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Vol. 51 No. 169
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Tuesday
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 25; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Doris Tucker 202-523-3419

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NOTICES
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NOTICES
Agency
311

Commit
NOTICES
Export
Korea
Textile
Corre
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Consum
NOTICES
Meeting
Cigar

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Contents

Federal Register
Vol. 51, No. 169
Tuesday, September 2, 1986

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
Upper Midwest et al., 31133

Agriculture Department
See Agricultural Marketing Service; Federal Grain Inspection Service; Forest Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Grants and cooperative agreements:
Extramural research support programs, 31175

Census Bureau
NOTICES
Surveys, determinations, etc.:
Company organization; multiestablishment companies, 31156

Coast Guard
RULES
Drawbridge operations:
Florida, 31112
Louisiana, 31113
Ports and waterways safety:
Blount Island Terminal St. Johns River, Jacksonville, FL; safety zone, 31113
Blount Island Terminal St. Johns River, Jacksonville, FL; security zone, 31114
NOTICES
Meetings:
Eighth Coast Guard District, 31185

Commerce Department
See also Census Bureau; International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration; National Technical Information Service
NOTICES
Agency information collection activities under OMB review, 31155

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, etc.:
Korea, 31163
Textile and apparel categories:
Correlation with U.S. Tariff Schedules Correction, 31163

Consumer Product Safety Commission
NOTICES
Meetings:
Cigarette and Little Cigar Fire Safety Interagency Committee, 31164

Defense Department
See also Navy Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Liver transplantation, 31100
Records:
Defense Audiovisual Agency implementation of the Privacy Act of 1974; CFR Part removed, 31103
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Inventory schedules, etc., 31196
Progress payment rates; reduction, 31194
Value engineering, 31197
NOTICES
Courts-Martial Manual; proposed amendments, 31164

Education Department
NOTICES
Grants; availability, etc.:
Handicapped children, severely; innovative programs; auxiliary activities—
Funding priorities, 31190
Meetings:
National Assessment of Vocational Education Conference, 31165

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Meetings:
National Petroleum Council, 31166

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 31125
Ohio, 31127
PROPOSED RULES
Hazardous waste:
Identification and listing—
Exclusions, 31140
NOTICES
Air pollution control; new motor vehicles and engines:
California pollution control standards—
Preemption waiver, 31173
Meetings:
Science Advisory Board, 31174
Toxic and hazardous substances control:
Premanufacture exemption application, 31173
Premanufacture exemption approvals, 31168
Premanufacture notices; monthly status report, 31200
Premanufacture notices receipts, 31169, 31170 (2 documents)

Executive Office of the President
See Science and Technology Policy Office

VOL 51 ISS 169 SE 2 1986 UMI

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Flight limitation in proximity of space flight operations, 31098
Airworthiness directives:
British Aerospace, 31089
Mooney Aircraft Co., 31090
VOR Federal airways, 31097
PROPOSED RULES
Airworthiness directives:
Boeing, 31133, 31134 (2 documents)
British Aerospace, 31135
Lockheed, 31137
VOR Federal airways, 31138
NOTICES
Meetings:
Aeronautics Radio Technical Commission, 31185 (2 documents)

Federal Communications Commission
RULES
Radio services, special:
Maritime services—
Conforming amendments, 31206
Reorganization and revision, 31303
PROPOSED RULES
Common carrier services:
Interstate telecommunications services; Alaska rates integration, etc., 31149
Telephone network, connection of telephone equipment, systems, and protective apparatus; computer-controlled automatic dialing equipment standards, 31149
Communications equipment and television broadcasting:
Cable television systems—
Subscriber terminal devices, 31147
Radio services, special:
Maritime services—
Compulsory ship radar equipment specifications for new installations, 31306
NOTICES
Applications, hearings, determinations, etc.:
Jacksonville Broadcasting Co. et al., 31174

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Hammeken, Walter H., et al., 31166
Natural Gas Policy Act:
Pipeline decontrol; waivers, rehearings, clarifications, etc., 31167
Preliminary permits surrender:
Burlington Energy Development Associates, 31167
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 31167
Sea Robin Pipeline Co., 31167

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Indiana, Ohio, and Michigan, 31152
Iowa, 31153
Ohio, 31153
Ohio, Louisiana, and North Carolina, 31154
Oklahoma and Arkansas, 31154
Oklahoma and Connecticut, 31155

Federal Highway Administration
PROPOSED RULES
Motor carrier safety regulations:
Driver qualifications—
Single classified driver's license system, 31150

Fish and Wildlife Service
RULES
Endangered Species Convention:
American alligators; export, 31130

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Sterivet Laboratories, Inc., 31100
Food additives:
Adhesive coatings and components—
Dipentene-beta-pinene-styrene resins, 31098
Adjuvants, production aids, and sanitizers—
3,5-Di-tert-butyl-4-hydroxhydrocinnamic acid triester, etc., 31099
NOTICES
Food additive petitions:
Dow Chemical Co., 31175
EMS-CHEMIE AG; correction, 31176
Rohn & Haas Co., 31176
GRAS or prior-sanctioned ingredients:
Donath-Kelterei, 31175
Hereld Organization; correction, 31176
National Fish Meal & Oil Association; correction, 31176

Forest Service
NOTICES
Environmental statements; availability, etc.:
Los Padres National Forest, CA, 31155

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Inventory schedules, etc., 31196
Progress payment rates; reduction, 31194
Value engineering, 31197

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Care Financing Administration

Health Care Financing Administration
NOTICES
Meetings:
Long-Term Health Care Policies Task Force, 31176

Historic Preservation, Advisory Council
RULES
Historic properties protection, 31115

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Countervailing duties:
Steel wire from New Zealand, 31156

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Cape Cod & Hyannis Railroad, Inc., 31178
Railroad services abandonment:
Portland Terminal Co., 31178

Joint Board for Enrollment of Actuaries
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 31178

Land Management Bureau
NOTICES
Meetings:
Rock Springs District Advisory Council, 31177

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Inventory schedules, etc., 31196
Progress payment rates; reduction, 31194
Value engineering, 31197

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 31179

National Bureau of Standards
NOTICES
National Fire Codes:
Fire safety standards, 31161
Technical Committee reports, 31161

National Highway Traffic Safety Administration
NOTICES
Meetings:
National Highway Safety Advisory Committee, 31186

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Atlantic swordfish, 31151
NOTICES
Permits:
Marine mammals, 31162

National Technical Information Service
NOTICES
Patent licenses, exclusive:
Nutrition 21, 31163

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Anchorage et al., 31103
USS Butte et al., 31104
USS Cushing et al., 31104
USS Dale, 31105
USS Duluth, 31106
USS Harry W. Hill et al., 31106
USS Iwo Jima, 31107
USS John Young et al., 31108
USS Moosbrugger et al., 31108
USS Norton Sound, 31109
USS Ogden et al., 31110
USS Preble, 31110
USS Raleigh, 31111
USS Sylvania, 31112
NOTICES
Environmental statements; availability, etc.:
Mid-Atlantic Electronic Warfare Range, Marine Corps Air Station, Cherry Point, NC, 31165
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 31165

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Arizona Public Service Co. et al., 31179
Long Island Lighting Co., 31181
Virginia Electric & Power Co. et al., 31181

Pension Benefit Guaranty Corporation
NOTICES
Privacy Act; systems of records, 31181

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration

Science and Technology Policy Office
NOTICES
Meetings:
White House Science Council, 31183

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 31183
Cincinnati Stock Exchange, Inc., 31184
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange Inc., 31184
(2 documents)
Applications, hearings, determinations, etc.:
FBS Mortgage Corp., 31185

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent and interim regulatory programs:
Federal oversight, evaluation, enforcement, and withdrawing approval of State programs, 31139
NOTICES
Surface coal mining operations; unsuitable lands; petitions, designations, etc.:
Tennessee, 31177

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration

Veterans Administration
NOTICES
Privacy Act:
Computer matching program, 31186

Separate Parts In This Issue

Part II
Department of Education, 31190

Part III
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 31194

Part IV
Environmental Protection Agency, 31200

Part V
Federal Communications Commission, 31206

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

VOL 51 ISS 169 SE 2 1986 UMI

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
1065.....31133
1068.....31133
1079.....31133

14 CFR
39 (2 documents).....31089, 31090
71.....31097
75.....31097
91.....31098
Proposed Rules:
39 (4 documents).....31133–31137
71.....31138

21 CFR
175.....31098
178.....31099
510.....31100

30 CFR
Proposed Rules:
733.....31139

32 CFR
199.....31100
286g.....31103
706 (14 documents).....31103–31112

33 CFR
117 (2 documents).....31112, 31113
165 (2 documents).....31113, 31114

36 CFR
800.....31115

40 CFR
52 (2 documents).....31125, 31127
Proposed Rules:
261.....31140

47 CFR
0.....31303
1.....31303
2.....31303
13.....31303
21.....31303
63.....31303
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303
Proposed Rules:
15.....31147
67.....31149
68.....31149
76.....31147
80.....31306

48 CFR
Proposed Rules:
32.....31194
45.....31196
48.....31197
52 (2 documents).....31194, 31197

49 CFR
Proposed Rules:
391.....31150

50 CFR
23.....31130
Proposed Rules:
630.....31151

VOL
51
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Rules and Regulations

Federal Register
Vol. 51, No. 169
Tuesday, September 2, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-38-AD; Amdt. 39-5409]

Airworthiness Directive; British Aerospace (BAe) Models DH 125-1A and DH 125-3A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD), which was previously made effective as to all known U.S. owners and operators of British Aerospace Models DH 125-1A and DH 125-3A series by individual priority letters. This AD requires inspection and repair of the flap drive torque shaft assembly to prevent loss of control due to asymmetric flap deployment.

EFFECTIVE DATE: September 15, 1986. This AD was effective earlier to all recipients of Priority Letter AD 86-06-04, issued March 19, 1986.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On March 19, 1986, the FAA issued Priority Letter AD 86-06-04, applicable to British Aerospace Models DH 125-1A and DH 125-3A series airplanes, which requires inspection and repair or replacement, as necessary, of the flap drive torque shaft assembly. This action was prompted by reports received of an in-flight incident of flap asymmetry due to failure of the flap drive torque shaft assembly. It was determined that the failure was caused by corrosion. Further investigation revealed similar corrosion on two other airplanes. Failure of the flap drive torque shaft assembly could result in loss of control of the airplane due to asymmetric flap deployment.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this type design registered in the U.S., Priority Letter AD 86-06-04 was issued to require inspection and repair or replacement, as necessary, of the flap drive torque shaft assembly in accordance with procedures described in British Aerospace Alert Service Bulletin 27-A140, dated March 10, 1986.

On April 1, 1986, British Aerospace issued Service Bulletin 27-140, which merely supplements and clarifies the Alert Service Bulletin 27-A140. The United Kingdom Civil Aviation Authority (CAA) has classified both service bulletins as mandatory. The FAA has included the procedures described in Service Bulletin 27-140 as an alternative for compliance with paragraph A. of the published version of this amendment; this action does not impose any additional burden on any operator.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued March 19, 1986, to all known U.S. owners and operators of certain British Aerospace Model 125 series airplanes. These conditions still exist and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to British Aerospace Models DH 125-1A, DH 125-1A/522, DH 125-1A/S-522, and DH 125-3A airplanes, all serial numbers, certificated in any category. To prevent loss of control due to asymmetric flaps, accomplish the following, unless already accomplished:

A. Before further flight, inspect the left-hand and right-hand flap drive torque shaft assemblies, and repair or replace, as necessary, in accordance with British Aerospace (BAe) Alert Service Bulletin 27-A140, dated March 10, 1986, or BAe Service Bulletin 27-140, dated April 1, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may

VOL 51 ISS 169 SEP 2 1986 UMI

be used when approved by the Manager, Standardization Branch, ANM-13, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 15, 1986. It was effective earlier to those recipients of Priority Letter AD 86-06-04, dated March 19, 1986.

Issued in Seattle, Washington, on August 22, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-19654 Filed 8-29-86; 8:45 am]

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14 CFR Part 39

[Docket No. 85-CE-29-AD, Amdt. No. 39-5408]

Airworthiness Directive; Mooney Aircraft Company Models M20 and M20A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Mooney Models M20 and M20A airplanes which supersedes AD 76-15-01, Amendment 39-2673. The new AD retains the same inspection intervals as were in AD 76-15-01, clarifies instructions for inspections originally prescribed in AD 76-15-01 and adds a one time reporting of findings resulting from the inspections. This action is necessary to assure thorough and complete inspections of the wood structure and to provide data on the condition of wood structure in the Mooney M20 and M20A fleet. This action will reduce the probability of undetected wood deterioration in primary structure and provide information that can be used to determine if additional mandatory action is needed to assure the structural integrity of these airplanes.

EFFECTIVE DATE: October 6, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Mooney Service Bulletin (S/B) No. M20-170A dated February 24, 1969; S/B No. M20-29 dated December 4, 1957; and S/B No. M20/67 dated February 15, 1960, may be obtained from Mooney Aircraft Corporation, Post Office Box 72, Kerrville, Texas 78028. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Garry Sills, Airplane Certification Branch, ASW-150, FAA, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 624-5164.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring more detailed repetitive inspections and proof load testing of the wooden primary structure and repair or replacement as necessary on Mooney Aircraft Corporation Model M20 and M20A airplanes was published in the **Federal Register** on Wednesday, September 4, 1985 (50 FR 35830-35836). The proposal resulted from an NTSB review of Mooney Models M20 and M20A accident records and specifically an accident on January 29, 1983, at Prattville, Alabama, in which the left wing separated in flight.

Interested persons have been provided an opportunity to comment on the proposal. Forty-four commenters responded. Two commenters agreed that the inspection requirements should be implemented as proposed. One commenter determined that paragraph (i) of the proposal would require a written report every 6 months. The FAA concurs and the paragraph has been rewritten to require a written report only for the initial inspection.

Two commenters, both of whom have performed extensive rework on their wings, indicated that the structural integrity of the airplane is dependent upon the age of the wing structure and the condition of the wing covering fabric. One of the commenters stated that the fabric should be inspected every month and all tears and cracks repaired at once when they are found. They also stated close attention should be given to ensure the scupper boxes are sealed so that spilled gasoline and water cannot enter the wing. The FAA has no means of determining to what extent a wing is reworked and therefore no allowance can be made for this action. The FAA does not concur that mandatory monthly inspections are justified if annual and six month inspections are done properly, and therefore, monthly inspections are not required by the AD. The FAA concurs with the statement regarding the scupper boxes and inspections of these areas are required by this AD.

One commenter stated that this AD should not be required until the next annual inspection. The FAA concurs and the requirements of this AD continue the required inspection intervals previously established by AD 76-15-01. Several commenters stated that airplanes which are permanently hangared are generally in better condition than those which are kept outdoors and that the FAA should consider granting extended inspection intervals for these hangared airplanes. While the FAA concurs that such airplanes may be in better structural condition than normal, it is impossible to monitor day to day conditions encountered by an airplane. Therefore, this suggestion was not incorporated in the AD.

Several commenters were concerned with the Prattville, Alabama, accident described in the "Discussion" section of the NPRM and felt that the evidence presented was nonsupportive or insufficient justification for the proposed AD. Further investigation by the FAA disclosed that the left wing main spar had deteriorated due to wood decay and that a previous structural repair of the spar had been improperly accomplished. The FAA concludes that improper repair of deteriorated wood structure was the primary cause of this accident and concurs that that accident alone is not justification for further action.

Some commenters were concerned that the new proof loads for the ailerons and flaps are excessive and that an exorbitant amount of time would be required to make the tests. Another commenter stated that the NPRM proposed complex repetitive inspections and proof load testing of the primary structure and urged the FAA to thoroughly investigate alternative solutions to the tests and inspections outlined in the NPRM. Several commenters considered the implementation cost of the proposed AD as significant and expressed concern. All information available at this time indicates that when the inspections are properly accomplished, wood deterioration in the empennages and wings is being discovered during compliance with the existing AD. Therefore, there is insufficent justification for placing additional test and inspection burdens on owners in

order to assure deterioration is found. Accordingly, the proposed requirements for additional inspections and wing control surfaces mounting point proof load tests have been withdrawn from the AD. However, there are areas in AD 76–15–01 where clarification of which components are to be inspected and how to inspect them is needed. Therefore, the new AD will retain the improved inspection descriptions proposed in the notice.

During the 15 years from 1971 to 1985 there were 10 structural failures on M20 airplanes. Eight of the 10 accidents occurred prior to the 1976 AD which requires repetitive proof load testing, inspection and repair of empennage structure and repetitive inspection, and if necessary, repair of wing structure. Since the 1976 AD, only two accidents have occurred, both of which involved wing failure. In one case the existing AD had apparently not been complied with and in the other case, the accident was due to improper repair of deteriorated wood structure in the wing.

The fact that some accidents of M20 and M20A airplanes attributed to inflight failure of deteriorated wood structure have occurred subsequent to the issuance of AD 76–15–01 confirms that the structure on some airplanes is in less than good condition. This is an ongoing problem that must be adequately addressed. At this time the FAA lacks information from which to determine how extensive the wood deterioration problem is in the M20 and M20A fleet. Information of this type is necessary along with accident data to determine if mandatory inspections and/or tests in addition to those required by this and previous AD action are needed to assure continued airworthiness of these airplanes. For these reasons, the inspection intervals of AD 76–05–01 are continued, and the improved inspection descriptions and the proposed one time reporting requirement retained in the new AD.

Therefore, the proposal is being adopted except for addition of some improved inspection descriptions, deletion of the aileron and flap mounting points proof loading and deletion of additional inspection requirements that were in addition to those intended in AD 76–15–01.

The FAA had determined there are approximately 352 airplanes that will be affected by this AD. The cost of inspecting these airplanes in accordance with this AD is unchanged from the previous AD with the exception of the expense of the one-time reporting requirement. This cost is so small that compliance with the AD will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mooney Aircraft Corporation: Applies to Models M20 and M20A (all serial numbers) airplanes certificated in any category.

Compliance: As indicated in the body of the AD.

To preclude structural failure due to deteriorated wooden structures, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, if AD 76–15–01 has not been previously complied with, or within 12 calendar months after the last 12 month repetitive inspection required by AD 76–15–01, whichever is applicable, and each 12 months thereafter accomplish the wood structure proof load tests, modifications and visual inspections specified in paragraphs (d), (e), (f) and (g) of this AD and repair all discrepancies found prior to further flight.

(b) The empennage proof load tests and modification and inspection requirements of paragraphs (a), (d) and (e) are not required on airplanes modified with an all-metal empennage installed per Mooney Service Bulletin (S/B) Kit No. M20–170–1.

(c) Within the sixth month after accomplishment of the inspections required by paragraph (a) of this AD, or within 12 calendar months after the last six month interval repetitive inspection required by AD 76–15–01 and each 12 months thereafter, whichever is applicable, accomplish the empennage and wing inspections specified in Parts IIA, III6, III9, and III10 of Mooney S/B No. M20–170A dated February 24, 1969, and repair all discrepancies found prior to further flight.

(d) On airplanes not equipped with an all-metal empennage, proof load test the empennage and supporting structure as follows:

(1) Apply proof loads to the vertical fin spar as shown in Figure 1 of this AD. Apply the load to the right side and then to the left side. Apply proof loads to the rudder hinges of the fin as shown in Figure 3 of this AD. Apply hinge proof loads to the right side and then to the left side.

(2) After the initial proof load testing in paragraph (d)(1) of this AD, at intervals not to exceed one year, apply the proof loads to the vertical fin spar and rudder hinges as shown in Figures 1 and 3 of this AD. Apply the loads in one direction only during each 12 month inspection cycle by applying the loads to the right side at the end of the first interval and alternating load direction similarly thereafter.

(3) If the empennage fails during the proof loading specified in paragraphs (d)(1) or (d)(2) of this AD, prior to further flight, replace the wood empennage with an all-metal empennage in accordance with the instructions contained in Mooney S/B Kit No. M20–170–1. The empennage is considered to have failed when complete separation of the vertical fin from the horizontal stabilizer occurs, fin spar cracks occur, the hinge separates or loosens from the fin, other wood failures occur, glue joint failures occur, or permanent deformation occurs as shown in Figure 2 of this AD.

(e) Modify and inspect the wood empennage as follows:

(1) If fin failure did not occur during the proof load application specified in paragraphs (d)(1) and (d)(2) of this AD, prior to further flight, modify the vertical fin and visually inspect the empennage as follows:

(i) Modify the vertical fin by adding inspection access holes and reinforcing straps in accordance with Parts IB and IC of Mooney S/B No. M20–170A dated February 24, 1969, unless previously accomplished.

(ii) Visually, and if necessary using the methods in paragraph (h) of this AD, inspect the empennage in accordance with S/B No. M20–170A dated February 24, 1969, Parts IA and II and repair any discrepancies found prior to further flight.

(f) Prepare the wing and wing carry-thru structure for inspection in accordance with instructions in Part III of Mooney S/B No. M20–170A dated February 24, 1969, and as follows:

(1) Remove the wing to fuselage fairings and fillets.

(2) Remove all the wing and center section access doors and panels. (Refer to Figure 5 of Mooney Service Bulletin (S/B) No. M20–170A).

(3) Remove the sealing tape at the wing-fuselage joint.

(4) Remove the rear seat and auxiliary fuel tank for access to the wing center section.

(5) Remove flag gap metal seal strips from the top trailing edge of both wings.

(6) Disconnect and remove the wing flaps and ailerons.

(g) Visually, and if necessary using the methods in paragraph (h) of this AD, inspect the wing and wing carry-thru structure and repair any discrepancies found prior to further flight in accordance with instructions in Part III of Mooney S/B No. 170A dated February 24, 1969, and as follows:

(1) Inspect the areas around wing to fuselage attach fittings for evidence of deterioration or joint separation.

(2) Inspect the flap and aileron attach bolts, bearings, bushings, and hinge fitting attach bolts and bushings for evidence of rust, corrosion, and wear. See Figure 6 in Mooney S/B No. M20-170A dated February 24, 1969.

(3) Visually inspect the wood end-grain surrounding bolt holes for evidence of rust, discoloration, deterioration, and evidence of moisture accumulation at the trailing edges of the wings.

(4) Visually inspect the rear stub spar for glue bond separations, water stains, and wood rot. If these inspections identify any questionable areas in which possible deterioration may exist in the concealed spar caps, prior to further flight, determine the condition of the internal spruce core in accordance with paragraph (h) of this AD. See Note 1 of this AD.

(5) Visually inspect all accessible areas of the main spar from the fuselage center line (BL 0.0) out to left and right wing station 59.25 for glue bond separations, water stains, and wood rot. If these inspections identify any questionable areas in which possible deterioration may exist in the concealed spruce spar prior to further flight determine the condition of the internal spruce core in accordance with paragraph (h) of this AD. See Note 1 of this AD.

(6) Visually inspect the accessible interior of the wing using a flashlight and mirror, for wood decay, water and/or wood stains, pooled dust/dirt which may indicate evidence of previous standing water, rust or corrosion on metallic surfaces, wood discoloration, and detectable moisture. See Note 1 of this AD.

(7) Inspect the upper and lower exterior surfaces of the wing, including the wheel well, for the following: See Note 1 of this AD.

(i) Indications that the wood immediately below the fabric is soft or contains excessive moisture (i.e., swollen). Soft wood may be located and/or confirmed by depressing the wing's surface in the vicinity of the area in question with a rounded, blunt instrument and comparing its hardness to that of good wood. Note that any areas being compared must have identical substructure.

(ii) Indications that the fabric/plant is delaminating from the wood surface (bubbles, discoloration, boils, soft spots and other surface flaws).

(iii) Cracks or breaks in the paint which could allow water to enter the wing.

(iv) Any other exterior damage which would allow water to penetrate the fabric/paint barrier and enter the wood.

(8) Visually inspect the rear spar in all areas it is accessible from the fuselage center line out to the left and right wing tips for wood rot, water stains in wood and glue joint separation. Pay special attention to the area around all flap and aileron hinge supports, including the support ribs, lower wing skins, spars and closeout strips at wing stations 22.0 and 147.0 (flap inboard and outboard hinge support ribs).

(9) Inspect all drain holes on the bottom of the wing to ensure they are completely open and free of burrs and/or pieces of fabric.

(10) Visually inspect the fuel scupper areas of the main and auxiliary fuel tank fillers for sealant condition between scupper boxes and wing structure.

(11) Check main and auxiliary fuel tank scupper drains to be sure they are not clogged.

(12) Visually inspect aileron and flap fabric covering under metal gap strips in accordance with Mooney S/B No. M20-29 dated December 4, 1957.

(13) Visually inspect the areas of the upper wing surface trailing edge under flap gap metal seals for fabric or wood deterioration. Be alert for deteriorated wood around screw holes used in holding the metal strip to the wing.

(14) Visually inspect, if necessary repair, and refinish the main landing gear wheel well area in accordance with Mooney S/B No. M20-67 dated February 15, 1960.

(h) If during any inspections specified in paragraphs (e) and (g) of this AD there are visual indications of wood deterioration below the surface, prior to further flight, inspect and test these areas to assure their structural integrity by using one or more of the following:

(1) Test for soft/decayed wood with a sharp probe such as an awl or sharp pocket knife.

(2) Disassemble the structure as necessary to gain access to the area and perform a detailed visual inspection.

(3) Tap the wood area in question with a small rounded blunt instrument approximately the size of a small pocket knife. Compare the sound to similar areas that are not suspect. Assuming similar understructure, an abrupt change in sound to a less or non-resilient sound may indicate decay below the surface.

(i) If significant structural repair of the wing main spar, rear spar or stub spar or any area of the wood empennage is found necessary as a result of the inspections and tests of the preceding paragraphs, prior to initiation of the repair, contact Mooney Aircraft Corporation, Post Office Box 72, Kerrville, Texas 78028; Telephone (512) 896-6000, or the local Mooney Aircraft Repair Center, or FAA Airplane Certification Office, ASW-150, FAA, Southwest Region, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 624-5164, to arrange for engineering review and approval of the repair design.

(j) Within 30 days after accomplishment of the first inspection required by paragraph (a) of this AD, the appropriately rated airframe mechanic who performed the inspection shall fill out and sign the one time reporting form included as Attachment 1 to this AD and mail it to the following address: DOT/FAA, Airplane Certification Branch, ASW-150, Post Office Box 1689, Fort Worth, Texas 76101.

(Reporting requirements approved by the Office of Management and Budget under control No. 2120-0056)

Note.—This is a one time only reporting requirement.

(k) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW-150, FAA, Southwest Region, Post Office Box 1689, Fort Worth, Texas 76101.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mooney Aircraft Corporation, Post Office Box 72, Kerrville, Texas 78028, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note 1.—The surface features described in the paragraphs of this AD may be accentuated by illuminating the surface with a light source at a shallow angle. The following technique may be used by an experienced inspector to detect soft and/or decayed wood in the wing spars. Tap the wing directly above and below the spars with a small rounded blunt instrument approximately the size of a small pocket knife. Start at the outboard end and move inboard, listening to the sound generated by the wing. The sound quality will change slowly. If the change is abrupt or if the sound is not resilient, the wood directly below the surface may be deteriorated due to decay.

Note 2.—Shelter—Owners and operators are encouraged to shelter the airplanes, to keep the airplane out of rain storms, and to protect the fabric surface from unnecessary exposure to the deteriorating effects of the sun.

Note 3.—Maintenance—Owners and operators are encouraged to be selective in who performs maintenance on their airplane. Only personnel extremely experienced in wood airplane inspection and repair should be contacted.

Note 4.—The inspection intervals required by this AD differ from the inspection intervals shown in Mooney Service Bulletin No. M20-170A. The intervals in this AD are the same as AD 76-15-01 which this AD supersedes.

Note 5.—Repairs to primary and secondary structure may be accomplished with reference to:

(A) FAA Advisory Circular No. 43-13-1A: Acceptable Methods, Techniques and Practices Aircraft Inspection and Repair, Department of Transportation, Federal Aviation Agency 1972; available through the Government Printing Office.

(b) ANC-18: Design of Wood Aircraft Structures, Chapter 4, Munitions Board Aircraft Committee June 1951.

(c) Mooney Aircraft Corporation Engineering Drawings; the specific drawings required will depend on the affected structural components.

(D) Mooney Service Bulletin No. M20-170A dated February 24, 1969.

Note 6.—Design of major repairs to primary wood structure (main and stub spars and ribs receiving loads such as landing gear loads or loads related to attachment of moveable control surfaces to fixed surfaces or attachment of fixed surfaces to the fuselage) should be reviewed and approved by Mooney Aircraft Corporation or an FAA Designated Engineering Representative having

appropriate ratings or by FAA Aircraft Certification Division engineers. This is not intended to apply to those situations wherein a deteriorated part is replaced with an entire new part of like design.

This AD supersedes AD 76–15–01, Amendment 39–2673.

This amendment becomes effective October 6, 1986.

Issued in Kansas City, Missouri, on August 21, 1986.

Edwin S. Harris,

Director, Central Region.

BILLING CODE 4910–13–M

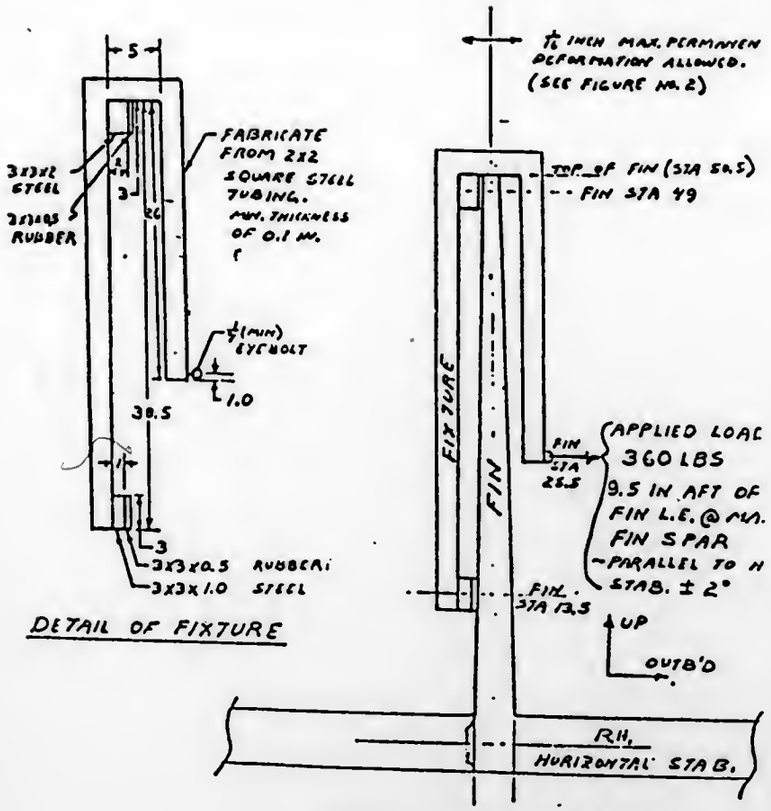


FIGURE NO. 1 - APPLICATION OF FIN SIDE PROOF LOAD ON MAIN SPAR

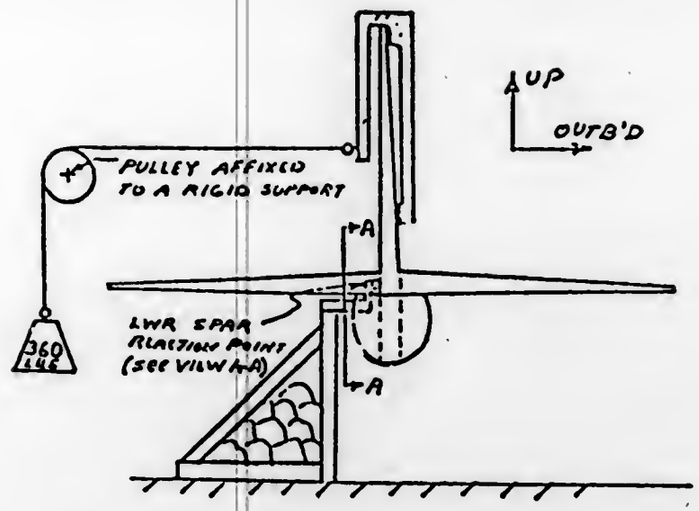
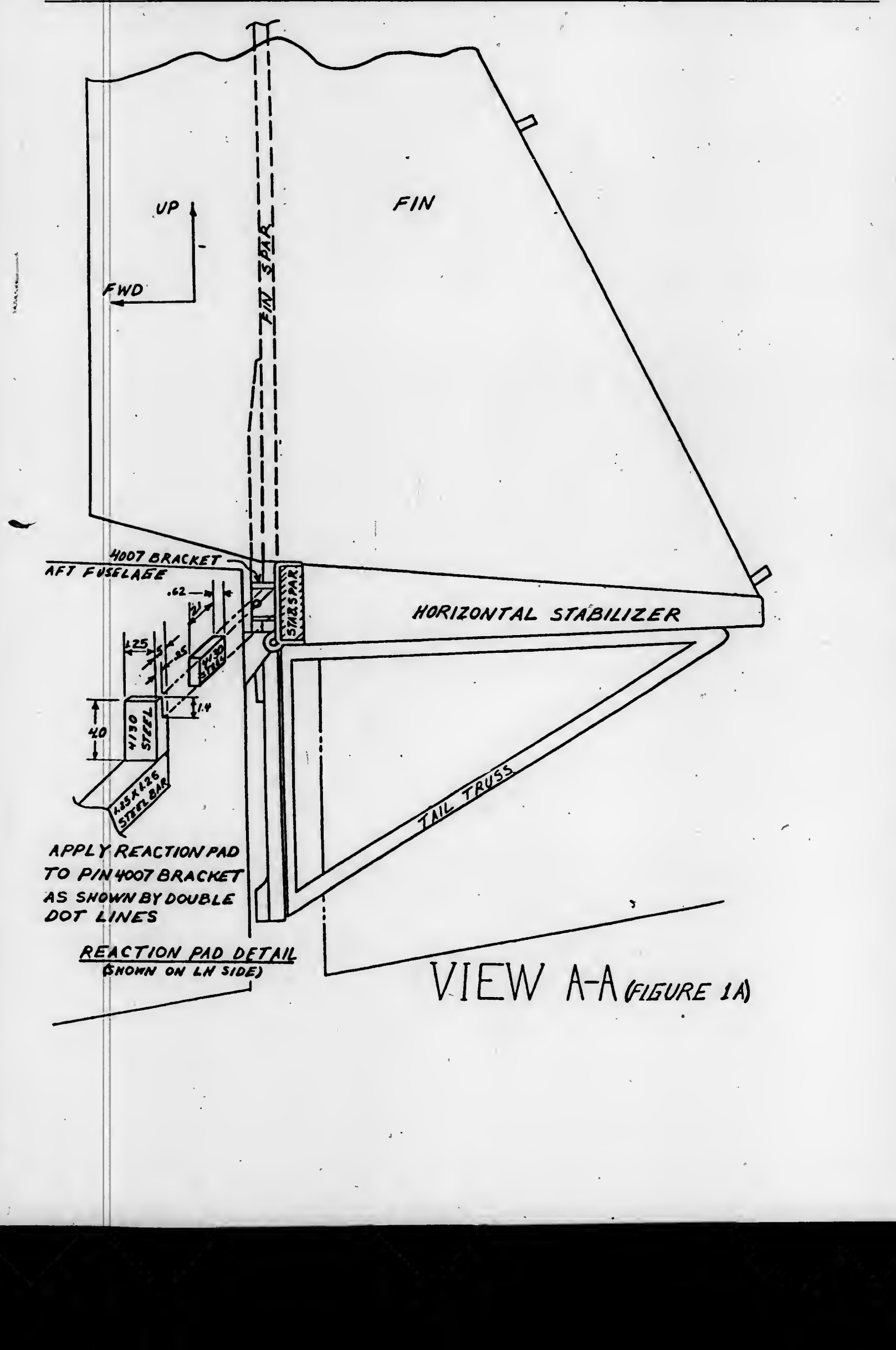


FIGURE 1A

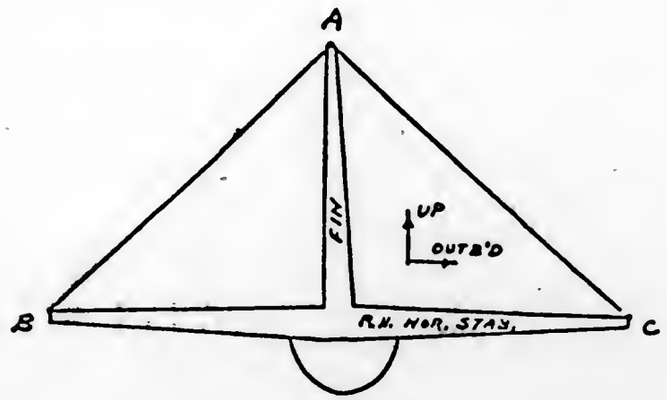
RECOMMENDED FIN PROOF LOAD METHOD (INCLUDING LOWER RESTRAINT)



VIEW A-A (FIGURE 1A)

NOTES:

1. MARK A POINT 'A' ON THE FIN TIP
2. MARK POINTS 'B' AND 'C' ON THE HORIZONTAL STAB. TIPS
3. MEASURE THE DISTANCES 'AB' AND 'AC' BEFORE AND AFTER APPLICATION OF LOADS SHOWN BY FIG. NO. 1
4. IF THE DISTANCE 'AB' MEASURED AFTER LOAD APPLICATION VARIES BY MORE THAN $\frac{1}{16}$ INCH FROM THE DISTANCE 'AB' MEASURED BEFORE LOAD APPLICATION, FAILURE IS CONSIDERED TO HAVE OCCURRED. A VARIATION OF MORE THAN $\frac{1}{16}$ INCH IN THE TWO 'AC' MEASUREMENTS ALSO CONSTITUTES FAILURE



VIEW LOOKING FORWARD

FIGURE NO. 2 - FIN PERMANENT DEFORMATION LIMITS

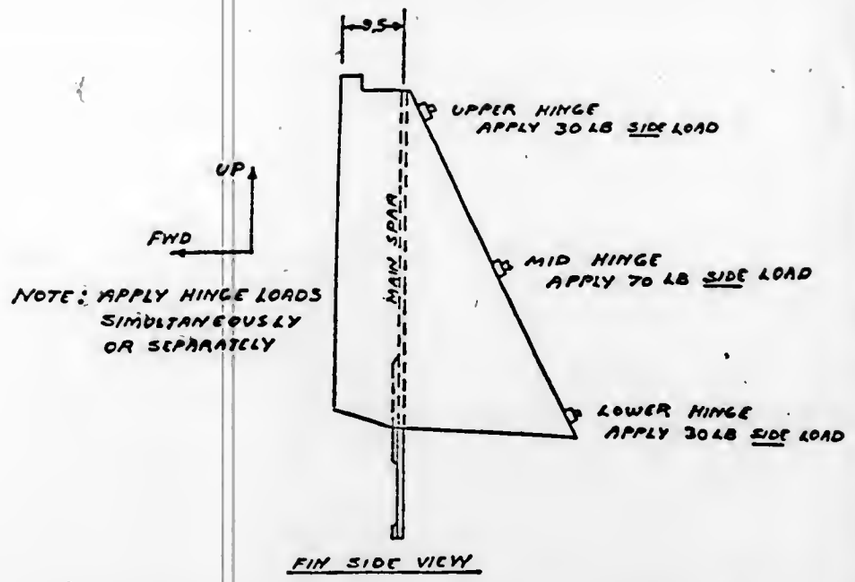


FIGURE NO. 3 - FIN-RUDDER HINGE SIDE PROOF LOAD APPLICATION

BILLING CODE 4910-13-C

Attachment 1

Inspection Results Reporting Form, Mooney M20 and M20A Wood Structure Inspection.

I. Airplane Model No. ————, Serial No. ————.

II. Airplane N-Number ————.

III. Does the airplane have a metal empennage installed? Yes ———— No ————. If no, go to IV, if yes, skip to V.

IV. For airplanes that have the wooden empennage:

Did the visual inspection of the empennage result in discovery of any failed glue joints, rotted wood or delaminated wood? Yes ———— No ————. If yes, describe location and extent of problem.

Did the visual inspection of the empennage result in discovery of any deteriorated paint or fabric covering? Yes ———— No ————. If yes, describe location and extent.

Did the visual inspection of the empennage result in discovery of any indications of water inside the empennage? Yes ———— No ————. If yes, describe where it got in and where it pooled.

Did the empennage pass or fail the proof load tests of paragraph (d)? Yes ———— No ————.

This inspection and testing of the wood empennage on this airplane results in the conclusion that its overall general structural condition is: Poor ————; Fair ————; Good ————; Excellent ————.

Make any comments you wish to make about adding or deleting inspections and testing of the wood empennage on M20 and M20A airplanes:

V. Wing inspection results.

Did the visual inspection of the wing and wing carry-thru result in discovery of any failed glue joints, rotted wood or delaminated wood? Yes ———— No ————. If yes, describe location and extent of problem.

Did the visual inspection of the wing and wing-carry-thru result in discovery of any deteriorated paint, fabric covering plugged drain holes or deteriorated scupper box seals? Yes ———— No ————. If yes, describe problem, location and extent.

Did the visual inspection of the wing and wing carry-thru result in discovery of any indications of water inside the wing? Yes ———— No ————. If yes, describe where it got it and where it pooled.

This inspection of the wing on this airplane results in the conclusion that its overall general structural condition is: Poor ————; Fair ————; Good ————; Excellent ————.

Make any comments you wish to make about adding or deleting inspections of the wing on M20 and M20A airplanes:

Mechanics Name: ————
FAA Certificate Number: ————
Date: ————

[FR Doc. 86-19857 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWA-17]

Alteration of Jet Routes and Establishment of VOR Federal Airways; Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter the descriptions of six Jet Routes and establish one new Federal Airway located in the states of Virginia, North Carolina, South Carolina and Georgia. This action is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On May 29, 1986, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of Jet Routes J-24, J-48, J-51, J-52, J-55, J-61, J-191 and establish new VOR Federal Airway V-577 and alter V-39 (51 FR 19360). Due to numerous technical problems Jet Route J-48 and Federal Airway V-39 did not pass flight check at this time and have been removed from this docket. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for removing J-48 and V-39 from this docket and except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations alter the descriptions of Jet Routes J-24, J-51, J-52, J-55, J-61, J-191 and establish new VOR Federal Airway V-577. Currently, east coast traffic flows are so saturated and compressed in the New York metropolitan area that substantial delays are experienced daily. The EECP would alleviate this congestion and would reduce delays to and from terminals in the eastern United States.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (51 FR 2683), are further amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-577 [New]

From Cedar Lake, NJ; INT Cedar Lake 091° and Sea Isle, NJ, 050° radials.

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J–24 [Amended]

By removing the words "Charleston, WV; to Richmond, VA." and substituting the words "Charleston, WV, INT Charleston 101° and Richmond, VA, 286° radials; to Richmond."

J–51 [Revised]

From Jacksonville, FL, via Savannah, GA; Columbia, SC; INT Columbia 040° and Flat Rock, VA, 213° radials; to Flat Rock.

J–52 [Amended]

By removing the words "Columbia, SC; Raleigh-Durham, NC;" and substituting the words, "Columbia, SC; INT Columbia 040° and Raleigh-Durham, NC, 228° radials; Raleigh-Durham;"

J–55 [Amended]

By removing the words "INT of the Florence 007° and the Raleigh, NC, and the Raleigh-Durham, NC, 224° radials;" and substituting the words "INT Florence 003° and Raleigh-Durham, NC, 228° radials;"

J–61 [Revised]

From INT Wilmington, NC, 028° and Nottingham, MD, 174° radials; Nottingham; Westminster, MD; Philipsburg, PA; to Buffalo, NY.

J–191 [Amended]

By removing the words "Tar River, NC;"

Issued in Washington, DC, on August 22, 1986.

Harold M. Downey,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86–19658 Filed 8–29–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 91

[Docket No. 25069; Amdt. 91–195]

Flight Limitation in the Proximity of Space Flight Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment corrects the reference to the Department of Defense (DOD) office in the FAA regulation restricting the flight of aircraft near space flight operations. The reference to "DOD Manager for Space Flight Operations" is changed to "DOD Manager for Space Transportation System Contingency Operations."

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch, ATO–230, Airspace-Rules and Aeronautical Information Division, Office of the Associate Administrator for Air Traffic, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8626.

SUPPLEMENTARY INFORMATION:

The Rule

FAR § 91.102, Flight Limitation in the Proximity of Space Flight Operations, prohibits the operation of aircraft within areas designated by a Notice to Airmen (NOTAM) for space flight operations except when authorized by air traffic control (ATC), or operated under the operational control of the DOD Manager for Manned Space Flight Operations. This DOD office title has been changed to the "DOD Manager for Space Transportation System Contingency Support Operations." This amendment to the rule reflects this office title change but makes no substantive change to the regulation. Because this amendment involves only a minor technical amendment which would not be of particular interest to the public, I find that notice and public procedure under 5 U.S.C. 553 are unnecessary. For the above reasons, I find that good cause exists for making the amendment effective less than 30 days after publication.

For the reasons listed above, the FAA has determined that this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reasons, this rule will have no significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Aviation safety.

The Amendment

Accordingly, Part 91 of the Federal Aviation Regulations (14 CFR Part 91) is amended as follows:

PART 91—[AMENDED]

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 91.102 is revised to read as follows:

§ 91.102 Flight limitation in the proximity of space flight operations.

No person may operate any aircraft of U.S. registry, or pilot any aircraft under the authority of an airman certificate issued by the Federal Aviation Administration within areas designated in a NOTAM for space flight operations except when authorized by ATC, or operated under the control of the Department of Defense Manager for Space Transportation System Contingency Support Operations.

Issued in Washington, DC, on August 25, 1986.

Donald D. Engen,

Administrator.

[FR Doc. 86–19662 Filed 8–29–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 86F–0018]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dipentene-*beta*-pinene-styrene resins as tackifying agents used in the production of adhesives intended for use in food-packaging materials. This action responds to a petition filed by Arizona Chemical Co.

DATES: Effective September 2, 1986; objections by October 29, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register

of February 12, 1986 (51 FR 5282), FDA announced that a petition (FAP 6B3906) had been filed by Arizona Chemical Co., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of dipentene-*beta*-pinene-styrene resins as tackifying agents used in the production of adhesives intended for use in food packaging materials.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before October 2, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 175.105(c)(5) by alphabetically inserting a new item in the list of substances to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * *	* * *
Dipentene-beta-pinene-styrene resins.	
* * *	* * *

Dated: August 25, 1986

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-19678 Filed 8-29-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 85F-0233]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as a component of olefin copolymers intended for use as food-contact articles. This action responds to a petition filed by the B.F. Goodrich Co. (petition now the property of Ciba-Geigy Corp.).

DATES: Effective September 2, 1986; objections by October 2, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 9, 1985 (50 FR 28034), FDA announced that a petition (FAP 5B3862) had been filed by the B.F. Goodrich Co., Akron, OH 44318, proposing to amend the food additive regulations in 21 CFR 178.2010 to provide for the inclusion of a new use of 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as a component of olefin copolymers intended for use as food-contact articles. Ciba-Geigy Corp., Hawthorne, NY 10532, subsequently, purchased the rights to the petition.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in

the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before October 2, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in paragraph (b) by adding new limitation 4 and the Chemical Abstracts Service Registry number (CAS Reg. No.) for "3,5-*Di-tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione," to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * * *

(b) * * *

Substances	Limitations
* * *	* * *
3,5-Di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione (CAS Reg. No. 34137-09-2).	For use only: * * * 4. At levels not to exceed 0.25 percent by weight of olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1, 3.2, 3.3, 3.4, 3.5, and 4.0.
* * *	* * *

Dated: August 25, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc 86-19676 Filed 8-29-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Sterivet Laboratories, Inc.

EFFECTIVE DATE: September 2, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 310-443-6243.

SUPPLEMENTARY INFORMATION: Sterivet Laboratories, Inc., 7230 Florence Blvd., Omaha, NE 68101, is sponsor of NADA 113-510 for Equipalazone® (phenylbutazone granules), which is used as an anti-inflammatory agent in horses. The firm advised FDA of a change of address. The agency is amending the regulations to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 [21 U.S.C. 360b, 371(a)]; 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Sterivet Laboratories, Inc.," and in paragraph (c)(2) in the entry for "047408" by amending the sponsor address to read "7230 Florence Blvd., Omaha, NE 68101."

Dated: August 25, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-19681 Filed 8-29-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD 6010.8-R, Amdt. No. 1]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Liver Transplantation

AGENCY: Office of the Secretary, DOD.

ACTION: Amendment to Final rule.

SUMMARY: This final rule provides for coverage by the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) of the costs of liver transplantation. The amendment states the principles by which coverage of liver transplantation will be provided, in keeping with Pub. L. 98-94, which amended title 10, chapter 55, United States Code, to provide for CHAMPUS coverage of liver transplant operations performed on and after July 1, 1983.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Reta M. Michak, Policy Branch, OCHAMPUS, telephone (303) 361-4078.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its Regulation, DOD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DOD Regulation 6010.8-R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

In FR Doc 85–15196 appearing in the Federal Register on June 25, 1985 (50 FR 26222), the Office of the Secretary of Defense published for public comment a proposed amendment regarding benefits for liver transplantation. The following summarizes the comments, suggestions and actions taken.

In the proposed rule, we stated that extrahepatic biliary atresia is a covered condition for patients who fail to respond to hepatoportoenterostomy (Kasai procedure). We agree that the criterion as written was too restrictive and we have therefore deleted the word "extrahepatic" and the phrase "for patients who fail to respond to hepatoportoenterostomy (Kasai procedure)."

The second condition read as follows: "Chronic active hepatitis except in the case of drug-induced chronic active hepatitis, which usually responds to the removal of the chemical agent, and hepatitis-B induced disease when viremia persists." Because of comments we have changed the wording to: "Chronic active hepatitis for patients who have almost no chance of survival beyond six months."

One commentor stated that the requirement that death from liver failure be imminent in patients with primary sclerosing cholangitis is too severe. That requirement has been deleted.

Another commentor recommended that the one-year abstinence from alcohol be deleted which would allow each potential recipient to be individually assessed as to the appropriate period of abstinence. That recommendation has also been accepted.

One comment noted that the 50 percent one-year survival rate is not very discriminating. Another comment suggested that in addition to the 50 percent one-year survival rate, there should be no indications of iatrogenic complications and the transplanted patient should be self-sustaining. We have considered both of these comments but have not made any changes as a result of these comments. The 50 percent one-year survival rate for ten patients is only one criterion that must be met for CHAMPUS approval as a liver transplant center. We feel that our survival rate criterion in addition to the other criteria that must be met will ensure that the centers we authorize will be qualified centers.

It was suggested that an additional criterion should include the institution's ability and willingness to systematically collect and share data on its transplant program. This criterion has been added.

Another comment noted that the requirement that various specialists be available implies that access to such specialists be on an *ad hoc* basis. It was therefore recommended that the wording be changed so that such specialists be on staff and actually complement a qualified transplantation team. We have accepted this recommendation.

It was also suggested that we add language to the effect that CHAMPUS shall not reimburse expenses for services and supplies for which the transplant center receives federal funds. CHAMPUS has a regulatory exclusion for services and supplies paid for, or eligible for payment directly or indirectly by a local, state or federal government, except for benefits provided under title XIX of the Social Security Act (Medicaid); therefore, it is not necessary to add that requirement to this rule.

An additional recommendation that CHAMPUS add a qualification that following brain death we will pay for services only after the donor's family has signed the necessary papers for excision of the donor organ, has also been accepted and incorporated in this final rule.

Technical Changes

We have also accepted several editorial suggestions to improve clarity and consistency. One technical change that we have made is to delete the requirement that the transplant center notify the Director, OCHAMPUS, upon the acceptance of a CHAMPUS beneficiary as a candidate for liver transplantation. We agree that this requirement is not necessary.

The Department of Defense Authorization Bill, 1984, Pub. L. 98–94, included language authorizing CHAMPUS to cover the costs of liver transplantation, including the costs of acquisition and transportation of the donated liver, retroactively effective for liver transplantation procedures performed on and after July 1, 1983. The amendment to title 10, chapter 55, United States Code, the basic statute governing CHAMPUS, provides that the Secretary of Defense, after consulting with the Secretary of Health and Human Services and other entities, will determine the persons who are appropriate candidates for liver transplantation and the health care facilities that are qualified to receive reimbursement for the procedure.

We have determined that the law requires that CHAMPUS benefits for liver transplantation services be available for all beneficiaries, regardless of age, who are suffering from irreversible liver injury, have exhausted alternative medical and surgical treatments, and are approaching the terminal phase of their illness. Guidelines for CHAMPUS coverage of liver transplants include the following conditions which have progressed to the point of end-stage liver failure:

Biliary atresia;

Chronic active hepatitis for patients who have almost no chance of survival beyond six months;

Primary biliary cirrhosis in the final stages of liver failure;

Inborn errors of metabolism which have caused end-stage liver damage or irreversible extrahepatic complications, including alpha$_1$ antitrypsin deficiency in children with Pi ZZ phenotype and adults with phenotype Pi ZZ, MZ, or SZ where evidence of hepatic failure is present; Wilson's disease unresponsive to chelation therapy with penicillamine; Crigler-Najjar syndrome, Type I; tyrosinemia; Byler's disease; Wolman's disease; glycogen storage disease, types O and IV; and certain genetic diseases associated with severe neurological complications, such as hereditary deficiency of urea cycle enzymes and disorders of lactate/pyruvate or amino acid metabolism;

Hepatic vein thrombosis (Budd-Chiari syndrome) in patients with severe hepatic decompensation, who have not responded to anticoagulation or appropriate surgery for portal decompression;

Primary hepatic malignancy confined to the liver but not amenable to resection; and

Alcoholic liver disease for patients who develop evidence of progressive liver failure despite appropriate medical treatment and cessation of alcohol abuse.

These guiding principles that CHAMPUS will follow in providing coverage for liver transplantation will be included in the CHAMPUS Policy Manual. This Policy Manual provides guidance, policy interpretations and decisions implementing the CHAMPUS.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation amendment will not have a significant economic impact on a substantial number of small businesses, organizations or governmental jurisdictions.

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We have determined that this Regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section § 199.4 is amended by revising paragraph (e)(5)(iii)(B), adding paragraph (e)(5)(v), and revising paragraph (g)(67) as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) With respect to kidney transplants, in most cases, Medicare (not CHAMPUS) benefits will be applicable. (Refer to 199.9 (e)(3)(vi), "Eligibility.")

* * * * *

(v) *Liver transplants.* Effective July 1, 1983, CHAMPUS benefits are payable for services and supplies related to liver transplantation under the following circumstances only:

(A) *Medical indications for liver transplantation.* CHAMPUS shall provide benefits for services and supplies related to liver transplantation performed for beneficiaries suffering from irreversible liver injury who have exhausted alternative medical and surgical treatments, who are approaching the terminal phase of their illness, and who are considered appropriate for liver transplantation according to guidelines adopted by the Director, OCHAMPUS.

(B) *Contraindications.* CHAMPUS shall not provide coverage if any of the following contraindications exist:

(*1*) Active alcohol or other substance abuse;

(*2*) Malignancies metastasized to or extending beyond the margins of the liver; or

(*3*) Viral-induced liver disease when viremia is still present.

(C) *Specific covered services.* CHAMPUS shall provide coverage for the following services related to liver transplantation:

(*1*) Medically necessary services to evaluate a potential candidate's suitability for liver transplantation, whether or not the patient is ultimately accepted as a candidate for transplantation;

(*2*) Medically necessary pre- and post-transplant inpatient hospital and outpatient services;

(*3*) Surgical services and related pre- and post-operative services of the transplant team;

(*4*) Services provided by a donor organ acquisition team, including the costs of transportation to the location of the donor organ and transportation of the team and the donated organ to the location of the transportation center;

(*5*) Medically necessary services required to maintain the viability of the donor organ following a formal declaration of brain death and after all existing legal requirements for excision of the donor organ have been met;

(*6*) Blood and blood products;

(*7*) Services and drugs required for immunosuppression, provided the drugs are approved by the United States Food and Drug Administration;

(*8*) Services and supplies, including inpatient care, which are medically necessary to treat complications of the transplant procedure, including management of infection and rejection episodes; and

(*9*) Services and supplies which are medically necessary for the periodic evaluation and assessment of the successfully transplanted patient.

(D) *Specific noncovered services.* CHAMPUS benefits will not be paid for the following:

(*1*) Services and supplies for which the beneficiary has no legal obligation to pay. For example, CHAMPUS shall not reimburse expenses that are waived by the transplant center, or for which research funds are available; and

(*2*) Out-of-hospital living expenses and any other non-medical expenses, including transportation, of the liver transplant candidate or family members, whether pre- or post-transplant.

(E) *Implementation guidelines.* The Director, OCHAMPUS, shall issue such guidelines as are necessary to implement the provision of this paragraph.

* * * * *

(g) * * *

(67) *Transportation.* All transportation except by ambulance, as specifically provided under paragraph (d), and except as authorized in paragraph (e)(5) of this section.

3. Section 199.6 is amended by adding a new paragraph (b)(4)(ii) and redesignating the existing paragraphs (b)(4)(ii) through (b)(4)(viii) as paragraphs (b)(4)(iii) through (b)(4)(ix).

§ 199.6 Authorized providers

* * * * *

(b) * * *

(4) * * *

(ii) *Liver transplantation centers.*

(A) CHAMPUS shall provide coverage for liver transplantation procedures performed only by experienced transplant surgeons at centers complying with the provisions outlined in paragraph (b)(4)(i) of this section and meeting the following criteria:

(*1*) The center is a tertiary care facility affiliated with an academic health center. The center must have accredited programs in graduate medical education related to the function of liver transplantation such as internal medicine, pediatrics, surgery, and anesthesiology;

(*2*) The center has an active solid organ transplantation program (involving liver transplants as well as other organs);

(*3*) The transplantation center must have at least a 50 percent one-year survival rate for ten cases. At the time CHAMPUS approval is requested, the transplant center must provide evidence that at least ten liver transplants have been performed at the center and that at least 50 percent of those transplanted patients have survived one year following surgery. A 50 percent one-year survival rate for all subsequent liver transplantations must be maintained for continued CHAMPUS approval;

(*4*) The center has allocated sufficient operating room, recovery room, laboratory, and blood bank support and a sufficient number of intensive care and general surgical beds and specialized staff for these areas;

(*5*) The center participates in a donor procurement program and network;

(*6*) The center systematically collects and shares data on its transplant program;

(*7*) The center has an interdisciplinary body to determine the suitability of candidates for transplantation on an equitable basis;

(*8*) The transplantation surgeon is specifically trained for liver grafting and must assemble and train a team to function whenever a donor liver is available;

(*9*) The transplantation center must have on staff board eligible or board certified physicians and other experts in the field of hepatology, pediatrics, infectious disease, nephrology with dialysis capability, pulmonary medicine with respiratory therapy support, pathology, immunology, and anesthesiology to complement a qualified transplantation team;

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(*10*) The transplantation center has the assistance of appropriate microbiology, clinical chemistry, and radiology support;

(*11*) The transplantation center has blood bank support to accommodate normal demands and the transplant procedure; and

(*12*) The transplantation center includes the availability of psychiatric and social services support for patients and family.

(B) In order to receive approval as a CHAMPUS authorized liver transplant center, a center must submit a request to the Director, CHAMPUS, or a designee. The CHAMPUS authorized liver transplant center shall agree to the following:

(*1*) Bill for all services and supplies related to the liver transplantation performed by its staff and bill also for services rendered by the donor hospital following declaration of brain death and after all existing legal requirements for excision of the donor organ have been met; and

(*2*) The center shall agree to submit all charges on the basis of fully itemized bills. This means that each service and supply and the charge for each is individually identified.

* * * * *

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 27, 1986.

[FR Doc. 86-19745 Filed 8-29-86; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 286g

Defense Audiovisual Agency Implementation of the Privacy Act of 1974

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: Due to the disestablishment of the Defense Audiovisual Agency, this action is to remove Part 286g of the Code of Federal Regulations.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Lawson, Office of the Assistant Secretary of Defense, Washington Headquarters Services, The Pentagon, Washington, D.C. 20301-1155, telephone 697-4111.

List of Subjects in 32 CFR Part 286g

Privacy.

Accordingly, 32 CFR Part 286g is removed in its entirety:

PART 286g—DEFENSE AUDIOVISUAL AGENCY IMPLEMENTATION OF THE PRIVACY ACT OF 1974 [REMOVED]

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 27, 1986.

[FR Doc. 86-19744 Filed 8-29-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Anchorage, et al.

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Anchorage (LSD 36) and USS Mount Vernon (LSD 39) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval dock landing ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Anchorage (LSD 36) and USS Mount Vernon (LSD 39) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with their special function as naval dock landing ships. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2 (a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	Aft masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS ANCHORAGE	LSD 36	N/A	N/A	N/A	N/A	N/A	N/A	X	46
USS MOUNT VERNON	LSD 39	N/A	N/A	N/A	N/A	N/A	N/A	X	46

Dated: August 20, 1986.
Approved:
James F. Goodrich,
Acting Secretary of the Navy.
[FR Doc. 86-19692 Filed 8-29-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Butte et al.

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Butte (AE 27), USS Santa Barbara (CAE 28) USS Mount Hood (AE 29), USS Shasta (AE 33) and USS Mount Baker (AE 34) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval ammunition ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 18, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Butte (AE 27), USS Santa Barbara (AE 28), USS Mount Hood (AE 29), USS Shasta (AE 33) and USS Mount Baker (AE 34) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with their special function as Navy ships. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(f)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained. (Percent)
USS BUTTE	AE 27	N/A	N/A	N/A	N/A	N/A	N/A	X	97
USS SANTA BARBARA	AE 28	N/A	N/A	N/A	N/A	N/A	N/A	X	97
USS MOUNT HOOD	AE 29	N/A	N/A	N/A	N/A	N/A	N/A	X	99
USS SHASTA	AE 33	N/A	N/A	N/A	N/A	N/A	N/A	X	96
USS MOUNT BAKER	AE 34	N/A	N/A	N/A	N/A	N/A	N/A	X	97

Dated: August 18, 1986.
Approved:
John Lehman
Secretary of the Navy.
[FR Doc. 86-19695 Filed 8-29-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Cushing et al.

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Cushing (DD 985), USS Deyo (DD 989), and USS Fife (DD 991) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval destroyers. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 18, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Cushing (DD 985), USS Deyo (DD 989), and USS Fife (DD 991) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship and the horizontal distance between the forward and after masthead lights, without interfering with their special function as Navy ships. The Secretary of the Navy

has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(ii)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS CUSHING	DD 985	N/A	N/A	N/A	N/A	N/A	X	X	46
USS DEYO	DD 989	N/A	N/A	N/A	N/A	N/A	X	X	46
USS FIFE	DD 991	N/A	N/A	N/A	N/A	N/A	X	X	46

Dated: August 18, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-19684 Filed 8-29-86;8:45am]

BILLING CODE 3810-AE-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Dale

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Dale (CG 19) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS DALE (CG 19) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light, Annex I, sec. 2(a)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	Aft masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
DSS DALE	CG 19	N/A	N/A	N/A	N/A	N/A	×	×	30

Dated: August 20, 1986.
Approved:
James F. Goodrich,
Acting Secretary of the Navy.
[FR Doc. 86-19688 Filed 8-29-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Duluth

AGENCY: Department of the Navy, DOD.
ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Duluth (LPD 6) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval amphibious transport dock. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 18, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS DULUTH (LPD 6) is a vessel of the Navy which, due to its special construction and purposes, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the afore-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements. Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I sec 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's lenght aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS DULUTH	LPD 6	N/A	N/A	N/A	N/A	N/A	N/A	X	50

Dated: August 18, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-19696 Filed 8-29-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Harry W. Hill, et al.

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Harry W. Hill (DD 986) and USS Fletcher (DD 992) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval destroyers. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Harry W. Hill (DD 986) and USS Fletcher (DD 992) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship and the horizontal distance between the forward and after masthead lights, without interfering with their special function as Navy ships. The Secretary of the Navy has also certified that the afore-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships'

ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I sec.2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS HARRY W. HILL	DD 986	N/A	N/A	N/A	N/A	N/A	×	×	46
USS FLETCHER	DD 992	N/A	N/A	N/A	N/A	N/A	×	×	48

Dated: August 20, 1986.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 86-19686 Filed 8-29-86; 8:45 am]

BILLING CODE 3810-AE-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Iwo Jima, et al.

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Iwo Jima (LPH 2) Class ships are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval amphibious assault ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Iwo Jima (LPH 2) Class ships are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of this ship and the horizontal distance between the forward and after masthead lights, without interfering with their special functions as Navy ships. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	After masthead light less than 4.5 meters above forward masthead light. Sec 2 (a) (ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b).	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS IWO JIMA	LPH 2	X	N/A	N/A	N/A	N/A	X	X	12
USS OKINAWA	LPH 3	X	N/A	N/A	N/A	N/A	X	X	13
USS GUADALCANAL	LPH 7	X	N/A	N/A	N/A	N/A	X	X	11
USS GUAM	LPH 9	X	N/A	N/A	N/A	N/A	X	X	11
USS TRIPOLI	LPH 10	X	N/A	N/A	N/A	N/A	X	X	12
USS NEW ORLEANS	LPH 11	X	N/A	N/A	N/A	N/A	X	X	10
USS INCHON	LPH 12	X	N/A	N/A	N/A	N/A	X	X	11

Dated: August 20, 1986.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 86-19687 Filed 8-29-86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS John Young, et al.

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS John Young (DD 973), USS Merrill (DD 976), USS O'Bannon (DD 987), and USS Thorn (DD 988) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval destroyers. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 18, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS John Young (DD 973), USS Merrill (DD 976), USS O'Bannon (DD 987), and USS Thorn (DD 988) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship and the horizontal distance between the forward and after masthead lights, without interfering with their special function as Navy ships. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters avove forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS JOHN YOUNG	DD 973	N/A	N/A	N/A	N/A	N/A	X	X	46
USS MERRILL	DD 976	N/A	N/A	N/A	N/A	N/A	X	X	45
USS O'BANNON	DD 987	N/A	N/A	N/A	N/A	N/A	X	X	46
USS THORN	DD 988	N/A	N/A	N/A	N/A	N/A	X	X	46

Dated: August 18, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-19690 Filed 8-29-86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Moosbrugger et al.

AGENCY: Department of The Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Moosbrugger (DD 980) and USS Leftwich (DD 984) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval destroyers. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Moosbrugger (DD 980) and USS Leftwich (DD 984) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship and the horizontal distance between the forward and after masthead lights, without interfering with their special function as Navy ships. The Secretary of the Navy has also certified that the aforementioned lights are located in

closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS MOSSBRUGGER	DD 980	N/A	N/A	N/A	N/A	N/A	X	X	46
USS LEFTWICH	DD 984	N/A	N/A	N/A	N/A	N/A	X	X	46

Dated: August 18, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-19691 Filed 8-29-86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Norton Sound

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Norton Sound (AVM 1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval guided missile ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 19, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Norton Sound (AVM 1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(j)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS NORTON SOUND	AVM 1	N/A	N/A	N/A	N/A	N/A	N/A	X	74

Dated: August 19, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-19694 Filed 8-29-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS OGDEN, et al.

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Ogden (LPD 5), USS Nashville (LPD 13), and USS Trenton (LPD 14), are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS wihtout interfering with their special function as naval amphibious transport dock ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 18, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Ogden (LPD 5), USS Nashville (LPD 13), and USS Trenton (LPD 14) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with their special function as Navy ships. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward mast-head light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing, less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS OGDEN	LDP 5	N/A	N/A	N/A	N/A	N/A	N/A	X	51
USS NASHVILLE	LDP 13	N/A	N/A	N/A	N/A	N/A	N/A	X	48
USS TRENTON	LDP 14	N/A	N/A	N/A	N/A	N/A	N/A	X	41

Dated: August 18, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-19697 Filed 8-29-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Preble

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Preble (DDG 46) is a vessel of the Navy which, due to its special construction and purpose, cannot fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 18, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Preble (DDG 46) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretry of the Navy has also certified that the afore-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment

for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I,	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS PREBLE	DOG 46	N/A	N/A	N/A	N/A	N/A	X	X	24

Dated: August 18, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-19689 Filed 8-29-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Raleigh

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Raleigh (LPD 1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval amphibious transport dock ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 18, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Raleigh (LPD 1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the afore-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 31 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS RALEIGH	LPD 1	N/A	N/A	N/A	N/A	N/A	N/A	X	44

Dated: August 18, 1986.
Approved:
John Lehman,
Secretary of the Navy
[FR Doc. 86-19685 Filed 8-29-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Sylvania

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS *Sylvania* (AFS 2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval combat store ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy; Admiralty Counsel, Office of the Judge Advocate General; Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400; Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS *Sylvania* (AFS 2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as Navy ship. The Secretary of the Navy has also certified that the afore-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of §706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS SYLVANIA	AFS 2	N/A	N/A	N/A	N/A	N/A	N/A	X	95

Dated: August 20, 1986.
Approved:
James F. Goodrich,
Acting Secretary of the Navy.
[FR Doc. 86-19693 Filed 8-29-86; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7 86-36]

Drawbridge Operation Regulations; Florida

AGENCY: Coast Guard, DOT.
ACTION: Final rule revocation.

SUMMARY: This amendment revokes the specific requirements relating to the operation of the New Pass bridge, mile 0.0, Sarasota County, Florida, because the bridge is being replaced.

EFFECTIVE DATE: This revocation is effective on October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Lee, (305) 536-4103.

SUPPLEMENTARY INFORMATION: This rule was not preceded by a notice of proposed rulemaking because it deletes a provision which on its face was to have expired on May 1, 1985. The deletion of this provision is in the public interest as it enhances navigability of the waterway. Therefore notice and public procedure thereon are unnecessary.

Drafting information

The drafters of these regulations are Mr. Wayne Lee, Chief, Bridge Section, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion

The existing regulations provide that the New Pass bridge need not be opened for the passage of vessels until the replacement bridge at that location is opened to highway traffic on May 1, 1985. Completion of the replacement bridge has been delayed several times and the old bridge has, therefore, remained closed to navigation. The Florida Department of Transportation has reported that the new bridge at New Pass will be opened to traffic in September 1986.

At that time, the current regulations no longer will be required and, therefore, are being revoked.

Economic Assessment and Certification

This rule is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this rule is expected to be so minimal that further evaluation is unnecessary. We conclude

this because the rule merely deletes a provision from the regulations which already was due to expire in May 1985.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

§ 117.311 [Removed]

2. Section 117.311 is removed.

Dated: August 25, 1986.

M.J. O'Brien,

Captain, U.S. Coast Guard; Commander, Seventh Coast Guard District, Acting.

[FR Doc. 86–19718 Filed 8–29–86; 8:45 am]

BILLING CODE 4910–14

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33 CFR Part 117

[CGD8–86–02]

Drawbridge Operation Regulations; Bayou Petit Caillou, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Terrebonne Parish Consolidated Government, Houma, Louisiana, the Coast Guard is changing the regulation governing the operation of the vertical lift span bridge (DuPlantis Bridge) over Bayou Petit Caillou, mile 29.9, near Bourg, Terrebonne Parish, Louisiana, by permitting the draw to remain closed at all times and to open when at least four hours notice is given. This change is being made because of infrequent requests to open the draw. This action will relieve the bridge owner of the burden of having a person available at the bridge, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 19 June 1986, the Coast Guard published a proposed rule (51 FR 22312) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 24 June 1986. In each notice interested persons were given until 4 August 1986 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

No objections to the change were received in response to the notice.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this regulation has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass through the bridge as evidenced by the 1985 bridge opening statistics. The vessels that pass can reasonably give four hours notice for a bridge opening by placing a collect call to the bridge owner at any time from ashore or afloat. Mariners requiring the bridge openings are mainly repeat users of the waterway and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. The four hours advance notice for opening the draw would be given by placing a collect call at any time to the Terrebonne Parish Consolidated Government at (504) 868–3000, or to (504) 873–6734 between the hours of 7:00 a.m. and 4:30 p.m. From afloat, this contact may be made by radiotelephone through a public coast station. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subject in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.475 is revised to read as follows:

§ 117.475 Little (Petit) Caillou Bayou.

(a) The draws of the S58 bridge, mile 25.7 at Sarah, and the Terrebonne Parish (Smithridge) bridge, mile 26.6 near Montegut, shall open on signal; except that, from 9 p.m. to 5 a.m., the draws shall open on signal if at least 12 hours notice is given.

(b) The draws of the Terrebonne Parish (DuPlantis) bridge, mile 29.9 near Bourg, and the S24 bridge, mile 33.7 at Presquille, shall open on signal if at least four hours notice is given. The draws shall open on less than four hours notice for an emergency, and shall open on signal should a temporary surge in waterway traffic occur.

Dated: August 18, 1986.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard; Commander, Eighth Coast Guard District.

[FR Doc. 86–19719 Filed 8–29–86; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD7 86–28]

Safety Zone; Blount Island Terminal St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around specific portions of the Jacksonville Port Authority's Blount Island Terminal, Jacksonville, Florida, a facility of particular hazard, and will restrict access to the Blount Island Terminal facility bordering the St. Johns River including all land within 100 yards and all water within 200 yards of the shoreline. The zone is required to safeguard innocent persons from injury, innocent vessels from damage and to prevent interference with safe cargo handling operations of military explosives aboar aritime Prepositioning Ships while they are moored at the St. Johns River at berth 12, Blount Island Terminal Jacksonville, Florida. These vessels are required to support U.S. forces overseas in a military emergency.

Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on September 28, 1986. Comments must be received before 01 September 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson, c/o Commanding Officer, USCG Marine Safety Office, 2831 Talleyrand Avenue,

Jacksonville, FL 32206, Tel: 904–791–2648.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation because it involves military or foreign affairs of the United States and is exempt under 5 U.S.C. 553(a)(1) from notice and comment requirements.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in the preamble. Commentors should include their name and address, identify the docket number for the regulation, and give the reason for their comments. Receipt of comments will be acknowledged if a self-addressed postcard or envelope is enclosed. Based upon comments received, the regulation may be changed.

Drafting Information

The drafter of this regulation is Lieutenant H. Henderson, Project Officer, U.S. Coast Guard Marine Safety Office, Jacksonville, Florida, and Project Attorney Lieutenant Commander Stanley T. Fuger JR, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The zone is required to protect the environment and public, and assure safe operations aboard Maritime Prepositioned Ships moored at berth 12 Blount Island Terminal Jacksonville, Florida. Each of these vessels will carry approximately 1,000,000 net pounds of military explosives. Operations in Jacksonville will be conducted monthly starting September 1986 and run indefinitely. These vessels are part of the U.S. Department of Defense logistics chain required to support U.S. forces overseas in a military emergency.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: (33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6 and 160.5)

2. A new § 165.728 is added to read as follows:

§ 165.728 Vicinity, Jacksonville Port Authority Blount Island Terminal Jacksonville, Florida-safety zone.

(a) The water, land, and land and water within the following boundaries are a safety zone—100 yards in all directions on land and 200 yards in all directions on water from the most southwest point of berth 6 to the most southeast point of berth 12 at Blount Island Terminal Jacksonville, Florida.

(b) The area described in paragraph (a) of this section is closed to all vessels and persons, except those vessels and persons authorized by Commander, Seventh Coast Guard District, or the COTP Jacksonville, Florida, whenever Maritime Prepositioned Ships are moored at berth 12, Blount Island Terminal.

(c) COTP Jacksonville, Florida closes the safety zone or specific portions of it, by means of locally promulgated notices. The closing of an area is signified by the display of a rotating yellow light located on the waterfront at berth 12, Blount Island Terminal. Appropriate Local Notices to Mariners will also be broadcast on 2670 KHZ.

Dated: August 25, 1986.

M. Woods,

Captain, U.S. Coast Guard; Captain of the Port, Jacksonville, Florida.

[FR Doc. 86–19720 Filed 8–29–86; 8:45 am]

BILLING CODE 4910–14

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33 CFR Part 165

[CGD7 86–29]

Security Zone: Blount Island Terminal St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone around specific portions of the Jacksonville Port Authority's Blount Island Terminal, Jacksonville, Florida, a facility of particular hazard, and will restrict access to the Blount Island Terminal facility bordering the St. Johns River including all land within 100 yards and water within 200 yards of the shoreline. The zone is necessary for protection of vital United States assets aboard Maritime Prepositioning Ships while they are moored at berth 12, Blount Island Terminal Jacksonville, Florida on the St. Johns River. These vessels are required to support U.S. forces overseas in a military emergency.

Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on September 28, 1986. Comments must be received before 01 September, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson, c/o Commanding Officer, USCG Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, FL 32206, Tel: 904–791–2648.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation because it involves military or foreign affairs of the United States and is exempt under 5 U.S.C. 553(a)(1) from notice and comment requirements.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESS"** in the preamble. Commenters should include their name and addresses, identify the docket number for the regulations and give the reason for their comments. Receipt of comments will be acknowledged if a self-addressed postcard or envelope is enclosed. Based upon comments received, the regulation may be changed.

Drafting Information

The drafter of this regulation is Lieutenant Commander H. Henderson, Project Officer, U.S. Coast Guard Marine Safety Office, Jacksonville, Florida, and Project Attorney, Lieutenant Commander Stanley T. Fuger Jr, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The zone is required to protect U.S. Maritime Prepositioned Ships against covert or subversive threats while moored at berth 12, Blount Island Terminal Jacksonville, Florida. Each of these vessels will carry approximately 1,000,000 net pounds of military explosives. Operations in Jacksonville will be conducted monthly starting September 1986 and run indefinitely. These vessels are part of the U.S. Department of Defense logistics chain required to support U.S. forces overseas in a military emergency.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: (33 U.S.C. 1225 and 1231; 50 U.S.C 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5)

2. A new § 165.729 is added to read as follows:

§ 165.729 Vicinity, Jacksonville Port Authority Blount Island Terminal Jacksonville, Florida—security zone.

(a) The water, land, and land and water within the following boundaries are a security zone—100 yards in all directions on land and 200 yards on water from the most southwest point of berth 6 to the most southeast point of berth 12 at Blount Island Terminal Jacksonville, Florida.

(b) The area described in paragraph (a) of this section is closed to all vessels and persons, except those vessels and persons authorized by Commander, Seventh Coast Guard District, or the COTP Jacksonville, Florida, whenever Maritime Prepoistioned Ships are moored at berth 12 Blount Island Terminal.

(c) COTP Jacksonville, Florida closes the security zone or specific portions of it by means of locally promulgated notices. The closing of the area is signified by the display of a rotating yellow light located on the waterfront at berth 12, Blount Island Terminal. Appropriate Local Notices to Mariners will also be broadcast on 2670 KHZ.

Dated: August 25, 1986.

M. Woods,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 86–19721 Filed 8–29–86; 8:45 am]

BILLING CODE 4910–14–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Final rule.

SUMMARY: On October 15, 1985, the Council published proposed revisions to its regulations implementing section 106 of the National Historic Preservation Act. This final rulemaking establishes the Council's revised regulations governing the process of review and comment upon federally supported undertakings that affect historic properties. These final regulations supersede the Council's existing section 106 regulations.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: John M. Fowler, Acting Executive Director, Advisory Council on Historic Preservation, Room 809, 1100 Pennsylvania Ave., NW., Washington, DC 20004 (202) 786–0503.

SUPPLEMENTARY INFORMATION: The Council published proposed revisions to its existing regulations on pages 41828–41833 of the Federal Register of October 15, 1985, and invited comments for 60 days, followed by a 30-day extension period ending January 15, 1986. The purpose of the proposed changes is to reduce regulatory burdens and paperwork, increase flexibility of compliance with section 106, and generally streamline the administrative process. An appropriate degree of Council involvement is maintained in the process, while encouraging State- and local-level decisionmaking and providing a reasonable opportunity for public participation. The Council received 240 comments from Federal agencies, State and local governments, preservation organizations, businesses, Indian representatives, and individuals. The full Council met to consider and discuss all the comments. The Council organized the comments into nine major areas. These areas of concern and the Council's response to them follow.

The Council has determined that these amendments are not "major rules" within the meaning of Executive Order 12291. Because the revised regulations expedite the current commenting process under section 106 of the National Historic Preservation Act, they will not cause increases in costs for local government agencies and will not have significant adverse effects on competition, employment, or investment. These amendments were submitted to the Office of Management and Budget 10 days prior to publication.

Pursuant to 36 CFR Part 805, "National Environmental Policy Act Implementation Procedures," the Council has determined that an Environmental Impact Statement is not required.

The Council has determined there are no information collection reporting or recordkeeping requirements in these revised regulations that require Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

It should be noted that special regulations governing section 106 requirements for Urban Development Action Grant Projects, currently set forth in 36 CFR Part 800, will be amended in the future.

Major Comments

1. *Comment:* The proposed regulatory revisions, particularly in sections 800.5 and 800.6, reduce the effectiveness of the Council's role in the consultation and commenting processes.

To streamline the process and eliminate potential for delay of a project by the Council, the proposed regulations made several revisions to the Council's current role. First, the Council was given an optional role in the consultation process, the objective being to encourage the resolution at the Agency Official-State Historic Preservation Officer (SHPO) level and to conserve Council resources. Second, agencies could terminate the consultation process at any time after initiating discussions with the SHPO on ways to reduce or avoid effects on historic properties. This was intended to avoid agencies being delayed by the consultation process and forced to reach agreement. Finally, time limits were imposed on the Council when it reviewed Memoranda of Agreement and provided comments.

Many commenters viewed these provisions as weakening the Council's role in the process and lessening the level of protection afforded to historic properties. While many commenters applauded the increased reliance on agency-SHPO negotiation and agreement, there was a recurring concern that the Council had removed itself too far from the consultation. Concern over the termination of consultation provision was particularly widespread. The proposed language was viewed as discouraging agencies from resolving preservation/development conflicts through consultation. Finally, while a number of commenters, notably Federal program agencies and their State counterparts, supported the notion of time limits on Council action, many commenters, including some of those agencies, felt the time limits were too short and inflexible.

In response, changes were made in the final regulations. While the emphasis on agency-SHPO consultation has been maintained, minor revisions have been made in the Council's relation to the consultation process, allowing for greater involvement when necessary (§ 800.5(e)). Agencies are also required to notify the Council when consultation is initiated (§ 800.5(e)). Language regarding termination of consultation has been revised to extend the authority to terminate to the SHPO and the Council and has been recast to

encourage, rather than discourage, agencies from using the consultation process (§ 800.5(e)(6)). The Council retained the fixed time limits on its actions as one of the fundamental objectives of regulatory reform (§ 800.6), but modified the 60-day limit on the Council set forth in § 800.6(b) to apply only when requested by an agency.

2. *Comment:* Revisions to the criteria of effect and associated procedural changes would make the section 106 process more complicated and less effective.

One of the initial objectives of the Council's regulatory reform was to eliminate the negative tone in the existing regulations, an example of which was the term "adverse effect." Some agencies objected to characterizing their actions, which they obviously felt were beneficial, as having "adverse effects." For example, rehabilitation projects, the effects of which were clearly beneficial to historic properties, typically had some impact on historic fabric and, therefore, were technically "adverse."

While many commenters supported those objectives, a far greater number expressed dissatisfaction with how the regulations were changed to achieve them. A widespread comment was objection to Council review of the new "no effect" determination. When the definition of "effect" was changed to eliminate the need for a separate determination of "adverse effect," a situation was created in which a substantial number of marginal cases that now are treated as "no adverse effect" and are submitted to the Council for review could fall into the "no effect" category. To monitor such cases to avoid misuse, a provision was established for notification of the Council in "no effect" cases. However, this requirement extended to a large number of cases that are not seen by the Council under the current "no effect" determination. Commenters noted that this would introduce a new review step, which most felt was unnecessary. In fact, this was one of the most commented upon revisions, and comments were overwhelmingly negative.

Another large group of commenters, primarily user agencies and SHPO's, expressed concern over elimination of the "no adverse effect" determination, a procedural device used for quick processing of simple cases with a minimum of paperwork. Commenters did not want this to be replaced by the more involved Memorandum of Agreement process.

In response, the Council has reinstated the distinction between "effect" and "adverse effect." Changes to the criteria (§ 800.9) and the process (§ 800.5(b)–(d)) have been made to achieve this, similar to the existing criteria and process. Council review of no effect determinations has been eliminated. Several innovations have been made to streamline the no adverse effect determination procedure and to meet the original objectives of reform. First, review of no adverse effect determinations, at agency discretion, is assigned to either the SHPO or the Council (§ 800.5(d)), rather than requiring all such findings to be submitted to the Council for 30-day review. Second, the criteria themselves have been revised for clarity (§ 800.9). Finally, a category of exceptions, covering such things as rehabilitation, has been created (§ 800.9(c)) so that certain kinds of projects need not be labeled and processed as adverse effect cases. Provision has also been made for a more flexible approach to no adverse effect determinations, allowing the Council and the agency to negotiate what would otherwise be an adverse effect situation into one that qualifies for expedited no adverse effect review (§ 800.5(d)(2)).

3. *Comment:* Proposed regulatory language and procedures that introduce new terminology and concepts would complicate compliance and require retraining, often without any clear increase in efficiency.

The proposed regulations contained many introductions of new language and processes to eliminate some of the negative elements of the current regulations, to use simpler language for increased clarity, and to introduce more flexibility in agency application of the regulations.

A large number of commenters, expecially those Federal agencies and SHPO's who work regularly with the regulations, expressed reservations about new terminology or new procedures without any demonstrable improvement in clarity or efficiency. They noted that the terminology and basic structure of the current section 106 process have been in place since 1974. Both Federal and State agencies noted the substantial investment in the development of internal procedures for compliance with section 106 and in the education of staff. Likewise, the interaction among the Council, SHPO's and agency officials on a daily basis has led to a widespread understanding of current terminology and attendant procedural steps. Recalling the amount of time and effort required to reach this level of understanding, a sizable number of commenters felt that introduction of new terms and procedures would cause a disruption in smooth operations, resulting in increased costs and delays.

The changes that cause this concern included the elimination of the distinction between "effect" and "adverse effect," which in turn abolished the current procedure for no adverse effect and conditional no adverse effect determinations; changes in the Council's participation in the consultation process; elimination of certain definitions such as "area of potential environmental impact"; changes in the existing Memorandum of Agreement process; and numerous minor changes in language, terminology, and section renumbering. Commenters felt that the proposed regulations created the perception of new regulatory processes that would require widespread retraining.

The Council was sensitive to these comments as it redrafted the regulations. In response, the concept of "effect"/"adverse effect" and associated procedures were reinstated in a streamlined manner (§ 800.5(d)). In modified form, the "conditional no adverse effect" device was revised (§ 800.5(d)(2)) and "area of potential effects" added to definitions (§ 800.2(c)). In other places, editing has taken place, with the objective of introducing new words, phases, and processes only where necessary to meet specific requirements of regulatory reform. The Council believes the result is to integrate innovative concepts and procedures into a document that maintains familiar reference points for users.

4. *Comment:* The regulations lack sufficient guidance and clear standards for the identification and evaluation of historic properties.

The proposed regulations moved to a more general statement of agency responsibilities for identifying and evaluating historic properties. The emphasis was more on process (e.g., who to contact, etc.) rather than specific technique. Reliance for detailed guidance in these areas was placed on the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, which are quite specific but nonbinding. Commenters from both the preservation community and user agencies requested more specificity and guidance on this aspect of the process.

In response, §§ 800.4(a) and 800.4(b) have been redrafted to more clearly state the Council's expectations for agency identification efforts. However, the Council continues to believe detailed guidance in these areas should be set forth in nonregulatory material. Accordingly, the Council intends to

work with Interior to provide nonbinding guidance to assist agencies in meeting their identification responsibilities under section 106.

5 *Comment:* The language of the proposed regulations is ambiguous and unclear in many places, lacking specificity and guidance for the user.

The Council's regulations are general-purpose regulations, intended to apply to all kinds of undertakings, all kinds of effects, and all kinds of historic properties. The proposed revised regulations used general language to permit flexibility in the application of the regulations.

Many commenters, viewing the proposed process from the perspective of their undertakings and the kinds of effects and properties with which they are familiar, objected to the changes of language, commenting that the proposed regulations were too general, or ambiguous and unclear. Thus, land-management agencies raised concerns about procedural steps and consultation with the public; urban citizen organizations sought more procedural safeguards and public participation; oil and gas companies wanted "avoidance" discussed, a matter relevant to them, but meaningless in an urban development context; and applicants for Federal assistance and permits requested a specific role in the process.

In response, the Council undertook to introduce more precision to the regulations while retaining the general principles of regulatory flexibility and economy of language. Throughout the final regulations, the Council has refined language to meet specific concerns raised by commenters. In particular, § 800.1(c) has been extensively rewritten to better spell out the roles of participants in the section 106 process, including the public.

6. *Comment:* Regulatory flexibility is desirable, but the language proposed in § 800.3 was vague.

The Council has endorsed the principle of flexible application of the Section 106 regulations as fundamental to regulatory reform. It specifically asked commenters whether the policy formulation in the proposed regulations at § 800.3 accomplished the Council's purposes. Many commenters applauded the notion of regulatory flexibility but felt that the language as proposed was vague. Others expressed concern that the notion of "substantial fulfillment" would encourage agencies to disregard the regulations. Commenters were nearly all in agreement that the section needed to be redrafted.

In response, the Council revised the language to retain but clarify the concept of regulatory flexibility. The term "substantial fulfillment" was deleted. As noted in the preamble to the proposed regulations, the Council continues to be concerned that its regulations primarily be of assistance to Federal agencies in complying with section 106 and not be the source of unwarranted litigation regarding insubstantial procedural details.

7. *Comment:* The regulations should deal more clearly with coordination with other statutes that establish preservation review responsibilities.

The existing section 106 regulations set forth a process for coordinating Section 106 reviews with environmental reviews under the National Environmental Policy Act. The provision was deleted in the proposed rules in the interests of shortening the regulations. A number of commenters asked for more definite coordination of the requirements of the regulations with those of statutory authorities other than section 106. The National Environmental Policy Act was mentioned most often, but the Archeological Resources Protection Act, section 4(f) of the Department of Transportation Act, and the Archeological and Historic Preservation Act of 1974 were also referred to.

In response, the Council agreed with this idea and added a section to carry out the suggestion (§ 800.14). It deals with each of the enumerated statutory requirements, but in a general and nonmandatory manner.

8. *Comment:* The regulations are either too specific or too general concerning public participation.

The proposed regulations eliminated the existing section dealing with public participation, opting instead to add specific requirements for public notification and opportunity for input. This was intended to strengthen the public role in the process and at the same time encourage the use of established agency public involvement processes.

Comments on public participation ran in several directions: objection to excessive public involvement requirements; proposals for more mandatory involvement; proposals for better integration with existing processes; and proposals to relate public participation requirements to project type and level of public interest or controversy.

In response, the Council reconsidered its treatment of public participation. The general section on public participation (§ 800.1(c)(iv)) was revised to urge use of existing public involvement processes, such as those used to meet NEPA obligations, and to encourage greater opportunities for public input. Certain additional revisions were made in the body of the regulations to promote public involvement in a flexible, nonmandatory manner. In particular, § 800.6(e) was added, allowing the public to bring questions about individual section 106 cases to the Council.

9. *Comment:* Participation by American Indians and other Native Americans needs to be strengthened.

In revising the regulations, the Council was sensitive to creating a more prominent role for affected Native Americans and inserted specific references to promote notification and consultation. A large number of commenters raised questions and offered comments about how the regulations afforded Indian tribes and other Native Americans the opportunity to participate in section 106 review. The comments generally broke down into concerns about sovereignty and about who is the appropriate representative of Native Americans.

A number of commenters raised the question of the sovereignty of Indian tribes, most pointing out that Indian tribes are sovereign entities and arguing, at least, that SHPO's should not be expected to represent Indian concerns. A few argued that section 106 should not apply to actions undertaken by Indians on Indian land.

How "Indian tribe" should be defined was also a major issue, as it determined participation in the process. One commenter felt that only officially recognized tribal governments should be dealt with. Others did not propose limiting section 106 consultation to "government-to-government" interaction, but did want to deal only with officially recognized tribes. Still others argued for a broad definition that would allow both formally recognized and currently unrecognized tribes to participate. Commenters also urged that more attention should be given to participation by traditional cultural authorities in the tribes. A few commenters suggested that the same opportunities to participate in review of impacts on their traditional properties should be afforded to other Native American groups, such as Native Hawaiians, as is afforded to Indians.

In response, the Council revised the provisions related to this area (§ 800.1(c)(2)). Formal government-to-government consultation remains with recognized tribes as defined in the National Historic Preservation Act, but traditional cultural leaders and others are provided the opportunity to participate as interested persons. Tribes with established historic preservation

programs are given the opportunity to assume the role of the SHPO (§ 800.1(c)(2)(iii)).

Title 36, Chapter VIII, is amended by revising Part 800 to read as follows:

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Subpart A—Background and Policy

Sec.

800.1 Authorities, purposes, and participants.
800.2 Definitions.

Subpart B—The Section 106 Process

800.3 General.
800.4 Identifying historic properties.
800.5 Assessing effects.
800.6 Affording the Council an opportunity to comment.
800.7 Agreements with States for section 106 reviews.
800.8 Documentation requirements.
800.9 Criteria of effect and adverse effect.

Subpart C—Special Provisions

800.10 Protecting National Historic Landmarks.
800.11 Properties discovered during implementation of an undertaking.
800.12 Emergency undertakings.
800.13 Programmatic Agreements.
800.14 Coordination with other authorities.
800.15 Counterpart regulations.

Authority: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); E.O. 11593, 3 CFR 1971 Comp., p. 154.

Subpart A—Background and Policy

§ 800.1 Authorities, purposes, and participants.

(a) *Authorities.* Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into account the effects of the agency's undertaking on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking and, prior to approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the section 106 process.

(b) *Purposes of the section 106 process.* The Council seeks through the section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties. Integration of the section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special section 106 procedures suited to the agency's needs.

(c) *Participants in the section 106 process.*—(1) *Consulting parties.* Consulting parties are the primary participants in the section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

(i) *Agency Official.* The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the section 106 process as appropriate in the manner set forth below.

(ii) *State Historic Preservation Officer.* The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in § 800.7 of these regulations.

(iii) *Council.* The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the regulations is set forth in a separate, internal delegation of authority.

(2) *Interested persons.* Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of section 106, they may invite that person to become a consulting party. Interested persons may include:

(i) *Local governments.* Local governments are encouraged to take an active role in the section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no such legal responsibility exists, the extent of local government participation is at the

VOL 51 ISS 169 SE 2 1986 UMI

discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

(ii) *Applicants for Federal assistance, permits, and licenses.* When the undertaking subject to review under section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the section 106 process in the manner prescribed in these regulations.

(iii) *Indian tribes.* The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands, provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

(iv) *The public.* The Council values the views of the public on historic preservation questions and encourages maximum public participation in the section 106 process. The Agency Official, in the manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adquately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decisionmaking. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the section 106 process.

§ 800.2 Definitions.

(a) "Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w–6.

(b) "Agency Official" means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with section 106 and section 110(f) in accordance with law.

(c) "Area of potential effects" means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

(d) "Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(e) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

(f) "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.

(g) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1701, *et seq.*

(h) "Interested person" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

(i) "Local government" means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(j) "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(k) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.

(l) "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

(m) "Secretary" means the Secretary of the Interior.

(n) "State Historic Preservation Officer" means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(o) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under section 106.

Subpart B—The Section 106 Process

§ 800.3 General.

(a) *Scope.* The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the section 106 process. Alternative methods of meeting section 106 obligations are found in § 800.7, governing review of undertakings in States that have entered into agreements with the Council for section 106 purposes, and § 800.13, governing Programmatic Agreements with Federal agencies that pertain to specific programs or activities. Under each of these methods, the Council encourages Federal agencies to reach agreement on developing alternatives or

measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.

(b) *Flexible application.* The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner relfecting differing program requirements, as long as the purposes of section 106 of the Act and these regulations are met.

(c) *Timing.* Section 106 requires the Agency Official to complete the section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit. The Council does not interpret this language to bar an Agency Official from expending funds on or authorizing nondestructive planning activities preparatory to an undertaking before complying with section 106, or to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the section 106 process that is consistent with the planning and approval schedule for the undertaking.

§ 800.4 Identifying historic properties.

(a) *Assessing information needs.* (1) Following a determination by the Agency Official that a proposed project, activity, or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall:

(i) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that undentified historic properties exist in the area of potential effects;

(ii) Request the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected; and

(iii) Seek information in acordance with agency planning processes from local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area.

(2) Based on this assessment, the Agency Official should determine any need for further actions, such as field surveys and predictive modeling, to identify historic properties.

(b) *Locating historic properties.* In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties should follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and agency programs to meet the requirements of section 110(a)(2) of the Act.

(c) *Evaluating historical significance.* (1) In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible.

(2) If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for section 106 purposes.

(3) If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for section 106 purposes.

(4) If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations.

(5) If the State Historic Preservation Officer does not provide views, then the State Historic Preservation Officer is presumed to agree with the Agency Official's determination for the purpose of this subsection.

(d) *When no historic properties are found.* If the Agency Official determines in accordance with §§ 800.4(a)–(c) that there are no historic properties that may be affected by the undertaking, the Agency Official shall provide documentation of this finding to the State Historic Preservation Officer. The Agency Official should notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and make the documentation available to the public. In these circumstances, the Agency Official is not required to take further steps in the section 106 process.

(e) *When historic properties are found.* If there are historic properties that the undertaking may affect, the Agency official shall assess the effects in accordance with Section 800.5.

§ 800.5 Assessing effects.

(a) *Applying the Criteria of Effect.* In consultation with the State Historic Preservation Officer, the Agency Official shall apply the Criteria of Effect (§ 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.

(b) *When no effect is found.* If the Agency Official finds the undertaking will have no effect on historic properties, the Agency Official shall notify the State Historic Preservation Officer and interested persons who have made their concerns known to the Agency Official and document the findings, which shall be available for public inspection. Unless the State Historic Preservation Officer objects within 15 days of receiving such notice, the Agency Official is not required to take any further steps in the section 106 process. If the State Historic Preservation Officer files a timely objection, then the procedures described in § 800.5(c) are followed.

(c) *When an effect is found.* If an effect on historic properties is found, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect (§ 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

(d) *When the effect is not considered adverse.* (1) If the Agency Official finds the effect is not adverse, the Agency Official shall:

(i) Obtain the State Historic Preservation Officer's concurrence with the finding and notify and submit to the Council summary documentation, which shall be available for public inspection; or

(ii) Submit the finding with necessary documentation (§ 800.8(a)) to the Council for a 30-day review period and notify the State Historic Preservation Officer.

(2) If the Council does not object to the finding of the Agency Official within 30 days of receipt of notice, or if the Council objects but proposes changes that the Agency Official accepts, the Agency Official is not required to take any further steps in the section 106 process other than to comply with any agreement with the State Historic Preservation Officer or Council concerning the undertaking. If the

Council objects and the Agency Official does not agree with changes proposed by the Council, then the effect shall be considered as adverse.

(e) *When the effect is adverse.* If an adverse effect on historic properties is found, the Agency Official shall notify the Council and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Council to participate. The Council may participate in the consultation without such a request.

(1) *Involving interested persons.* Interested persons shall be invited to participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(ii) The representative of an Indian tribe in accordance with § 800.1(c)(2)(iii);

(iii) Applicants for or holders of grants, permits, or licenses, and owners of affected lands; and

(iv) Other interested persons when jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

(2) *Documentation.* The Agency Official shall provide each of the consulting parties with the documentation set forth in § 800.8(b) and such other documentation as may be developed in the course of consultation.

(3) *Informing the public.* The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing agency public involvement procedures to provide this opportunity. The Agency Official, State Historic Preservation Officer, or the Council may meet with interested members of the public or conduct a public information meeting for this purpose.

(4) *Agreement.* If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has not participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with § 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

(5) *Amendments.* The Agency Official, the State Historic Preservation Officer, and the Council, if it was a signatory to the original agreement, may subsequently agree to an amendment to the Memorandum of Agreement. When the Council is not a party to the Memorandum of Agreement, or the Agency Official and the State Historic Preservation Officer cannot agree on changes to the Memorandum of Agreement, the proposed changes shall be submitted to the Council for comment in accordance with § 800.6.

(6) *Ending consultation.* The Council encourages Agency Officials and State Historic Preservation Officers to utilize the consultation process to the fullest extent practicable. After initiating consultation to seek ways to reduce or avoid effects on historic properties, State Historic Preservation Officer, the Agency Official, or the Council, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The Agency Official shall then request the Council's comments in accordance with § 800.6(b) and notify all other consulting parties of its requests.

§ 800.6 Affording the Council an opportunity to comment.

(a) *Review of a Memorandum of Agreement.* (1) When an Agency Official submits a Memorandum of Agreement accompanied by the documentation specified in § 800.8(b) and (c), the Council shall have 30 days from receipt to review it. Before this review period ends, the Council shall:

(i) Accept the Memorandum of Agreement, which concludes the section 106 process, and informs all consulting parties; or

(ii) Advise the Agency Official of changes to the Memorandum of Agreement that would make it acceptable; subsequent agreement by the Agency Official, the State Historic Preservation Officer, and the Council concludes the section 106 process; or

(iii) Decide to comment on the undertaking, in which case the Council shall provide its comments within 60 days of receiving the Agency Official's submission, unless the Agency Official agrees otherwise.

(2) If the Agency Official, the State Historic Preservation Officer, and the Council do not reach agreement in accordance with § 800.6(a)(1)(iii), the Agency Official shall notify the Council, which shall provide its comments within 30 days of receipt of notice.

(b) *Comment when there is no agreement.* (1) When no Memorandum of Agreement is submitted, the Agency Official shall request Council comment and provide the documentation specified in § 800.8(d). When requested by the Agency Official, the Council shall provide its comments within 60 days of receipt of the Agency Official's request and the specified documentation.

(2) The Agency Official shall make a good faith effort to provide reasonably available additional information concerning the undertaking and shall assist the Council in arranging an onsite inspection and public meeting when requested by the Council.

(3) The Council shall provide its comments to the head of the agency requesting comment. Copies shall be provided to the State Historic Preservation Officer, interested persons, and others as appropriate.

(c) *Response to Council comment.* (1) When a Memorandum of Agreement becomes final in accordance with § 800.6(a)(1) (i) or (ii), the Agency Official shall carry out the undertaking in accordance with the terms of the agreement. This evidences fulfillment of the agency's section 106 responsibilities. Failure to carry out the terms of a Memorandum of Agreement requires the Agency Official to resubmit the undertaking to the Council for comment in accordance with § 800.6.

(2) When the Council had commented pursuant to § 800.6(a), the Agency Official shall consider the Council's comments in reaching a final decision on the proposed undertaking. The Agency Official shall report the decision to the Council, and if possible, should do so prior to initiating the undertaking.

(d) *Foreclosure of the Council's opportunity to comment.* (1) The Council may advise an Agency Official that it considers the agency has not provided the Council a reasonable opportunity to comment. The decision to so advise the Agency Official will be reached by a majority vote of the Council or by a majority vote of a panel consisting of three or more Council members with the concurrence of the Chairman.

(2) The Agency Official will be given notice and a reasonable opportunity to respond prior to a proposed Council determination that the agency has foreclosed the Council's opportunity to comment.

(e) *Public requests to the Council.* (1) When requested by any person, the Council shall consider an Agency Official's finding under §§ 800.4(b), 800.4(c), 800.4(d), or 800.5(b), and, within 30 days of receipt of the request, advise the Agency Official, the State Historic

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Preservation Officer, and the person making the request of its views of the Agency Official's finding.

(2) In light of the Council views, the Agency Official should reconsider the finding. However, an inquiry to the Council will not suspend action on an undertaking.

(3) When the finding concerns the eligibility of a property for the National Register, the Council shall refer the matter to the Secretary.

§ 800.7 Agreements with States for section 106 reviews.

(a) *Establishment of State agreements.* (1) Any State Historic Preservation Officer may enter into an agreement with the Council to substitute a State review process for the procedures set forth in these regulations, provided that:

(i) The State historic preservation program has been approved by the Secretary pursuant to section 101(b)(1) of the Act; and

(ii) The Council, after analysis of the State's review process and consideration of the views of Federal and State agencies, local governments, Indian tribes, and the public, determines that the State review process is at least as effective as, and no more burdensome than, the procedures set forth in these regulations in meeting the requirements of section 106.

(2) The Council, in analyzing a State's review process pursuant to § 800.7(a)(1)(ii), shall:

(i) Review relevant State laws, Executive orders, internal directives, standards, and guidelines;

(ii) Review the organization of the State's review process;

(iii) Solicit and consider the comments of Federal and State agencies, local governments, Indian tribes, and the public;

(iv) Review the results of program reviews carried out by the Secretary; and

(v) Review the record of State participation in the section 106 process.

(3) The Council will enter into an agreement with a State under this section only upon determining, at minimum, that the State has a demonstrated record of performance in the section 106 process and the capability to administer a comparable process at the State level.

(4) A State agreement shall be developed through consultation between the State Historic Preservation Officer and the Council and concurred in by the Secretary before submission to the Council for approval. The Council may invite affected Federal and State agencies. local governments, Indian tribes, and other interested persons to participate in this consultation. The agreement shall:

(i) Specify the historic preservation review process employed in the State, showing that this process is at least as effective as, and no more burdensome than, that set forth in these regulations;

(ii) Establish special provisions for participation of local governments or Indian tribes in the review of undertakings falling within their jurisdiction, when appropriate;

(iii) Establish procedures for public participation in the State review process;

(iv) Provide for Council review of actions taken under its terms, and for appeal of such actions to the Council; and

(v) Be certified by the Secretary as consistent with the Secretary's Standards and Guidelines for Archaeology and Historic Preservation.

(5) Upon concluding a State agreement, the Council shall publish notice of its execution in the **Federal Register** and make copies of the State agreement available to all Federal agencies.

(b) *Review of undertakings when a State agreement is in effect.* (1) When a State agreement under § 800.7(a) is in effect, an Agency Official may elect to comply with the State review process in lieu of compliance with these regulations.

(2) At any time during review of an undertaking under a State agreement, an Agency Official may terminate such review and comply instead with §§ 800.4 through 800.6 of these regulations.

(3) At any time during review of an undertaking under a State agreement, the Council may participate. Participants are encouraged to draw upon the Council's expertise as appropriate.

(c) *Monitoring and termination of State agreements.* (1) The Council shall monitor activities carried out under State agreements, in coordination with the Secretary of the Interior's approval of State programs under section 101(b)(1) of the Act. The Council may request that the Secretary monitor such activities on its behalf.

(2) The Council may terminate a State agreement after consultation with the State Historic Preservation Officer and the Secretary.

(3) A State agreement may be terminated by the State Historic Preservation Officer.

(4) When a State agreement is terminated pursuant to § 800.7(c)(2) and (3), such termination shall have no effect on undertakings for which review under the agreement was complete or in progress at the time the termination occurred.

§ 800.8 Documentation requirements.

(a) *Finding of no adverse effect.* The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the criteria of adverse effect were found inapplicable; and

(5) The views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

(b) *Finding of adverse effect.* The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and

(4) A description of the undertaking's effects on historic properties.

(c) *Memorandum of Agreement.* When a memorandum is submitted for review in accordance with § 800.6(a)(1), the documentation, in addition to that specified in § 800.8(b), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to deal with the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.

(d) *Requests for comment when there is no agreement.* The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is as follows:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on

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the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes for dealing with the undertaking's effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons;

(9) The planning and approval schedule for the undertaking; and

(10) Copies or summaries of any written views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

§ 800.9 Criteria of effect and adverse effect.

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

Subpart C—Special Provisions

§ 800.10 Protecting National Historic Landmarks.

(a) Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.4 through 800.6 and give special consideration to protecting National Historic Landmarks as follows:

(a) Any consultation conducted under § 800.5(e) shall include the Council;

(b) The Council may request the Secretary under section 213 of the Act to provide a report to the Council detailing the significance of the property, describing the effects of the undertaking on the property, and recommending measures to avoid, minimize, or mitigate adverse effects; and

(c) The Council shall report its comments, including Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

§ 800.11 Properties discovered during implementation of an undertaking.

(a) *Planning for discoveries.* When the Agency Official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the treatment of such properties if discovered and include this plan in any documentation prepared to comply with § 800.5.

(b) *Federal agency responsibilities.* (1) When an Agency Official has completed the section 106 process and prepared a plan in accordance with § 800.11(a), the Agency Official shall satisfy the requirements of section 106 concerning properties discovered during implementation of an undertaking by following the plan.

(2) When an Agency Official has completed the section 106 process without preparing a plan in accordance with § 800.11(a) and finds after beginning to carry out the undertaking that the undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, the Agency Official shall afford the Council an opportunity to comment by choosing one of the following courses of action:

(i) Comply with § 800.6;

(ii) Develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and the comments from the State Historic Preservation Officer and the Council pursuant to § 800.11(c); or

(iii) If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act, 16 U.S.C. 469(a)–(c), comply with that Act and implementing regulations instead of these regulations.

(3) Section 106 and these regulations do not require the Agency Official to stop work on the undertaking. However, depending on the nature of the property and the undertaking's apparent effects on it, the Agency Official should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

(c) *Council comments.* (1) When comments are requested pursuant to § 800.11(b)(2)(i), the Council will provide its comments in a time consistent with the Agency Official's schedule, regardless of longer time periods allowed by these regulations for Council review.

(2) When an Agency Official elects to comply with § 800.11(b)(2)(ii), the Agency Official shall notify the State Historic Preservation Officer and the

Council at the earliest possible time, describe the actions proposed to take effects into account, and request the Council's comments. The Council shall provide interim comments to the Agency Official within 48 hours of the request and final comments to the Agency Official within 30 days of the request.

(3) When an Agency Official complies with § 800.11(b)(2)(iii), the Agency Official shall provide the State Historic Preservation Officer an opportunity to comment on the work undertaken and provide the Council with a report on the work after it is undertaken.

(d) *Other considerations.*

(1) When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of section 106.

(2) When a discovery occurs and compliance with this section is necessary on lands under the jurisdiction of an Indian tribe, the Agency Official shall consult with the Indian tribe during implementation of this section's requirements.

§ 800.12 Emergency undertakings.

(a) When a Federal agency head proposes an emergency action and elects to waive historic preservation responsibilities in accordance with 36 CFR 78.2, the Agency Official may comply with the requirements of 36 CFR Part 78 in lieu of these regulations. An Agency Official should develop plans for taking historic properties into account during emergency operations. At the request of the Agency Official, the Council will assist in the development of such plans.

(b) When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster declared by the President or the appropriate Governor, and § 800.12(a) does not apply, the Agency Official may satisfy section 106 by notifying the Council and the appropriate State Historic Preservation Officer of the emergency undertaking and affording them an opportunity to comment within seven days if the Agency Official considers that circumstances permit.

(c) For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, § 800.12(b) also applies to an imminent threat to public health or safety as a result of natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or the State Historic Preservation Officer objects, the Agency Official shall comply with §§ 800.4 through 800.6.

(d) This section does not apply to undertakings that will not be implemented within 30 days after the disaster or emergency. Such undertakings shall be reviewed in accordance with §§ 800.4 through 800.6.

§ 800.13 Programmatic Agreements.

(a) *Application.* An Agency Official may elect to fulfill an agency's section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

(1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;

(2) When effects on historic properties cannot be fully determined prior to approval;

(3) When non-Federal parties are delegated major decisionmaking responsibilities;

(4) That involve development of regional or land-management plans; or

(5) That involve routine management activities at Federal installations.

(b) *Consultation process.* The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

(c) *Public involvement.* The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

(d) *Execution of the Programmatic Agreement.* After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

(e) *Effect of the Programmatic Agreement.* An approved Programmatic Agreement satisfies the Agency's section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

(f) *Notice.* The Council shall publish notice of an approved Programmatic Agreement in the **Federal Register** and make copies readily available to the public.

(g) *Failure to carry out a Programmatic Agreement.* If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with §§ 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

§ 800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

(b) Designing determinations and agreements to satisfy the terms not only of section 106 and these regulations, but also of the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, section 110 of the National Historic Preservation Act, and section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

§ 800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the section 106 process. When concurred in by the Council, such counterpart regulations

shall stand in place of these regulations for the purposes of the agency's compliance with section 106.

Dated: August 27, 1986.

John M. Fowler,
Acting Executive Director.

[FR Doc. 86-19814 Filed 8-29-86; 8:45 am]

BILLING CODE 4310-10-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-3071-2]

Approval and Promulgation of State Implementation Plans; Colorado Prevention of Significant Deterioration Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: Colorado's Prevention of Significant Deterioration (PSD) Regulation was submitted on April 18, 1983, and EPA proposed to approve the regulation with some exceptions on July 12, 1985.

EPA today is approving this PSD revision to the Colorado State Implementation Plan with some exceptions. These exceptions should not affect the ability of Colorado to assume the major portion of the PSD permitting responsibility. Further, if any source otherwise required to obtain a PSD permit under federal interpretation, is not required to obtain a PSD permit from the State because of these exceptions such source will be required to obtain a permit from EPA in accordance wth EPA's PSD regulations. EPA does not expect that any such sources will actually request a permit to construct in Colorado, however. EPA's PSD regulations will also remain in effect for sources located on Indian Reservations and for sources that have received earlier PSD permits from EPA. EPA is taking this action, because except as noted, the Colorado PSD regulations meet EPA policy. The effect of this approval will mean that Colorado will be issuing almost all PSD permits within the State after today.

EFFECTIVE DATE: September 2, 1986.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices.

Environmental Protection Agency, Region VIII, Air Program Branch, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale Wells, Air Programs Branch, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202, (303) 293-1773.

SUPPLEMENTARY INFORMATION: The Colorado PSD Regulation was submitted to meet the requirements of 40 CFR 51.24, as promulgated by EPA on August 7, 1980. EPA proposed to approve the Regulation on July 12, 1985, with certain exceptions. The first exception related to the 15 source categories which the State omitted from the list for which fugitive emissions must be included in calculating potential to emit. The second exception related to the State's exemption of fugitive dust from a number of requirements, including increment consumption.

EPA also proposed to take no action regarding the stack height provisions of the Colorado PSD Regulation because the applicable EPA regulation had not yet been promulgated. EPA's stack height regulation has now been promulgated; and by letter dated December 16, 1985, the State of Colorado has committed to comply with the federal stack height regulation in issuing PSD permits. Presently, Colorado is in the process of revising the stack height provision, and EPA is reserving action on said stack height provision until Colorado adopts and submits its new regulation.

Finally, EPA also proposed disapproval of certain waivers and exemptions in the Colorado PSD regulation, as noted below in the Section on "Final Action".

Comments:

EPA Region VIII received two comments on the proposed Colorado PSD regulation during the 30-day comment period. The first comment requested that EPA clarify whether the Agency was taking any action to approve the Category I areas in Colorado's PSD regulation. Category I is a designation authorized by Colorado's Air Pollution Control Act which applies the Class I SO_2 increment to certain pristine areas in Colorado not designated Class I by the Federal PSD regulations. Colorado law does not allow the State Implementation Plan to be more restrictive than the Federal requirements; therefore, the State has requested that the Category I areas be excluded from the SIP. EPA does not consider this portion of Colorado's regulation to be federally enforceable. There are specific procedures listed in the Code of Federal Regulations for redesignation of Class II areas which must be followed for EPA to recognize the Class I protections for an area. Until those procedures are followed, EPA must regard Category I areas as Federal Class II areas.

The other comment consisted of excerpts of comments submitted to the Colorado Air Quality Control Commission (during the PSD regulation hearings) that pertained to the requirements and exemptions for fugitive dust. Colorado's PSD regulation has exemptions from several fugitive dust requirements; and, EPA's proposed action on Colorado's PSD regulation disapproved all such fugitive dust exemptions. EPA's proposed action further stated that the source would be required to obtain a PSD permit from EPA in accordance with 40 CFR Part 52.21, if Colorado so applied the exemptions to any source in such a way as to avoid required PSD permitting. The comment on fugitive dust emissions therefore was already addressed in the action proposed by EPA.

Final Action

In addition to the source categories which were proposed to be dissapproved on July 12, 1985, EPA is disapproving the Colorado Regulations for sources which were regulated under section 111 or 112 of the Clean Air Act as of August 7, 1980. Excepted are sources for which fugitive dust emissions will be included in calculating potential to emit. EPA approves Colorado Regulation 3 and the Common Provision Regulations as amended for the PSD program except as follows:

1. The plan is disapproved for the following industrial source categories:

a. Kraft Pulp Mills:
Primary Zinc Smelters
Primary Aluminum Ore Reduction Plants
Primary Copper Smelters
Municipal Incinerators (capable of charging more than 250 tons of refuse per day)
Hydrofluoric, Sulfuric, and Nitric Acid Plants
Phosphate Rock Processing Plants
Sulfur Recovery Plants
Carbon Black Plants (furnace process)
Primary Lead Smelters
Secondary Metal Production Plants
Chemical Process Plants
Taconite Ore Processing Plants
Glass Fiber Processing Plants
Charcoal Production Plants

b. The following section 111 and 112 sources:
Asphalt Concrete Plants
Coal Preparation Plants
Grain Elevators
Sewage Treatment Plants (Sludge Incinerators)
Stationary Gas Turbines
Sources of Mercury, Berylium, Asbestos, and Vinyl Chloride.

2. The plan is disapproved for sources that would avoid any Federal PSD requirements due to exemptions in the Colorado PSD Regulation relating to fugitive dust.

3. The plan is disapproved for sources that would not need a Colorado permit due to the exemption for modification of oil or gas boilers to burn coal, shale oil, or coal-derived fuels (Regulation 3.I.B.2.c.viii).

4. The plan is disapproved for sources that would be exempted from a Colorado permit due to the State definition of Stationary Source (Common Provisions) *Reading* "except that properties which are or will be used only for right-of-way, transmissions, gathering, transportation, communication, pipeline or similar purposes shall not be considered contiguous or adjacent."

5. The plan is disapproved for sources that would avoid compliance with their permits due to that portion of Regulation 3.IV.H.4 allowing an administrative compliance waiver for as long as six months to a new source which violates a term of its permit.

6. The plan is disapproved for sources that would receive a Colorado permit based upon the provision covering Time Constraints on Division Action found in Regulation 3.IV.

7. EPA is delaying action on Regulation 3.XII.D pertaining to stack heights until Colorado adopts and submits new stack height regulations. Meanwhile, Colorado has committed to comply with EPA's stack height regulation.

8. EPA is taking no action regarding Regulation 3.VIII.B. as that provision applies the Class I SO_2 increment to areas designated as Class II under the Federal PSD Regulation.

Sources affected by items 1–7 are herby notified that federal permits under 40 CFR 52.21 will be required.

The Federal PSD regulation will remain in effect for the sources listed in items 1–7 above.

EPA finds good cause exists for making the action taken in this notice immediately effective for the following reason:

Implementation plan revisions are already in effect under state law or regulation and EPA approval poses no additional regulatory burden.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 1986. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 22, 1986.

Lee M. Thomas,

Administrator.

Part 52 Chapter I, Title 40 of the Code of Federal Rgulations is amended as follows:

PART 52—[AMENDED]

Subpart G—Colorado

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7842.

2. Section 52.320 is revised by adding paragraphs (c)(36) and (c)(37) as follows:

§ 52.320 Identification of plan.

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(c) * * *

(36) "Revisions to Colorado Regulation No. 3 Requiring Air Contaminant Emission Notices, Emission Permits and Fees as it Relates to the Prevention of Significant Deterioration" and "Revisions to Common Provision Regulation as Related to Regulation 3." Changes submitted April 18, 1983, by the Governor.

(37) Supplemental information submitted on December 16, 1985, by the Colorado Department of Health concerning compliance with EPA's stack height regulations in issuing PSD permits.

(i) Incorporation by reference.

(A) Revisions to Regulation 3 and Common Provisions Regulation adopted March 10, 1983, by the Colorado Air Quality Control Commission.

(B) Supplemental information submitted on December 16, 1985, by the Colorado Department of Health concerning compliance with EPA's stack height regulation in issuing PSD permits.

3. In § 52.343, paragraph (a) is revised to read as follows:

§ 52.343 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met for the following categories of sources for preventing the significant deterioration of air quality:

(1) Kraft Pulp Mills:
Primary Zinc Smelters
Primary Aluminum Ore Reduction Plants
Primary Copper Smelters
Municipal Incinerators (capable of charging more than 250 tons of refuse per day)
Hydrofluoric Sulfuric and Nitric Acid Plants
Phosphate Rock Processing Plants
Sulfur Recovery Plants
Carbon Black Plants (furnace process)
Primary Lead Smelters
Secondary Metal Production Plants
Chemical Process Plants
Taconite Ore Processing Plants
Glass Fiber Processing Plants
Charcoal Production Plants

(2) Sources avoiding requirements based on exemptions in Colorado Regulations on the basis of fugitive dust that would not be exempt under § 52.21.

(3) Sources exempt under Regulation 3.I.B.2.c.viii.

(4) Sources exempt under the following Colorado Common Provision Regulation definition of Stationary Source: "Except that properties which are or will be used only for right-of-way, transmissions, gathering, transportation, communication, pipeline, or similar purposes shall not be considered contiguous or adjacent."

(5) Sources locating on Indian lands.

(6) Sources that would receive a Colorado permit based upon the provision covering Time Constraints on Division Action found on Regulation 3.IV.F.

(7) Sources that would avoid compliance with their permits due to that portion of Regulation 3.IV.H.4 allowing an administrative compliance waiver for as long as six months to a new source which violates a term of its permit.

(8) Sources which were regulated under section 111 or 112 of the Clean Air Act as of August 7, 1980 with the exception of those sources for which fugitive emissions will be included

incalculating potential to emit in the Colorado Regulation.

[FR Doc: 86-19596 Filed 8-29-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL-3072-1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final rulemaking on a revision to the ozone portion of the Ohio State Implementation Plan (SIP) to control Volatile Organic Compounds (VOC). This revision will provide an alternative emission control program (bubble) for VOC emission from a gasoline and aviation fuel loading rack located at Standard Oil Company (Standard Oil) in Trumbull County, Ohio. USEPA's final approval is based upon a request which was submitted by the State.

EFFECTIVE DATE: This rulemaking becomes effective on October 2, 1986.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, N.W., Room 8301, Washington, DC.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396, before visiting the Region V Office.)

Ohio Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

U.S. Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On April 7, 1982 (47 FR 150756), the Environmental Protection Agency issued an interim Emissions Trading Policy Statement (ETPS) entitled "General Principles for Creation, Banking, and Use of Emission Reduction Credits". This statement indicated that it is the policy of USEPA to encourage use of emission trades to achieve more flexible, rapid and efficient attainment of national ambient air quality standards (NAAQS). This policy statement described emissions trading, sets out general principles USEPA will use to evaluate emission trades under the Clean Air Act, and expands opportunities for States and industry to use these less costly control approaches. The April 7, 1982, notice indicates that until USEPA takes final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed policy statement.

On September 13, 1983, the Ohio Environmental Protection Agency (OEPA) submitted a revision to its ozone SIP for Standard Oil Company. The revision request contains an alternative emission control program (bubble) which is in the form of a variance for VOC emissions from an aviation fuel loading rack located at Standard Oil Company in Trumbull County, Ohio. Under the existing federally approved SIP, each gasoline and aviation fuel loading rack is subject to the control requirements contained in Ohio Administrative Code Rule 3745-21-09(Q).

On June 19, 1984, **Federal Register** (49 FR 25008), USEPA proposed to approve Standard Oil's bubble request. The bubble plan at Standard Oil would reduce the allowable VOC emissions from a gasoline loading rack and, at the same time, would allow an increase in VOC emissions from an aviation fuel loading rack. The throughput at the aviation fuel loading rack is much smaller than the throughput at the gasoline loading rack. The reduction in the allowable VOC emissions from the gasoline rack (from 0.67 pounds per 1000 gallons (#/1000 gal) of gasoline loaded) to 0.66 #/1000 gal of gasoline loaded) is expected to more than offset the increase in allowable VOC emissions from the aviation loading rack. The SIP revision would affect the VOC emissions at the aviation fuel loading rack by removing the 0.67 #/1000 gal of gasoline loaded limitation, requiring no vapor control. The VOC reduction from the gasoline loading rack is 0.7 tons per year (T/yr) and the increase in allowable VOC emissions from the aviation loading rack is 0.3 T/yr, leading to a minimum overall decrease in allowable VOC emissions of 0.4 T/yr.

The actual and allowable emissions and the resulting change in emissions from before to after the bubble are summarized in the following table:

Emissions (tons/year)	Loading Rack					
	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
Aviation	0.38	0.38	0.00	0.08	0.38	+0.30
Gasoline	3.62	3.62	0.00	46.74	46.04	−0.70
Total	4.00	4.00	0.00	46.62	46.42	−0.40

During the 30 day public comment period USEPA received comments from Natural Resouces Defense Council (NRDC) and Standard Oil. USEPA's evaluation of these comments are summarized below with USEPA's responses.

1. *Comment:* NRDC comments that this SIP revision should not be approved because it is a "paper" trade. NRDC believes "if this bubble is approved, real pollution will be higher" than without this bubble (emphasis in original), because the emission reduction portion of the bubble is only "a paper change in the emission limit" at the gasoline loading rack.

Response: USEPA believes that, once the Agency has approved a SIP as being adequate to assure timely attainment and maintenance of a national ambient air quality standard, it may approve trades among the emission limits in that SIP so long as the new limits produce air quality that is equivalent to what would result from the SIP limits and the baseline used in the trade is consistent with the assumptions in the attainment demonstration. USEPA has already approved Ohio's SIP for Trumbull County, including the limit of .67 #1000 gals, for loading racks, as adequate to assure timely attainment and maintenance of the ozone standard, RACT 1 **Federal Register** October 31, 1980 (45 FR 72122), and RACT II **Federal Register** June 29, 1982 (47 FR 28097). The emissions reduction required by that limit is greater than the reduction that the area's attainment demonstration found to be needed to attain and maintain the standard.[1]

[1] Ohio's attainment demonstration for the Youngstown urbanized ozone nonattainment area in which the Standard Oil terminal is located showed that by the end of 1982 the SIP would bring a percentage reduction in emissions which was greater than the percentage reduction which analysis of monitoring data found to be necessary

Continued

Consequently, a reduction of emissions to below what that limit requires is a surplus reduction that can be used to offset the increase resulting from the loosening of another emission limit in the same area without interfering with timely attainment and maintenance.

Contrary to the commenter's suggestion, the Clean Air Act does not require USEPA to disapprove a SIP revision just because it would permit increases above the emissions level that would actually occur absent the revision. Rather, the Act permits SIP revisions that relax emission limits if those relaxations do not interfere with timely attainment and maintenance of the air quality standard. See, e.g., *Ohio Environmental Council v. EPA*, 593 F.2d 24 (6th Cir. 1979); *United States Steel Corporation v. EPA*, 633 F.2d 671, 674 (3d Cir. 1980). Here, USEPA has shown that the relaxation of the limit for the aviation fuel facility will not interfere with attainment and maintenance of the ozone standard in Trumbull County or elsewhere because that relaxation is balanced by the tightening of the SIP requirement for the gasoline loading rack.

NRDC nonetheless maintains that USEPA should not recognize the SIP tightening at the gasoline loading racks because the tighter limit (0.66 #/1000 gals.) does not reflect the installation of control equipment that is different from what would have been installed to meet the current limit. For bubbles in nonattainment areas with adequate, approved attainment demonstrations, however, USEPA does not require such a showing. As just described, the issue is whether the new limits will interfere with timely attainment and maintenance of the standard. Whether the source anticipates changing its choice of control equipment as a result of the revisions is irrelevant. As shown above, the resulting set of emission limits will produce emission reductions at least as great as what the SIP requires and the approved demonstration assumes and, therefore, will not interfere with attainment and maintenance of the standard.

2. *Comment:* NRDC comments that Trumbull County remains nonattainment for ozone, and notes in fact that on June 12, 1984, USEPA denied an Ohio request for redesignation of this county from nonattainment to attainment. NRDC notes thus that Trumbull County remains nonattainment after the 1982 attainment deadline, and concludes that "the area is in need of all available VOC reductions as quickly as possible."

On the same issue, Standard Oil comments that "even though Trumbull County had its nonattainment status retained, this appears to have been on the basis of proximity to the Youngstown urban area, rather than on monitoring or actual emissions data". Thus, Standard Oil asserts that "the nonattainment designation does not mean that VOC reductions are immediately required."

Response: Both commentors are correct that on June 12, 1984, USEPA chose to maintain the nonattainment status of Trumbull County, and Standard Oil is correct that the stated rationale for this action was Trumbull County's proximity to Youngstown. In fact, the Youngstown urbanized area extends into Trumbull County and even includes the City of Niles, where the Standard Oil facility is located. Thus, to the extent that further emission reductions are needed in the Youngstown area in general, these needs apply in specific to the area in which Standard Oil has its Niles Terminal.

Table 1 summarizes available ozone air quality data in the Youngstown area. USEPA policy on redesignations is to use the three most recent years of data. Thus, it is clear from the data in Table 1 that the Youngstown area should continue to be designated nonattainment.

TABLE 1.—AIR QUALITY DATA FROM THE YOUNGSTOWN AREA

Site name	Site address	Year	High conc.	2nd high conc.	No. of exceedances	Expected exceedance
Youngstown	Metropolitan Tower.	1980	.160	[1]—	1	1.1
		1981	.145	.130	2	2.1
		1982	.135	[1]—	1	1.2
		1983	.125	[1]—	1	1.4
Youngstown	9 West Front St.	1984	[1]—	[1]—	0	0.0

[1] "—" indicates that concentration is not an exceedance.

USEPA's June 12, 1984 judgment that the Youngstown area should continue to be designated nonattainment does not necessarily mean that the area will be found to have violated the standard after 1982. This seeming paradox arises because that judgment was based only on one year of data after 1982 [2]; that is, USEPA's judgment that the areas should still be designated nonattainment in part reflected 1981 and 1982 air quality data.

USEPA has made several calls for ozone SIP revisions in areas that were required to achieve the ozone standard by the end of 1982 but appear unlikely to have done so. In Youngstown, however, it is not yet sufficiently clear whether the area will be found to have attained the standard after 1982. Many of Ohio's RACT regulations had compliance dates at the end of 1982, and it is quite possible that, as forecast in the SIP, these emission reductions will be sufficient to attain the standard as of then. Currently available data from 1983 and 1984 indicate an expected frequency of exceedances of 0.7 per year, which is less than the attainment frequency of 1.0 per year, the threshold beyond which an area is in nonattainment. Thus, it is not clear that the Youngstown area has been violating the standard since 1982, and in fact it appears likely that once a full three years of air quality data after 1982 are available, these data will show the area to have been in attainment since then.

This information does not suggest that the area's SIP is substantially inadequate to attain and maintain the ozone standard within the meaning of section 110(a)(2)(H) of the Clean Air Act. Rather, the information indicates that, absent additional data suggesting that the recent air quality improvement is temporary, USEPA may continue to assume that the current SIP limits and any equivalent set of limits will be adequate for that purpose. For these reasons, USEPA does not believe that the current nonattainment designation for Trumbull County precludes reliance on the current Trumbull County SIP limits, including the gasoline loading rack limit, as the appropriate trading

to attain and maintain the standard. To support this showing, the State presented an inventory of the area's emissions and the percent emission reduction expected from each source or category of sources by the end of 1982, as well as the average percent reduction expected from the area's sources. That inventory did not reflect emissions reductions from the Standard Oil Niles terminal. The loading rack limit, however, in fact required that the terminal reduce its emissions before the end of 1982 by roughly 80 percent, an amount greater than the average areawide percent reduction that the rollback demonstration showed necessary (i.e., 44 percent).

[2] USEPA when possible uses three years of air quality data to evaluate attainment status.

baseline for this bubble. Nor does the designation mean that USEPA must disapprove a SIP revision for the area just because it does not require the achievement of "available VOC reductions as quickly as possible." In light of the adequacy of the current SIP, USEPA has no authority to disapprove an even trade among the current limits just because greater emission reductions might actually result absent the trade.

3. *Comment:* NRDC comments that the limit of 0.67 #/1000 gal does not represent reasonably available control technology (RACT) for either the gasoline loading rack or the aviation fuel loading rack. NRDC supports this contention by citing information supplied by Standard Oil that the gasoline loading rack actually achieves an emissions level of 0.052 #1000 gal. NRDC also calculates that the same 97.3 percent control effectiveness would lead to emissions at the aviation fuel loading rack being 0.092 #/1000 gal. NRDC concludes that 0.67 #/1000 is not a suitable RACT baseline against which to calculate the impact of the bubble, and further indicates that USEPA should call for a statewide SIP revision to tighten the fuel rack emission limit.

Standard Oil responded to the NRDC comment, saying that "the only data relied on by NRDC . . . is a single test at a single terminal," and that test was conducted before certain programs which would increase vapor loading at the terminal were fully implemented (viz Stage I vapor recovery and leak tightness testing). Standard Oil also noted that when USEPA adopted new source performance standards for terminals in 1983 (representing USEPA's judgment about best available control technology (BACT)), USEPA "expressly decided not to change" the 0.67 #/1000 gal RACT limit. Finally, Standard Oil asserts that 0.67 #/1000 gal does not represent RACT for the aviation fuel loading rack, since this limit would cost $8.40 per pound hydrocarbon removed as compared to the 3 to 5 cents per pound costs applicable to the controls that USEPA considers RACT for this source category.

Response: USEPA approved the 0.67 #/1000 gals limit as reflecting RACT for fuel loading racks when it approved the SIP for Trumbull County. October 31, 1980 **Federal Register** (45 FR 72122).

As indicated in the previous response, USEPA does not believe that it is required to reassess its previous approval absent new information that shows that the SIP limits are substantially inadequate to attain and maintain the ozone standard in the area. As noted in an earlier response, the available information does not show that the SIP is substantially inadequate. In addition, neither commenter has demonstrated conclusively that the existing emission limitation does not represent RACT. For these reasons, USEPA has not issued a deficieny notice for the area's ozone SIP,. and the current RACT limit continues to form the proper trading baseline for the affected loading racks.

4. *Comment:* NRDC comments that this bubble violates USEPA's bubble policy insofar as the bubble takes credit for a reduction in allowable emissions, whereas the bubble policy requires the use of actual emissions in this case. NRDC notes that the bubble policy only permits the use of allowable emissions if the area has an approved attainment demonstration based on allowable emissions. NRDC then argues that even if the Trumbull County SIP were based on allowable emissions, the fact of nonattainment beyond the 1982 attainment deadline would show that the SIP allowed too much emissions, therefore indicating that SIP allowable emissions is an inappropriate baseline in this case.

Standard Oil states that use of allowable emissions as the trading baseline is appropriate here, particularly since the amount of emissions involved is small and the nonattainment designation is based on being downwind of an urban area.

Response: USEPA's bubble policy states that where an area's attainment demonstration has been approved by USEPA, "the baseline must be consistent with assumptions used to develop the area's SIP". The ozone SIP for Trumbull County uses a hybrid emission inventory which cannot be simply labeled as either actual or allowable emissions. The emissions assumed in the inventory to occur at the end of 1982 were a projection of the actual activity level of each emission source times the emission rate which is required to be achieved from the source under the SIP. The percent emission reduction associated with the Standard Oil terminal's allowable emissions rate, assuming a constant activity level, is greater than the average areawide percent reduction that the inventory calculations showed necessary to attain and maintain the ozone standard. Thus, as indicated in the footnote in the response to the first comment, any reduction beyond that level is a reduction not relied on in the demonstration and is, therefore, surplus.

5. *Comment:* NRDC comments that "it is no argument" to support this bubble on the basis that few emissions are being traded. NRDC states that "the principle is at issue here" and notes that with approval of this bubble, Standard Oil and other companies can be expected "cash in" on more of the 13-fold difference between its actual and allowable emissions.

Response: The principles reflected in the policy against which this bubble is being reviewed apply equally to "large" and "small" bubbles. USEPA does not consider it germane whether approvable credit is large or small so long as these principles are adhered to.

6. *Comment:* NRDC states that "the bubble is unenforceable because the difference between 0.67 and 0.66 #/1000 gal cannot be reliably measured. Standard Oil states that "despite the inherent inaccuracies in the test method, the new limit would be just as enforceable as the current limit". Standard Oil also notes that because the SIP limit for Niles Terminal is being revised, the bubble policy "indicates that the proposed bubble 'automatically' satisfies the enforceability test".

Response: In judging whether this bubble is approvable, USEPA must judge whether a 0.66 #/1000 gal limit would be enforceable. NRDC appears to be correct that current test methods cannot accurately measure differences of 0.01 #/1000 gal. However, the question is not whether the test method can distinguish between 0.67 and 0.66 #/1000 gal; instead, the question is simply whether the test method can give a reasonable indication of whether the source emits above or below 0.66 #/1000 gal. USEPA has previously found the 0.67 #/1000 gal limit to be enforceable, and the 0.66 #/1000 gal is equally enforceable. Standard Oil also is correct in implying that a federally approved SIP revision provides a suitable legal instrument for enforcing the bubble.

7. *Comment:* Standard Oil comments that although it is prepared to accept this revised SIP, it believes that the bubble is unnecessary because the rack which is being allowed to increase emissions (the aviation fuel rack) is exempted under Ohio's RACT rules. Standard Oil argues that the aviation fuel rack receives its shipments by truck, that this rack should, therefore, be classified as a bulk gasoline plant, and that under Ohio's regulations for bulk gasoline plants this source would be exempted.

Response: Ohio's regulations define a bulk gasoline terminal as a ". . . facility which received [petroleum] primarily via pipeline, ship or barge . . ." The term facility can be assumed to signify a collection of all emission points within a single property. In the case of the facility known as Niles Terminal, it may be

assumed in the absence of information to the contrary that the gasoline loading racks receive gasoline principally by pipeline. Since Standard Oil has shown that gasoline is the overwhelming fraction of the overall petroleum dispensed, the entire Terminal must be considered subject to the regulations for bulk terminals.

Based on its review of Ohio submittal and its consideration of public comments, USEPA has determined that the bubble is approvable. The bubble consists of enforceable emission limitations, and there will be no net increase above the emissions allowed by the USEPA-approved SIP and assumed in the USEPA-approved attainment demonstration. Therefore, USEPA is taking final action today to approve this Standard Oil bubble.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52:

Air pollution control, Incorporation by Reference, Ozone, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register, on July 1, 1982.

Dated: August 19, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

Subpart KK—Ohio

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1870 is amended by adding paragraph (c)(69) as follows:

§ 52.1870 Identification of plan.

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(c) * * *

(69) On September 13, 1983, the Ohio Environmental Protection Agency submitted a variance which would establish an alternative emission control program (bubble) for Volatile Organic Compound emissions from a gasoline and aviation fuel loading rack located at Standard Oil Company in Trumbull County, Ohio.

(i) *Incorporation by reference.* (A) An August 26, 1983, Permit and Variance to Operate an Air Contaminant Source Terms and Conditions, Application No. 02 78 06 0355 J001 and 02 78 06 0355 J002, for Niles Terminal Station N. 234, Niles Aviation Gasoline Bulk Terminal.

[FR Doc. 86–19597 Filed 8–29–86; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of American Alligators Taken in 1986 Through 1988 Harvest Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed in Appendix II of CITES may occur only if a Scientific Authority (SA) has advised a permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species, and if the MA is satisfied that the animals or plants were not obtained in violation of laws for their protection. This notice announces final findings by the SA and MA of the United States on the export of American alligators. Previously, these findings were made to span three harvest seasons, 1983–85. This year the Fish and Wildlife Service (Service) intends to make these findings to cover the 1986–1988 harvest seasons.

DATE: These findings are effective on September 2, 1986.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, room 537, 1717 H Street, NW., Washington, DC or at the Federal Wildlife Permit Office, room 621, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:
Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653–5948
Management Authority Finding—Mr. Earl B. Baysinger, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 235–1937
Export Permits—Mr. Richard K. Robinson, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 235–1903

SUPPLEMENTARY INFORMATION: This is the second of two notices concerning the Service's findings on export of American alligators taken in the 1986–1988 harvest seasons. The first notice (51 FR 18634; May 21, 1986) announced proposed findings by the SA and MA of the United States on the export of American alligators. The Service invited comments from the public at that time. One comment from a sportsmen's organization along with information from the three involved States were received.

Scientific Authority (SA) Findings

Article IV of CITES requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the SA and MA of the exporting country. The SA must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted.

The SA for the United States must develop such advice on nondetriment for the export of Appendix II animals in accordance with Section 8A of the Endangered Species Act of 1973, as amended in 1982. The Act states that the Secretary of the Interior "shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice."

The American alligator is listed in Appendix II to respond both to problems of potential threat to the survival of American alligators [CITES Article II.2(a)] and similarity in appearance to other crocodilians that are threatened with possible extinction [CITES Article II.2(b)]. The Regional 10-year review of the appendices confirmed the suitability of this treatment, as set forth in the proposal that the Conference of the

Parties adopted in 1979 to transfer this species to Appendix II. The Service will address the issue of similarity in appearance through tagging of hides and documentation of shipments of meat and parts. Inasmuch as the alligator is listed partly because of a potential threat to its survival (based on previous population declines that have been reversed in most parts of its range in the United States), the Service also must determine if exports will not be detrimental to the survival of the American alligator itself.

Guidelines developed for SA advice on exports of alligators under the provisions of CITES Article II.2(a) have been revised to conform with the 1982 Amendments to the Endangered Species Act (see 48 FR 16494, April 18, 1983). They are as follows:

A. Minimum Requirements for Biological Information

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State choice), and population estimates where such information is available.

(2) Information on total harvest of the species, each harvest season.

(3) Information on distribution of harvest.

(4) Habitat evaluation.

B. Minimum Requirements for a Management Program

(1) There should be a controlled harvest with methods and seasons to be a matter of State choice.

(2) All hides, meat, and parts should be registered and marked accordingly.

(3) Harvest level objectives should be determined annually by the States.

The Service finds that current information on population status, management, and harvest submitted by the States of Florida, Louisiana, and Texas, as well as that collected by the Service fully support a finding that the export of alligators taken in accordance with State regulations in Florida, Louisiana, and Texas for the 1986–1988 harvest seasons will not be detrimental to the survival of the species in those States. Tagging of hides by the States and documentation of shipments by the MA provide assurance that export will not reduce the effectiveness of CITES in controlling trade in other species of crocodilians. Documents containing information that provides the basis for SA advice for alligators in each of these States are available for public inspection at the Office of Scientific Authority (address given above).

Management Authority (MA) Findings

Exports of Appendix II species are to be allowed under CITES only if an SA has advised that the exports are not detrimental to the survival of the species and if the MA is satisfied that the specimens were not obtained in contravention of laws for the protection of the wildlife or plants. The Service, therefore, must be satisfied that alligator hides, meat, or parts were not obtained in violation of State or Federal laws in order to allow export. Evidence of legal taking for American alligator is provided by Service-approved, State tagging systems. The Service requires the State tagging program to apply locking nylon tags with embossed legends to legally harvested alligator hides as evidence of compliance with CITES regulations (50 CFR 17.42(a)). Tags and State documentation must clearly identify hides, meat, and parts as to species, State of origin, and season of taking.

The Service will supply suitable export tags free of charge to qualifying States for alligators harvested during the period covered by these final findings, or each State may use its own Service-approved tags if they meet the tag requirements described in the export guidelines below.

The Service has adopted the following MA export guidelines (49 FR 1058; January 9, 1984) for the export of hides. The guidelines for the export of meat and parts were proposed for the first time in the May 21, 1986, Federal Register notice.

(1) Current State hunting, trappings, tagging, selling, and shipping regulations and sample hide export tag, "parts tag", and meat-package and package sealing devices must be on file with the Service (Federal Wildlife Permit Office).

(2) Hide export:

(a) The hide export tag must be durable and permanently locking, and must show State of origin, year to take, species, and be numerically unique;

(b) The hide export tag must be applied to all hides within a minimum time after take, as specified by the State, and such time should be as short as possible to minimize movement of untagged hides;

(c) The hide export tag must be permanently attached as authorized and prescribed by the State;

(d) State-registered agents or State-licensed takers permitted by the State to attach tags must account for tags received and must return unused tags to the State within a specified time after the taking season closes; and

(e) Fully manufactured hide products may be exported from the United States when accompanied by State hide export tags removed from hides contained in the products; such tags must be surrendered to the Service prior to export.

(3) Meat export: Meat from legally harvested and tagged alligators is to be packed in uniform (within the State) containers, permanently sealed and labeled as required by State law. Bulk meat is to be marked with a State "parts tag" or "bulk meat tag" permanently attached. Container label or "parts tag" should indicate, as a minimum, State of origin, year of take, species, weight of package or unit, identification of State licensed harvester, and identification of State licensed processor or packer.

(4) Other parts:

Alligator skulls should carry a "parts tag" and be marked with the number of the original U.S.-CITES export tag used for the hide of that individual, as required by State law.

"Parts tags" used for alligator parts should supply the same information as described for such tags used to mark alligator meat.

The Service has reviewed the alligator tagging programs of Florida, Louisiana, and Texas and has found that they fully meet these guidelines.

Export Approval

The Wildlife Legislative Fund of America submitted comments supporting the Service's proposed findings and rule concerning export of American alligators in 1986 and subsequent harvest seasons, and the State wildlife agencies of Florida, Louisiana, and Texas provided additional biological and harvest information.

The Service has decided to approve the export of American alligators lawfully taken during the 1986–1988 harvest seasons in Florida, Louisiana, and Texas on the grounds that both SA and MA criteria have been met. The Service plans to continue annual reviews to ensure that export does not become detrimental to the survival of the species. This annual monitoring will consist of, but not be limited to, review of management and export tagging programs, review of information in annual reports available from the States, and examination of export information collected at the ports.

For all other States not named above, either the taking of this species is not yet allowed by the State, the species does not occur in the State, or the State did not provide the Service with information on which to base SA and MA findings. The Service does not grant general approval for export of specimens of this species originating in such States.

Additional States within the species' natural range may find that a change in Federal laws controlling this species has

made their alligators eligible for harvest and commerce. A State seeking to begin a harvest program for export purposes under CITES should provide biological and management program information as described in this notice to enable the Service to issue SA and MA findings.

The findings announced in this notice are effective immediately. It is the Service's opinion that a delay in the effective date of the regulations after this final rulemaking is published could adversely impact the species by preventing the international marketing of hides (where commercial harvest is an important part of the State conservation programs) thereby reducing the incentive for takers or dealers to comply with State requirements in Florida, Louisiana, and Texas. The rule extends export approval for the same States that were approved for export in the previous years without any adverse public comment. The Service, therefore, finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, for these regulations to take effect immediately upon publication. Further, because this rule relieves a restriction on export, it may take effect immediately under 5 U.S.C. 553(d)(1).

This final rule is issued under authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The primary authors are Dr. Richard M. Mitchell, Office of Scientific Authority, and S. Ronald Singer, Federal Wildlife Permit Office.

Note.—The Department has determined that these final findings on the export of American alligator taken in the 1986–1988 harvest seasons are not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act and therefore the preparation of an Environmental Impact Statement is not required. The Department also has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). The findings will allow a continuation of the export of specimens taken in accordance with State programs that have operated for several years without adversely affecting the resource. The findings do not contain any information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service amends Part 23 of Title 50, Code of Federal Regulations, as set forth below:

1. The authority citation for 50 CFR Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531–43.

2. In § 23.57, add new paragraph (g) to read as follows:

§ 23.57 American alligator (*Alligator mississippiensis*).

* * * * *

(g) *1986–1988 harvests:* Florida, Louisiana, and Texas.

Condition on export: Each hide must be clearly identified as to species, State of origin, and season of taking, and must be tagged by a permanently attached, serially numbered tag of a type approved by the Service that is attached under conditions established by the Service. Fully manufactured hide products may be exported from the United States when accompanied by State hide export tags removed from hides contained in the products; these tags must be surrendered to the Service prior to export.

Meat from legally harvested and tagged alligators shall be packed in uniform containers, permanently sealed and labeled as required by State law. Bulk meat shall be marked with a State "parts tag" or "bulk meat tag" permanently attached indicating, at a minimum, State of origin, year of take, species, weight of package or unit, identification of State licensed harvester, and identification of State licensed processor or packer.

Large individual parts shall have a "parts tag" permanently attached, while smaller parts may be packed with a "parts tag" permanently attached to the package. Alligator skulls shall carry a "parts tag" and also be marked with the number of the original U.S.-CITES export tag used for the hide of that individual, and other markings, as required by State law. "Parts tags" shall supply the same information as described for such tags used to mark alligator meat.

Dated: August 20, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Porks.

[FR Doc. 86–19760 Filed 8–29–86; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 51, No. 169
Tuesday, September 2, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1065, 1068, and 1079

[Docket Nos. A0-178-A40, A0-86-A44, and A0-295-A37]

Milk in the Upper Midwest, Nebraska-Western Iowa, and Iowa Marketing Areas; Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

SUMMARY: This notice extends until September 26, 1986, the deadline for filing exceptions to the August 6, 1986 recommended decision concerning proposed amendments to the Upper Midwest, Nebraska-Western Iowa and Iowa milk orders. A proprietary handler and a cooperative association that supplies milk for the Nebraska-Western Iowa market jointly requested the additional time to prepare exceptions. The petition states that more time is needed because of preparation for another federal order proceeding and to allow adequate time to prepare appropriate comments.

DATE: Exceptions now are due on or before September 26, 1986.

ADDRESS: Comments (five copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding.

Notice of Hearing: Issued February 25, 1986; published March 3, 1986 (51 FR 7280).

Recommended Decision: Issued August 6, 1986; published August 12, 1986 (51 FR 28819).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the orders regulating the handling of milk in the Upper Midwest, Nebraska-Western Iowa and Iowa marketing areas, which was issued on August 6, 1986, is hereby extended to September 26, 1986.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Parts 1065, 1068 and 1079

Milk, Milk marketing orders, Dairy products.

The authority citation for 7 CFR Parts 1065, 1068 and 1079 continues to read as follows:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Signed at Washington, DC, on: August 27, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-19748 Filed 8-29-86; 8:45 am]

BILLING CODE 3140-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-164-AD]

Airworthiness Directive; Boeing Model 747 Series Airplanes With the One-Piece Escape Slide Installed at Door No. 3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the Door No. 3 escape slide attachment to the door. An investigation has determined that there is insufficient strength in the attachment of the escape slide pack to the door to resist vertical loads. This could lead to the slide pack becoming detached from the door during an accident. This condition, if not corrected, could prevent deployment of the escape slide, thus delaying and possibly jeopardizing successful emergency evacuation of the airplane.

DATES: Comments must be received no later than October 20, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-164-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Young, Airframe Branch, ANM-120S, telephone (206) 431-2929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 96168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public

contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-164-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

As the result of an investigation conducted by the airplane manufacturer, the FAA has determined that the vertical loads resulting from a minor crash landing could result in detachment of the escape slide pack from the door. Detachment of the escape slide could prevent deployment of the slide, thus delaying an emergency evacuation of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747-25A2710, dated July 15, 1986, which describes a modification to increase the load capability of the escape slide attachment to prevent detachment from the door.

Since this condition may exist or develop on other airplanes of the same type design, the proposed AD would require modification to the escape slide pack in accordance with Boeing Service Bulletin 747-25A2710.

It is estimated that 50 airplanes of U.S. operators would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of necessary parts is estimated at $1,840 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $108,000.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 airplanes, certificated in any category, equipped with the single-piece escape slide at Door No. 3. To ensure that the escape slide pack remains in proper position on the door in the event of a minor crash landing, accomplish the following, unless already accomplished:

A. Within twelve months after the effective date of this AD, modify the escape slide attachment in accordance with Boeing Alert Service Bulletin 747-25A2710, dated July 15, 1986, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 22, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-19656 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-175-AD]

Airworthiness Directive; Boeing Model 737-100 and 737-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to add an airworthiness directive (AD), applicable to certain Boeing Model 737 airplanes, which would require replacement of certain underwing fuel tank access covers with stronger, fire-resistant covers. This action is prompted by one incident of cover penetration, which resulted in a fire and total loss of the airplane.

DATE: Comments must be received on or before October 20, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-175-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton A. Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2926. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available,

both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-175-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On August 22, 1985, in Manchester, England, an incident occurred in which a wing fuel tank access cover near the engine on a Boeing Models 737-200 airplane was penetrated on takeoff, due to an engine failure. The engine part which penetrated the door had relatively low impact velocity. The massive fuel spillage and fire which ensued destroyed the airframe. Numerous fatalities resulted from this accident.

It is common practice to locate fuel in the wings of airplanes and to install fuel tank access covers on wing surfaces. On numerous models, these covers are located on the lower wing surface and are of a type of construction which is susceptible to fracture from impact of foreign objects, such as engine and tire debris. A massive fuel spillage can lead to a catastrophic fire, as occurred in the incident previously mentioned.

Although it is extremely difficult to stop penetrations from high energy engine debris, it is possible to minimize fuel spillage by replacing covers in likely impact areas with improved covers less susceptible to fracture. The affected covers on Boeing Models 737-100 and 737-200 airplanes, which this proposed AD addresses, have been demonstrated to be a safety hazard, as evidenced by the aforementioned incident. These fuel tank access covers are in close proximity to the engines. To correct this unsafe condition, this proposed airworthiness directive would require that Boeing Model 737-100 and 737-200 lower wing access covers immediately adjacent to the engines be replaced with covers of substantially improved impact resistance. Furthermore, these covers must be shown to be "fire resistant" as defined in Federal Aviation Regulations, Part 1. The manufacturer has developed both a retrofit and new replacement design that provides an acceptable level of safety, and it is anticipated that these would be available in sufficient quantities such that operators may comply in a timely manner with the requirements of this proposal.

It is estimated that 396 airplanes of U.S. registry would be affected by this AD, that approximately 16 manhours per airplane would be required to replace the affected covers, and that the average labor charge would be $40 per manhour. Replacement costs are estimated to be $500 per cover (4 covers per airplane). Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,045,440.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 737-100 and 737-200 series airplanes, certificated in any category. To minimize the hazard of lower wing surface fuel tank access cover penetration due to impact from low energy engine and tire debris, accomplish the following, unless already accomplished.

A. Within the next year after the effective date of this AD, replace the lower wing surface fuel tank access covers located immediately inboard and outboard of each engine (total of four per airplane), with covers having impact resistance equivalent to that of 2024-T3 aluminum 0.140-inch thick, as approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. The replacement doors must also be fire resistant as defined in the Federal Aviation Regulations, Part 1.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

Issued in Seattle, Washington, on August 22, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-19655 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-36-AD]

Airworthiness Directive; British Aerospace (BAe) Model 3101 Jetstream Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain BAe Model 3101 Jetstream airplanes which would require the removal and replacement of certain BAe modified fuel, hydraulic and water methanol system valves. These valves have been found to fail by shearing off the top of the valve spindle, resulting in the inability to operate the valve in critical flight conditions. The actions of this AD will preclude fuel, hydraulic and methanol system failure and possible loss of the airplane.

DATE: Comments must be received on or before November 7, 1986.

ADDRESSES: BAe Mandatory Service Bulletin (MSB) 28-JA850911 dated June 13, 1986, which incorporates HiTemp Service Bulletin HTE 4925/1-SB-1 dated August 19, 1985, applicable to this AD may be obtained from British Aerospace plc, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; or the Rules Docket at the address below. Send comments on the proposal in duplicate

VOL 51 ISS 169 SE 2 1986 UMI

to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–36–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, B–1000 Belgium; Telephone (322)–513.38.30; or Mr. Harvey A. Chimerine, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–CE–36–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

In service experience by the manufacturer of the Hi-Temp HTE 1 inch actuated ball valves, shows that valve spindle HTE Part Number (P/N) 4925–005 is understrength and that the top of the spindle can shear off, resulting in the valve failing to operate in critical flight conditions. These valves are used in certain BAe Model 3101 Jetstream airplanes.

As a result, BAe has issued BAe MSB 28–JA850911 dated June 13, 1986, which requires the modification of the valves in accordance with HTE SB 4925/1–SB–1 by removing the HTE P/N 4925–005 and replacing it with a larger diameter, increased strength valve spindle HTE P/N 4925–013. The Civil Airworthiness Authority of the United Kingdom (CAA–UK) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in United Kingdom has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of BAe MSB 28–JA850911 dated June 13, 1986, which incorporates HiTemp SB HTE 4925/1–SB–1 dated August 19, 1985, and the mandatory classification of this Service Bulletin by CAA–UK. Based on the foregoing, the FAA believes that the condition addressed by BAe MSB 28–JA850911 dated June 13, 1986, which incorporates HiTemp SB HTE 4925/1–SB–1 dated August 19, 1985, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require on BAe Model 3101 Jetstream airplanes, the installation of BAe Modification JM7519 in the BAe fuel, hydraulic and water methanol system valves, by removing HTE P/N 4925–005 and replacing it with HTE P/N 4925–013.

The FAA has determined there are approximately 23 airplanes affected by the proposed AD. The cost of modifying these airplanes according to the proposed AD is estimated to be $480 per airplane. The total cost is estimated to be $11,040 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace: Applies to Model 3101 Jetstream, (S/N 642 to 646, 648 to 655, 657, 658 and 660 to 666 inclusive) airplanes, certificated in any category.

Compliance: Required within 600 hours time-in-service (TIS) after the effective date of this AD unless already accomplished.

To ensure operation of fuel/hydraulic and water methanol system valves during critical flight operations, accomplish the following:

(a) Modify the HiTemp Valves Part Number (P/N) HTE 4925–001 as follows:

(1) Remove the valves in accordance with Section 2. "ACCOMPLISHMENT INSTRUCTIONS" paragraph A "PREPARATION" in British Aerospace (BAe) S/B 28–JA850911 dated June 13, 1986.

(2) Replace valve spindles P/N 4925–005 with strengthened spindles P/N 4925–013 in HiTemp Model HTE 1" Actuated Ball Valves in accordance with Section 2. "ACCOMPLISHMENT INSTRUCTIONS" in HiTemp SB HTE 4925/1–SB–1 dated August 19, 1985, on those valves located as follows:

(i) Fuel System—left and right LP cocks at wing leading edges outboard of the engines, and crossfeed cock on fuselage center section.

(ii) Hydraulic System—left and right LP cocks in the hydraulic installations below fuselage center section.

(iii) Water Methanol System (if fitted)—stop valves in the left and right main landing gear bays.

(3) Re-install and carryout functional tests of the valves in accordance with Section 2 "ACCOMPLISHMENT INSTRUCTIONS", paragraph B "ACCOMPLISHMENT" in BAe S/N 28-JA850911 dated June 13, 1986.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to British Aerospace plc, Manager, Product Support Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland, or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 22, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-19660 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-161-AD]

Airworthiness Directive: Lockheed-California Company Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require inspections and replacement of the pylon attach fitting-to-skate-angle bolts on Lockheed L-1011 airplanes. This action is necessary to detect broken H-11 bolts that have failed due to stress-corrosion. Failure of more than two bolts, in combination with maximum limit load conditions, could lead to engine separation from the wing.

DATES: Comments must be received on or before October 20, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-161-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L-1011, Technical Operations, Dept. 63-38. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-161-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Lockheed model L-1011 wing pylon attach fitting-to-skate-angle bolts are fabricated from H-11 steel. Operators have discovered six broken bolts, one each on six different airplanes. These airplanes had accumulated between 18,000 and 34,000 hours time-in-service. Metallurgical analysis of one of the cracked bolts showed that corrosion pitting led to stress-corrosion cracking.

Each pylon has three joints and each joint has a total of six bolts. Stress analysis shows that the joint has ultimate strength with one broken bolt, and limit strength with two broken bolts in the same joint. However, more than two broken bolts in the same joint would reduce the joint strength to less than limit load capability. The combination of more than two failed bolts in a joint and exposure to maximum limit load conditions could lead to engine separation.

The FAA has reviewed and approved Lockheed Service Bulletin 093-54-049, dated June 12, 1986, which describes the inspection procedures and replacement instructions of the wing pylon attach fittings-to-skate-angle bolts.

Since this situation is likely to exist or develop on other airplanes of the same type design, the proposed AD would require inspection and replacement of the wing pylon attach fittings-to-skate-angle H-11 bolts, in accordance with the service bulletin previously mentioned.

It is estimated that 120 airplanes of U.S. registry would be affected by this AD; that it would take approximately 50 manhours per airplane to accomplish the required inspections and 110 manhours per airplane to replace all of the bolts, plus approximately $720 for new bolts per airplane; and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $854,400.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L-1011-385 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine separation due to broken pylon attach fittings-to-skate-angle bolts, which are cracking because of stress-corrosion, accomplish the following:

A. Before accumulating a total of 15,000 hours time-in-service or within the next 3,000 hours time-in-service after the effective date of the AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 hours time-in-service, accomplish the following:

1. Inspect the pylon attach fittings-to-skate-angle bolts in accordance with the Accomplishment Instructions in Lockheed Service Bulletin 093-54-049, dated June 12, 1986, or later FAA-approved revision.

2. If broken bolts are found, before further flight replace each broken bolt with a new bolt in accordance with the Accomplishment Instructions in Lockheed Service Bulletin 093-54-049 dated June 12, 1986, or later FAA-approved revision.

B. Before accumulating a total of 15,000 hours time-in-service or before January 15, 1989, whichever is later, replace all of the pylon attach fittings-to-skate-angle H-11 steel bolts with stress-corrosion resistant MP-35N bolts in accordance with the Accomplishment Instructions in Lockheed Service Bulletin 093-54-049, dated June 12, 1986, or later FAA-approved revision. The inspections required by paragraph A. may be discontinued after paragraph B. has been accomplished.

C. Alternate means of compliance with this AD which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L-1011, Technical Operations, Dept. 63-38. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on August 22, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-19653 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AWA-19]

Proposed Alteration and Revocation of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal Airways located in the States of Minnesota and South Dakota by revoking some airway segments and renumbering other airway segments. This action is in support of the FAA agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate route designations from the National Airspace System (NAS).

DATES: Comments must be received on or before October 17, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-19, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the descriptions of several VOR Federal Airways located in the States of Minnesota and South Dakota by revoking all alternate route designations from the NAS. In addition, certain airway segments would be revoked and other segments would be renumbered. This action is in support of the FAA agreement with the ICAO to eliminate all alternate airway designations from the NAS. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory

Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-170 [Amended]

By removing the words "including a N alternate via INT Worthington 064° and Fairmont 285° radials;" and by removing the words "That airspace 11,000 feet MSL and below is excluded between Jamestown VORTAC and the Devils Lake VORTAC during the time that the Devils Lake East MOA is activated by NOTAM."

V-430 [Amended]

By removing the words ", including a north alternate via Thief River Falls, MN" and by removing the words ", including a N alternate from Grand Rapids, to Duluth via Hibbing, MN, excluding the airspace between the main and this N alternate airway"

V-191 [Amended]

By removing the words "including an east alternate; to Duluth, MN." and substituting the words "Duluth, MN; Hibbing, MN; Grand Rapids, MN; Bemidji, MN; Thief River Falls, MN; to Grand Forks, ND."

V-129 [Amended]

By removing the words "Hibbing, MN, including an E alternate; International Falls, MN, including a W alternate from Hibbing, INT Hibbing 319° and International Falls 182° radials to International Falls;" and substituting the words "Hibbing, MN; International Falls, MN;"

V-505 [Amended]

By removing the words ", to Grantsburg, WI." and substituting the words "; Grantsburg, WI; Duluth, MI; INT Duluth 331°T(336°M) and Hibbing, MN, 120°T(125°M) radials; Hibbing; INT Hibbing 319°T(314°M) and International Falls, MN, 182°T(176°M) radials; to International Falls."

V-181 [Amended]

By removing the words ", including a W alternate via INT Yankton 015° and Sioux Falls 231° radials" and "including an east alternate;" also, by removing the words ", including an east alternate; Grand Forks, ND, including an east alternate via INT Fargo 004° and Grand Forks 152° radials;" and substituting the words "; Grand Forks, ND"

V-220 [Amended]

By adding the words "From Norfolk, NE; Yankton, SD; INT Yankton 015°T(008°M) and Sioux Falls, SD, 231°T(222°M) radials; Sioux Falls; INT Sioux Falls 004°T(355°M) and Watertown, SD, 154°T(145°M) radials; Watertown; INT Watertown 021°T(012°M) and Fargo, ND, 172°T(163°M) radials; Fargo; INT Fargo 004°T(355°M) and Grand Forks, ND, 152°T(143°M) radials; to Grand Forks."

V-97 [Amended]

By removing the words "Boiler, including a W alternate via Indianapolis; INT Indianapolis 344° and Shelbyville 313° radials and INT Shelbyville 313° and Boiler 136° radials;" and substituting the word "Boiler;"

V-305 [Amended]

By removing the words "to Indianapolis." and substituting the words "Indianapolis; INT Indianapolis 038°T(037°M) and Kokomo, IN, 182°T(182°M) radials; to Kokomo."

Issued in Washington, DC, on August 25, 1986.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-19659 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 733

Extension of Public Comment Period on Topics Pertaining to Federal Oversight of State Regulatory Programs Under the Surface Mining Control and Reclamation Act

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Extension of public comment period; reopening of comment period on petition for rulemaking.

SUMMARY: On August 13 and 14, 1986, OSMRE sponsored a conference on the following topics: (1) OSMRE's use of ten-day notices and Federal notices of violations, and (2) criteria and procedures for substituting Federal enforcement and withdrawing approval of State regulatory programs under the Surface Mining Control and Reclamation Act (SMCRA). In the July 29, 1986 Federal Register OSMRE invited all interested persons to attend the conference and/or submit written comments in advance of the conference or within two weeks of the close of the conference (51 FR 27059-60) on the two topics listed above. In this same notice OSMRE also reopened the comment period on a petition for rulemaking submitted by ten citizen organizations to allow further consideration of the issue raised by petitioners concerning substitution of Federal enforcement and withdrawal of approval of State programs. That aspect of the petition related to one of the conference topics listed above. OSMRE is extending the comment period on the conference topics and on the portion of the petition which related to substitution of Federal enforcement and withdrawal of approval of State programs until September 29, 1986. This extension will enable interested or affected persons to review the transcript of the conference and provide any additional comments or recommendations to OSMRE.

DATES: Persons wishing to submit comments should do so no later than September 29, 1986. Comments received after that date will not necessarily be considered by OSMRE in formulating any programmatic or regulatory revision relevent to the topics discussed at the conference.

ADDRESS: Written comments should be sent to Mr. Arthur W. Abbs or Mr. Richard G. Bryson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Room 210, Washington, DC 20240; Telephone: (202) 343-5351.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs or Mr. Richard G. Bryson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Room 210, Washington, DC 20240; Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: On August 13 and 14, 1986, OSMRE sponsored a conference on aspects of OSMRE's oversight of State regulatory programs under the Surface Mining Control and Reclamation Act (SMCRA). The purpose of the conference was to have an exchange of views on the following topics: (1) OSMRE's use of ten-day notices and Federal notices of violations and (2) critieria and procedures for sustitution of Federal enforcement and withdrawal of approval of a State regulatory program under SMCRA. All interested persons

were invited to attend the conference and provide comments on one or both of the conference topics and/or submit written comments in advance or within two weeks of the close of the conference (51 FR 27059, July 29, 1986). A transcript of the conference and all written comments submitted prior to the conference or since the close of the conference have been filed in the OSMRE administrative record and are available to the public. Any interested person may also obtain a copy of the transcript by contacting the person listed above under "For Further Information Contact." OSMRE is extending the comment period on the conference topics until September 29, 1986, to provide interested or affected persons an opportunity to review the transcript of the conference and submit any additional comments or recommendations to OSMRE. OSMRE will review all comments received during the conference as well as the written comments submitted both prior to and following the conference in considering any possible changes to its current oversight procedures or policies.

OSMRE will also consider the recommendations and comments which have been submitted in formulating its decisions on two petitions for rulemaking which are pending disposition. One of the petitions, which was submitted November 13, 1985, by ten citizen organizations requests, among other things, that OSMRE establish by regulation the circumstances under which the Director must initiate the process described in 30 CFR Part 733 for Federally enforcing or withdrawing approval of a State regulatory program under SMCRA. OSMRE published a notice of availability and request for comment on this petition in the January 3, 1986 **Federal Register** (51 FR 272), and later reopened the comment period on the petition from February 4, 1986 to March 5, 1986 (51 FR 4396, February 4, 1986). OSMRE reopened the comment period on July 29, 1986 (51 FR 27059) and by this notice is extending it until September 29, 1986, on those aspects of the petition related to substitution of Federal enforcement for a State program and withdrawal of approval of a State program. That aspect of the petition relates to one of the conference topics listed above. Conference recommendations and comments relating to that issue will be considered in analyzing this aspect of the petition.

The other petition submitted on May 30, 1986, by the Mining and Reclamation Council of America (MARC) *et al.*, requests that OSMRE (1) repeal existing regulations which authorize the issuance of Federal notices of violation in States with approved regulatory programs, and (2) establish a uniform standard of review for evaluation of State responses to ten-day notices. A notice of availability of the MARC petition appeared in the **Federal Register** on July 30, 1986 (51 FR 27197); the comment period closes September 29, 1986. Conference recommendations and comments will be considered in evaluating both aspects of this petition.

Dated: August 26, 1986.

Brent Walquist

Assistant Director, Program Operations.

[FR Doc. 86-19731 Filed 8-29-86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3072-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at two facilities from the list of hazardous wastes contained in 40 CFR 261.31 and § 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Hazardous and Solid Waste Amendments of 1984 changed the criteria to be used in evaluating delisting petitions. Consequently, the Agency's evaluation of the two petitions for which we propose to grant an exclusion have been considered both for the factors for which the wastes were originally listed, as well as other factors and toxicants which might reasonably be expected to cause the wastes to be hazardous.

DATES: EPA will accept public comments on these proposed exclusions until October 2, 1986. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on these proposed exclusions by filing a request with Bruce R. Weddle, whose address appears below, by September 17, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-86-FPEP-FFFFF".

Requests for a hearing should be addressed to Bruce R. Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for these proposed exclusions is located at U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 if you would like to make an appointment. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because

they typically and frequently exhibit any of the characteristics of hazardous waste identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used To Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the factors for which the waste was originally listed), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or ciriteria, if there is reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste at significant levels, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste).[1] The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not yet completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis.

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will be considered hazardous, and not excluded from Subtitle C control.

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[3] The Agency believes this to be a reasonable outcome since a larger quantity of waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the levels of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the levels of toxicants at the compliance point. For wastes that are typically landfilled, the mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than that same regulatory level). Depending on the volume of waste, and additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. In fact, the Agency has used this approach in evaluating each of the wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petitions discussed in this notice.

It should be noted that EPA has not verified the submitted test data for all of the facilities discussed in today's notice before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. In addition, the Agency has initiated a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.[3]

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments, however, specifically require the Agency to provide notice and an opportunity for comment before granting an exclusion. The exclusions proposed today will therefore not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Florida Production Engineering Company, Daytona Beach, Florida
Martin Marietta Aerospace, Ocala, Florida

I. Florida Production Engineering Company

A. Petition for Exclusion

Florida Production Engineering Company (FPE), located in Daytona Beach, Florida, has petitioned the Agency for a one-time exclusion of sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) oncarbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). FPE has petitioned to exclude their waste because it does not meet the criteria for which it was listed.[4]

The manufacturing processes that generated FPE's sludge were sulfuric acid anodizing of aluminum and electropolishing. The sludge from these operations was discharged to several on-site lagoons. The use of these lagoons was discontinued in 1978, when a new treatment system was installed. In March 1982, however, the sludge was removed from the lagoons, stabilized by pH adjustment through addition of caustic, and stored in four lined trenches. No other wastes have been placed in these lined trenches. It is the sludge in these trenches that is the subject of FPE's petition. FPE estimates the total volume of sludge in the trenches to be approximately 1,250 cubic yards.

In support of their petition, FPE submitted process descriptions, a raw materials list, and material safety data sheets for the manufacturing processes that were in operation when the sludge was generated. In addition, FPE submitted the results of total constituent analyses and EP leachate tests for the EP toxic metals and nickel; total constituent analyses for sulfide and cyanide; distilled water leach tests for cyanide; and tests for total oil and grease content. Furthermore, FPE submitted ground water monitoring data for the vicinity of the lagoons and trenches. Much of this information was provided, as noted above, to demonstrate that no hazardous constituents, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

Samples use to characterize the sludge were collected from each of the four trenches.[5] For Trench #1, six full-depth cores were collected from each quadrant of the trench and composited to produce four samples, representing one quadrant each. For Trenches #2–4, five full-depth cores were collected from each quadrant of each trench and composited to produce three samples, each of which represented one trench.

Also, as part of the Agency's spot-check verification program, FPE's waste

[3] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] As part of its spot-check verification program, surprise sampling visits were made to the Florida Production Engineering Co. and Martin Marietta Aerospace. The results of the Agency's testing is discussed in today's notice. In addition, the complete sampling and analysis reports on these two facilities are available in the public docket to this rulemaking.

[4] FPE originally submitted their petition on December 7, 1983. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider other factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or similar regulatory changes, the Agency requested additional information, addressing these factors, from FPE on March 27, 1984.

[5] FPE originally submitted analytical results for four samples (three collected while the sludge was in the lagoons prior to stabilization and only one collected after the sludge had been relocated to the trenches). In response to Agency concerns that an insufficient number of samples had been collected to characterize the stabilized sludge in the trenches, FPE re-sampled the sludge as described in this notice. Due to the insufficient number of the first set of samples (*i.e.*, they were not representative), only the results for this second set of samples were used in the Agency's evaluation. (The Agency notes, however, that the results for both sets of samples are similar.) produce four samples.

was analyzed for various toxicants (see RCRA docket for a description of the sampling methodology and analyses performed). These data have also been used as part of the Agency's evaluation of FPE's petition. The maximum concentrations from FPE's and EPA's analyses are presented in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

	Total constituent analyses (mg/kg, wet)		Leachate analyses (mg/1)	
	FPE results	EPA results	FPE results	EPA results
As	<2.16	5.4	<0.01	<0.02
Ba	10.64	13.4	0.19	<0.5
Cd	<0.66	<0.3	<0.015	<0.025
Cr	205	272	<0.08	<0.20
Pb	42.5	113	<0.20	<0.05
Hg	0.93	2.7	<0.0004	<0.001
Se	<0.72	<3.5	<0.02	<0.02
Ag	4.32	<0.3	<0.022	<0.02
Ni	234	154	2.30	1.15
CN	<0.2	[1] X	<0.005	<0.25
Sulfide	<2.0	[1] X	[2] NA	[2] NA
Oil and grease	1,400	2,400	[2] NA	[2] NA

[1] X = test not performed.
[2] NA = test not applicable.

FPE also submitted a list of raw materials (and the material safety data sheets) that were used in the manufacturing processes that generated the waste. This list indicated that no additional hazardous constituents are expected to be present, or likely to be formed, in the waste. Nevertheless, the Agency, as part of its spot-check program, collected samples and analyzed them for the organic priority pollutants. The detected compounds and their concentrations are presented in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Compounds	Total constituent analyses (mg/kg)
Bis (2-ethylhexyl) phthalate	19.0
Di-n-octyl phthalate	6.3

FPE also provided the results from ground-water monitoring data for the site. This included data from the vicinity of both the old lagoons and the trenches where the sludge is now stored. (Complete ground-water monitoring data for the site is available in the public docket for this notice.)

B. Agency Analysis and Action

FPE has demonstrated that the sludge contained in the four lined trenches is non-hazardous. The Agency believes that the samples collected by FPE are non-biased and are representative of the sludge. The collection of multiple full-depth cores from each quadrant of the trenches accounts for any horizontal or vertical stratification that may have occurred as the trenches were being filled. Also, the mixing of the sludge with caustic before being relocated from the lagoons to the trenches would be expected to reduce any inhomogeneity in the sludge's composition. In addition, the analytical results submitted by FPE are similar to those from the Agency's spot-check program. The Agency, therefore, believes that the samples collected adequately characterize FPE's sludge.[6]

The Agency has evaluated the mobility of toxicants from FPE's sludge by using the vertical and horizontal spread (VHS) mode.[7] This evaluation, using the maximum concentrations reported by FPE and the estimated sludge volume of 1,250 cubic yards, resulted in the predicted compliance point concentrations that are presented in Table 3. Table 3 also presents, for each toxicant, the regulatory standard to which the compliance-point concentration is compared.

TABLE 3.—VHS MODEL: PREDICTED COMPLIANCE-POINT CONCENTRATIONS

Constituents	Compliance-point concentrations (mg/1)	Regulatory standards (mg/1)
As	<0.001	0.05
Ba	0.014	1.0
Cd	<0.001	0.01
Cr	<0.006	0.05
Pb	<0.015	0.05
Hg	<0.0001	0.002
Se	<0.002	0.01
Ag	<0.002	0.05
Ni	0.177	0.35
CN	<0.001	0.2

The compliance-point concentrations of these toxicants are all less than their regulatory standards. (For the EP toxic metals, these standards are equal to the National Interim Primary Drinking Water Standards. For nickel and cyanide, the standards are equal to the Agency's interim delisting standard [8] and the U.S. Public Health Service's suggested drinking water standards,[9] respectively.) The presence of these toxicants in FPE's sludge is, therefore, not of regulatory concern.

Since the sludge does not contain sulfide or cyanide (not detected at 2.0 mg/kg and 0.2 mg/kg, respectively), the waste could not be considered hazardous due to reactivity. (The reactivity characteristic refers to the capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes.) Also, the Agency's review of the processes and raw materials used at FPE during the period when the sludge was generated indicates that no additional Appendix VIII hazardous constituents (other than those for which the sludge was analyzed) are expected to be present in the sludge at levels of regulatory concern. This was confirmed by the results from the Agency's spot-check sampling program. Using the Agency's procedure for estimating the leachate concentration of organics,[10] along with the VHS model, the detected organic priority pollutants would result in the compliance-point concentrations that are presented in Table 4. Table 4 also presents the regulatory standards to which these compliance-point concentrations are compared.

TABLE 4.—VHS Model: Predicted Compliance-Point Concentrations (ppm)

Compound	Best fit	95 percent confidence	Regulatory standard
Bis(2-ethylhexyl)phthalate	8.5×10^{-4}	1.2×10^{-3}	7.0×10^{-1}
Di-n-octyl phthalate	8.5×10^{-4}	1.1×10^{-3}	6.0×10^{-1}

Since the compliance-point concentrations are both less than the regulatory standards, the presence of these compounds at the reported levels is not of regulatory concern.

Based upon the consitutents and factors evaluated, the Agency believes

[6] The sampling plan used by FPE was recommended by the Agency in March 1984. The sampling plan allowed that, since the sludge was expected to be relatively homogenous as a result of both mixing the sludge with caustic and additional mixing that occurred when the sludge was relocated, only one sample (a composite of 20 full-depth cores) was required from Trenches #2–4. That is, since it was expected that the sludge in all four trenches would be essentially identical, four separate samples were required from only Trench #1. Subsequently, the Agency has issued general guidance on sampling plans for delisting activities that would have required separate analyses of more than one composite sample from Trenches #2–4 (*i.e.*, Petitions to Delist Hazardous Wastes: A Guidance Manual, EPA/530–SW–85–003, April 1985). The Agency believes, however, that, since FPE's sampling plan was approved and since the leachate concentrations were low and essentially uniform in all samples, additional sampling to reflect the later, more rigorous requirements is unwarraned.

[7] See 50 FR 7882, Appendix I, February 26, 1985 for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model at 50 FR 48896, Appendix (November 27, 1985).

[8] The Agency previously used 632 ppb as the regulatory standard for nickel. Pending the completion of current EPA studies on the health effects of nickel, the Agency is using 350 ppb for the purpose of evaluating delisting petitions. The basis for this standard is explained at 50 FR 20239–48, May 15, 1985.

[9] See *Drinking Water Standards*, U.S. Public Health Service, Publication 956 (1962).

[10] For a discussion of the Agency's proposed organic leachate model see 50 FR 48953, Appendix, November 27, 1985 and 51 FR 27061, July 29, 1986.

that FPE has demonstrated their sludge to be nonhazardous and that, as such, it should be excluded from bazardous waste control. This conclusion is supported by the ground water monitoring data provided by FPE. Several years of monitoring results indicate that the waste in the trenches has not had an impact on ground water. The Agency notes that the monitoring system at FPE has been evaluated by EPA's Region IV office, and is considered adequate under section 265, Subpart F of RCRA. The Agency proposes, therefore, to grant a one-time exclusion to Florida Production Engineering Company, located in Daytona Beach, Florida, for their wastewater treatment sludges from electroplating operations, currently contained in the four trenches.

II. Martin Marietta Aerospace

A. Petition for exclusion

Martin Marietta Aerospace (MMA), located in Ocala, Florida, is involved in the manufacture of non-conductive printed circuit boards. MMA has petitioned the Agency to exclude its wastewater treatment sludges, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) clean/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

MMA has petitioned to exclude its waste because it does not meet the criteria for which it was listed.[11] The listed constitutents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). MMA contends that its wastewater treatment process generates a non-hazardous sludge because the constituents of concern, although present in the waste, are in essentially an immobile form. They further believe that this waste is not hazardous for any other reason.

In support of their petition, MMA has submitted a detailed description of its non-conductive circuit board manufacturing and wastewater treatment processes, including process schematics; total constituent analyses and EP toxicity test results of the waste filter cake for cadmium, total chromium, and nickel; and total constitutent analyses of the waste filter cake for cyanide. MMA has also submitted total constitutent analyses and EP leachate analyses for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease (TOG) analyses on representatives waste samples. The MMA petition also included a list of all raw materials used in the process, separated by process. Since the raw materials list indicated that 1, 1, 1-trichloroethane, methylene chloride, and formaldehyde were used in the manufacturing process, MMA submitted total constitutent analyses for these three organics as well as 27 other volatile organic compounds.[12] The Agency requested this information, as noted above, to determine whether hazardous constituents other than those for which the waste was originally listed are present in the waste.

Additionally, the Agency visited MMA's facility on June 28, 1984, as part of the Agency's spot-check verfication program in order to validate the analytical information submitted by MMA. A total of seven samples were collected by the Agency, from the filter press and drum storage area and analyzed for total oil and grease, total constituent analysis and EP toxicity analysis for the EP toxic metals and nickel; total constituent analysis for cyanide; and total constituents analysis for the priority pollutants.

The non-conductive printed circuit board production process includes copper, solder, and electroless copper plating. Prior to December 1985 the circuit boards were also nickel-gold tab plated.

Prior to June 1985, all off-specification plating baths, concentrated liquors, and spent chelated rinse waters were treated on-site in the chelated wastewater treatment system; however, since June 1985, these concentrated wastes have been pumped into 55 gallon drums for off-site disposal at a permitted RCRA facility. All acid/alkali rinse waters, filter-backwash waters, and supernatant from the filter press are sent to the solids separation treatment system. The wastewater is neutralized with lime, calcium chloride, and sodium hydroxide. Polymer flocculant aids are added and the mixutre is then sent to a lamella clarifier. The thickened sludge is held in a sludge storage tank until dewatered by a plate and frame filter press. The supernatant from the lamella clarifier is pumped to a clear water holding tank, polished by a Culligan filtration system, and discharged to a privately owned treatment works. The waste filter cake falls from the press into small bins which are emptied by hand, into 55 gallon drums.

MMA collected four composite samples of waste filter cake generated between January and April, May and August, September and December 1981, and January and July 1982. The waste filter cake was stored in drums separated by generation dates. Fifty percent of the drums from each generation period were sampled by taking a complete vertical core sample with a two inch polyvinyl chloride (PVC) tube. The core samples were then composited by generation period.

MMA collected an additional four composite samples of the waste filter cake generated between August 26, 1985 and September 9, 1985, September 10, 1985 and September 14, 1985, September 25, 1985 and September 27, 1985, and September 29, 1985 and October 2, 1985. A complete vertical core sample was taken from fifty percent of the drums and composited by generation period. A final round of sampling, by MMA, included 7 composite samples of material collected directly from the filter press on January 6, and January 17, 1986, and 24 vertical core samples of drummed material generated between November 13, 1985 and January 9, 1986.[13]

On June 16, 1984, as part of the Agency's spot-check sampling program, an additional seven samples (two filter press and five drums) covering the generation period of April 12, 1984 through June 26, 1985, were collected and analyzed by the Agency. The filter press was sampled by taking one grab sample from the center of the filter press

[11] MMA originally submitted their petition on September 30, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional consitutents) other than those for which the waste was originally listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous (see Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of these changes, and as a result of these new requirements, the Agency requested additional information from MMA on August 23, 1983. MMA submitted raw materials data and analytical testing for all materials which could possible enter the waste treatment system in June 1984, October 1985, and March 1986.

[12] Analyses for 27 other volatile organic compounds, not used by MMA, were also provided as part of a standardized laboratory report. None of the 27 compounds were detected using a detection limit of <0.25 mg/kg (nor were they expected to be detected).

[13] Four samples were collected on December 13, 1984 and analyzed for total oil and grease. It is not known how these four samples were taken. These samples were also analyzed, however, these values were not included in the Agency's analysis, since the sampling procedures were not well documented The Agency notes that the analytical data points reported for this set of samples all fell within the range of the data used for this analysis.

bin and the drums were sampled by taking a full depth core using a two-inch PVC tube.

MMA contends that taken together, the samples are representative of any variation of the listed and non-listed constituent concentrations in its wastestream, since the range of sampling spans five years of production, and is therefore, representative of any short-term variations and significant long-term variations in waste composition. In addition, MMA contends that the manufacturing and treatment processes are uniform and consistent, and that the use of raw materials does not vary over time. Consequently, they believe that the samples collected and analyzed fully characterize their waste.

Total constituent analyses and EP leachate analyses for the listed constituents of concern and the non-listed EP toxic metals revealed the maximum concentrations reported by MMA in Table 1 and by the Agency in Table 2. The total oil and grease content of the waste filter cake ranged between 0.05 and 0.8 percent.

TABLE 1.—MAXIMUM REPORTED CONCENTRATIONS (PPM)—FILTER CAKE SAMPLES TAKE BY MMA

Constituents	Total constituent concentrations	EP leachate concentrations
As	<9.8	<0.05
Ba	114	2.29
Cd	4.8	0.04
Cr (total)[1]	14.0	<0.04
Pb	5,015	0.18
Hg	0.34	<0.0002
Se	<1.0	<0.01
Ag	<1.5	<0.03
Ni	773	0.15
CN (total)	20.7	[2]1.03

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make the determination of hexavalent chromium unnecessary.
[2] Calculated by assuming a theoretical leaching of 100 percent and a twenty fold dilution (100 grams of solid diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

TABLE 2.—MAXIMUM REPORTED CONCENTRATIONS (PPM)—FILTER CAKE TAKEN BY USEPA

Constituents	Total constituent concentrations	EP leachate concentrations
As	<5.0	<0.02
Ba	130	<0.50
Cd	1.2	<0.025
Cr (total)[1]	40	<0.20
Pb	7,500	[2]6.33
Hg	0.56	<0.001
Se	<5.0	<0.02
Ag	<0.4	<0.020
Ni	1,000	3.9
CN (total)	3.1	[3]0.15

[1] Hexavalent chromium is listed at the constituent of concern for this waste; however, the concentration of total chromium is low enough to make the determination of hexavalent chromium unnecessary.
[2] Forty-four samples were tested using the EP toxicity test and were subsequently analyzed for lead. The Agency has concluded that the maximum value 6.33 ppm (and a duplicate analysis of 4.75 ppm) is an outlier as determined by the Dixon's Test (also called the Extreme Value Test), and appropriate tests for normality. This test and the supporting calculations are available in the public docket to this notice.
[3] Calculated by assuming a theoretical leaching of 100 percent and a twenty fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

The list of raw materials used in the manufacturing process indicated that three Appendix VIII hazardous constituents: methylene chloride, 1,1,1-trichloroethane, and formaldehyde are used in the manufacturing process. MMA completed a mass balance equation claiming that the sludge contained a maximum of 0.5 mg/kg of formaldehyde. No other Appendix VIII hazardous constituents, other than those tested for, are used in the process, and thus are not likely to be present in the waste at levels of regulatory concern.

As part of the Agency's spot-check sampling visit, seven samples were analyzed for volatile organic compounds and the priority pollutants. No constituents were detected using a detection limit of 1 mg/kg, except for the three base/neutral compounds presented in Table 3.

MMA provided nine total constituent analyses (collected by MMA in the final round of sampling—see above) for methylene chloride and 1,1,1-trichloroethane (See footnote 12). Both methylene chloride and 1,1,1-trichloroethane were not detected in the waste using a detection limit of <0.25 mg/kg, and <0.05 mg/kg, respectively.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS

Constituents	Maximum concentrations (mg/kg)
Bis(2-ethylhexyl)phthalate	63.0
Diethyl phthalate	31.0
Di-n-octyl phthalate	52.0

MMA also provided test data indicating that the waste filter cake was not ignitable, corrosive, or reactive. MMA generates a maximum of 14 tons per year of waste filter cake from this process.

B. Agency Analysis and Action

MMA has sufficiently demonstrated that the filter cake generated at their Ocala, Florida facility is non-hazardous. Based on the data presented in MMA's petition and data obtained through the Agency's spot-check sampling, the Agency believes that the petitioner has adequately characterized the waste filter cake and that the samples analyzed reflect the day to day variation in production.[14] The Agency believes MMA's claim that the manufacturing and treatment processes are uniform and consistent is well substantiated since this facility does not perform as a job shop or have seasonal product variations. Thus, we consider the sampling procedures used by MMA to be adequate, and as such, showed no significant day to day variation in constituent concentrations. The Agency, therefore, concludes that the analytical information provided by MMA is representative of the waste filter cake.

The Agency has evaluated the mobility of the constituents from MMA's waste filter cake using the vertical and horizontal spread (VHS) model.[15] The Agency's evaluation of MMA's 14 tons [16] of filter cake using the maximum leachate values for the EP toxic metals, nickel, and cyanide in the VHS model generated the compliance point concentrations in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constiutes	Calculated compliance point concentrations[1]	Regulatory standards
As	<0.006	0.05
Ba	0.07	1.0
Cd	<0.001	0.01
Cr (total)	<0.001	0.05
Pb	[2]0.006	0.05
Hg	0.0001	0.0002
Se	<0.0006	0.01
Ag	<0.001	0.05
Ni	0.2	0.35
CN (total)	[3]0.03	0.2

[1] Where concentrations were below the detection limits, the detection limit was used in the VHS model calculations.
[2] Calculated using a maximum extract concentration of 0.2 ppm, after elimination of an outlier using Dixon's Test.
[3] Calculated from the maximum theoretical EP leachate value of 1.03 mg/1.

The filter press cake exhibited cadmium, chromium, arsenic, barium, lead, mercury, selenium, and silver levels (at the compliance point) below the National Interim Primary Drinking Water Standards, cyanide levels below the U.S. Public Health Service's suggeted drinking water standard,[17] and

[14] The Agency was initially concerned about the lead extract level of one sample collected during its spot-check visit. MMA collected and analyzed additional samples in response to Agency concerns. A statistical evaluation of all forty-four analyses determined this value to be an outlier.

[15] See footnote 7.

[16] Although MMA generates a maximum of 14 tons of waste material, the minimum default tonnage used by the VHS model is 475 tons. See 50 FR 7882, and 50 FR 48816 for discussion of waste generation rates when used in the VHS model.

[17] See footnote 9.

nickle levels below the Agency's interim regulatory standard for nickel.[18]

In addition, the low total cyanide levels in the waste filter cake could not result generate free cyanide at levels expected to create a health hazard through inhalation. In particular, the total cyanide, and thus the free cyanide, are not present in sufficient concentrations to volatilize at concentrations exceeding the workroom air threshold limit of 10 ppm set by the American Conference of Government Industrial Hygienists.[19]

The organic compounds used in the manufacturing process and those listed in Table 2 were evaluated by first estimating their leachate concentrations (using the proposed General Linear (Organic Leachate) Model and then predicting their compliance point concentrations with the VHS model.[20] This procedure resulted in the compliance point concentrations presented in Table 5. Table 5 also presents, for each organic compound, the regulatory standard to which the predicted concentration is compared.

As indicated in Table 5, the maximum predicted compliance point concentrations of these organic compounds, except for formaldehyde are each less than the compound's regulatory standard. With respect to formaldehyde, a regulatory standard for ingestion has not yet been developed. The Agency still believes, however, that the level of this toxicant in the waste is not of regulatory concern. (See footnote 4 to Table 5.) The presence of these compounds at the reported levels, therefore, are not of regulatory concern. Also, the Agency's evaluation of the processes and raw materials, used at MMA's Ocala, Florida facility, indicates that no other hazardous organic compounds would be expected to be present in the sludge.[21]

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (MG/L)

Compounds	Baseline	95 percent confidence	Regulatory standard [1]
Bis(2-ethylhexyl)-phthalate	0.00076	0.00095	0.70
Diethyl phathalate	.008	.01	350
Di-n-octyl phathalate	[2].001	.0015	.60
Methylene chloride	.001	.0014	.056
1,1,1-Trichloroethane	.00013	.00019	1.2
Formaldehyde	[3].005	.0007	[4].11

[1] An explanation of the derivation of these regulatory standards is available in the public docket.

[2] A solubility of 5.75E-5 mg/l was calculated using the following equation: Log S = −1.37 * Log K_{ow} + 7.21 (umols/liter). See *Handbook of Chemical Properties Estimation Methods, Environmental Behavior or Organic Compounds*, Lyman, 1982.

[3] The GLM model calculated that 4.28 mg/l of formaldehyde would be available for leaching, when the maximum total concentration of formaldehyde was 0.5 mg/l. Due to formaldehyde's high solubility, the model's predicted leachate concentration, was, in the case, too high; therefore, the maximum total concentration was used.

[4] Although no level for formaldehyde is currently available the Agency believes that the levels of formaldehyde which could be found in MMA's waste are not of regulatory concern. This conclusion was based upon evidence accumulated from a literature search of information currently available on the toxicity of formaldehyde. Individual citations in this survey are referenced in the public docket. The National Academy of Sciences has set a health advisory for formaldehyde in drinking water of 0.11 mg/l/day for adults. There is no evidence available in the literature which indicates that formaldehyde is carcinogenic when ingested.

The Agency concludes that the waste filter cake is non-hazardous (for all reasons), and as such, should be excluded from the hazardous waste management system. The Agency, therefore, proposes to grant an exclusion to Martin Marietta Aerospace's facility located in Ocala, Florida, for its electroplating waste-water treatment sludge, as described in its petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[22] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

III. Effective Date

this rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wstes, thereby enabling the facility to treat its waste as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001, RCRA, 42 U.S.C. 6921.

Dated: August 22, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

[18] See footnote 8.

[19] See American Conference of Governmental Hygienists: *Documentation of the Threshold Limit Values for Substances in Workroom Air*, third Edition, 1971, Cincinnati, Ohio.

[20] See footnote 7.

[21] The Agency notes that the additional priority pollutants tested by MMA are not expected to be present in their waste, but were presented as non-detected at 0.25 ppm as a part of a standard priority pollutant scan. Since extraction and analytical procedures were performed as required by Test Methods for Evaluating Solid Waste—SW–846 and the review of the raw materials used at MMC shows that these constituents are not used at the facility, these additional priority pollutants are assumed by the Agency not to be present in the waste.

[22] The curent exclusion applies only to the processes covered by the original demonstrations. A facility may file a new petition if it altera its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

Authority. Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, Table 1, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Florida Production Engineering Company.	Daytona Beach, Florida.	This is a one-time exclusion. Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations and contained in four on-site trenches on [date of final rule's publication].
•	•	•
Martin Marietta Aerospace.	Ocala, Florida.....	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [date of final rule's publication].

[FR Doc. 86-19710 Filed 8-29-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[Gen. Docket No. 85-301; FCC 86-363]

Subscriber Terminal Devices Connected to Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend Parts 15 and 76 of its rules to establish uniform regulations for subscriber terminal devices connected to cable systems. The proposed rules require that all such devices, such as converters and decoders, external to the TV receiver, comply with requirements of Part 15, Subpart H, for TV interface devices, with some exceptions. All such devices are proposed to be subject to vertification.

The Commission has taken this action in an effort to eliminate the disparity in the current rules between such devices that are cable operator owned and those that are subscriber owned. Under the current rules, devices owned or supplied by a cable operator are subject to Part 76, while subscriber owned devices are subject to the different Part 15 standards.

This action will provide uniform emission and other technical standards for all cable terminal devices.

DATES: Comments must be submitted on or before October 14, 1986, and reply comments on or before October 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon A. Briley, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's further notice of proposed rule making, MM Docket 85-301, adopted August 7, 1986, and released August 20, 1986.

The full text of commission decisions are available for inspection and copying during normal business hours in the FCC dockets branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Further Notice of Proposed Rule Making:

1. On October 16, 1985, the FCC adopted a *Notice of Proposed Rule Making (Notice)*, Gen. Docket No. 85-301, 50 FR 42729 (1985), that proposed to require all subscriber terminal devices (*e.g.* converters and decoders) connected to cable television systems to comply with the emission limits and other technical requirements of Part 15, Subparts C, H, or J, depending on the device's configuration. The *Notice* proposed to end the disparity in the current rules between cable operator owned or supplied devices, which currently are subject to Part 76 of the rules, and subscriber owned devices, which currently are subject to the different standards of Part 15. This proposal was based on the observation that the terminal devices owned by both cable system operators and cable subscribers serve essentially the same functions and may be identical. The Commission, therefore, indicated that it did not believe such devices should be subject to disparate regulatory treatment.

2. The commenting parties, while supporting the objective of uniform standards, opposed the Commission's proposal for resolving this matter on the basis that it would replace one anomaly with another. They indicated that the proposed rules would subject terminal devices to varying and, in some cases, unnecessary, subparts of Part 15. For example, under the proposal, baseband converters would be regulated under Subpart H for TV interface devices and RF converters would be regulated as computing devices under Subpart J. In addition, some parties contended that Part 15 emission limits would be insufficient for cable terminal devices. However, none of the parties supplied data is support of this contention.

3. In this Further Notice of Proposed Rule Making, the FCC requests comment on a substantially revised approach for regulating cable terminal equipment and seeks additional information concerning the appropriate radiation limits to be specified for this equipment. The FCC proposes to regulate all cable terminal devices that are external to the TV receiver under the standards for TV interface devices in Part 15, Subpart H of the rules. However, cable terminal devices would be exempt from the current requirements of Subpart H for certification and instead would be required to comply with the verification procedures of Part 2, Subpart J, which is essentially a self-testing requirement and does not impose any filing burdens on manufacturers. This revised approach is intended to achieve uniformity in the treatment of cable system terminal devices. Interested parties are invited to submit specific data on actual and predicted interference to other electronic equipment from terminal devices and on cable system operation of terminal devices constructed to varying emissions standards. The FCC also proposes to require manufacturers or importers of terminal devices to provide information to the user concerning the interference potential of the devices, special accessories that may be needed, and the possibility that interference to cable service caused by the device may result in its disconnection by the cable operator. Finally, the FCC proposes to assign responsibility for interference generally to the party operating the device, except that a cable operator is responsible for the suppression of interference introduced into the cable system.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities because the

new regulations that would apply to such entities are not burdensome. These regulations include limits on output signal level and line conducted voltage from cable terminal devices and provision of certain information to users of such devices. The proposed rule changes are intended to assist all manufacturers, cable operators, cable subscribers, and regulatory agencies by establishing uniform standards for all terminal devices and to assign responsibility in cases of interference resulting from subscriber supplied devices. Any manufacturer which produces equipment directly for consumer sale will now be relieved of the certification requirement and will need to comply only with verification procedures.

6. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burden upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 14, 1986, and reply comments on or before October 29, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

8. This Further Notice of Proposed Rule Making is issued pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

List of Subjects

47 CFR Part 15

Radio frequency devices.

47 CFR Part 76

Cable television service.

Part 15—[Amended]

Part 15 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

9. The authority citation for Part 15 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301, unless otherwise noted.

10. Section 15.4 is proposed to be amended by revising paragraph (u) to read as follows:

§ 15.4 General definitions.

* * * * *

(u) *TV interface device.* (1) A restricted radiation device that:

(i) Produces a radio frequency carrier modulated by a video signal derived from an external or internal signal source, and which feeds the modulated radio frequency energy by conduction to the antenna terminals of a conventional television receiver; or

(ii) Interconnects a cable television system to a television receiver or other subscriber premise equipment.

(2) A TV interface device may be a stand alone RF modulator, or a composite device consisting of an RF modulator, video source and other components. If such device is located within a television receiver, it shall be subject to the same requirements as a television receiver under Part 15, Subpart C. Devices defined under paragraph (u)(1)(ii) of this section, such as converters and decoders that are external to a television receiver, are subject to the provisions of Part 15, Subpart H.

* * * * *

11. Section 15.602 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 15.602 Conditions of operation.

* * * * *

(c) A TV interface device as defined under § 15.4(u)(1)(ii) shall not be required to comply with the provisions of §§ 15.616 and 15.618.

12. Part 15 is proposed to be amended by adding a new § 15.619 to read as follows:

§ 15.619 Verification of cable terminal devices

Devices defined under § 15.4(u)(1)(ii) shall be subject to verification, in accordance with Subpart J of Part 2, to show compliance with Subpart H of this part.

13. Part 15 is proposed to be amended by adding a new § 15.623 to read as follows:

§ 15.623 Cable terminal devices: information to user.

(a) Information shall be provided to the user of a cable terminal device, as defined in § 15.4(u)(1)(ii), about the interference potential of the device and simple measures that a user can take to correct interference. (See, *e.g.*, § 15.838). Such information shall be included in a conspicuous place in the instruction manual.

(b) If the cable terminal device requires special accessories, such as shielded cables, in order to comply with FCC emission limits and other technical standards, the manufacturer or supplier of the device shall provide information to the user as to the length of the cables, type of shielding, or other appropriate instructions.

(c) The following information, in the same or similar language, shall be provided to the user of a cable terminal device: If this device causes interference to or disrupts cable service, the cable operator may disconnect service to the user until such interference or disruption is corrected.

PART 76—[AMENDED]

Part 76 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

14. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154, and 303.

15. Section 76.5(x) is proposed to be revised to read as follows:

§ 76.5 Definitions.

* * * * *

(x) *Subscriber terminal.* The cable television system terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of signals of various classes. Terminal devices interconnected to a cable system shall comply with Subpart H of Part 15.

* * * * *

16. Section 76.605 is proposed to be amended by adding a note to the end of the section to read as follows:

§ 76.605 Technical standards.

* * * * *

Note.—The requirements of this section shall not apply to devices subject to the provisions of §§ 15.601 through 15.626

17. Section 76.617 is proposed to be revised to read as follows:

§ 76.617 Responsibility for interference.

Interference generated by a radio frequency (RF) device subject to Part 15 of the rules shall be the responsibility of the operator of the device in accordance with the provisions of Part 15 of this chapter: *Provided,* that the operator of a cable system to which the device is connected shall be responsible for the suppression of interference that is caused by RF energy that is introduced into the system by the device, regardless of its ownership.

William J. Tricarico,

Secretary.

[FR Doc. 86-19468 Filed 8-29-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 67

[CC Docket No. 83-1376; RM-4436]

Integration of Rates and Services for the Provision of Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Order Extending Time for Comments.

SUMMARY: The *Order* extends the time in which parties to CC Docket 83-1376 have to file market structure proposals and comments based on the data on the Alaska telecommunication market filed on July 15, 1986. The action was taken because of the voluminous quantity of data filed.

DATES: Proposals for structuring the Alaska market and comments on the issues before the Federal-State Joint Board may be filed on or before December 2, 1986. Oppositions or further comments in light of the market structure proposals and initial comments may be filed on or before January 20, 1987. Reply comments may be filed on or before February 19, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Common Carrier Bureau, Policy and Program Planning Division, 202-632-9342.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

In the Matter of Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands; CC Docket No. 83-1376, RM 4436.

Adopted: August 18, 1986.

Released: August 20, 1986.

By the Deputy Chief for Policy, Common Carrier Bureau.

1. On September 27, 1985, the Federal Communications Commission (FCC) adopted a *Notice of Proposed Rulemaking and Order Establishing a Joint Board* in the above-captioned proceeding,[1] in which it convened this Federal-State Joint Board (Joint Board) pursuant to section 410(c) of the Communications Act of 1934, as amended.[2] The Joint Board was asked to prepare recommendations concerning: (1) What, if any, market structure changes are necessary to harmonize the Commission's rate integration and pro-competitive policies for the Alaska telecommunication market; and (2) what separations or other rule changes, if any, would be necessary to implement any market structure changes. The Joint Board was also directed to consider the high cost of service in Alaska in reaching its recommended decision, and was asked to study whether there is a need for subsidization of telecommunication service in Alaska, and, if so, to explore alternative sources for such support.

2. On May 9, 1986, the Joint Board issued an *Order* inviting interested persons to submit information and data concerning the provision of telecommunication services within the state of Alaska and between Alaska and the contiguous states.[3] The Joint Board requested data that identify: (1) The costs associated with Alaska's interstate and intrastate telecommunication services in order to determine the extent to which these services are characterized by high costs; (2) the location of those costs within the network hierarchy to permit the evaluation of cost allocation, market structure, or separations alternatives; and (3) the cost of the various interstate and intrastate service offerings of the Alaska carriers to allow evaluation of the market structure proposals. The Joint Board requested data from Alaska exchange carriers, the state of Alaska, Alascom, Inc. (Alascom), General Communication Incorporated (GCI), and the American Telephone and Telegraph Company (AT&T).

3. On July 15, 1986, each of the above-named parties filed information and data on the Alaska telecommunication market. The state of Alaska and GCI each filed one volume of material containing substantial amounts of information and data. Alascom filed five volumes and the Alaska exchange carriers filed seven volumes of data. AT&T filed 57 pages plus substantial appended material.

4. As described above, a substantial amount of information and data on the Alaska telecommunication market have been submitted by the parties. The process of analyzing these raw data, developing market structure proposals, and then testing these proposals against the data is likely to require considerable time and effort. A deliberate and thorough analysis of the Alaska market by all parties will enhance the Joint Board's ability to resolve this matter in an equitable manner and in the most expeditious period of time. It appears that the October 31, 1986, date for presenting market structure proposals and rulemaking comments may unnecessarily constrain the parties ability to conduct the required analysis. Accordingly, we find that the public interest will be served by extending the dates on which future pleadings are due in this docket, as set forth in the following paragraph.

5. Interested persons may file proposals for structuring the Alaska market and comments on the issues before the Federal-State Joint Board on or before December 2, 1986. Oppositions or further comments in light of the market structure proposals and initial comments may be filed on or before January 20, 1987. Reply comments may be filed on or before February 19, 1987.

6. Accordingly, it is ordered, pursuant to sections 1, 4(i) and (j), 201-205, 221, and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201-205, 221, and 410(c), that the dates for filing further responsive pleadings in this proceeding are extended as set forth in paragraph 5 of this Order.

Federal Communications Commission.

Carl D. Lawson,

Deputy Chief for Policy, Common Carrier Bureau.

[FR Doc. 86-19507 Filed 8-29-86; 8:45 am]

BILLING CODE 6712-01-M

[1] *Integration of Rates and Services*, 50 FR 41714 (Oct. 15, 1985).

[2] 47 U.S.C. 410(c). The referral of the market structure issues was a discretionary referral, while the consideration of any changes to the separations procedures is required by statute.

[3] Integration of Rates and Services, 51 FR 17756 (May 15, 1986).

47 CFR Part 68

[CC Docket No. 81-216; FCC 86-352]

Registration Limitations on Computer Assisted or Controlled Automatic Dialing

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order; Withdrawal of Proposed Rule.

SUMMARY: The Commission determined not to adopt any limitations in Part 68 of the rules, 47 CFR Part 68, on computer assisted or controlled automatic dialing as had initially been proposed in the *Fourth Notice* (published on 50 FR 51893, 12-20-85). The Commission determined that it had not been shown that computer assisted or controlled automatic dialing was causing any harm to the telephone network such as excessive congestion justifying at this time imposition of additional regulatory requirements and the costs thereof on manufacturers and consumers. The Commission has also clarified the

effective dates for Part 68 interconnection standards for terminal equipment connected to subrate and 1.544 Mbps digital services. These are January 2, 1986 for the grandfather eligibility date for such equipment, and June 30, 1987, as the register only date for such equipment.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1832.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order adopted August 5, 1986, and released August 21, 1986, CC Docket 81–216, determining that Part 68 limitations on computer assisted or controlled dialing are not necessary at this time. The Commission also clarified the effective dates for Part 68 interconnection standards for terminal equipment connected to subrate and 1.544 Mbps digital services.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Commission Decision

Part 68 of the Commission's rules, 47 CFR Part 68, provides the technical and procedural standards under which customer-provided telephone equipment, systems, and protective apparatus may be directly connected to the nationwide telephone network. Compliance with those standards assures equipment manufacturers and consumers that their equipment is connectible to the network, and assures telephone companies that connection will not cause harm to the network. Section 68.318(c)(1) of the rules, 47 CFR 68.318(c)(1), requires as a condition of registration that terminal equipment with an integral capability to dial telephone numbers limit repetitive dialing to the same number to fifteen successive attempts. This rule section applies only to terminal equipment which is itself registered under Part 68, but would not apply to other devices which do not contain an inherent automatic dialing capability but which can be controlled by an external device and directed to automatically dial telephone numbers. This latter situation involves principally modems which have the ability to dial a telephone number when directed by a computer. In *Fourth Notice of Proposed Rulemaking, supra*, the Commission solicited comment on whether and how Part 68 limitations should be adopted to protect against computer assisted or directed automatic dialing by registered terminal equipment. In response, several telephone carriers contended that since the Commission has already adopted Part 68 limitations on automatic dialing it is appropriate and necessary that such limitations be applied to any device which can engage in automatic dialing even though it does not have any integral automatic dialing capability but are merely directed by another device. They further claim that modems and other devices used as automatic dialers can cause network congestion and overloading of trunk lines and should therefore be subject to automatic dialing limitations. The carriers also requested that modems be required to recognize "reorder" tones (signals indicating that trunk lines are busy) and stop redialing when such tones are recognized). Manufacturers alleged generally that there was no evidence in the record that modems are being used in any way that causes network harm and that there is no justification for imposing on this class of equipment additional costs to prevent automatic dialing. In its decision, the Commission found essentially that there was insufficient evidence in the record to warrant a finding that modems or other devices were being used in conjunction with external control devices to engage in harmful automatic dialing. The Commission also found that Part 68 automatic dialing limitations could entail significant additional costs on relevant terminal equipment. The Commission concluded that Part 68 limitations to limit automatic dialing by computer controlled modems were not justified at the present time, although it was stated that the Commission could revisit the issue if necessary to ensure network protection.

The Commission also clarified the effective dates, *i.e.* grandfathering and register only dates, for implementation of Part 68 interconnection standards for network channel terminating equipment (NCTE) connected to subrate and 1.544 Mbps digital services. These dates are set forth in §§ 68.2(a) (1) and (2) of the Commission's rules, 47 CFR 68.2(a) (1) and (2). However, the dates in these rule sections as set forth in the Commission's decision and appendix as released by the Commission, *Memorandum Opinion and Order*, CC Docket 81–216, FCC 85–564, released November 22, 1985, the item as printed in the Federal Register, 50 FR 48203 (November 22, 1985) and a Public Notice issued by the Commission February 10, 1986, each specified different dates. The Commission clarified that the dates in §§ 68.2(a)(1) and (2) as appeared in the Federal Register are the correct dates. These dates are January 2, 1986 for the grandfather eligibility date and June 30, 1987 for the register only date. As no further issues were remaining, the Commission also terminated CC Docket 81–216.

Ordering Clauses

16. Accordingly, it is ordered, That CC Docket 81–216 is terminated.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86–19610 Filed 8–29–86; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[BMCS Docket No. MC–125; Notice No. 86–11]

Qualifications of Drivers—Licenses; Extension of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued an advance notice of proposed rulemaking (ANPRM) which was published in the **Federal Register** August 1, with the comment period closing on September 2. An extension of the closing date has been requested in which the petitioners believe there are a number of critical issues raised that cannot be fully evaluated within the time currently provided. The closing date is therefore being extended to October 2.

DATE: Comments must be received on or before October 2, 1986.

ADDRESS: All comments should refer to the docket number which appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, Federal Highway Administraton, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety (202)366–2983; or Mr. Edward J. Mullaney, Office of the Chief Counsel, (202)366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA received a petition from the American Association of Motor Vehicle Administrators requesting a 30-day extension of the comment period. The AAMVA stated that it wished to discuss the items contained in the ANPRM at its Driver License Steering Committee planning meeting and stated that the group needed extra time to adequately respond. The International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America and the American Trucking Associations requested an extension of 60 days in order to adequately respond to the 32 substantive questions contained in the ANPRM. The Virginia Department of Motor Vehicles requested the comment period be extended until December 2. These requests for extension have merit and therefore the comment period is being extended to October 2, 1986.

List of Subjects in 49 CFR Part 391

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Driver qualifications.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: August 26, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 86–19699 Filed 8–29–86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 50581–6157]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of non-implementation.

SUMMARY: By this notice, the Secretary of Commerce (Secretary) announces that he is not implementing the variable season closure (VSC) to fishing for Atlantic swordfish for 1986. Based on comments received, it is uncertain that net benefits would result from imposing the VSC this year. The fishery will remain open.

ADDRESS: Donald W. Geagan, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: Under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR Part 630, the Secretary of Commerce issued a notice of preliminary annual adjustment to the variable season closure (VSC). The notice announced the starting and ending dates of the VSC which was intended to reduce the catch of small fish (51 FR 27227, July 30, 1986).

Comments received from the public and fishermen's organizations have demonstrated that it is uncertain if net benefits would result from the VSC this year.

Therefore, the Secretary has decided not to implement the variable season closure for 1986 and the fisheries will remain open.

Other Matters

This action is taken under the authority of 50 CFR Part 630 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 26, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–19645 Filed 8–27–86; 3:47 pm]

BILLING CODE 3510-22-M

VOL 51 ISS 169 SE 2 1986 UMI

Notices

Federal Register
Vol. 51, No. 169
Tuesday, September 2, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation of the East Indiana (IN), Erie (OH), Michigan (MI), and Schneider (IN), Agencies in the Battle Creek, Michigan, Geographic Area

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation of East Indiana Grain Inspection, Inc.; Erie Grain Inspection Service; Michigan Grain Inspection Services, Inc.; and Schneider Inspection Service, Inc., as the official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act), in the Battle Creek, Michigan, geographic area.

EFFECTIVE DATE: October 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that the designation of Grain Inspection Services, Inc., Battle Creek, Michigan, would not be renewed on May 1, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the April 1, 1986, **Federal Register** (51 FR 11063). Applications were to be postmarked by May 1, 1986. There were five applicants for the available geographic area, as follows:

1. East Indiana Grain Inspection, Inc. (East Indiana), Muncie, Indiana, which applied only for the following County in Ohio: Williams.

2. Erie Grain Inspection Service (Erie), Bellevue, Ohio, which applied for the entire geographic area available for assignment.

3. Lima Grain Inspection Service, Inc. (Lima), Lima, Ohio, which applied only for the following County in Ohio: Williams.

4. Michigan Grain Inspection Services, Inc. (Michigan), Reese, Michigan, which applied for the entire geographic area available for assignment.

5. Schneider Inspection Service, Inc. (Schneider), Lowell, Indiana, which applied only for the following Counties in Michigan: Berrien, Cass, St. Joseph, Branch, and Hillsdale.

FGIS announced the applicant names and requested comments on the same in the June 2, 1986, **Federal Register** (51 FR 19771), and as corrected, June 17, 1986, (51 FR 21943). Comments were to be postmarked by July 17, 1986. One favorable comment was received regarding the Schneider application for designation.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that East Indiana, Erie, Michigan, and Schneider are better able than any other applicant to provide official services in the geographic area for which FGIS is designating them. These assignments of geographic areas are effective October 1, 1986, and terminate upon the end of East Indiana's (August 31, 1988), Erie's (June 30, 1989), Michigan's (April 30, 1989), and Schneider's (July 31, 1987) present designations. East Indiana's, Erie's, Michigan's, and Schneider's present designations are amended accordingly.

East Indiana, Erie, Michigan, and Schneider will provide official inspection services in the following specified geographic areas, which together comprise the entire area previously described in the April 1 **Federal Register**.

The following geographic area, in the State of Ohio, is hereby assigned to East Indiana: Williams County.

The following geographic area, in the State of Michigan, is hereby assigned to Erie: Crop Aid, Hudson, Lenawee County.

The following geographic area, in the State of Michigan, is hereby assigned to Michigan:

Bounded on the North by the northern and eastern Mason County lines; the northern and eastern Newago County lines; the northern Montcalm County line east to U.S. Route 131; U.S. Route 131 south to State Route 46; State Route 46 east to State Route 66; State Route 66 south to Washington Road; Washington Road east to the western Gratiot County line; the western Gratiot County line south to State Route 57; State Route 57 east to U.S. Route 27;

Bounded on the East by U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the Jackson County line;

Bounded on the South by the southern Jackson, Calhoun, Kalamazoo, and Van Buren County lines; and

Bounded on the West by the Lake Michigan shoreline north to the northern Mason County line.

An exception to the described geographic area is the following location situated inside this area which has been and will continue to be serviced by Detroit Grain Inspection Service, Inc.: St. Johns Coop., St. Johns, Clinton County, Michigan.

The following geographic area, in the State of Michigan, is hereby assigned to Schneider: Berrien, Cass, St. Joseph, Branch, and Hillsdale Counties.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or by contacting the agencies at the following addresses:

East Indiana Grain Inspection, Inc., 2017 Enterprise Avenue, Muncie, IN 47302

Erie Grain Inspection Service, 301 North Street, P.O. Box 96, Bellevue, OH 44811

Michigan Grain Inspection Services, Inc., 1770 South Reese Road, Reese, MI 48757

Schneider Inspection Service, Inc., 15406 White Oak, Lowell, IN 46356

Until October 1, 1986, persons or firms located in the geographic area described in the April 1 **Federal Register** and requiring official inspection services should contact the FGIS Saginaw field office at (517) 753–2482.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: August 15, 1986.

J.T. Abshier,

Director, Compliance Division

[FR Doc. 86–19635 Filed 8–29–86; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicant in the Belmond, Iowa, Geographic Area (IA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the Belmond, Iowa, geographic area.

DATE: Comments to be postmarked on or before October 17, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced the cancellation of designation of David R. Schaal, doing business as D. R. Schaal Agency, effective December 31, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the July 1, 1986, **Federal Register** (51 FR 23802). Applications were to be postmarked by July 31, 1986. Lewis D. Schaal, who proposes to do business as D. R. Schaal Agency, was the only applicant for designation and applied for designation in the entire area available for assignment.

This notice provides interested persons the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the address listed above.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat.2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: August 15, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–19637 Filed 8–29–86; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the Columbus Agency (OH)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties, including the agency currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is Columbus Grain Inspection, Inc.

DATE: Applications to be postmarked on or before October 2, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Columbus Grain Inspection, Inc. (Columbus), 348 ½ E. Franklin, P.O. Box 167, Circleville, OH 43113, was designated under the Act as an official agency to provide inspection functions on March 1, 1984.

The official agency's designation terminates on February 28, 1987. Section (7)(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Columbus, in the State of Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by U.S. Route 30 east to State Route 154; State Route 154 east to the Ohio-Pennsylvania State line;

Bounded on the East and South by the Ohio-Pennsylvania State line south to the Ohio River; the Ohio River south-southwest to the western Scioto County line; and

Bounded on the West by the western Scioto County line north to State Route 73; State Route 73 northwest to U.S. Route 22; U.S. Route 22 west to U.S. Route 68; U.S. Route 68 north to Clark County; the northern Clark County line west to State Route 560; State Route 560 north to State Route 296; State Route 296 west to Interstate 75; Interstate 75 north to State Route 47; State Route 47 northeast to U.S. Route 68; U.S. Route 68 north to U.S. Route 30.

Interested parties, including Columbus, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning March 1, 1987, and ending February 28, 1990.

Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: August 15, 1986.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 86–19364 Filed 8–29–86; 8:45 am]

BILLING CODE 3410–EN–M

Designation Renewal of the Fostoria Agency (OH), State of Louisiana (LA), and State of North Carolina (NC)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Fostoria Grain Inspection (Fostoria), Louisiana Department of Agriculture (Louisiana), and North Carolina Department of Agriculture (North Carolina) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: October 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Fostoria's, Louisiana's, and North Carolina's designations terminate on September 30, 1986, and requested applications for official agency designation to provide official services within specified geographic areas in the April 1, 1986, **Federal Register** (51 FR 11084), and as corrected, April 9, 1986 (51 FR 12188). Applications were to be postmarked by May 1, 1986. Fostoria, Louisiana, and North Carolina were the only applicants for their respective designations, and each applied for designation renewal in the area currently assigned to each agency.

FGIS announced the applicant names and requested comments on the same in the June 2, 1986, **Federal Register** (51 FR 19769). Comments were to be postmarked by July 17, 1986. No comments were received regarding Fostoria's, Louisiana's, and North Carolina's designation renewal.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Fostoria, Louisiana, and North Carolina are able to provide official services in the geographic area for which FGIS is renewing their designation. Effective October 1, 1986, and terminating September 30, 1989, Louisiana will provide official inspection and Class X or Class Y weighing services, and Fostoria and North Carolina will provide official inspection services in their entire specified geographic areas, previously described in the April 1 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or by contacting the agencies at the following addresses:

Fostoria Grain Inspection, 628 West Fourth Street, P.O. Box 864, Fostoria, OH 44830

Louisiana Department of Agriculture, P.O. Box 44456, Baton Rouge, LA 70804

North Carolina Department of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: August 19, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–19632 Filed 8–29–86; 8:45 am]

BILLING CODE 3410–EN–M

Designation of the Enid (OK) and Little Rock (AR) Agencies in the Ft. Smith-Van Buren, Arkansas, Geographic Area

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: This notice announces the designation of Enid Grain Inspection Company, Inc., and Little Rock Grain Exchange Trust as the official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act), in the Ft. Smith-Van Buren, Arkansas, geographic area.

EFFECTIVE DATE: October 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced the cancellation of designation of Ft. Smith-Van Buren Grain Inspection Service, effective April 17, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the April 1, 1986, **Federal Register** (51 FR 11086). Applications were to be postmarked by May 1, 1986. There were two applicants for the available geographic area, as follows: 1. Enid Grain Inspection Company, Inc. (Enid), Enid, Oklahoma; and 2. Little Rock Grain Exchange Trust (Little Rock), Little Rock, Arkansas. Both applicants applied for the entire geographic area available for assignment.

FGIS announced the applicant names and requested comments on the same in the June 2, 1986, **Federal Register** (51 FR 19769), and as corrected, June 17, 1986 (51 FR 21943). Comments were to be postmarked by July 17, 1986. FGIS received two comments regarding designation in the available geographic area. One commenter, whose firm is located in Oklahoma, commented favorably upon Enid's application for designation; the other commenter, whose firms are located in both Arkansas and Oklahoma, stated that for the firm located in Arkansas they would

prefer Little Rock, and for the firm located in Oklahoma they would prefer Enid.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Enid and Little Rock are better able than any other applicant to provide official services in the geographic area for which FGIS is designating them. These assignments of geographic areas are effective October 1, 1986, and terminate upon the end of Enid's (June 30, 1989) and Little Rock's (May 31, 1988) present designations. Enid's and Little Rock's present designations are amended accordingly.

Enid and Little Rock will provide official inspection services in the following specified geographic areas, which together comprise the entire area previously described in the April 1 Federal Register.

The following geographic area, in the State of Oklahoma, is hereby assigned to Enid: Adair, Cherokee, Choctaw, Delaware, Haskell, Latimer, Le Flore, McCurtain, McIntosh, Muskogee, Ottawa, Pittsburg, Pushmataha, and Sequoyah Counties.

The following geographic area, in the State of Arkansas, is hereby assigned to Little Rock: Benton, Boone, Carroll, Crawford, Franklin, Johnson, Logan, Madison, Montgomery, Newton, Polk, Sebastian, Sevier, Scott, Washington, and Yell Counties.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or by contacting the agencies at the following addresses:

Enid Grain Inspection Company, Inc., 2205 N. 10th Street, P.O. Box 229, Enid, OK 73701

Little Rock Grain Exchange Trust, 600 Olive Street, Bldg. B, North Little Rock, AR 72114

Until October 1, 1986, persons or firms located in the geographic area described in the April 1 Federal Register and requiring official inspection services should contact the FGIS Stuttgart field office at (501) 673–2506.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: August 15, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–19636 Filed 8–29–86; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Alva Agency (OK) and State of Connecticut (CT)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Alva Grain Inspection Department (Alva) and Connecticut Department of Agriculture (Connecticut).

DATE: Comments to be postmarked on or before October 17, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the July 1, 1986, Federal Register (51 FR 23802). Applications were to be postmarked by July 31, 1986. Alva and Connecticut were the only applicants for their respective designations and each applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the address listed above.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: August 15, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–19633 Filed 8–29–86; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Land and Resource Management Plan, Los Padres National Forest, Monterey, San Luis Obispo, Santa Barbara, Ventura, Kern, and Los Angeles Counties, CA; Extension to Public Review and Comment Period for the Proposed Forest Plan and Draft Environmental Impact Statement

In response to public request the Los Padres National Forest has extended the public review and comment period for the Proposed Forest Plan and Draft Environmental Impact Statement to Thursday October 30, 1986. All written comments should be addressed to Forest Supervisor Arthur J. Carroll, Los Padres National Forest, Attn: LMP, 6144 Calle Real, Goleta, CA 93117.

For additional information on the comment period extension, please contact the Public Affairs Officer or Planning Officer at the above address or telephone (805) 683–6711.

Arthur J. Carroll,

Forest Supervisor, Los Padres National Forest.

[FR Doc. 86–19704 Filed 8–29–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Logbook Family of Forms—Amendment 9

Form Number: Agency—N/A; OMB—0648–0016

Type of Request: Revision of a currently approved collection
Burden: 4,282 respondents; 8,123 reporting/recordkeeping hours
Needs and Uses: The objective of the amendment is to evaluate the relative costs and technical merits of a mandatory logbook approach to data collection for coastal pelagics.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Weekly
Respondent's Obligation: Mandatory
OMB desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW. Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 20, 1986.

Linda Engelmeier,

Acting Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–19750 Filed 8–29–86; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of the Census

Number of Employees, Payrolls, Geographic Location, Current Status, and Kind of Business for the Establishments of Multiestablishment Companies; Determination for Surveys

In conformity with Title 13, United States Code, sections 182, 224, and 225 and due notice of consideration having been published on April 1, 1985 (50 FR 12843), I have determined that a 1986 Company Organization Survey is needed to update the multiestablishment companies in the Standard Statistical Establishment list. The survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multiestablishment companies. These data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

Report forms will be furnished to firms included in the survey and additional copies of the form are available on request to the Director, Bureau of the Census, Washington, DC 20233.

I have, therefore, directed that a Survey be conducted for the purpose of collecting these data.

Dated: August 27, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86–19742 Filed 8–29–86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[C–614–601]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Steel Wire From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in New Zealand of steel wire. The estimated net bounty or grant is 6.84 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of steel wire.

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of steel wire from New Zealand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of this product in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: September 2, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Mark Linscott, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2438 or 377–1174.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in New Zealand of steel wire. For purposes of this final determination, the following programs are found to confer bounties or grants:

- Export Performance Taxation Incentive (EPTI).
- Export Market Development Taxation Incentive (EMDTI).
- Sales Tax Refunds.
- Export Suspensory Loan Scheme.

The estimated net bounty or grant is 6.84 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of steel wire.

Case History

On March 17, 1986, we received a petition in proper form from the Davis Walker Corporation, filed on behalf of the U.S. industry producing steel wire. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in New Zealand of steel wire, directly or indirectly, receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 7, 1986, we initiated such an investigation (51 FR 13050, April 17, 1986). We stated that we expected to issue a preliminary determination on or before June 10, 1986.

Since New Zealand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this merchandise materially injure, or threaten material injury to, a U.S. industry.

On April 16, 1986, we presented a questionnaire to the Government of New Zealand, in Washington, DC, concerning the petitioner's allegations. On May 16, 1986, we received a response to our questionnaire from the Government of New Zealand, and on May 23, 1986, we received a response to our questionnaire from New Zealand Wire Industries Limited (NZWI), the only known producer and exporter of steel wire to the United States. On the basis of the information contained in these responses, we made our preliminary determination on June 10, 1986 (51 FR 21784, June 16, 1986). From June 30 to July 4, 1986, we verified the responses submitted by the Government of New Zealand and NZWI.

We received a supplemental submission from NZWI on August 8, 1986. We afforded interested parties an opportunity to present views orally in accordance with our regulations (19 CFR 355.35). No public hearing was

requested. On August 6, 1986, we received case briefs from petitioner and respondents. On August 11, 1986, we received a rebuttal brief from respondents.

Scope of Investigation

For purposes of this investigation, galvanized carbon steel wire covers round, carbon steel wire coated or plated with zinc, 0.06 inch or more in diameter, as currently provided for in items 609.4165 and 609.4365 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the Federal Register (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is July 1, 1984, through June 30, 1985, which corresponds to the company's last complete fiscal year. Based upon our analysis of the petition, the responses to our questionnaire submitted by the Government of New Zealand and NZWI, our verification and written comments submitted by interested parties, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in New Zealand of steel wire under the following programs:

A. Export Performance Taxation Incentive (EPTI)

Petitioner alleges that the New Zealand steel wire industry receives EPTI tax credits on exports of qualifying goods.

According to the response of the Government of New Zealand, exporters are entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported under section 156A of the Income Tax Act of 1976, as amended. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the remainder is paid to the taxpayer in cash.

The rate of the tax credit is dependent upon the government predetermined value-added category into which the product falls. The amount of the tax credit is calculated by multiplying the rate corresponding to the value-added category into which the product falls by the f.o.b. value of export sales. Galvanized (zinc-coated) steel wire falls into value-added category B, for which the corresponding rate is 10.5 percent.

According to the response and verified information, the rates specified under this program will be reduced in the tax years ending March 31, 1986, and March 31, 1987, and then the program will be eliminated entirely. We verified that NZWI claimed a 10.5 percent EPTI tax credit for exports of galvanized steel wire on the tax return filed during the review period.

Because eligibility for this program is limited to exporters, we determine that it provides a bounty or grant to producers and exporters of steel wire within the meaning of the countervailing duty law.

Under our tax methodology, we calculate the benefit from this program by dividing the amount of the EPTI tax credits claimed by NZWI for its exports of galvanized steel wire to the United States on the tax return filed during the review period by the value of the company's total export sales of galvanized steel wire to the United States during the review period. On this basis, we calculate an estimated net bounty or grant of 5.40 percent *ad valorem.*

B. Export Market Development Taxation Incentive (EMDTI)

Petitioner alleges that the New Zealand steel wire industry receives EMDTI tax credits under section 156F of the New Zealand Income Tax Act of 1976, as amended, for qualifying export market development expenditures.

According to the government's response, under the 1979 Amendment of the Income Tax Act of 1976, certain export market development expenditures qualify as a tax credit amounting to 67.5 percent of the total expenditure. Qualifying expenditures include expenses incurred principally for seeking and developing markets, retaining existing markets, and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating the taxable income. We verified that NZWI claimed EMDTI tax credits for market development expenditures in the United States on the tax return filed during the review period.

Because eligibility for this program is limited to exporters, we determine that it confers a bounty or grant within the meaning of the countervailing duty law.

To quantify the benefit accruing to NZWI under this program, we compared the value of claiming 67.5 percent of the expenditures as a tax credit rather than deducting the expenditures as ordinary business expenses. Given that the corporate tax rate in New Zealand during the review period was 45 percent, the net benefit to the exporters under this program is 22.5 percent of the qualifying expenditures.

We divided 22.5 percent of the qualifying expenditures which were claimed by NZWI on the tax return filed during the review period for marketing efforts directed at the United States by the total f.o.b. value of export sales of steel wire to the United States during the review period. On this basis, we calculate an estimated net bounty or grant of 0.55 percent *ad valorem.*

C. Sales Tax Exemptions or Refunds

Petitioner alleges that the New Zealand steel wire industry receives sales tax exemptions or refunds on machinery and equipment used in the production of goods for export.

Under Item 136 IV of the Sales Tax Exemption Order of 1979, machinery used in the production of goods for export may be exempt from the ten percent sales tax. A company must demonstrate that 40 percent of the f.o.b. value of production from the machinery will be exported or must show that its exports are more than NZ $500,000 f.o.b. per year. Because NZWI's exports exceed NZ $500,000 f.o.b. per year, it is a qualifying exporter under Item 136 IV. We verified that NZWI received a refund of the sales tax during the review period under Item 136 IV for machinery used to produce zinc-coated steel wire.

We determine that Item 136 IV sales tax exemptions or refunds provide a bounty or grant to producers and exporters of steel wire within the meaning of the countervailing duty law because the refund/exemption is contingent upon export performance.

In 1983, a modification of the Sales Tax Exemption Order of 1979 imposed a 40 percent sales tax on computer equipment. Part G of this modification order authorized the Minister of Trade and Industry to classify computer equipment at a ten percent rate under such conditions as he may determine. On October 18, 1983, the Minister of Trade and Industry announced a reduction in the sales tax rate on computer equipment to ten percent for a wide range of businesses including

VOL
51
ISS
169
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those operating in agriculture, forestry, fishing, mining, manufacturing, utilities, construction, transport, storage, and communications.

NZWI received a rebate of the sales tax on computer equipment it purchased in the amount of the difference between the 40 and ten percent rates. We verified that the ten percent rate on computer equipment was not contingent upon export performance and was unrelated to Item 136 IV exemptions or refunds. Moreover, because refunds received on computer equipment are not based on exports and are available to a broad range of industries, we determine them to be not countervailable.

To calculate the benefit from Item 136 IV sales tax exemptions or refunds to exporters, we divided the total refunds received during the review period for purchases of equipment by the total export sales during the review period. On this basis, we calculate an estimated net bounty or grant of 0.71 percent *ad valorem*.

D. Export Suspensory Loan Scheme

Petitioner alleges that the New Zealand steel wire industry received loans or grants for the purchase of equipment used in the manufacture of export goods under the Export Suspensory Loan Scheme.

We verified that exporters may receive loans from the Department of Trade and Industry under the Export Suspensory Loan Scheme for the purchase of equipment used to expand production of exportable goods. If an exporter meets its predetermined export sales targets, its loans are converted to grants. NZWI received loans in 1979 and 1980, both of which were converted to grants during the company's fiscal year ending June 31, 1984.

We determine that this program provides a bounty or grant to producers and exporters of steel wire within the meaning of the countervailing duty law because suspensory loans under this program are made available only for purchasing equipment used in producing export goods.

To calculate the benefit, we allocated the grants received during the company's fiscal year ending in 1984 over 15 years, the average useful life of equipment used in the steel industry. We attempted to calculate a discount rate for this allocation based on the company's cost of fixed-interest-rate long-term loans taken out in the 1984 fiscal year. However, the company did not have any fixed-rate loans. We then sought the interest rates on variable-rate long-term loans taken out in 1984. Again, no variable-rate long-term loans were taken out in 1984. Therefore, we used as the discount rate the weighted-average interest rate paid by the company during the review period on variable-rate long-term loans for which balances were outstanding in 1984, the year the grants were received.

The benefit allocated to the review period was divided by total export sales during the review period. The estimated net bounty or grant conferred on NZWI by the Export Suspensory Loan Scheme during the review period is 0.18 percent *ad valorem*.

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in New Zealand of steel wire under the following program:

Global Tender Import Licenses

The response submitted by the Government of New Zealand indicated that NZWI obtained global tender licenses for importing wire rod and steel wire during the review period.

Under the global tender licensing scheme, the Department of Trade and Industry "auctions" the right to import products that are also available from New Zealand producers. Licenses are tendered in units of $2,000 (valued c.i.f.). In each round of bidding, a wide range of products is tendered. Tenders are announced in the New Zealand Gazette. Bidding for the licenses is done by post and is open to any person or firm domiciled in New Zealand.

Once the average successful bid rate (the ratio of the average successful bid to the unit price expressed as a percentage) is below 7.5 percent and after two rounds of tendering, the product is automatically given one-year "license on demand" status. If the license on demand does not threaten the domestic industry producing that product, import licensing requirements for the product are eliminated.

We verified that global tender licenses are available to all importers and apply to all products for which licensing requirements are still in place. We saw no evidence that these licenses are limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that global tender import licenses do not confer a countervailable benefit.

III. Programs Determined Not To Be Used

Based on our verification of the responses of the Government of New Zealand and NZWI, we determine that manufacturers, producers, or exporters in New Zealand of steel wire did not use the following programs, which were listed in our notice of initiation.

A. Export Marketing Assistance

Petitioner alleges that the New Zealand steel wire industry receives various types of export marketing assistance from the New Zealand Export-Import Corporation, the Department of Trade and Industry, the Building Research Association of New Zealand, and the Standards Association of New Zealand.

According to the responses and verified information, NZWI received no export marketing assistance from any of the aforementioned organizations. Also, we verified that NZWI purchased no U.S. standards from the Standards Association of New Zealand during the review period.

B. Export Programme Grants Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS)

Petitioner alleges that, under the Export Programme Grants Scheme (EPGS) and the Export Programme Suspensory Loan Scheme (EPSLS), the New Zealand steel wire industry is eligible to receive overseas marketing assistance. The Export Programme Suspensory Loan Scheme is a distinct program from the Export Suspensory Loan Scheme discussed in section I.D. of this notice.

The EPGS offered grants covering 64 percent of approved marketing expenditures. The EPGS was superseded by the EPSLS in June 1982. Unlike its predecessor, the EPSLS offered loans that were converted to grants upon achieving predetermined export targets. The loans were limited to 40 percent of approved expenditures. The EPSLS has been terminated although assistance can continue through 1987 for agreements entered into prior to termination of the program. No new applications have been accepted since May 1985.

Under both the EPGS and the EPSLS, eligible companies participated in three year marketing plans. Grants or loans were disbursed in each year of the plan to defray partially marketing expenditures made in that year. Eligible expenditures consisted primarily of costs of travel, salary, per diem and some special promotional expenses.

We verified that NZWI received no assistance under the EPGS for promoting exports during the review period. Additionally, we verified that NZWI received assistance under the EPSLS only for marketing activities in Australia and had no loans outstanding

under this program during the review period.

Therefore, no benefits accrued to exports to the United States during the review period. Accordingly, we determine that these programs were not used.

C. Preferential Treatment to Exporters in Granting Import Licenses

Petitioner alleges that import licensing concessions under the Export Production Assistance Scheme are provided to companies that import materials for incorporation in goods to be exported. Such concessions may include additional availability of import licenses on components incorporated into goods to be exported for the purpose of increasing New Zealand's access to foreign markets. These concessions are not available to manufacturers producing for domestic consumption. We verified that NZWI received no import licensing concessions during the review period.

D. Research and Development Incentives

Petitioner alleges that the New Zealand steel wire industry receives research and development incentives under the Applied Technology Program administered by the Development Finance Corporation and under the predecessor Industrial Research and Development Grants Advisory Committee of the Department of Trade and Industry. We verified that no assistance has been provided under this program to NZWI.

E. Regional Development Investment Incentives

Petitioner alleges that New Zealand steel wire producers receive a variety of regional development incentives administered by the Department of Trade and Industry based on their location in regions classified as either priority or low growth. Petitioner also alleges that the steel wire industry receives concessions on electricity, water rights, and rail freight for any facilities located on the South Island. We verified that NZWI received no regional development incentives from the Department of Trade and Industry or any other government organization.

F. Special Industrial Development Allowances

Petitioner alleges that the New Zealand steel wire industry receives tax benefits from the Industrial Development Plan Investment Allowance (IDPIA) under section 121 or the High Priority Investment Allowance under section 121A of the New Zealand Income Tax Act of 1976, as amended. According to the government response no industrial development plan has been approved for the steel wire industry and, therefore, no producer or exporter of steel wire has qualified for this program. We verified that NZWI has not received benefits under this program.

G. Export and Development Financing From the Development Finance Corporation

Petitioner alleges that the New Zealand steel wire industry receives export credits and development financing on terms inconsistent with commercial considerations from the Development Finance Corporation. We verified that NZWI has not received any export credits from the Development Finance Corporation. We also verified that NZWI had no development financing loans outstanding during the review period.

Petitioner's Comments

Comment 1: Petitioner contends that, in calculating the value of the benefit to the respondent from the EPTI Program, the Department should calculate the benefit at 10.5 percent, the corresponding value-added band rate under the EPTI program for galvanized wire.

DOC Position: We believe that the most accurate method to calculate the benefit accruing to exports of steel wire to the United States under the EPTI program is to use the value of EPTI credits claimed by NZWI on the tax return filed during the review period. See our discussion in the *DOC Position* on respondents' *Comment 1.*

Comment 2: Petitioner contends that the Department should calculate the benefit under EMDTI based on 67.5 percent of qualifying marketing expenditures and should not reduce this amount by the deduction otherwise allowable for these expenditures. Petitioner argues that because NZWI owed no taxes during the review period due to its assumption of the losses of another company within the Fletcher Challenge Group, the tax consequences of a deduction are irrelevant.

DOC Position: We disagree. The Department's practice for measuring benefits from tax subsidy programs is designed to isolate the difference between tax consequences resulting under a particular program and the tax consequences that would otherwise result absent the subsidy program. Marketing expenditures are normally deductible as ordinary business expenses. Therefore, the benefit accruing to NZWI is the difference between treating a portion of these expenditures as a credit rather than deducting them in their entirety. That NZWI was able to put itself into a tax loss position and, hence, pay no taxes during the review period does not detract from the fact that these expenditures are deductible. If the EMDTI program did not exist, NZWI could choose not to assume the losses of another company and accordingly, could deduct the full amount of its qualifying marketing expenditures.

Comment 3: Petitioner contends that the Department erred in allocating grants received under the Export Suspensory Loan Scheme over 15 years, the average useful life of equipment in the steel industry. Petitioner argues that these grants should be treated as one-time extraordinary items and expensed in the year of receipt or, alternatively, should be allocated over five to seven years, the amortization period used by NZWI.

DOC Position: We disagree. Department grant methodology as set forth in the Subsidies Appendix provides for allocation of grants over the average useful life of renewable physical assets in the industry. As stated in the Subsidies Appendix, the IRS tables, which reflect reasonable accounting useful life, provide the best practicable means of consistently determining useful life. This allocation methodology avoids the obvious anomaly that would result if subsidies margins varied between cases due solely to different countries' periods of allocation.

Comment 4: Petitioner contends that the global tender licensing process is selectively applicable to certain industries and products. Petitioner argues that the Department should quantify the benefit as the difference in price between imported and domestically produced wire rod.

DOC Position: We disagree. See our discussion in section II.

Comment 5: Petitioner contends that all refunds of sales tax payments received by NZWI are made pursuant to exemption provisions applicable to only select industries and that all refunds should be included in the final subsidy rate. Petitioner further contends that the full exemption from sales tax for steel raw materials and steel wire authorized in the Sales Tax Exemption Order of 1979 are countervailable subsidies.

DOC Position: We agree that all refunds received by NZWI as a qualifying exporter under Item 136 IV of the Sales Tax Exemption Order of 1979 are countervailable (see our discussion in section I.C.). We disagree that refunded sales taxes for purchases of

VOL 51 ISS 169 SE 2 1986 UMI

computer equipment are countervailable (see our discussion in section I.C.). Finally, we disagree that the full exemptions for steel raw materials and steel wire are countervailable.

The Sales Tax Exemption Order of 1979 sets forth a schedule of exempt items. Some exemptions are specific classes of goods. Others are determinable items, *i.e.*, subject to the terms of exemption approved by the Minister of Trade and Industry. For example, Item 136 IV, which designates machinery used in the production of export goods as exempt, was implemented pursuant to such discretionary authority of the Minister.

Exempt goods specifically listed in the Schedule and not subject to ministerial discretion include an expansive and wide variety of products used by an equally wide variety of industries. The list designates over 200 specific exempt goods or exempt classes of goods. A small sample includes chemical, pharmaceutical, and related products, electrical goods and materials, food and foodstuffs, machinery used in farming, forestry, fisheries, beekeeping, and horticulture, metal products, paper, printed material, rubber products, textiles, and motor vehicles. No analysis of specificity could conclude that these exemptions are limited to a specific enterprise or industry, or group of enterprises or industries. The exemptions for steel raw materials and steel wire are among the products in the listing of specifically exempt goods.

Respondents' Comments

Comment 1: Respondents contend that for EPTI and EMDTI the Department should not lag tax benefits by allocating credits to the period in which the tax return is filed but instead should calculate benefits based on the credits earned by reason of sales made within the review period. Respondents argue that our current methodology can produce absurd results and has the effect of imposing duties on importers out of all proportion to true countervailing duty rates.

Respondents also argue that the lag methodology is unnecessary for analyzing EPTI and EMDTI, because benefits are readily determinable in advance. For this reason, EPTI benefits have nothing to do with calculating taxable income and consequently, are not, in actuality, tax benefits but instead are a grant which should be expensed in the year of receipt. Finally, respondents contend that our lag methodology has the effect of encouraging manufacturers to increase U.S. export sales.

DOC Position: We disagree. The Department's long-standing tax methodology has been to lag income tax benefits. The statute requires us to countervail the actual net subsidy received. Consequently, tax benefits are countervailable only when a company actually receives the benefits, rather than when a company becomes eligible to receive them.

While under a program like EPTI, a company can know in advance the magnitude of its tax credit, the credit's ultimate effect lies in how it modifies the actual tax liability. In an income tax program, the actual tax liability cannot be known until after the tax return is filed. Therefore, only after its tax return is filed can a company truly discern the ultimate benefit, and its effects, derived from any tax program.

An exporter may choose not to claim EPTI credits or may choose to claim them selectively. This situation arose in the investigation of Carbon Steel Wire Rod from New Zealand (see "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from New Zealand," (51 FR 7971, March 7, 1986)), where one of the companies did not claim EPTI for export sales of carbon steel wire rod but claimed it for other export sales. Only after a company's tax return is filed can the EPTI credit claimed be determined with certainty.

Finally, for cases involving several companies, some of which may operate on different fiscal years, we attempt to analyze all of the companies at the same point in time. If some companies' fiscal years do not correspond to the review period, an analysis of their export sales during the review period will include sales, a portion of which will be claimed in the tax return filed during the review period and the remaining portion in a tax return filed in the future. The lag methodology avoids such skewed results.

As to respondents' contention that our lag methodology encourages manufacturers to increase exports to the United States, we believe that export sales are influenced by factors independent of the desire of a manufacturer, faced with countervailing duties, to increase the denominator used to calculate the extent of countervailing duties. Further, respondents' argument ignores the real impact of the imposition of countervailing duties, namely that importers are discouraged from importing the subject product. Thus, exporters' inclinations to the contrary, the effect would generally be a net decrease in sales to the United States.

Comment 2: Respondents contend that no refunds of sales tax payments were received by NZWI during the review period by reason of steel wire exportation.

DOC Position: We disagree. See our discussion under section I.C.

Verification

In accordance with section 776(a) of the Act, we verified the information and data used in making our final determination. During verification, we followed normal verification procedures, including meetings with government officials and inspection of documents, as well as on-site inspection of the accounting records of NZWI.

Administrative Procedures

We afforded interested parties an opportunity to present views orally in accordance with § 355.34 of our regulations (19 CFR 355.34). Written comments were received from respondents on August 6 and 11, 1986, and from petitioner on August 6, 1986. We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with § 355.35 of our regulations (19 CFR 355.35). No public hearing was requested.

Suspension of Liquidation

The suspension of liquidiation ordered in our preliminary affirmative countervailing duty determination will remain in effect until further notice. The estimated bounty or grant is 6.84 percent *ad valorem*.

In accordance with section 706(a)(4) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of the steel wire from New Zealand which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register, and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

August 25, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-19620 Filed 8-29-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Notice 2]

National Fire Codes; Request for Proposals for Revisions of Standards

AGENCY: National Bureau of Standards, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise same of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necesarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at the above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested person may submit amendments supported by written data, views, or argument to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 E.D.S.T. on the closing date indicated will be acted on by the Committee.

At a later date each NFPA technical committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition. Each person who has submitted a written proposal will receive a copy of the report.

Dated: August 25, 1986.

Raymond G. Kammer,

Acting Director, National Bureau of Standards.

1987 Technical Committee Reports

NFPA technical committees are accepting proposals for recommendations on the following documents:

NFPA 50A–1984, Gaseous Hydrogen Systems at Consumer Sites—May 29, 1987

NFPA 50B–1985, Liquefied Hydrogen Systems at Consumer Sites—May 29, 1987

NFPA 51B–1984, Actylene Cylinder Charging Plants—May 29, 1987

NFPA 52–1984, CNG Systems on Motor Vehicles & Fueling Systems—Jan 16, 1987

NFPA 54–1984, National Fuel Gas Code—Apr 15, 1987

NFPA 61A–1984, Manufacturing & Handling Starch—Jul 17, 1987

NFPA 61C–1984, Fire & Dust Explosions in Feed Mills—Jul 17, 1987

NFPA 61D–1984, Fire & Dust Explosions in the Milling of Agricultural Commodities for Human Consumption—Jul 17, 1987

NFPA 82–1983, Incinerators & Waste & Linen Handling Systems & Equipment—Jan 16, 1987

NFPA 90A–1985, Air Conditioning & Ventilating Systems—Jul 17, 1987

NFPA 90B–1984, Warm Air Heating & Air Conditioning System—Jul 17, 1987

NFPA 301–1984, Motor Craft—Jul 17, 1987

NFPA 801–1986, Facilities Handling Radioactive Materials—Jan 16, 1987

NFPA 802–1983, Nuclear Reactors—Jan 16, 1987

NFPA 907M–1983, Investigation of Fires of Electrical Origin—Jan 16, 1987

Proposed NFPA 914, Building Rehabilitation & Reuse—Jan 16, 1987

Proposed NFPA 1404, Self-Contained Breathing Apparatus in Training Exercises—Jan 16, 1987

[FR Doc. 86–19724 Filed 8–29–86; 8:45 am]

BILLING CODE 3510–13–M

[Notice 1]

National Fire Codes; Request for Comments on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1987 Annual Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The technical committee reports will be available for distribution on August 22, 1986. Comments received on or before November 7, 1986, will be considered by NFPA before final action is taken on the proposals.

ADDRESS: The 1987 Annual Technical Committee Reports is available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 522(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at

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the Annual Meeting in May of each year. The NFPA invites public comment on its technical committee reports.

Request for Comments

Interested persons may participate in the revisions of these reports by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in The 1987 Annual Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the document and give reasons for any recommendations. Comments received on or before November 7, 1986, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as The Technical Committee Documentation by March 27, 1987, prior to the Annual Meeting.

A copy of The Technical Committee Documentation will be sent automatically to each commentor. Action by NFPA members on the technical committee reports (adoption or rejection) will be taken at the Annual Meeting, May 18–21, 1987, at the Cincinnati Convention Center, Cincinnati, Ohio.

Dated: August 25, 1986.

Raymond G. Kammer,

Acting Director, National Bureau of Standards.

1987 Annual Technical Committee Reports

The following Annual NFPA Technical Committee Reports are available for comments from NFPA:

NFPA 1	Fire Prevention Code.....	P
NFPA 12A	Halon 1301 Fire Extinguishing Systems.	P
NFPA 12B	Halon 1211 Fire Extinguishing Systems.	P
NFPA 22	Water Tanks for Private Fire Protection.	P
NFPA 24	Private Fire Service Mains & Their Appurtenances.	P
NFPA 30	Flammable and Combustible Liquids Code.	P
NFPA 30A	Automotive & Marine Service Station Code.	P
NFPA 70B	Electrical Equipment Maintenance.	P
NFPA 71	Central Station Signaling Systems.	P
NFPA 72E	Automatic Fire Detectors.....	P
NFPA 79	Electrical Equipment of Industrial Machinery.	P
NFPA 85A	Fuel Oil 7 Natural Gas-Fire Single Burner Boiler-Furnaces.	C
NFPA 85F	Pulverized Fuel Systems.....	C
NFPA 85G	Furnace Implosions in Multiple Burner Boiler-Furnaces.	C
NFPA 86C	Industrial Furnaces Using a Special Processing Atmosphere.	C
NFPA 96	Vapor Removal from Commercial Cooking Equipment.	P
NFPA 123	Underground Coal Mines.....	N
NFPA 231F	Storage of Rolled Paper.....	P
NFPA 403	Aircraft Rescue & Fire Fighting at Airports/Heliports.	C
NFPA 412	Foam Fire Fighting Equipment on Aircraft Rescue & Fire Fighting Vehicles.	C
NFPA 415	Aircraft Fueling Ramp Drainage.	P
NFPA 416	Construction and Protection of Airport Terminal Bldgs.	P
NFPA 419	Master Planning Airport Water Supply Systems for Fire Prot.	P
NFPA 421	Aircraft Industrial Fire Protection Systems.	W
NFPA 501A	Firesafety Criteria for Mobile Home Install Sites & Comm.	P
NFPA 502	Limited Access Hwys, Tunnels, Bridges, Ele Rwys, & A/R Stru.	P
NFPA 505	Powered Industrial Trucks...	P
NFPA 664	Prev of Fires & Explo in Wood Proc & Woodworking Facilities.	P
NFPA 851	Hydroelectric Generating Plants.	N
NFPA 912	Places of Worship.....	N
NFPA 913	Protecting our Heritage.....	N
NFPA 1021	Fire Officer Professional Qualifications.	R
NFPA 1031	Professional Qualifications for Fire Inspector.	C
NFPA 1033	Fire Inspector & Investigator Professional Qualifications.	N
NFPA 1035	Professional Qualifications for Public Fire Educator.	N
NFPA 1041	Fire Service Instructor Professional Qualifications.	O
NFPA 1500	Fire Department Safety Programs.	N
NFPA 1501	Fire Department Safety Officer.	C
NFPA 1911	Testing Fire Department Pumpers.	N
NFPA 1921	Fire Department Portable Pumping Units.	R
NFPA 1972	Structural Fire Fighter Helmets.	P
NFPA 1974	Protective Footwear for Fire Fighters.	N
NFPA 1961	Self-Contained Breathing Apparatus for Fire Fighters.	C

Types of Action: C—Complete Revision; P—Partial Amendments; N—New; T—Tentative Adoption; R—Reconfirmation; W—Withdrawal.

[FR Doc. 86-19725 Filed 8-29-86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; A. Rus Hoelzel

On April 2, 1986, notice was published in the **Federal Register** (51 FR 11334) that an application had been filed by A. Rus Hoelzel, P.O. Box 563, Friday Harbor, Washington 98250, to take by harassment and skin biopsy killer whales *(Orcinus orca)*. The Permit authorizes up to five skin biopsies in the first year of research.

The Permit includes the following Special Conditions:

The Permit Holder is required to coordinate/consult with the Northwest Region, National Marine Fisheries Service prior to the initiation of research activities each year.

The Permit Holder shall not make more than one attempt per day to dart a given animal.

The Permit Holder shall not dart an individual whale more than once nor make more than two attempts to dart any individual whale during the duration of the permit.

The Permit Holder shall suspend all research activities pending review and approval by the National Marine Fisheries Service for continuation of authorized activities if any of the following occur:

a. There is any uncertainty as to the health or survival of a previously darted whale.

b. A previously darted whale shows signs of being detrimentally affected by the authorized activity such as an infection in the darted area.

c. There is any uncertainty as to changes in social organization of any of the pods due to repeated approach or the darting of whales within such pods.

d. A non-targeted whale is struck with a dart.

e. A targeted whale is struck anywhere other than the dorsal mid-body region not including the dorsal fin.

The research activity shall be terminated immediately if it is determined by a NMFS designated observer that the activity is causing a substantial disruption to the pod(s) being sampled. If such termination occurs, the Permit Holder shall provide a detailed report to NMFS describing the circumstances and modifications that would be made to the research program

to prevent a reoccurence of such disruption. Upon receipt of the report, NMFS will determine if authorization should be given to continue the research activities and the Permit Holder shall be notified accordingly.

The Permit Holder shall submit by December 31 of each year the Permit is valid a report describing activities that have been conducted under the Permit including an assessment of any effects the research is having on the animals. The Holder must request authorization to continue research activities for each subsequent year. The continuation of research in subsequent years is subject to approval by the Assistant Administrator, in consultation with the Marine Mammal Commission, based upon review of the results of the previous year's activities.

Notice is hereby given that on August 22, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: August 22, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–19549 Filed 8–29–86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Nutrition 21, having a place of business at San Diego, California, an exclusive right in the United States to manufacture, use, and sell products based on certain metal compounds of picolinic acid encompassed within the scope of the invention entitled "Dietary Supplementation with Essential Metal Picolinates," U.S. Patent 4,315,927. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Speciolist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86–19703 Filed 8–29–86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes to the Textile Category System; Correction

August 27, 1986.

On May 6, 1986 a notice was published in the **Federal Register** (51 FR 16734) which announced changes in the Textile Category System. In column two on page 16734 under the heading "Category and New TSUSA numbers effective July 1, 1986," lines 22, 26, 48 and 52, referring to textile products in Category 410, should be deleted.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–19749 Filed 8–29–86; 8:45 am]

BILLING CODE 3510-DR-M

Extending Coverage of the Korean Export Visa Requirement to Include Textiles and Textile Products of Vegetable Fibers (Other than Cotton) and Silk Blends

August 28, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 2, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Governments of the United States and the Republic of Korea has agreed to extend coverage of the existing export visa requirement to include textiles and textile products of vegetable fibers, other than cotton, such as ramie, linen, jute, abaca, etc., and silk blends in Categories 800 through 899, produced or manufactured in Korea and exported to the United States. This coverage is in addition to the previously established coverage of cotton, wool and man-made fiber textiles and textile products. The visa itself and the official authorized by the Korean Government to issue visas are not being changed at this time. Accordingly, in the letter published below the Chairman of CITA directs the Commissioner of Customs, effective on September 2, 1986, to amend the directive of November 4, 1982 to extend coverage to the aforementioned products, exported on or after September 1, 1986. A listing of the new categories with brief descriptions of each is published as an enclosure to that letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986.

Ronald I. Levin,

Acting Choirman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1986.

Commission of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of November 4, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry and withdrawal from warehouse for consumption in the United States of cotton, wool and man-made fiber textile products, produced or manufactured in Korea for which the authorities in Korea has not issued an appropriate export visa.

Effective on September 2, 1986, the directive of November 4, 1982 is hereby further amended to require that textiles and textile products of vegetable fibers, other than cotton, such as ramie, linen, jute, abaca, etc., and silk blends in Categories 800 trough 899 also be visaed if exported from Korea on or after September 1, 1986. A listing of the new categories with brief descriptions of each is enclosed.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Brief Description	Silk blends and other veg. fibers
Non-MFA Apparel	
Gloves and mittens	831
Hosiery	832
M&B suit-type jackets	833
M&B other coats and jackets	834
W,G&I coats and jackets	835
Dresses	836
Knit shirts, blouses, and tops	838
Not knit shirts and blouses	840
Skirts	842
M&B suits	843
W,G&I suits	844
Sweaters of veg. fibers	845
Sweaters of silk	846
Trousers, slacks and shorts	847
Robes and dressing gowns	850
Pajamas and other nightwear	851
Underwear	852
Neckwear	858
Other apparel	859
Non-MFA non-apparel	
Yarn and thread	800
Fabrics	810
Towels	863
Luggage	870
Handbags and flatgoods	871
Other made-ups	899

[FR Doc. 86-19815 Filed 8-29-86; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting; Change of Date

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting; change of date.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on September 9, 1986, in Washington, DC to review the status of major projects undertaken to implement the Cigarette Safety Act of 1984.

DATE: The meeting will be on September 9, 1986, from 9:30 a.m. to 5:00 p.m.

ADDRESS: The meeting will be in Room 703-A of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terri Buggs, Office of Program Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 18, 1986 (51 FR 29514) the Interagency Committee published a notice stating that this meeting would be on September 8 and 9, 1986. The meeting has been rescheduled for September 9, 1986, and will be for one day only.

Dated: August 26, 1986.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette Little Cigar Fire Safety.

[FR Doc. 86-19751 Filed 8-29-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

ACTION: Notice of Proposed Amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, Exec. Order No. 12473, as amended by Exec. Order No. 12484. The proposed changes are part of the annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985, and were developed from proposals previously made available for comment. *See* 51 FR 4530 (Feb. 5, 1986). One public comment on the subject of charges was received during that period; as a result of internal review, the amendments discussed in the comment were removed from the proposal and are pending further internal consideration.

The proposed changes reflected in this notice would amend the following Rules for Courts-Martial: R.C.M. 706(c)(1), Inquiry into the mental capacity or mental responsibility of the accused (Inquiry—By whom conducted); R.C.M. 916(e)(1), Self-defense (Homicide or aggravated assault cases); R.C.M. 1001, Presentencing procedure; R.C.M. 1010(c), Notice concerning post-trial and appellate rights; R.C.M. 1109, Vacation of suspension of sentence; R.C.M. 1112, Review by a judge advocate; R.C.M. 1114, Promulgating orders; R.C.M. 1201, Review by the Judge Advocate General; and R.C.M. 1305, Record of trial.

The proposed changes would amend Part III with respect to the following Military Rules of Evidence: Mil. R. Evid. 304, Confessions and Admissions; Mil. R. Evid. 613(a), Examining witness concerning prior statement; Mil. R. Evid. 902, Self-Authentication.

The amendments also include modifications to the following provisions of Part IV, Punitive Articles: Paragraph 4, Article 80—Attempts; Paragraph 32, Article 108—Military property of the United States—sale, loss, damage, destruction, or wrongful disposition; Paragraph 42, Article 117—Provoking speeches or gestures; Paragraph 46, Article 121—Larceny and wrongful appropriation; and Paragraph 89, Article 134 (Indecent language).

In addition to the foregoing, the proposed changes include other amendments to the Manual for Courts-Martial that will be required if pending legislation concerning the military justice system is enacted. *See* H.R. 2258, tit. VII, 99th Cong., 2d Sess. (July 25, 1986); S. 2638, tit. VIII, 99th Cong., 2d Sess. (July 8, 1986). The legislative proposals concern the defense of lack of mental responsibility, procedure for requesting enlisted membership on courts-martial, authority of reserve members to administer oaths, the staute of limitations, jurisdiction over reservists, time periods for post-trial submissions, and detail of judge advocates.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, The Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial; January 23, 1985. The September 21, 1986 deadline for comments has been established in the interest of the sound administration of military justice to ensure timely input and coordination of the proposed amendments in the context of pending legislation.

This notice is intended only to improve the internal management of the federal government. It is not intended to create any right of benefit, substantive or procedural, enforceable at law by a party against the United States; its agencies its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at the Office of the Judge Advocate General (Code 20), Department of the Navy, 200 Stovall Street, Room 9S09, Alexandria, VA 22332-2400. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the following address: Office of the Judge Advocate General (Code 20), ATTN: LCDR Don Welch, Department of the Navy, 200

Stovall Street, Room 9S09, Alexandria, VA 22332–2400.

DATE: Comments on the proposed changes must be received not later than September 21, 1986, for consideration by the Joint-Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: LCDR Don Welch, (202) 325–9890.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 27, 1986.

[FR Doc. 86–19747 Filed 8–29–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Executive Panel Advisory Committee; Role of the Naval Reserve in the Maritime Strategy Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Role of the Naval Reserve in the Maritime Strategy Task Force will meet September 22–23 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine or determine a strategic rationale for the employment of Reserve forces, the value of the Reserve to the total force, and the best way to develop Reserve resources. The entire agenda for the meeting will consist of discussions of key issues regarding changes in the strategic balance, the need for mobilization capability, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be keep secret in the interest of national defense and is, in fact, property classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 928; Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: August 27, 1986.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86–19682 Filed 8–29–86; 8:45 am]

BILLING CODE 3810-AE-M

Environmental Impact Statement, North Carolina

Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Acquisiton, Installation, and Operation of an Electronic Warfare Training System at Marine Corps Air Station (MCAS) Cherry Point BT–11 (Piney Island) Target Complex.

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Guidelines (40 CFR Part 1500), the Department of the Navy (DON), U.S. Marine Corps is preparing a DEIS for the establishment of the Mid-Atlantic Electronic Warfare Range (MAEWR) in airspace restricted area R–5306A (portions of Carteret, Pamlico, Craven, and Hyde Counties).

The purpose of the MAEWR is to provide a realistic means of improving the training of combat pilots in tactics and survival techniques in a "hostile" electronic environment., The MAEWR will be unique in that no weapons or missiles will be fired or bombs dropped; computers will be used to evaluate pilot and weapons systems performance.

As envisioned, the MAEWR will consist of three primary components: A Tactical Aircrew Combat Training System (TACTS), a Threat Emitter System (TES), and a Communications Data Link to connect the TACTS and TES with MCAS Cherry Point.

The TACTS system is a computer based data communication system and tracking network that provides real time control and monitoring of the flight dynamics and weapons system of an aircraft engaged in a training mission. The TACTS also records the events so that a debriefing of the aircrews can occur anytime after the mission. As planned, the Master TACTS Station will be located in the vicinity of Merimon, NC, with small remote stations located on some of the existing radio towers located within or adjacent to the restricted airspace.

The Threat Emitter System (TES) consists of devices that simulate the electronic signals of the defense systems that could be found protecting an enemy installation. Threat emitters will be arrayed in groups about BT–11/Piney Island, OLF Atlantic, and possibly on two or three locations in the private sector. The emitters on BT–11 will be placed on platforms above the marsh for emitter safety and security reasons.

The communications system will link the TACTS and TES data to MCAS Cherry Point. This will require construction of a tower approximately 340 feet tall, near Merrimon for a line-of-sight microwave link between BT–11 and the Air Station.

Initially, MAEWR users will consist of Marine aircraft and pilots from MCAS Cherry Point, NC and MCAS Beaufort, SC. As the range is completed, missions will be flown by squadrons from Naval Air Station (NAS) Oceana, and MCAS New River as well as from more distant active duty and reserve squadrons. All training will be at subsonic speeds.

The total procurement and installation program will cost slightly less than $100M over the next 7 to 10 years and upon completion will generate nearly fifty new jobs at MCAS Cherry Point.

Scoping for this DEIS was initiated on June 13, 1986 by a letter to potentially affected entities. The letter described the proposed action and requested formal imput which would identify environmental issues meriting in-depth analysis. The Marine Corps wishes to ensure all interested parties have the opportunity to focus the environmental analysis, and request comments be addressed to: Atlantic Division, Naval Facilities, Engineering Command, Norfolk, VA 23511–6287, Attn: Mr. C. Maguire (Code 2032E).

In order that comments be considered in a timely fashion, all scoping correspondence should be received not later than three (3) weeks after the publication date of this notice. When the DEIS is completed, a public notice of its availability will be made which will request review and comment by all interested parties. A Final Environmental Impact Statement (FEIS) will then be prepared to respond to the review comments.

Dated: August 27, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86–19683 Filed 8–29–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Assessment of Vocational Education Conference

The Department of Education will conduct a Design Conference for the National Assessment of Vocational Education Programs, which is required by section 403 of the Carl D. Perkins Vocational Education Act, 20 U.S.C.

2403. The purpose of the conference is to discuss the issues in vocational education that should be included in the National Assessment.

Presentations will be made by individuals who have been commissioned to present issue papers on the nine topical areas identified in the Act. Results from the conference will be considered by the Department in designing a series of procurements over the next two years to complete the National Assessment. The Department will submit final reports on the assessment to the Congress in January 1989.

Location of the Conference: Dupont Plaza Hotel, Dupont Circle, Washington, DC.

DATES: September 11 and 12, 1986.

FOR FURTHER INFORMATION CONTACT: John Wirt, Director, National Assessment of Vocational Education, Office of Planning, Budget, and Evaluation, 400 Maryland Ave., SW., (Rm. 3137, FOB-6), Washington, DC 20202. Telephone: (202) 245-8281.

Dated: August 26, 1986.

Bruce Carnes,

Deputy Under Secretary for Planning, Budget and Evaluation.

[FR Doc. 86-19670 Filed 8-29-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council

Date: October 9, 1986—9:00 a.m.

Place: Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW., Washington, DC

Contact: Patricia B. Dickinson, U.S. Department of Energy, Office of Oil, Gas, Shale and Coal Liquids, Mail Stop—FE-30, GTN, Washington, DC 20545, Telephone: 301-353-2430

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tentative Agenda

—Call to Order by Ralph E. Bailey, Chairman, National Petroleum Council.

—Remarks by the Honorable John S. Herrington, Secretary of Energy.

—Reports of Study Committees of the National Petroleum Council.

• Proposed Final Report of the Committee on U.S. Petroleum Refining, John K. McKinley, Chairman.

• Proposed Interim Report of the Committee on U.S. Oil & Gas Outlook, James L. Ketelsen, Chairman.

—Consideration of Administrative Matters.

—Discussion of Any Other Business Properly Brought Before the National Petroleum Council.

—Public comment (10 minute rule).

—Adjournment.

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contract Patricia B. Dickinson at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4.00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 26, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-19672 Filed 8-29-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9647-000, 4900-001, 6281-000, 8391-001, 9842-000]

Availability of Environmental Assessment and Finding of No Significant Impact.

Walter H., Patricia, L., Harry V. and Dorothy L. Hammeken, Lawrence R. Taft, Frontier Land & Power, Incorporated, Prodek, Inc., Ray F. Ward

August 28, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (of exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name.	State	Water body	Nearest town or county	Applicant
9647-000	Hammeken's Hydro	CA	Potter Valley Project (FERC No. 77) tailrace canal.	Potter Valley	Walter H., Patricia, L., Harry V. and Dorthy L. Hammeken.
			Licenses		
4900-001	Forestport	NY	Black River	Forestport	Lawrence R. Taft.
6281-000	Five Bears	CA	Ward Creek	Genessee	Frontier Land & Power, Inc.
8391-001	Silver Jack Dam	CO	Cimarron River	Montrose	Prodek, Inc.
9842-000	Ward Mill Dam	NC	Watauga River	Boone	Ray F. Ward.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE.,

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19735 Filed 8-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8734-002]

Burlington Energy Development Assoc. Surrender of Preliminary Permit

August 22, 1986.

Take notice that Burlington Energy Development Associates, Permittee for the proposed North Chuctamunda Project No. 8743, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 10, 1985, and would have expired May 31, 1988. The project would have been located on the North Chuctamunda Creek in Montgomery County, New York.

The Permittee filed the request on June 30, 1986, and the preliminary permit for Project No. 8743 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall reman in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19736 Filed 8-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Howell Petroleum Corp.); Order Granting Rehearing For Further Consideration

Issued: August 26, 1986.

Before Commissioners Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Howell Petroleum Corporation has filed a request for reconsideration in the above-captioned docket.[1] Rehearing of the order denying waiver issued on July 22, 1986, in *Howell Petroleum Corporation,* is granted solely for the purpose of affording the Commission additional time to consider the request for rehearing. Pursuant to Rule 713(b) of the Commission's Procedural Rules, no answer to this order, or the request for rehearing, will be entertained.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-19698 Filed 8-29-86; 8:45 am]

BILLING CODE 6717-01-M

[1] Howell's request for reconsideration will be treated as a request for rehearing.

[Docket No. RP86-124-001]

Alabama-Tennessee Natural Gas Co.; Proposed Tariff Changes

August 26, 1986.

Take notice that on August 21, 1986, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed below. According to § 381.103(b)(2)(iii), of the Commission's regulations (18 CFR 318.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 22, 1986.

First Revised Sheet No. 6
First Revised Sheet No. 12
Second First Revised Sheet No. 13
Substitute First Revised Sheet No. 16
Substitute Second Revised Sheet No. 17
Substitute First Revised Sheet No. 18
Substitute First Revised Sheet No. 19
Substitute First Revised Sheet No. 20
Substitute Original Sheet No. 20-A
Substitute Original Sheet No. 20-B

These tariff sheets are proposed to become effective July 1, 1986. Alabama-Tennessee states that the purpose of this filing is to replace Rate Schedule T-1 filed on June 2, 1986 in Docket No. TA86-3-1-000, *et al.* According to Alabama-Tennessee, Substitute First Revised Tariff Sheet No. 16 to Substitute Original Sheet No. 20-B contain the revised Rate Schedule T-1, which is designed to conform to the Commission's Regulations, especially § 284.7(b)(2). Alabama-Tennessee further states that certain language contained in that rate schedule which might limit its applicability has been eliminated or modified.

Finally, Alabama-Tennessee is proposing in First Revised Sheet No. 6, First Revised Sheet No. 12 and Second Revised Sheet No. 13 to revise its Rate Schedule SG-1 to apply to any customer who receives not more than 2,500 Mcf of natural gas on any day. According to Alabama-Tennessee, the present limit of that rate schedule is 1500 Mcf per day.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of practice and procedure. (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19737 Filed 8-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-688-000 and CI86-689-000]

Sea Robin Pipeline Co.; Applications For Abandonment Authorization

August 27, 1986.

Take notice that on August 20, 1986, Sea Robin Pipeline Company (Applicant), 600 Travis—P.O. Box 1478, Houston, Texas, filed in Docket No. CI86-688-000 an application on behalf of Pogo Producing Company (Pogo) and in Docket No. CI86-689-000 an application on behalf of Pennzoil Producing Company (Pennzoil) pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Rules of the Federal Energy Regulatory Commission for expedited abandonment of sales under certain expired gas purchase contracts between Applicant and Pogo and between Applicant and Pennzoil, all as more fully set forth in the applications on file with the Commission and open to public inspection.

The location, docket number, contract date, rate schedule, and applicable price categories under each of the expired contracts between Applicant and Pogo are:

Location of sale	Authorized in docket No.	Contract date	Rate schedule No.	Applicable prices
West Cameron block 532	CI76-649	July 16, 1976	9	§ 104 Post-1974.
West Cameron block 533	CI76-647	do	8	§ 104 Post-1974; § 102(d).
South Marsh Island block 125	CI77-609	June 15, 1977	19	§ 104 Post-1974; § 102(d).
South Marsh Island block 127	CI77-610	do	20	§ 104 Post-1974.
Eugene Island block 312	CI76-936	July 7, 1977	33	§ 104 73-74 Biennium; § 104 Post-1974.

Location of sale	Authorized in docket No.	Contract date	Rate schedule No.	Applicable prices
Eugene Island block 333	CI78-937	....do	34	§ 104 73-74 Biennium; § 104 Post-1974.
West Cameron block 563	CI78-934	....do	31	§ 104 Post-1974; § 102(d).

The location, docket number, contract date, rate schedule, and applicable price categories under each of the expired contracts between Applicant and Pennzoil are;

Location of sale	Authorized in docket no.	Contract date	Rate schedule No.	Applicable prices
West Cameron block 532 [1]	CI76-90	7/16/76	9	§ 104 Post-1974.
West Cameron block 533 [1]	CI78-86	....do	8	§ 104 Post-1974; § 102(d).
East Cameron block 334 [1]	CI78-91	6/17/76	12	§ 104 Post-1974; § 102(d).
East Cameron block 335 [1]	CI78-89	....do	11	§ 104 Post-1974; § 102(d).
South Marsh Island block 128 [1]	CI78-92	7/02/76	13	§ 104 Post-1974; § 102(d).
South Marsh Island block 126	CI77-288	1/7/76	313	§ 104 Post-1974; § 102(d).
South Marsh Island block 125	CI78-94	6/15/77	19	§ 104 Post-1974; § 102(d).
South Marsh Island block 125	CI77-612	....do	315	§ 104 Post-1974; § 102(d).
South Marsh Island block 127 [1]	CI78-95	....do	20	§ 104 Post-1974; § 102(d).
South Marsh Island block 127	CI77-611	....do	314	§ 104 Post-1974; § 102(d).
Eugene Island blocks 312, 333, 261, 262	CI77-702	7/7/77	325	§ 104 Post-1974; § 102(d).
Eugene Island block 333	CI77-702	....do	326	§ 104 Post-1974; § 102(d).
West Cameron block 609	CI77-702	....do	321	§ 104 Post-1974; § 102(d).
West Cameron block 617	CI77-702	....do	322	§ 104 73-74 Biennium; § 104 Post-1974; § 102(d).

[1] These sales were originally between Pennzoil Oil & Gas Inc. and Applicant. On August 13, 1985, Pennzoil Producing Co. filed in Docket Nos. C178-80, *et al.* a Notice of Merger and Request for Redesignation of Rate Schedules requesting authorization to continue sales Pennzoil Oil & Gas Inc. had made under these contracts.

Applicant states that Pogo and Pennzoil have refused to seek abandonment or to renegotiate these contracts, and have rejected Applicant's offer to release and transport these volumes to alternate markets. Applicant state further that despite the contracts' expiration, Pogo and Pennzoil have continued to demand performance from Applicant under a unique clause that provides that once the contract has terminated, Pogo and Pennzoil have no contractual obligations to Applicant, but "shall be entitled to enforce each and every provision of this Contract against" Applicant until Pogo and Pennzoil "shall become entitled in accordance with all applicable laws, rules, regulations and orders to cease once and for all making deliveries to" Applicant. Applicant, asserts that the contract provisions reflect Pogo's and Pennzoil's implied duty to seek abandonment, but that Pogo and Pennzoil have shown that they have no intention of meeting that obligation.

Applicant contends that the contracts sought to be abandoned contain terms (such as an 85 percent minimum annual take requirement with ratable take provisions and a price provision that sets the rate at the Natural Gas Policy Act maximum ceiling price with no market out provisions) that would not be tolerated in today's competitive natural gas markets, but that survive only because of Pogo's and Pennzoil's manipulation of the regulatory process.

Applicant states that minimum annual takes at 85 percent of the deliverability of gas-well gas and 100 percent of the oil well gas under the expired contracts herein amount to approximately 32,200 Mcf/d. Applicant further states that Pogo's gas has a weighted average cost almost $.30/MMBtu higher than Applicant's weighted average cost of gas, and Pennzoil's gas has a weighted average cost approximately $.78/MMBtu higher than Applicant's. Applicant asserts that the abandonment sought in this application is consistent with the Commission's recent orders encouraging abandonments as a means of serving the public convenience and necessity in (1) benefiting national natural gas markets by permitting the free flow of competitively priced gas; (2) benefiting producers with effective contracts by alleviating shut-ins of natural gas and generating additional cash flow; and (3) benefiting pipelines by reducing take-or-pay exposure to the extent that gas can be released and sold to alternate markets.

Applicant further states that denial of abandonment of the expired contracts would result in (1) artificial infusion of unrealistically high volumes of high priced gas under expired contracts into national gas markets; (2) near monopolization of Applicant's limited purchase capacity by producers with expired contracts, to the detriment of other producers with currently effective contracts covering gas such as reservoir damage gas that ordinarily would be accorded a higher priority in Applicant's nominations; (3) frustration of Applicant's efforts to become an Order 436 transporter, indifferent to the merchant function; (4) unnecessary escalation of Applicant's already considerable take-or-pay exposure; and (5) abdiction of the Commission's responsibilities over Section 7 certificates in favor of parties who seek, in a period of transition toward deregulation, to manipulate the regulatory process into a shield against market-based competition.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19738 Filed 8-29-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59224A; FRL-3072-4]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-51 and TME-86-52. The test marketing conditions are described below.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTRACT: H. Dayton Eckerson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613C, 401 M

St. SW., Washington, DC 20460, (202–475–8994).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commece, use and disposal of the substances for test marketing purposes will not present any unresonable risk of injury to health or the environment. EPA may impose restriction on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–51 and TME–86–52. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME–86–51 and TME–86–52. A bill of lading accompaning each shipment must state that use of the substances is restricted to that approved in the TMEs. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substances produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

T 86–51

Date of Receipt: July 9, 1986.
Notice of Receipt: July 21, 1986 (51 FR 21687).
Applicant: Confidential.
Chemical: (G) Anionic substituted aromatic.
Use: (G) Fibers finish component.
Production Volume: Confidential.
Number of Customers: Confidential.
Worker Exposure: Confidential
Test Marketing Period: Six months.
Commencing on: August 20, 1986.
Risk Assessment: EPA identified no significant concerns for injury to human health or the environment. Therefore, the test market substance will not present any unreasonable risk of injury to human health or the environment.
Public Comments: None.

T 86–52

Date of Receipt: July 9, 1986.
Notice of Receipt: July 21, 1986 (51 FR 21687).
Applicant: Confidential.
Chemical: (G) Anionic substituted aromatic.
Use: (G) Fibers finish component.
Production Volume: Confidential.
Number of Customers: Confidential.
Worker Exposure: Confidential.
Test Marketing Period: Six months.
Commencing on: August 20, 1986.
Risk Assessment: EPA identified no significant concerns for injury to human health or the environment. Therefore, the test market substance will not present any unreasonable risk of injury to human health or the environment.
Public Comments: None
Commencing on: August 20, 1986

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 20, 1986.

Martin Halper,

Acting Office Director, Office of Textile Substances.

[FR Doc. 86–19715 Filed 8–29–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59782; FRL–3073–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 48066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86–224 and 86–225, September 8, 1986
Y 86–226, September 9, 1986

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–224

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Binder in coating. Prod. range: 116,883 to 233,766 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–225

Importer. BASF Engineering Plastics.
Chemical. (S) Ethene polymer with 2-propenoic acid, 1,1-dimethylethyl ester and 2-propenoic acid.
Use/Production. (S) Site-limited and industrial use as a coating to protect metal products such as aluminum, steel and copper, also used as an adhesive in lamination examples are laminating aluminum, sheeting, paper or nylon film to polyethylene.
Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–226

Manufacturer. Emery Chemicals.
Chemical. (S) Adipic and terephthalic acid polymers with neopentyl glycol, ethylene glycol and isodecyl alcohol.

Use/Production. Industrial plasticizer for polyvinyl chloride resin. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 4 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. Disposal by publicly owned treatment work (POTW).

Dated: August 22, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86-19716 Filed 8-29-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51638; FRL-3072-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-two such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-1539, 86-1540, 86-1541, and 86-1542; November 13, 1986.

P 86-1543, 86-1544, 86-1545, 86-1546, 86-1547, 86-1548, 86-1549, 86-1550, 86-1551, 86-1552, 86-1553, 86-1554, 86-1555, 86-1556, 86-1557, 86-1558, and 86-1559; November 16, 1986.

P 86-1560, 86-1561, 86-1562, 86-1563, 86-1564, 86-1565, 86-1566, and 86-1567; November 17, 1986.

P 86-1568, 86-1569, 86-1570, 86-1571, 86-1572, and 86-1573; November 18, 1986.

P 86-1574; November 19, 1986.

P 86-1575, and 86-1576; October 29, 1986.

P 86-1577; November 19, 1986.

P 86-1580, 86-1581, and 86-1582; October 29, 1986.

Written comments by:

P 86-1539 86-1540, 86-1541, and 86-1542; October 14, 1986.

P 86-1543, 86-1544, 86-1545, 86-1546, 86-1547, 86-1548, 86-1549, 86-1550, 86-1551, 86-1552, 86-1553, 86-1554, 86-1555, 86-1556, 86-1557, 86-1558, and 86-1559; October 17, 1986.

P 86-1560, 86-1561, 86-1562, 86-1563, 86-1564, 86-1565, 86-1566, and 86-1567; October 18, 1986.

P 86-1568, 86-1569, 86-1570, 86-1571, 86-1572, and 86-1573; October 19, 1986.

P 86-1574; October 20, 1986.

P 86-1575 and 86-1576; September 30, 1986.

P 86-1577; October 20, 1986.

P 86-1580, 86-1581 and 86-1582; September 30, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51638]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1539

Manufacturer. Confidential.

Chemical. (G) Silicon substituted organic amine.

Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 1.0 gm/kg; Irritation: Skin—Severe, Eye—Severe; Ames test: Non-mutagenic.

Exposure. Processing: dermal, a total of 3 workers, up to 4 hrs/da, up to 25 day/yr.

Environmental Release/Disposal. Less than 1 to 5 kg/batch incinerated.

P 86-1540

Manufacturer. Confidential.

Chemical. (G) Poly-epsilon-caprolactonediol derivative of an alkyl diol, polymer with methylene bis (isocyanatobenzene), aromatic initiated (alkylene ether) glycol and alkanol.

Use/Production. (G) Reactive elastomer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1541

Manufacturer. Confidential.

Chemical. (G) Prepolymer of sulfurated prepolymer.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1542

Importer. Naarden International U.S.A.

Chemical. (S) 3-Methyl-2-(2-propenyl)-phenol, 5-methyl-2-(2 propenyl)-phenol.

Use/Import. (S) Industrial fragrance ingredients in plastics, soaps, and cosmetics. Import range: Confidential.

Toxicity Data. Acute oral: >1.029 ml/kg; Irritation: Skin—Severe, Eye—Moderate to severe; Ames test: Weak mutagen.

Exposure. Processing: dermal, a total of 25 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Minimal release to air.

P 86-1543

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (S) Polysilicate, dimethylvinylsiloxy, trimethylsiloxy-.

Use/Import. (S) Ingredient for rubber compound. Import range: 800 to 1,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-1544

Importer. Confidential.

Chemical. (G) Disubstituted-heterocycle, inorganic salt.

Use/Import. (S) Industrial colorant for textiles. Import range: Confidential.

Toxicity Data. Acute oral: >5.0 gm/kg; Irritation: Skin—Non-itritant, Eye—Irritant.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1545

Manufacturer. Confidential.

Chemical. (G) Stryenated acrylate methacrylate.

Use/Production. (G) Industrial polymer having a dispersive use. Prod. range: 100,000 to 601,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 31 workers, up to 8 hrs/da, up to 116 da/yr.

Environmental Release/Disposal. 9 to 140 kg/batch released to land. Disposal by approved landfill.

P 86–1546

Manufacturer. Confidential.
Chemical. (G) Aliphatic alicyclic acid.
Use/Production. (G) Industrial dispersively used coating. Prod. range: 30,000 to 200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 30 workers, up to 8 hrs/da, up to 66 da/yr.
Environmental Release/Disposal. 3 to 140 kg/batch released to land. Disposal by approved landfill.

P 86–1547

Manufacturer. The Dow Chemical Company.
Chemical. (G) Thermoplastic Polyurethane polymer.
Use/Production. (S) Industrial injection molding of polyurethane articles. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P–86–1548

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyesteramide polymer.
Use/Production. (G) Industrial injection molding of articles. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P–86–1549

Manufacturer. The Dow Chemical Company.
Chemical. (G) Carboxylic terminated polyester prepolymer.
Use/Production. (S) Site-limited and industrial intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P–86–1550

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyester amide.
Use/Production. (S) Industrial extrusion and injection molding of articles. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P–86–1551

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyesteramide polymer.
Use/Production. (G) Industrial extrusion and injection molding of articles. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P–86–1552

Manufacturer. The Dow Chemical Company.
Chemical. (G) Alpha, alpha'-bis (methylphenyl)-1,3 benzenediethanol.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release. Disposal by publicly owned treatment work (POTW) and navigable waterway.

P–86–1553

Manufacturer. The Dow Chemical Company.
Chemical. (G) Carboxylic terminated polyester prepolymer.
Use/Production. (S) Site-limited and industrial intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P–86–1554

Importer. Confidential.
Chemcial. (G) Acrylic polymer.
Use/Import. (G) Protective and decorative coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No. release.

P–86–1555

Importer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Import. (G) Metal coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P–86–1556

Importer. Confidential.
Chemical. (G) Isocyanate, hydroxy-terminated linear polyester-diol, alkyldiol piperazine polymer.
Use/Import. (S) Industrial and consumer color fixing agent for leather. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P–86–1557

Importer. Confidential.
Chemical Oxepanone polymer with polyalkoxy compound, trifunctional polyol, substituted propanoic acid, a diamine and a diisocyanate.
Use/Import. (S) Industrial and consumer color fixing agent for leather. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86–1558

Manufacturer. Confidential.
Chemical. (G) Diethylenetriamine, polymer with an alkyl diacid and a monocyclic acid anhydride.
Use/Production. (S) Site-limited intermediate prepolymer for further use in production of polymers. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. 25 kg/batch released to water. Disposal by POTW.

P 86–1559

Manufacturer. Confidential.
Chemical. (G) Diethylenetriamine, polymer with an alkyl diacid, a monocyclic anhydride and a quaternized substituted alkyl diamine.
Use/Production. (G) Industrial and consumer used in inks in open, non-dispersive uses. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. 25 kg/batch released to water. Disposal by POTW

P 86–1560

Manufacturer. Confidential.
Chemical. (G) Sorbitan ester.
Use/Production. (S) Chemical intermediate, surfactant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1561

Manufacturer. Confidential.
Chemical. (G) Polyoxyethylene sorbitan ester.
Use/Production. (S) Surfactant. Prod. range: Confidential
Toxicity Data. No data submitted.

Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1562

Manufacturer. Confidential.
Chemical. (G) Acyclic acid, bicycloheptane diester with 2,2'-[isopropylidenebis(p-phenyleneoxy) diethanol.
Use/Production. (G) Open, non-dispersive use, Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. 0.1 to 2 kg/batch released to land. Disposal by approved landfill.

P 86–1563

Importer. Confidential.
Chemical. (G) Diphenol diester.
Use/Import. (G) Industrial contained use of PMN substance for polymer formulation. Import range: Confidential.
Toxicity Data. Acute oral: >5.0 gm/kg; Irritation: Skin—Mild, Eye—Mild; Ames test: Non-mutagenic.
Exposure. Processing: dermal, a total of 36 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 0.01 to 0.02 kg/day released to air, water, and land. Disposal by licensed disposal company and incineration or approved landfill.

P 86–1564

Manufacturer. Confidential.
Chemical. (G) Functional styrenated methacrylate acrylate.
Use/Production. (G) Industrial polymer having dispersive use. Prod. range: 50,000 to 100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 31 workers, up to 8 hrs/da, up to 13 da/yr.
Environmental Release/Disposal. 4 to 167 kg/batch released to land. Disposal by approved landfill.

P 86–1565

Manufacturer. Owens-Corning Fiberglass.
Chemical. (G) Aromatic polymer.
Use/Production. (S) Industrial resin. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1566

Manufacturer. Owens-Corning Fiberglass.
Chemical. (G) Reactive epoxy film former.
Use/Production. (G) Size ingredient. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1567

Manufacturer. Confidential.
Chemical. (G) U.V. curable polyurethane.
Use/Production. (G) Floor-tile coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1568

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane.
Use/Production. (G) Used in preparation of coating. Prod. range: 40,000 to 250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 44 workers, up to 8 hrs/da, up to 47 da/yr.
Environmental Release/Disposal. 2 to 325 kg/day released to land. Disposal by approved landfill.

P 86–1569

Manufacturer. Spencer Kellogg Products/NL Industries, Inc.
Chemical. (G) Polyurethane lacquer.
Use/Production. (G) Used in an open, non-dispersive manner. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–1570

Importer. Shin-Estu Silicones of America, Inc.
Manufacturer.
Chemical. (G) Polysilicate, trimethylsiloxy-.
Use/Import. (G) Industrial ingredient for silicone adhesive.
Import range: 3,000 to 6,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–1571

Manufacturer. Confidential.
Chemical. (G) Alkylalkoxysilane.
Use/Production. (G) Industrial additive for polymerization catalyst. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 4 workers, up to .50 hr/da, up to 17 da/yr.
Environmental Release/Disposal. 1 to 2.2 kg/batch released to land. Disposal by Resource Conversation and Recovery Act (RCRA).

P 86–1572

Manufacturer. Confidential.
Chemical. (G) Alkylalkoxysilane.
Use/Production. (G) Industrial additive for polymerization catalyst. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 0.5 hr/da, up to 17 da/yr.
Environmental Release/Disposal. 1 to 2.2 kg/day released to land. Disposal by the RCRA.

P 86–1573

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane.
Use/Production. (G) Used in coating preparations. Prod. range: 40,000 to 251,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 47 workers, up to 8 hrs/da, up to 47 da/yr.
Environmental Release/Disposal. 1 to 325 kg/batch released to land. Disposal by approved landfill.

P 86–1574

Manufacturer. Confidential.
Chemical. (G) Complex dioic acid.
Use/Production. (G) Dispersively used industrial coating. Prod. range: 50,000 to 300,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 31 workers, up to 8 hrs/da, up to 124 da/yr.
Environmental Release/Disposal. 3 to 118 kg/batch released to land. Disposal by approved landfill.

P 86–1575

Importer. Confidential.
Chemical. (G) Thixotropic alkyd resin.
Use/Import. (S) Used as a modifier in long oil alkyds to improve flow. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1576

Importer. Confidential.
Chemical. (G) Alkyd resin.
Use/Import. (S) Used to form protective primer coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure Confidential.
Environmental Release/Disposal. Confidential.

P 86–1577

Manufacturer. Confidential.
Chemical. (G) Modified, maleated metal resinate.

Use/Production. (S) Publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1580

Importer. Confidential.

Chemical. (G) Alkyd resin.

Use/Import. (S) Used in industrial primer applications, it affords fast dry, hardness and chemical resistance when blended with conventional primer systems. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal Confidential.

P 86-1581

Importer. Confidential.

Chemical. (G) Alkyd resin.

Use/Import. (S) Used in industrial primer applications, it affords fast dry, hardness and chemical resistance when blended with conventional primer systems. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1582

Importer. Confidential.

Chemical. (G) Alkyd resin.

Use/Import. (S) Used in industrial primer applications it affords fast dry, hardness and chemical resistance when blended with conventional primer systems. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: August 25, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86-19717 Filed 8-29-86; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL-3072-8]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of waiver of Federal preemption.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant pursuant to section 209(b) of the Clean Air Act to adopt and enforce amendments to its emission standards and enforcement procedures for the certification of new modified imported vehicles. California amended its emission standards and enforcement procedures to permit certification for new imported nonconforming vehicles. Previously, California had prohibited the sale of registration of new nonconforming vehicles. The new "modifier certification procedures" require the modified vehicles to meet emission standards as well as durability, driveability and configuration control requirements. Modifiers are required to warrant emission controls, provide a network of service facilities for warranty repairs and demonstrate financial responsibility. The new procedures also provide for defect reporting, dealership inspections and in-use testing.

ADDRESSES: A copy of the above standards and procedures, the decision document containing an explanation of the Administrator's determination and the record of those documents used in arriving at this decision, are available for public inspection during normal working hours (8:00 a.m. to 4:00 p.m.) at the U.S. Environmental Protection Agency, Central Docket Room (Docket EN-86-15), West Tower Lobby, 401 M Street, SW., Washington, DC 20460. Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Steven M. Spiegel, as noted below.

FOR FURTHER INFORMATION CONTACT: Steven M. Spiegel, Attorney/Advisor, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, Washngton, DC 20460. Telephone: (202) 382-2526.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended (Act), 42 U.S.C. 754(b) (1982), for recent regulatory amendments to its emission standards and enforcement procedures for "California Certification and Compliance Test Procedures for New Modifier Certified Motor Vehicles" (modifier certification procedures).

Section 209(b) of the Act provides that if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of: whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California does not need the State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these amended standards and accompanying enforcement procedures do not undermine California's prior determinations that the state standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards. No commenters presented evidence that California arbitrarily and capriciously reached this determination. I agree with California's determination, and thus, I cannot find California's determination to be arbitrary and capricious.

CARB has consistently demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emissions standards and test procedures are technologically feasible and present no inconsistency with Federal certification requirements and are, therefore, consistent with section 202(a) of the Act. No commenter submitted sufficient data or other information to satisfy its burden of persuading EPA that the standards are not technologically feasible within available lead time, considering costs, or that California's certification procedures are inconsistent with the Federal certification procedures. Thus, I cannot find that California'a amendments will be inconsistent with section 202(a) of the Act. Accordingly, I must grant the waiver requested by California.

My decision will affect not only persons in California but also the modifier-importers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of

publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings, if any, brought by EPA to enforce these requirements.

This action is not a rule as defined by Executive Order 12291. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Additionally a regulatory Impact Analysis is not being prepared under Executive Order 12291, for this waiver determination since it is not a rule.

This action also is not a "rule"as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Dated: August 26, 1986.

Don R. Clay,

Acting Assistant Administrotor for Air and Radiation.

[FR Doc. 86-19712 Filed 8-29-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59228; FRL-3073-2]

Lignosulfinic Acid, Triethanolamine Salt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: September 17, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59228]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division, (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-57

Close of Review Period. October 1, 1986.

Manufacturer. Westvaco Corporation.

Chemical. (S) Lignosulfonic acid, triethanolamine salt.

Use/Production. (G) Dispersant for agricultural products, dyestuffs and colorants. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: August 22, 1986.

V. Paul Fuschini,

Acting Division Director, Information Monagement Division.

[FR Doc. 86-19714 Filed 8-29-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3072-5]

Science Advisory Board; Radiation Advisory Committee; Drinking Water Subcommittee; Open Meeting—September 25-26, 1986

Under Pub. L. 92-463, notice is hereby given that a meeting of the Drinking Water Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held on September 25-26, 1986 at the U.S. Environmental Protection Agency, South Conference Area Room #6 on Thursday, and #12 on Friday. The Conference Area is located on the Ground Floor, near the EPA Washington Information Center, Waterside Mall, 401 M Street, SW, Washington, DC. The meeting will begin at 8:30 a.m. on Thursday and adjourn no later than 5:00 p.m. Friday. The Subcommittee will review the Office of Drinking Water's *Radionuclides in Drinking Water* and four supporting documents. Copies of the documents being reviewed may be obtained by calling or writing Dr. Joseph Cotruvo (202) 382-7575 at the Office of Drinking Water, WH-550D, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The meeting is open to the public; however, seating is limited. Any member of the public wishing to attend or obtain information should contact Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on September 22, 1986. The telephone number is (202) 382-2552.

Dated: August 21, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-19713 Filed 8-29-86; 8:45 am

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

New TV Stations; Applications for Consolidated Hearing; Jacksonville Broadcasting Co. and James Capers, Jr.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/State	File No.	MM Docket No.
A. Sidney Poplin d/b/a Jacksonville Broadcasting Company, Jacksonville, NC.	BPCT-860304KE.	86-344
B. James Capers, Jr., Jacksonville, NC.	BPCT-860422KG.	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standerdized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
Air hazard	B
Comparative	A, B
Ultimate	A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text

of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Stephen F. Sewell,

Assistant Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-19505 Filed 8-29-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Extramural Research Support Programs

AGENCY: National Institute of Mental Health.

ACTION: Issuance of notice of the revision of the program announcement on Extramural Research Support Programs.

SUMMARY: The National Institute of Mental Health announces the availability of a revised Extramural Research Programs announcement, MH-86-18. This announcement reflects changes in programs resulting from the recent reorganization of the Institute. It also contains the new schedule for the review of applications and an updated list of contact persons for the ongoing extramural research programs.

FOR FURTHER INFORMATION CONTACT: Anne W. Cooley, Extramural Policy Branch, Division of Extramural Activities, National Institute of Mental Health, Parklawn Building, Room 9-95, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4673.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-19667 Filed 8-29-86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 86F-0341]

Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene-carbon monoxide copolymers as components of food-packaging materials.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3948) has been filed by The Dow Chemical Co., 1803 Building, Door 7, Midland, MI 48674, proposing that Part 177 (21 CFR Part 177) of the food additive regulations be amended to provide for the safe use of ethylene-carbon monoxide copolymers as components of food-packaging material.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 5, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-19660 Filed 8-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86G-0321]

Donath-Kelterei; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 6G0314) has been filed by Donath-Kelterei, Gutenbergstrasse 4, 8043 Unterfohring, West Germany, proposing to affirm that the puree and juice from the sea buckthorn berry *Hippophae rhamnoides* L. is generally recognized as safe (GRAS) for use as a food ingredient.

DATE: Comments by November 3, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 6G0314) has been filed by Donath-Kelterei, Gutenbergstrasse 4, 8043 Unterföhring, West Germany, proposing to affirm that the puree and juice from the sea buckthorn berry *Hippophae rhamnoides* L. is GRAS for use as a food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before November 3, 1986, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 25, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-19679 Filed 8-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86G-0202]

The Hereld Organization; Filing of Petition for Affirmation of GRAS Status; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the GRASP number in the notice that announced the filing of a petition for affirmation of GRAS status on behalf of the Hereld Organization.

FOR FURTHER INFORMATION CONTACT: Lola Batson, Regulations Editorial Staff (HFC-222), 5600 Fishers Lane, Food and Drug Administration, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-12097, appearing on page 19612 in the **Federal Register** of Friday, May 30, 1986, in the first column, third line and in the second column under "Supplementary Information," seventh line, the GRASP number is changed to read "(GRASP 5G0305)".

Dated: August 25, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-19677 Filed 8-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0294]

EMS-CHEMIE AG; Filing of Food Additive Petition

Correction

In FR Doc. 86-17182, appearing on page 27461, in the issue of Thursday, July 31, 1986, first column, in the third line of the "SUMMARY", "EMS-CHEMIC" should read "EMS-CHEMIE", and in the seventh line, "contact" was misspelled.

BILLING CODE 1505-01-M

[Docket No. 86G-0289]

The National Fish Meal and Oil Association; Filing of Petition For Affirmation of GRAS Status

Correction

In FR Doc. 86-17183, beginning on page 27461, in the issue of Thursday, July 31, 1986, make the following correction:

On page 27461, third column, in the **"FOR FURTHER INFORMATION CONTACT"** caption, third line, "NW." should read "SW."

BILLING CODE 1505-01-M

[Docket No. 86F-0339]

Rohm & Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rohm & Haas Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with magnesium nitrate as an antimicrobial agent for fillers, binders, pigment slurries, sizing solutions, and coating formulations employed in the manufacture of paper and paperboard for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3947) has been filed by Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one mixture with magnesium nitrate as an antimicrobial agent for fillers, binders, pigment slurries, sizing solutions, and coating formulations employed in the manufacture of paper and paperboard for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 25, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-19675 Filed 8-29-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OA-1-N]

Meeting of the Task Force on Long-Term Health Care Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces a meeting of the Task Force on Long-Term Health Care Policies.

DATE: The meeting will be held on September 25, 1986 from 1:00 p.m. to 4:00 p.m., and on September 26, 1986 from 9:00 a.m. to 3:00 p.m., e.s.t. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Marriott Hotel, 1999 Jefferson Davis Highway, Crystal City, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dennis DeWitt, 202-245-0063.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Long-Term Health Care Policies, created by Section 9601 of the Consolidated Omnibus Budget Reconciliation Act of 1985, will evaluate current issues relating to private long-term care insurance. To ensure the evolution of sound private long-term care policies and to help foster consumer confidence in them, the Task Force will develop guidelines that can be used by State regulators, persons involved in the insurance industry, and consumers who may wish to purchase such policies.

The term "long-term health care policy" means an insurance policy, or similar health benefits plan, that is designed for or marketed as providing (or making payment for) health care services (such as nursing home care and home health care) or related services (which may include home and community-base services), or both, over an extended period of time.

The Task Force on Long-Term Health Care Policies will advise the Secretary of Health and Human Services and the Administrator of the Health Care Financing Administration concerning the development of insurance policies for long-term care that are privately marketed to individuals or groups. The Task Force will develop recommendations for long-term health care policies, including recommendations designed to: (1) Limit marketing and agent abuse for those

policies; (2) assure the dissemination of information to consumers necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage; (3) assure that benefits provided under the policies are reasonable in relationship to premiums charged; and (4) promote the development and availability of long-term health care policies which meet these recommendations.

Agenda

Agenda items for the meeting will include orientation and swearing in for the Task Force members, presentations from experts in the field of long-term care insurance policies and persons conducting studies in this subject area, and discussions of directions and issues to be addressed at the next meeting.

Agenda items are subject to change as priorities dictate.

Dated: August 26, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86-19743 Filed 8-29-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-06-4133-15]

Rock Springs District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Rock Springs, Interior.

ACTION: Notice of Tour and Meeting of the Rock Springs District Advisory Council.

DATE: Tour will be held September 24, 1986, at 9:00 A.M.

ADDRESS: Rock Springs District Office, Bureau of Land Management, U.S. Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Donald Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, WY 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: A tour of surface reclamation at Bridger Coal Company will leave the district Office parking lot on US 191 North of Rock Springs at 9:00 A.M. Wednesday, September 24 and return about 5:00 P.M. the same day. If time allows a stop at a gas processing plant may be made. While the public is invited, BLM will not provide transport.

The meeting will begin at 9:00 A.M. Thursday, September 25, in the District Office Conference Room.

The Agenda is:

Discussion of the Field Tour
Trona Lease Sale Status
Update on Hickey Mountain
Update on Riley Ridge
Coal Program Briefing
Public Comment Period
Arrangements for the Next Meeting

Donald Sweep,

District Manager.

[FR Doc. 86-19775 Filed 8-28-86; 11:28 am]

BILLING CODE 4310-22-M

Office of Surface Mining Reclamation and Enforcement

North Chickamauga Creek Lands Unsuitable for Mining Petition

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare a combined petition evaluation document/environmental impact statement, and notice of scoping meeting and scoping comment period for the petition to designate certain lands in the North Chickamauga Creek watershed in Hamilton and Sequatchie Counties, Tennessee as unsuitable for surface coal mining operations.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSMRE) intends to prepare a combined petition evaluation document/environmental impact statement (PED/EIS) for the decision on a petition to designate certain lands within the Chickamauga Creek watershed in Hamilton and Sequatchie Counties, Tennessee as unsuitable for surface coal mining operations in accordance with Section 522 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. OSMRE has identified four alternatives that the combined PED/EIS would evaluate as described in the supplementary information of this notice. OSMRE requests that other agencies and the public submit written comments or statements on the need for an EIS on the petition and the scope of the issues which should be analyzed in the combined document.

DATES: Written comments must be received by 5 p.m. local time, November 3, 1986. Oral comments may be presented at the scoping meeting to be held at the Hamilton County Court House at 7:00 p.m. on September 23, 1986.

ADDRESSES: Written comments must be received at, or hand delivered to, the Office of Surface Mining Reclamation and Enforcement, Tennessee Division of Permitting, Attn: Willis Gainer, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902. Copies of the petition are available upon request from the Office of Surface Mining Reclamation and Enforcement at the above address. The public record on the petition is available for review during normal working hours at the OSMRE office listed above.

FOR FURTHER INFORMATION CONTACT: James L. Chisholm at the OSMRE office listed above (telephone: (615) 673-4330 or FTS 854-4330).

SUPPLEMENTARY INFORMATION: The Guardians of North Chickamauga Creek, Inc. filed a petition on November 16, 1983, with the State of Tennessee, Commissioner of the Department of Health and Environment, Surface Mining Division to designate an area lying within the North Chickamauga Creek watershed as unsuitable for all surface coal mining operations under the Tennessee Coal Surface Mining Law, Tennessee Code Annotated 59-8-331(a)(2) and (3). On October 1, 1984, OSMRE assumed authority for surface coal mining and reclamation operations for Tennessee, including the processing of lands unsuitable petitions (49 FR 38874-38897). The document was officially transferred to OSMRE on December 10, 1984.

OSMRE determined the petition incomplete according to 30 CFR 942.764(a) and returned the petition to the petitioners on January 25, 1985. On April 30, 1986, the petition was refiled with OSMRE, with certain modifications, including a reduction in size of the area covered (reduced from 100 to 80 square miles). The petition was declared administratively complete and accepted for processing on June 27, 1986. The 15-page petition and 87 pages of exhibits were submitted by Robert B. Pyle, attorney for the Guardians of the North Chickamauga Creek, Inc., and the Sierra Club. Mr. Pyle's address is P.O. Box 16416, Chattanooga, Tennessee 37416.

The major allegations of the petition are:

1. Mining operations are incompatible with exising State and local land use plans.

2. Mining will affect fragile and historic lands and result in significant damage to esthetic values and natural systems including rare and endangered species.

3. Mining could result in substantial loss of water supply.

4. Mining is unsuitable to the watershed due to the condition of area roads, endangering public safety.

The several alternatives available to OSMRE for evaluation in the combined document range from not designating any of the lands in the area as unsuitable, to designating all the lands in the petition are as unsuitable including designating only parts of the area as unsuitable. The alternatives are as follows:

Alternative 1—Designate the entire petition area as unsuitable for all surface coal mining operations.

Alternative 2—Not designate any of the area as unsuitable for all surface coal mining operations.

Alternative 3—Designate parts of the petition area as unsuitable for all surface coal mining operations.

A. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would be incompatible with existing State or local land use plans or programs.

B. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would affect fragile or historic lands and result in significant damage to important esthetic values and natural systems.

C. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations could result in a substantial loss or a reduction of long-range productivity of water supply.

Alternative 4—Designate the entire petition area as unsuitable for surface coal mining but allow undeground mining with or without certain restrictions.

A scoping comment period is intended to raise the relevant issues to be addressed by the combined document. The scoping meeting will be held at the Hamilton County Courthouse on September 23, 1986, at 7:00 p.m. The comment period will close on November 3, 1986, at 5:00 p.m. local time. OSMRE seeks public comments in relation to the scope of issues to be addressed by the impact evaluation, including impacts and alternatives that should be addressed. Written comments submitted should be specific and confined to issues pertinent to the petition. The public comments received during the scoping period will assist OSMRE in making decision on the petition evaluation and in preparing the environmental impact statement. OSMRE believes that the proposed action is a major Federal action that may significantly affect the quality of the human environment and may require the preparation of an EIS. OSMRE additionally gives notice here that should information or analysis show that the proposed action does not require an EIS, it will terminate the environmental impact statement process thorugh an appropriate notice in the **Federal Register**.

Dated: August 28, 1986.

Brent Walquist,

Assistant Director, Program Operations.

[FR Doc. 86-19732 Filed 8-29-86; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30859]

Cape Cod & Hyannis Railroad Inc.; Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts Cape Cod & Hyannis Railroad, Inc., from 49 U.S.C. Subtitle IV.

DATES: This exemption is effective September 5, 1986. Petitions to reopen must be filed by September 22, 1986.

ADDRESS: Send pleadings referring to Finance Docket No. 30859 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Mary E. O'Neal, Cargill, Masterman & Culbert, One Lewis Wharf, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7693.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289-4357 (DC Metropolitan Area) or toll free (800) 424-5403.

Decided: August 25, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-19702 Filed 8-29-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-268 (Sub-No. 1X]

Portland Terminal Co. Abandonment Exemption; Cumberland County, ME

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Portland Terminal Company of four portions of track subject to standard labor protection.

DATES: This exemption is effective on October 2, 1986. Petitions to stay must be filed by September 12, 1986, and petitons for reconsideration must be filed by September 22, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-285 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Kinga M. LaChapelle, Portland Terminal Company, Iron Horse Park, No. Billerica, MA 01862

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7693.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: August 25, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Gradison, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-19807 Filed 8-29-86; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., in Washington, DC, on October 2, 1986, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred

to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirements set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: August 27, 1986.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 86-19707 Filed 8-29-86; 8:45 am]

BILLING CODE 4810-25-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Availability of Proposed Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a0.

DATE: Comments must be received in writing on or before November 3, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval:

1. Department of the Air Force, Directorate of Administration (N1-AFU-86-58). Equipment request records.

2. Department of Agriculture, Commodity Stabilization Service (N1-161-86-1). Wage determination forms, contract forms for grain storage structures, and maps, charts, and graphs relating to corn moisture, core acreager allotments in Missouri, and planted acres in the north central states, 1924-37.

3. Department of Justice, U.S. Parole Commission (NC1-438-85-2). Reports, software and related records of the Parole Decision History System (PDH) and the Parole Decision Making System (PDM). The PDH and PDM have been designated for permanent retention and eventual transfer to the National Archives.

4. National Archives and Records Administration (N1-GRS-86-3). Revision of General Records Schedule 6, item 1b to decrease retention period.

5. Tennessee Valley Authority, Division of Medical Services (NC1-142-85-10). Comprehensive schedule.

6. Tennessee Valley Authority (NC1-142-85-12). Comprehensive schedule for the Power Program function.

7. Veterans Administration, Department of Veterans Benefits (N1-15-86-7). Specially Adapted Housing Grant Record Cards maintained in VA Central Office as an administrative control.

8. Veterans Administration, Department of Veterans Benefits (N1-15-86-10). Loan Guaranty Property Management System Reports.

Dated: August 25, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86-19757 Filed 8-29-86; 8:45 am]

BILLING CODE 7515-0-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-528 and 50-529]

Arizona Public Service Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-41 and NPF-51 issued to Arizona Public Service Company et al. (the licensees),[1] for operation of Palo Verde Nuclear Generating Station, Units 1 and 2, located in Maricopa County, Arizona. The request for amendments was submitted by letter dated July 23, 1986, as supplemented by letter dated August 26, 1986.

The proposed amendments would revise Tables 2.2-1 and 3.3-2 to the Technical Specifications for both units to change the setpoints involved with the Low Reactor Coolant Flow (LRCF) reactor trip function. The LRCF trip function provides protection in the event of (1) a reactor coolant pump sheared shaft or (2) a main steam line break with a concurrent loss of offsite power. The proposed changes would still be within the bounds of the current safety analyses for both events. The purpose for the proposed changes is to accommodate process noise without tripping the reactor.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the

[1] The other licensees are the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority.

Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to these amendments follows:

Criterion 1

The proposed changes would not increase the probability or consequences of any accident previously evaluated since the proposed changes are still within the bounds of the current safety analyses. The proposed changes are intended to reduce the probability of a reactor trip due to process noise.

Criterion 2

The proposed changes would not create the possibility of a new or different kind of accident from any previously analyzed since they would not introduce new systems, modes of operation, failure modes or other plant perturbations. The would only adjust the settings for the LRCF trip function.

Criterion 3

The proposed changes would not involve a significant reduction in the margin of safety. While some of the proposed setpoints are less conservative than the existing setpoints, the proposed setpoints are still within the bounds of current safety analyses.

Therefore, since the application for amendments appears to satisfy the criteria specified in 10 CFR 50.92, the NRC staff proposed to determine that the requested changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By October 2, 1986, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person who interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center,

Phoenix, Arizona 85073, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85007.

Dated at Bethesda, Maryland, this 27th day of August, 1986.

For the Nuclear Regulatory Commission.

E.A. Licitra,

Acting Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 86-19763 Filed 8-29-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-5 (EP Exercise); ASLBP No. 86-533-01-OL]

Long Island Lighting Co.; (Shoreham Nuclear Generating Plant, Unit 1)

August 26, 1986.

Atomic Safety and Licensing Board

Before Administrative Judges: Morton B. Margulies, Chairman Jerry R. Kline, Frederick J. Shon.

Order

(Canceling Prehearing Conference of September 3, 1986)

A prehearing conference had been set for September 3, 1986, at Hauppauge, New York, to consider proposed contentions and a discovery schedule.

The Board has received the following filings from the parties:

(a) Intervenors' proposed contentions, August 1, 1986, 162 pages;

(b) Applicants' objections for proposed contentions, August 15, 1986, 148 pages;

(c) Staff's answer to proposed contentions, August 15, 1986, 48 pages;

(d) Intervenors response to Applicant and Staff, August 25, 1986, 300 pages.

It is not possible for the Board to review, in a meaningful manner, such extensive and complex filings before the start of the scheduled prehearing conference on September 3. The Board therefore cancels the scheduled prehearing conference and will reschedule it, as appropriate.

Dated at Bethesda, Maryland this 26th day of August, 1986.

It is so ordered.

The Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Judge.

Jerry R. Kline,

Administrative Judge.

Frederick J. Shon,

Administrative Judge.

[FR Doc. 86-19761 Filed 8-29-86; 8:45 am]

BILLING CODE 7590-01-M

Docket Nos. 50-338 and 50-339

Virginia Electric and Power Co. et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 84 and 71 to Facility Operating License Nos. NPF-4 and NPF-7, issued to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee), which amended the Licenses for operation of the North Anna Power Station, Units 1 and 2 (the facilities), located in Louisa County, Virginia. Amendment No. 84 to Facility Operating License No. NPF-4 for the North Anna Power Station, Unit No. 1 is effective within 60 days from the date of issuance. Amendment No. 71 to Facility Operating License No. NPF-7 for the North Anna Power Station, Unit No. 2 is effective within 30 days from the date of issuance.

The amendments revise the North Anna Power Station, Units No. 1 and 2 Facility Operating Licenses No. NPF-4 and No. NPF-7, and the Technical Specifications, respectively, to increase the presently rated core power level of 2775 Megawatts-thermal to 2893 Megawatts-thermal. The amendments allow the two units to operate at a Nuclear Steam Supply thermal power of 2905 Megawatts-thermal. The amendments represent an increase of approximately 4.5 percent over the currently licensed core power rating and nuclear steam thermal power rating. The amendments will increase the electrical power output for each unit by 32 Megawatts-electrical.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action were published in the **Federal Register** on July 26, 1985 (50 FR 30550). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission prepared an Environmental Assessment and Finding of No Significant Impact (August 11, 1986, 51 FR 28784) related to the action and concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action significantly beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated April 1973, as amended.

For further details with respect to this action, see (1) the application for amendments dated May 2, 1985, as supplemented by letters dated February 6, April 30, June 4, July 3, and August 20, 1986, (2) Amendment Nos. 84 and 71 to Facility Operating License Nos. NPF-4 and NPF-7, (3) and the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A.

Dated at Bethesda, Maryland, this 25th day of August, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A

[FR Doc. 86-19762 Filed 8-29-86; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; New System of Records

AGENCY: Pension Benefit Guaranty Corporation.

BEST COPY AVAILABLE

VOL 51 ISS 169 SE 2 1986 UMI

ACTION: Notice of new system of records.

SUMMARY: This document provides notice that the Pension Benefit Guaranty Corporation has established a system of records, System PBGC–11, pertaining to its "call detail program" that collects and uses information on the use of the Corporation's telephone system by employees and other persons. The document also provides information concerning clarifying changes in System PBGC–11, Call Detail Records, and the routine uses that were previously proposed.

EFFECTIVE DATE: September 2, 1986.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006, 202–956–5051 (202–956–5059 for TTY AND TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On August 1, 1986, the Pension Benefit Guaranty Corporation ("PBGC") published in the **Federal Register**, 51 FR 27614, a "Notice of new system of records and routine uses" that is designated as PBGC–11 and entitled "Call Detail Records." Interested persons were invited to submit written data, views, or comments on the proposed routine uses and none were received. Therefore, the routine uses in System PBGC–11 are effective on September 2, 1986, as proposed.

Some comments concerning other provisions of System PBGC–11 were received from reviewers within the government, and the PBGC has decided that clarification of the uses of this new system of records is needed. Accordingly, the PBGC is making several changes in System PBGC–11 at this time. The changes are as follows:

First, the PBGC proposed to incorporate by reference into System PBGC–11, five of the six previously established General Routine Uses for information in the PBGC's systems of records (number 5 was excluded). Those General Routine Uses are set forth in the Notice published on August 1, 1986, and were previously published in the Prefatory Statement to the PBGC's 1982 Annual Publication of its systems of records (47 FR 58404, December 30, 1982). The PBGC now has determined that General Routine Use number 2, relating to disclosure to a federal, state or local agency requesting information from the PBGC, also is inapplicable to System PBGC–11. Accordingly, that General Routine Use is not incorporated into this system of records.

Second, also in connection with the incorporation by reference of the General Routine Uses that apply to System PBGC–11, the PBGC has determined that the application of specific General Routine Uses to System PBGC–11 will be clearer if a specific paragraph listing the incorporated uses is added. Accordingly, the PBGC has added a new paragraph 1 to the section entitled "ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES." The other two routine uses are renumbered accordingly.

Third, the PBGC is adding a specific disclosure rule following the "ROUTINE USES" section of System PBGC–11. This disclosure rule relates to the statutory provision in 5 U.S.C. 552a(b)(12) that records may be disclosed "to a consumer reporting agency in accord with section 3711(f) of title 31." This disclosure rule was inadvertently omitted from the system of records as published previously.

Because these changes are not subject to the notice and comment requirement applicable to routine uses, there is no change in the September 2, 1986, effective date.

Based on the foregoing, the PBGC hereby establishes System PBGC–11, as follows.

(Sec. 3, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a))

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

PBGC–11

SYSTEM NAME:

Call Detail Records—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contract employees and consultants of the PBGC and officials of the labor organization representing PBGC employees who have made long distance or other toll calls from PBGC telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of PBGC telephones to place long distance and other toll calls; records indicating assignment of telephone extension numbers to employees and other covered individuals; records relating to location of telephone extensions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. General Routine Uses 1, 3, 4 and 6 of the PBGC's Prefatory Statement of General Routine Uses apply to this system. These General Routine Uses were published at 47 FR 58404.

2. Records and data may be disclosed to employees, contract employees and consultants of the PBGC and officials of the labor organization representing PBGC employees to determine their individual responsibility for telephone calls, but only to the extent that such disclosures consist of comprehensive lists of called numbers and length of calls.

3. Pursuant to Title VII of the Civil Service Reform Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of PBGC employees in the bargaining unit.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

Storage:

Records are maintained manually in file folders, in machine readable form, and on floppy disks.

Retrievability:

Records are retrieved by name of employee or other covered individual or telephone extension number, or by telephone number called.

Safeguards:

Manual and machine readable records are maintained in filing cabinets or offices in areas of restricted access that are locked after office hours; floppy disks are locked in a vault with limited access in an office that is locked after office hours.

Retention and disposal:

Records are retained for 3 years and then destroyed.

System Manager(s) and Address:

Manager, Office Services Division, Human Resources and Support Services Department, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006.

Notification Procedures:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

Record Access Procedures:

Same as notification procedure.

Contesting Record Procedures:

Same as notification procedure.

Record Source Categories:

Telephone assignment records; call detail listings; private telephone billing information.

[FR Doc. 86-19706 Filed 8-29-86; 8:45 am]

BILLING CODE 7708-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on September 18 and 19, 1986 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on September 18, recess and reconvene at 8:00 a.m. on September 19. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The September 18 session and a portion of the September 19 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456-7740, prior to 3:00 p.m. on September 17. Ms. Boyd is also available to provide specific information regarding time, place and agenda for the open session.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

August 25, 1986.

[FR Doc. 86-19759 Filed 8-29-86; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23552; File No. SR-CBOE-86-26]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

On July 22, 1986, the Chicago Board Options Exchange, Inc. submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the current one-year index option escrow receipt pilot program for an additional six month period.

The proposed rule change was noticed in Securities Exchange Act Release No. 23510 (August 6, 1986), 51 FR 29038 (August 13, 1986). No comments have been received yet on the proposed rule change.

The Commission previously approved a one-year pilot program by the options exchanges that permits the use of escrow receipts, in lieu of margin, that are collateralized by either cash, cash equivalents, or one or more qualified equity securities, or a combination of the foregoing, to cover short call options contracts overlying broad-based index options.[3]

The CBOE has indicated that because of start-up delays the pilot program has only been effective for nine months. Accordingly, in its filing CBOE has requested that we extend the pilot program for an additional six-month period until February 20, 1987. CBOE believes this should enable market participants to use the program for a sufficient amount of time to collect enough data to assess the pilot. In addition, CBOE states that this additional data can be included in the report that is required to be submitted to the Commission at the pilot's conclusion.

In reviewing CBOE's request to extend the pilot, we note that the Commission has previously considered and approved the concept of an index option escrow receipt pilot program. In addition, we note that a six month extension of the pilot should provide additional information to determine whether the program should be modified, cancelled, or approved on a permanent basis.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6[4] and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that: (1) The proposed rule change has been published for comment for thirteen days, and no comments have yet been received; and (2) CBOE's rule change would only result in extending the existing program previously approved by the Commission for an additional six months and would not otherwise alter the pilot's original terms.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

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[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] *See* Securities Exchange Act Release No. 22323 (August 13, 1985), 50 FR 33439 (August 19, 1985) and File Nos. SR-Amex-84-33, SR-CBOE-84-28, SR-NYSE-84-35, SR-PSE-85-19, and SR-Phlx-85-18.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2)(1982).

[6] 17 CFR 200.30-3(a)(12)(1985).

VOL 51 ISS 169 SE 2 1986 UMI

Dated: August 25, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-19752 Filed 8-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23553; SR-CSE-86-4]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Cincinnati Stock Exchange, Inc. ("CSE") submitted on July 7, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to expand the number of Proprietary Memberships authorized under the CSE's Code of Regulations. Under the proposed charge, the CSE would amend Article II, section 5.2(b) of its Code of Regulations to increase the maximum number of Proprietary Memberships from 200 to 275.

According to the Exchange, all but 3 of the 200 Certificates of Proprietary Membership currently authorized have been issued. The CSE states that this expansion of the number of proprietary memberships will enable the Exchange to meet an anticipated increase in demand for memberships and enhance the Exchange's ability to raise capital. This proposed rule change was adopted by the CSE's Board of Trustees on June 5, 1986, and was approved by the Exchange's membership on June 19, 1986.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 23428, July 14, 1986) and by publication in the **Federal Register** (51 FR 26323, July 22, 1986). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 25, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-19753 Filed 8-29-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 25, 1986.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

ALZA Corporation
Class A Common Stock, No Par Value (File No. 7-9142)
Circus Circus Enterprises, Inc.
Common Stock, $0.10 Par Value (File No. 7-9143)
Dana Corporation
Common Stock, $1.00 Par Value (File No. 7-9144)
Di Giorgio Corporation
Common Stock, $2.50 Par Value (File No. 7-9145)
Emhart Corporation
Common Stock, $1.00 Par Value (File No. 7-9146)
Hall (Frank B.) & Co., Inc.
Common Stock, $0.50 Par Value (File No. 7-9147)
HealthAmerica Corporation
Common Stock, $0.01 Par Value (File No. 7-9148)
Marion Laboratories, Inc.
Common Stock, $1.00 Par Value (File No. 7-9149)
Nord Resources Corporation
Common Stock, $0.01 Par Value (File No. 7-9150)
The Pittston Company (Virginia)
Common Stock, $1.00 Par Value (File No. 7-9151)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 16, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-19755 Filed 8-29-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 25, 1986.

The above mentioned named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Public Service Company of New Hampshire
Common Stock, $5.00 Par Value (File No. 7-9140)
Ensource Inc. (New)
Common Stock, $.10 Par Value (File No. 7-9141)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 16, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-19754 Filed 8-29-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-742]

Application and Opportunity for Hearing; FBS Mortgage Corp.

August 26, 1986.

Notice is hereby given that FBS Mortgage Corporation (the "Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting the Applicant from certain reporting requirements under section 13 and from the operation of section 16 of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than September 22, 1986 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 86-19756 Filed 8-29-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 86-07]

Eighth Coast Guard District Industry Day

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: On 5 November 1986, Commander, Eighth Coast Guard District will sponsor an Industry Day program to provide for an exchange of ideas, opinions and information concerning developments affecting the Coast Guard and the maritime community and its related industries. The format for the day will be as follows:

1. General Session; greeting, opening remarks
2. Group Discussions; four, separate, small group discussions focusing on the Deep Sea Industry, Off Shore Industry, Towing Industry and Shore Side Facilities.
3. No host Lunch (approximate cost $20.00)
4. Resume small group discussions.
5. General Session; closing remarks, adjournment

Tentative topics of discussion for the small groups are:

a. Oversized tow-inland navigation regulations
b. Status of Berwick Bay High Water regulations
c. Port Security Card program
d. New Boundary LIne
e. Requirement for Pilots
f. New licensing regulations
g. Certificates of Alternate Compliance
h. Special Purpose Vessels (i.e. liftboats, dive boats, etc.)

Persons desiring to attend the program are encouraged to provide additional topics for consideration. Pre-registration for the program is required. Contact the below named Officers to submit topics for discussion and to obtain pre-registration forms.

DATE: 5 November 1986, 8:00 A.M. to 5:00 P.M.

ADDRESS: Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, LA 70140.

FOR FURTHER INFORMATION CONTACT: LCDR Dean W. Kutz, USCG or LT Gregory A. Santer, USCG c/o Commander, Eighth Coast Guard District (mvs), Hale Boggs Federal Building, Room 1341, 500 Camp Street, New Orleans, LA 70130-3396; telephone number (504) 589-6271.

Dated: August 21, 1986.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 86-19722 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160—406 MHz Emergency Locator Transmitters (ELT); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on September 25-26, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Introductory Remarks; (2) Review and Approve Terms of Reference, RTCA Paper No. 63-86/SC160-1; (3) Briefing on the Report of the *Ad Hoc* Committee; (4) Committee Discussion of Extent of the Problem; (5) Define Scope of Work and Develop a Plan for Accomplishment; (6) Task Assignments; (7) Other Business; and (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 21, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86-19663 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on September 19, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks and Introductions; (2) Approval of Minutes of the Meeting

Held on July 18, 1986; (3) Executive Director's Report; (4) Special Committee Activities Report for July/August 1986; (5) Report of the Fiscal & Management Subcommittee; (6) Approval of RTCA CY87 Operations and Special Budgets; (7) Consideration of Proposals to Establish New Special Committees; (8) Report of Special Committee 155 Steering Committee; (9) Consideration for Approval of Committee Reports; (10) Other Business; and (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 21, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86-19664 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

National Highway Safety Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Highway Safety Advisory Committee to be held September 19, 1986, in Washington, DC. The meeting will be held in Room 2230 at the DOT Headquarters Building, 400 Seventh St., SW., from 8:00 a.m. to 4:00 p.m. This meeting is the rescheduled meeting from August 13-14, 1986 which was postponed on August 11. The agenda will include swearing in of new members, and briefings on NHTSA highway safety emphasis areas.

The meeting is open to the interested public, buy my be limited in attendance to the space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the NHTSA Executive Secretariat, Room 5221, DOT Headquarters Building, telephone 202-366-2870.

Issued in Washington, DC, on August 27, 1986.

Sharon Goldstein,

Acting Director, Executive Secretariat.

[FR Doc. 86-19700 Filed 8-29-86; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Report of New Matching Program

AGENCY: Veterans Administration.

ACTION: Notice of Matching Program—Veterans Administration Compensation and Pension Records/State and Local Wage, Tax and Employment Security Records.

SUMMARY: The Veterans Administration (VA) is providing notice that the Office of Inspector General (OIG) will expand the series of computer matches it is conducting of VA Compensation and Pension records with State and local wage, tax and employment security records.

The goals of these matches are: (1) To verify the eligibility of recipients to receive VA benefits and detect unwarranted payments to persons who may be ineligible for veterans benefits; and (2) to assess the effectiveness of the Eligibility Verification Report which is used for the self-reporting of income by pension beneficiaries. Subsequent computer matches will also include checks on the eligibility of beneficiaries having disabilities based on "industrial inadaptability" or "inability to obtain or retain employment."

This notice supersedes the Reports of New Matching Programs published in the **Federal Register** on March 28, 1983 (48 FR 12883) and January 5, 1984 (49 FR 689).

DATES: It is anticipated the matches will commence in approximately August 1986.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Mr. Jack H. Kroll, Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, area code 202-389-5297.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: August 18, 1986.

Thomas K. Turnage,

Administrator.

Report of Matching Program: Veterans Administration Compensation and Pension Records/State and Local Wage, Tax and Employment Security Records.

a. *Authority.* The Inspector General Act of 1978 (Pub. L. 95-452).

b. *Program Description.*

(1) *Purpose.* The Office of Inspector General (OIG) plans to expand its existing program of matching lists of veterans and beneficiaries who are receiving compensation or pension payments with the wage, tax and employment security records of State and local agencies. These matches are for the purpose of verifying the eligibility of the recipients, identifying those who may be ineligible or not fully entitled to such benefits, and to assess the validity of the Eligibility Verification Report required of each pension recipient. As an additional component of these computer matches, the OIG will examine information reflecting on the eligibility of recipients having disabilities based on "industrial inadaptability" or "inability to obtain or retain employment."

Title 38 United States Code, requires that Veterans Administration (VA) benefit payments be reduced or terminated for recipients who are found to be ineligible.

(2) *Procedures.* The matches, which are presently being conducted with a number of States in accordance with notices published earlier, are being expanded in scope as described in paragraph a. (1), above. The matches will be performed by the VA OIG whenever possible; however, in some instances State or local agencies may actually perform the match in order to comply with local laws or rules on the release of records. For the purpose of this matching program, the term "State" will include the District of Columbia and the Commonwealth of Puerto Rico.

In conducting the matches the OIG will request that State and local agencies provide computerized excerpts of records containing names, identifying data and summaries or descriptions of the records. When it is necessary that a State or local agency perform the match,

the OIG will provide a computerized extract of VA records containing only the social security numbers of veterans and beneficiaries. When it is necessary to verify the identity of veterans or beneficiaries who may be listed in State or local agency files, the OIG may furnish additional identifying data such as date of birth, place of birth, sex, etc. In accordance with Title 38 U.S.C. 3301, the names and addresses of veterans and beneficiaries will not be made available to State or local agencies except: (a) In connection with a proceeding for the collection of a debt owed to the United States and resulting from the receipt of VA benefits; or (b) in response to a written request from a civil or criminal law enforcement agency for a public health or safety purpose provided by law.

It is planned that the first match under this expanded scope will be with records from Missouri. If this match demonstrates the effectiveness of matching VA with State and local agency records to detect overpayments of veterans benefits to recipients with disabilities, the Inspector General may include this additional check in matches of the remaining States and selected local agencies. The schedule and order of the remaining matches will depend on current workload, available resources and other factors; and therefore, cannot be projected. These matches may be repeated on a cyclical or intermittent basis.

In this computer matching program, a "hit" is defined as the identification of an individual in the records that are being matched or compared with each other. Hits resulting from these matches of VA records with State and local wage, tax and employment security records will be treated as follows: The OIG will verify the identity of the persons listed as hits and review the information obtained through the match. If the information indicates that the information provided to the VA in applying for a benefit may not have been accurate, or that there has been a change in the eligibility of the person that has not been reported to the VA, the information and identity of the person will be referred to the Department of Veterans Benefits (DVB) for further review and follow-up action. Employers or other knowledgeable sources may be contacted in the verification process. A reduction, suspension or termination of benefit payments may ensue when the circumstances warrant and after due process has been afforded to the individual. Action to recover overpayments may also be taken. When there are reasonable grounds to believe there has been a violation of criminal law, the matter may be investigated and referred for prosecutive consideration.

c. *Records to be matched.* Lists extracted from the following system of records will be matched with State and local wage, tax and employment security records:

Compensation, Pension, Education and Rehabilitation Records—VA (58VA21/22/28) as set forth on page 738 of the **Federal Register** publication Privacy Act Issuances, 1984 Compilation, Vol. V and amended at 50 FR 26875 (June 28, 1985); 50 FR 31453 (Aug. 2, 1985), 51 FR 24781 (July 8, 1986); and 51 FR 25142 (July 10, 1986). The disclosure of information from this system of records, for the purpose of the matching program, is permitted by a published routine use.

d. *Period of match.* Intermittently from approximately August 1986.

e. *Safeguards.* Records used in the matches and data generated, as a result, will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have a need for the information in order to conduct the matches or followup actions. All of the material will be stored in locked containers when not in use. Prior to releasing any information from the VA system of records to a State or local agency, the OIG will obtain a written agreement from the agency specifying that the matching file will remain the property of the VA and will be returned to the OIG or will be destroyed upon completion of the match, as appropriate; that it will be used and accessed only to match the files previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose; and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the VA OIG or by DVB.

f. *Retention and disposition.* Records not resulting in "hits" will be destroyed by burning, shredding, or electronic erasing within three months of the completion of the individual match. Records resulting in "hits" will be retained by either the OIG or the Department of Veterans Benefits until the completion of any necessary administrative or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

[FR Doc. 86-19730 Filed 8-29-86; 8:45 am]
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VOL
51
ISS
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federal register

Tuesday
September 2, 1986

Part II

Department of Education

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children; Notice of Proposed Annual Funding Priorities

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priorities.

SUMMARY: The Secretary proposes annual funding priorities for Auxiliary Activities—Innovative Programs for Severely Handicapped Children.

DATE: Comments must be received on or before October 2, 1986.

ADDRESS: Comments should be addressed to R. Paul Thompson, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 4615) Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: P. Paul Thompson. Telephone: (202) 732-1161.

SUPPLEMENTARY INFORMATION: The Auxiliary Activities program, authorized by section 624 of the Education of the Handicapped Act (EHA), supports research, development or demonstration, training, and dissemination activities which meet the unique educational needs of handicapped children and youth, and are consistent with the purposes of Part C of the EHA (20 U.S.C. 1424). In accordance with this authority, the Secretary proposes to fund projects under the following priorities for fiscal year 1987. These priorities address the needs of deaf-blind and severely handicapped children which have been identified by professionals, paraprofessionals, and parents as being those most critical at this time. Projects will be funded for up to 36 months, except where otherwise indicated, subject to annual review of progress, the availability of Federal funds, and other factors (see 34 CFR 75.251-75.253).

Proposed Priorities

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications submitted under the Auxiliary Activities—Innovative Programs for Severely Handicapped Children in fiscal year 1987 that respond to one of the priorities described below.

(a) *Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment.* This priority supports projects which, on a district-wide basis (local educational agency) or cross-district basis, design, implement, and evaluate innovative approaches to meet the needs of severely handicapped (including deaf-blind) children and youth in the least restrictive and least segregated environments. Projects supported under this priority must provide for and demonstrate the capacity to effectively serve deaf-blind children and youth. Projects under this priority must:

(1) Develop new approaches for delivery of integrated educational services, which includes providing severely handicapped children who are currently being served in segregated environments with special educational and related services in programs at facilities with nonhandicapped children;

(2) Demonstrate through the provision of project services the clear movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(3) Demonstrate the delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community reference skills, and employment skills;

(4) Promote acceptance of severely handicapped children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with handicapped and nonhandicapped peers and adults;

(5) Demonstrate effective involvement of families in the planning and delivery of services to their severely handicapped children or youth.

It is expected that awards will be made at approximately $100,000 per year for up to three years under this competition.

(b) *State-wide systems change.*

(1) Applications submitted under this priority must:

(i) Develop, in a conjunction with the EHA Part B State plan, activities to improve the quality of special education and related services in the State to severely handicapped (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated environments to integrated environments;

(ii) Implement the planned services;

(iii) Evaluate the effectiveness of the implementation; and

(iv) Disseminate information about project outcomes.

(2) Planning for improved services under this priority must:

(i) Identify resources available in the State to provide the needed services to the severely handicapped children and youth;

(ii) Establish procedures to improve the EHA Part B State plan child-find activities pertaining to all severely handicapped children and youth in the State;

(iii) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, nonsegregated, least restrictive environments. These services must at minimum contain the components specified for projects proposed for funding under Priority (a)—Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment—in this notice;

(iv) Establish a project advisory board having representation of parents of project children and youth, providers of services to this population, and State and professional organizations, which is responsible for providing significant input on project management procedures; and

(v) Formulate and implement formal, written policies and procedures with relevant State, local, and professional organizations for coordinating services provided to the target population, including the elimination of overlapping and redundant services.

In the past few years, contracts and cooperative agreements have been awarded to establish similar State-wide service delivery systems. States receiving those contracts or cooperative agreements are not eligible for competing under this priority.

It is expected that awards will be made at approximately $175,000 per year for up to three years under this competition.

(c) *Inservice training—services for severely handicapped children and youth.* This priority supports projects which utilize effective inservice training activities which meet the needs of qualified personnel to provide services to severely handicapped children and youth such as those who are deaf-blind, profoundly handicapped, traumatically head injured, medically dependent, multi-sensory impaired, motorically impaired, and severely behaviorally disordered. Personnel receiving inservice training under this priority must be either:

(1) Currently providing educational service to these severely handicapped children and youth; or

(2) Committed by signed contract or other such agreement to provide educational services to these severely handicapped children and youth for at least a one-year period following the completion of the inservice training provided under this priority.

The inservice training provided must be based on innovative practices for the education of these children and youth in least restrictive school and community environments. These practices could include, for example, training sequences for development of job-related skills determined to be critical for retention of students in supported work placements; use of augmentative communication devices for deaf-blind children placed in least restrictive environments; parental involvement in monitoring the progress of their severely handicapped children; and application of research project findings with severely handicapped children in normalized, least restrictive environments.

Training may be made available for professionals and paraprofessionals in educational, vocational, health, social services and other related service fields. All inservice training projects must be planned in consideration of the comprehensive system of personnel development required under Part B of the EHA (*See* 34 CFR 300.139) and demonstrate ongoing coordination and cooperation between universities and State agencies. Projects could provide for release time of participants, options for academic credit, salary step credit, certification renewal, or updating professional skills. Funds made available under this priority may not be used for payment of stipends or allowances for travel and other expenses for trainees or their dependents.

It is expected that awards will be made at approximately $107,000 per year for up to three years under this competition.

(d) *Nondirected demonstration projects for severely handicapped (other than deaf-blind) children and youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant educational needs including vocational needs of severely handicapped (other than deaf-blind) children and youth. Unlike research studies, these projects must focus on direct services to these children and youth, exemplifying innovative, effective approaches to their education.

Applicants proposing to conduct a project must fully describe and justify the particular approach to be demonstrated, citing, where relevant, any pertinent research upon which the demonstration's approach is based.

It is expected that awards will be made approximately $106,000 per year for up to three years under this competition.

(e) *Model project for the most severely handicapped children and youth.* This priority supports projects which design, implement, and evaluate innovative approaches for educating the most severely handicapped children and youth who are traumatically head injured, medically dependent, multi-sensory impaired, motoricaly impaired, or severely behaviorally disordered. Projects must reflect on-going coordinated planning between relevant health and educational agencies. Project activities must emphasize the active integration of the participating children and youth with nonhandicapped peers in least restrictive environments. Services provided in these projects must evidence awareness and, where appropriate, adoption or adaptation of educational procedures validated for effectiveness with other severely handicapped children and youth.

It is expected that awards will be made at approximately $125,000 per year for up to three years under this competition.

(f) *Communication skills development for deaf-blind children and youth.* This priority supports projects which identify critical educational problems in developing communication skills in deaf-blind children and youth, design and demonstrate innovative programs to effectively resolve those problems, and disseminate information about project findings and recommendations. Projects must address one of the following issues:

(1) Appropriate communication modes;

(2) Standardized procedures for communication (language) sampling within a range of social contexts;

(3) The sequence of communicative behaviors that follow the presymbolic stage and are predictive of later linguistic or communicative functioning;

(4) Procedures for assessment of communicative exchanges between deaf-blind persons and others (parents, siblings, peers, teachers, etc.);

(5) Effective intervention strategies that facilitate effective communicative exchanges between deaf-blind persons and others; or

(6) Procedures for selecting and evaluating technological aids with attention to the vocabulary and linguistic features appropriate to each device and its individual user.

It is expected that awards will be made at approximately $125,000 per year for up to three years under this competition.

(g) *Transition skills development for deaf-blind or other severely multi-sensory impaired youth.* This priority supports projects which design, implement, and disseminate information about innovative practices which facilitate the transition of deaf-blind or other severely mulit-sensory impaired youth from education to employment and other service options, in preparation for their integration into regular community environments as adults. Emphasis in these projects must be placed on the development of job related skills, peer interactions, orientation and mobility, personal grooming, independent living skills and the development of a positive self concept. Projects must include specific activities directed toward development of skills identified as those most needed by project participants in order to facilitate their effective transition. Each project must include procedures for initiating and maintaining an on-going coordination and cooperation with State educational and rehabilitative agencies in the State where the project is located.

It is expected that awards will be made at approximately $106,000 per year for up to three years under this competition.

(h) *Supported employment for deaf-blind youth.* This priority supports projects which design, implement, and disseminate information about innovative practices in the job placement, job sit training and follow-up of deaf-blind youth. The practices must extend beyond, expand upon, complement, or supplement existing successful practices. These projects are to focus on on-the-job skills and adaptations, employee-employer relations, job acquisition, retention skills, and where appropriate, supplemental support for the employment of deal-blind youth on a long-term basis. These projects may also include feasible applications of techniques still in the development stage in research and other experimental programs.

These projects are to include the provision of services for severely handicapped deaf-blind youth who typically have not been eligible for vocational rehabilitation services.

The overall objective of these projects should be to provide an employment focus directed toward the achievement by these deaf-blind youth of the same goals (security, mobility, quality of life, and appropriate income level) sought for nonhandicapped workers.

The following provisions which distinguish these projects from traditional vocational education programming for deaf-blind youth must be incorporated into these projects:

(1) Paid employment in regular job settings such as assisted competitive employment, mobile work crews, and work stations in industry;

(2) Opportunities for integration of these deaf-blind youth with nonhandicapped coworkers in their job setting and with relevant others in typical living environments external to the job;

(3) Financial and social services support for these deaf-blind youth throughout the course of the project; and

(4) A plan cooperatively developed with related State and local agencies for the continuation of those services for an appropriate period of time following termination of the project.

It is expected that awards will be made at approximately $116,000 per year for up to three years under this competition.

(i) *Nondirected demonstration projects for deaf-blind children and youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant educational needs including vocational needs of deaf-blind children and youth. Unlike research studies, these projects must focus on direct services to these children and youth, exemplifying innovative, effective approaches to their education. Applicants proposing to conduct a project must fully describe and justify the particular approach to be demonstrated, citing where relevant, any pertinent research upon which the project is based.

It is expected that awards will be made at approximately $116,000 per year for up to three years under this competition.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities. All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 4615, Switzer Building, 330 C Street SW., Washington, DC., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance No. 84.086; Innovative Programs for Severely Handicapped Children)

Dated: July 23, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-19008 Filed 8-29-86; 8:45 am]

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 32, 45, 48, and 52
Federal Acquisition Regulation (FAR); Proposed Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

Federal Acquisition Regulation (FAR); Reduction in Customary Progress Payment Rates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision to the Federal Acquisition Regulation (FAR) that would change the customary progress payment rates prescribed in FAR Subpart 32.1.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 2, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–58 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule revises the progress payment provisions contained in the FAR to accomplish the following: (1) Lower the customary progress payment rate to 80% and 85% for large and small businesses respectively, because the economic conditions which precipitated their increase to the present levels no longer exist, (2) incorporate the limitations on progress payments that had been established under the Defense Procurement Improvement Act of 1986, (3) provide guidance within the Progress Payment clause for situations where more than one progress payment rate is being used, and (4) adjust the contractor minimum investment requirement used in determining flexible progress payments.

B. Regulatory Flexibility Act

The proposed changes to FAR Subparts 32 1, 32.5, and 52.2 do not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). The following Initial Regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. Any public comments relative to this assessment are solicited.

Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis has been prepared in accordance with section 603, Title 5, United States Code.

Reasons for Proposed Agency Action

There are three separate actions proposed under this rule change: (1) Lower the customary progress payment rate to 80% and 85% for large and small businesses respectively, (2) incorporate the limitations on progress payments that had been established under the Defense Procurement Improvement Act of 1986, and (3) provide guidance within the Progress Payment clause for situations where more than one progress payment rate is being used.

The first action has been recommended by several sources, such as the Grace Commission, DoD Inspector General, and more recently, as an issue under DoD's Defense Financial and Investment Review. The 80% and 85% progress payment rates are the same as those that had existed between 1968 and 1981. Historically, small businesses have obtained a 5% preferential progress payment rate above that provided for large businesses, and have also been able to receive progress payments on accrued costs, while large businesses must first have paid suppliers and vendors before they can obtain progress payments. Under today's more stable economic conditions, with the prime interest rate at approximately 8%, the progress payments at these rates provide an equitable level of financing to both large and small businesses, since the progress payment rates are the same as they were in 1981 when the prime interest rate was in the 12–18% range.

The second action incorporates the limitations on progress payments across all Federal agencies rather than only DoD. This action was considered necessary to maintain uniform progress payment policies throughout the Federal Government to the maximum extent practical.

The third action is an administrative adjustment so that separate progress payment rates could be accommodated within the Progress Payments clause, if such work was severable and accounting segregation could be achieved.

Objectives and Legal Basis

The proposed rules will achieve uniformity and keep progress payment levels sufficiently aligned with economic conditions.

Description and Estimate of Number of Small Entities to Which Proposed Rule Will Apply

The proposed rule will apply to all small businesses which receive progress payments on Government contracts.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

The progress payment rate reduction will not impose additional administrative requirements. It only affects the level of progress payments paid by the Government. The application of the limitation of progress payments under the Defense Procurement Improvement Act of 1986 throughout all Government agencies may cause additional recordkeeping to the extent that the limitation on undefinitized work is 80% and the progress payment rate incorporated into a contract is higher (e.g., small business rate of 85%). However, it is not expected that there is an extensive amount of undefinitized contract activity by small businesses outside DoD. It is also not expected that the number of small business contractors receiving progress payments outside DoD would be significant.

Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

Rules do not duplicate, overlap, or conflict with any other Federal rules.

Significant Alternatives

Action is also being taken within DoD's profit policy under the Weighted Guidelines Method to recognize a contractor's working capital investment in defense contracts. This will provide a more real-time response to changes in the economic environment.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements on the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: August 26, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 32 and 52 be amended as set forth below:

1. The authority citation for Parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 32—CONTRACT FINANCING

2. Subpart 32.1 is amended by adding section 32.001 as follows:

32.001 Definition.

"Contract action," as used in this part, means an action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

3. Section 32.102 is amended by revising paragraph (e)(2) to read as follows:

32.102 Description of contract financing methods.

* * * * *

(e)(2) This type of progress payment may be used as a payment method under agency procedures. Agency procedures must ensure that payments are commensurate with work accomplished which meets the quality standards established under the contract. Furthermore, progress payments may not exceed 80 percent of the eligible costs of work accomplished on undefinitized contract actions.

4. Section 32.501–1 is amended by revising the first two sentences in paragraph (a) and by adding paragraph (d) to read as follows:

32.501–1 Customary progress payment rates.

(a) The customary progress payment rate is 80 percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is 85 percent. * * *

* * * * *

(d) In accordance with the Defense Procurement Improvement Act of 1986 (Pub. L. 99–145) and, for civilian agencies, as a matter of policy, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. A higher rate is not authorized under unusual progress payments or flexible progress payments for the undefinitized actions.

5. Section 32.502–4 is amended by adding paragraph (d) to read as follows:

32.502–4 Contract clauses.

* * * * *

(d) If the nature of the contract necessitates separate progress payment rates for portions of work that are clearly severable and accounting segregation would be maintained (e.g., annual production requirements), the application of separate progress payment rates shall be fully described in a supplementary special provision within the contract. Separate progress payment requests and subsequent invoices shall be submitted by the contractor for the severable portions of work in order to maintain accounting integrity.

6. Section 32.503–6 is amended by revising the following entries in Section II of paragraph (g)(4) to read as follows:

32.503–6 Suspension or reduction of payments.

(g) * * *
(4) * * *
Section II:

* * * * *

Progress payment rate: × 80%
Alternate amount to be used: $599,760

* * * * *

7. Section 32.503–8 is amended by removing in the sixth sentence the figure "86.1" and inserting in its place the figure "76.5" and by revising the following entries in the sixth sentence to read as follows:

32.503–8 Liquidation rates—ordinary method.

* * * * *

Result × progress payment rate (4.33% × 80%): 3.46%

Result subtracted from progress payment rate (80% −3.46%): 76.54%

8. Section 32.503–10 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii), and (b)(3)(iii) to read as follows:

32.503–10 Establishing alternate liquidation rates.

* * * * *

(b) * * *
(3) * * *

(i) If the progress payment rate is 80 percent, the minimum liquidation rate should be 72.7 percent, computed as follows:

$$\frac{(\$1{,}000{,}000 \times 80\%)}{\$1{,}100{,}000} = 72.7\%$$

(ii) If the progress payment rate is 85 percent, the minimum liquidation rate should be 77.3 percent, computed as follows:

$$\frac{(\$1{,}000{,}000 \times 85\%)}{\$1{,}100{,}000} = 77.3\%$$

(iii) If the contract is subject to a CAS limitation on G&A eligible for progress payments (see 32.503–7), an adjusted alternate liquidation rate shall be established by subtracting the estimated G&A not eligible for progress payments from the total estimated contract costs. For example, if the price is $1,100,000, costs are $1,000,000, and unbilled G&A is $47,600, the liquidation rate should be 69.3 percent, computed as follows:

$$\frac{(\$1{,}000{,}000 - \$47{,}600)}{\$1{,}100{,}000} \times 80\% = 69.3\%$$

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 52.232–5 is amended by removing in the title of the clause the date "(MAY 1986)" and inserting in its place the date "(AUG 1986)"; by revising the first sentence in paragraph (b); and by adding paragraph (g) to read as follows:

52.232–5 Payments under fixed-price construction contracts.

* * * * *

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. * * *

* * * * *

(g) Notwithstanding any provision of this contract, progress payments shall not exceed

80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

10. Section 52.232–10 is amended by removing in the title of the clause the date "(JUL 1985)" and inserting in its place the date "(AUG 1986)"; by revising the first sentence in paragraph (a); and by adding paragraph (e) to read as follows:

52.232–10 Payments under fixed-price architect-engineer contracts.

* * * * *

(a) Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the Contractor under this contract which meet standards of quality established under this contract. * * *

* * * * *

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

11. Section 52.232–16 is amended by removing in the title of the clause, and in the title of *Alternate I* and *Alternate II* the date "(APR 1984)" and inserting in each place the date "(AUG 1986)"; by removing in paragraph (a)(1)(i) of the clause the words "90 percent" and inserting in their place the words "80 percent"; by removing in paragraph (a)(5) and in the first sentence of paragraph (b) of the clause the words "90 percent" and inserting in their place the words "80 percent"; by removing in the second and third sentences of paragraph (d)(1) the word "vestiture" and inserting in both places the word "investiture"; by revising paragraph (j)(3)(i); by adding paragraph (k) to the clause; by removing both derivation lines following "(End of clause)" and each derivation line at the end of *Alternate I* and *Alternate II;* by revising the introductory text of *Alternate I* and *Alternate II;* by removing in paragraph (a)(1)(i) of *Alternate I* the words "95 percent" and inserting in their place the words "85 percent"; by redesignating and revising paragraph (k) in *Alternate II* as paragraph (l); and by adding paragraph (m) in *Alternate II* to read as follows:

52.232–16 Progress payments.

* * * * *

(j) * * *

(3) * * *

(i) Are substantially similar to the terms of the clause at FAR 52.232–16, Progress Payments, for any subcontractor that is a large business concern, or that clause with its *Alternate I* for any subcontractor that is a small business concern;

* * * * *

(k) *Limitations on Undefinitized Contract Actions.* Notwithstanding any other progress payment provision in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(End of Clause)

Alternate I (AUG 1986) If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see 32.501–1), delete subparagraphs (a)(1) and (a)(2) from the basic clause, and substitute the following subparagraphs (a)(1) and (a)(2):

* * * * *

Alternate II (AUG 1986) If the contract is a letter contract, add paragraphs (l) and (m). The amount specified in paragraph (m) shall not exceed 80 percent applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(l) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b) of this clause, be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government shall allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and shall liquidate each portion under the relevant procedure in subparagraphs (l)(1) and (l)(2).

(4) If the method of liquidating progress payments provided in this paragraph (l) does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(m) The amount of unliquidated progress payments shall not exceed (*specify dollar amount*).

[FR Doc. 86–19652 Filed 8–29–86; 8:45 am]

BILLING CODE 6820–61–M

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48 CFR Part 45

Federal Acquisition Regulation (FAR); Inventory Schedules, Preparing and Submitting Standard Form 1432

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 45.606–5(e)(4), concerning the instructions for completing Standard Form (SF) 1432, Inventory Schedule D (Special Tooling and Special Test Equipment).

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 3, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–44 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:
Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering a change to FAR 45.606–5(e)(4)(ii) to clarify the descriptive information to be included on the SF 1432 when a contractor reports excess special tooling and special test equipment for disposal action. In order to maximize the reutilization potential, the function performed by and the end item application of the special tooling or the special test equipment must be included on the inventory schedule. An editorial change to 45.606–5(e)(4)(i) is also made.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) does not apply because the proposed revision is not a "significant revision" as defined in FAR 1.501–1, i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 96–525 and section 302 of Pub. L. 96–577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the proposed revision is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply. Although such solicitation is not required, comments are invited.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes to FAR 45.606–5 do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: August 25, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 45—GOVERNMENT PROPERTY

Therefore, it is proposed that 48 CFR Part 45 be amended as set forth below:

1. The authority citation for Part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 45.606–5 is amended by revising paragraphs (e)(4)(i) and (e)(4)(ii) to read as follows:

45.606–5 Instructions for preparing and submitting schedules of contractor inventory.

* * * * *

(e) * * *

(4) * * *

(i) *Classification.* Use a new form for each general classification of special tooling and special test equipment.

(ii) *Description.* Furnish a description which will enable the plant clearance officer or screener to determine the appropriate disposition, including the potential for reutilization. Include tool nomenclature, tool number, related product part number, and function which the tool performs. Designate special tooling usable for maintenance programs by placing the letter "M" in the left-hand column, "For Use of Contracting Agency Only." Provide the end item application and a brief description of the test function for each unit of special test equipment.

* * * * *

[FR Doc. 86–19651 Filed 8–29–86; 8:45 am]
BILLING CODE 6820–61–M

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48 CFR Parts 48 and 52

Federal Acquisition Regulation (FAR); Value Engineering

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) Part 48, Value Engineering, as a result of recommendations received primarily from industry.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 3, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–33 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:
Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Recommendations for changes to FAR Part 48 have been carefully reviewed and have resulted in revisions which appear in this proposed rule.

B. Regulatory Flexibility Act Analysis Summary

Economic Impact of Proposed Rule

Incorporation of the proposed rule in the FAR is not likely to result in a significant economic impact on a substantial number of small entities. However, information currently available is insufficient to permit a determination as to the extent of such economic impact, and comments that will permit a determination are hereby solicited.

Alternatives to the Proposed Rule

Consideration was given to alternatives such as those specified in section 603(c) of the Regulatory Flexibility Act. Such alternatives, however, will not permit the stated objectives of the rule to be accomplished.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes to FAR Part 48 do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 48 and 52

Government procurement.

Dated: August 25, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 48 and 52 be amended as set forth below:

1. The authority citation for Parts 48 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 48—VALUE ENGINEERING

2. Section 48.001 is amended by inserting in the first sentence of the definition "Acquisition savings" a period after the word "successor" and removing the remainder of the sentence:

by revising paragraph (b) of the definition "Acquisition savings"; by removing in paragraph (c) of the definition "Acquisition savings" the words "(but see 48.102(f))"; and by inserting in the definition "Sharing base" a period after the word "VECP" and removing the remainder of the sentence as follows:

48.001 Definitions.

* * * "Acquisition savings"

* * * * *

(b) Concurrent contract savings, which are net reductions in the prices of other contracts being performed at the time the VECP is accepted; and

* * * * *

3. Section 48.101 is amended by removing the third sentence of paragraph (b)(2) and inserting in its place two sentences to read as follows:

48.101 General.

* * * * *

(b) * * *

(2) * * * No VE sharing is permitted in architect-engineer contracts. All other contracts with a program clause share in savings on accepted VECP's, but at a lower percentage rate than under the voluntary approach. * * *

4. Section 48.102 is amended by removing the second sentence of paragraph (a); by revising paragraph (e); and by removing the first sentence of paragraph (f) as follows:

48.102 Policies.

* * * * *

(e) Generally, profit or fee on the instant contract should not be adjusted downward as a result of acceptance of a VECP. Profit or fee shall be excluded when calculating instant contract savings.

* * * * *

5. Section 48.103 is amended by removing the third and fourth sentences in paragraph (b) and inserting in their place five sentences to read as follows:

48.103 Processing value engineering change proposals.

* * * * *

(b) * * * The contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. Any VECP may be approved, in whole or in part, by a contract modification incorporating the VECP. Until the effective date of the contract modification, the contractor shall perform in accordance with the existing contract. If the Government accepts the VECP, but properly rejects units subsequently delivered or does not receive units on which a savings share was paid, the contractor shall reimburse the Government for the proportionate share of these payments. If the VECP is not accepted, the contracting officer shall provide the contractor with prompt written notification, explaining the reasons for rejection. * * *

* * * * *

6. Section 48.104–1 is amended by removing the last sentence of paragraph (a)(2); by removing in paragraph (a)(6) the words "(but see 48.102(e) and subparagraph (1) above)"; and by revising the second sentence of paragraph (b) as follows:

48.104–1 Sharing acquisition savings.

* * * * *

(b) * * * The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (1) 45 percent for fixed-price contracts or (2) 75 percent for cost-reimbursement contracts. * * *

48.105 [Amended]

7. Section 48.105 is amended by inserting in the second sentence the words "to be" after the word "not".

8. Section 48.201 is amended by revising paragraph (f)(1); by removing in paragraph (f)(3) the words "on accepted VECP's"; and by removing paragraph (g) as follows:

48.201 Clauses for supply or service contracts.

* * * * *

(f) *Architect-engineer contracts.* (1) The clause at 52.248–1, Value Engineering, shall not be used in solicitations and contracts for architect-engineer services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 52.248–1 is amended by removing in the title of the clause the date "(APR 84)" and inserting in its place the date "(AUG 86)"; by removing the parenthetical phrase in paragraph (b) of the clause; by revising paragraph (b)(2); by removing in the second sentence of paragraph (b)(3) the word "all"; by inserting in the definition "Sharing base" a period after the word "VECP" and removing the remainder of the sentence; and by removing all the derivation lines following "(End of clause)" to read as follows:

52.248–1 Value engineering.

* * * * *

(b) * * *

(2) Concurrent contract savings, which are net reductions in the prices of other contracts being performed at the time the VECP is accepted; and

* * * * *

10. Section 52.248–3 is amended by inserting a colon in the first sentence of the introductory text following the word "clause" and removing the remainder of the paragraph; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1986)"; by revising paragraphs (f)(1) and (f)(2)(iii); and by removing the derivation line following "(End of clause)" to read as follows:

52.248–3 Value engineering—Construction.

* * * * *

(f) *Sharing.* (1) *Rates.* The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 45 percent for fixed-price contracts or (ii) 75 percent for cost-reimbursement contracts.

(2) * * *

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

* * * * *

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federal register

Tuesday
September 2, 1986

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for May 1986; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53086; FRL-3062-2]

Premanufacture Notices; Monthly Status Report for May 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for May 1986.

Nonconfidential portions of the PMNs may be seen in Rm. NE-G007 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53086]:" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during May; (b) PMNs received previously and still under review at the end of May; (c) PMNs for which the notice review period has ended during May; (d) chemical substances for which EPA has received a notice of commencement to manufacture during May; and (e) PMNs for which the review period has been suspended. Therefore, the May 1986 PMN Status Report is being published.

Dated: July 24, 1986.

Denise Devoe,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report, May 1986

I. 171 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No.	Identity/generic name	FR citation	Expiration date
P 86-970	Generic name: Unsaturated ether urethane containing cationic salt of a defunctionalized epon resin	51 FR 17232 (17234) (5/9/86)	July 29, 1986.
P 86-971	Generic name: Unsaturated ether urethane containing cationic salt of a defunctionalized epon resin	51 FR 17232 (17234) (5/9/86)	Do.
P 86-972	Generic name: Unsaturated ether urethane containing cationic salt of a defunctionalized epon resin	51 FR 17232 (17234) (5/9/86)	Do.
P 86-973	Generic name: Allyl ether ester of an unsaturated fatty acid	51 FR 17232 (17234) (5/9/86)	Do.
P 86-974	Generic name: Isophorone diisocyanate urethane formed from a beta-hydroxy ester of an unsaturated fatty acid	51 FR 17232 (17234) (5/9/86)	Do.
P 86-975	Generic name: Diisocyanate polymer with polyether polyols	51 FR 17232 (17234) (5/9/86)	Do.
P 86-976	Generic name: Diisocyanate	51 FR 17232 (17234) (5/9/86)	Do.
P 86-977	Generic name: Polymer with polyether polyols	51 FR 17232 (17235) (5/9/86)	Do.
P 86-978	Generic name: Oxygenated alkyl benzene, metalloid ester	51 FR 17232 (17235) (5/9/86)	Do.
P 86-979	Generic name: Reaction product of aromatic aldehyde with oxygenated aromatic alkyl benzene, metalloid ether	51 FR 17232 (17235) (5/9/86)	Do.
P 86-980	Generic name: Imidazolidine-amide-carboxylate complex	51 FR 18037 (5/16/86)	July 30, 1986.
P 86-981	Generic name: Alkylphosphatoallyl titanate	51 FR 18037 (5/16/86)	Do.
P 86-982	Generic name: Prepolymer modified MDI	51 FR 18037 (18038) (5/16/86)	Do.
P 86-983	Generic name: Magnesium salt of alkenyl succinic acid	51 FR 18037 (18038) (5/16/86)	Aug. 2, 1986.
P 86-984	Generic name: Alkyl ester capped urea compound	51 FR 18037 (18038) (5/16/86)	Do.
P 86-985	2,6'-Dihydroxy-1,1'-azobisnaphthalene-3,4'-disulfonic acid	51 FR 18037 (18038) (5/16/86)	Do.
P 86-986	Generic name: Hydrocarbon resin	51 FR 18037 (18038) (5/16/86)	Aug. 3, 1986.
P 86-987	Generic name: Alkyl alcohol, alkoxylated	51 FR 18037 (18038) (5/16/86)	Do.
P 86-988	Generic name: Substituted copper phthalocyanine salts	51 FR 18037 (18038) (5/16/86)	Do.
P 86-989	Substituted copper phthalocyanine salts	51 FR 18037 (18038) (5/16/86)	Do.
P 86-990	Generic name: Starch, dihydrogen phosphate, disubstituted alkyl ether	51 FR 18037 (18038) (5/16/86)	Do.
P 86-991	Generic name: Alkoxylated aromatic, alkenoate ester	51 FR 18037 (18038) (5/16/86)	Do.
P 86-992	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18038) (5/16/86)	Do.
P 86-993	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18038) (5/16/86)	Do.
P 86-994	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18038) (5/16/86)	Do.
P 86-995	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18038) (5/16/86)	Do.
P 86-996	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18038) (5/16/86)	Do.
P 86-997	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18038) (5/16/86)	Do.
P 86-998	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18039) (5/16/86)	Do.
P 86-999	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1000	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1001	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1002	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1003	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1004	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1005	Generic name: Dibasic-acid/glycol ester	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1006	Generic name: Alkylaluminum compound	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1007	Generic name: Acrylated functional polysiloxane	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1008	Generic name: Terephthalic mixed glycol ester	51 FR 18037 (18039) (5/16/86)	Aug. 4, 1986.
P 86-1009	Polymer of isobutyl acrylate, 2-ethyl hexyl acrylate, methyl methacrylate, acrylic acid	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1010	Generic name: Polyester of aliphatic polyol, rosin, linseed oil and aromatic dibasic acid	51 FR 18037 (18039) (5/16/86)	Do.
P 86-1011	Generic name: Substituted carbopolycycle sulfonate of substituted phenyl azo substituted heteromonocycle	51 FR 18037 (18040) (5/16/86)	Aug. 5, 1986.
P 86-1012	Mixed $C_5/C_6/C_7$, dimer and C_5/C_6 ethers; (gases, extractive, C_4-C_6, amylene rich, reaction products with olefins, and methanol, distillation residues).	51 FR 18037 (18040) (5/16/86)	Do.
P 86-1013	Generic name: Mixed $C_5/C_6/C_7$, dimer and C_5/C_6 ethers; (gases, extractive, C_4-C_6, amylene rich, reaction products with olefins, and methanol, distillation residues).	51 FR 18037 (18040) (5/16/86)	Do.
P 86-1014	Generic name: Substituted phosphine oxide	51 FR 18958 (5/23/86)	Aug. 8, 1986.
P 86-1015	Generic name: Substituted phosphine oxide	51 FR 18958 (5/23/86)	Do.
P 86-1016	N,N-Dimethylaminopropylacrylamide	51 FR 18958 (5/23/86)	Aug. 9, 1986.
P 86-1017	Generic name: Isocyanate polymer with polyalkyloxy compound, substituted propanoic acid, and a diamine	51 FR 18958 (5/23/86)	Do.
P 86-1018	Generic name: Unsaturated polyester resin from dibasic acids and polyols	51 FR 18958 (18959) (5/23/86)	Do.
P 86-1019	Generic name: Cyclotetra(2-hydroxy-5-tert-butyl-benzene	51 FR 18958 (18959) (5/23/86)	Do.
P 86-1020	Generic name: Hydroxymethyl tetramer of substituted phenol	51 FR 18958 (18959) (5/23/86)	Do.
P 86-1021	Generic name: Transition metal trichalcogenide	51 FR 18958 (18959) (5/23/86)	Do.
P 86-1022	Polymer of acetoacetate of hydroxy ethyl methacrylate, methyl methacrylate, styrene, butyl methacrylate	51 FR 18958 (18959) (5/23/86)	Do.

I. 171 Premanufacture Notices Received During the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 86-1023	Polymer of dipropylene glycol, diethylene glycol, ethylene glycol, trimethylol propane, phthalic anhydride, terephthalic acid, tall oil fatty acid.	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1024	Generic name: Acrylic polyisocrotylate	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1025	Generic name: Acrylic polyisocrotylate	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1026	Generic name: Alkyl ester	51 FR 18039 (18039) (5/22/86)	Aug. 18, 1988.
P 86-1027	Generic name: Alkyl ester	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1028	2,6-Dimethyl naphthalene	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1029	Generic name: Aromatic terpene phenol resin	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1030	Generic name: Aromatic hydrocarbon, phenol polymer	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1031	Generic name: Hydroxyl containing acrylic copolymer	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1032	Generic name: Functionalized acrylic-vinyl aromatic copolymer	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1033	Generic name: Modified acrylic-vinyl aromatic copolymer	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1034	Generic name: Metastud, phenolic resin ester, calcium salt	51 FR 18039 (18039) (5/22/86)	Aug. 11, 1988.
P 86-1035	Generic name: Polymer of aromatic diisocyanate, aliphatic diacid and alkanediols	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1036	Generic name: Cyanoacrylate ester polymer	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1037	Generic name: Polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol	51 FR 18039 (18039) (5/22/86)	Aug. 12, 1988.
P 86-1038	Generic name: Oxime blocked polyether urethane	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1039	Generic name: Polyurethane	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1040	Vinyl toluene alkyd	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1041	Generic name: Amine salt	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1042	Mixed mono- and diphosphate esters of 1H-imidazole propanoic acid, 4,5-dihydro-1-(2-hydroxyethyl)-, 2-undecyl mixed di- and tri-potassium salt.	51 FR 18039 (18039) (5/22/86)	Do.
P 86-1043	Generic name: Monosulfonated alkoxyaminotriazine	51 FR 20705 (20705) (6/6/86)	Aug. 13, 1988.
P 86-1044	Generic name: Bissulfonated alkoxyaminotriazine	51 FR 20705 (20705) (6/6/86)	Do.
P 86-1045	Generic name: Hydroxy ester	51 FR 20705 (20705) (6/6/86)	Aug. 16, 1988.
P 86-1046	Dialkyl carbamate	51 FR 20706 (6/6/86)	Do.
P 86-1047	Polyaminoamide	51 FR 20705 (20705) (6/6/86)	Do.
P 86-1048	N,N-dimethylethanediamide	51 FR 20705 (20705) (6/6/86)	Do.
P 86-1049	Acetic acid, cyano-2-alkoxyalkyl ester	51 FR 20705 (20705) (6/6/86)	Do.
P 86-1050	Diphenoxyalkylformal	51 FR 20705 (20705) (6/6/86)	Aug. 17, 1988.
P 86-1051	Generic name: Polyether urethane polymer	51 FR 20705 (20705) (6/6/86)	Do.
P 86-1052	Generic name: Siloxane, dimethyl, dihydroxyalkyl, terminated reaction product with oxepanone	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1053	Generic name: Siloxane, dimethyl, dihydroxyalkyl, terminated reaction product with oxepanone	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1054	Generic name: Substituted polyacrylamide	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1055	Generic name: Polyester urethane methacrylate blocked	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1056	Generic name: Polyester urethane methacrylate blocked	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1057	Generic name: Poly-[(alkoxycarbonyl)-alkyl]polysulfide	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1058	Generic name: Poly-(alkyl)polysulfide	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1059	Generic name: Acrylate capped benzoated polyether ester of benzophenonetetracarboxylic dianhydride	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1060	Generic name: Heterocyclic aminal	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1061	Generic name: Alkoxylated terephthalate glycol ester polymer	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1062	Generic name: Butadiene/bound antioxidant copolymer	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1063	Generic name: AMPS copolymer	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1064	Generic name: Alkyl methacrylate copolymer	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1065	Generic name, Vinyl heterocycle alkyl methacrylate copolymer	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1066	Generic name: Vinyl heterocycle alkyl methacrylate copolymer	51 FR 20706 (20707) (6/6/86)	Do.
P 86-1067	Generic name: Saturated polyester	51 FR 20706 (20706) (6/6/86)	Aug. 18, 1988.
P 86-1068	Generic name: Cyanoacrylate ester polymer	51 FR 20706 (20706) (6/6/86)	Do.
P 86-1069	Generic name: Substituted ketone	51 FR 20706 (20706) (6/6/86)	Do.
P 86-1070	2-Naphthalenesulfonic acid, 7,7'-[(2,4,6-trimethyl-5-sulfo-1,3-phenylene)bis(imino(6-chloro-1,2,5-triazine 4,2-diyl)imino)]bis[4-hydroxy-3-[(4-methoxy-2-sulfophenyl)azo], pentasodium salt.	51 FR 20706 (20706) (6/6/86)	Aug. 16, 1988.
P 86-1071	Benzoic acid, 2-[(2-cyanoethyl)amino]-6-[[5-nitro-2-triazolyl)azo]-2-[2-methylpropoxy)ethyl ester	51 FR 20706 (20706) (6/6/86)	Do.
P 86-1072	Generic name: Substituted alkyl phosphine	51 FR 20706 (20706) (6/6/86)	Do.
P 86-1073	Generic name: Substituted aromatic polymer	51 FR 21241 (21242) (6/11/86)	Aug. 29, 1988.
P 86-1074	Generic name: Aqueous polyurethane dispersion	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1075	Generic name: Sulfated oil, sodium salts	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1076	Generic name: Alkyl esters sulfated, sodium salts	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1077	Generic name: Alkyl esters sulfated, sodium salts	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1078	Generic name, Alkyl phosphates, mono- and di-esters, salts with amine and potassium hydroxide	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1079	Generic name: Polyether-modified polyester polyol	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1080	Cuprate (6-), [5-(acetylamino)-4-hydroxy-3-[5-hydroxy-6-[[2-hydroxy-4-[[2-[sulfooxy)ethyl] sulfonyl]phenyl]azo]-7-sulfo-2-naphthalenyl]azo-2,7-naphthalene disulfonate (6-)]-tetrasodium salt.	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1081	Generic name: Halogenated aromatic substituted alkane	51 FR 21241 (21242) (6/11/86)	Aug. 24, 1988.
P 86-1082	Generic name: Halogenated aromatic substituted olefin	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1083	Generic name: Modified hydrocarbon resin	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1084	Generic name: Modified phenolic resin	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1085	Generic name: Yellow azo dye	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1086	Generic name: Yellow azo dye	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1087	Isopropylethanolamine linked epon 828/vibrathane B602 epoxy urethane resin	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1088	Generic name: Urethane acrylate with pendant hydroxy and carboxy groups	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1089	Generic name: Potassium alkenyl succinate	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1090	Generic name: Fatty acid modified polyester acrylate	51 FR 21241 (21242) (6/11/86)	Aug. 25, 1988.
P 86-1091	Generic name: Mixed glycol and oligoester of aromatic and aliphatic dicarboxylic acids	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1092	Generic name: Polyester of alkane dicarboxylic acid, alkanediols and benzene polycarboxylic acid derivative	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1093	Generic name: Fatty acid modified polyester	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1094	Generic name: Alkanes, polymers with tard oil, sulfurized	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1095	Generic name: Aryliminonaphthalenone	51 FR 21241 (21242) (6/11/86)	Aug. 28, 1988.
P 86-1096	Generic name: Substituted naphthol	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1097	Generic name: Alkyl substituted vinyl polymer	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1098	Generic name: Substituted nitrobenzoic acid, derivative	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1099	Generic name: Substituted aminobenzoic acid, derivative	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1100	Generic name: Hydroxylated amine resin	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1101	Generic name: Polyether polyurethane	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1102	Generic name: Fatty acid modified polyester	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1103	Generic name: Rosin modified fumaric resin	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1104	Poly[oxy-1,4-butanediyl), alpha-(4-ethenylbenzoyl)-beta-((4-nitro-benzoyl)oxy)-hydrogen	51 FR 21241 (21242) (6/11/86)	Do.
P 86-1105	Generic name: Allyl alcohol ester of acetoacetic acid	51 FR 21795 (21795) (6/16/86)	Do.
P 86-1106	Acetic acid, cyano-, butyl ester	51 FR 21795 (21795) (6/16/86)	Do.
P 86-1107	Generic name: Substituted naphthalene	51 FR 21795 (21795) (6/16/86)	Do.
P 86-1108	Generic name: Modified acrylate terpolymer	51 FR 21795 (21795) (6/16/86)	Do.
P 86-1109	Generic name: Modified acrylate terpolymer	51 FR 21795 (21795) (6/16/86)	Do.
Y 86-131	Generic name: Modified styrenated acrylic terpolymer	51 FR 18040 (18040) (5/16/86)	May 22, 1988.

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I. 171 Premanufacture Notices Received During the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
Y 86-132	Generic name: Polyester of carbomonocyclic acid, sulfonated carbomonocyclic ester, alkylene glycol cycloalkylene glycol styrenated acrylic terpolymer.	51 FR 18040 (5/16/86)	Do.
Y 86-133	A crosslinked poly(2-propenoic acid, butyl ester) core//crosslinked polystyrene	51 FR 18040 (5/16/86)	May 25, 1986.
Y 86-134	Generic name: Polyurethane	51 FR 18040 (5/16/86)	May 26, 1986.
Y 86-135	Generic name: Polyester resin	51 FR 18040 (5/16/86)	Do.
Y 86-136	Generic name: Polyurethane resin	51 FR 18040 (5/16/86)	Do.
Y 86-137	Generic name: Polyester resin	51 FR 18040 (5/16/86)	Do.
Y 86-138	Generic name: Polyester	51 FR 18040 (18041) (5/16/86)	Do.
Y 86-139	Generic name: Polyester of alkane, dicarboxylic acid, alkanediol and benzene polycarboxylic acid, derivative	51 FR 18040 (18041) (5/16/86)	May 27, 1986.
Y 86-140	Generic name: Polyester of carbomonocyclic acid or ester alkylene glycols, and sulfonated carbomonocyclic ester	51 FR 18040 (18041) (5/16/86)	Do.
Y 86 141	Generic name: Polyester of carbomonocyclic acid or ester alkylene glycols, and sulfonated carbomonocyclic ester	51 FR 18040 (18041) (5/16/86)	Do.
Y 86-142	Generic name: Polyester of carbomonocyclic acid or ester alkylene glycols, and sulfonated carbomonocyclic ester	51 FR 18040 (18041) (5/16/86)	Do.
Y 86-143	Generic name: Polyester of carbomonocyclic acid or ester alkylene glycols, and sulfonated carbomonocyclic ester	51 FR 18040 (18041) (5/16/86)	Do.
Y 86-144	Generic name: Acrylic latex	51 FR 18040 (18041) (5/16/86)	Do.
Y 86-145	Generic name: Isocyanate polymer with polyalkyloxy compound, substituted propanoic acid, and a diamine	51 FR 18957 (18958) (5/23/86)	June 1, 1986.
Y 86-146	Generic name: Water reducible air-dry alkyd resin	51 FR 18957 (18958) (5/23/86)	Do.
Y 86-147	Generic name: Ethylene interpolymer	51 FR 18957 (18958) (5/23/86)	June 4, 1986.
Y 86-148	Generic name: Polymer from poly(alkylene ether) glycol and methylene bis-cyclohexyl isocyanate	51 FR 18957 (18958) (5/23/86)	Do.
Y 86-149	Generic name: Silicone polyester	51 FR 20705 (6/6/86)	June 9, 1986.
Y 86-150	Generic name: 2-Propenoic acid copolymer, potassium salt	51 FR 20705 (6/6/86)	June 6, 1986.
Y 86-151	Generic name: 2-Propenoic acid copolymer, alkali metal salt	51 FR 20705 (6/6/86)	Do.
Y 86-152	Generic name: Thermoplastic elastomer	51 FR 21240 (6/11/86)	June 16, 1986.
Y 86-153	Polymer of rosin, maleic anhydride, pentaerythritol, dodecylphenol, paraformaldehyde, dimerized fatty acids	51 FR 21240 (21241) (6/11/86)	Do.
Y 86-154	Polymer of rosin, maleic anhydride, pentaerythritol, dodecylphenol, paraformaldehyde, dimerized fatty acids	51 FR 21240 (21241) (6/11/86)	Do.
Y 86-155	Polymer of rosin, polymerized rosin, maleic anhydride, pentaerythritol, dodecylphenol, paraformaldehyde, dimerized fatty acids.	51 FR 21240 (21241) (6/11/86)	Do.
Y 86-156	Generic name: Unsaturated polyester resin	51 FR 21240 (21241) (6/11/86)	Do.
Y 86-157	Generic name: Polyester resin	51 FR 21240 (21241) (6/11/86)	Do.
Y 86-158	Generic name: Polymethacrylic resin	51 FR 21240 (21241) (6/11/86)	Do.
Y 86-159	Generic name: Polyester resin	51 FR 21240 (21241) (6/11/86)	Do.
Y 86-160	Generic name: Branched saturated polyester resin containing hydroxyl groups	51 FR 21240 (21241) (6/11/86)	Do.
Y 86-161	Generic name: Thermoplastic polyamide resin	51 FR 21240 (21241) (6/11/86)	Do.

II. 149 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.

P 86-821
P 86-822
P 86-823
P 86-824
P 86-825
P 86-826
P 86-827
P 86-828
P 86-829
P 86-830
P 86-831
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P 86-570

III. 168 Premanufacture Notices for Which the Notices Review Period Has Ended During the Month (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory)

PMN No.

P 84-392
P 85-236
P 85-1180
P 85-1181
P 85-1182
P 86-84
P 86-544
P 86-468
P 86-469
P 86-470

P 86-571	P 86-581	P 86-591	P 86-601	Y 86-127	Y 86-136
P 86-572	P 86-582	P 86-592	Y 86-118	Y 86-128	Y 86-137
P 86-573	P 86-583	P 86-593	Y 86-119	Y 86-129	Y 86-138
P 86-574	P 86-584	P 86-594	Y 86-120	Y 86-130	Y 86-139
P 86-575	P 86-585	P 86-595	Y 86-121	Y 86-131	Y 86-140
P 86-576	P 86-586	P 86-596	Y 86-122	Y 86-132	Y 86-141
P 86-577	P 86-587	P 86-597	Y 86-123	Y 86-133	Y 86-142
P 86-578	P 86-588	P 86-598	Y 86-124	Y 86-134	Y 86-143
P 86-579	P 86-589	P 86-599	Y 86-125	Y 86-135	Y 86-144
P 86-580	P 86-590	P 86-600	Y 86-126		

IV. 66 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture

PMN No.	Identity/generic name	Date of commencement
P 80-215	Generic name: Styrene-Acrylate copolymer	May 1, 1986.
P 81-142	4-(4-Morpholinyl)2,5-dibutyloxybenzenediazonium, 5-sulfoisophthalate	Do.
P 83-1079	2-(3-Heptyloxy) acetic acid	Apr. 9, 1986.
P 84-688	Generic name: Modified methacrylate copolymer	Apr. 14, 1986.
P 84-853	Generic name: Aromatic sulfamide of substituted phenylazo substituted heteromonocycle	May 12, 1986.
P 84-1178	Generic name: Phenolic modified resin ester	Mar. 31, 1986.
P 85-112	Generic name: Alkenediol-maleic anhydride copolymer	Apr. 21, 1986.
P 85-174	Generic name: Alkenyl substituted carbomonocyclic alkenyl ether	Apr. 28, 1986.
P 85-224	Generic name: Polyester polyol	Apr. 4, 1986.
P 85-282	Generic name: Substituted terpene resin	May 22, 1986.
P 85-286	Generic name: Amino acrylate monomer	Apr. 18, 1986.
P 85-334	Generic name: Aromatic dinitro compound	May 6, 1986.
P 85-335	Generic name: Aromatic diamine	May 12, 1986.
P 85-506	Generic name: Inorganic complex of rosin	May 22, 1986.
P 85-639	Generic name: Substituted polyglycol	May 2, 1986.
P 85-663	Generic name: Pyrrolopyrrol	Apr. 17, 1986.
P 85-680	Generic name: 1,1-Dimethylpropyl peroxyester	Apr. 15, 1986.
P 85-705	Generic name: Substituted polyglycol	Apr. 29, 1986.
P 85-888	Generic name: Sodium salt of polycarboxylic acid	Apr. 24, 1986.
P 85-894	2-Methyl-6-quinolinamine hydrochloride	Mar. 18, 1986.
P 85-895	2-Methyl-6-quinolinamine	Mar. 7, 1986.
P 85-896	2-Methyl-6-nitroquinoline	Feb. 26, 1986.
P 85-929	Generic name: Isothiocyanate of a substituted polycyclic compound	Mar. 20, 1986.
P 85-932	Generic name: Polyester resin	Mar. 7, 1986.
P 85-980	Generic name: Sodium bisulfite, reaction product with an epoxidized natural oil	Apr. 11, 1986.
P 85-984	Generic name: Epoxidized natural oil	Apr. 9, 1986.
P 85-947	Generic name: Polyalkylated benzene	May 1, 1986.
P 85-1034	Generic name: Nickel acrylate complex	Do.
P 85-1069	Generic name: Copper phthalocyanato-, poly[(alkyl- monohydroxyethyl imidazolium) methylene]derivative, compound with ethanoate	Apr. 14, 1986.
P 85-1070	Generic name: Copper phthalocyanato-, poly[(alkyl bis-hydroxyethyl imidazolium)methylene] derivative, compound with ethanoate	Do.
P 85-1093	Generic name: Trisubstituted methanaminium salt	Apr. 4, 1986.
P 85-1140	Generic name: Alkyd resin additive	Apr. 29, 1986.
P 85-1312	Isononanoic acid, sodium salt	Nov. 5, 1986.
P 85-1324	Generic name: Sulfurized ester	May 12, 1986.
P 85-1397	Generic name: Acrylic copolymer latex	May 1, 1986.
P 85-1401	Generic name: Disubstituted phenylazo disubstituted naphthalenesulfonic acid, substituted alkyl amine salt	Apr. 23, 1986.
P 85-1402	Generic name: Substituted phenylazo disubstituted naphthalenesulfonic acid, salt	Apr. 8, 1986.
P 85-1432	Generic name: Substituted N,N-dialkyl-m-anisidine	Apr. 9, 1986.
P 85-1443	Chromate (7-) bis[1-[4-[[3-(acetylamino]-4-[4,8-disulfo-2-naphthalenyl)azo]phenyl]amino]-6-[[6-[(2-carboxyphenyl)-azo]-5-hydroxy-7-sulfo-2-naphthalenyl]amino]-1,3,5-triazin-2-yl]-3-carboxypyridiniumato(6-)]-, heptasodium, dihydrate.	Apr. 30, 1986.
P 85-1460	Polymer of bis-(4-phenoxyphenyl) methanone and 1,4-benzenedicarbonyl dichloride	May 16, 1986.
P 85-1461	Bis(4-phenoxyphenyl) methanone	Do.
P 85-1464	Generic name: Substituted pyrazol azo benzene sulfonic acid	Apr. 24, 1986.
P 86-83	3-Chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-benzenamine	Apr. 22, 1986.
P 86-125	Generic name: Water-based polyurethane lacquer	May 7, 1986.
P 86-211	Generic name: Aryl cycloalkyl polyamide	May 20, 1986.
P 86-252	Generic name: Polyoxyalkylene-, polymethylalkyl- polysiloxane	Apr. 25, 1986.
P 86-253	Generic name: N-butyl-2-ethylhexylacrylate copolymer	Do.
P 86-267	Generic name: Polymer of fatty acids, C_{16-18} and C_{18} unsaturated, isophthalic acid, trimethylolethane and other carboxylic acids	May 5, 1986.
P 86-278	Generic name: Modified acrylic polymer	Apr. 23, 1986.
P 86-290	Sodium aluminum tetrafluoride	Apr. 29, 1986.
P 86-308	Generic name: Triazolium azo dye	Apr. 22, 1986.
P 86-312	Generic name: Amine salt of partial ester of phosphoric acid	Apr. 27, 1986.
P 86-319	Generic name: Acrylic emulsion	Mar. 23, 1986.
P 86-340	Generic name: Substituted zinc benzoate	Apr. 24, 1986.
P 86-364	Generic name: Aryl substituted lactone	Apr. 8, 1986.
P 86-395	Generic name: Aromatic polyamide	May 9, 1986.
P 86-406	Generic name: Water reducible acrylic copolymer alkyd	Apr. 22, 1986.
P 86-407	Generic name: Site-limited alkyd resin	Do.
P 86-409	Generic name: Substituted arylalkylene dicarboxylate	Apr. 25, 1986.
P 86-422	Generic name: Modified polycarbonate	May 20, 1986.
P 86-432	Generic name: Modified metal chloride	Apr. 30, 1986.
P 86-437	Generic name: Trimethyl-alkyl blocked hydroxymethylmethacrylate	May 7, 1986.
P 86-447	Generic name: Tricyclic olefinic hydrocarbons	Apr. 30, 1986.
P 86-452	Generic name: Polymer of benzenedicarboxylic acids, alkanediol, alkanedicarboxylic acid and benzenetricarboxylic acid	May 16, 1986.
P 86-461	Generic name: Dehydrated castor oil alkyd resin	Apr. 30, 1986.
P 86-463	Generic name: Acrylic resin	Do.
P 86-464	Generic name: Acrylic resin	Do.
P 86-465	Generic name: Blocked polyamine	May 1, 1986.
P 86-496	Benzoic acid, 4-[[[[4-ethoxycarbonyl)phenyl]- amino]methylene]-amino]-ethyl ester	May 16, 1986.
P 86-514	Generic name: Acrylic resin solution	May 11, 1986.
P 86-515	Generic name: Acrylic resin solution	Do.
P 86-553	Benzoic acid, 4-[[(methylphenylamino)methylene]]- ethyl ester	May 23, 1986.
P 86-556	Generic name: Butylaminosilane	May 19, 1986.
P 86-561	Generic name: Modified styrenated acrylic water resin	May 21, 1986.
Y 86-85	Generic name: Alkyd resin	May 1, 1986.
Y 86-90	Generic name: Polyester resin	Apr. 16, 1986.
Y 86-91	Generic name: Polyester resin	Apr. 17, 1986.

IV. 86 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
Y 86-107	Generic name: Styrene-n-butylacrylate-polymer	May 15, 1986.
Y 86-115	Generic name: Polyester polyol	Mar. 31, 1986.
Y 86-118	Generic name: Water soluble acrylate random copolymer	May 5, 1986.
Y 86-119	Generic name: Water soluble acrylate random copolymer	Do.
Y 86-120	Generic name: Water soluble acrylate random copolymer	Do.
Y 86-121	Generic name: Styrene-acrylate random copolymer emulsion	Do.
Y 86-128	Generic name: Linear saturated polyester resin containing hydroxyl groups	May 20, 1986.
Y 86-129	Generic name: Linear saturated polyester resin containing hydroxyl groups	Do.
Y 86-130	Generic name: Branched saturated polyester resin containing hydroxyl groups	Do.

V. 29 Premanufacture Notices for Which the Review Period Has Been Suspended

PMN No	Identity/generic name	FR citation	Date suspended
P 85-929	Generic name: Alkylated aromatic diamine	50 FR 20596 (20599) (5/17/85)	May 28, 1986.
P 85-1307	Generic name: Alkenoic acid, trisubstituted-benzyl disubstituted phenyl ester	50 FR 33630 (33631) (8/20/85)	May 1, 1986.
P 85-1368	Generic name: Vinyl chloride-vinyl acetate hydroxyl modified copolymer	50 FR 36869 (9/9/85)	May 21, 1986.
P 85-1420	Generic name: Substituted allyl aniline	50 FR 38194 (38196) (9/20/85)	May 1, 1986.
P 86-38	Generic name: Organosilazane	50 FR 42773 (42774) (10/22/85)	May 5, 1986.
P 86-39	Generic name: Organosilazane	50 FR 42773 (42774) (10/22/85)	Do.
P 86-476	Generic name: Substituted ammonium carboxylate	51 FR 5592 (5593) (2/14/86)	May 25, 1986.
P 86-477	Generic name: 1,4-Benzenedisulfonic acid, 2,2'-[1,2-ethanediyl] bis[3-sulfo-4,1-phenylene]imino[6-[(disubstituted)-imino]-1,2,3,5-triazine-4,2-diyl]bis-, hexasodium salt.	51 FR 5592 (5593) (2/14/86)	May 13, 1986.
P 86-478	Generic name: 1,4-Benzenedisulfonic acid, 2,2'-[1,2-ethanediyl] bis[3-sulfo-4,1-phenylene]imino[6-[(disubstituted)-imino]-1,2,3,5-triazine-4,2-diyl]] bis-, hexasodium salt.	51 FR 5592 (5593) (2/14/86)	Do.
P 86-500	Generic name: Tetraglycidylamine	51 FR 6310 (6311) (2/21/86)	May 22, 1986.
P 86-501	Generic name: Aromatic diamine	51 FR 6310 (6311) (2/21/86)	Do.
P 86-502	Generic name: Tetraglycidylamine	51 FR 6310 (6311) (2/21/86)	Do.
P 86-503	Generic name: Aromatic diamine	51 FR 6310 (6311) (2/21/86)	Do.
P 86-504	Generic name: Alkaline metal salt of mercapto substituted heterocycle	51 FR 6310 (6311) (2/21/86)	May 5, 1986.
P 86-530	Generic name: Substituted acetic acid, mixed sodium and potassium salts	51 FR 6310 (6313) (2/21/86)	May 28, 1986.
P 86-531	Generic name: Substituted acetic acid, potassium salt	51 FR 6310 (6313) (2/21/86)	Do.
P 86-532	Generic name: Substituted acetic acid, sodium salt	51 FR 6310 (6313) (2/21/86)	Do.
P 86-533	Generic name: Substituted acetic acid	51 FR 6310 (6313) (2/21/86)	Do.
P 86-542	N-nitrosophenylhydroxylamine, ethanol amine salt	51 FR 7118 (2/26/86)	May 12, 1986.
P 86-549	Generic name: Acrylate modified alicyclic urethane	51 FR 7118 (7119) (2/26/86)	May 13, 1986.
P 86-554	Poly(oxy-1,2-ethanediyl), alpha-(1-oxo-2-propenyl)-omega-(dodecyloxy)-	51 FR 7118 (7119) (2/26/86)	May 12, 1986.
P 86-558	Generic name: Lithium hyperoxoperborate	51 FR 7118 (7120) (2/26/86)	Do.
P 86-566	1-Decanamine, N-decyl-N-methyl-N-oxide	51 FR 8009 (8010) (3/7/86)	May 13, 1986.
P 86-586	Poly(oxy-1,2-ethanediyl), alpha-2-methyl-1-oxo-2-propenyl-beta-(dodecyloxy)-	51 FR 8009 (8012) (3/7/86)	May 12, 1986.
P 86-592	Generic name: 1,3,5-Naphthalenetri-sulfonic acid-7[[4-[[4-[(4-substituted-6-halo-, 1,3,5-triazin-2-yl)amino]phenyl] azo]substituted phenyl]azo]-, mixed sodium and potassium salts.	51 FR 8889 (3/14/86)	May 28, 1986.
P 86-606	Generic name: Alkylsilylurethane	51 FR 8889 (8891) (3/14/86)	May 27, 1986.
P 86-626	Generic name: Ethanol, 2,2'-[[3-chloro-4-[[4-[functionalized alkenyl]phenyl]-azo]phenyl]imino]bis-, bis(hydrogen sulfate) ester, sodium salt.	51 FR 8889 (8892) (3/14/86)	May 28, 1986.
P 86-627	Poly(oxy-1,2-ethanediyl), alpha-1-oxo-isononyl-omega-hydroxy	51 FR 8889 (8892) (3/14/86)	Do.
P 86-629	Generic name: Aminocarboxylic acid, alkaline salt	51 FR 8889 (8892) (3/14/86)	Do.

[FR Doc. 86-17891 Filed 8-29-86; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Tuesday
September 2, 1986

Part V

Federal Communications Commission

47 CFR Part 80 et al.
Maritime Radio Service; Final Rules and Proposed Rule

VOL 51 ISS 169 SE 2 1986 UMI

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 80, 81, 83

[PR Docket No. 85-145; FCC 86-141]

Maritime Radio Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The FCC revises and reorganizes the existing Parts 81 and 83 of the rules governing the maritime radio services into a new Part 80. This action is part of the FCC's ongoing effort to review, simplify and clarify its regulations. The intended effect of this action is to eliminate unnecessary rules and language and improve the organization of the regulations governing the maritime radio services.

EFFECTIVE DATE: October 2, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Mickley, Robert DeYoung or William Berges, Private Radio Bureau, Aviation and Marine Branch, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in PR Docket 85-145, FCC 86-141, Adopted April 3, 1986, and Released April 25, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On May 24, 1985, the FCC released a Notice of Proposed Rule Making (Notice) in PR Docket No. 85-145, 50 FR 23454, proposing to consolidate the maritime rules which are currently contained in Parts 81 and 83. This not only reduced the redundancy now contained in the two parts, but also provided an opportunity to improve the organization of the maritime rules, eliminate unnecessary language and review each rule under the guidelines of the Regulatory Flexibility Act, Pub. L. 96-354, and the Paperwork Reduction Act, Pub. L. 96-611. The new Part 80 reduces the size of the maritime rules by approximately 40 percent.

2. The comments were unanimously supportive of the effort to rewrite and reorganize the marine rules. Two commenters, Sperry and Tideland limited their specific comments to the radar and racon provisions of Part 80. Gearhart devoted the bulk of its comments to the subject of the licensing and scope of service of portable ship earth stations. This subject is beyond the scope of this proceeding, but will be addressed in a separate proceeding in the future.

3. Other than the issues mentioned above, three areas of controversy were identified in the comments. These concerned (1) whether type acceptance of equipment for compulsory ships is an adequate substitute for type approval, (2) whether the deletion of the requirement for radar maintenance records is advisable, and (3) whether the emission designators are correct. The Radio Officers Union, District 3 of the National Marine Engineers' Beneficial Association (ROU) opposed type acceptance of compulsory ship equipment, contending this equipment should be held to the highest standard of authorization. The American Institute of Merchant Shipping (AIMS) supported the proposal, arguing that type acceptance is a process shipboard safety equipment and that type acceptance should lead to more rapid equipment authorization. The FCC concluded that type acceptance is an adequate means of authorizing maritime equipment. Type acceptance is consistent with the equipment authorization program for other compulsory and voluntary equipment and would have no effect on safety.

4. The ROU also opposed the proposal to eliminate the requirement contained in § 83.405(b) for ships subject to the Safety Convention to keep a record of installation and maintenance of radar stations. ROU argued that the requirement is not burdensome, the records are useful and consistent with the recommendations of the International Maritime Organization (IMO). AIMS supported the proposal and pointed out that the IMO recommendations are nonbinding. The FCC stated that the rule was not necessary for regulatory or safety purposes and therefore it would be eliminated as proposed. If the information is useful, the records can continue to be kept in whatever form is convenient.

5. The Radio Technical Commission for Maritime Services (RTCM) pointed out instances where the new system of emission designation adopted in the implementation of the Third Report and Order in General Docket No. 80-739, released November 27, 1984, 49 FR 48694, may lead to inconsistencies with respect to communications authorized under the old designation system in Parts 81 and 83. The FCC stated that the final rules clarify or resolve this problem by utilizing more than one designator or adding explanatory language as suggested by RTCM. The FCC noted that it was not intended in General Docket No. 80-739 or in this proceeding to alter authorized operations in the maritime services. Consequently, if any conflicts remain the FCC intends to permit previously authorized operations to continue unless specifically indicated to the contrary. Any conflicts would be resolved in future actions.

6. Other than the changes discussed above, the new Part 80 retains the organizational structure proposed in the NPRM. Subparts A-I are of general applicability while Subpart J-P apply to stations on land and Subparts Q-X apply to stations on ships. The FCC emphasized that the changes incorporated in Part 80 are primarily editorial in nature and do not alter substantive requirements applicable to the various maritime services except where specifically described.

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

8. The rule changes contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified requirements or burden upon the public. Implementation of any new or modified requirements or burden will be subject to approval by the Office of Management and Budget as prescribed in the Act.

Ordering Clauses

9. Accordingly, it is ordered, That under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended 47 U.S.C. 154(i) and 303(r), the Commission rules are amended as set forth, effective October 1, 1986.

10. It is further ordered, that this processing is terminated.

CROSS REFERENCE TABLE

Old section No.	New section No. and title	Summary of changes
81.1	80.1 Basis and purpose	Clarified.
81.2 (a–c)	80.5 Definitions	Clarified.
81.3 (a–v)	80.5 Definitions	Clarified.
81.4 (a–r)	80.5 Definitions	Clarified.
81.5 (a–e)	80.5 Definitions	Clarified
81.6 (a–d)	80.5 Definitions	Clarified.
81.7 (a–u)	80.5 Definitions	Clarified.
81.8	80.5 Definitions	Clarified.
81.9 (a–e)	80.5 Definitions	Clarified.
81.20	80.23 Filing of applications	Clarified.
81.21 (a&b)	Deleted	
81.22 (a&b)	80.17 Administrative classes of stations	Clarified.
81.23 (a&b)	80.15 Eligibility for station license	Clarified.
81.24	80.19 Standard forms to be used	Clarified.
	80.405 Station license	Clarified.
81.25 (a–d)	Deleted	
81.27 (a–c)	Deleted	
81.28 (a&b)	Deleted	
81.29	Deleted	
81.30	Deleted	
81.31 (a–d)	80.21 Supplemental information required	Clarified.
81.33	80.501 Supplemental eligibility requirements	Clarified.
	80.507 Scope of service	Clarified.
81.34 (a&b)	80.39 Authorized station location	Clarified.
81.35	80.19 Standard forms to be used	Simplified.
81.36 (a)	80.19 Standard forms to be used	Simplified.
81.36 (b)	Deleted	
81.36 (c)	80.29 Changes during license term	Clarified.
81.36 (d)	80.29 Changes during license term	Simplified.
81.37 (a)	80.19 Standard forms to be used	Simplified.
81.37 (b)	Deleted	
81.39 (a&b)	80.23 Filing of applications	Simplified.
81.40 (a–d)	80.23 Filing of applications	Simplified.
	80.37 One authorization for plurality of stations	Simplified.
81.41 (a–c)	Deleted	
81.42 (a&b)	Deleted	
81.44	Deleted	
81.46 (a&b)	Deleted	
81.47 (a&b)	Deleted	
81.48 (a–c)	Deleted	
81.51	Deleted	
81.61	80.49 Time in which station is paced in operation	Clarified.
81.65 (a&b)	80.25 License term	Simplified
81.69 (a–e)	80.37 One authorization for a plurality of stations	Clarified.
81.70 (a–b)	80.39 Authorized station location	Clarified.
81.71 (a–c)	80.41 Control points and dispatch points	Clarified.
81.72 (a–j)	Deleted	
81.73	80.47 Operation during emergency	Simplified.
81.74	80.302 Notice of discontinuance, reduction or impairment of service involving a distress watch	Clarified.
	80.471 Discontinuance or impairment of service	Simplified.
81.76	80.31 Cancellation of license	Clarified.
81.101	80.61 Commission inspection of station	Simplified.
	80.403 Availability of documents	Simplified.
81.102 (a–d)	80.405 Station license	Simplified.
81.103 (a–d)	Deleted	
81.104 (a)	80.69 Facilities requirements for public coast stations using telegraphy	Simplified.
81.104 (b)	80.67 General facilities requirements for coast stations	Simplified.
81.104 (c)	80.69 Facilities requirements for public coast stations using telephony	Clarified.
81.104 (d&e)	80.67 General facilities requirements for coast stations	Simplified.
81.105 (a–c)	80.70 Special provisions relative to coast stations VHF facilities	No change.
81.105	Deleted	
81.106 (a–g)	80.71 Operating controls for stations on land	No change.
81.107 (a&b)	80.72 Antenna requirements for coast stations	No change.
81.108	Deleted	
81.109 (a–c)	Deleted	
81.110 (a&b)	80.63 Maintenance of transmitter power	Clarified.
81.112	Deleted	
81.113 (a&b)	80.74 Public coast station facilities for a telephony busy signal	No change
81.114 (a&b)	Deleted	
81.115 (a&b)	80.409 Station logs	Simplified.
81.116 (a–d)	80.78 Requirements for land station control points	Simplified.
81.131 (a–e, g)	80.209 Transmitter frequency tolerances	Clarified.
81.131 (f)	Deleted	
81.132 (a–g)	80.207 Classes of emissions	Simplified.
81.132 (a)	80.385 Frequencies for automated systems	Clarified.
81.133 (a–d)	80.205 Bandwidths	Simplified.
81.134 (a–j)	80.215 Transmitter power	Simplified.
81.136 (a&b)	80.203 Authorization of transmitters for licensing	Clarified.
81.137 (a–f)	80.203 Authorization of transmitters for licensing	Simplified.
81.138 (a)	80.203 Authorization of transmitters for licensing	Simplified.
81.138 (b)	Deleted	
81.139 (a–c)	80.221 Special requirements for generating automatically the radiotelephone alarm signal	Simplified.
81.140 (a&b)	80.211 Emission limitations	Clarified.
81.142 (a–j)	80.213 Modulation requirements	Simplified.
81.143 (a–f)	80.219 Special requirements for narrow-band direct-printing (NB–DP) equipment	Simplified.
81.144 (a–f)	80.225 Special requirements for digital selective calling (DSC) equipment	Simplified.
81.151	80.151 Classification of operator licenses and endorsements	Clarified.
81.152 (a), (c), (d), (d), (g)	80.153 Coast station operator requirements	Simplified; (b and (f) deleted.
81.154	80.167 Limitation on operators	Simplified.

CROSS REFERENCE TABLE—Continued

Old section No.	New section No. and title	Summary of changes
81.155 (a&b)	Deleted	
81.156	80.169 Operators required to adjust transmitters or radar	Simplified.
81.158 (a–c)	80.177 When operator license is not required	Clarified.
81.159	80.175 Availability of operator licenses	Simplified.
	80.407 Operator authorization	Simplified.
81.171	80.86 International regulations applicable	No change.
81.172	80.87 Cooperative use of frequency assignments	Simplified.
81.173	80.88 Secrecy of communications	No change.
81.174	80.89 Unauthorized transmission	Simplified.
81.175	80.90 Suspension of transmission	No change.
81.176 (a&b)	80.106 Intercommunication in the mobile service	No change.
81.177	80.107 Service of private coast stations and marine utility stations	No change.
81.178	80.105 General obligations of coast stations	No change.
81.179 (a), (b), (c), (e), (f)	80.95 Message charges	Simplified; (d) deleted.
81.180	Deleted	
81.181 (a&b)	80.91 Order of priority of communications	No change.
	80.312 Priority of distress transmissions	No change.
81.182	80.94 Control by coast or Government station	Simplified.
81.183 (a–d)	80.92 Prevention of interference	Simplified.
81.184 (a&b)	80.106 Transmission of traffic lists by coast stations	Simplified.
81.185	80.109 Transmissions to a plurality of mobile stations by a public coast station	Simplified.
81.186 (a–g)	80.93 Hours of service	No change.
81.187 (a)	80.311 Authority for distress transmission	Simplified.
81.187 (b)	80.321 Acknowledgement of receipt of distress message	Simplified.
81.187 (c)	80.322 Form of acknowledgement	Simplified.
81.187 (d)	80.325 Control of distress traffic	Simplified.
81.187 (e)	80.324 Transmission of distress message by station not itself in distress	Simplified.
81.188 (a&b)	80.317 Radiotelegraph and radiotelephone alarm signals	No change.
81.189 (a&b)	80.318 Use of alarm signals	No change.
81.190 (a&b)	80.301 Watch requirements	Simplified.
81.190 (c)	Deleted	
81.191 (a)	Deleted	
81.191 (b)	80.301 Watch requirements	Simplified.
81.191 (c)	80.303 Watch on 156.8 Mhz (channel 16)	Clarified.
81.191 (d&e)	Deleted	
81.192	80.96 Maintenance tests	Simplified.
81.193 (a–d)	80.110 Inspection and maintenance of tower markings and associated control equipment	Simplified.
81.194 (a–c)	80.409 Station logs	Simplified.
81.201	80.451 Supplemental eligibility requirements	Simplified.
81.202 (a–c)	80.453 Scope of communications	Clarified.
81.203 (a&b)	80.358 Frequencies for digital selective calling	Simplified.
81.203 (b–e)	80.121 Public coast stations using telegraphy	Simplified.
81.204 (a&b)	80.361 Frequencies for narrow direct printing (NB–DP) and data transmissions	Simplified.
81.204 (c)	Deleted	
81.205 (a–e)	80.121 Public coast stations using telegraphy	Clarified.
81.206 (a–c)	80.455 Assignment and use of frequencies for manual Morse code telegraphy	Simplified.
81.206 (a, d, e)	80.357 Working frequencies	Simplified.
81.206 (b&c)	80.353 General uses—radiotelegraphy	Simplified.
81.207 (a–c)	80.355 Distress, urgency, safety, call and reply frequencies	Simplified.
81.207 (d)	Deleted	
81.207 (e)	80.359 Frequencies for digital selective calling (DSC)	Clarified.
81.209 (a–c)	80.121 Public coast stations using telegraphy	Simplified.
81.218 (a–d)	80.357 Working frequencies	Simplified.
81.219	80.100 Morse code requirement	Clarified.
81.220	80.99 Radiotelegraph station identification	Clarified.
81.221 (a&b)	80.98 Radiotelegraph testing procedure	No change.
81.222 (a–c)	80.97 Radiotelegraph operating procedure	Clarified.
81.223 (a)	80.401 Station documents requirement	Simplified.
81.223 (b)	Deleted	
81.223 (c)	80.403 Availability of documents	Clarified.
81.224 (a–h)	80.409 Station logs	Clarified.
81.230	80.122 Public coast stations using facsimile	Clarified.
	80.363 Frequencies for facsimile	Clarified.
81.301	80.451 Supplement eligibility requirements	No change.
81.302 (a–c)	80.453 Scope of communications	Clarified.
81.303 (a)	80.467 Duplication of VHF service	No change.
81.304 (a–h)	80.465 Assignment and use of frequencies for telephony	Simplified.
81.305 (a&b)	80.369 Distress, urgency, safety, call and reply frequencies	Simplified.
81.306 (a&b)	80.371 Public correspondence frequencies	Simplified.
81.307	80.371 Public correspondence frequencies	Simplified.
81.308 (a&b)	80.373 Private communications frequencies	Simplified.
81.310 (a)	80.99 Radiotelegraph station indentification	Simplified.
	80.102 Radiotelephone station identification	Simplified.
81.310 (b&c)	Deleted	
81.311 (a&b)	80.101 Radiotelephone testing procedures	Simplified.
81.312 (a–d)	80.111 Radiotelephone operating procedures for coast stations	Simplified.
81.313 (a–c)	80.401 Station documents requirement	Simplified.
81.314 (a–f)	80.409 Station logs	Simplified.
81.330 (a–e)	80.469 Maritime mobile repeater stations in Alaska	Simplified.
81.330 (f–i)	80.373 Private communications frequencies	Simplified.
81.351 (a–b)	80.501 Supplemental eligibility requirements	Simplified.
81.352 (a–c)	80.503 Cooperative use of facilities	Simplified.
81.354 (a–b)	80.505 Points of communication	Clarified.
81.355 (a–d)	80.507 Scope of service	Simplified.
81.356	80.373 Private communications frequencies	Simplified.
81.357 (a–c)	80.383 Vessel Traffic Services (VTS) System frequencies	No change.
81.358 (a–c)	80.511 Assignment limitations	No change.
81.359 (a–c)	80.513 Frequency coordination	No change.
81.360 (a–e)	80.367 General uses—radiotelephony	Simplified.
	80.369 Distress, urgency, safety, call and reply frequencies	Simplified.

CROSS REFERENCE TABLE—Continued

Old section No.	New section No. and title	Summary of changes
	80.273 Private communications frequencies	Simplified.
81.361 (a–c)	80.131 Radioprinter operations	Simplified.
	80.1155 Radioprinter	Simplified.
81.362 (a–c)	80.131 Radioprinter operations	Simplified.
	80.1155 Radioprinter	Simplified.
81.363 (a&b)	80.131 Radioprinter operations	Simplified.
	80.1155 Radioprinter	Simplified.
81.364	80.517 Time limitation on calling	No change.
81.367 (a&b)	80.104 Radiotelephone testing procedures	Clarified.
81.368 (a–c)	80.111 Radiotelephone operating procedures for coast stations	Clarified.
81.372	80.102 Radiotelephone station identification	Simplified.
81.401	80.801 Licensing limitations	Simplified.
81.402 (a–c)	80.275 Radiodetermination frequencies	Simplified.
81.403 (a&b)	80.805 U.S. Coast Guard coordination	No change.
81.404 (a&b)	80.853 Scope of communication	Clarified.
81.501	80.33 Developmental license	Clarified.
81.502 (a–c)	80.33 Developmental license	Clarified.
81.503 (a&b)	80.33 Developmental license	Simplified.
81.503 (a–c)	80.284 Frequencies for developmental stations	Simplified.
81.504 (a–c)	80.33 Developmental license	Simplified.
81.505 (a–d)	80.33 Developmental license	Simplified.
81.506	80.33 Developmental license	Simplified.
81.507 (a–c)	80.33 Developmental license	Simplified.
81.521–81.534	Deleted	
81.551	80.149 Answers to notice of violation	No change.
81.601	Deleted	
81.603 (a–c)	Deleted	
81.605	Deleted	
81.609 (a&b)	Deleted	
81.611	80.853 Scope of communications	Simplified.
81.613	80.853 Scope of communications	Simplified.
81.615	80.389 Frequencies for maritime support station	No change.
81.617	Deleted	
81.619	80.855 Assignment of use of frequencies	Simplified.
81.621	80.281 Frequencies of fixed stations	Simplified.
	80.555 Scope of communications	Simplified.
81.623 (a)	80.281 Frequencies for fixed stations	Simplified.
	80.553 Supplementary eligibility requirements	Simplified.
81.625 (a–d)	80.281 Frequencies for fixed stations. See also 80.211, 80.557, and 80.559	Simplified.
81.701	80.15 Eligibility for station license	Simplified.
81.702 (a&b)	80.705 Hours of service of Alaska public fixed stations	Simplified.
81.703	80.703 Priority of distress and other signals	Simplified.
81.704	80.409 Station logs	Clarified.
81.705 (a&b)	80.267 Cooperative use of frequency assignments	Clarified.
81.708 (a&b)	Deleted	
81.708 (a&b)	80.709 Frequencies available	Clarified.
81.709	80.709 Frequencies available	Clarified.
81.711	80.709 Frequencies available	Clarified.
81.714	80.711 Use of U.S. Government frequencies	No change.
81.801	80.751 Scope	No change.
81.802 (a–c)	80.753 Signal strength requirements at the service area contour	No change.
81.803	80.755 Applicability	No change.
81.804 (a&b)	80.757 Topographical data	No change.
81.805 (a–e)	80.759 Average terrain elevation	No change.
81.806	80.763 Effective antenna height	No change.
81.807	80.765 Effective radiated power	No change.
81.808 (a–d)	80.767 Propagation curve	No change.
81.810 (a–d)	80.769 Shadow loss	No change.
81.811	80.723 Ratio of desired to undesired signal strengths	No change.
81.812 (a–c)	80.771 Method of computing coverage	No change.
81.813 (a–c)	80.761 Conversion graphs	No change.
81.901	80.57 Canada/USA channeling arrangement for VHF maritime public correspondence	No change.
81.902 (a–j)	80.57 Do	No change.
81.903 (a–f)	80.57 Do	No change.
81.904 (a–f)	80.57 Do	No change.
81.905 (a–c)	80.57 Do	No change.
81.906 (a–c)	80.57 Do	No change.
	80.475 Scope of service of Automated Maritime Telecommunications System (AMTS)	Simplified.
81.913 (a–c)	80–1169 Automated Maritime Telecommunications System (AMTS)	Simplified.
81.915	80.477 Points of communication	Simplified.
81.917	80.295 Frequencies for automated systems	No change.
	80.1171 Assignment and use of frequencies	Simplified.
83.1 (a&b)	80.1 Basis and purpose	No change.
83.2 (a–g)	80.5 Definitions	Clarified.
83.3 (a–f)	80.5 Definitions	Clarified.
83.4 (a–c)	80.5 Definitions	Clarified.
83.5 (a–c)	80.5 Definitions	Clarified.
83.6 (a–c)	80.5 Definitions	Clarified.
83.7 (a–f)	80.5 Definitions	Clarified.
83.8 (a–h)	80.5 Definitions	Clarified.
83.20 (a&b)	80.13 Station license required	No change.
83.22	80.15 Eligibility for station license	Clarified.
83.24 (a–c)	80.15 Eligibility for station license	Clarified.
83.28 (a&b)	80.19 Standard forms to be used	Simplified.
83.30 (a–c)	Deleted	
83.32 (a–e)	80.23 Filing of applications	No change.
83.32 (f–g)	80.51 Ship earth station licensing	No change.
83.34	Deleted	
83.36	Deleted	
83.38	Deleted	
83.40 (a–c)	80.19 Standard forms to be used	Simplified.

CROSS REFERENCE TABLE—Continued

Old section No.	New section No. and title	Summary of changes
	80.25 License term	
83.42 (a&b)	80.29 Changes during license term	No change.
83.44	80.56 Transfer of ship station license prohibited	Clarified.
83.46 (a&b)	Deleted	No change.
83.46	80.31 Cancellation of license	
83.50 (a&b)	80.53 Application for portable ship station license	Clarified.
83.52 (a&b)	80.55 Application for fleet station license	No change.
83.54	Deleted	Clarified.
83.56	80.507 Scope of service	
83.60 (a–c)	80.59 Compulsory ship station	Simplified.
83.70 (a–e)	80.59 Compulsory ship stations	Simplified.
83.72 (a&b)	80.59 Compulsory ship stations	No change.
83.74	80.59 Compulsory ship stations	No change.
83.101 (a)	80.61 Commission inspection of stations	
83.101 (b)	80.79 Inspection of ship stations by a foreign Government	No change.
83.102 (a–c)	80.405 Station license	Simplified.
83.103	Deleted	Simplified.
83.104 (a–h)	80.60 Operating controls for ship stations	
83.105 (a–d)	80.142 Ships using telegraphy	No change.
83.106 (a–c)	80.143 Required frequencies for radiotelephony	No change.
	80.956 Required Frequencies and uses	No change.
83.107 (a–c)	80.61 Antenna requirements for ship stations	Clarified.
83.108	Deleted	No change.
83.110 (a–b)	80.63 Maintenance of transmitter power	
83.111	Deleted	Clarified.
83.112	Deleted	
83.113	Deleted	
83.114 (a&b)	80.935 Station clock	
83.115 (a–e)	80.409 Station logs	Simplified.
83.131 (a–g)	80.209 Transmitter frequency tolerances	Clarified.
83.132 (a–g)	80.207 Classes of emission	Simplified.
83.133 (a&b)	80.205 Bandwidths	Simplified.
83.133 (c&d)	Deleted	Simplified.
83.134 (a–f)	80.215 Transmitter power	
	80.1053 Special requirements for Class A EPIRB stations	Simplified
	80.1057 Special requirements for Class C EPIRB stations	Clarified.
83.135 (a)	80.217 Suppression of interference aboard ships	Clarified.
83.135 (b)	Deleted	Simplified.
83.136 (a–f)	80.211 Emission limitations	
83.137 (a–d)	80.213 Modulation requirements	Simplified.
	80.1057 Special requirements for Class C EPIRB stations	Simplified.
83.138 (a–c)	80.203 Authorization of transmitter for licensing	Clarified.
83.139 (a–j)	80.203 Authorization of transmitter for licensing	Simplified.
83.140 (a–c)	80.203 Authorization of transmitter for licensing	Simplified.
83.141 (a–d)	80.223 Special requirement for survival craft stations	Simplified.
83.142 (a–c)	80.221 Special requirements for automatically generating the radiotelephone alarm signal	Clarified.
83.143 (a–f)	80.219 Special requirements for narrow-band direct-printing (NB–DP) equipment	Simplified.
83.144 (a–m)	80.1053 Special requirements for Class A EPIRBs	Simplified.
	80.1055 Special requirements for Class B EPIRBs	Simplified.
83.145 (a&b)	80.1053 Special requirements for Class A EPIRBs	Simplified.
83.145 (c)	Deleted	Simplified.
83.146 (a–g)	80.1057 Special requirements for Class C EPIRBs	
83.151 (a)	80.151 Classification of operator's licenses and endorsements	No change.
83.152 (a)	80.155 Ship station operator requirements	Clarified.
83.152 (b)	80.157 Radio officer defined	Clarified.
83.152 (c)	Deleted	Clarified.
83.153	Deleted	
83.155 (a–e)	80.159 Operator requirements for Title III of the Communications Act and the Safety Convention	
83.156 (a&b)	80.159 Do	Simplified.
83.157 (a&b)	80.161 Operator requirements for Great Lakes Radio Agreement	Simplified.
83.158	80.163 Operator requirements of the Vessel Bridge-to-Bridge Act	Clarified.
83.159	80.165 Operator requirements for voluntary stations	No change.
83.160 (a&b)	80.167 Limitations on operators	Clarified.
83.161 (a–c)	Deleted	Simplified.
83.162 (a&b)	80.189 Operators required to adjust transmitters or radar	
83.164 (a–d)	80.177 When operator license is not required	Clarified.
83.165 (a&b)	80.175 Availability of operator licenses	Simplified.
83.173 (a&b)	80.114 Authority of master	Simplified.
83.174	80.88 Secrecy of communications	No change.
83.175	80.106 Intercommunication in the mobile services	No change.
83.176	Deleted	Simplified.
83.177 (a&b)	80.91 Order of priority of communications	
83.178	80.89 Unauthorized transmissions	No change.
83.179	80.94 Control by coast or Government station	Clarified.
83.180	80.87 Cooperative use of frequency assignments	No change.
83.181 (a–e)	80.92 Prevention of interference	No change.
83.182	80.90 Suspension of transmission	Simplified.
83.183 (a&b)	80.93 Hours of service	No change.
83.184 (a–c)	80.409 Station logs	Simplified.
83.185	Deleted	Clarified.
83.186 (a–f)	80.115 Operational conditions for use of associated ship units	
83.201 (a&b)	80.304 Watch requirement during silence period	Simplified.
83.202 (a–c)	80.305 Watch requirements of the Communications Act and the Safety Convention	Clarified.
83.203 (a–d)	80.305 Do	Clarified.
83.204 (a,c–e)	80.306 Provisions governing the radiotelegraph watch	Clarified.
83.204 (b)	Deleted	Clarified.
83.205	80.307 Compulsory use of radiotelegraph auto alarm	
83.206	80.308 Watch required by the Great Lakes Radio Agreement	No change.
83.207	80.309 Watch required by Bridge-to-Bridge Act	No change.
83.221	80.146 Watch on 500 kHz	Clarified.
83.233	80.147 Watch on 2182 kHz	No change.
		No change.

CROSS REFERENCE TABLE—Continued

Old section No.	New section No. and title	Summary of changes
83.224 (a-c)	80.149 Watch required by voluntary vessels	No change.
83.231	Deleted	
83.232	80.311 Authority for distress transmissions	Clarified.
83.233	80.313 Frequencies for use in distress	Clarified.
83.234 (a-c)	80.314 Distress signals	No change.
83.235 (a-c)	80.315 Distress calls	No change.
83.236 (a-c)	80.316 Distress messages	No change.
83.237 (a-e)	80.319 Radiotelegraph distress call and message transmission procedure	No change.
83.238 (a-e)	80.320 Radiotelephone distress call and message transmission procedure	No change.
83.239 (a&b)	80.321 Acknowledgement of receipt of distress message	No change.
83.240 (a&b)	80.322 Form of acknowledgement	No change.
83.241 (a&b)	80.323 Information furnished by an acknowledging station	No change.
83.242 (a-d)	80.324 Transmission of distress message by station not itself in distress	No change.
83.243 (a-d)	80.325 Control of distress traffic	No change.
83.244 (a&b)	80.326 Notification of resumption of normal working	No change.
83.245 (a&b)	80.327 Radiotelegraph and radiotelephone alarm signals	No change.
83.246 (a&b)	80.328 Use of alarm signals	No change.
83.247 (a-d)	80.327 Urgency signals	No change.
83.248 (a-c)	80.328 Urgency message	No change.
83.249 (a-c)	80.329 Safety signals	No change.
83.250 (a-d)	80.330 Safety message	No change.
83.251 (a-c)	80.331 Bridge-to-Bridge communication procedure	No change.
83.252 (a&b)	80.332 Equipment to aid search and rescue operations	No change.
83.253	80.333 Stations in maritime mobile-satellite service	Simplified.
83.254	80.145 Class C EPIRB operational procedures	No change.
83.261	Deleted	
83.262	Deleted	
83.263 (a&b)	Deleted	
83.271	80.95 Message charges	No change.
83.272	80.95 Message charges	No change.
83.273	80.95 Message charges	Clarified.
83.274 (a&b)	80.95 Message charges	Clarified.
83.275	Deleted	
83.276	80.95 Message charges	Simplified.
83.277	Deleted	
83.282	80.141 General provisions for ship stations	No change.
83.283 (a-c)	80.141 General provisions for ship stations	No change.
83.284 (a&b)	80.141 General provisions for ship stations	No change.
83.285 (a&b)	80.351 Scope	Simplified.
83.286 (a-c)	80.357 Working frequencies	Simplified.
83.287 (a-i)	80.355 Distress, urgency, safety, call and reply frequencies	Simplified.
83.288 (a&b)	80.359 Frequencies for digital selective calling (DSC)	Simplified.
83.289 (a&b)	80.357 Working frequencies	Simplified.
83.320 (a,c&d)	80.261 Frequencies for narrow-band direct-printing (NBDP) and data transmissions	Clarified.
83.321	80.261 Frequencies for narrow-band direct-printing (NBDP) and data transmissions	Clarified.
83.322 (a-d)	80.255 Distress, urgency, safety, call and reply frequencies	Clarified.
83.323 (a-c)	80.255 Distress, urgency, safety, call and reply frequencies	Clarified.
83.324 (a-g)	80.257 Working frequencies	Simplified.
83.325	80.169 Morse code requirement	Clarified.
	80.353 General uses—radiotelegraphy	Clarified.
83.326 (a-c)	80.99 Radiotelegraph station identification	No change.
83.327 (a&b)	80.98 Radiotelegraph testing procedure	No change.
83.328 (a-g)	80.97 Radiotelegraph operating procedures	Clarified.
83.328 (a-c, e)	80.353 General uses—radiotelegraphy	No change.
83.329 (a-d)	80.142 Ships using radiotelegraphy	No change.
83.330 (a-j)	80.142 Ships using radiotelegraphy	No change.
83.332 (a&b)	80.263 Frequencies for facsimile	Clarified.
	80.1157 Facsimile	Clarified.
83.333 (a-c)	80.401 Station document requirement	Clarified.
83.334 (a-c)	80.409 Station logs	Clarified.
83.335	80.385 Frequencies for automated systems	Simplified.
83.337 (a-c)	80.131 Radioprinter operations	Simplified.
	80.1155 Radioprinter	Simplified.
83.339 (a-e)	80.131 Radioprinter operations	Simplified.
	80.1155 Radioprinter	Simplified.
83.341 (a&b)	80.131 Radioprinter operations	Simplified.
	80.1155 Radioprinter	Simplified.
83.351 (a&b)	80.369 Distress, urgency, safety, call and reply frequencies	Simplified.
83.352 (a-d)	80.369 Distress, urgency, safety, call and reply frequencies	Simplified.
83.353 (a-d)	80.369 Distress, urgency, safety, call and reply frequencies	Simplified.
83.354	80.371 Public correspondence frequencies	Simplified.
83.355 (a-c)	80.371 Public correspondence frequencies	Simplified.
83.356	80.371 Public correspondence frequencies	Simplified.
83.357	Deleted	
83.358 (a-e)	80.373 Private communications frequencies	Simplified.
83.359 (a)	80.371 Public correspondence frequencies	Clarified.
83.360 (a)	80.373 Private communications frequencies	Clarified.
83.360 (a)	80.379 Maritime frequencies assignable to aircraft stations	Simplified.
83.360 (a&b)	80.373 Private communications frequencies	Simplified.
83.361 (a-c)	80.282 Vessel traffic services (VTS) system frequencies	Simplified.
83.362 (a-g)	80.373 Private communications frequencies	Simplified.
83.363 (a&b)	80.367 General conditions of use	Simplified.
83.364 (a-d)	80.102 Radiotelephone station identification	Simplified.
83.365 (a&b)	80.101 Radiotelephone testing procedure	Simplified.
83.366 (a-j)	80.116 Radiotelephone operating procedures for ship stations	Simplified.
83.367 (a&b)	80.401 Station document requirement	Simplified.
83.368 (a-c)	80.409 Station logs	Simplified.
83.370 (a&b)	80.373 Private radiotelephone frequencies	Simplified.
83.373	80.385 Frequencies for automated systems	Simplified.
83.401 (a-c)	80.375 Radiodetermination frequencies	Simplified.
83.403	80.375 Radiodetermination frequencies	Simplified.

CROSS REFERENCE TABLE—Continued

Old section No.	New section No. and title	Summary of changes
83.404 (a&b)	80.1201 Special provisions for cable repair ship stations	Simplified.
83.405	80.375 Radiodetermination frequencies	Simplified.
83.431	Deleted	
83.432 (a–c)	80.33 Developmental license	Simplified.
83.433 (a–c)	80.33 Developmental license	Simplified.
83.434 (a–c)	80.391 Frequencies for developmental operations	Simplified.
83.435 (a–c)	80.33 Developmental license	Simplified.
83.436	80.33 Developmental license	Simplified.
83.437 (a–c)	80.33 Developmental license	Simplified.
83.441 (a–d)	80.33 Developmental license	Simplified.
83.442	80.802 Inspection of station	Simplified.
83.443 (a–c)	80.804 Radio station	Simplified.
83.444 (a–g)	80.805 Radio installations	Clarified.
83.445 (a–i)	80.806 Requirements of main installation	No change.
83.446 (a&b)	80.807 Requirements of radiotelephone installation	No change.
83.447	80.808 Requirements of reserve installation	No change.
83.448	80.809 Routing of power supply wiring	No change.
83.449 (a&b)	80.810 User of reserve installation	Clarified.
83.451	80.811 Tests of reserve installation and automatic radiotelegraph alarm-signal keyer	No change.
83.452 (a&b)	80.812 Automatic-alarm-signal keying device	No change.
83.453 (a&b)	80.813 Installation of automatic-alarm-signal keying device	No change.
83.454 (a–e)	80.814 Radiotelegraph auto alarm	Simplified.
83.457 (a–c)	80.815 Installation of radiotelegraph auto alarm	Clarified.
83.458 (a&b)	80.817 Tests of radiotelegraph auto alarm	No change.
83.459 (a&b)	80.818 Direction finding and homing equipment	No change.
83.460	80.819 Requirements for radio direction finder	No change.
83.461 (a&b)	80.820 Auxiliary receiving antenna	Simplified.
83.462 (a&b)	80.821 Installation of direction finder	Simplified.
83.463 (a–c)	80.822 Contingent acceptance of direction finder calibration	Clarified.
83.464 (a&b)	80.823 Check bearings by authorized ship personnel	Simplified.
83.465 (a–c)	80.824 Homing facility requirements	No change.
83.466 (a–c)	80.825 Radar installation requirements specifications	Clarified.
83.467	80.826 Interior communication systems	No change.
83.468	80.827 Requirements for interior communications system	No change.
83.469 (a–f)	80.828 Radiotelegraph station clock	No change.
83.471 (a–e)	80.829 Survival craft non-portable radiotelegraph installation	No change.
83.472 (a–c)	80.830 Power supply for survival craft non-portable radiotelegraph installation	No change.
83.473 (a–c)	80.831 Survival craft portable radiotelegraph equipment	No change.
83.474 (a–d)	80.832 Tests to survival craft radio equipment	No change.
83.475 (a–c)	80.833 Class S survival craft emergency position indicating radiobeacons EPIRB's	No change.
83.479 (a&b)	80.834 Survival craft portable two-way radiotelephone apparatus	No change.
83.480 (a–d)	80.835 Ship and survival craft station spare parts, tools, instruction books, circuit diagrams and testing equipment	No change.
83.481	80.836 General and individual ship exemptions	No change.
83.482 (a–e)	Deleted	
83.483 (a–f)	80.853 Radiotelephone station	Clarified.
83.484 (a–h)	80.854 Radiotelephone installation	Clarified.
83.486	80.855 Radiotelephone transmitter	Clarified.
83.487	80.856 Automatic radiotelephone alarm signal generator	No change.
83.488 (a–e)	80.857 Installation of automatic radiotelephone alarm signal generator	No change.
83.489 (a&b)	80.858 Radiotelephone receiver	No change.
83.491 (a–h)	80.859 Main power supply	No change.
83.492	80.860 Reserve power supply	No change.
83.493 (a–e)	80.861 Required capacity	No change.
83.494 (a–c)	80.862 Proof of capacity	No change.
83.496 (a&b)	80.863 Antenna system	No change.
83.497	80.864 Emergency electric lights	No change.
83.498	80.865 Radiotelephone station clock	No change.
83.499 (a&b)	80.866 Spare antenna	No change.
83.501	80.867 Ship station tools, instruction books, circuit diagrams and testing equipment	No change.
83.502	80.868 Card of instructions	No change.
83.504 (a&b)	80.869 Test of radiotelephone station	No change.
83.511	80.870 Survival craft radio equipment	No change.
83.512	80.901 Applicability	No change.
83.513	80.903 Inspection of radiotelephone installation	No change.
83.514 (a–d)	80.411 Vessel certification or exemption	Simplified.
83.516 (a&b)	80.905 Radiotelephone installation	Simplified.
83.517 (a&b)	80.907 Principal operating position	Simplified.
83.518 (a–e)	80.909 Medium frequency transmitter	No change.
83.519 (a–f)	80.911 VHF transmitter	Simplified.
83.521 (a–c)	80.913 Radiotelephone receivers	Clarified.
83.522 (a–g)	80.915 Main power supply	Clarified.
83.523	80.917 Reserve power supply	Simplified.
83.524 (a–e)	80.919 Required capacity	Clarified.
83.526	80.921 Proof of capacity	Clarified.
83.527 (a&b)	80.923 Antenna system	Clarified.
83.528	80.925 Electric light	Clarified.
83.529	80.927 Antenna radio frequency indicator	No change.
83.531	80.929 Nameplate	No change.
83.532 (a–c)	80.931 Test of radiotelephone installation	No change.
83.536 (a–e)	80.933 General exemption	No change
83.537	80.951 Applicability	No change.
83.539 (a–d)	80.953 Inspection and certification	No change.
83.541 (a&b)	80.955 Radiotelephone installation	No change.
83.542 (a–c)	80.957 Principal operating position	No change.
83.543 (a&b)	80.959 Radiotelephone transmitter	No change.
83.544 (a&b)	80.961 Radiotelephone receiver	No change.
83.545 (a–e)	80.963 Main power supply	No change.
83.546	80.965 Reserve power supply	No change.
83.547 (a&b)	80.967 Antenna system	No change.
83.548	80.969 Illumination of operating controls	No change.
	80.971 Test of radiotelephone installation	Simplified.

CROSS REFERENCE TABLE—Continued

Old section No.	New section No. and title	Summary of changes
83.551 (a&b)	80.251 Scope	Simplified.
83.552 (a–g)	80.253 Technical requirements of main transmitter	Clarified.
83.553 (a–e)	80.255 Technical requirements of reserve transmitter	Clarified.
83.554 (a&b)	80.251 Scope	Simplified.
83.555 (a–h)	80.259 Technical requirements for radiotelephone auto alarm receiver (auto alarm)	Clarified.
83.556 (a–k)	80.257 Manufacturing requirements for radiotelegraph auto alarm receiver (auto alarm)	No change.
83.557	80.251 Scope	Clarified.
83.561	Deleted	
83.562 (a–f)	80.261 Technical requirements for automatic alarm signal keying device	Simplified.
83.564	80.251 Scope	Simplified.
83.567 (a–e)	80.263 Common requirements for survival craft radio equipment	Simplified.
83.568 (a–g)	80.265 Requirements for survival craft portable radio equipment	Simplified.
83.569 (a–e)	80.267 Requirements for survival craft nonportable radio equipment	Simplified.
83.570 (a–c)	80.269 Technical requirements for radiotelephone distress frequency watch receiver	Simplified.
83.601 (a–e)	80.1059 Special requirements for Class S EPIRB stations	Clarified.
83.603 (a–l)	80.271 Technical requirements for portable survival craft radiotelephone tranceivers	Clarified.
83.651 (a&b)	80.149 Answer to notice of violation	No change.
83.652	Deleted	
83.701 (a–d)	80.1001 Applicability	Clarified.
83.703	80.1003 Station required	Simplified.
83.705	80.1005 Inspection of station	No change.
83.709 (a–b)	80.1007 Bridge-to-bridge radiotelephone installation	Clarified.
83.711	80.1009 Principal operator and operating position	No change.
83.713 (a–b)	80.1011 Transmitter	Clarified.
83.715 (a–c)	80.1013 Receiver	Simplified.
83.717 (a–c)	80.1015 Power supply	Simplified.
83.719 (a&b)	80.1017 Antenna system	No change.
83.721	80.1019 Antenna radio frequency indicator	No change.
83.723	80.1021 Nameplate	No change.
83.725	80.1023 Test of radiotelephone installation	No change.
83.811 (a&b)	80.1177 Assignment and use of frequencies	Simplified.
83.813 (a&b)	80.15 Eligibility for station license	Simplified.
83.815 (a–c)	80.1175 Scope of communications	Simplified.
83.817	80.1179 On-board repeater limitations	Simplified.
83.819 (a–c)	80.413 On-board station equipment records	Simplified.
83.821	Deleted	
83.823 (a&b)	80.1175 Scope of communications	Simplified.
83.825 (a–d)	80.1181 Station identification	Clarified.
83.835 (a–f)	80.1183 Remote control for maneuvering or navigation	No change.
83.840	80.1185 Supplemental eligibility requirement for satellite stations	No change.
83.841	80.1187 Scope of communication	No change.
83.842 (a–d)	80.1189 Order of priority	No change.
83.843 (a&b)	80.377 Frequencies for ship earth stations	Simplified.
83.851 (a–d)	80.871 VHF radiotelephone station	No change.
83.852 (a–d)	80.872 The VHF radiotelephone installation	No change.
83.853 (a–d)	80.873 VHF radiotelephone transmitter	No change.
83.854 (a–e)	80.874 VHF radiotelephone receiver	No change.
83.855 (a–d)	80.875 VHF radiotelephone power supply	Simplified.
83.856	80.876 VHF radiotelephone antenna system	No change.
83.857 (a–h)	80.877 Controls and indicators required for the VHF radiotelephone installation	No change.
83.1100	80.1169 Automated Maritime Telecommunications System (AMTS)	Simplified.
83.1103	80.1169 Automated Maritime Telecommunications System (AMTS)	Simplified.
83.1105	80.385 Frequencies for automated systems	No change.
	80.1171 Assignment and use of frequencies	Simplified.

List of Subjects

47 CFR Part 80

Alaska, Coast stations, Communication equipment, Radio, Ship stations, Telephone, Telegraph.

47 CFR Part 81

Alaska, Coast stations, Communication equipment, Telephone, Telegraph.

47 CFR Part 83

Communications equipment, Radio, Ship stations.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PARTS 81 AND 83—REMOVED

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are removed and a new Part 80 is added to read as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

GENERAL

Subpart A—General Information

Sec.

80.1 Basis and purpose.
80.2 Other regulations that apply.
80.3 Other applicable rule parts of this chapter.
80.5 Definitions.

Subpart B—Applications and Licenses

80.11 Scope.
80.13 Station license required.
80.15 Eligibility for station license.
80.17 Administrative classes of station.
80.19 Standard forms to be used.
80.21 Supplemental information required.
80.23 Filing of applications.
80.25 License term.
80.29 Changes during license term.
80.31 Cancellation of license.
80.33 Developmental license.
80.37 One authorization for a plurality of stations.
80.39 Authorized station location.
80.41 Control points and dispatch points.
80.43 Equipment acceptable for licensing.
80.45 Frequencies.
80.47 Operation during emergency.
80.49 Time in which station is placed in operation.
80.51 Ship earth station licensing.
80.53 Application for a portable ship station license.
80.55 Application for a fleet station license.
80.56 Transfer of ship station license prohibited.
80.57 Canada/USA channeling arrangement for VHF maritime public correspondence.
80.59 Compulsory ship stations.

Subpart C—Operating Requirements and Procedures

Station Requirements—General

80.61 Commission inspection of stations.
80.63 Maintenance of transmitter power.

Station Requirements—Land Stations

80.67 General facilities requirements for coast stations.
80.68 Facilities requirement for public coast stations using telegraphy.
80.69 Facilities requirement for public coast stations using telephony.
80.70 Special provisions relative to coast station VHF facilities.
80.71 Operating controls for stations on land.
80.72 Antenna requirements for coast stations.
80.74 Public coast station facilities for a telephony busy signal.
80.76 Requirements for land station control points.

Station Requirements—Ship Stations

80.79 Inspection of ship station by a foreign government.
80.80 Operating controls for ship stations.
80.81 Antenna requirements for ship stations.

Operating Procedures—General

80.86 International regulations applicable.
80.87 Cooperative use of frequency assignments.
80.88 Secrecy of communication.
80.89 Unauthorized transmissions.
80.90 Suspension of transmission.
80.91 Order of priority of communications.
80.92 Prevention of interference.
80.93 Hours of service.
80.94 Control by coast or Government station.
80.95 Message charges.
80.96 Maintenance tests.
80.97 Radiotelegraph operating procedures.
80.98 Radiotelegraph testing procedures.
80.99 Radiotelegraph station identification.
80.100 Morse code requirement.
80.101 Radiotelephone testing procedures.
80.102 Radiotelephone station identification.
80.103 Digital selective calling (DSC) operating procedures.
80.104 Identification of radar transmissions not authorized.

Operating Procedures—Land Stations

80.105 General obligations of coast stations.
80.106 Intercommunication in the mobile service.
80.107 Service of private coast stations and marine-utility stations.
80.108 Transmission of traffic lists by coast stations.
80.109 Transmission to a plurality of mobile stations by a public coast station.
80.110 Inspection and maintenance of tower markings and associated control equipment.
80.111 Radiotelephone operating procedures for coast stations.

Operating Procedures—Ship Stations

80.114 Authority of the master.
80.115 Operational conditions for use of associated ship units.
80.116 Radiotelephone operating procedures for ship stations.

Special Procedures—Public Coast Stations

80.121 Public coast stations using telegraphy.
80.122 Public coast stations using facsimile.

Special Procedures—Private Coast Stations

80.131 Radioprinter operations.

Special Procedures—Ship Stations

80.141 General provisions for ship stations.
80.142 Ships using radiotelegraphy.
80.143 Required frequencies for radiotelephony.
80.145 Class C EPIRB operational procedures.

Shipboard General Purpose Watches

80.146 Watch on 500 kHz.
80.147 Watch on 2182 kHz.
80.148 Watch on 156.8 MHz (Channel 16).

Violations

80.149 Answers to notice of violation.

Subpart D—Operator Requirements

80.151 Classification of operator licenses and endorsements.

Coast Station Operator Requirements

80.153 Coast station operator requirements.

Ship Station Operator Requirements

80.155 Ship station operator requirements.
80.157 Radio officer defined.
80.159 Operator requirements of Title III of the Communications Act and the Safety Convention.
80.161 Operator requirements of the Great Lakes Radio Agreement.
80.163 Operator requirements of the Bridge-to-Bridge Act.
80.165 Operator requirements for voluntary stations.

General Operator Requirements

80.167 Limitations on operators.
80.169 Operators required to adjust transmitters or radar.
80.175 Availability of operator licenses.
80.177 When operator license is not required.

Subpart E—General Technical Standards

80.201 Scope.
80.203 Authorization of transmitters for licensing.
80.205 Bandwidths.
80.207 Classes of emission.
80.209 Transmitter frequency tolerances.
80.211 Emission limitations.
80.213 Modulation requirements.
80.215 Transmitter power.
80.217 Suppression of interference aboard ships.
80.219 Special requirements for narrow-band direct-printing (NB-DP) equipment.
80.221 Special requirements for automatically generating the radiotelephone alarm signal.
80.223 Special requirements for survival craft stations.
80.225 Special requirements for digital selective calling (DSC) equipment.

Subpart F—Equipment Authorization for Compulsory Ships

80.251 Scope.
80.253 Technical requirements for main transmitter.
80.255 Technical requirements for reserve transmitter.
80.257 Manufacturing requirements for radiotelegraph automatic alarm receiver (auto alarm).
80.259 Technical requirements for radiotelegraph auto alarm receiver.
80.261 Technical requirements for automatic-alarm-signal keying device.
80.263 Common requirements for survival craft radio equipment.
80.265 Requirements for survival craft portable radio equipment.
80.267 Requirements for survival craft nonportable radio equipment.
80.269 Technical requirements for radiotelephone distress frequency watch receiver.
80.271 Technical requirements for portable survival craft radiotelephone transceivers.
80.273 Technical requirements for radar equipment.

Subpart G—Safety Watch Requirements and Procedures

Coast Station Safety Watches

80.301 Watch requirements.
80.302 Notice of discontinuance, reduction, or impairment of service involving a distress watch.
80.303 Watch on 156.8 MHz (channel 16).

Ship Station Safety Watches

80.304 Watch requirement during silence periods.
80.305 Watch requirements of the Communications Act and the Safety Convention.
80.306 Provisions governing the radiotelegraph watch.
80.307 Compulsory use of radiotelegraphy auto alarm.
80.308 Watch required by the Great Lakes Radio Agreement.
80.309 Watch required by the Bridge-to-Bridge Act.
80.310 Watch required by voluntary vessels.

Distress, Alarm, Urgency and Safety Procedures

80.311 Authority for distress transmission.
80.312 Priority of distress transmissions.
80.313 Frequencies for use in distress.
80.314 Distress signals.
80.315 Distress calls.
80.316 Distress messages.
80.317 Radiotelegraph and radiotelephone alarm signals.
80.318 Use of alarm signals.
80.319 Radiotelegraph distress call and message transmission procedure.
80.320 Radiotelephone distress call and message transmission procedure.
80.321 Acknowledgment of receipt of distress message.
80.322 Form of acknowledgment.
80.323 Information furnished by an acknowledging station.
80.324 Transmission of distress message by station not itself in distress.
80.325 Control of distress traffic.
80.326 Notification of resumption of normal working.
80.327 Urgency signals.

80.328 Urgency message.
80.329 Safety signals.
80.330 Safety message.
80.331 Bridge-to-bridge communication procedure.
80.332 Equipment to aid search and rescue operations.
80.333 Stations in the maritime mobile-satellite service.

Subpart H—Frequencies

Radiotelegraphy

80.351 Scope.
80.353 General uses—radiotelegraphy.
80.355 Distress, urgency, safety, call and reply frequencies.
80.357 Working frequencies.
80.359 Frequencies for digital selective calling (DSC).
80.361 Frequencies for narrow-band direct-printing (NB-DP) and data transmissions.
80.363 Frequencies for facsimile.

Radiotelephony

80.365 Scope.
80.367 General uses—radiotelephony.
80.369 Distress, urgency, safety, call and reply frequencies.
80.371 Public correspondence frequencies.
80.373 Private communications frequencies.

Radiodetermination

80.375 Radiodetermination frequencies.

Ship Earth Stations

80.377 Frequencies for ship earth stations.

Aircraft Stations

80.379 Maritime frequencies assignable to aircraft stations.

Operational Fixed Stations

80.381 Frequencies for operational fixed stations.

Vessel Traffic Services System (VTS)

80.383 Vessel Traffic Services (VTS) system frequencies.

Automated Systems

80.385 Frequencies for automated systems.

Alaska Fixed Stations

80.387 Frequencies for Alaska fixed stations.

Maritime Support Stations

80.389 Frequencies for maritime support stations.

Developmental operations

80.391 Frequencies for developmental stations.

Subpart I—Station Documents

80.401 Station document requirement.
80.403 Availability of documents.
80.405 Station license.
80.407 Operator authorization.
80.409 Station logs.
80.411 Vessel certification or exemption.
80.413 On-board station equipment records.
80.415 ITU publications.
80.417 FCC Rules and Regulations.

STATIONS ON LAND

Subpart J—Public Coast Stations

80.451 Supplemental eligibility requirements.
80.453 Scope of communications.

Use of Telegraphy

80.455 Assignment and use of frequencies for manual Morse code telegraphy.
80.459 Digital selective calling.
80.461 Narrow-band direct-printing.

Use of Telephony

80.465 Assignment and use of frequencies for telephony.
80.467 Duplication of VHF service.
80.469 Maritime mobile repeater stations in Alaska.
80.471 Discontinuence or impairment of service.

Automated Systems

80.475 Scope of service of the Automated Maritime Telecommunications Systems (AMTS).
80.477 Points of communications.
80.479 Assignment and use of frequencies for AMTS.

Subpart K—Private Coast Stations and Marine-Utility Stations

80.501 Supplemental eligibility requirements.
80.503 Cooperative use of facilities.
80.505 Points of communication.
80.507 Scope of service.
80.509 Frequency assignment.
80.511 Assignment limitations.
80.513 Frequency coordination.
80.515 Limitations on use.
80.517 Time limitation on communication.
80.519 Station identification.

Subpart L—Operational Fixed Stations

80.551 Applicability.
80.553 Supplemental eligibility requirements.
80.555 Scope of communication.
81.557 Assignment and use of frequencies.
81.559 Licensing limitations.

Subpart M—Radiodetermination Stations

80.601 Scope of communications.
80.603 Assignment and use of frequencies.
80.605 U.S. Coast Guard coordination.

Subpart N—Maritime Support Stations

80.651 Supplemental eligibility requirements.
80.653 Scope of communications.
80.655 Use of frequencies.
80.659 Technical requirements.

Subpart O—Alaska Fixed Stations

80.701 Scope of service.
80.703 Priority of distress and other signals.
80.705 Hours of service of Alaska-public fixed stations.
80.707 Cooperative use of frequency assignments.
80.709 Frequencies available.
80.711 Use of U.S. Government frequencies.

Subpart P—Standards for Computing Public Coast Station VHF Coverage

80.751 Scope.
80.753 Signal strength requirements at the service area contour.
80.755 Applicability.
80.757 Topographical data.
80.759 Average terrain elevation.
80.761 Conversion graphs.
80.763 Effective antenna height.
80.765 Effective radiated power.
80.767 Propagation curve.
80.769 Shadow loss.
80.771 Method of computing coverage.
80.773 Ratio of desired to undesired signal strengths.

STATIONS ON SHIPBOARD

Subpart Q—Compulsory Radiotelegraph Installations for Vessels 1600 Gross Tons

80.801 Applicability.
80.802 Inspection of station.
80.804 Radio station.
80.805 Radio installations.
80.806 Requirements of main installation.
80.807 Requirements of radiotelephone installation.
80.808 Requirements of reserve installation.
80.809 Routing of power supply wiring.
80.810 Use of reserve installation.
80.811 Tests of reserve installation and automatic-alarm-signal keying device.
80.812 Automatic-alarm-signal keying device.
80.813 Installation of automatic-alarm-signal keying device.
80.814 Radiotelegraph auto alarm.
80.815 Installation of radiotelegraph auto alarm.
80.817 Tests of radiotelegraph auto alarm.
80.818 Direction finding and homing equipment.
80.819 Requirements for radio direction finder.
80.820 Auxiliary receiving antenna.
80.821 Installation of direction finder.
80.822 Contingent acceptable of direction finder calibration.
80.823 Check bearings by authorized ship personnel.
80.824 Homing facility requirements.
80.825 Radar installation requirements and specifications.
80.826 Interior communication systems.
80.827 Requirements for interior communications systems.
80.828 Radiotelegraph station clock.
80.829 Survival craft nonportable radiotelegraph installation.
80.830 Power supply for survival craft nonportable radiotelegraph installation.
80.831 Survival craft portable radiotelegraph equipment.
80.832 Tests for survival craft radio equipment.
80.833 Class S survival craft emergency position indicating radiobeacons (EIPIRB's).
80.834 Survival craft portable two-way radiotelephone.
80.835 Ship and survival craft station spare parts, tools, instruction books, circuit diagrams and testing equipment.
80.836 General and individual ship exemptions.

Subpart R—Compulsory Radiotelephone Installations for Vessels 300 Gross Tons

80.851 Applicability.
80.853 Radiotelephone station.
80.854 Radiotelephone installation.
80.855 Radiotelephone transmitter.
80.856 Automatic radiotelephone alarm signal generator.
80.857 Installation of automatic radiotelephone alarm signal generator.
80.858 Radiotelephone receiver.
80.859 Main power supply.
80.860 Reserve power supply.
80.861 Required capacity.
80.862 Proof of capacity.
80.863 Antenna system.
80.864 Emergency electric lights.
80.865 Radiotelephone station clock.
80.866 Spare antenna.
80.867 Ship station tools, instruction books, circuit diagrams and testing equipment.
80.868 Card of instructions.
80.869 Test of radiotelephone station.
80.870 Survival craft radio equipment
80.871 VHF radiotelephone station.
80.872 The VHF radiotelephone installation.
80.873 VHF radiotelephone transmitter.
80.874 VHF radiotelephone receiver.
80.875 VHF radiotelephone power supply.
80.876 VHF radiotelephone antenna system.
80.877 Controls and indicators required for VHF radiotelephone installation.

Subpart S—Compulsory Radiotelephone Installations for Small Passenger Boats

80.901 Applicability.
80.903 Inspection of radiotelephone installation.
80.905 Radiotelephone installation.
80.907 Principal operating position.
80.909 Medium frequency transmitter.
80.911 VHF transmitter.
80.913 Radiotelephone receivers.
80.915 Main power supply.
80.917 Reserve power supply.
80.919 Required capacity.
80.921 Proof of capacity.
80.923 Antenna system.
80.925 Electric light.
80.927 Antenna radio frequency indicator.
80.929 Nameplate.
80.931 Test of radiotelephone installation.
80.933 General exemptions.
80.935 Station clock.

Subpart T—Radiotelephone Installation Required for Vessels on the Great Lakes

80.951 Applicability.
80.953 Inspection and certification.
80.955 Radiotelephone installation.
80.956 Required frequencies and uses.
80.957 Principal operating position.
80.959 Radiotelephone transmitter.
80.961 Radiotelephone receiver.
80.963 Main power supply.
80.965 Reserve power supply.
80.967 Antenna system.
80.969 Illumination of operating controls.
80.971 Test of radiotelephone installation.

Subpart U—Radiotelephone Installations Required by the Bridge-to-Bridge Act

80.1001 Applicability.
80.1003 Station required.
80.1005 Inspection of station.
80.1007 Bridge-to-bridge radiotelephone installation.
80.1009 Principal operator and operating position.
80.1011 Transmitter.
80.1013 Receiver.
80.1015 Power supply.
80.1017 Antenna system.
80.1019 Antenna radio frequency indicator.
80.1021 Nameplate.
80.1023 Test of radiotelephone installation.

Subpart V—Emergency Position Indicating Radiobeacons (EPIRB's)

80.1051 Scope.
80.1053 Special requirements for Class A EPIRB stations.
80.1055 Special requirements for Class B EPIRB stations.
80.1057 Special requirements for Class C EPIRB stations.
80.1059 Special requirements for Class S EPIRB stations.

Subpart W—Future Global Maritime Distress and Safety System (FGMDSS)

[Reserved]

Subpart X—Voluntary Radio Installations

General

80.1151 Voluntary radio operations.
80.1153 Station log and radio watches.

Voluntary Telegraphy

80.1155 Radioprinter.
80.1157 Facsimile.
80.1159 Narrow-band direct-printing (NB-DP).
80.1161 Emergency position indicating radiobeacon (EPIRB).

Voluntary Telephony

80.1165 Assignment and use of frequencies.

Automated Systems

80.1169 Automated Maritime Telecommunications System (AMTS).
80.1171 Assignment and use of frequencies.

On-Board Communications

80.1175 Scope of communications of on-board stations.
80.1177 Assignment and use of frequencies.
80.1179 On-board repeater limitations.
80.1181 Station identification.
80.1183 Remote control for maneuvering or navigation.

Satellite Stations

80.1185 Supplemental eligibility for satellite stations.
80.1187 Scope of communications.

Radiodetermination

80.1201 Special provisions for cable-repair ship stations.

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

GENERAL

Subpart A—General Information

§ 80.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the maritime services in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations. The rules in this part are in accordance wtih applicable statutes, international treaties, agreements and recommendations to which the United States is a party. The most significant of these documents are listed below with the short title appearing in parenthesis:

Communications Act of 1934, as amended—(Communications Act).
Communications Satellite Act of 1962, as amended—(Communications Satellite Act).
International Telecommunication Union Radio Regulations, in force for the United States—(Radio Regulations).
Agreement Between the United States of America and Canada for the Promotion of Safety on the Great Lakes by Means of Radio, as amended, and the Technical Regulations annexed thereto—(Great Lakes Radio Agreement).
International Convention for Safety of Life at Sea, 1974, as amended, and the Annex thereto—(Safety Convention).
Vessel Bridge-to-Bridge Radiotelephone Act—(Bridge-to-Bridge Act).

(b) *Purpose.* This part states the conditions under which radio may be licensed and used in the maritime services. These rules do not govern radio stations operated by agencies of the U.S. Government.

§ 80.2 Other regulations that apply.

The Commandant, U.S. Coast Guard has promulgated regulations which affect radiotelecommunication equipment carriage and power source installation requirements for certain ships. Inquiries concerning applicable U.S. Coast Guard regulations are to addressed to the Commandant, U.S. Coast Guard, Washington, DC 20593, or to the nearest District Headquarters Office of the U.S. Coast Guard.

§ 80.3 Other applicable rule parts of this chapter.

Other FCC rule parts applicable to licensees in the maritime services include the following:

(a) *Part 0.* This part describes the Commission's organization and delegations of authority. Part 0 also lists

available Commission publications, standards and procedures for access to Commission records and location on Commission monitoring stations.

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, rulemaking proceedings, procedures for reconsideration and review of the Commission's actions, provisions concerning violation notices and forfeiture proceedings, and the requirements for environmental impact statements.

(c) *Part 2.* This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contain standards and procedures concerning marketing of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 13.* This part contains information and rules for the licensing of commercial radio operators.

(e) *Part 17.* This part contains requirements for construction, marking and lighting of antenna towers.

(f) *Part 21.* This part contains rules concerning point-to-point microwave service authority relating to communication common carriers.

(g) *Part 42.* This part contains rules concerning the preservation of records of communication common carriers.

(h) *Part 43.* This part contains rules concerning reports of communication common carriers.

(i) *Part 61.* This part contains tariff rules applicable to communication common carriers.

(j) *Part 62.* This part contains rules concerning interlocking directorates relating to communication common carriers.

(k) *Port 63.* This part contains rules concerning the extension of lines and discontinuance of service by communication common carriers.

(l) *Part 64.* This part contains miscellaneous rulea relating to communication common carriers.

(m) *Part 68.* This part contains technical standards for connection of terminal equipment to the telephone network.

(n) *Part 87.* This part contains rules for the aviation services. Some maritime frequencies are authorized for use by aircraft stations for safety and distress, public correpondence and for operational communications.

(o) *Part 94.* This part contains rules concerning the private microwave service relating to point-to-point communication requirements.

§ 80.5 Definitions.

Alaska—public fixed station. A fixed station in Alaska which is open to public correspondence and is licensed by the Commission for radio communication with Alaska-Private fixed stations on paired channels.

Alaska—private fixed station. A fixed station in Alaska which is licensed by the Commission for radio communication within Alaska and with associated ship stations, on single frequency channels. Alaska-private fixed stations are also eligible to communicate with Alaska-public fixed stations on paired channels.

Associated ship unit. A portable VHF transmitter for use in the vicinity of the ship station with which it is associated.

Automated maritime telecommunications system (AMTS). An automatic, integrated and interconnected maritime communications system serving ship stations on specified inland and coastal waters of the United Stations.

Automated mutual-assistance vessel rescue system (AMVER). An international system, operated by the U.S. Coast Guard, which provides aid to the development and coordination of search and rescue (SAR) efforts. Data is made available to recognized SAR agencies or vessels of any nation for reasons related to marine safety.

Bridge-to-bridge station. A radio station located on a ship's navigational bridge or main control station operating on a specified frequency which is used only for navigational communications, in the 156–162 MHz band.

Cargo ship safety radiotelegraphy certificate. A certificate issued after an inspection of a cargo ship radiotelegraph station which complies with the applicable Safety Convention radio requirements.

Cargo ship safety radiotelephony certificate. A certificate issued after inspection of a cargo ship radiotelephone station which complies with the applicable Safety Convention radio requirements.

Categories of ships. (1) When referenced in Part II of Title III of the Communications Act or the radio provisions of the Safety Convention, a ship is a "passenger ship" if it carries or is licensed or certificated to carry more than twelve passengers. A "cargo ship" is any ship not a passenger ship.

(2) A "commercial transport vessel" is any ship which is used primarily in commerce (i) for transporting persons or goods to or from any harbor(s) or port(s) or between places within a harbor or port area, or (ii) in connection with the construction, change in construction, servicing, maintenance, repair, loading, unloading, movement, piloting, or salvaging of any other ship or vessel.

(3) The term "passenger carrying vessel", when used in reference to Part III, Title III of the Communications Act of the Great Lakes Radio Agreement, means any ship transporting more than six passengers for hire.

(4) Power-driven vessel. Any ship propelled by machinery.

(5) Towing vessel. Any commercial ship engaged in towing another ship astern, alongside or by pushing ahead.

(6) Compulsory ship. Any ship which is required to be equipped with radiotelecommunication equipment in order to comply with the radio or radio-navigation provisions of a treaty or statute to which the vessel is subject.

(7) Voluntary ship. Any ship which is not required by treaty or statute to be equipped with radiotelecommunication equipment.

Coost station. A land station in the maritime mobile service.

Commercial communications. Communications between coast stations and ship stations aboard commercial transport vessels, or between ship stations aboard commercial transport vessels, which relate directly to the purposes for which the ship is used including the piloting of vessels, movements of vessels, obtaining vessel supplies, and scheduling of repairs.

Day. (1) Where the word "day" is applied to the use of a specific frequency assignment or to a specific authorized transmitter power, its use means transmission on the frequency assignment or with the authorized transmitter power during that period of time included between one hour after local sunrise and one hour before local sunset.

(2) Where the word "day" occurs in reference to watch requirements, or to equipment testing, its use means the calendar day, from midnight to midnight, local time.

Digital selective calling (DSC). A synchronous system developed by the International Radio Consultative Committee (CCIR), used to establish contact with a station or group of stations automatically by means of radio. The operational and technical characteristics of this system are contained in CCIR Recommendation 493.

Direction finder (radio compass). Apparatus capable of receiving radio signals and taking bearings on these signals from which the true bearing and direction of the point of origin may be determined.

Distress signal. The distress signal is an internationally recognized radiotelegraph or radiotelephone

transmission which indicates that a ship, aircraft, or other vehicle is threatened by grave and imminent danger and requests immediate assistance.

(1) In radiotelegraphy, the international distress signal consists of the group "three dots, three dashes, three dots", transmitted as a single signal in which the dashes are emphasized so as to be distinguished clearly from the dots.

(2) In radiotelephony, the international distress signal consists of the enunciation of the word "Mayday", pronounced as the French expression "m'aider". In case of distress, transmission of this particular signal is intended to ensure recognition of a radiotelephone distress call by stations of any nationality.

Distress traffic. All messages relative to the immediate assistance required by a ship, aircraft. or other vehicle in distress.

Emergency position indicating radiobeacon (EPIRB) station. A station in the maritime mobile service the emissions of which are intended to facilitate search and rescue operations.

Environmental communications. Broadcasts of information about the environmental conditions in which vessels operate, i.e., weather, sea conditions, time signals adequate for practical navigation, notices to mariners, and hazards to navigation.

Fleet radio station license. An authorization issued by the Commission for two or more ships having a common owner or operator.

Future global maritime distress and safety system (FGMDSS). An international Maritime Organization (IMO) worldwide coordinated maritime distress system designed to provide the rapid transfer of distress messages from vessels in distress to units best suited for giving or coordinating assistance. The system includes standardized equipment and operational procedures, unique identifers for each station, and the integrated use of frequency bands and radio systems to ensure the transmission and reception of distress and safety calls and messages at short, medium and long ranges.

Great Lakes. This term, used in this part in reference to the Great Lakes Radio Agreement, means all of Lakes Ontario, Erie, Huron (including Georgian Bay), Michigan, Superior, their connecting and tributary waters and the St. Lawrence River as far east as the lower exit of the St. Lambert Lock as Montreal in the Province of Quebec, Canada, but does not include any connecting and tributary waters other than: the St. Marys River, the St. Clair River, Lake St. Clair, the Detroit River and the Welland Canal.

Harbor or port. Any place to which ships may resort for shelter, or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term applies to such places whether proclaimed public or not and whether natural or artifical.

Inland waters. This term, as used in reference to waters of the United States, its territories and possessions, means waters that lie landward of the boundary lines of inland waters as contained in 33 CFR 82, as well as waters within its land territory, such as rivers and lakes, over which the United States exercises sovereignty.

Marine utility station. A station in the maritime mobile service consisting of one or more handheld radiotelephone units licensed under a single authorization. Each unit is capable of operation while being hand-carried by an individual. The station operates under the rules applicable to ship stations when the unit is aboard a vessel, and under the rules applicable to private coast stations when the unit is on land.

Maritime control communications. Communications between private coast and ship stations or between ship stations licensed to a state or local governmental entity, which relate directly to the control of boating activities or assistance to ships.

Maritime mobile repeater station. A land station at a fixed location established for the automatic retransmission of signals to extend the range of communication of ship and coast stations.

Maritime mobile-satellite service. A mobile-satellite service in which mobile earth stations are located on board ships. Survival craft stations and EPIRB stations may also participate in this service.

Maritime mobile service. A mobile service between coast stations and ship stations, or between ship stations, or between associated on-board communication stations. Survival craft stations and EPIRB stations also participate in this service.

Maritime mobile service identities. An international system for the identification of radio stations in the maritime mobile service. The system is comprised of a series of nine digits which are transmitted over the radio path to uniquely identify ship stations, ship earth stations, coast stations, coast earth stations and groups of stations.

Maritime radiodetermination service. A maritime radiocommunication service for determining the position, velocity, and/or other characteristics of an object, or the obtaining of information relating to these parameters, by the propagation properties of radio waves.

Maritime support station. A station on land used in support of the maritime services to train personnel and to demonstrate, test and maintain equipment.

Navigational communications. Safety communications pertaining to the maneuvering of vessels or the directing of vessel movements. Such communications are primarily for the exchange of information between ship stations and secondarily between ship stations and coast stations.

Noncommercial communications. Communication between coast stations and ship stations other than commercial transport ships, or between ship stations aboard other than commercial transport ships which pertain to the needs of the ship.

On-board communication station. A low-powered mobile station in the maritime mobile service intended for use for internal communications on board a ship, or between a ship and its lifeboats and liferafts during lifeboat drills or operations, or for communication within a group of vessels being towed or pushed, as well as for line handling and mooring instructions.

On-board repeater. A radio station that receives and automatically retransmits signals between on-board communication stations.

Open sea. The water area of the open coast seaward of the ordinary low-water mark, or seaward of inland waters.

Operational fixed station. A fixed station, not open to public correspondence, operated by entities that provide their own radiocommunication facilities in the private land mobile, maritime or aviation services.

Passenger ship safety certificate. A certificate issued by the Commandant of the Coast Guard after inspection of a passenger ship which complies with the requirements of the Safety Convention.

Pilot. Pilot means a Federal pilot required by 46 U.S.C. 764, a state pilot required under the authority of 46 U.S.C. 211, or a registered pilot required by 46 U.S.C. 216.

Port operations communications. Communications in or near a port, in locks or in waterways between coast stations and ship stations or between ship stations, which relate to the operational handling, movement and safety of ships and in emergency to the safety of persons.

Portable ship station. A ship station which includes a single transmitter

intended for use upon two or more ships.

Private coast station. A coast station, not open to public correspondence, which serves the operational, maritime control and business needs of ships.

Public coast station. A coast station that offers radio communication common carrier services to ship radio stations.

Public correspondence. Any telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission.

Radar beacon (RACON). A receiver-transmitter which, when triggered by a radar, automatically returns a distinctive signal which can appear on the display of the triggering radar, providing range, bearing and identification information.

Radioprinter operations. Communications by means of a direct printing radiotelegraphy system using any alphanumeric code, within specified bandwidth limitations, which is authorized for use between private coast stations and their associated ship stations on vessels of less than 1600 gross tons.

Safety communication. The transmission or reception of distress, alarm, urgency, or safety signals, or any communication preceded by one of these signals, or any form of radiocommunication which, if delayed in transmission or reception, may adversely affect the safety of life or property.

Safety signal. (1) The safety signal is the international radiotelegraph or radiotelephone signal which indicates that the station sending this signal is preparing to transmit a message concerning the safety of navigation or giving important meteorological warnings. (2) In radiotelegraphy, the international safety signals consists of three repetitions of the group "TTT", sent before the call, with the letters of each group and the successive groups clearly separated from each other. (3) In radiotelephony, the international safety signal consists of three oral repetitions of "Security", pronounced as the French word "Securite", sent before the call.

Selective calling. A means of calling in which signals are transmitted in accordance with a prearranged code to operate a particular automatic attention device at the station whose attention is sought.

Ship earth station. A mobile earth station in the maritime mobile-satellite service located on board ship.

Ship or vessel. "Ship" or "vessel" includes every description of watercraft or other artificial contrivance, except aircraft, capable of being used as a means of transportation on water whether or not it is actually afloat.

Ship radio station license. An authorization issued by the Commission to operate a radio station onboard a vessel.

Ship station. A mobile station in the maritime mobile service located onboard a vessel which is not permanently moored, other than a survival craft station.

Station. One or more transmitters or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on radiocommunication services.

Survival craft station. A mobile station in the maritime or aeronautical mobile service intended solely for survival purposes and located on any lifeboat, liferaft or other survival equipment.

Urgency signal. (1) The urgency signal is the international radiotelegraph or radiotelephone signal which indicates that the calling station has a very urgent message to transmit concerning the safety of a ship, aircraft, or other vehicle, or of some person on board or within sight.

(2) In radiotelegraphy, the international urgency signal consists of three repetitions of the group "XXX", sent before the call, with the letters of each group and the successive groups clearly separated from each other.

(3) In radiotelephony, the international urgency signal consists of three oral repetitions of the word "Pan" pronounced as the French word "PANNE" and sent before the call.

Vessel traffic service (VTS). A U.S. Coast Guard traffic control service for ships in designated water areas to prevent collisions, groundings and environmental harm.

Watch. The act of listening on a designated frequency.

Subpart B—Applications and Licenses

§ 80.11 Scope.

This subpart contains the procedures and requirements for the filing of applications for licenses to operate radio facilities in the maritime services. Part 1 of the Commission's rules contains the general rules of practice and procedure applicable to proceedings before the FCC.

§ 80.13 Station license required.

(a) All stations in the maritime services must be licensed by the FCC.

(b) One ship station license will be granted for operation of all maritime services transmitting equipment on board a vessel.

§ 80.15 Eligibility for station license.

(a) *General.* A station license cannot be granted to or held by a foreign government or its representative.

(b) *Public coast stations and Alaska-public fixed stations.* A station license for a public coast station or an Alaska-public fixed station cannot be granted to or held by:

(1) Any alien or the representative of any alien;

(2) Any foreign government or its representative;

(3) Any corporation organized under the laws of any foreign government;

(4) Any corporation of which any officer or director is an alien;

(5) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or its representative, or by a corporation organized under the laws of a foreign country;

(6) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license; or

(7) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or its representatives, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) *Private coast and marine utility stations.* The supplemental eligibility requirements for private coast and marine utility stations are contained in § 80.501(a).

(d) *Ship stations.* A ship station license may only be granted to:

(1) The owner or operator of the vessel;

(2) A subsidiary communications corporation of the owner or operator of the vessel;

(3) A state or local government subdivision; or

(4) Any agency of the U.S. Government subject to Section 301 of the Communications Act.

(e) *EPIRB stations.* (1) Class C EPIRB stations will be authorized:

(i) For use on board vessels operating within 32 kilometers (approximately 20

miles) of shore and in the Great Lakes, or

(ii) On passenger and cargo vessels with survival craft as required or recommended by the U.S. Coast Guard.

(2) Class A or Class B EPIRB stations will be authorized for use on board the following types of vessels:

(i) Vessels authorized to carry survival craft; or

(Ii) Vessels expected to travel in waters beyond the range of marine VHF distress coverage which is generally considered to be more than 32 kilometers (approximately 20 miles) offshore; or

(iii) Vessels required to be fitted with EPIRB's to comply with U.S. Coast Guard regulations.

§ 80.17 Administrative classes of stations.

(a) Stations in the Maritime Mobile Service are licensed according to class of station as follows:

(1) Public coast stations.

(2) Private coast stations.

(3) Maritime support stations.

(4) Ship stations. The ship station license may include authority to operate other radio station classes aboard ship such as; radionavigation, on-board, satellite, EPIRB, radiotelephone, radiotelegraph and survival craft.

(5) Marine utility stations.

(b) Stations on land in the Maritime Radiodetermination Service are licensed according to class of station as follows:

(1) Shore radiolocation stations.

(2) Shore radionavigation stations.

(c) Fixed stations in the Fixed Service associated with the maritime services are licensed as follows:

(1) Operational fixed stations.

(2) Alaska-public fixed stations.

(3) Alaska-private fixed stations.

§ 80.19 Standard forms to be used.

The following table indicates the correct standard form or other means to be used when submitting an application. Forms may be obtained from the Commission at Gettysburg, PA 17325, Washington, DC 20554 or any of its District Offices.

Class of station(s)	Application for	Use
Ship	New license	FCC Form 506.
	Renewal of license without modification	FCC Form 405–B.
	Renewal of license with modification	FCC Form 506.
	Modification of license	FCC Form 506.
	Temporary operating authority in conjunction with application for a new license or modification of license.	FCC Form 506–A.
	Radio inspection and certification	FCC Form 801.[1]
	Exemption	FCC Form 820.
	Special temporary authority	Letter/Telegram.
	Transfer of control of corporation	FCC Form 703.
Public coast	New license	FCC Form 503.
Private coast	Modification of license	FCC Form 503.
Operational fixed	Renewal of license with modification	FCC Form 503.
Shore radionavigation	Assignment of authorization	FCC Forms 1046 and 503.
Shore radiolocation	Transfer of Control of Corporation	FCC Form 703.
Maritime support	Renewal of license without modification	FCC Form 405–A.
Alaska-public fixed	Special temporary authority	Letter/Telegram.
Alaska-private fixed		
Marine utility		

[1] FCC Form 808 also required when inspection is to be conducted during other than normal business hours.

§ 80.21 Supplemental information required.

Applications for radio stations to be located within designated radio protection areas, radio stations with a proposed antenna structure which will require antenna markings, a new public coast stations proposing operations in the 156–162 MHz band and new ship stations on vessels not located in the United States must contain supplementary information as indicated in this section. Other supplemental information may be required by other rule sections of this part concerning particular maritime services.

(a) To minimize harmful interference at the National Radio Astronomy Observatory site at Green Bank, Pocahontas County, W.Va., and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, W.Va., an applicant for a new station authorization (other than mobile or temporary fixed), or for modification of an existing license to change the frequency, power, antenna location, height or directivity within the area bounded by 39°15'N. on the north, 78°30'W. on the east, 37°30'N. on the south and 80°30'W. on the west, must, at the time of filing such application with the Commission, notify the Director, National Radio Astronomy Observatory, Attn: Interference Office, Post Office Box No. 2, Green Bank, W. Va. 24944, in writing, of the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission, and power. The application must show the date notification was made to the Observatory. The Commission will allow twenty (20) days after receipt of the notification for comments or objections. If a timely objection is received, the Commission will consider the comments or objections and act appropriately.

(b) Protection for Federal Communications Commission monitoring stations:

(1) Geographical coordinates of FCC facilities which require protection are listed in § 0.121(c) of this chapter. Applications for stations (except mobile stations) which will be located within 80 km (50 miles) of the referenced coordinates are examined to determine extent of possible interference. A clause protecting the monitoring station may be added to the station license.

(2) Prospective applicants of stations for which the calculated value of expected field strength exceeds 10 mV/m (-65.8 dBW/m^2) at the referenced coordinates, should consult with the FCC to determine if any protection is necessary. Write: Chief, Field Operations Bureau, Federal Communications Commission, Washington, DC 20554.

(c) Each application for a new public coast station operating on frequencies in the band 156–162 MHz must include as supplementary information a chart, with supporting data, showing the service area contour computed in accordance with Subpart P of this part.

(d) Each application for a new public coast station operating on frequencies in the band 156–162 MHz to be located within the coordination boundaries of "Arrangement "A" of the Canada/U.S.A. Frequency Coordination Agreement above 30 MHz", must comply with the provisions of the "Canada/U.S.A. Channeling Agreement for VHF Maritime, Public Correspondence" as contained in § 80.57.

(e) An application for a new station on a vessel not located in the United States must include:

(1) A statement that the vessel is not documented or otherwise registered by any foreign authority; and

(2) A statement that the foreign authorities where the vessel is located will not or cannot license the vessel radio equipment, or that they do not object to the licensing of the equipment by the United States.

§ 80.23 Filing of applications.

Rules about the filing of applications for radio station licenses are contained in this section.

(a) Each application must specify an address in the United States to be used by the Commission in serving

documents or directing correspondence to the licensee.

(b) An original of each application must be filed.

(c) Each application must be filed with the Federal Communications Commission, Gettysburg, Pa. 17325 unless otherwise noted on the application form.

(d) One application for two or more new maritime utility stations may be submitted when the applicant and proposed area of operation for each station is the same.

(e) One application for transfer of control may be submitted for two or more stations subject to this part when the individual stations are clearly identified and the following elements are the same for all existing or requested station authorizations involved:

(1) Applicant;

(2) Specific details of basic request.

§ 80.25 License term.

(a) Licenses for stations in the maritime services will normally be issued for a term of five years from the date of original issuance, major modification, or renewal.

(b) Licenses for stations engaged in developmental operation will be issued for a period not to exceed one year from date of grant.

§ 80.29 Changes during license term.

(a) The following table indicates the required action for changes made during the license term:

Type of change	Required action
Mailing address	Written notice to the Commission.
Name of licensee (without change in ownership, control or corporate structure).	Written notice to the Commission.
Transfer of control of a corporation.	Comply with § 1.924 of this chapter.
Assignment of a radio station license.	Comply with § 1.924 of this chapter.
Name of the vessel	Written notice to the Commission.
Addition of transmitting equipment which operates on a frequency or frequency band not authorized on present license.	Application for modification of license.
Addition or replacement of transmitting equipment on a frequency or frequency band authorized on present license.	None (provided the equipment is properly type accepted and the emission characteristics remain the same).

(b) Written notices must be sent to the Federal Communications Commission, Gettysburg, Pennsylvania 17325.

§ 80.31 Cancellation of license.

When a station subject to this part which is not a communication common carrier permanently discontinues operation, the licensee must return the station license to the Commission's office at P.O. Box 1040, Gettysburg, Pennsylvania 17325, for cancellation. Communication common carrier stations subject to this part must comply with the discontinuance of service provisions of Part 63 of this chapter.

§ 80.33 Developmental license.

This section contains rules about the licensing of developmental operations at stations subject to this part.

(a) *Supplemental eligibility.* An authorization for developmental operation will be issued only to persons eligible to operate such stations on a regular basis.

(b) *Showing required.* Each application for a developmental license must be accompanied by a letter showing that:

(1) The applicant has an organized plan of development leading to an objective;

(2) A point has been reached in the program where actual transmission by radio is essential to progress;

(3) The program will contribute to the use of the radio services subject to this part;

(4) The program will be conducted by qualified personnel;

(5) The applicant is legally qualified and possesses technical facilities for conduct of the program as proposed; and

(6) The public interest, convenience and necessity will be served by the proposed operation.

(c) *Signature and statement of understanding.* The showing must be signed by the applicant and state that the applicant agrees that any developmental license issued will be accepted with the express understanding that it is subject to change in any of its terms or to cancellation in its entirety at any time, upon reasonable notice but without a hearing, if, in the opinion of the Commission, circumstances should so require.

(d) *Assignable frequencies.* Applicants for a developmental license may be authorized to use a frequency or frequencies available for the service and class of station proposed. The number of frequencies assignable to a particular station will depend upon the specific requirements of the developmental program and the number of frequencies available for use in the area where the station is to be operated.

(e) *Developmental program.* (1) The developmental program as described by the applicant in the application for authorization must be substantially followed unless the Commission otherwise directs.

(2) Where some phases of the developmental program are not covered by the general rules of the Commission and the rules in this part, the Commission may specify supplemental or additional requirements or conditions.

(3) The Commission may, from time to time, require a station engaged in developmental work to conduct special tests which are reasonable to the authorized developmental program.

(f) *Use of developmental stations.* (1) Stations authorized to conduct developmental operations must conform to all applicable technical and operating requirements contained in this part, unless a waiver is specifically provided in the station authorization.

(2) Communication with any station of a country other than the United States is prohibited unless specifically provided in the station authorization.

(3) Developmental operations must not cause harmful interference to the operation of stations regularly authorized to use the frequency or frequencies.

(g) *Report of operation required.* A report on the results of the developmental program must be filed within 60 days of the expiration of the license. A report must accompany a request for renewal of the license. Matters which the applicant does not wish to disclose publicly may be so labeled; they will be used solely for the Commission's information. However, public disclosure is governed by § 0.467 of this chapter. The report must include the following:

(1) Results of operation to date.

(2) Analysis of the results obtained.

(3) Copies of any published reports.

(4) Need for continuation of the program.

(5) Number of hours of operation on each authorized frequency during the term of the license to the date of the report.

§ 80.37 One authorization for a plurality of stations.

Marine utility stations. One station license may be issued to authorize a designated maximum number of marine utility stations operating at temporary unspecified locations, normally in multiples of ten stations when:

(a) The licensee of each station is the same; and

(b) The authorized area of operation of each station is the same.

§ 80.39 Authorized station location.

This section describes the circumstances under which a coast station location is classified as permanent or temporary unspecified.

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VOL 51 ISS 169 SEP 2 1986 UMI

(a) *Permanent.* Whenever a station is to transmit from a single location, the station location is "permanent" and the location must be shown on the application.

(b) *Temporary unspecified.* Whenever a station is to transmit from unspecified locations within a prescribed geographical area, the station location is "temporary unspecified" and the proposed geographical operating area must be shown on the application.

§ 80.41 Control points and dispatch points.

This section applies to coast or fixed stations at permanent locations.

(a) Applicants must provide the address or location of the control point where station records will be kept.

(b) When the address or location of a control point where station records are kept is to be changed, the licensee must request a modification of the station license.

(c) Control points not collocated with station records and dispatch points may be installed and used without obtaining any authorization from the Commission.

§ 80.43 Equipment acceptable for licensing.

Transmitters listed in § 80.203 must be type accepted for a particular use by the Commission based upon technical requirements contained in Subparts E and F of this part.

§ 80.45 Frequencies.

When an application is submitted on FCC Form 503, the applicant must propose frequencies to be used by the station. The applicant must ensure that frequencies requested are consistent with the applicant's eligibility, the proposed class of station operation and the frequencies available for assignment as contained in Subpart H of this part.

§ 80.47 Operation during emergency.

A station may be used for emergency communications when normal communication facilities are disrupted. The Commission may order the discontinuance of any such emergency communication service.

§ 80.49 Time in which station is placed in operation.

This section applies to public coast and public fixed stations. When a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within eight months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

§ 80.51 Ship earth station licensing.

(a) In cases where a ship earth station is required to be commissioned before it is certified to use a privately owned satellite system, FCC Form 506 must be submitted to the Commission prior to transmission on any of the satellite frequency bands allocated for maritime satellite communications.

(b) A ship earth station authorized to operate the INMARSAT space segment must display the Commission license in conjunction with the commissioning certificate issued by the INMARSAT Organization. Ship earth stations that were operating in the MARISAT system and are not commissioned by the INMARSAT Organization will continue to be used in the INMARSAT system without a commissioning certificate issued by the INMARSAT Organization. The continued use of such equipment, however, will not be permitted after September 1, 1991, unless a commissioning certificate is obtained from the INMARSAT Organization. Notwithstanding the requirements in this paragraph, ship earth stations can operate in the INMARSAT space segment without an INMARSAT issued commissioning certificate provided an appropriate written approval is obtained from the INMARSAT Organization in addition to the Commission's license.

§ 80.53 Application for a portable ship station license.

(a) The Commission may grant a license permitting operation of a portable ship station aboard different vessels of the United States. Each application for a portable ship station must include a showing that:

(1) The station will be operated as an established class of station on board ship, and

(2) A station license for portable equipment is necessary to eliminate frequent application to operate a ship station on board different vessels.

§ 80.55 Application for a fleet station license.

(a) An applicant may apply for licenses for two or more radiotelephone stations aboard different vessels on the same application. Under these circumstances a fleet station license may be issued for operation of all radio stations aboard the vessels in the fleet.

(b) The fleet station license is issued on the following conditions:

(1) The licensee must keep a current list of vessel names and registration numbers authorized by the fleet license;

(2) The vessels do not engage in voyages to any foreign country;

(3) The vessels are not subject to the radio requirements of the Communications Act or the Safety Convention.

§ 80.56 Transfer of ship station license prohibited.

A ship station license may not be assigned. Whenever the vessel ownership is transferred, the previous authorization must be forwarded to the Commission for cancellation. The new owner must file for a new authorization.

§ 80.57 Canada/U.S.A. Channeling Arrangement for VHF Maritime Public Correspondence.

(a) *Canada/U.S.A. arrangement.* Pursuant to arrangements between the United States and Canada, assignment of VHF frequencies in the band 156–162 MHz to public coast stations in certain areas of Washington state, the Great Lakes and the east coast of the United States must be made in accordance with the provisions of this section.

(b) *Definitions.* On the west coast, specific terms are defined as follows:

(1) Inland Waters Public Correspondence Sector. A distinct geographical area in which one primary and one supplementary channel is allotted. A number of local channels may also be authorized.

(2) Coastal Waters Public Correspondence Sector. A distinct geographical area in which one primary and one supplementary channel is allotted. Local channels may also be authorized.

(3) Inland Waters. Inland waters of western Washington and British Columbia bounded by 47 degrees latitude on the south, the Canada/U.S.A. Coordination Zone Line B on the north, and to the west by 124 degrees 40 minutes longitude at the west entrance to the Strait of Juan de Fuca.

(4) Coastal Waters. Waters along the Pacific Coast of Washington state and Vancouver Island within the Canada/U.S.A. Coordination Zone.

(5) Inland Waters Primary Channel. A channel intended to cover the greater portion of an Inland Waters Public Correspondence Sector. It may provide some coverage to an adjacent sector but must not provide coverage beyond the adjacent sector. Harmful interference beyond the adjacent sector must not occur. Only one primary channel will be authorized in any sector.

(6) Inland Waters Supplementary Channel. A channel intended to improve coverage within a sector or to relieve traffic congestion on the primary channel. It may provide some coverage of an adjacent sector but must not provide coverage beyond the adjacent sector. Harmful interference beyond the

adjacent sector must not occur. Only one supplementary channel will be authorized in any sector.

(7) Inland Waters Local Channel. A channel designed to provide local coverage of certain bays, inlets and ports where coverage by primary or supplementary channels is poor or where heavy traffic loading warrants. A local channel must not cause harmful interference to any primary or supplementary channels. Coverage must be confined to the designated sector.

(8) Coastal Waters Primary Channel. Same as (5) except for technical characteristics.

(9) Coastal Waters Supplementary Channel. Same as (6) except for technical characteristics.

(10) Coastal Waters Local Channel. Same as (7) except for technical characteristics.

(c) *Technical characteristics.* On the west coast, technical characteristics of public correspondence stations will be as follows:

(1) Inland Waters Primary and Supplementary Channels. The effective radiated power (ERP) must not exceed 60 watts. Antenna height must not exceed 152 meters (500 feet) above mean sea level (AMSL) with the exceptions noted in paragraph (d)(5) of this section.

(2) Inland Waters Local Channel. ERP must not exceed 8 watts with an antenna height of no more than 15 meters (50 feet) AMSL or the ERP must not exceed 2 watts with an antenna height of no more than 30 meters (100 feet) AMSL.

(3) Coastal Waters Primary and Supplementary Channels. ERP must not exceed 125 watts with no antenna restrictions.

(4) Coastal Waters Local Channel. ERP must not exceed 10 watts with a maximum antenna height of 76 meters (250 feet) AMSL.

(5) Harmful interference will be determined and resolved using the definition and procedures of the ITU Radio Regulations.

(6) To keep the ERP and antenna elevations at a minimum and to limit coverage to the desired areas, an informal application may be filed for special temporary authority in accordance with §§ 1.41 and 1.925 to conduct a field survey to obtain necessary data for informal application. Such data may accompany the application and be used in lieu of theoretical calculations as required in Subpart P of this part. The Seattle FCC District Office must be notified in advance of scheduled tests.

(d) *Canada/U.S.A. channeling arrangement for West Coast VHF maritime mobile public correspondence.* (1) The provisions of the Canada/U.S. channeling arrangement apply to waters of the State of Washington and of the Province of British Columbia within the coordination boundaries of "Arrangement A" of the Canada/U.S.A. Frequency Coordination Agreement above 30 MHz. In addition, all inland waters as far south as Olympia are to be included. A map of these waters is contained in paragraph (d)(6) of this section, Figure 1.

(2) The channeling arrangement applies to the following VHF public correspondence channels: Channels 24, 84, 25, 85, 26, 86, 27, 87 and 28.

(3) Public correspondence stations may be established by either country in accordance with the provisions of the arrangements. However, there must be an exchange of information prior to the establishment of new stations or a change in technical parameters of existing stations. Any channel except that used as primary or supplementary channel in a given sector is available for use as a local channel in that sector. Local channels are not protected from interference caused by primary or supplementary channels in adjacent sectors if these stations are in compliance with this section.

(4) Preliminary local Canadian/U.S. coordination is required for all applications at variance with this section. This coordination will be in accordance with the provisions of Arrangement "A" of the Canada/U.S. Frequency Coordination Agreement over 30 MHz. Stations at variance with the arrangement are not protected from interference and must not cause interference to existing or future stations which are in accordance with the agreement.

(5) Stations in existence at the time of the arrangement must have complied with the provisions of the arrangement within 12 months after it became effective with the following exceptions:

(i) Public coast (VHF) stations:
KOH627 Tacoma, Washington
KOH630 Seattle, Washington
WXY956 Camano, Washington
VAI2 Mount Parke, British Columbia
VAS5 Watts Point, British Columbia
XLK672 Bowen Island, British Columbia

(ii) These stations employing frequencies assigned at the time of the arrangement may be maintained with existing antenna heights in excess of 152 meters (500 feet) unless harmful interference to existing stations is identified and reported directly to the Federal Communications Commission or through the Public Correspondence Committee of the North Pacific Marine Radio Council.

(6) The agreed channeling arrangements for the west coast are as follows:

Public correspondence sector	Primary channel	Supplementary channel
British Columbia (Coastal Waters):		
Tofino	24	26
Barkley Sound	27	87
British Columbia (Inland Waters)		
Juan de Fuca West (Canada)	26	24
Juan de Fuca East (Canada)	86	84
Gulf Islands	27	[1]
Strait of Georgia South	26	86
Howe Sound	24	84
Strait of Georgia North	26	87
Campbell River	28	85
Washington (Coastal Waters):		
Cape Johnson	26	85
Point Grenville	26	25
Washington (Inland Waters):		
Juan de Fuca West (U.S.A.)	26	[1]
Juan de Fuca East (U.S.A.)	25	[1]
San Juan Islands	26	85
Puget Sound North	24	87
Puget Sound Hood Canal	26	25
Lower Puget Sound	28	85

[1] Supplementary channel not available.

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VOL 51 ISS 169 SE 2 1986 UMI

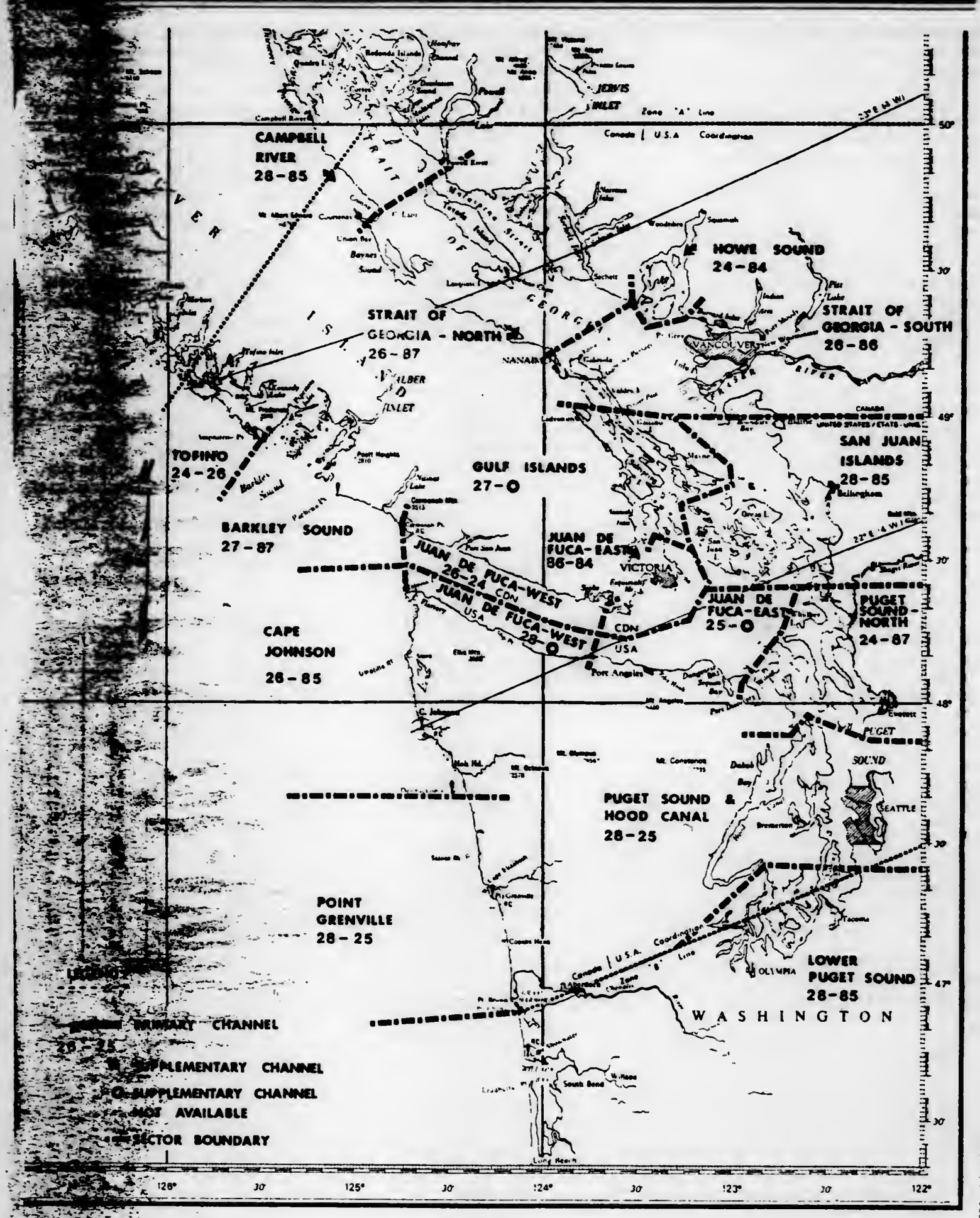


Figure 1

(e) *Canada/U.S.A. VHF channeling arrangement on the Great Lakes and the St. Lawrence Seaway.* Channels on the Great Lakes and the St. Lawrence Seaway will be assigned as follows:

(1) The provisions of the arrangement apply to the waters of the Great Lakes and the St. Lawrence Seaway within the coordination boundaries of "Arrangement A" of the Canada/U.S.A. Frequency Coordiantion Agreement above 30 MHz.

(2) The arrangement applies to the following public correspondence channels: channels 24, 84, 25, 85, 26, 86, 27, 87, 28, and 88.

(3) Canada and the U.S.A. use the following channeling arrangement:

(i) Canadian channels: 24, 85, 27, 88 (Note 1).

(ii) U.S.A. channels: 84, 25, 86, 87, 28 (Note 2).

(iii) Shared channels: 26 (Note 3).

Note 1: Also assignable to U.S. Stations within the frequency coordination zone following successful coordination with Canada.

Note 2: Also assignable to Canadian station within the frequency coordination zone following successful coordination with the United States.

Note 3: Changes to existing assignments and new assignments within the frequency coordination zone of either country are subject to prior coordination with the other Administration.

(f) *Canada/U.S.A. channeling arrangement for East Coast VHF maritime mobile public correspondence.* For purposes of this section, channels on the east coast will be assigned as follows:

(1) The provisions of the arrangement apply to the Canadian and U.S.A. east coast waters including the St. Lawrence Seaway within the coordination boundaries of "Arrangement A" of the Canada/U.S.A. Frequency Coordination Agreement above 30 MHz.

(2) The arrangement applies to the following public correspondence channels: channels 24, 84, 25, 85, 26, 86, 27, 87, 28, and 88.

(3) Canada and the U.S.A. use the following channeling arrangement:

(i) Canadian channels: 24, 85, 27, 88 (Note 1).

(ii) U.S.A. channels: 84, 25, 86, 87, 28 (Note 2).

(iii) Shared channel: 26 (Note 3).

Note 1: Also assignable to U.S. stations within the frequency coordination zone following successful coordination with Canada.

Note 2: Also assignable to Canadian stations within the frequency coordination zone following successful coordination with the United States.

Note 3: Changes to existing assignments and new assignments within the frequency coordination zone of either country are subject to prior coordination with the other Administration.

§ 80.59 Compulsory ship stations.

(a) *Application for inspection and certification.* An application for inspection and certification must be submitted to the Engineer in Charge of the FCC District Office nearest the proposed place of inspection on one of the following forms at least three days before the proposed inspection date:

(1) FCC Form 801 must be used to apply for a ship radio inspection on board ships subject to Part II or Part III of Title III of the Communications Act, the Safety Convention or the Great Lakes Radio Agreement. In addition, FCC Form 801 must be used to apply for inspections of bridge-to-bridge radio stations on board vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act when they are additionally subject to any of the laws and treaties mentioned in the previous sentence.

(2) FCC Form 806 must be used to apply for a ship radio inspection on board ships subject to Part II of Title III of the Communications Act or the Great Lake Radio Agreement on a Sunday or national holiday or during other than established working hours on any other day.

(b) *Responsibilities.* Applicants for a ship radio inspection subject to Parts II or III of Title III of the Communications Act, the Safety Convention, or the Great Lakes Radio Agreement must ensure that a licensed radio operator of the required class and endorsements, and sufficient personnel to lower and raise antennas and to launch any radio equipped survival craft are available on the ship at the time of inspection. The radio operator provided must be either a regularly assigned radio operator or a service representative.

(c) *Application for exemption.* FCC Form 820 must be used to apply for exemption from the radio provisions of Parts II or III of Title III of the Communications Act, the Safety Convention, or the Great Lakes Radio Agreement, or for modification or renewal of an exemption previously granted. Applications for exemptions must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554. In cases of emergency, the Commission may consider an informal application which includes the full information normally furnished on the formal application.

(d) *Temporary waiver of annual inspection.* The Commission may grant a waiver of the annual inspection for a period not to exceed 30 days from the time of first arrival of a ship at a United States port directly from a foreign port for the sole purpose of enabling the vessel to proceed coastwise to another port in the United States where an inspection can be made.

(1) An informal application (such as a letter or telegram, or telephone call to be confirmed by letter) for waiver of inspection must be submitted by either the vessel owner, the vessel's operating agency, the ship station licensee or the master of the vessel. The application must be submitted not earlier than 3 days in advance of the vessel's arrival at the United States port. The application must be submitted to the Commission's Engineer in Charge of the FCC District Office nearest the port of arrival. The application must include:

(i) The ship's name and radio call sign;

(ii) The name of the first United States port of arrival directly from a foreign port;

(iii) The date of arrival;

(iv) The date and port at which annual inspection will be formally requested to be conducted;

(v) Reason for requesting waiver; and

(vi) A statement that the ship's compulsory radio equipment is operable.

(e) *Compensation for overtime services.* Under section 4(f)(3) of the Communications Act, Engineers in Charge and Radio Engineers of the Field Operations Bureau of the Federal Communications Commission who may be required to remain on duty to perform services in connection with the inspection of ship radio equipment and apparatus for the purpose of Part II of Title III of the Communications Act or the Great Lakes Radio Agreement at night or on Sundays and holidays must receive extra compensation to be paid by the master, owner, or agent of the vessel under the following regulations:

(1) The rates of extra compensation are payable in cases where the services of such engineers have been duly requested and they have reported for duty, even though no actual service may be performed.

(2) The extra compensation for overtime services is in addition to the regular compensation paid by the government in the cases of engineers whose compensation is fixed on the ordinary per diem basis and those receiving compensation per month or per annum.

(3) Extra compensation for "waiting time" will not be allowed unless and until the engineer actually reports for duty.

(4) For the purpose of computing extra compensation, the word "night" means the time between the established closing hour of one day at the office involved

VOL 51 ISS 169 SE 2 1986 UMI

and the established opening hour of the following business day at such office, but will not include any such time within the 24 hours of a Sunday or holiday. Each Sunday and each holiday will comprise the 24 hours between midnight and midnight. For the purposes of this section, the time between the established closing hour of an office and midnight of the day immediately preceding a Sunday or holiday and the time from midnight until the established opening hour of the day immediately following the Sunday or holiday will be considered as a single night. The term "holiday" includes only government recognized holidays, and such other days as may be designated national holidays by the President or Congress.

(5) For authorized service in excess of 8 hours on any day excluding Sunday and holidays, extra compensation equivalent to one-half day's pay is payable for each 2 hours or fraction thereof of at least 1 hour that the overtime extends beyond the 8 hours when the overtime is not less than 1 hour. The maximum amount which may be paid for authorized overtime services on any day other than on a Sunday or holiday must not exceed 2½ days' pay.

(6) In computing the amount earned for overtime at the rate of "one-half day's pay for each 2 hours or fraction thereof of at least 1 hour that the overtime extends beyond the established closing hour", one-half day's pay must be one-half of the gross daily rate of pay; each 2 hours is the time period for the purpose of computation; at least 1 hour means the minimum service in any 2-hour overtime period for which extra pay may be granted, and each additional period in the amount of 2 hours or fraction thereof of at least 1 hour will entitle the engineer to an additional one-half day's pay. Payment of extra compensation for services consisting of at least 1 hour is authorized from the established closing hour, even though such services may not actually begin until later, provided that the engineer rendering the service remained on duty after the established closing hour, in which case the time between the established closing hour, and the time of beginning the actual services must be computed as waiting time. Where the performance of actual service is preceded by such a waiting time there should be an affirmative statement that the engineer was required to remain on duty between the established closing hour and the time of beginning the actual services.

(7) In computing extra compensation where the services rendered are in broken periods, the time served should be combined with the waiting time and computed as continuous service.

(8) The same considerations must apply when charging for waiting time as govern the charge for services actually rendered. No charge should be made unless after having reported for duty the waiting time amounts to at least 1 hour.

(9) For any authorized services performed on Sundays and holidays, totalling not more than 8 hours, extra compensation is payable equivalent to two day's pay in addition to any regular compensation for such days. For any authorized service in excess of 8 hours (starting either before or after 5 p.m. local time) extra compensation at the rate of one-half days' pay, based on the normal daily rate of pay, for each two hours of service or fraction thereof of not less than 1 hour, is payable in addition to the extra compensation payable for service up to and including 8 hours of service. The maximum extra compensation payable for work on Sundays and holidays is 4½ days' pay.

(10) When engineers are in travel status overtime will apply the same as if they were at an official station. However, compensation for such overtime must not include travel time.

(11) Assessments and collection of fees against steamship companies for overtime services must be made even though the payment to employees for such services may not be made until funds are appropriated for that purpose.

(12) An application on FCC Form 808 must be filed with the office being requested to furnish overtime services before such assignment can be made.

(13) Overtime services must be billed to the steamship companies as soon as possible after the services have been performed and on a collection voucher (FCC Form 907). Remittance shall be by postal money order or certified check payable to the "Collector of Customs, Treasury Department" and forwarded to that officer at the port indicated on the voucher, who shall in turn deposit such remittance on a properly designated receipt account.

(14) Protests against the extraction of extra compensation must be forwarded to the Commission at Washington, DC, and a copy sent to the office which furnished the overtime services.

Subpart C—Operating Requirements and Procedures

Station Requirements—General

§ 80.61 Commisson inspection of stations.

All stations and required station records must be made available for inspection by authorized representatives of the Commission.

§ 80.63 Maintenance of transmitter power.

(a) The power of each radio transmitter must not be more than that necessary to carry on the service for which the station is licensed.

(b) Except for transmitters using single sideband and independent sideband emissions, each radio transmitter rated by the manufacturer for carrier power in excess of 100 watts must contain the instruments necessary to determine the transmitter power during its operation.

Station Requirements—Land Stations

§ 80.67 General facilities requirements for coast stations.

(a) All coast stations licensed to transmit in the band 156–162 MHz must be able to transmit and receive on 156.800 MHz and at least one working frequency in the band.

(b) All coast stations that operate telephony on frequencies in the 1605–3500 kHz band must be able to transmit and receive using J3E emission on the frequency 2182 kHz and at least one working frequency in the band. In addition, each such public coast station must transmit and receive H3E emission on the frequency 2182 kHz.

§ 80.68 Facilities requirements for public coast stations using telegraphy.

Public coast station using telegraphy must be provided with the following facilities.

(a) Stations having a frequency assignment below 150 kHz must:

(1) Transmit A1A emission on at least one working frequency within the band 100–150 kHz;

(2) Receive A1A emission on all radio channels authorized for transmission by mobile stations operating in the maritime mobile service for telegraphy within the band 100–150 kHz.

(b) Stations having a frequency assignment within the 405–525 kHz band must transmit and receive on 500 kHz and at least one working frequency in the band.

(c) Stations having frequency assignments above 4000 kHz must be equipped to receive on each of their assigned frequencies and all ship station radiotelegraphy frequencies in the same sub-band as the assigned frequency of the coast station. See Subpart H of this part for the list of frequencies.

§ 80.69 Facilities requirement for public coast stations using telephony.

Public coast stations using telephony must be provided with the following facilities.

(a) When the station is authorized to use frequencies in the 1605–3500 kHz

band, equipment meeting the requirements of §80.67(b) must be installed at each transmitting location.

(b) The transmitter power on the frequency 2182 kHz must not exceed 50 watts carrier power for normal operation. During distress, urgency and safety traffic, operation at maximum power is permitted.

§ 80.70 Special provisions relative to coast station VHF facilities.

(a) Coast stations which transmit on the same radio channel above 150 MHz must minimize interference by reducing radiated power, by decreasing antenna height or by installing directional antennas. Coast stations at locations separated by less than 241 kilometers (150 miles) which transmit on the same radio channel above 150 MHz must also consider a time-sharing arrangement. The Commission may order station changes if agreement cannot be reached between the involved licensees.

(b) Coast stations which transmit on a radio channel above 150 MHz and are located within interference range of any station within Canada or Mexico must minimize interference to the involved foreign station(s), and must notify the Commission of any station changes.

§ 80.71 Operating controls for stations on land.

Each coast station, Alaska-public fixed station and Alaska-private fixed station must provide operating controls in accordance with the following:

(a) Each station using telegraphy or telephony must be capable of changeover from transmission to reception and vice versa within two seconds excluding a change in operating radio channel.

(b) During it hours of service, each station must be capable of:

(1) Commencing operation within one minute after the need to do so occurs;

(2) Discontinuing all emission within five seconds after emission is no longer desired. The emission of an unattended station in an automated multistation system at which restoration to standby is automatic on conclusion of a call must be discontinued within three seconds of the disconnect signal or, if a disconnect signal is not received, within twenty seconds after reception of the final carrier transmission from a ship station.

(c) Each station using a multichannel installation for telegraphy must be capable of changing from one telegraphy channel to any other telegraphy channel within the same sub-band below 525 kHz within five seconds. This requirement need not be met by equipment intended for use only in emergencies and not used for normal communication.

(d) Every coast station using a multi-channel installation for radiotelephony must be capable of changing from one telephony channel to another telephony channel within:

(1) Five seconds within the frequency band 1605–3500 kHz; or

(2) Three seconds within the band 156–162 MHz. This requirement also applies to marine utility stations.

§ 80.72 Antenna requirements for coast stations.

All emissions of a coast station a marine-utility station operated on shore using telephony within the frequency band 30–200 MHz must be vertically polarized.

§ 80.74 Public coast station facilities for a telephony busy signal.

A "busy" signal, when used by a public coast station in accordance with the provisions of § 80.111(d), must consist of the transmission of a single audio frequency regularly interrupted, as follows:

(a) Audio frequency: Not less than 100 nor more than 1100 Hertz, provided the frequency used for this purpose will not cause auto alarms or selective-ringing devices to be operated.

(b) Rate of interruption: 60 times per minute ± 10%.

(c) Duration of each interruption: 0.5 second ± 10%.

§ 80.76 Requirements for land station control points.

Each coast or fixed station subject to this part must have the following facilities:

(a) Except for marine utility stations, a visual indication of antenna current; or a pilot lamp, meter or equivalent device which provides continuous visual indication whenever the transmitter control circuits have been actuated.

(b) Capability to aurally monitor all transmissions originating at dispatch points and to disconnect the dispatch points from the transmitter or to terminate the operation of the transmitter.

(c) Facilities which will permit the responsible operator to turn the carrier of the radio transmitter on and off at will.

Station Requirements—Ship Stations

§ 80.79 Inspection of ship station by a foreign Government.

The Governments or appropriate administrations of countries which a ship visits may require the license of the ship station or ship earth station to be produced for examination. When the license cannot be produced without delay or when irregularities are observed, Governments or administrations may inspect the radio installations to satisfy themselves that the installation conforms to the conditions imposed by the Radio Regulations.

§ 80.80 Operating controls for ship stations.

(a) Each control point must be capable of:

(1) Starting and discontinuing operation of the station;

(2) Changing frequencies within the same sub-band;

(3) Changing from transmission to reception and vice versa.

(4) In the case of stations operating in the 156–162 MHz bands, reducing power output to one watt or less in accordance with § 80.215(e).[1]

(b) Each ship station using telegraphy must be capable of changing from telegraph transmission to telegraph reception and vice versa without manual switching.

(c) Each ship station using telephony must be capable of changing from transmission to reception and vice versa within two seconds excluding a change in operating radio channel.

(d) During its hours of service, each ship station must be capable of:

(1) Commencing operation within one minute;

(2) Discontinuing all emission within five seconds after emission is no longer desired.

(e) Each ship station using a multi-channel installation for telegraphy (except equipment intended for use only in emergencies on frequencies below 515 kHz) must be capable of changing from one radio channel to another within:

(1) Five seconds if the channels are within the same sub-band; or

(2) Fifteen seconds if the channels are not within the same sub-band.

(f) Each ship station and marine-utility station using a multi-channel installation for telephony must be capable of changing from one radio channel to another within:

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[1] Ship station transmitters, except hand-held portable transmitters, manufactured after January 21, 1987 must automatically reduce the carrier power to one watt or less when tuned to the frequency 156.375 MHz or 156.650 MHz. All ship station transmitters, except portable ship station transmitters, used after January 21, 1997, must automatically reduce power as described above. A manual override device must be provided which when held by the operator will permit full carrier power operation on channels 13 and 67. Portable ship station transmitters must be capable of reducing power to one watt, but need not do so automatically.

(1) Five seconds within the band 1605–3500 kHz; or

(2) Three seconds within the band 156–162 MHz.

(g)(1) Any telegraphy transmitter constructed since January 1, 1952, that operates in the band 405–525 kHz with an output power in excess of 250 watts must be capable of reducing the output power to 150 watts or less.

(2) The requirement of paragraph (g)(1) of this section does not apply when there is available in the same station a transmitter capable of operation on the international calling frequency 500 kHz and at least one working frequency within the band 405–525 kHz, capable of being energized by a source of power other than an emergency power source and not capable of an output in excess of 100 watts when operated on such frequencies.

§ 80.81 Antenna requirements for ship stations.

All telephony emissions of a ship station or a marine utility station on board ship within the frequency band 30–200 MHz must be vertically polarized.

Operating Procedures—General

§ 80.86 International regulations applicable.

In addition to being regulated by these rules, the use and operation of stations subject to this part are governed by the Radio Regulations and the radio provisions of all other international agreements in force to which the United States is a party.

§ 80.87 Cooperative use of frequency assignments.

Each radio channel is available for use on a shared basis only and is not available for the exclusive use of any one station or station licensee. Station licensees must cooperate in the use of their respective frequency assignments in order to minimize interference and obtain the most effective use of the authorized radio channels.

§ 80.88 Secrecy of communication.

The station licensee, the master of the ship, the responsible radio operators and any person who may have knowledge of the radio communications transmitted or received by a fixed, land, or mobile station subject to this part, or of any radiocommunication service of such station, must observe the secrecy requirements of the Communications Act and the Radio Regulations. See Sections 501, 502, and 705 of the Communications Act and Article 23 of the Radio Regulations.

§ 80.89 Unauthorized transmissions.

Stations must not:

(a) Engage in superfluous radiocommunication.

(b) Use telephony on 243 MHz.

(c) Use selective calling on 2182 kHz or 156.800 MHz.

(d) When using telephony, transmit signals or communications not addressed to a particular station or stations. This provision does not apply to the transmission of distress, alarm, urgency, or safety signals or messages, or to test transmissions.

(e) When using telegraphy, transmit signals or communications not addressed to a particular station or stations, unless the transmission is preceded by CQ or CP or by distress, alarm, urgency, safety signals, or test transmissions.

(f) Transmit while on board vessels located on land. Vessels in the following situations are not considered to be on land for the purposes of this paragraph:

(1) Vessels which are aground due to a distress situation;

(2) Vessels in drydock undergoing repairs; and

(3) State or local government vessels which are involved in search and rescue operations including related training exercises.

§ 80.90 Suspension of transmission.

Transmission must be suspended immediately upon detection of a transmitter malfunction and must remain suspended until the malfunction is corrected, except for transmission concerning the immediate safety of life or property, in which case transmission must be suspended as soon as the emergency is terminated.

§ 80.91 Order of priority of communications.

(a) The order of priority of radiotelegraph communications is as follows:

(1) Distress calls including the international distress signal for radiotelegraphy, the international radiotelegraph alarm signal, the international radiotelephone alarm signal, distress messages and distress traffic.

(2) Communications preceded by the international radiotelegraph urgency signal.

(3) Communications preceded by the international radiotelegraphy safety signal.

(4) Communications relative to radio direction-finding bearings.

(5) Communications relative to the navigation and safe movement of aircraft.

(6) Communications relative to the navigation, movements, and needs of ships, including weather observation messages destined for an official meteorological service.

(7) Government communications for which priority right has been claimed.

(8) Service communications relating to the working of the radiocommunication service or to communications previously transmitted.

(9) All other communications.

(b) The order of priority of radiotelephone communications is as follows:

(1) Distress calls including the international distress signal for radiotelephony, the international radiotelephone alarm signal, distress messages and distress traffic.

(2) Communications preceded by the international radiotelephone urgency signal, or known to the station operator to consist of one or more urgent messages concerning the safety of a person, aircraft or other mobile unit.

(3) Communications preceded by the international radiotelephone safety signal, or known to the station operator to consist of one or more messages concerning the safety of navigation or important meteorological warnings.

(4) Communications known by the station operator to consist of one or more messages relative to the navigation, movements and needs of ships, including weather observation messages destined for an official meteorological service.

(5) Government communications for which priority right has been claimed.

(6) All other communications.

§ 80.92 Prevention of interference.

(a) The station operator must determine that the frequency is not in use by monitoring the frequency before transmitting, except for transmission of signals of distress.

(b) When a radiocommunication causes interference to a communication which is already in progress, the interfering station must cease transmitting at the request of either party to the existing communication. As between nondistress traffic seeking to commence use of a frequency, the priority is established under § 80.91.

(c) Except in cases of distress, communications between ship stations or between ship and aircraft stations must not interfere with public coast stations. The ship or aircraft stations which cause interference must stop transmitting or change frequency upon the first request of the affected coast station.

VOL 51 ISS 169 SE 2 1986 UMI

§ 80.93 Hours of service.

(a) *All stations.* All stations whose hours of service are not continuous must not suspend operation before having concluded all communication required in connection with a distress call or distress traffic.

(b) *Public coast stations.* (1) Each public coast station whose hours of service are not continuous must not suspend operation before having concluded all communication involving messages or calls originating in or destined to mobile stations within range and mobile stations which have indicated their presence.

(2) Unless otherwise authorized by the Commission upon adequate showing of need, each public coast station authorized to operate on frequencies in the 3000–23,000 kHz band must maintain continuous hours of service.

(c) *Compulsory ship stations.* Compulsory ship stations whose service is not continous may not suspend operation before concluding all traffic originating in or destined for public coast stations situated within their range and mobile stations which have indicated their presence.

(d) *Other than public coast or compulsory ship stations.* The hours of service of stations other than public coast or compulsory ship stations are determined by the station licensee.

§ 80.94 Control by coast or Government station.

When communicating with a coast station or any Government station in the maritime mobile service, ship stations must comply with the instruction given by the coast station or Government station relative to the order and time of transmission, the choice of frequency, the suspension of communication and the permissible type of message traffic that may be transmitted. This provision does not apply in the event of distress.

§ 80.95 Message charges.

(a) Charges must not be made for service of:

(1) Any public coast station unless tariffs for the service are on file with the Commission;

(2) Any station other than a public coast station or an Alaska—public fixed station, except cooperatively shared stations covered by § 80.503;

(3) Distress traffic; and

(4) Navigation hazard warnings preceded by the SAFETY signal.

(b) The licensee of each ship station is responsible for the payment of all charges accruing to any other station(s) or facilities for the handling or forwarding of messages or communications transmitted by that station.

(c) In order to be included in the ITU List of Coast Stations public coast stations must recognize international Accounting Authority Identification Codes (AAIC) for purposes of billing and accounts settlement in accordance with Article 66 of the Radio Regulations. Stations which elect not to recognize international AAIC's will be removed from the ITU List of Coast Stations.

§ 80.96 Maintenance tests.

Stations are authorized to engage in test transmissions necessary for maintenance of the station. Test transmissions must conform to appropriate test operating procedures.

§ 80.97 Radiotelegraph operating procedures.

This section applies to ships and coast stations authorized to transmit in the band 405–525 kHz.

(a) Except for the transmission of distress or urgency signals, all transmissions must cease within the band 485–515 kHz during each 500 kHz silence period.

(b) Stations transmitting telegraphy must use the service abbreviations ("Q" code) listed in Appendix 14 to the Radio Regulations.

(c) The call consists of:

(1) The call sign of the station called, not more than twice; the word "DE" and the call sign of the calling station, not more than twice; if useful, the frequency on which the called station should reply; and the letter "K".

(2) If the call is transmitted twice at an interval of not less than one minute, it must not be repeated until after an interval of three minutes.

(d) The reply to calls consists of: The call sign of the calling station, not more than twice; the word "DE"; and the call sign of the station called, once only.

§ 80.98 Radiotelegraph testing procedures.

(a) Stations authorized to use telegraphy may conduct tests on any assigned frequency. Emissions must not cause harmful interference. When radiation is necessary the radiotelegraph testing procedure described in this paragraph must be followed:

(1) The operator must not interfere with transmissions in progress.

(2) The operator must transmit "IE" (two dots, space, one dot) on the test frequency as a warning that test emissions are about to be made. When the frequency of the test emission is within the frequency band 405–525 kHz, a watch must be maintained on 500 kHz throughout the test period.

(3) If any station transmits "AS" (wait), testing must be suspended. When transmission of "IE" is resumed and no response is heard, the test may proceed.

(4) Test signals composed of a series of "VVV" having a duration of not more than ten seconds, followed by the call sign of the testing station will be transmitted. The call sign must be sent clearly at a speed of approximately 10 words per minute. This test transmission must not be repeated until a period of at least one minute has elapsed. On 500 kHz in a region of heavy traffic, at least five minutes must elapse before the test transmission is repeated.

(b) When testing is conducted on 500 kHz, no tests will be conducted during the 500 kHz silence periods. Care must be exercised not to so prolong and space the dash portion of the "VVV" series as to form the alarm signal.

(c) When testing is conducted on any frequency in the band 8362–8366 kHz, tests must not actuate any automatic alarm receiver.

§ 80.99 Radiotelegraph station identification.

This section applies to coast, ship and survival craft stations authorized to transmit in the band 405–525 kHz.

(a) The station transmitting radiotelegraph emissions must be identified by its call sign. The call sign must be transmitted with the telegraphy emission normally used by the station. The call sign must be transmitted at 20 minute intervals when transmission is sustained for more than 20 minutes. When a ship station is exchanging public correspondence communications, the identification may be deferred until completion of each communication with any other station.

(b) The requirements of this section do not apply to survival craft stations when transmitting distress signals automatically or when operating on 121.500 MHz for radiobeacon purposes.

(c) Emergency position indicating radiobeacon stations do not require identification.

§ 80.100 Morse code requirement.

The code employed for telegraphy must be the Morse code specified in the Telegraph Regulations annexed to the International Telecommunication Convention. Pertinent extracts from the Telegraph Regulations are contained in the "Manual for Use by the Maritime Mobile and Maritime Mobile-Satellite Services" published by the International Telecommunication Union.

§ 80.101 Radiotelephone testing procedures.

This section is applicable to all stations using telephony except where otherwise specified.

(a) Station licensees must not cause harmful interference. When radiation is necessary or unavoidable, the testing procedure described below must be followed:

(1) The operator must not interfere with transmissions in progress.

(2) The testing station's call sign, followed by the word "test", must be announced on the radio-channel being used for the test.

(3) If any station responds "wait", the test must be suspended for a minimum of 30 seconds, then repeat the call sign followed by the word "test" and listen again for a response. To continue the test, the operator must use counts or phrases which do not conflict with normal operating signals, and must end with the station's call sign. Test signals must not exceed ten seconds, and must not be repeated until at least one minute has elapsed. On the frequency 2182 kHz or 156.800 MHz, the time between tests must be a minimum of five minutes.

(b) Testing of transmitters must be confined to single frequency channels on working frequencies. However, 2182 kHz and 156.800 MHz may be used to contact ship or coast stations as appropriate when signal reports are necessary. Short tests on 2182 kHz by vessels with DSB (A3) equipment for distress and safety purposes are permitted to evaluate the compatibility of that equipment with an A3J emission system. U.S. Coast Guard stations may be contacted on 2182 kHz or 156.800 MHz for test purposes only when tests are being conducted during inspections by Commission representatives, when qualified radio technicians are installing or repairing the station radiotelephone equipment, or when qualified ship's personnel conduct an operational check requested by the U.S. Coast Guard. In these cases the test must be identified as "FCC" or "technical".

(c) Survival craft transmitter tests must not be made within actuating range of automatic alarm receivers. Survival craft transmitters must not be tested on the frequency 500 kHz during the silence periods.

§ 80.102 Radiotelephone station identification.

This section applies to all stations using telephony which are subject to this part.

(a) Except as provided in paragraph (d), stations must give the call sign in English. Identification must be made:

(1) At the beginning and end of each communication with any other station.

(2) At 15 minute intervals when transmission is sustained for more than 15 minutes. When public correspondence is being exchanged with a ship or aircraft station, the identification may be deferred until the completion of the communications.

(b) Private coast stations located at drawbridges and transmitting on the navigation frequency 156.650 MHz may identify by use of the name of the bridge in lieu of the call sign.

(c) Ship stations transmitting on any authorized VHF bridge-to-bridge channel may be identified by the name of the ship in lieu of the call sign.

(d) Ship stations operating in a vessel traffic service system or on a waterway under the control of a U.S. Government agency or a foreign authority, when communicating with such an agency or authority may be identified by the name of the ship in lieu of the call sign, or as directed by the agency or foreign authority.

§ 80.103 Digital selective calling (DSC) operating procedures.

(a) Operating procedures for the use of DSC equipment in the maritime mobile service are as contained in CCIR Recommendation 541 as modified by paragraph (c) of this section.

(b) When using DSC techniques, coast and ship stations must use nine digit maritime mobile service identities.

(c) DSC acknowledgement of DSC distress and safety calls must be made by designated coast stations and such acknowledgement must be in accordance with procedures contained in CCIR Recommendation 541. Nondesignated public and private coast stations must follow the guidance provided for ship stations in CCIR Recommendation 541 with respect to DSC "Acknowledgement of distress calls" and "Distress relays".

§ 80.104 Identification of radar transmissions not authorized.

This section applies to all maritime radar transmitters except radar beacon stations.

(a) Radar transmitters must not transmit station identification.

Operating Procedures—Land Stations

§ 80.105 General obligations of coast stations.

Each coast station or marine-utility station must acknowledge and receive all calls directed to it by ship or aircraft stations. Such stations are permitted to transmit safety communication to any ship or aircraft station.

§ 80.106 Intercommunication in the mobile service.

(a) Each public coast station must exchange radio communications with any ship or aircraft station at sea; and each station on shipboard or aircraft at sea must exchange radio communications with any other station on shipboard or aircraft at sea or with any public coast station.

(b) Each public coast station must acknowledge and receive all communications from mobile stations directed to it, transmit all communications delivered to it which are directed to mobile stations within range in accordance with their tariffs. Discrimination in service is prohibited.

§ 80.107 Service of private coast stations and marine-utility stations.

A private coast station or a marine-utility station is authorized to transmit messages necessary for the private business and operational needs of ships and the safety of aircraft.

§ 80.108 Transmission of traffic lists by coast stations.

(a) Each coast station is authorized to transmit lists of call signs in alphabetical order of all mobile stations for which they have traffic on hand. These traffic lists will be transmitted on the station's normal working frequencies at intervals of:

(1) In the case of telegraphy, at least two hours and not more than four hours during the working hours of the coast station.

(2) In the case of radiotelephony, at least one hour and not more than four hours during the working hours of the coast station.

(b) The announcement must be as brief as possible and must not be repeated more than twice. Coast stations may announce on a calling frequency that they are about to transmit call lists on a specific working frequency.

§ 80.109 Transmission to a plurality of mobile stations by a public coast station.

Group calls to vessels under the common control of a single entity and information for the general benefit of mariners including storm warnings, ordinary weather, hydrographic information and press materials may be transmitted by a public coast station simultaneously to a plurality of mobile stations.

§ 80.110 Inspection and maintenance of tower markings and associated control equipment.

The licensee of any radio station which has an antenna structure required

to be painted or illuminated pursuant to the provisions of section 303(q) of the Communications Act must operate and maintain the tower marking and associated control equipment in accordance with Part 17 of this chapter.

§ 80.111 Radiotelephone operating procedures for coast stations.

This section applies to all coast stations using telephony which are subject to this part.

(a) *Limitations on calling.* Except when transmitting a general call to all stations for announcing or preceding the transmission of distress, urgency, or safety messages, a coast station must call the particular station(s) with which it intends to communicate.

(2) Coast stations must call ship stations by voice unless it is known that the particular ship station may be contacted by other means such as automatic actuation of a selective ringing or calling device.

(3) Coast stations may be authorized emission for selective calling on each working frequency.

(4) Calling a particular station must not continue for more than one minute in each instance. If the called station does not reply, that station must not again be called for two minutes. When a called station does not reply to a call sent three times at intervals of two minutes, the calling must cease for fifteen minutes. However, if harmful interference will not be caused to other communications in progress, the call may be repeated after three minutes.

(5) A coast station must not attempt to communicate with a ship station that has specifically called another coast station until it becomes evident that the called station does not answer, or that communication between the ship station and the called station cannot be carried on because of unsatisfactory operating conditions.

(b) *Time limitation on calling frequency.* Transmissions by coast stations on 2182 kHz or 156.800 MHz must be minimized and any one exchange of communications must not exceed one minute in duration.

(c) *Change to working frequency.* After establishing communications with another station by call and reply on 2182 kHz or 156.800 MHz coast stations must change to an authorized working channel for the transmission of messages.

(d) *Use of busy signal.* A coast station, when communicating with a ship station which transmits to the coast station on a radio channel which is a different channel from that used by the coast station for transmission, may transmit a "busy" signal whenever transmission from the ship station is being received. The characteristics of the "busy" signal are contained in § 80.74.

Operating Procedures—Ship Stations

§ 80.114 Authority of the master.

(a) The service of each ship station must at all times be under the ultimate control of the master, who must require that each operator or such station comply with the Radio Regulations in force and that the ship station is used in accordance with those regulations.

(b) These rules are waived when the vessel is under the control of the U.S. Government.

§ 80.115 Operational conditions for use of associated ship units.

(a) Associated ship units may be operated under a ship station authorization. Use of an associated ship unit is restricted as follows;

(1) It must only be operated on the safety and calling frequency 156.800 MHz or on commercial or noncommercial VHF intership frequencies appropriate to the class of ship station with which it is associated.

(2) Except for safety purposes, it must only be used to communicate with the ship station with which it is associated or with associated ship units of the same ship station. Such associated ship units may not be used from shore.

(3) It must be equipped to transmit on the frequency 156.800 MHz and at least one appropriate intership frequency.

(4) Calling must occur on the frequency 156.800 MHz unless calling and working on an intership frequency has been prearranged.

(5) Power is limited to one watt.

(6) The station must be identified by the call sign of the ship station with which it is associated and an appropriate unit designator.

(b) State or local government vehicles used to tow vessels involved in search and rescue operations are authorized to operate on maritime mobile frequencies as associated ship units. Such operations must be in accordance with paragraph (a) of this section except that the associated ship unit: may be operated from shore; may use Distress, Safety and Calling, Intership Safety, Liaison, U.S. Coast Guard, or Maritime Control VHF intership frequencies; and may have a transmitter power of 25 watts.

§ 80.116 Radiotelephone operating procedures for ship stations.

(a) *Calling coast stations.* (1) Use by ship stations of the freqency 2182 kHz for calling coast stations and for replying to calls from coast stations is authorized. However, such calls and replies should be on the appropriate ship-shore working frequency.

(2) Use by ship stations and marine utility stations of the frequency 156.800 MHz for calling coast stations and marine utility stations on shore, and for replying to calls from such stations, is authorized. However, such calls and replies should be made on the appropriate ship-shore working frequency.

(b) *Calling ship stations.* (1) Except when other operating procedure is used to expedite safety communication, ship stations, before transmitting on the intership working frequencies 2003, 2142, 2638, 2738, or 2830 kHz, must first establish communications with other ship stations by call and reply on 2182 kHz. Calls may be initiated on an intership working frequency when it is known that the called vessel maintains a simultaneous watch on the working frequency and on 2182 kHz.

(2) Except when other operating procedures are used to expedite safety communications, the frequency 156.800 MHz must be used for call and reply by ship stations and marine utility stations before establishing communication on one of the intership working frequencies. Calls may be initiated on an intership working frequency when it is known that the called vessel maintains a simultaneous watch on the working frequency and on 156.800 MHz.

(c) *Change to working frequency.* After establishing communication with another station by call and reply on 2182 kHz or 156.800 MHz stations on board ship must change to an authorized working frequency for the transmission of messages.

(d) *Limitations on calling.* Calling a particular station must not continue for more than 30 seconds in each instance. If the called station does not reply, the station must not again be called until after an interval of 2 minutes. When a called station called does not reply to a call sent three times at intervals of 2 minutes, the calling must cease and must not be renewed until after an interval of 15 minutes; however, if there is no reason to believe that harmful interference will be caused to other communications in progress, the call sent three times at intervals of 2 minutes may be repeated after a pause of not less than 3 minutes. In event of an emergency involving safety, the provisions of this paragraph do not apply.

(e) *Limitations on working.* Any one exchange of communications between any two ship stations on 2003, 2142, 2638, 2738, or 2830 kHz or between a ship station and a private coast station

on 2738 or 2999 kHz must not exceed 3 minutes after the stations have established contact. Subsequent to such exchange of communications, the same two stations must not again use 2003, 2142, 2608, 2738, or 2830 kHz for communication with each other until 10 minutes have elapsed.

(f) *Transmission limitation on 2182 kHz and 156.800 MHz.* To facilitate the reception of distress calls, all transmissions on 2182 kHz and 156.800 MHz (channel 16) must be minimized and transmissions on 156.800 MHz must not exceed 1 minute.

(g) *Limitations on commercial communication.* On frequencies in the band 156–162 MHz, the exchange of commercial communication must be limited to the minimum practicable transmission time. In the conduct of ship-shore communication other than distress, stations on board ship must comply with instructions given by the private coast station or marine utility station on shore with which they are communicating.

(h) *2182 kHz silence periods.* To facilitate the reception of distress calls, transmission by ship or survival craft stations is prohibited on any frequency (including 2182 kHz) within the band 2173.5–2190.5 kHz during each 2182 kHz silence period.

Special Procedures—Public Coast Stations

§ 80.121 Public coast stations using telegraphy.

(a) *Narrow-band direct-printing (NB–DP) operating procedures.* (1) When both terminals of the NB–DP circuit are satisfied that the circuit is in operable condition, the message preamble must be transmitted in the following format:

(i) One carriage return and one line feed,

(ii) Serial number or number of the message,

(iii) The name of the office of origin,

(iv) The number of words,

(v) The date of handing in of the message,

(vi) The time of handing in of the message, and

(vii) Any service instructions. (See The ITU "Manual for Use by the Maritime Mobile and Maritime Mobile-Satellite Services".)

(2) Upon completion of transmission of the preamble, the address, text and signature must be transmitted as received from the sender.

(3) Upon completion of transmission of the signature the coast station must, following the signal "COL", routinely repeat all service indications in the address and for figures or mixed groups of letters, figures or signs in the address, text or signature.

(4) In telegrams of more than 50 words, routine repetition must be given at the end of each page.

(5) Paragraphs (a) (1) through (4) of this section need not be followed when a direct connection is employed.

(6) In calling ship stations by narrow-band direct-printing, the coast station must use the ship station selective calling number (5 digits) and its assigned coast station identification number (4 digits). Calls to ship stations must employ the following format: Ship station selective call number, repeated twice; "DE", sent once; and coast station identification number, repeated twice. When the ship station does not reply to a call sent three times at intervals of two minutes, the calling must cease and must not be renewed until after an interval of fifteen minutes.

(7) A public coast station authorized to use NB–DP frequencies between 4000 kHz and 27500 kHz may use class A1A emission on the "mark" frequency for station identification and for establishing communications with ship stations. The radio station license must reflect authority for this type of operation, and harmful interference must not be caused.

(b) *Watch on ship calling frequencies.* (1) Public coast stations using telegraphy must maintain a continuous watch during their working hours for calls from ship stations on frequencies in the same band(s) in which the coast station is licensed to operate. See Subpart H of this part.

(2) Such station must employ receivers which are capable of being accurately set to any designated calling frequency in each band for which the receiver is intended to operate. The time required to set the receiver to a frequency must not exceed five seconds. The receiver must have a long term frequency stability of not more than 50 Hz and a minimum sensitivity of two microvolts across receiver input terminals of 50 ohms, or equivalent. The audio harmonic distortion must not exceed five percent at any rated output power.

(c) *Radiotelegraph frequencies.* Radiotelegraph frequencies available for assignment to public coast stations are contained in Subpart H of this part.

§ 80.122 Public coast stations using facsimile.

Facsimile operations are a form of telegraphy for the transmission and receipt of fixed images between authorized coast and ship stations in accordance with the following paragraphs.

(a) *Supplemental eligibility requirements.* Public coast stations are eligible to use facsimile techniques with ship stations.

(b) *Assignment and use of frequencies.* (1) For the purpose of providing facsimile communications with ship stations, public coast stations will request frequencies from the bands 2000–27500 kHz listed in Part 2 of this chapter which are available for shared use by the maritime mobile service and other radio services.

(2) Equipment used for facsimile operations is subject to the applicable provisions of Subpart E of this part.

(3) The use of voice on frequencies authorized for facsimile operations is limited to set-up and confirmation of receipt of facsimile transmissions.

Special Procedures—Private Coast Stations

§ 80.131 Radioprinter operations.

Radioprinter operations provide a relatively low cost system of record communications between authorized coast and ship stations in accordance with the following paragraphs.

(a) *Supplementary eligibility requirement.* A radioprinter authorization for a private coast station may be issued to the owner or operator of a ship of less than 1600 gross tons, a community of ships all of which are less than 1600 gross tons, or an association whose members operate ships of less than 1600 gross tons.

(b) *Scope of communications.* Only those communications which concern the business and operational needs of vessels are authorized.

(c) *Assignment and use of frequencies.* (1) Frequencies may be assigned to private coast stations for radioprinter use from the appropriate bands listed in Subpart H of this part.

(2) Frequencies in the listed bands are shared with other radio services including the maritime mobile service. Each assigned frequency is available on a shared use basis only, not for the exclusive use of any one station or licensee.

(d) *Coast station responsibilities.* (1) Private coast stations must propose frequencies and provide the names of ships to be served with the application.

(2) Private coast station licensees must provide copies of their license to all ships with which they are authorized to conduct radioprinter operations.

Special Procedures—Ship Stations

§ 80.141 General provisions for ship stations.

(a) *Points of communication.* Ship stations and marine utility stations on board ships are authorized to communicate with any station in the maritime mobile service.

(b) *Service requirements for all ship stations.* (1) Each ship station must receive and acknowledge all communications which are addressed to the ship or to any person on board.

(2) Every ship, on meeting with any direct danger to the navigation of other ships such as ice, a derelict vessel, a tropical storm, subfreezing air temperatures associated with gale force winds causing severe icing on superstructures, or winds of force 10 or above on the Beaufort scale for which no storm warning has been received, must transmit related information to ships in the vicinity and to the authorities on land unless such action has already been taken by another station. All such radio messages must be preceded by the safety signal.

(3) A ship station may accept communications for retransmission to any other station in the maritime mobile service. Whenever such messages or communications have been received and acknowledged by a ship station for this purpose, that station must retransmit the message as soon as possible.

(c) *Service requirements for vessels.* Each ship station provided for compliance with Part II of Title III of the Communications Act must provide a public correspondence service on voyages of more than 24 hours for any person who requests the service.

(1) Compulsory radiotelegraph ships must provide this service during the hours the radio operator is normally on duty.

(2) Compulsory radiotelephone ships must provide this service for at least four hours daily. The hours must be prominently posted at the principal operating location of the station.

§ 80.142 Ships using radiotelegraphy.

(a) *Calling by narrow-band direct-printing.* (1) NB–DP ship stations must call United States public coast stations on frequencies designated for NB–DP operation.

(2) Where it is known that the coast station maintains a watch on working frequencies for ship station NB–DP calls the ship station must make its initial NB–DP call on those frequencies.

(3) Calls to a coast station or other ship station must employ the following format: Coast station identification number, repeated twice; "DE", sent once; and ship station selective call number, repeated twice. When the coast station does not reply to a call sent three times at intervals of two minutes, the calling must cease for fifteen minutes.

(b) *NB–DP operating procedure.* These procedures apply to NB–DP communication with a coast station or with other ship stations.

(1) Calls to coast stations will normally be made by radioteleprinter on the NB–DP frequencies on which the coast station maintains a watch.

(i) The transmit frequencies and frequencies on which coast stations maintain a watch are indicated in the ITU List of Coast Stations.

(ii) When using paired frequencies as set forth in § 80.361(a), the ship station must transmit on the ship frequency and receive on the coast transmit frequency designated within the same series. Cross series operation between ship and coast stations is prohibited.

(iii) When using non-paired frequencies as set forth in § 80.361(b), the coast station must transmit on one of the coast station radiotelegraphy working frequencies listed in § 80.357. Special arrangements may be made between ship stations or shipping companies and coast stations for the use of specific frequencies.

(2) When efforts to establish an NB–DP circuit on NB–DP frequencies have proven unsuccessful, ship stations may call coast stations on manual Morse radiotelegraphy calling frequencies, shift to manual Morse radiotelegraphy working frequencies, and complete arrangements for setting up a NB–DP circuit. The routine use of manual Morse radiotelegraphy frequencies for the setting up of a NB–DP circuit with United States coast stations is not authorized.

(3) In calling the coast station by NB–DP, the ship station must use the 4 digit coast station identification number and self-identify using the 5 digit ship station selective call number.

(4) When both terminals of the NB–DP circuit are satisfied that the circuit is operable, the ship station must indicate whether the exchange is to be in:

(i) Conversational mode, where the stations concerned are connected directly, or

(ii) Store-and-forward mode, where traffic is stored at the coast station until the circuit to the called station can be set up.

(iii) In the conversational mode the preamble must include the characters DIRTLXyz+ transmitted in sequence and preceded by at least one carriage return and a line feed, where "y" is the telex destination code in accordance with CCITT Recommendation F.69, "z" is the land subscriber's telex number and "+" indicates end of sequence.

(iv) In store-and-forward mode the preamble must include the characters TLXyz+ transmitted in sequence and preceded by at least one carriage return and a line feed, where "y" is the telex destination code in accordance with CCITT Recommendation F.69, "z" is the land subscriber's telex number and "+" indicates end of sequence.

(5) Following completion of the procedure of paragraphs (b)(4)(iii) or (b)(4)(iv) of this section, the message preamble must be transmitted as follows: Serial number or number of the message; the name of the office of origin; the number of words; the date of handing in of the message; the time of handing in of the message; and any service instructions. (See CCITT Recommendation F.1 contained in the "Manual for Use by The Maritime Mobile and Maritime Mobile-Satellite Services".)

(6) Upon completion of transmission of the preamble, the address, text and signature must be transmitted as received from the sender.

(7) Upon completion of transmission of the signature, the transmitting station must, following the signal "COL", routinely repeat all service indications in the address and for figures or mixed groups of letters, figures, or signs in the address, text or signature.

(8) In telegrams of more than 50 words, routine repetition must be given at the end of each page.

(9) The provisions of paragraphs (b)(5) through (b)(8) of this section need not be followed when a direct connection is employed.

(c) *Required channels for radiotelegraphy.* (1) Each ship station using telegraphy on frequencies within the band 405–525 kHz must be capable of:

(i) Transmit and receive on 500 kHz using the authorized emissions, and

(ii) Transmit on at least two working frequencies and receive on all other frequencies necessary for their service using authorized emissions, and

(iii) When a radiotelegraph installation is compulsory, a fourth frequency within this band which is authorized specifically for direction finding must also be provided.

(2) Each ship station using telegraphy on frequencies within the band 90–160 kHz must be capable of transmitting and receiving class A1A emission on the frequency 143 kHz, and on at least two additional working frequencies within this band except that portion between 140 kHz and 146 kHz.

(3) Each ship station using telegraphy and operating in the bands between 4000–27500 kHz must be capable of transmitting and receiving class A1A or J2A emission on at least one frequency authorized for calling and at least two frequencies authorized for working in each of the bands for which facilities are provided to carry on its service.

(4) Each ship station using telegraphy in Region 2 on frequencies within the band 2065–2107 kHz must be capable of transmitting and receiving class A1A or J2A emission on at least one frequency in this band authorized for working in addition to a frequency in this hand authorized for calling.

§ 80.143 Required frequencies for radiotelephony.

(a) Except for compulsory vessels, each ship radiotelephone station licensed to operate in the band 1605–3500 kHz must be able to receive and transmit J3E emission on the frequency 2182 kHz. Ship stations are additionally authorized to receive and transmit H3E emission for communications with foreign coast stations and with vessels of foreign registry. If the station is used for other than safety communications, it must be capable also of receiving and transmitting the J3E emission on at least two other frequencies in that band. However, ship stations which operate exclusively on the Mississippi River and its connecting waterways, and on high frequency bands above 3500 kHz, need be equipped with 2182 kHz and one other frequency within the band 1605–3500 kHz. Additionally, use of A3E emission is permitted for distress and safety purposes on 2182 kHz for portable survival craft equipment also having the capability to operate on 500 kHz and for transmitters authorized for use prior to January 1, 1972.

(b) Except as provided in paragraph (c) of this section, at least one VHF radiotelephone transmitter/receiver must be able to transmit and receive on the following frequencies:

(1) The distress, safety and calling frequency 156.800 MHz;

(2) The primary intership safety frequency 156.300 MHz;

(3) One or more working frequencies; and

(c) Where a ship ordinarily has no requirement for VHF communications, handheld VHF equipment may be used solely to comply with the bridge-to-bridge navigational communication requirements contained in Subpart U of this part.

§ 80.145 Class C EPIRB operational procedures.

Class C EPIRBs must be used for distress purposes only after use of the VHF/FM radiotelephone installation, in accordance with § 80.320, has proved unsuccessful or when a VHF/FM radiotelephone installation is not fitted, or when specifically requested to do so by a station engaged in search and rescue operations.

Shipboard General Purpose Watches

§ 80.146 Watch on 500 kHz.

During their hours of service, ship stations using frequencies in the authorized bands between 405–525 kHz must, remain on watch on 500 kHz except when the operator is transmitting on 500 kHz or operating on another frequency. The provisions of this section do not relieve the ship from complying with the requirements for a safety watch as prescribed in § 80.304 and § 80.305.

§ 80.147 Watch on 2182 kHz.

Ship stations must maintain a watch on 2182 kHz as prescribed by § §80.304(b).

§ 80.148 Watch on 156.8 MHz (channel 16).

Each VHF ship station, or if more than one VHF ship station is being operated from a vessel (for example, if a pilot is operating his radio equipment on board the vessel), then at least one VHF ship station per vessel must during its hours of service maintain a watch on 156.800 MHz whenever such station is not being used for exchanging communications. The watch is not required:

(a) Where a ship station is operating only with handheld bridge-to-bridge VHF radio equipment under § 80.143(c) of this part;

(b) For vessels subject to the Bridge-to-Bridge Act and participating in a Vessel Traffic Service (VTS) system when the watch is maintained on both the bridge-to-bridge frequency and a separately assigned VTS frequency; or

(c) For a station on board a voluntary vessel equipped with digital selective calling (DSC) equipment, maintaining a continuous DSC watch on 156.525 MHz whenever such station is not being used for exchanging communications, and while such station is within the VHF service area of a U.S. Coast Guard radio facility which is DSC equipped.

Violations

§ 80.149 Answer to notice of violation.

(a) Any person receiving official notice of violation of the terms of the Communications Act, any legislative act, executive order, treaty to which the United States is a party, terms of a station or operator license, or the rules and regulations of the Federal Communications Commission must within 10 days from such receipt, send a written answer, in duplicate, to the office of the Commission originating the official notice. If an answer cannot be sent or an acknowledgment made within such 10-day period by reason of illness or other unavoidable circumstances, acknowledgment and answer must be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice must be complete in itself and must not be abbreviated by references to other communications or answers to other notices. The answer must contain a full explanation of the incident involved and must set forth the action taken to prevent a continuation or recurrence. If the notice relates to lack of attention to or improper operation of the station or to log or watch discrepancies, the answer must give the name and license number of the licensed operator on duty.

(b) When an official notice of violation, impending violation, or discrepancy, pertaining to any provision of Part II of Title III of the Communications Act or the radio provisions of the Safety Convention, is served upon the master or person responsible for a vessel and any instructions appearing on such document issued by a representative of the Commission are at variance with the content of paragraph (a) of this section, the instructions issued by the Commission's representative supersede those set forth in paragraph (a) of this section.

Subpart D—Operator Requirements

§ 80.151 Classification of operator licenses and endorsements.

(a) Commercial radio operator licenses issued by the Commission are classified in accordance with the Radio Regulations of the International Telecommunication Union.

(b) The following licenses are issued by the Commission. International classification, if different from the license name, is given in parentheses. The licenses and their alphanumeric designator are listed in descending order.

(1) T–1. First Class Radiotelegraph Operator's Certificate.

(2) T–2. Second Class Radiotelegraph Operator's Certificate.

(3) G. General Radiotelephone Operator License (radiotelephone operator's general certificate).

(4) T–3. Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate).

(5) MP. Marine Radio Operator Permit (radiotelephone operator's restricted certificate).

(6) RP. Restricted Radiotelephone Operator Permit (radiotelephone operator's restricted certificate).

(c) The following license endorsements are affixed by the Commission to provide special authorizations or restrictions. Applicable licenses are given in parentheses.

(1) Ship Radar endorsement (First and Second Class Radiotelegraph Operator's Certificate, General Radiotelephone Operator License).

(2) Six Months Service endorsement (First and Second Class Radiotelegraph Operator's Certificate).

(3) Restrictive endorsements; relating to physical handicaps, English language or literacy waivers, or other matters (all licenses).

Coast Station Operator Requirements

§ 80.153 Coast station operator requirements.

(a) Operation of a coast station transmitter must be performed by a person holding a commercial radio operator license of the required class, who is on duty at the control point of the station. The operator is responsible for the proper operation of the station.

(b) The minimum class of radio operator license required for operation of each specific classification of station is set forth below:

Minimum Operator License

Public coast telegraph, all classes—T–2.
—Manual Morse under supervision of T1 or T2—T–3.
—NB–DP under supervision of T1 or T2—T–3, G or MP.

Coast telephone, all classes:
—Exceeding 250 watts carrier power or 1,500 watts peak envelope power—T–2 or G.
Except in Alaska regional and local area stations—T–3, G or MP.
—250 watts or less carrier power or 1,500 watts or less peak envelope power operating on frequencies below 30 MHz—T–3, G or MP.
Except in Alaska—None.
—250 watts or less carrier power operating on frequencies above 30 MHz—None.

(c) Special Operating Conditions:

(1) When a coast telephone station of any class is used to transmit manual telegraphy the telegraph key operator must hold a third-class or higher radiotelegraph operator's license.

(2) An operational fixed station or a maritime support station associated with a coast station may be operated by the operator of the associated coast station.

Ship Station Operator Requirements

§ 80.155 Ship station operator requirements.

Except as provided in § 80.177, operation of transmitters on any ship station must be performed by a person holding a commercial radio operator license or permit of the class required below. The operator is responsible for the proper operation of the station.

§ 80.157 Radio officer defined.

A "radio officer" means a person holding a first or second class radiotelegraph operator's certificate issued by the Commission who is employed to operate the ship radiotelegraph station in compliance with Part II of Title III of the Communications Act. Such person is also required to be licensed as a "radio officer" by the U.S. Coast Guard.

§ 80.159 Operator requirements of Title III of the Communications Act and the Safety Convention.

(a) Each telegraphy passenger ship equipped with a radiotelegraph station in accordance with Part II of Title III of the Communications Act must carry one radio officer holding a first or second class radiotelegraph operator's certificate and a second radio officer holding either a first or second class radiotelegraph operator's certificate. The holder of a second class radiotelegraph operator's certificate may not act as the chief radio officer.

(b) Each cargo ship equipped with a radiotelegraph station in accordance with Part II of Title III of the Communications Act and which has a radiotelegraph auto alarm must carry a radio officer holding a first or second class radiotelegraph operator's certificate who has had at least six months service as a radio officer on board U.S. ships. If the radiotelegraph station does not have an auto alarm, a second radio officer who holds a first or second class radiotelegraph operator's certificate must be carried.

(c) Each cargo ship equipped with a radiotelephone station in accordance with Part II of Title III of the Communications Act must carry a radio operator who meets the following requirements:

(1) Where the station power does not exceed 1500 watts peak envelope power, the operator must hold a marine radio operator permit or higher class license.

(2) Where the station power exceeds 1500 watts peak envelope power, the operator must hold a general radiotelephone operator license.

(d) Each ship transporting more than six passengers for hire equipped with a radiotelephone station in accordance with Part III of Title III of the Communications Act must carry a radio operator who meets the following requirements:

(1) Where the station power does not exceed 250 watts carrier power or 1500 watts peak envelope power, the radio operator must hold a marine radio operator permit or higher class license.

(2) Where the station power exceeds 250 watts carrier power or 1500 watts peak envelope power, the radio operator must hold a general radiotelephone operator license.

§ 80.161 Operator requirements of the Great Lakes Radio Agreement.

Each ship subject to the Great Lakes Radio Agreement must have on board an officer or member of the crew who holds a marine radio operator permit or higher class license.

§ 80.163 Operator requirements of the Bridge-to-Bridge Act.

Each ship subject to the Bridge-to-Bridge Act must have on board a radio operator who holds a restricted radiotelephone operator permit or higher class license.

§ 80.165 Operator requirements for voluntary stations.

	Minimum operator license
Ship Morse telegraph	T–2.
Ship direct-printing telegraph	MP.
Ship telephone, more than 250 watts carrier power or 1,000 watts peak envelope power.	G.
Ship telephone, not more than 250 watts carrier power or 1,000 watts peak envelope power.	MP.
Ship telephone, not more than 100 watts carrier power or 400 watts peak envelope power:	
Above 30 MHz	None.[1]
Below 30 MHz	RP.
Ship earth station	RP.

[1] RP required for international voyage.

General Operator Requirements

§ 80.167 Limitations on operators.

The operator of maritime radio equipment other than T–1, T–2, or G licensees, must not:

(a) Make equipment adjustments which may affect transmitter operation;

(b) Operate any transmitter which requires more than the use of simple external switches or manual frequency

VOL 51 ISS 169 SE 2 1986 UMI

selection or transmitters whose frequency stability is not maintained by the transmitter itself.

§ 80.169 Operators required to adjust transmitters or radar.

(a) All adjustments of radio transmitters in any radiotelephone station during or coincident with the installation, servicing, or maintenance of such equipment which may affect the proper operation of the station, must be performed by or under the immediate supervision and responsibility of a person holding a first or second class radiotelegraph or a general radiotelephone operator permit.

(b) Only persons holding a first or second class radiotelegraph operator certificate must perform such functions at radiotelegraph stations transmitting Morse code.

(c) Only persons holding an operator certificate containing a ship radar endorsement must perform such functions on radar equipment.

§ 80.175 Availability of operator licenses.

All operator licenses required by this subpart must be readily available for inspection.

§ 80.177 When operator license is not required.

(a) No radio operator authorization is required to operate:

(1) A shore radar, a shore radiolocation, maritime support or shore radionavigation station;

(2) A survival craft station or an emergency position indicating radio beacon;

(3) A ship radar station if:

(i) The radar frequency is determined by a nontunable, pulse type magnetron or other fixed tuned device, and

(ii) The radar is capable of being operated exclusively by external controls;

(4) An on board station; or

(5) A ship station operating in the VHF band on board a ship voluntarily equipped with radio and sailing on a domestic voyage.

(b) No radio operator license is required to install a VHF transmitter in a ship station if the installation is made by, or under the supervision of, the licensee of the ship station and if modifications to the transmitter other than front panel controls are not made.

(c) No operator license is required to operate coast stations of 250 watts or less carrier power or 1500 watts or less peak envelope power operating on frequencies above 30 MHz, or marine utility stations.

Subpart E—General Technical Standards

§ 80.201 Scope.

This subpart gives the general technical requirements for the use of frequencies and equipment in the maritime services. These requirements include standards for equipment authorization, frequency tolerance, modulation, emission, power and bandwidth.

§ 80.203 Authorization of transmitters for licensing.

(a) Each transmitter authorized in a station in the maritime services after September 30, 1986, except as indicated in paragraphs (e), (f) and (g) of this section, must be type accepted by the Commission for Part 80 operations. The procedures for type acceptance are contained in Part 2 of this chapter. Transmitters of a model type accepted or type approved before October 1, 1986 will be considered type accepted for use in ship or coast stations as appropriate.

(b) Except for radar equipment, applicants for type acceptance of radio equipment designed to satisfy Part II of Title III of the Communications Act or the Safety Convention must also submit with their application a working unit of the type for which type acceptance is desired.

(c) Double sideband (DSB) radiotelephone equipment operating in the 1605–27500 kHz band will be authorized only for use in ship stations. Such equipment must comply with Chapter IV of the Safety Convention, operate only on the frequency 2182 kHz, and be marked "Distress and Safety Use Only".

(d) Transmitters type accepted for single sideband suppressed carrier radiotelephone transmissions may be used for facsimile transmissions without filing for a type acceptance modification provided the transmitters retain type acceptance and comply with the applicable standards in this part.

(e) Manufacturers of ship earth station transmitters intended for use in the INMARSAT space segment must comply with the verification procedures given in Part 2 of this chapter. Verification of such equipment must be in accordance with the technical requirements provided in the INMARSAT document titled "Type Approval Procedures for an INMARSAT Standard-A Ship Earth Station Model". The ship earth station input/output parameters, the data obtained when the equipment is integrated in system configuration and the pertinent method of test procedures that are used for type approval of the station model which are essential for the compatible operation of that station in the INMARSAT space segment must be disclosed by the manufacturer upon request of the FCC or the United States Signatory. Witnessing of the type approval tests and the disclosure of the ship earth station equipment design or any other information of a proprietary nature will be at the discretion of the ship earth station manufacturer. Transmitters of a model that was type accepted by MARISAT for use in its system will be considered verified for use in the INMARSAT system. However, the continued use of such equipment will not be permitted after September 1, 1991, unless verified under the Commission's procedures.

(f) Type acceptance is not required for U.S. Government furnished transmitters to fulfill a U.S. Government contract. However, such transmitters must comply with all technical requirements in this part.

(g) Type acceptance is not required for transmitters authorized for developmental stations.

(h) Type acceptance of individual radio transmitters requested by station applicants or licensees must also follow the type acceptance procedure in paragraph (a) of this section. However, operation of such transmitters must be limited to the specific units individually identified on the station authorization. Such transmitters will not be included in the Commission's "Radio Equipment List".

(i) Ship station transmitters may be type accepted for emissions not shown in § 80.205 of this part. However, such emissions are not authorized for use in the United States or for communications with U.S. coast stations.

§ 80.205 Bandwidths.

(a) An emission designator shows the necessary bandwidth for each class of emission of a station except that in ship earth stations it shows the occupied or necessary bandwidth, whichever is greater. The following table gives the class of emission and corresponding emission designator and authorized bandwidth:

Class of emission	Emission designator	Authorized bandwidth (kHz)
A1A	160HA1A	0.4
A1B [1]	160HA1B	0.4
A2A	2K66A2A	2.8
A2B [1]	2K66A2B	2.8
A3E	6K00A3E	6.0
A3N [2]	2K66A3N	2.8
A3N [2]	3K20A3N	25.0
F1B [4]	280HF1B	0.3
F1B [5]	300HF1B	0.5
F1B [6]	16KOF1B	20.0
F1C	2K80F1C	3.0
F2B [6]	16KOF2B	20.0
F2C [7]	16KOF2C	20.0

Class of emission	Emission designator	Authorized bandwidth (kHz)
F3C	2K80F3C	3.0
F3C [7]	16KOF3C	20.0
F3E [8]	16KOF3E	20.0
F3N [8]	20MOF3N	20,000.0
G3D [10]	16KOG3D	20.0
G3E [8]	16KOG3E	20.0
G3N [8]	16KOG3N	20.0
H2A	1K40H2A	2.8
H2B [1]	1K40H2B	2.8
H3E [11]	2K80H3E	3.0
H3N	2K68H3N	2.8
J2A	160HJ2A	0.4
J2B [6]	280HJ2B	0.3
J2B	300HJ2B	0.5
J2B	2K80J2B	3.0
J2C	2K80J2C	3.0
J3C	2K80J3C	3.0
J3E [11]	2K80J3E	3.0
J3N	160HJ3N	0.4
NON	NON	0.4
PON	([12])	([12])
R3E [11]	2K80R3E	3.0

[1] On 500 kHz and 2182 kHz A1B, A2B, H2B and J2B emissions indicate transmission of the auto alarm signals.
[2] Applicable only to transmissions in the 405–525 kHz band for direction finding.
[3] Applicable only to EPIRB's.
[4] Radioprinter transmissions for communications with private coast stations.
[5] NB–DP radiotelegraph and data transmissions for communications with public coast stations.
[6] Applicable only to radioprinter in the 156–162 MHz and 216–220 MHz bands.
[7] Applicable only to facsimile in the 156–162 MHz and 216–220 MHz bands.
[8] Applicable only when maximum frequency deviation is 5 kHz. See also paragraph (b) of this section.
[9] Applicable only to marine hand-held radar.
[10] Applicable only to on-board frequencies for maneuvering or navigation.
[11] Transmitters type accepted prior to December 31, 1969, for emission H3E, J3E and R3E and an authorized bandwidth of 3.5 kHz may continue to be operated. These transmitters will not be authorized in new installations.
[12] Variable.

(b) For land stations the maximum authorized frequency deviation for F3E or G3E emission is as follows:

(1) 5 kHz in the 72.0–73.0 MHz, 75.4–76.0 MHz and 156–162 MHz bands;

(2) 15 kHz for stations which were authorized for operation before December 1, 1961, in the 73.0–74.6 MHz band.

§ 80.207 Classes of emission.

(a) Authorization to use a radiotelephone emission by ship and coast stations includes the brief use of radiotelegraphy, including keying only the modulating audio frequency, tone signals, digital selective calling and other signalling devices to establish or maintain communications, provided:

(1) That these signalling techniques, other than digital selective calling, are not used on frequencies made available exclusively for distress and safety and general purpose DSC calling;

(2) The authorized radiotelephone emission bandwidth is not exceeded; and

(3) Harmful interference is not caused to stations operating in accordance with the Radio Regulations.

(b) In radiotelegraphy communications employing a modulated carrier the carrier must be keyed and modulated by an audio frequency.

(c) Authorization to use single sideband emission is limited to emitting a carrier;

(1) For full carrier transmitters at a power level between 3 and 6 dB below peak envelope power;

(2) For suppressed carrier transmitters at a power level at least 40 dB below peak envelope power; and

(3) For reduced or variable level carrier:

(i) In the 1600–4000 kHz band:

(A) For coast station transmitters 18±2 dB below peak envelope power;

(B) For ship station transmitters installed before January 2, 1982, 16±2 dB below peak envelope power; and

(C) For ship station transmitters installed after January 1, 1982, 18±2 dB below peak envelope power.

(ii) In the 4000–27500 kHz band:

(A) For coast station transmitters 18±2 dB below peak envelope power;

(B) For ship station transmitters installed before January 2, 1978, 16±2 dB below peak envelope power; and

(C) For ship station transmitters installed after January 1, 1978, 18±2 dB below peak envelope power.

(d) The authorized classes of emission are as follows:

Types of stations	Classes of emission
Ship Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A
405–525 kHz	A1A, J2A
1605–27500 kHz:	
Manual	A1A, J2A
DSC	F1B, J2B
NB–DP	F1B, J2B
Facsimile	F1C, F3C, J2C, J3C
156–162 MHz [3]	F1B, F2B, F2C, F3C
216–220 MHz [3]	F1B, F2B, F2C, F3C
1626.5–1646.5 MHz	([4])
Radiotelephony:	
1605–27500 kHz [5]	H3E, J3E, R3E
27.5–470 MHz [6]	G3D, G3E
1626.5–1646.5 MHz	([4])
Radiodetermination:	
285–325 kHz [7]	A1A, A2A
405–525 kHz (Direction Finding) [8].	A3N, H3N, J3N, NON
2.4–9.5 GHz	PON
14.00–14.05 GHz	F3N
Land Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A
405–525 kHz	A1A, J2A,
1605–2850 kHz:	
Manual	A1A, J2A
Facsimile	F1C, F3C, J2C, J3C
Alaska-Fixed	A1A, J2A
4000–27500 kHz:	
Manual	A1A, J2A
DSC	F1B, J2B
NB–DP	F1B, J2B
Facsimile	F1C, F3C, J2C, J3C
Alaska-Fixed	A1A, F1B, J2A
72–76 MHz	A1A, A2A, F1B, F2B
156–162 MHz [3]	F1B, F2B, F2C, F3C
216–220 MHz [3]	F1B, F2B, F2C, F3C
Radiotelephony:	
1605–27500 kHz	H3E, J3E, R3E
72–76 MHz	A3E, F3E, G3E
156–470 MHz	G3E

Types of stations	Classes of emission
Radiodetermination:	
2.4–9.6 GHz	PON
Distress, Urgency and Safety: [9]:	
500 kHz [10]	A2A, and A2B or H2A and H2B
2182 kHz [10] [11]	A2B, A3B, H2B, H3E, J2B and J3E
8364 kHz	A2A, H2A
121.500 MHz	A3E, A3N
123.100 MHz	A3E
156.750 and 156.800 MHz	G3E, G3N
243.00 MHz	A3N.

[1] Excludes distress, EPIRB's, and survival craft.
[2] Frequencies used in the automated multi-station system. See § 80.385(b).
[3] Frequencies used in the Automated Maritime Telecommunications System (AMTS). See § 80.385(b).
[4] Types of emission are determined by the INMARSAT Organization.
[5] Transmitters type accepted prior to December 31, 1969, for emission H3E, J3E, and R3D and an authorized bandwidth of 3.5 kHz may continue to be operated. These transmitters will not be authorized in new installations.
[6] G3D emission must be used only by one-board stations for maneuvering or navigation.
[7] Frequencies used for cable repair operations. See § 80.375(b).
[8] For direction finding requirements see § 80.375.
[9] Includes distress emissions used by ship, coast, EPIRB's and survival craft stations.
[10] On 500 kHz and 2182 kHz A1B, A2B, H2B and J2B emissions indicate transmission of the auto alarm signals.
[11] Ships on domestic voyages must use J3E emission only.

§ 80.209 Transmitter frequency tolerances.

(a) The frequency tolerances applicable to transmitters in the maritime services are shown in the following table. Tolerances are given as parts in 10^6 unless shown in Hz.

Frequency bands and categories of stations	Tolerances applicable until Jan. 1, 1990, for transmitters installed before Jan. 2, 1987	Tolerances applicable [1] to new transmitters installed after Jan. 1, 1987, and to all transmitters after Jan. 1, 1990
(1) Band 100–525 kHz:		
(i) Coast stations:		
For single sideband emissions.	20 Hz	20 Hz
For narrow-band direct-printing and data emissions.	15 Hz	15 Hz
For all other emissions.	200	100
(ii) Ship stations:		
For transmitters with single sideband emission type accepted or type approved before November 30, 1977.	50 Hz	
For transmitters with other emissions type accepted or type approved before November 30, 1977.	1000	
For transmitters with digital selective calling emissions.	20Hz [2]	10Hz [2]
For all transmitters type accepted or type approved after November 29, 1977.	20 Hz	20 Hz

Frequency bands and categories of stations	Tolerances applicable until Jan. 1, 1990, for transmitters installed before Jan. 2, 1987	Tolerances applicable [1] to new transmitters installed after Jan. 1, 1987, and to all transmitters after Jan. 1, 1990
(iii) Ship stations for emergency only:		
For transmitters type approved before November 30, 1977.	3000	
For transmitters type approved after November 29, 1977.	20 Hz	20 Hz
(iv) Survival craft stations:		
For transmitters type approved before November 30, 1977.	5000	
For transmitters type approved after November 29, 1977.	20 Hz	20 Hz
(v) Radiodetermin-a-tion stations:		
For all emissions	100	100
(2) Band 1600–4000 kHz:		
(i) Coast stations and Alaska fixed stations:		
For single sideband and facsimile emissions.	20 Hz	20 Hz
For narrow-band direct-printing and data emissions.	15 Hz	15 Hz
For digital selective calling emissions.	15 Hz [2]	10 Hz [3]
For all other emissions.	50	50
(ii) Ship stations:		
For transmitters with single sideband and facsimile emissions type accepted or type approved before November 30, 1977.	50 Hz	
For transmitters with other emissions type accepted or type approved before November 30, 1977.	200	
For transmitters with digital selective calling emissions.	20 Hz [2]	10 Hz [3]
For all other transmitters type accepted or type approved after November 29, 1977.	20 Hz	20 Hz
(iii) Survival craft stations:		
For transmitters type approved before November 30, 1977.	200	
For transmitters type approved after November 29, 1977.	20 Hz	20 Hz
(iv) Radiodetermin-a-tion stations:		
With power 200W or less.	100	20
With power above 200W.	50	10

Frequency bands and categories of stations	Tolerances applicable until Jan. 1, 1990, for transmitters installed before Jan. 2, 1987	Tolerances applicable [1] to new transmitters installed after Jan. 1, 1987, and to all transmitters after Jan. 1, 1990
(3) Band 4000–27500 kHz:		
(i) Coast stations and Alaska fixed stations:		
For single sideband and facsimile emissions.	20 Hz	20 Hz
For narrow-band direct-printing and data emissions.	15 Hz	15 Hz
For digital selective calling emissions.	15 Hz [3]	10 Hz [3]
For Morse telegraphy emissions.	15	10
For all other emissions.	15	15
(ii) Ship stations:		
For transmitters with Morse telegraphy emissions type accepted or type approved before November 30, 1977.	200 Hz	
For transmitters with other emissions type accepted or type approved before November 30, 1977.	50 Hz	
For transmitters with digital selective calling emissions.	20 Hz [3]	10 Hz [3]
For all other transmitters type accepted or type approved after November 29, 1977.	20 Hz	20 Hz
(iii) Survival craft stations:		
For transmitters type approved before November 30, 1977.	200	
For transmitters type approved before November 29, 1977.	50 Hz	50 Hz
(4) Band 72–76 MHz:		
Fixed stations:		
Operating in the 72.0–73.0 and 75.4–76.0 MHz bands.	5	5
Operating in the 73.0–74.6 MHz band.	50	50
(5) Band 156–162 MHz:		
(i) Coast stations:		
For stations licensed to operate with a carrier power:.		
Below 3 watts	10	10
3 to 100 watts	5	5
Above 100 watts.	2.5	2.5
(ii) Ship stations	10	10
(iii) Survival craft stations operating on 121.500 MHz.	50	50
(iv) EPIRB's:		
Operating on 121.500 and 243.000 MHz.	50	50
Operating on 156.750 and 156.800 MHz.	20	10
(6) Band 216–220 MHz:		
(i) Coast Stations: For all emissions.	5	5
(ii) Ship stations: For all emissions.	5	5
(7) Band 457–466 MHz:		
On-board stations	5	5
(8) Band 1626.5–1646.5 MHz:		
Ship earth stations	5	5

[1] Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain type acceptance and comply with the applicable standards in this part.

[2] Until January 1, 1990, the frequency tolerance for DSC coast station transmitters in the MF and HF bands is 15 Hz. Thereafter, the frequency tolerance for DSC coast station transmitters in the MF and HF bands is 10 Hz.

[3] Until January 1, 1995, the frequency tolerance for DSC ship station transmitters in the MF and HF bands is 20 Hz. Thereafter, the frequency tolerance for DSC ship station transmitters in the MF and HF bands is 10 Hz.

(b) When pulse modulation is used in land and ship radar stations operating in the bands above 2.4 GHz the frequency at which maximum emission occurs must be within the authorized bandwidth and must not be closer than 1.5/T MHz to the upper and lower limits of the authorized bandwidth where "T" is the pulse duration in microseconds. In the band 14.00-14.05 GHz the center frequency must not vary more than 10 MHz from 14.025 GHz.

§ 80.211 Emission limitations.

The emissions must be attenuated according to the following schedule.

(a) The mean power when using emissions H3E, J3E and R3E:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 150 percent of the authorized bandwidth: At least 25 dB;

(2) On any frequency removed from the assigned frequency by more than 150 percent up to and including 250 percent of the authorized bandwidth: At least 35 dB; and

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 plus $10\log_{10}$ (mean power in watts) dB.

(b) For transmitters operating in the band 1626.5–1646.5 MHz. The mean power in any 4 kHz band:

(1) Where the center frequency is removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 dB;

(2) Where the center frequency is removed from the assigned frequency by more than 100 percent up to 250 percent of the authorized bandwidth: At least 35 dB; and

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 plus 10$\log_{10}$ (mean power in watts) dB.

(c) In any 4 kHz band the peak power of spurious emissions and noise at the input to the transmit antenna must be attenuated below the peak output power of the station as follows:

(1) 125 dB at 1525.0 MHz, increasing linearly to 90 dB at 1612.5 MHz;

(2) 90 dB at 1612.5 MHz increasing linearly to 60 dB at 1624.0 MHz;

(3) 90 dB from 1624.0 MHz to 1650.0 MHz, except at frequencies near the transmitted carrier where the requirements of paragraphs (b)(1) through (b)(3) apply;

(4) 60 dB at 1650.0 MHz decreasing linearly to 90 dB at 1662.5 MHz;

(5) 90 dB at 1662.5 MHz decreasing linearly to 125 dB at 1752.5 MHz; and

(6) 125 dB outside above range, except for harmonics which must comply with (b)(3) of this section.

(d) Radiotelegraph survival craft transmitters must comply with § 80.223.

(e) Developmental stations must conform to the standards for regular authorized stations.

(f) The mean power when using emissions other than those in paragraphs (a), (b), (c) and (d) of this section:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: at least 25 dB;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: at least 35 dB; and

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: at least 43 plus 10$\log_{10}$ (mean power in watts) dB.

§ 80.213 Modulation requirements.

(a) Transmitters must meet the following modulation requirements:

(1) When double sideband emission is used the peak modulation must be maintained between 75 and 100 percent;

(2) When phase or frequency modulation is used in the 156–162 MHz and 216–220 MHz bands the peak modulation must be maintained between 75 and 100 percent. A frequency deviation of ± kHz is defined as 100 percent of peak modulation; and

(3) In single sideband operation the upper sideband must be transmitted. Single sideband transmitters must automatically limit the peak envelope power to their authorized operating power and meet the requirements in § 80.207(c).

(b) Radiotelephone transmitters using A3E, F3E and G3E emission must have a modulation limiter to prevent any modulation over 100 percent. This requirement does not apply to survival craft transmitters, to transmitters that do not require a license or to transmitters whose output power does not exceed 3 watts.

(c) Ship station transmitters using G3D or G3E emission in the 156–162 MHz and 216–220 MHz bands must be capable of proper technical operation with a frequency deviation of ±5 kHz.

(d) Coast station transmitters operated in the 72.0–73.0 MHz and 75.4–76.0 MHz bands must be equipped with an audio low-pass filter. The filter must be installed between the modulation limiter and the modulated radio frequency stage. At frequencies between 3 kHz and 15 kHz it must have an attenuation greater than at 1 kHz by at least 40$\log_{10}$ (f/3) dB where "f" is the frequency in kilohertz. At frequencies above 15 kHz the attenuation must be at least 28 dB greater than at 1 kHz.

(e) Coast station transmitters operated in the 156–162 MHz band must be equipped with an audio low-pass filter. The filter must be installed between the modulation limiter and the modulated radio frequency stage. At frequencies between 3 kHz and 20 kHz it must have an attenuation greater than at 1 kHz by at least 60$\log_{10}$ (f/3) dB where "f" is the audio frequency in kilohertz. At frequencies above 20 kHz the attenuation must be at least 50 dB greater than at 1 kHz.

(f) Radar stations operating in the bands above 2.4 GHz may use any type of modulation consistent with the bandwidth requirements in § 80.209(b).

(g) The modulation requirements for EPIRB's are contained in Subpart V.

§ 80.215 Transmitter power.

(a) Transmitter power shown on the radio station authorization is the maximum power the licensee is authorized to use. Power is expressed in the following terms:

(1) For single sideband emission: Peak evelope power;

(2) For G3E emission: Carrier power;

(3) For PON and F3N emission: Mean power;

(4) For all emissions in the 1626.5–1646.5 MHz band: equivalent isotropic radiated power.

(5) For all other emissions: the carrier power multiplied by 1.67.

(b) *Coast station frequencies below 27500 kHz.* The maximum power must not exceed the values listed below.

(1) Public coast stations, except Alaska:

(i) Radiotelegraphy:

100–160 kHz—80kW
405–525 kHz—40kW
2035–2065 kHz—6.6kW
4000–7000 kHz—10kW
8000–9000 kHz—20kW
12000–27500 kHz—30kW

(ii) Radiotelephony:

2000–4000 kHz—day—800W
2000–4000 kHz—night—400W
4000–27500 kHz—10kW

(2) Private coast stations, except in Alaska: 1kW

(3) Coast stations in Alaska, public and private:

405–525 kHz—265W
1605–12000 kHz—150W

(c) *Coast station frequencies above 27500 kHz.* The maximum power must not exceed the values listed below.

(1) Coast stations:

156–162 MHz—50W [1]
216–220 MHz [2]

(2) Marine utility stations: 156–162 MHz—10W

(d) *Ship station frequencies below 27500 kHz.* The maximum power must not exceed the values listed below:

(1) Radiotelegraphy: All ships—2kW [3]

(2) Radiotelephony:

(i) All ships—Great Lakes and Inland Waters—150W

(ii) All ships—Open waters: 2000–4000 kHz—150W

2182 kHz—emergency, urgency, or safety ship to shore—400W [4]

(iii) All ships—open waters 4000–27500 kHz—1.5kW [5]

(e) *Ship stations frequencies above 27500 kHz.* The maximum power must not exceed the values listed below.

(1) Ship stations 156–162 MHz—25W [6]
Marine utility and portable stations 156–162 MHz—10W [6]

(2) Ship stations 216–220 MHz—25W [7]

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[1] Maximum authorized power at the input terminals of the station antenna.

[2] See paragraph (h) of this section.

[3] For passenger ships 5000 gross tons and over—8kW. For cable-repair ships—15W; see § 80.375(b).

[4] For passenger ships 5000 gross tons and over—1kW.

[5] For passenger ships 5000 gross tons and over—3kW.

[6] Reducible to 1 watt or less, except for transmitters limited to public correspondence channels and used in an automated system.

[7] Reducible to 2.5 watts or less; see paragraph (i) of this section.

(3) On board stations 456–468 MHz—4W [8]
(4) Ship earth stations 1626.5–1646.5 MHz [9]
(5) Ship radar stations with F3N emission—200 mW
(6) EPIRB—121.500 and 243.00 MHz [10]
(7) EPIRB—156.750 and 156.800 MHz [10]

(f) *Fixed stations.* The maximum power must not exceed the values listed below.

(1) Maritime support (receiver test):
R3E and J3C emission—150W
F3E emission—50W
(2) Operational fixed: 72–76 MHz and above 162 MHz [11]
(3) Alaska—Private fixed:
10–200 kHz—650W
405–525 kHz—265W
1605–12000 kHz—150W
(4) Alaska—Public fixed:
405–525 kHz—1kW
1605–12000 kHz—1kW

(g) The carrier power of ship station radiotelephone transmitters, except portable transmitters, operating in the 156–162 MHz band must be at least 6 but not more than 25 watts. Transmitters that use 12 volt lead acid storage batteries as a primary power source must be measured with a primary voltage between 12.2 and 13.7 volts DC. Additionally, unless otherwise indicated, equipment in radiotelephone ship stations operating in the 156–162 MHz band must meet the following requirements:

(1) All transmitters must be capable of reducing the carrier power to one watt or less;

(2) All remote control units that are used with transmitters manufactured after August 31, 1979, or installed after February 29, 1980, must be capable of causing the carrier power to be reduced to one watt or less;

(3) Except as indicated in paragraph (g)(4) of this section all transmitters and associated remote control units in use after January 21, 1997, must automatically reduce the carrier power to one watt or less when the transmitter is tuned on 156.375 MHz or 156.650 MHz, and must be provided with a manual override switch when held by an operator will permit full carrier power operation on 156.375 MHz and 156.650 MHz;

(4) Portable transmitters are not required to comply with the automatic reduction of carrier power in paragraph (g)(3) of this section; and

(5) Transmitters dedicated for use on public correspondence duplex channels as additional equipment to a VHF ship station in the Great Lakes which meet all pertinent rules in this part are not required to reduce their carrier power to one watt.

(h) Coast stations in an AMTS may radiate as follows, subject to the condition that no harmful interference will be caused to television reception except that TV services authorized subsequent to the filing of the AMTS station application will not be protected.

(1) When located more than 169 kilometers (105 miles) from the antenna of a channel 13 TV station and more than 129 kilometers (80 miles) from the antenna of a channel 10 station, the ERP of coast stations having an antenna height of 61 meters (200 feet) or less above ground must not exceed 1000 watts.

(2) Coast stations located less than 169 kilometers (105 miles) from a channel 13 TV station, or less than 129 kilometers (80 miles) from a channel 10 station or when using a transmitting antenna height above ground greater than 61 meters (200 feet), must submit a plan to limit interference to TV reception. The plan must include:

(i) A description of the interference contour with indentification of the method used to determine this contour; and

(ii) A statement concerning the number of residences within the interference contour. The interference contour includes only areas inside the TV grade B contour with the latter determined assuming maximum permissible TV antenna height and power for broadcast stations and the actual facility parameters for translators and low power TV stations. See Part 73, Subpart E of this chapter for further information on TV grade B contour determination.

(3) When located as described in paragraph (h)(2) of this section the coast station will be authorized if the applicant's plan has limited the interference contour to fewer than 100 residences or if the applicant:

(i) Shows that the proposed site is the only suitable location;

(ii) Develops a plan to control any interference caused to TV reception within the grade B contour from its operations; and

(iii) Agrees to make such adjustments in the TV receivers affected as may be necessary to eliminate interference caused by its operations.

(4) The applicant must eliminate any interference caused by its operation to TV reception within the grade B contour that might develop within 90 days of the time it is notified in writing by the Commission. If this interference is not removed within the 90-day period, operation of the coast station must be discontinued. The licensee is expected to help resolve all complaints of interference, whether inside or outside the grade B contour.

(5) Frequencies below 217.000 MHz are not authorized to coast stations located within 169 kilometers (105 miles) of a channel 13 TV station. See § 80.385(a).

(6) The transmitter output power must be 50 watts or less.

(i) A ship station must have a transmitter output power not exceeding 25 watts and an ERP not exceeding 18 watts. The transmitter must include the capability to reduce the carrier power to 2.5 watts with a front panel control. The maximum transmitter output power is permitted to be increased to 50 watts under the following conditions:

(1) Increases exceeding 25 watts are made only by radio command from the controlling coast stations; and

(2) The application for an equipment authorization demonstrates that the transmitter output power is 25 watts or less when external radio commands are not present.

(j) A ship installation with a transmitter output power exceeding 25 watts under the conditions of paragraph (i) of this section is exempted from the limitation of 18 watts ERP when operating in specific geographical areas identified in a plan for the use of higher power.

(k) Within the 1626.5–1646.5 MHz band the maximum e.i.r.p by a ship earth station in any direction in the horizontal plane or in the direction of the space station must not exceed +40 dB relative to one watt in any 4 kHz band in the main beam, except upon a satisfactory showing of need for greater power, in which case a maximum of +55 dB relative to one watt may be authorized.

(l) For operational fixed stations using frequencies in the 72–76 MHz band and for other classes of stations operating above 162.025 MHz, the transmitter power must be specified in the station authorization. Frequencies in the 72–76 MHz band are listed in § 80.361. The operational requirements for 72–76 MHz are contained in Subpart L of this part.

§ 80.217 Suppression of interference aboard ships.

(a) A voluntarily equipped ship station receiver must not cause harmful interference to any receiver required by statute or treaty.

[8] Type acceptance based on a carrier power of 4 watts with transmitter connected to a dummy load of matching impedance. The effective radiated power must not exceed 2 watts.
[9] See paragraph (k) of this section.
[10] See Subpart V of this part.
[11] See paragraph (l) of this section.

VOL 51 ISS 169 SE 2 1986 UMI

(b) The electromagnetic field from receivers required by statute or treaty must not exceed the following value at a distance over sea water of one nautical mile from the receiver:

Frequency of interfering emissions	Field intensity in microvolts per meter
Below 30 MHz	0.1
30 to 100 MHz	.3
100 to 300 MHz	1.0
Over 300 MHz	3.0

or

Deliver not more than the following amounts of power, to an artificial antenna having electrical characteristics equivalent to those of the average receiving antenna(s) use on shipboard:

Frequency of interfering emissions	Power to artificial antenna in microwatts
Below 30 MHz	403
30 to 100 MHz	4,000
100 to 300 MHz	40,000
Over 300 MHz	400,000

§ 80.219 Special requirements for narrow-band direct-printing (NB-DP) equipment.

(a) Equipment operating on frequencies in the 4000–23000 kHz band designated for NB-DP and data transmission systems must:

(1) Be capable of transmission and reception of signals conforming to the International Telegraphy Alphabet Code No. 2 at a 50 baud modulation rate;

(2) Not exceed a 100 baud modulation rate over the radio path; and

(3) Use class F1B J2B emission with a total frequency shift of 170 Hertz.

(b) When frequency shift keying is applied to the input of a single-sideband transmitter, the subcarrier must appear on the higher frequency side of the residual carrier, have a frequency stability of ±5 Hz, and be shifted 85 Hz above and below the frequency of the subcarrier. CCIR Recommendation 476–3 recommends a subcarrier of 1700 Hz.

(c) In systems using the International Telegraphy Alphabet Code No. 2 the higher of the emitted frequencies must correspond to "space" (start, A or no perforation) and the lower of the emitted frequencies must correspond to "mark" (stop, Z, or perforation).

(d) Where an error control system is employed the equipment must be provided with a simple device to by-pass the error control system to permit transmission and reception over the radio path of uncorrected signals conforming with paragraph (a)(1) of this section.

(e) When an error-detecting and correcting system is used a 7-unit ARQ system or a 7-unit forward acting error-correcting and indicating time diversity system using the same code must be employed.

§ 80.221 Special requirements for automatically generating the radiotelephone alarm signal.

(a) Each device for automatically generating the radiotelephone alarm signal must be capable of being disabled to permit the immediate transmission of a distress call and message.

(b) The device must comply with the following requirements:

(1) The frequency tolerance of each must be ±1.5 percent;

(2) The duration tolerance of each tone must be ±50 milliseconds;

(3) The interval between successive tones must not exceed 50 milliseconds; and

(4) The amplitude ratio of the tones must be flat within 1.6 dB.

(c) Devices installed on or after January 1, 1983, must comply with the following requirements:

(1) The frequency tolerance of each tone must be ±1.5 percent;

(2) The duration tolerance of each tone must be ±10 milliseconds;

(3) The interval between successive tones must not exceed 4 milliseconds;

(4) The amplitude ratio of the tones must be flat within 1.6 dB;

(5) The output of the device must be sufficient to modulate the associated transmitter for H2B emission to at least 70 percent, and for J2B emission to within 3 dB of the rated peak envelope power;

(6) Light from the device must not interfere with the safe navigation of the ship;

(7) After activation the device must automatically generate the radiotelephone alarm signal for not less than 30 seconds and not more than 60 seconds unless manually interrupted;

(8) After generating the radiotelephone alarm signal or after manual interruption the device must be immediately ready to repeat the signal;

(9) The transmitter must be automatically switched from the stand-by condition to the transmit condition at the start and return to the stand-by condition at the conclusion of the radiotelephone alarm signal.

(c) Any device used by a station to automatically generate the radiotelephone alarm signal must be type accepted by the Commission.

§ 80.223 Special requirements for survival craft stations.

(a) Survival craft stations capable of transmitting on:

(1) 500 kHz must be able to operate with class A2A and A2B or H2A and H2B emissions;

(2) 2182 kHz must be able to operate with A2B and A3E or H2B and H3E and J2B and J3E emissions;

(3) 8364 kHz must be able to operate with class A2A or H2A emission; and

(4) 121.500 MHz must be able to operate with A3E or A3N emission.

(b) Survival craft stations must be able to receive the frequency and types of emission which the transmitter is capable of using. Where the transmitter frequency is 8364 kHz the receiver must be able to receive A1A, A2A and H2A emissions throughout the 8320–8745 kHz band.

(c) Survival craft transmitters operating on 500 kHz or on 8364 kHz must be able to be manually keyed. If provisions are made for automatically transmitting the radiotelegraph alarm signal or the radiotelegraph distress signal, such provisions must meet the requirements in Subpart F of this part.

(d) When an EPIRB is part of a survival craft station the EPIRB portion must be capable of transmitting only on the frequencies 121.500 MHz and 243.000 MHz with A3N emission.

§ 80.225 Special requirements for digital selective calling (DSC) equipment.

This section specifies the requirements for optional DSC equipment installed in ship and coast stations. Mandatory requirements will be established by FCC Order at a later date. DSC equipment in operation which is not in conformance with the mandatory requirements will be allowed to be used for at least three years after the mandatory requirements become effective.

(a) DSC equipment installed in coast and ship stations must be compatible with CCIR Recommendation 493 except that:

(1) Station identification must be numerical;

(2) The order of entry and readout for coordinates must be first latitude and then longitude;

(3) Calls from coast stations in the NF/HF bands must be preceded by a dot pattern;

(4) Ship stations operating in the MF/HF bands must include a dot pattern only in distress and ship-to-ship calls;

(5) A dot pattern must not be used on frequencies in the VHF band; and

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(6) More restrictive technical provisions in these rules take precedence.

(b) Reference to any CCIR Recommendation in this section is the most recent CCIR approved Recommendation which does not prevent use of existing equipment.

(c) The provisions in paragraph (a) of this section are not applicable to AMTS in the 216–220 MHz band and to NB–DP equipment that comply with CCIR Recommendation 476.

(d) The format sequence of a DSC call is:

Dot pattern
Phasing sequence
Format specifier
Address
Category
Self-identification
Message 1
Separator (if required)
Message 2
Separator (if required)
.
.
.
End of sequence
Error check character.

(e) DSC receivers must be capable of interpreting the following minimum operational characteristics of the call sequence:

(1) *Format specifier.* The format specifier contains the following information:

(i) Distress call;

(ii) All ships call; and

(iii) Selective call.

(2) *Address.* Ship and coast stations must recognize the address information for a "distress call" or an "all ships call" which is contained in the format specifier. For all other calls they must recognize the following address information:

(i) Selective call: It contains the called station numerical identification; and

(ii) Geographical area: Except for calls in the VHF bands all ship stations must be able to identify the particular "geographical area" of the calling station.

(3) *Category.* An aural or visual indicator may be used for urgency, vital safety, important safety, business and routine calls. A separate and distinct aural indicator must be provided for distress calls. The category for a "distress call" is contained in the format specifier. The priority of calls is as follows:

Distress
Urgency
Vital safety
Important safety
Ship business priority
Routine

(4) *Message.* All VHF stations must display a two digit channel number. All other stations must display a four digit channel number; and

(5) *End of sequence.* All stations must recognize the "end of sequence" of a call.

(f) DSC transmitters must be capable of the following minimum operational characteristics of the call sequence:

(1) *Format specifier.* (1) Distress call (ship stations only);

(ii) All ships call;

(iii) Selective call; and

(iv) Selective group calling is required only by public coast stations for calling a group of ships in a particular geographical area.

(2) *Address.* The address information for a "distress call" or an "all ships call" is contained in the format specifier. Transmission of a "distress call" is required only by ship stations. For all other calls the address by stations must contain the following information:

(i) Selective call: All stations must transmit their numerical identification; and

(ii) Geographical area: Public coast stations only must transmit the identification of the called geographical area.

(3) *Category.* The category for a ship station "distress call" is contained in the format specifier. The priority of calls is as follows:

Distress
Urgency
Vital safety
Important safety
Ship business priority
Routine

(4) *Self-identification.* Automatically transmit the calling station's identity;

(5) *Message.* VHF stations must transmit a two digit channel number. All other stations must transmit a four digit channel number; and

(6) *End of sequence.* Coast stations must automatically transmit "end of sequence".

Subpart F—Equipment Authorization for Compulsory Ships

§ 80.251 Scope.

(a) This subpart gives the general technical requirements for type acceptance of equipment used on compulsory ships. Such equipment includes radiotelegraph transmitters, radiotelegraph auto alarms, automatic-alarm-signal keying devices, survival craft radio equipment, watch receivers, and radar.

(b) The equipment described in this subpart must be type accepted.

(c) The term "transmitter" means the transmitter unit and all auxiliary equipment necessary to make this unit operate as a main or emergency transmitter in a ship station at sea. Each separate motor-generator, rectifier, or other unit required to convert the ship primary power to the phase, frequency, or voltage necessary to energize the transmitter unit is considered a component of the transmitter.

(d) "Average ship station antenna" means an actual antenna installed on board ship having a capacitance of 750 picofarads and an effective resistance of 4 ohms at a frequency of 500 kHz, or an artificial antenna having the same electrical characteristics.

§ 80.253 Technical requirements for main transmitter.

(a) The following table gives the operating carrier frequency, emission, modulation and average ship station antenna power requirements for the main transmitter.

Operating frequency (kHz)	Frequency tolerance		Class of emission	Percentage modulation for amplitude modulation	Modulation frequency for amplitude modulation	Power into average ship station antenna
	Parts [1] in 10^6	Hz [2]				
500 kHz	1,000	20	A2A and A2B or H2A and H2B.	Not less than 70; not more than 100.	At least 1 frequency between 300 and 1250 Hertz, except for transmittal installed after July 1, 1951, at least 1 frequency between 450 and 1250 Hertz.	Not less than 200 watts.
Do	1,000	20	A1A or J2A			Not less than 160 watts.
410 and 2 working frequencies in the band 415 to 525.	1,000	20	A2A and A3N or H2A and H3N.	Not less than 70; not more than 100.	At least 1 frequency between 300 and 1250 Hertz, except for transmitters installed after July 1, 1951, at least 1 frequency between 450 and 1250 Hertz.	Not less than 200 watts.
Do	1,000	20	A1A and N0N or J2A and J3N.			Not less than 160 watts.

[1] For equipment type accepted or type approved before November 30, 1977.
[2] For equipment type accepted or type approval after November 29, 1977.

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(b) A main transmitter must operate at its required antenna power when adjusted to any required operating frequency and energized by the main power supply of the ship station or by an equivalent power supply.

(c) A main transmitter must be equipped to measure (1) antenna current, (2) transmitter power supply voltages, and (3) anode or collector current(s).

(d) The antenna power must be determined at the operating carrier frequency by the product of the antenna resistance and the square of the average antenna current, both measured at the same point in the antenna circuit at approximately ground potential.

(e) A main transmitter producing more than 250 watts output power must have the output power reduced to not more than 150 watts when used for telegraphy. In stations where a separate telegraph transmitter operable on the same frequencies as the main transmitter with an output power of less than 250 watts, is installed, the power reduction requirement does not apply. Such separate transmitters must not obtain power from the emergency power supply.

§ 80.255 Technical requirements for reserve transmitter.

(a) The following table describes the operating carrier frequency, emission, modulation and average ship station antenna power requirements for the reserve transmitter.

Operating frequency (kHz)	Frequency tolerance		Class of emission	Percentage modulation for amplitude modulation	Modulation for frequency for amplitude modulation	Power into an average ship station antenna
	Parts [1] in 10^6 [2]	Hz [2]				
500	[3] 1,800	20	A2A and A2B or H2A and H2B.	Not less than 70; not more 100.	At least 1 frequency between 300 and 1250 Hertz except for transmitters installed after July 1, 1951, at least 1 frequency between 450 and 1250 Hertz.	Not less than 25 watts.
410 and 1 working frequency in the band 415 to 525.	[3] 1,000	20	A2A and A3N or H2A and H3N.	....do....	....do....	....do....

[1] For equipment type accepted or type approved before November 30, 1977.
[2] For equipment type accepted or type approved after November 29, 1977.
[3] Except for reserve transmitters whose use is confined solely to safety communications. Such transmitters must maintain a frequency tolerance of 3000 parts in 10^6.

(b) A reserve transmitter must operate at its required antenna power when adjusted to the operating frequency and energized by the reserve power supply of the ship station or by an equivalent power supply.

(c) A reserve transmitter must be equipped to measure antenna current.

(d) The antenna power must be determined at the operating carrier frequency by the product of the antenna resistance and the square of the average antenna current both measured at the same point in the antenna circuit at approximately gound potential.

§ 80.257 Manufacturing requirements for radiotelegraph automatic alarm receiver (auto alarm).

(a) The auto alarm must consist of:

(1) A radio receiver capable of receiving emissions of classes A1A, A1B, A2A, A2B, H2A, H2B, J2A, and J2B over the frequency range 496 through 504 kHz.

(i) The receiver must reject signals +106 dB above one microvolt at ±150 kHz from the center frequency and +88 dB above one microvolt at ±40 kHz from the center frequency.

(ii) The receiver must respond to signals from 100 microvolts to 1 volt on the center frequency. There must be less than 6 dB variation in sensitivity from 496 kHz through 504 kHz.

(2) A device capable of selecting the alarm signal specified under § 80.259 (a) and (b).

(3) A minimum of 3 audible alarm units to meet the three location installation requirements of § 80.259(g).

(4) A testing device to determine locally that the auto alarm system is operative.

(b) The auto alarm may be constructed in one or more units but must be independent of the ship's regular radio receiving apparatus.

(c) A telephone jack must be provided to permit reception by a telephone receiver.

(d) Tuning and timing controls must not be accessible from the exterior of the device.

(e) Once set into operation the audible alarms must continue to function until switches off in the principal radiotelegraph operating room.

(f) A nonlocking or momentary-throw switch must be provided to permit temporary disconnection of the audible alarm on the bridge and in the operator's quarters when the auto alarm system is being tested.

(g) A failure of the auto alarm power supply must activate the audible alarms.

(h) The auto alarm must operate within specifications throughout the temperature range 0–50 degrees Celsius at relative humidities as high as 95%.

(i) The auto alarm must be protected from excessive currents, power supply reversals and voltage variations which could cause damage to any component.

(j) The auto alarm must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.03 inch in a direction of an angle of 30 to 45 degrees with the base of the auto alarm.

§ 80.259 Technical requirements for radiotelegraph auto alarm receiver.

(a) For type acceptance the auto alarm in the absence of interference must be capable of being operated by four consecutive dashes whose length may vary from 6.0 to 3.5 seconds and the intervening spaces vary between 1.5 seconds to 10 milliseconds. These types of auto alarms must not respond to dashes longer than 6.31 seconds or shorter than 3.33 seconds nor to intervening spaces longer than 1.58 seconds or shorter than 5 milliseconds except as follows:

(1) Non-digital types employing resistance-capacitance timing, type approved before October 1, 1969, and placed in service on or before January 1, 1985, must not respond to dashes longer than 7.40 seconds or shorter than 2.80 seconds, nor to space intervals longer than 1.80 seconds or shorter than 5 milliseconds.

(2) Digital types employing a stable clock as the basic timing device, type approved before May 1, 1968, and placed in service on or before December 1, 1975, may accept dashes whose lower limits extends down to 3.0 seconds.

(b) The auto alarm must operate with a signal of 100 microvolts RMS at 500 kHz applied to an artificial antenna consisting of a 20 microhenry inductance, a 500 picofarad capacitor, and a 5 ohm resistor connected in series in the absence of any interference and without manual adjustment. It must be capable of operation under these conditions on the following classes of emission:

(1) A1B;
(2) A2B with a carrier modulated at any modulation percentage from 30 through 100 percent with any modulation frequency from 300 through 1350 Hertz; and
(3) H2B with a carrier keyed and emitted at any power level from 3 through 6 decibels below peak envelope power, with any modulation frequency from 300 through 1350 Hertz.
(c) The auto alarm must operate with signal levels up to 1 volt under normal operating conditions.
(d) The auto alarm warning device must not be activated by atmospherics or by any signal from the antenna other than the alarm signal.
(e) The auto alarms must respond to the alarm signal through non-continuous interference caused by atmospherics and powerful signals other than the alarm signal. In the presence of atmospherics or interfering signals, the auto alarm must automatically adjust itself within a reasonable time to the condition in which it can most readily distinguish the alarm signal.
(f) The auto alarm must respond without adjustment and with practically uniform sensitivity to signals over a band extending no less than 4 kHz on each side of the 500 kHz radiotelegraph frequency and with a minimum attenuation of:

6 dB at 495.0 kHz and 505.0 kHz
40 dB at 487.0 kHz and 513.0 kHz
80 dB at 475.0 kHz and 525.0 kHz

(g) When the auto alarm is activated it must sound continuously a warning in the radiotelegraph operating room, in the radio operator's cabin, and on the bridge.
(h) The auto alarm must include a 500 kHz signal generator and a keying device which automatically disconnects the auto alarm from the antenna when an alarm signal of 100 microvolts is applied to test the auto alarm.

§ 80.261 Technical requirements for automatic-alarm-signal keying device.

(a) The automatic-alarm-signal keying device may consist of one or more units.
(b) The device must be designed to activate the keying circuits of any transmitter approved by the Commission for use as a main or reserve transmitter.
(c) Timing-adjustment controls must not be accessible from the exterior of the device.
(d) The device must be able to repeatedly transmit the alarm signal. For this purpose the dashes transmitted must have a duration of 3.8 to 4.2 seconds, and spaces between each of the twelve dashes constituting a series must have a duration of 0.8 to 1.2 seconds. Spaces between each series of twelve dashes must have a duration of 0.8 second to one minute. This operation must be sustainable with power supply voltage variations of ±15%.
(e) A single control, protected to avoid accidental manipulation, must be provided for placing the device into full operation within 30 seconds. Once in operation, the device must be capable of continuous operation without attention for a least one hour.
(f) When the "on-off" control of the device is placed in the "off" position, the keying circuit to the radio transmitter(s) must be automatically opened.
(g) The automatic-alarm-signal keying device must be capable of operation from a power supply independent of ship power. It may operate from the radio station emergency power supply.
(h) Instructions for adjustment of the device and the correct indication of any instrument incorporated to reveal improper operation must be inscribed on a plate mounted on the device in a position to be easily read by the operator.
(i) The keying circuit must be capable of switching 0.75 amperes DC through a 32 ohms non-inductive resistance. If the automatic-alarm-signal keying device is also intended to be used with transmitters requiring a keying circuit capability of 2 amperes DC through a 115 ohms non-inductive resistance, the keying circuit of the device must comply with this latter requirement.
(j) The automatic-alarm-signal keying device must operate within specifications throughout the temperature range 0–50 degrees Celsius at relative humidities as high as 95%.
(k) The automatic-alarm-signal keying device must be protected from excessive currents, power supply reversals and voltage variations which could cause damage to any component.
(l) The automatic-alarm-signal keying device must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.03 inch in a direction at an angle of 30 to 45 degrees with the base of the automatic-alarm-signal keying device.

§80.263 Common requirements for survival craft radio equipment.

In addition to the requirements set forth in §§ 80.265 and 80.267, survival craft radio equipment must comply with the following:
(a) The radio equipment must be operable without tools.
(b) Each equipment must be provided with an instruction manual covering the design, installation, operation, and maintenance of the equipment.
(c) Simple instructions for the operation of the equipment must be prominently and permanently attached to it. These instructions must include information about the erection of the antenna(s), and automatic and manual transmission of the international distress and alarm signals on 500 kHz.
(d) An artificial antenna for test purposes must be provided.
(e) The survival craft radio transmitter must meet the following:
(1) Must be pretuned to the required frequencies. The operating frequencies must be maintained within the prescribed tolerances under varying voltages, antenna circuit characteristics, and other normal conditions of adjustment, and shock or vibration. The frequency control circuit adjustments must not be readily available to the person using the transmitter;
(2) Antenna tuning controls must be provided on the operating panel. An initial adjustment of these controls must resonate the antenna circuit at each required operating radio frequency. Resonance must be maintained without further adjustment of the controls during a normal operating period of the transmitter;
(3) The front panel must contain controls for manual operation on 500 kHz, manual operation on 8364 kHz, and automatic operation alternately on these two frequencies. Not more than one manual switch adjustment must be necessary to transmit automatically. For manual radiotelegraphy the transmitter and receiver, including their controls, must be arranged so that they can be operated from the same operating position and the time necessary to change from transmission to recepition and vice versa must not exceed two seconds; and
(4) In automatic operation the radio must:
(i) On 500 kHz transmit the international radiotelegraph alarm signal followed by the international radiotelegraph distress signal, the latter to be transmitted in one or more separate groups, each group consisting of three separate distress signals;
(ii) On 8364 kHz transmit the international radiotelegraph distress signal in one or more separate groups, each group consisting of three separate distress signals; this group or these groups to be followed by a continuous long dash of not less than 30 seconds in duration;
(iii) Transmit the specified signals by automatically changing the operating frequency of the transmitter from 500 kHz to 8364 kHz and vice versa with a

transfer time interval not to exceed one second;

(iv) Completely de-energize the receiver during operation of the transmitter;

(v) Be capable of testing the required automatic keying arrangement without the generation of radio frequency energy; and

(vi) For automatic transmission of the international radiotelegraph distress signal, not exceed 16 words per minute or be less than 8 words per minute. The alarm signal dashes must have a duration within the limits of 3.8 to 4.2 seconds, and the spaces between each of the 12 dashes constituting a series must have a duration within the limits of 0.8 to 1.2 seconds.

(f) Survival craft radio receivers must meet the following requirements:

(1) The receiver must be capable of receiving A2A or H2A emission over the 492–508 kHz band without manual tuning and when manually tuned must be capable of receiving A1A and A2A or H2A and J2A emission on any frequency in the 8320–8745 kHz band;

(2) The selectivity of the receiver preceeding the final detector must be flat within 6 dB over the band 492 to 508 kHz;

(3) The audio frequency response of the receiver must be flat within 6 dB over the range of frequencies between 400 and 1400 Hertz; and

(4) The receiver must be equipped with only one manually operated volume control.

(g) The artificial antenna must meet the following requirements:

(1) Provide a reliable test load for the transmitter at the frequencies 500 kHz and 8364 kHz of approximately the same electrical characteristics as the single wire or collapsible rod antenna required by this section;

(2) Be housed in a single container and provided with terminals. If more than two terminals are provided on the artificial antenna, all the terminals must be labelled; and

(3) Be prominently labelled "FOR TEST USE ONLY".

§ 80.265 Requirements for survival craft portable radio equipment.

(a) Survival craft portable radio equipment must be provided as a single portable buoyant unit consisting of a transmitter, receiver including headphones, power supply, grounding system, antenna system and line for lowering the apparatus. Each totally enclosed lifeboat must comply with the additional equipment requirements specified in this section:

(1) The radio must float in sea water and withstand a drop into sea water in various positions from a height of 6 meters (20 feet), without requiring repair or adjustment other than normal antenna tuning. The operating controls, indicating devices and instruments, including the headphones, must be protected against physical damage and from prolonged exposure to the weather. The radio must withstand submersion in sea water so that no part is less than 5 centimeters (2 inches) below the surface of the water for two hours without leaking;

(2) The radio must be fitted with handles or grips. It must be carryable by either one or two persons;

(3) The radio must be designed to attach to a lifeboat thwart by lashing or other acceptable means;

(4) The radio, exclusive of the line for lowering, must not weigh more than 27 kilograms (60 pounds). A radio for use in a totally enclosed lifeboat must not weigh more than 18 kilograms (40 pounds);

(5) The line for lowering must consist of not less than 12 meters (40 feet) of 9 thread manila or sisal rope, or the equivalent thereof, which must be securely attached to the radio at all times;

(6) All removable components necessary for the proper operation of the radio must be attached to this equipment;

(7) Each radio must have a durable removable plate showing clearly the survival craft radio call sign in letters and digits and in characters of the Morse code; and

(8) The maximum overall dimensions of the radio to be used in totally enclosed lifeboats including accessories must not exceed 35 by 40 by 50 centimeters (14 by 16 by 20 inches).

(b)(1) Portable survival craft radio transmitters must meet the following requirements:

Operating frequency (kHz)	Frequency tolerance		Type of emission	Modulation percentage (average of modulation percentage of positive and negative peaks	Modulation frequency	Average power output into specified artificial antenna	Artificial antenna
	Parts [1] in 10 [6]	Hz [2]					
500	5,000	20	A2A and A2B or H2A and H2B.	Not less than 70	Not less than 450 nor greater than 1350 Hertz.	Not less than 1.7 watts	10 ohm resistance, 75 picofarads capacitance.
500	5,000	20	do	do	do	Not less than 2 watts [3]	15 ohms resistance, 100 picofarads capacitance.
8364	200	50	A2A and A3N or H2A and H3N.	do	do	Not less than 4 watts	40 ohms resistance.

[1] For equipment type accepted or type approved before November 30, 1977.
[2] For equipment type accepted or type approved after November 29, 1977.
[3] In the case of equipment type approved prior to May 26, 1965, the power output may be 1.7 watts into an artificial antenna of 10 ohms resistance and 75 picofarads capacitance.

(2) The transmitter must be equipped with a visual indicator or indicators such as neon tubes to show antenna circuit resonance. Failure of the indicator(s) must not keep the transmitter from operating.

(c) Portable survival craft receivers must meet the following requirements:

(1) The audio output must be one milliwatt with a signal to noise power ratio of at least 10 to 1, when the receiver is supplied through the following artificial antennas with the respective radio frequency signals:

Operating frequency, (kHz)	Signal strength (microvolts)	Modulation factor	Modulation (Hz)	Artificial antenna
500	25	0.3	400	10 ohms resistance and 100 picofarads capacitance.[1]
8364	100	0.3	400	40 ohms resistance.

[1] In the case of equipment type approved prior to May 26, 1965, the artificial antenna may be 10 ohms resistance and 75 picofarads capacitance.

(2) The noise power present in the output of the receiver when the receiver is adjusted for A2A or H2A emission on 500 kHz and 8364 kHz must be determined with an unmodulated input signal of the indicated strength.

(d) The power supply must meet the following requirements:

(1) The source of power must be a manually operated electric generator capable of energizing the survival craft radio installation. The mechanical power applied to the crank handle(s) or the propelling lever(s) of the generator driving mechanism must not exceed a maximum of 0.15 horsepower for any operation of the survival craft radio installation at any temperature of the generator and its associated driving mechanism between minus 30 degrees and plus 50 degrees Celsius. Under these conditions the speed of rotation of the crank handle(s) must not be greater than 70 revolutions per minute nor must the cycles of operation of the propelling lever(s) be greater than 70 cycles per minute. The voltages applied to the radio installation must not vary from their normal values more than 20 percent at any generator speed in excess of the normal operating speed which can be manually developed.

(e) The antenna system must consist of a single wire antenna with a collapsible mast or a collapsible rod antenna conforming to the following requirements:

(1) The single wire antenna must be at least 12 meters (40 feet) of at least No. 10 AWG insulated extra-flexible stranded copper and include a means for fastening the wire to the antenna supports, and means for making electrical connection to the transmitter;

(2) Each totally enclosed lifeboat must be provided with a collapsible rod antenna which operates in either a freestanding position or supported only by a grommet in the canopy of the lifeboat. The antenna must be capable of being erected from within of the enclosure. Antennas for use in totally enclosed lifeboats must be type accepted.

(f) The grounding system must consist of either a conducting wire or plate to provide an efficient ground for the portable survival craft equipment. The conducting wire must consist of a length of not less than 6 meters (20 feet) of No. 10 AWG bare stranded copper or equivalent copper braid weighted at one end for immersion in the sea. The ground plate must consist of a bare plate or strips of corrosion resistant metal having a total area of at least .6 square meters (6.5 square feet) and must be located on the hull of the lifeboat below the waterline. The electrical connection to the grounding conductor or to the ground plate must be made from inside the lifeboat.

§ 80.267 Requirements for survival craft nonportable radio equipment.

(a)(1) The radio transmitter must meet the following requirements:

Operating frequency (kHz)	Frequency tolerance		Type of emission	Modulation percentages (average of modulation percentage of positive and negative peaks)	Modulation frequency	Average power output into specified artificial antenna	Artificial antenna
	Parts [1] in 10^6	HZ [2]					
500	5,000	20	A2A and A2B or H2A and H2B.	Not less than 70	Not less than 450 nor greater than 1350 Hertz.	Not less than 30 watts	10 ohms resistance and 100 picofarads capacitance.
8364	200	50	A2A or H2A Ides	do	do	Not less than 40 watts	40 ohms resistance.

[1] For equipment type accepted or type approved before November 30, 1977.
[2] For equipment type accepted or type approved after November 29, 1977.

(2) The transmitter must have an antenna current meter.

(b) Survival craft non-portable receivers must meet the following requirements:

(1) The audio output must be one milliwatt at a signal to noise power ratio of at least 10 to 1, when the receiver is supplied through the following artificial antennas with the respective radio frequency signals:

Operating frequency, (kHz)	Signal strength (microvolts)	Modulation factor	Modulation (Hz)	Artificial antenna
500	200	0.3	400	15 ohms resistance and 100 picofarads capacitance.
8364	1,000	0.3	400	40 ohms resistance.

(2) When the receiver is adjusted for A2A or H2A emission on 500 kHz and 8364 kHz the noise power present in the output of the receiver must be determined with an unmodulated input signal of the indicated strength;

(3) The audio output of the receiver must be capable of at least 6 dB above one milliwatt at the rated loan impedance.

§ 80.269 Technical requirements for radiotelephone distress frequency watch receiver.

(a) The radiotelephone distress frequency watch receiver is comprised of a receiver, a loudspeaker and a radiotelephone auto alarm device.

(b) The radiotelephone distress frequency watch receiver must meet the following requirements:

(1) The receiver must be capable of being switched to 2182 kHz and of receiving signals of at least A2A, A2B, H2A and H2B emissions;

(2) The receiver sensitivity must provide a SINAD of 20 dB at the audio output when a 30 microvolt signal with A2A, A2B, H2A, or H2B emission modulated 30% at 400 Hz is applied to the receiver RF terminals;

(3) The audio output of the receiver must be at least 50 milliwatts at the rated load impedance;

(4) The receiver must be provided with an auto alarm device which mutes the receiver (silences the loudspeaker) unless the radiotelephone alarm signal or the signal preceeding a vital navigational warning is received. When the auto alarm is activated the receiver audio output level must be louder than the output level of the received speech signal. Additionally, the receiver must meet the following requirements:

(i) When the receiver is muted its audio output power must be less than 1 milliwatt;

(ii) If tone filters are used to process the 1300 Hz and 2200 Hz tones the tolerance of their center frequency must be ±1.5 percent of the alerting frequency. The response must be flat within 6 dB to ±3% of the center frequency of the filters; and

(iii) The receiver must not be unmuted by atmospherics or by strong signals other than the radiotelephone alarm and the vital navigational warning signal.

(5) The receiver must be unmuted within 4 to 6 seconds when a double

sideband alarm signal modulated at 70% is applied at its input terminals at a level which produces a SINAD of 10 dB under the following conditions:

(i) For radiotelephone alarm the signal must be modulated sequentially by a 1300 ±20 Hz tone and a 2200 ±35 Hz tone. The duration of each tone must be 250 ±50 milliseconds and the period between each tone must not exceed 50 milliseconds; and

(ii) For navigational warning the signal must be modulated by a 2200 ±35 Hz tone and the modulated carrier must be turned "on" for 250 ±50 milliseconds and then "off" for 250 ±50 milliseconds.

(6) The receiver must not be unmuted when a double sideband signal of 70 dB above the receiver measured sensitivity, modulated at 70% by a 2200 ±35 Hz tone with the following durations is applied at its input terminals:

(i) "On" periods of less than 175 milliseconds or more than 325 milliseconds followed by "off" periods of any duration; and

(ii) "Off" periods of less than 175 milliseconds or more then 425 milliseconds followed by "on" periods of any duration.

(7) The controls listed below must be provided on the exterior of the equipment:

(i) On/off switch with a visual indication that the device is on;

(ii) Volume control to adjust the audio output;

(iii) Control for dimming any light on the equipment;

(iv) Control for switching the auto alarm in and out of operation; and

(v) Control to manually reset the auto alarm to muted condition.

(8) The receiver must operate within specifications throughout the temperature range 0–50 degrees Celsius at relative humidities as high as 95%.

(9) The receiver must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.03 inch in a direction at an angle of 30 to 45 degrees with the base of the auto alarm.

§ 80.271 Technical requirements for portable survival craft radiotelephone transceivers.

(a) Portable survival craft radiotelephone transceivers must comply with the following:

(1) The transceivers must receive and transmit either on 457.525 MHz or on 156.800 MHz;

(2) The receiver must comply with the requirements in Part 15, Subpart C of this chapter and must have a sensitivity of not more than 2 microvolts. The sensitivity requirement must be met using the receiver sensitivity measurement procedure specified in the Radio Technical Commission for Marine Services (RTCM) Special Committee No. 66 Report MMS–R2;

(3) The effective radiated power of the transmitter must be at least 0.1 watt;

(4) The transceivers must be battery powered and operate for at least four hours with a transmit to receive ratio of 1:9 with no significant adverse effect upon the performance of the device;

(5) The transceivers must have a permanently attached waterproof label with the statement "Complies with the FCC requirements for survival craft two-way radiotelephone equipment"; and

(6) The antenna must be permanently attached to the device or its removal must require the use of a special tool.

(b) Portable radiotelephone transceivers that are already type accepted may be used to satisfy the survival craft radiotelephone requirement until October 1, 1993, provided the device meets the technical requirements in (a)(1) through (a)(3) of this section.

(c) Survival craft radiotelephone equipment installed after October 1, 1988, must be type accepted to meet the requirements of this section.

(d) After October 1, 1993, all portable radiotelephone transceivers that are used to satisfy the survival craft radiotelephone requirement must have been type accepted to meet the requirements of this section.

(e) Portable radiotelephone transceivers which are type accepted to meet the requirements of this section must be identified by an appropriate note in the Commission's Radio Equipment List.

§ 80.273 Technical requirements for radar equipment.

The technical requirements for radar equipment are contained in § 80.825.

Subpart G—Safety Watch Requirements and Procedures

Coast Station Safety Watches

§ 80.301 Watch requirements.

(a) Each public coast station operating on telegraphy frequencies in the band 405–535 kHz must maintain a watch for classes A1A, A2B and H2B emissions by a licensed radiotelegraph operator on the frequency 500 kHz for three minutes twice each hour, beginning at x h.15 and x h.45 Coordinated Universal Time (UTC).

(b) Each public coast station licensed to operate in the band 1605–3500 kHz must monitor such frequency(s) as are used for working or, at the licensee's discretion, maintain a watch on 2182 kHz.

(c) Except for distress, urgency or safety messages, coast stations must not transmit on 2182 kHz during the silence periods for three minutes twice each hour beginning at x h.00 and x h.30 Coordinated Universal Time (UTC).

(d) Each public coast station must provide assistance for distress communications when requested by the Coast Guard.

§ 80.302 Notice of discontinuance, reduction, or impairment of service involving a distress watch.

(a) When changes occur in the operation of a public coast station which include discontinuance, reduction or suspension of a watch required to be maintained on 500 kHz, 2182 kHz, or 156.800 MHz, notification must be made by the licensee to the nearest district office of the U.S. Coast Guard as soon as practicable. The notification must include the estimated or known resumption time of the watch.

§ 80.303 Watch on 156.800 MHz (channel 16).

(a) During its hours of operation, each coast station operating in the 156–162 MHz band and serving rivers, bys and inland lakes except the Great Lakes, must maintain a safety watch on the frequency 156.800 MHz.

(b) A coast station may be exempted from compliance with the watch requirement when Federal, State or Local Government stations maintain a watch on 156.800 MHz over 95% of the coast station's service area. Requests for an exemption must include a chart showing the receiving service area of the inland water public coast station. The coordinates, to the nearest minute, and the receiving service area of the Government stations maintaining the continuous watch on 156.800 MHz must be indicated on the same chart. The service area of these stations must be calculated using criteria specified in Subpart P of this part.

(c) If the government station(s) providing the 156.800 MHz watch over the service area of an exempt station temporarily discontinues that watch, the exempt coast station upon receiving notice of this condition must maintain the watch on 156.800 HMz during the discontinuance. Automated maritime communications systems' compliance with this requirement is limited to the use of existing facilities.

Ship Station Safety Watches

§ 80.304 Watch requirement during silence periods.

(a) Each ship station operating on telegraphy frequencies in the band 405–

535 kHz, must maintain a watch on the frequency 500 kHz of three minutes twice each hour beginning at x h.15 and x h.45 Coordinated Universal Time (UTC) by a licensed radiotelegraph officer using either a loudspeaker or headphone.

(b) Each ship station operating on telephony on frequencies in the band 1605–3500 kHz must maintain a watch on the frequency 2182 kHz. This watch must be maintained at least twice each hour for 3 minutes commencing at x h.00 and x h.30 Coordinated Universal Time (UTC) using either a loudspeaker or headphone. Expect for distress, urgency or safety messages, ship stations must not transmit during the silence periods on 2182 kHz.

§ 80.305 Watch requirements of the Communications Act and the Safety Convention.

(a) Each ship of the United States which is equipped with a radiotelegraph station for compliance with Part II of Title III of the Communications Act or Chapter IV of the Safety Convention must:

(1) Keep a continuous and efficient watch on 500 kHz by means of radio officers while being navigated in the open sea outside a harbor or port. In lieu thereof, on a cargo ship equipped with a radiotelegraph auto alarm in proper operating condition, an efficient watch on 500 kHz must be maintained by means of a radio officer for at least 8 hours per day in the aggregate, i.e., for at least one-third of each day or portion of each day that the vessel is navigated in the open sea outside of a harbor or port.

(2) Keep a continuous and efficient watch on the radiotelephone distress frequency 2182 kHz from the principal radio operating position or the room from which the vessel is normally steered while being navigated in the open sea outside a harbor or port. A radiotelephone distress frequency watch receiver having a loudspeaker and a radiotelephone auto alarm facility must be used to keep the continuous watch on 2182 kHz if such watch is kept from the room from which the vessel is normally steered. After a determination by the master that conditions are such that maintenance of the listening watch would interfere with the safe navigation of the ship, the watch may be maintained by the use of the radiotelephone auto alarm facility alone.

(3) Keep a continuous and efficient watch on the VHF distress frequency 156.800 MHz from the room from which the vessel is normally steered while in the open sea outside a harbor or port. The watch must be maintained by a designated member of the crew who may perform other duties, relating to the operation or navigation of the vessel, provided such other duties do not interfere with the effectiveness of the watch. Use of a properly adjusted squelch or brief interruptions due to other nearby VHF transmissions are not considered to adversely affect the continuity or efficiency of the required watch on the VHF distress frequency. This watch need not be maintained by vessels subject to the Bridge-to-Bridge Act and participating in a Vessel Traffic Services (VTS) system as required or recommended by the U.S. Coast Guard, when an efficient listening watch is maintained on both the bridge-to-bridge frequency and a separate assigned VTS frequency.

(b) Each cargo ship of the United States which is equipped with a radiotelephone station for compliance with Part II of Title III of the Communications Act or Chapter IV of the Safety Convention must while being navigated outside of a harbor or port:

(1) Keep a continuous watch on 2182 kHz in the room from which the vessel is normally steered while at sea, whenever such station is not being used for authorized traffic. Such watch must be maintained by at least one officer or crewmember who may perform other duties relating to the operation or navigation of the vessel, provided such other duties do not interfere with the watch. A radiotelephone watch receiver having a loudspeaker and a radiotelephone auto alarm must be used to keep the continuous watch on 2182 kHz. After a determination by the master that maintenance of the watch would interfere with the safe navigation of the ship, the watch may be maintained by use of the radiotelephone auto alarm facility alone.

(2) Keep a continuous watch on 156.800 MHz from the room from which the vessel is normally steered. The watch must be maintained by a crewmember who may perform other duties, relating to the operation or navigation of the vessel, provided such other duties do not interfere with the watch. Use of properly adjusted squelch of brief interruptions due to other nearby VHF transmissions are not considered to adversely affect the watch. This watch need not be maintained by vessels subject to the Bridge-to-Bridge Act and participating in a Vessel Traffic Services (VTS) system when a watch is maintained on both the bridge-to-bridge frequency and a VTS frequency.

(c) Each vessel of the United States transporting more than six passengers for hire, which is equipped with a radiotelephone station for compliance with Part III of Title III of the Communications Act must, while being navigated in the open sea or any tidewater within the jurisdiction of the United States adjacent or contiguous to the open sea, keep a continuous watch on 2182 kHz while the vessel is beyond VHF communication range of the nearest VHF coast station, whenever the radiotelephone station is not being used for authorized traffic. A VHF watch must be kept on 156.800 MHz whenever such station is not being used for authorized traffic. The VHF watch must be maintained at the vessel's steering station actually in use by the qualified operator as defined by § 80.157 or by a crewmember who may perform other duties relating to the operation or navigation of the vessel, provided such other duties do not interfere with the watch. The use of a properly adjusted squelch is not considered to adversely affect the watch. The VHF watch need not be maintained by vessels subject to the Bridge-to-Bridge Act and participating in a Vessel Traffic Services (VTS) system when an efficient listening watch is maintained on both the bridge-to-bridge frequency and a VTS frequency.

§ 80.306 Provisions governing the radiotelegraph watch.

(a) The radio officer must use the main or reserve receiver, and either headphones or a loudspeaker to keep the watch on 500 kHz.

(b) During the watch, the radio officer may temporarily interrupt the required watch on 500 kHz while transmitting or receiving signals or messages to or from a station but only if it is not feasible to simultaneously handle such traffic and listen on 500 kHz by a split headphones or a loudspeaker. The watch on 500 kHz must, however, without exception be maintained during the silence periods.

(c) During this watch, on vessels subject to the Communications Act and the Safety Convention on international voyages, the radio officer may discontinue listening when handling traffic on other frequencies or performing other essential radio duties, but only if it is impracticable to listen by split headphones or loudspeaker. The watch must always be maintained by a radio officer using headphones or loudspeaker during the silence periods. The term "essential radio duties" in this rule includes urgent repairs of radiocommunication equipment used for safety or radio navigational equipment by order of the master.

(d) When authorized by the master, the radio officer may perform maintenance repair of communications,

navigation or other electronic equipment outside of the radiotelegraph room, provided that the listening watch on 500 kHz can be maintained by headphones, loudspeakers, portable receivers, or other suitable means. The watch on 500 kHz must be maintained in the radiotelegraph room during the silence period.

§ 80.307 Compulsory use of radiotelegraph auto alarm.

The radiotelegraph auto alarm required on a cargo ship subject to the radiotelegraph provisions of Part II of Title III of the Communications Act or the Safety Convention must be in operation, connected to the main antenna and adjusted for optimum efficiency at all times while the ship is being navigated in the open sea when a radio officer is not listening on the frequency 500 kHz, except under the circumstances as set forth in § 80.306(b).

§ 80.308 Watch required by the Great Lakes Radio Agreement.

Each ship of the United States which is equipped with a radiotelephone station for compliance with the Great Lakes Radio Agreement must when underway, keep a watch on 156.800 MHz whenever such station is not being used for authorized traffic. The watch must be maintained by a least one officer or crewmember who may perform other duties provided such other duties do not interfere with the watch.

§ 80.309 Watch required by Bridge-to-Bridge Act.

All vessels subject to the Bridge-to-Bridge Act must keep a watch on the designated navigational frequency. The watch must be maintained by the master or person in charge of the vessel or the person designated by the master or person in charge to pilot or direct the movement of the vessel. The person standing watch may perform other duties provided such other duties do not interfere with the watch.

§ 80.310 Watch required by voluntary vessels.

Voluntary vessels must maintain a watch on 156.800 MHz whenever the radio is operating and is not being used to communicate.

Distress, Alarm, Urgency and Safety Procedures

§ 80.311 Authority for distress transmission.

A mobile station in distress may use any means at its disposal to attract attention, make known its position, and obtain help. A distress call and message, however, must be transmitted only on the authority of the master or person responsible for the mobile station. No person shall knowingly transmit, or cause to be transmitted, any false or fraudulent signal of distress or related communication.

§ 80.312 Priority of distress transmissions.

The distress call has absolute priority over all other transmissions. All stations which hear it must immediately cease any transmission capable of interfering with the distress traffic and must continue to listen on the frequency used for the emission of the distress call. This call must not be addressed to a particular station. Acknowledgement of receipt must not be given before the distress message which follows it is sent.

§ 80.313 Frequencies for use in distress.

The frequencies specified in the bands below are for use by mobile stations in distress. The conventional emission is shown. When a ship station cannot transmit on the designated frequency or the conventional emission, it may use any available frequency or emission. Frequencies for distress and safety calling using digital selective calling techniques are listed in § 80.359(b).

Frequency band	Emission	Carrier frequency
405–535 kHz	A2B	500 kHz.
1605–3500 kHz	J3E	2182 kHz.
4000–27, 5000 kHz	A2B	8364 kHz.
118–136 MHz	A3E	121.500 MHz.
156–162 MHz	F3E, PON	156.800 MHz 156.750 MHz.
243 MHz	A3N	243.000 MHz.

The maximum transmitter power obtainable may be used.

§ 80.314 Distress signals.

(a) The international radiotelegraphy distress signal consists of the group "three dots, three dashes, three dots" (... ---...), symbolized herein by SOS, transmitted as a single signal in which the dashes are slightly prolonged so as to be distinguished clearly from the dots.

(b) The international radiotelephone distress signal consists of the word MAYDAY, pronounced as the French expression "m'aider".

(c) These distress signals indicate that a mobile station is threatened by grave and imminent danger and requests immediate assistance.

§ 80.315 Distress calls.

(a) The radiotelegraph distress call consists of:

(1) The distress signal SOS, sent three times;

(2) The word DE;

(3) The call sign of the mobile station in distress, sent three times.

(b) The radiotelephone distress call consists of:

(1) The distress signal MAYDAY spoken three times;

(2) The words THIS IS;

(3) The call sign (or name, if no call sign assigned) of the mobile station in distress, spoken three times.

§ 80.316 Distress messages.

(a) The radiotelegraph distress message consists of:

(1) The distress signal SOS;

(2) The name of the mobile station in distress;

(3) Particulars of its position;

(4) The nature of the distress;

(5) The kind of assistance desired;

(6) Any other information which might facilitate rescue.

(b) The radiotelephone distress message consists of:

(1) The distress signal MAYDAY;

(2) The name of the mobile station in distress;

(3) Particulars of its position;

(4) The nature of the distress;

(5) The kind of assistance desired;

(6) Any other information which might facilitate rescue, for example, the length, color, and type of vessel, number of persons on board.

(c) As a general rule, a ship must signal its position in latitude and longitude, using figures for the degrees and minutes, together with one of the words NORTH or SOUTH and one of the words EAST or WEST. In radiotelegraphy, the signal .-.-.- must be used to separate the degrees from the minutes. When practicable, the true bearing and distance in nautical miles from a known geographical position may be given.

§ 80.317 Radiotelegraph and radiotelephone alarm signals.

(a) The international radiotelegraph alarm signal consists of a series of twelve dashes sent in one minute, the duration of each dash being four seconds and the duration of the interval between consecutive dashes one second. The purpose of this special signal is the actuation of automatic devices giving the alarm to attract the attention of the operator when there is no listening watch on the distress frequency.

(b) The international radiotelephone alarm signal consists of two substantially sinusoidal audio frequency tones transmitted alternately. One tone must have a frequency of 2200 Hertz and the other a frequency of 1300 Hertz, the duration of each tone being 250 milliseconds. When generated by automatic means, the radiotelephone

alarm signal must be transmitted continuously for a period of at least 30 seconds, but not exceeding one minute; when generated by other means, the signal must be transmitted as continuously as practicable over a period of approximately one minute. The purpose of this special signal is to attract the attention of the person on watch or to actuate automatic devices giving the alarm.

§ 80.318 Use of alarm signals.

(a) The radiotelegraph or radiotelephone alarm signal, as appropriate, must only be used to announce:

(1) That a distress call or message is about to follow;

(2) The transmission of an urgent cyclone warning. In this case the alarm signal may only be used by coast stations authorized by the Commission to do so; or

(3) The loss of a person or persons overboard. In this case the alarm signal may only be used when the assistance of other ships is required and cannot be satisfactorily obtained by the use of the urgency signal only, but the alarm signal must not be repeated by other stations. The message must be preceded by the urgency signal.

(b) In cases described in paragraphs (a)(2) and (3) of this section, the transmission of the warning or message by radiotelegraphy must not begin until two minutes after the end of the radiotelegraph alarm signal.

§ 80.319 Radiotelegraph distress call and message transmission procedure.

(a) The radiotelegraph distress procedure consists of the following six steps: however, when time is vital, the first and second steps may be omitted. These two steps of the distress procedure may also be omitted in circumstances when transmission of the alarm signal is considered unnecessary:

(1) The radiotelegraph alarm signal;

(2) The distress call and an interval of two minutes;

(3) The distress call;

(4) The distress message;

(5) Two dashes of ten to fifteen seconds each;

(6) The call sign of the mobile station in distress.

(b) The radiotelegraph distress transmissions must be sent by means of the international Morse code at a speed not exceeding 16 words per minute nor less than 8 words per minute.

(c) The distress message, preceded by the distress call, must be repeated at intervals, especially during the 500 kHz international silence periods, until an answer is received. The radiotelegraph alarm signal may also be repeated, if necessary.

(d) The transmissions under paragraphs (a)(5) and (6) of this section, which are to permit direction finding stations to determine the position of the station in distress, may be repeated at frequent intervals if necessary.

(e) When the mobile station in distress receives no answer to a distress message transmitted on the distress frequency, the message may be repeated on any other available frequency on which attention might be attracted.

§ 80.320 Radiotelephone distress call and message transmission procedure.

(a) The radiotelephone distress procedure consists of:

(1) The radiotelephone alarm signal (whenever possible);

(2) The distress call;

(3) The distress message.

(b) Radiotelephone distress transmissions must be made slowly and distinctly, each word being clearly pronounced to facilitate transcription.

(c) After the transmission by radiotelephony of its distress message, the mobile station may be requested to transmit suitable signals followed by its call sign or name, to permit direction-finding stations to determine its position. This request may be repeated at frequent intervals if necessary.

(d) The distress message, preceded by the distress call, must be repeated at intervals until an answer is received. This repetition must be preceded by the radiotelephone alarm signal whenever possible.

(e) When the mobile station in distress receives no answer to a distress message transmitted on the distress frequency, the message may be repeated on any other available frequency on which attention might be attracted.

§ 80.321 Acknowledgement of receipt of distress message.

(a) Stations of the maritime mobile service which receive a distress message from a mobile station which is beyond any possible doubt in their vicinity must immediately acknowledge receipt. However, in areas where reliable communication with one or more coast stations is practicable, ship stations may defer this acknowledgement for a short interval so that a coast station may acknowledge receipt.

(b) Stations of the maritime mobile service which receive a distress message from a mobile station which beyond any possible doubt is not in their vicinity, must allow a short interval of time to elapse before acknowledging receipt of the message in order to permit stations nearer to the mobile station in distress to acknowledge receipt without interference.

§ 80.322 Form of acknowledgement.

(a) The acknowledgement of receipt of a radiotelegraph distress message is transmitted in the following form:

(1) The distress signal SOS;

(2) The call sign of the station sending the distress message, sent three times;

(3) The word DE;

(4) The call sign of the station acknowledging receipt, sent three times;

(5) The group RRR;

(6) The message signal SOS.

(b) The acknowledgement of receipt of a radiotelephone distress message is transmitted in the following form:

(1) The distress signal MAYDAY;

(2) The call sign or other identification of the station sending the distress message, spoken three times;

(3) The words THIS IS;

(4) The call sign or other identification of the station acknowledging receipt, spoken three times;

(5) The word RECEIVED;

(6) The distress signal MAYDAY.

§ 80.323 Information furnished by an acknowledging station.

(a) Every mobile station which acknowledges receipt of a distress message must on the order of the master or person responsible for the ship, aircraft, or other vehicle carrying such mobile station, transmit as soon as possible the following information in the order shown:

(1) Its identifier;

(2) Its position;

(3) The speed at which it is proceeding towards, and the approximate time it will take to reach the mobile station in distress.

(b) Before sending this message, the station must ensure that it will not interfere with the emissions of other stations better situated to render immediate assistance to the station in distress.

§ 80.324 Transmission of distress message by station not itself in distress.

(a) A mobile station or a land station which learns that a mobile station is in distress must transmit a distress message in any of the following cases:

(1) When the station in distress cannot transmit the distress message.

(2) When the master or person responsible for the ship, aircraft, or other vehicle not in distress, or for the land station, believes that further help is necessary.

(3) When, although not in a position to assist, it has heard a distress message which has not been acknowledged.

When a mobile station transmits such a distress message, it must notify the authorities who may be able to assist.

(b) Transmission must be made on the international distress frequencies or on any other available frequency on which attention might be attracted.

(c) Transmission of the distress message must always be preceded by the call indicated below, which must itself be preceded whenever possible by the radiotelegraph or radiotelephone alarm signal. This call consists of:

(1) When radiotelegraphy is used:

(i) The signal DDD SOS SOS SOS DDD:

(ii) The word DE;

(iii) The call sign of the transmitting station, sent three times.

(2) When radiotelephony is used:

(i) The signal MAYDAY RELAY, spoken three times;

(ii) The words THIS IS;

(iii) The call sign or other identification of the transmitting station, spoken three times.

(d) When the radiotelegraph alarm signal is used, an interval of two minutes must be allowed, whenever this is considered necessary, before the transmission of the call mentioned in paragraph (c)(1) of this section.

§ 80.325 Control of distress traffic.

(a) Distress traffic consists of all messages relating to the immediate assistance required by the mobile station in distress. In distress traffic, the distress signal must be sent before the call and at the beginning of the preamble of any radiotelegram.

(b) The control of distress traffic is the responsibility of the mobile station in distress or of the station which has sent the distress message. These stations may delegate the control of the distress traffic to another station.

(c) The station in distress or the station in control of distress traffic may impose silence either on all stations of the mobile service in the area or on any station which interferes with the distress traffic. It must address these instructions "to all stations" or to one station only, according to circumstances. In either case, it must use one of the following signals which are reserved for use by the mobile station in distress and for the station controlling distress traffic:

(1) In radiotelegraphy, the abbreviation QRT, followed by the distress signal SOS.

(2) In radiotelephony, the signal SEELONCE MAYDAY.

(d) If essential, any station of the mobile service near the ship, aircraft, or other vehicle in distress may also impose silence. It must use for this purpose:

(1) In radiotelegraphy, the abbreviation QRT, followed by the word DISTRESS and its own call sign;

(2) In radiotelephony, the word SEELONCE, followed by the word DISTRESS and its own call sign or other identification.

§ 80.326 Notification of resumption of normal working.

(a) When distress traffic has ceased, or when complete silence is no longer necessary on a frequency which has been used for distress traffic, the station which has controlled this traffic must transmit on that frequency a message addressed "to all stations" indicating that normal working may be resumed.

(1) In radiotelegraphy, this message consists of:

(i) The distress signal SOS;

(ii) The call "to all stations" (CQ), sent three times;

(iii) The word DE;

(iv) The call sign of the station sending the message;

(v) The time of handing in the message;

(vi) The name and call sign of the mobile station which was in distress;

(vii) The service abbreviation QUM.

(2) In radiotelephony, this message consists of:

(i) The distress signal MAYDAY;

(ii) The call "Hello all stations", spoken three times;

(iii) The words THIS IS;

(iv) The call sign or other identification of the station sending the message;

(v) The time of handing in of the message;

(vi) The name and call sign of the mobile station which was in distress;

(vii) The words SEELONCE FEENEE OR PRU-DONCE.

(b) Until they receive the foregoing message indicating that normal or limited working may be resumed, all stations which are aware of the distress traffic, and which are not taking part in it, are forbidden to transmit on the frequencies on which the distress traffic is taking place.

§ 80.327 Urgency signals

(a) The urgency signal indicates that the calling station has a very urgent message to transmit concerning the safety of a ship, aircraft, or other vehicle, or the safety of a person. The urgency signal must be sent only on the authority of the master or person responsible for the mobile station.

(b) In radiotelegraphy, the urgency signal consists of three repetitions of the group XXX, sent with the individual letters of each group, and the successive groups clearly separated from each other. It must be transmitted before the call.

(c) In radiotelephony, the urgency signal consists of the word PAN, spoken three times and transmitted before the call.

(d) The urgency signal has priority over all other communications except distress. All mobile and land stations which hear it must not interfere with the transmission of the message which follows the urgency signal.

§ 80.328 Urgency message.

(a) The urgency signal and call, and the message following it, must be sent on one of the international distress frequencies. Stations which cannot transmit on a distress frequency may use any other available frequency on which attention might be attracted.

(b) Mobile stations which hear the urgency signal must continue to listen for at least three minutes. At the end of this period, if no urgency messageh as been heard, they may resume their normal service. However, land and mobile stations which are in communication on frequencies other than those used for the transmission of the urgency signal and of the call which follows it may continue their normal work without interruption provided the urgency message is not addressed "to all stations".

(c) When the urgency signal has been sent before transmitting a message "to all stations" which calls for action by the stations receiving the message, the station responsible for its transmission must cancel it as soon as it knows that action is no longer necessary. This message of cancellation must likewise be addressed "to all stations".

§ 80.329 Safety signals.

(a) The safety signal indicates that the station is about to transmit a message concerning the safety of navigation or giving important meteorological warnings.

(b) In radiotelegraphy, the safety signal consists of three repetitions of the group TTT, sent with the individual letters of each group, and the successive groups clearly separated from each other. It must be sent before the call.

(c) In radiotelephony, the safety signal consists of the word SECURITE, pronounced as in French, spoken three times and transmitted before the call.

(d) The safety signal and call must be sent on one of the international distress frequencies (500 kHz or 8364 kHz radiotelegraph; 2182 kHz or 156.8 MHz radiotelephone). Stations which cannot

transmit on a distress frequency may use any other available frequency on which attention might be attracted.

§ 80.330 Safety message.

(a) The safety signal and call must be followed by the safety message. Where practicable, the safety message should be sent on a working frequency, and a suitable announcement to this effect must be made at the end of the call.

(b) Except for the cases mentioned in paragraph (c) of this section, the safety signal when sent on the frequency 500 kHz must be transmitted toward the end of the first available silence period; the safety message must be transmitted immediately after the silence period.

(c) Messages about meteorological warnings, of cyclones, dangerous ice, dangerous wrecks, or any other imminent danger to marine navigation must be preceded by the safety signal.

(d) Stations hearing the safety signal must not make any transmission likely to interfere with the message.

§ 80.331 Bridge-to-bridge communication procedure.

(a) Vessels subject to the Bridge-to-Bridge Act transmitting on the designated navigational frequency must conduct communications in a format similar to those given below:

(1) this is the (name of vessel). My position is (give readily identifiable position, course and speed) about to (describe contemplated action). Out.

(2) Vessel off (give a readily identifiable position). This is (name of vessel) off (give a readily identifiable position). I plan to (give proposed course of action). Over.

(3) (Coast station), this is (vessel's name) off (give readily identifiable position). I plan to (give proposed course of action). Over.

(b) Vessels acknowledging receipt must answer "(Name of vessel calling). This is (Name of vessel answering). Received your call," and follow with an indication of their intentions. Communications must terminate when each ship is satisfied that the other no longer poses a threat to its safety and is ended with "Out".

(c) Use of power greater than 1 watt in a bridge-to-bridge station shall be limited to the following three situations:

(1) Emergency.

(2) Failure of the vessel being called to respond to a second call at low power.

(3) A broadcast call as in paragraph (a)(1) of this section in a blind situation, e.g., rounding a bend in a river.

§ 80.332 Equipment to aid search and rescue operations.

(a) Survival craft stations may transmit distress, urgency and safety signals, calls and messages.

(b) EPIRB's may transmit only in accordance with the requirements of Subparts V and X of this part.

§ 80.333 Stations in the maritime mobile-satellite service.

The provisions of §§ 80.311 and 80.324 apply to the operations of ship earth stations in the maritime mobile-satellite service.

Subpart H—Frequencies

Radiotelegraphy

§ 80.351 Scope.

The following sections describe the carrier frequencies and general uses of radiotelegraphy with respect to the following:
—Distress, urgency, safety, call and reply.
—Working.
—Digital selective calling (DSC).
—Narrow-band direct-printing (NB–DP).
—Facsimile.

§ 80.353 General uses—radiotelegraphy.

(a) Unless otherwise indicated radiotelegraphy may be used by ship and public coast stations only.

(b) The signal code for Morse telegraphy must be the international Morse code signals specified in the Telegraph Regulations annexed to the International Telecommunication Convention.

(c) To facilitate communications, ship stations transmitting by means of radiotelegraphy must use the service abbreviations ("Q" signals) listed in Appendix 14 to the ITU Radio Regulations whenever practicable.

(d) In order to reduce interference stations must attempt to select calling frequencies which provide the most favorable propagational characteristics for effecting reliable communications.

(e) Coast stations may apply to use for telegraphy communications any additional coast station frequencies that are allocated for such communications in the 10–27500 kHz band that are not listed in this part. See the Table of Frequency allocations in § 2.106 of this chapter. The use of such frequencies will be authorized initially with a six month provisional period.

(f) Radiotelegraphy stations communicating with a Government station may transmit on a Government frequency when authorized to do so by the Government station or agency if the emission, bandwidth and frequency tolerance of the non-Government station are within the same limits as the Government station.

§ 80.355 Distress, urgency, safety, call and reply frequencies.

This section describes the distress, urgency, safety, call and reply carrier frequencies assignable to stations for Morse code radiotelegraphy.

(a) *Frequencies in the 100–160 kHz band.* The international calling frequency in the 100–160 kHz band is 143 kHz using A1A or J2A emission. When a ship station operating in the 100–160 kHz band desires to communicate with a coast station, it must call on the frequency 143 kHz unless the International List of Coast Stations provides otherwise. Coast stations must reply on their normal working frequency in this band. Only individual calls, replies to such calls, and transmission of signals preparatory to traffic may be transmitted on 143 kHz.

(b) *Frequencies in the 405–535 kHz band.* (1) The international distress, urgency, safety, call and reply frequency used by ship and coast stations operating in the 405–525 kHz band is 500 kHz. A2A and A2B or H2A and H2B emissions are preferred for distress calls, distress traffic and for urgency and safety messages. For call and reply messages A1A or J2A emission must be used. In order to facilitate distress communications routine correspondence tranmissions on 500 kHz must be reduced to a minimum.

(2) In Region 2 and areas of heavy traffic ship stations must request coast stations to listen on the ship station's working frequencies.

(3) In areas where 500 kHz is used for distress a ship or coast station must use the supplementary calling frequency 512 kHz for routine calling and normally request a reply on its working frequency. The called station may reply on 512 kHz when requested to do so by the calling station.

(c) *Frequencies in the 2000–27500 kHz band.*—(1) *Survival craft frequencies:* Survival craft operating on 8364 kHz must use A2A or H2A emission to establish communications related to search and rescue operations.

(2) The frequencies 2174.5 kHz, 4177.5 kHz, 6268.0 kHz, 8357.5 kHz, 12520.0 kHz and 16695.0 kHz are available exclusively for distress and safety communications using NB–DP.

(3) *Ship station frequencies.* The following tables describe the calling and safety carrier frequencies and frequency families in the 4000–27500 kHz band which may be used by ship stations for A1A or J2A radiotelegraphy. All of these frequencies are available to all

authorized ship stations. In addition ship stations may operate 100 and 200 Hz above and below each of the frequencies listed in these tables. The calling frequencies are arranged by frequency family numbers. The frequency families which must be routinely guarded by U.S. coast radiotelegraph stations are marked by footnotes. The specific frequencies of the frequency family which must be guarded at a coast station will vary with propagation conditions. The calling frequencies which are routinely guarded by specific coast stations can be determined by reference to the ITU publication entitled "List of Coast Stations". The world-wide plan for the distribution and use of calling frequencies appears in Appendix 34 and Resolution No. 312 to the current edition of the ITU Radio Regulations. Initial calls by ship stations must be made on the appropriate frequencies of frequency family 3, 9, 13 or 17. Calls on frequency family 5 or 6 must be made only after calls on the appropriate frequency family 3, 9, 13 or 17 are unsuccessful.

(i) *General Frequency Table.*

ITU channel series	Band [1]				
	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz
1	4180.2	6270.3	8360.4	12540.6	16720.8
2	4180.6	6270.9	8361.2	12541.8	16722.4
3	4181.0	6271.5	8362.0	12543.0	16724.0
4	4181.4	6272.1	8362.8	12544.2	16725.6
5	4181.8	6272.7	8363.6	12545.4	16727.2
6	4182.2	6273.3	8364.4	12546.6	16728.8
7	4182.6	6273.9	8365.2	12547.8	16730.4
8	4183.0	6274.5	8366.0	12549.0	16732.0
9	4183.4	6275.1	8366.8	12550.2	16733.6
10	4183.8	6275.7	8367.6	12551.4	16735.2
11	4184.2	6276.3	8368.4	12552.6	16736.8
12	4184.6	6276.9	8369.2	12553.8	16738.4
13	4185.0	6277.5	8370.0	12555.0	16740.0
14	4185.4	6278.1	8370.8	12556.2	16741.6
15	4185.8	6278.7	8371.6	12557.4	16743.2
16	4186.2	6278.3	8372.4	12558.6	16744.8
17	4186.6	6279.9	8373.2	12559.8	16746.4
18	4187.0	6280.5	8374.0	12561.0	16748.0

[1] All frequencies in kHz.

ITU channel series	Band [1]
	22 MHz
1	22228.0
2	22230.0
3	22232.0
4	22234.0
5	22236.0
6	22238.0
7	22240.0
8	22242.0
9	22244.0
10	22246.0

[1] All frequencies in kHz.

ITU channel designation	Band [1]
	25 MHz
A	25071.0
C	25073.0
B	25075.0

[1] All frequencies in kHz.

(ii) *World-Wide Families.*

Family 5		Family 6	
Frequency (kHz) [1]	ITU series/ designator	Frequency (kHz) [1]	ITU series/ designator
4181.8	5	4182.2	6
6272.7	5	6273.3	6
8363.6	5	8364.4	6
12545.4	5	12546.6	6
16727.2	5	16728.8	6
22232.0	3	22234.0	4
25073.0	C	25073.0	C

(iii) *East Coast Families.*

Family 1		Family 2	
Frequency (kHz)	ITU series/ designator	Frequency (kHz)	ITU series/ designator
4180.2	1	4180.6	2
6270.3	1	6270.9	2
8360.4	1	8361.2	2
12540.6	1	12541.8	2
16720.8	1	16722.4	2
22228.0	1	22228.0	1
22230.0	2	22230.0	2
25071.0	A	25071.0	A

Family 3		Family 4	
Frequency (kHz) [2]	ITU series/ designator	Frequency (kHz) [2]	ITU series/ designator
4181.0	3	4181.4	4
6271.5	3	6272.1	4
8362.0	3	8362.8	4
12543.0	3	12544.2	4
16724.0	3	16725.6	4
22228.0	1	22228.0	1
		22230.0	2
25071.0	A	25071.0	A

(iv) *Gulf Coast, Puerto Rico, and Virgin Island Families.*

Family 7		Family 8	
Frequency (kHz)	ITU series/ designator	Frequency (kHz)	ITU series/ designator
4182.6	7	4183.0	8
6273.9	7	6274.5	8
8365.2	7	8366.0	8
12547.8	7	12549.0	8
16730.4	7	16732.0	8
22236.0	5	22236.0	5
22238.0	6	22238.0	6
25071.0	A	25071.0	A

Family 9		Family 10	
Frequency (kHz) [3]	ITU series/ designator	Frequency (kHz)	ITU series/ designator
4183.4	9	4183.8	10
6275.1	9	6275.7	10
8366.8	9	8367.6	10
12550.2	9	12551.4	10
16733.6	9	16735.2	10
22236.0	5	22236.0	5
		22238.0	6
25071.0	A	25071.0	A

(v) *West Coast, Guam, and Hawaii Families.*

Family 11		Family 12	
Frequency (kHz) [4]	ITU series/ designator	Frequency (kHz)	ITU series/ designator
4184.2	11	4184.6	12
6276.3	11	6276.9	12
8368.4	11	8369.2	12
12552.6	11	12553.8	12
16736.8	11	16738.4	12
		22240.0	7
22242.0	8	22242.0	8
25075.0	B	25075.0	B

Family 13		Family 14	
Frequency (kHz) [4]	ITU series/ designator	Frequency (kHz)	ITU series/ designator
4185.0	13	4185.4	14
6277.5	13	6278.1	14
8370.0	13	8370.8	14
12556.0	13	12556.2	14
16740.0	13	16741.8	14
22240.0	7	22240.0	7
		22242.0	8
25075.0	B	25075.0	B

(vi) *American Samoa Families.*

Family 15		Family 16	
Frequency (kHz)	ITU series/ designator	Frequency (kHz)	ITU series/ designator
4185.6	16	4186.2	16
6278.7	16	6279.3	16
8371.8	15	8372.4	16
12557.4	15	12558.6	16
16743.2	15	16744.8	16
22244.0	9	22244.0	9
22246.0	10	22246.0	10
25076.0	B	25075.0	B

Family 17		Family 18	
Frequency (kHz)	ITU series/ designator	Frequency (kHz)	ITU series/ designator
4186.6	17	4187.0	18
6279.9[6]	17	6280.5	18
8373.2[6]	17	8374.0	18
12559.8	17	12561.0	18
16746.4	17	16748.0	18
22244.0	9	22244.0	9
		22246.0	10
25075.0	B	25075.0	B

[1] Routinely guarded world-wide by all coast radiotelegraph stations.
[2] Routinely guarded by East Coast radiotelegraph stations.
[3] Routinely guarded by Gulf Coast radiotelegraph stations.
[4] Routinely guarded by West Coast and Pacific radiotelegraph stations.
[5] Routinely guarded by all West Coast radiotelegraph stations.
[6] Routinely guarded by American Samoa radiotelegraph stations.

(4) *Coast Station frequencies.* Coast stations may use any working carrier frequency for distress, safety and calling listed in § 80.357(b)(1) which is not identified with a specific use.

(d) *Frequencies in the VHF bands.* (1) Survival craft stations using 121.500 MHz may be assigned A3N emission for radiobeacon purposes.

(2) EPIRB stations may be assigned 121.500 MHz and 243.000 MHz using A3N emission or 156.750 MHz and 156.800 MHz using G3N emission to aid search and rescue operations. See Subpart V of this part.

§ 80.357 Working frequencies.

This section describes the working frequencies assignable to maritime stations for A1A or J2A radiotelegraphy.

(a) *Ship station frequencies*—(1) *Frequencies in the 100–160 kHz band.* The following table describes the working carrier frequencies in the 100–160 kHz band which are assignable to ship stations. A ship station may also transmit on a radiotelegraphy working channel of a coast station within the 100–160 kHz band when directed to do so by the coast station provided interference is not caused to any land, fixed, broadcast, or radiolocation station.

100–160 (kHz)
152
153
154
155
156
157
158

(2) *Frequencies in the 405–525 kHz band.* The following table describes the working carrier frequencies in the 405–525 kHz band which are assignable to ship stations. A ship station may transmit on a radiotelegraphy working channel of a coast station in the 415–490 kHz band when directed to do so by the coast station.

405–525 (kHz)
[1] 410
425
454
468
480
[2] 512
[3] 518

[1] The frequency 410 kHz may be used on a secondary basis for the transmission of radiodetermination information and for transmitting by radiotelegraph radiodetermination related messages to direction-finding stations.

[2] The frequency 512 kHz may be used as a supplementary calling frequency when 500 kHz is used for distress, safety and urgency communications. The use of the 512 kHz as a working frequency is prohibited in areas where it is used as a supplementary calling frequency when 500 kHz is used for distress, safety, and urgency communications.

[3] The frequency 518 kHz is a receive only frequency by ship stations. It is used by U.S. Coast Guard coast stations for NB–DP transmissions of meteorological and navigational warnings to ships.

(3) *Frequencies in the 2000–27500 kHz band.* The following table describes the working frequencies and Channel Series in the 2000–27500 kHz band which are assignable to ship stations. Two Channel Series will be assigned for routine use to each ship station. Frequencies from any other Channel Series may be used if the frequencies in the assigned Channel Series are not adequate for communications.

BILLING CODE 6712-01-M

Channel Series	Bands 1/						
	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz	25 MHz
W1	4188.5	6282.75	8377.0	12565.0	16754.0	22250.5	25091.5
(a)	.....	.....	.....	12566.0	16754.5	22251.0	.....
(b)	.....	.....	8377.5	.....	16755.0	.....	.....
(c)	.....	.....	.....	12566.5	16755.5	.....	.....
W2	4189.0..	6283.5..	8378.0..	12567.0	16756.0	22251.5	25092.0
(a)	.....	.....	.....	12567.5	16756.5	22252.0	.....
(b)	.....	.....	.8378.5..	.....	.16757.0.	.....	
(c)	.....	.....	.....	12568.0	16757.5	.....	.....
W3	4189.5	6284.25	8379.0	12568.5	16758.0	22252.5	25092.5
(a)	.....	.....	.....	12569.0	16758.5	22253.0	.....
(b)	.....	.....	8379.5	.....	16759.0	.....	.....
(c)	.....	.....	.....	12569.5	16759.5	.....	.....
W4	4190.0	6285.0	8380.0	12570.0	16760.0	22253.5	25093.0
(a)	.....	.....	.....	12570.5	16760.5	22254.0	.....
(b)	.....	.....	8380.5	.....	16761.0	.....	.....
(c)	.....	.....	.....	12571.0	16761.5	.....	.....
W5	4190.5	6285.75	8381.0	12571.5	16762.0	22254.5	25093.5
(a)	.....	.....	.....	12572.0	16762.5	22255.0	.....
(b)	.....	.....	.8381.5..	.....	16763.0	.....	.....
(c)	.....	.....	.....	12572.5	16763.5	.....	.....
W6	4191.0	6286.5	8382.0	12573.0	16764.0	22255.5	25094.0
(a)	.....	.....	.....	12573.5	16764.5	22256.0	.....
(b)	.....	.....	8382.5	.....	16765.0	.....	.....
(c)	.....	.....	.....	12574.0	16765.5	.....	.....
W7	4191.5	6287.25	8383.0	12574.5	16766.0	22256.5	25094.5
(a)	.....	.....	.....	12575.0	16766.5	22257.0	.....
(b)	.....	.....	8383.5	.....	16767.0	.....	.....
(c)	.....	.....	.....	12575.5	16767.5	.....	.....
W8	4192.0	6288.0	8384.0	12576.0	16768.0	22257.5	25095.0
(a)	.....	.....	.....	12576.5	16768.5	22258.0	.....
(b)	.....	.....	8384.5	.....	16769.0	.....	.....
(c)	.....	.....	.....	12577.0	16769.5	.....	.....
W9	4192.5	6288.75	8385.0	12577.5	16770.0	22258.5	25095.5
(a)	.....	.....	.....	12578.0	16770.5	22259.0	.....
(b)	.....	.....	8385.5	.....	16771.0	.....	.....
(c)	.....	.....	.....	12578.5	16771.5	.....	.....
W10	4193.0	6289.5	8386.0	12579.0	16772.0	22259.5	25096.0
(a)	.....	.....	.....	12579.5	16772.5	22260.0	.....
(b)	.....	.....	8386.5	.....	16773.0	.....	.....
(c)	.....	.....	.....	12580.0	16773.5	.....	.....
W11	4193.5	6290.25	8387.0	12580.5	16774.0	22260.5	25096.5
(a)	.....	.....	.....	12581.0	16774.5	22261.0	.....
(b)	.....	.....	8387.5	.....	16775.0	.....	.....
(c)	.....	.....	.....	12581.5	16775.5	.....	.....
W12	.4194.0..	.6291.0..	.8388.0..	12582.0	16776.0	.22261.5..	.25097.0..
(a)	.....	.....	.....	12582.5	16776.5	.22262.0..	.....
(b)	.....	.....	8388.5	.....	16777.0	.....	.....
(c)	.....	.....	.....	12583.0	16777.5	.....	.....

W13	4194.5	6291.75	8389.0	12583.5	16778.0	22262.5	25097.5
(a)				12584.0	16778.5	22263.0	
(b)			8389.5		16779.0		
(c)				12584.5	16779.5		
W14	4195.0	6292.5	8390.0	12585.0	16780.0	22263.5	25098.0
(a)				12585.5	16780.5	22264.0	
(b)			8390.5		16781.0		
(c)				12586.0	16781.5		
W15	4195.5	6293.25	8391.0	12586.5	16782.0	22264.5	25098.5
(a)				12587.0	16782.5	22265.0	
(b)			8391.5		16783.0		
(c)				12587.5	16783.5		
W16	4196.0	6294.0	8392.0	12588.0	16784.0	22265.5	25099.0
(a)				12588.5	16784.5	22266.0	
(b)			8392.5		16785.0		
(c)				12589.0	16785.5		
W17	4196.5	6294.75	8383.0	12589.5	16786.0	22266.5	25099.5
(a)				12590.0	16786.5	22267.0	
(b)			8393.5		16787.0		
(c)				12590.5	16787.5		
W18	4197.0	6295.5	8394.0	12591.0	16788.0	22267.5	25100.0
(a)				12591.5	16788.5	22268.0	
(b)			8394.5		16789.0		
(c)				12592.0	16789.5		
W19	4197.5	6296.25	8395.0	12592.5	16790.0	22268.5	25100.5
(a)				12593.0	16790.5	22269.0	
(b)			8395.5		16791.0		
(c)				12593.5	16791.5		
W20	4198.0	6297.0	8396.0	12594.0	16792.0	22269.5	25101.0
(a)				12594.5	16782.5	22270.0	
(b)			8396.5		16793.0		
(c)				12595.0	16793.5		
W21	4198.5	6297.75	8397.0	12595.5	16794.0	22270.5	25101.5
(a)				12596.0	16794.5	22271.0	
(b)			8397.5		16795.0		
(c)				12596.5	16795.5		
W22	4199.0	6298.5	8398.0	12597.0	16696.0	22271.5	25102.0
(a)				12597.5	16796.5	22272.0	
(b)			8398.5		16797.0		
(c)				12598.0	16797.5		
W23	4199.5	6299.25	8399.0	12598.5	16798.0	22272.5	25102.5
(a)				12599.0	16798.5	22273.0	
(b)			8399.5		16799.0		
(c)				12599.5	16799.5		
W24	4200.0	6300.0	8400.0	12600.0	16800.0	22273.5	25103.0
(a)				12600.5	16800.5	22274.0	
(b)			8400.5		16801.0		
(c)				12601.0	16801.5		
W25	4200.5	6300.75	8401.0	12601.5	16802.0	22274.5	25103.5
(a)				12602.0	16802.5	22275.0	
(b)			8401.5		16803.0		
(c)				12602.5	16803.5		

W26	4201.0	6301.5	8402.0	12603.0	16804.0	22275.5	25104.0
(a)				12603.5	16804.5	22276.0	
(b)			8402.5		16805.0		
(c)				12604.0	16805.5		
W27	4201.5	6302.25	8403.0	12604.5	16806.0	22276.5	25104.5
(a)				12605.0	16806.5	22277.0	
(b)			8403.5		16807.0		
(c)				12605.5	16807.5		
W28	4202.0	6303.0	8404.0	12606.0	16808.0	22277.5	25105.0
(a)				12606.5	16808.5	22278.0	
(b)			8404.5		16809.0		
(c)				12607.0	16809.5		
W29	4202.5	6303.75	8405.0	12607.5	16810.0	22278.5	25105.5
(a)				12608.0	16810.5	22279.0	
(b)			8405.5		16811.0		
(c)				12608.5	16811.5		
W30	4203.0	6304.5	8406.0	12609.0	16812.0	22279.5	25106.0
(a)				12609.5	16812.5	22280.0	
(b)			8406.5		16813.0		
(c)				12610.0	16813.5		
W31	4203.5	6305.25	8407.0	12610.5	16814.0	22280.5	25106.5
(a)				12611.0	16814.5	22281.0	
(b)			8407.5		16815.0		
(c)				12611.5	16815.5		
W32	4204.0	6306.0	8408.0	12612.0	16816.0	22281.0	25107.0
(a)				12612.5	16816.5	22282.0	
(b)			8408.5		16817.0		
(c)				12613.0	16817.5		
W33	4204.5	6306.75	8409.0	12613.5	16818.0	22282.5	25107.5
(a)				12614.0	16818.5	22283.0	
(b)			8409.5		16819.0		
(c)				12614.5	16819.5		
W34	4205.0	6307.5	8410.0	12615.0	16820.0	22283.5	25108.0
(a)				12615.5	16820.5	22284.0	
(b)			8410.5		16821.0		
(c)				12616.0	16821.5		
W35	4205.5	6308.25	8411.0	12616.5	16822.0	22284.5	25108.5
(a)				12617.0	16822.5	22285.0	
(b)			8411.5		16823.0		
(c)				12617.5	16823.5		
W36	4206.0	6309.0	8412.0	12618.0	16824.0	22285.5	25091.5
(a)				12618.5	16824.5	22286.0	
(b)			8412.5		16825.0		
(c)				12619.0	16825.0		
W37	4206.5	6309.75	8413.0	12619.5	16826.0	22286.5	25092.0
(a)				12620.0	16826.5	22297.0	
(b)			8413.5		16827.0		
(c)				12620.5	16827.5		
W38	4207.0	6310.5	8414.0	12621.0	16828.0	22297.5	25092.5
(a)				12621.5	16828.5		
(b)			8414.5		16829.0	22298.0	
(c)				12622.0	16829.5		

W39	4207.5	6311.25	8415.0	12622.5	16830.0	22298.5	25093.0
(a)				12623.0	16830.5	22299.0	
(b)			8415.5		16831.0		
(c)				12623.5	16831.5		
W40	4208.0	6312.0	8416.0	12624.0	16832.0	22299.5	25093.5
(a)				12624.5	16832.5	22300.0	
(b)			8416.5		16833.0		
(c)				12625.0	16833.5		
W41	4208.5	6312.75	8417.0	12625.5	16834.0	22300.5	25094.0
(a)				12626.0	16834.5	22301.0	
(b)			8417.5		16835.0		
(c)				12626.5	16835.5		
W42	4209.0	6313.5	8418.0	12627.0	16836.0	22301.5	25094.5
(a)				12627.5	16836.5	22302.0	
(b)			8418.5		16837.0		
(c)				12628.0	16837.5		
W43	4209.5	6314.25	8419.0	12628.5	16838.0	22302.5	25095.0
(a)				12629.0	16838.5	22303.0	
(b)			8419.5		16839.0		
(c)				12629.5	16839.5		
W44	4210.0	6315.0	8420.0	12630.0	16840.0	22303.5	25095.5
(a)				12630.5	16840.5	22304.0	
(b)			8420.5		16841.0		
(c)				12631.0	16841.5		
W45	4210.5	6315.75	8421.0	12631.5	16842.0	22304.5	25096.0
(a)				12632.0	16842.5	22305.0	
(b)			8421.5		16843.0		
(c)				12632.5	16843.5		
W46	4211.0	6316.5	8422.0	12633.0	16844.0	22305.5	25096.5
(a)				12633.5	16844.5	22306.0	
(b)			8422.5		16845.0		
(c)				12634.0	16845.5		
W47	4211.5	6317.25	8423.0	12634.5	16846.0	22306.5	25097.0
(a)				12635.0	16846.5	22307.0	
(b)			8423.5		16847.0		
(c)				12635.5	16847.5		
W48	4212.0	6318.0	8424.0	12636.0	16848.0	22307.5	25097.5
(a)				12636.5	16848.5	22308.0	
(b)			8424.5		16849.0		
(c)				12637.0	16849.5		
W49	4212.5	6318.75	8425.0	12637.5	16850.0	22308.5	25098.0
(a)				12638.0	16850.5	22309.0	
(b)			8425.5		16851.0		
(c)				12638.5	16851.5		
W50	4213.0	6319.5	8426.0	12639.0	16852.0	22250.5	25098.5
(a)				12639.5	16852.5	22251.0	
(b)			8426.5		16853.0		
(c)				12640.0	16853.5		
W51	4213.5	6320.25	8427.0	12640.5	16854.0	22251.5	25099.0
(a)				12641.0	16854.5	22252.0	
(b)			8427.5		16855.0		
(c)				12641.5	16855.5		

W52	4214.0	6321.0	8428.0	12642.0	16856.0	22252.5	25099.5
(a)				12642.5	16856.5	22253.0	
(b)			8428.5		16857.0		
(c)				12643.0	16857.5		
W53	4214.5	6321.75	8429.0	12643.5	16858.0	22253.5	25100.0
(a)				12644.0		22254.0	
(b)			8429.5				
(c)				12644.5	16719.0		
W54	4215.0	6322.5	8430.0	12645.0	16707.0	22254.5	25100.5
(a)				12645.5	16707.5	22255.0	
(b)			8430.5	12530.0	16708.0		
(c)				12646.0	16708.5		
W55	4215.5	6323.25	8431.0	12646.5	16709.0	22255.5	25101.0
(a)				12647.0	16709.5	22256.0	
(b)			8431.5	12530.5	16710.0		
(c)				12647.5	16710.5		
W56	4216.0	6324.0	8432.0	12648.0	16711.0	22256.5	25101.5
(a)				12648.5	16711.5	22257.0	
(b)			8432.5	12531.0	16712.0		
(c)				12649.0	16712.5		
W57	4216.5	6324.75	8433.0	12649.5	16713.0	22257.5	25102.0
(a)				12650.0	16713.5	22258.0	
(b)			8433.5	12531.5	16714.0		
(c)				12650.5	16714.5		
W58	4217.0		8434.0	12651.0	16715.0	22258.5	25102.5
(a)				12532.0	16715.5	22259.0	
(b)			.8434.5.	12532.5	16715.5		
(c)					16716.5		
W59	4217.5		8435.0	12528.0	16717.0	22259.5	25103.0
W60	4218.0		8358.5	12528.5	16717.5	22260.0	25103.5
W61	4218.5		8359.0	12529.0	16718.0	22260.5	25104.0
W62	4219.0		8359.5	12529.5	16718.5	22261.0	25104.5

1/ All frequencies in this table are shown in kilohertz.

BILLING CODE 6712-01-C

(b) *Coast station frequencies*—(1) *Frequencies in the 100–27500 kHz band.* The following table describes the working carrier frequencies in the 100–27500 kHz band which are assignable to coast stations located in the designated geographical areas.

Area	Bands [1]								
	100–160 kHz	405–525 kHz	2 MHz	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz
Central Pacific	126.15	426.00	2037.5	4247.0	6348.0	8558.0	12695.5	17018.8	22425.0
		436.00	2045.0	4274.0	6365.5	8618.0	12808.5	17026.0	22479.0
	147.85	460.00	2061.5	4228.0	6477.5	8642.0	12844.5	17088.8	22515.0
		476.0			6488.0	8445.0	13002.0	16847.3	22557.0
		500.00					13033.5		
		512.00							
South Pacific		418.00	2049.5	4238.0	6355.0	8590.0	12691.0	17064.8	22413.0
		464.00	2055.5	4283.0	6463.5	8606.0	12912.0	17088.8	22467.0
		482.00				8642.0	12993.0	16880.9	
		500.00					13033.5		
		512.00							
Gulf of Mexico	153.00	410.00	2042.0	4256.0	6369.0	8473.0	12704.5	16018.8	22431.0
		420.00	2048.0	4274.0	6435.5	8550.0	12926.5	17117.8	22467.0
		434.00	2049.5	4310.0	6446.0	8570.0	12840.0	17170.4	22318.5
		438.00	2052.5	4322.0	6495.0	8666.0	13038.0	17172.4	
		478.00	2055.5			8445.0	13051.5	16871.3	
		484.00	2063.0			8453.0	12660.0		
		500.00							
		512.00							
Great Lakes		482.00		4316.0	6474.0	8534.0			
		500.00							
		512.00							
Hawaii		484.00	2052.5	4295.0	6407.5	8542.0	13029.0	16978.4	22509.0
		500.00							
		512.00							
Puerto Rico	153.00	486.00	2052.5	4244.0		8457.0	12700.0		
		500.00							
		512.00							
North Atlantic	112.85	418.00	2036.0	4238.0	6351.5	8502.0	12745.5	16933.2	22407.0
	124.05	436.00	2040.5	4268.0	6376.0	8514.0	12925.5	16968.8	22485.9
	130.35	442.00	2046.5	4331.0	6414.5	8586.0	12948.0	16973.8	22503.0
	132.10	460.00	2051.0	4343.0	6418.0	8610.0	12961.5	16997.8	22521.0
	134.55	472.00	2054.0	4346.0	6333.5	8630.0	12997.5	17021.8	22348.5
	137.00	478.00	2060.0		6337.0	8658.0	13020.0	17093.8	22366.5
		482.00			6344.0	8686.0	13024.5	16904.9	
	146.80	500.00					13033.5		
	147.50	512.00					13066.5		
Central Atlantic		426.00	2063.0	4346.0	6484.5	8502.0	12885.0		
		500.00							
		512.00							
South Atlantic	137.70	434.00	2039.0	4250.0	6389.8	8486.0	12952.5	16918.8	22431.0
		484.00	2043.5	4292.0	6407.5	8525.0	12970.5	17093.8	22563.0
		472.00	2051.0	4295.0	6411.0	8686.0	13011.0	17160.8	22318.5
		488.00	2057.0			8453.0	12660.0	17170.4	
		500.00						16861.7	
		512.00							
North Pacific		482.00	2058.5	4349.0	6411.0	8582.0	12907.5	17007.2	22599.0
		488.00	2063.0			8658.0	12916.5		
		500.00							
		512.00							
Alaska		416.00							
		438.00							
		452.00							
		472.00							
		512.00							

[1] All frequencies in this table are shown in kilohertz.

(2) *Conditions of use.* The following conditions are applicable to these frequencies:

(i) Frequencies in the 100–160 kHz band are assignable to coast stations for high seas communications only;

(ii) Frequencies above 5 MHz may be assigned primarily to stations serving the high seas and secondarily to stations serving inland waters of the United States including the Great Lakes, subject to showing of need and with the condition that interference will not be caused to any high seas coast station;

(iii) The frequency 410 kHz may be used on a secondary basis for the transmission of radiodetermination information and for transmitting by radiotelegraph radiodetermination messages to direction-finding stations; and

(iv) The frequency 512 kHz may be used as a supplementary calling frequency when 500 kHz is used for distress, urgency and safety communications. The use of the 512 kHz as a working frequency is prohibited in areas where 500 kHz is used for distress, urgency and safety communications.

§ 80.359 Frequencies for digital selective calling (DSC).

(a) *General purpose calling.* The following table describes the non-paired channels assignable to ship and coast stations for general purpose DSC using F1B or J2B emission.

Ship transmit [1]	Coast transmit [1]
4187.5	4357.0
6281.5	6506.0
8375.5	8718.5
12562.0	13100.0
12562.5	13100.5
16750.5	17232.0
16751.0	17232.5
22248.0	22595.0
22248.5	22595.5
156.525 MHz	156.525 MHz

[1] All frequencies in kHz unless otherwise indicated

(b) *Distress and safety calling.* The following table describes the non-paired frequencies assignable to ship and coast stations for DSC distress and safety calling. The provisions and procedures for distress and safety calling are

contained in CCIR Recommendation 541 as modified by § 80.103(c) of this part.

Non-paired channels.

Transmit and receive (kHz)
2187.5 kHz
4188..0 kHz
6282.0 kHz
8375.0 kHz
12563.0 kHz
16750.0 kHz
156.525 MHz

(c) *Working frequencies.* Coast and ship stations may use DSC techniques for general calling purposes on their assigned working frequencies in the 2000–27500 kHz band and on those frequencies in the 156–162 MHz band which are allocated for maritime control, commercial, non-commercial and public correspondence communications.

§ 80.361 Frequencies for narrow-band direct-printing (NB–DP) and data transmissions.

(a) The following table describes the frequency pairs and Channel Series which are assignable to ship and public coast stations for narrow-band direct printng (NB–DP) and data transmissions:

Paired channels.

Channel series	Band [1]											
	4 MHz		6 MHz		8 MHz		12 MHz		16 MHz		22 MHz	
	Coast transmit	Ship transmit	Coast transmit	Ship transmit	Coast transmit	Ship transmit	Coast transmit	Ship transmit	Coast transmit	Ship transmit	Coast transmit	Ship transmit
R1	4350.0	4170.5	6494.5	6256.5	8705.0	8344.0	13071.5	12491.5	17197.5	16660.5	22561.5	22192.5
R2	4350.5	4171.0	6495.0	6257.0	8705.5	8344.5	13072.0	12492.0	17198.0	16661.0	22562.0	22193.0
R3	4351.0	4171.5	6495.5	6257.5	8706.0	8345.0	13072.5	12492.5	17198.5	16661.5	22562.5	22193.5
R4	4351.5	4172.0	6496.0	6258.0	8706.5	8345.5	13073.0	12493.0	17199.0	16662.0	22563.0	22194.0
R5	4352.0	4172.5	6496.5	6258.5	8707.0	8346.0	13073.5	12493.5	17199.5	16662.5	22563.5	22194.5
R6	4352.5	4173.0	6497.0	6259.0	8707.5	8346.5	13074.0	12494.0	17200.0	16663.0	22564.0	22195.0
R7	4353.0	4173.5	6497.5	6259.5	8708.0	8347.0	13074.5	12494.5	17200.5	16663.5	22564.5	22195.5
R8	4353.5	4174.0	6498.0	6260.0	8708.5	8347.5	13075.0	12495.0	17201.0	16664.0	22565.0	22196.0
R9	4354.0	4174.5	6498.5	6260.5	8709.0	8348.0	13075.5	12495.5	17201.5	16664.5	22565.5	22196.5
R10	4354.5	4175.0	6499.0	6261.0	8709.5	8348.5	13076.0	12496.0	17202.0	16665.0	22566.0	22197.0
R11	4355.0	4175.5	6499.5	6261.5	8710.0	8349.0	13076.5	12496.5	17202.5	16665.5	22566.5	22197.5
R12	4355.5	4176.0	6500.0	6262.0	8710.5	8349.5	13077.0	12497.0	17203.0	16666.0	22567.0	22198.0
R13	4356.0	4176.5	6500.5	6262.5	8711.0	8350.0	13077.5	12497.5	17203.5	16666.5	22567.5	22198.5
R14	4356.5	4177.0	6501.0	6263.0	8711.5	8350.5	13078.0	12498.0	17204.0	16667.0	22568.0	22199.0
R15			6501.5	6263.5	8712.0	8351.0	13078.5	12498.5	17204.5	16667.5	22568.5	22199.5
R16			6502.0	6264.0	8712.5	8351.5	13079.0	12499.0	17205.0	16668.0	22569.0	22200.0
R17			6502.5	6264.5	8713.0	8352.0	13079.5	12499.5	17205.5	16668.5	22569.5	22200.5
R18			6503.0	6265.0	8713.5	8352.5	13080.0	12500.0	17206.0	16669.0	22570.0	22201.0
R19			6503.5	6265.5	8714.0	8353.0	13080.5	12500.5	17206.5	16669.5	22570.5	22201.5
R20			6504.0	6266.0	8714.5	8353.5	13081.0	12501.0	17207.0	16670.0	22571.0	22202.0
R21			6504.5	6266.5	8715.0	8354.0	13081.5	12501.5	17207.5	16670.5	22571.5	22202.5
R22			6505.0	6267.0	8715.5	8354.5	13082.0	12502.0	17208.0	16671.0	22572.0	22203.0
R23			6505.5	6267.5	8716.0	8355.0	13082.5	12502.5	17208.5	16671.5	22572.5	22203.5
R24					8716.5	8355.5	13083.0	12503.0	17209.0	16672.0	22573.0	22204.0
R25					8717.0	8356.0	13083.5	12503.5	17209.5	16672.5	22573.5	22204.5
R26					8717.5	8356.5	13084.0	12504.0	17210.0	16673.0	22574.0	22205.0
R27					8718.0	8357.0	13084.5	12504.5	17210.5	16673.5	22574.5	22205.5
R28							13085.0	12505.0	17211.0	16674.0	22575.0	22206.0
R29							13085.5	12505.5	17211.5	16674.5	22575.5	22206.5
R30							13086.0	12506.0	17212.0	16675.0	22576.0	22207.0
R31							13086.5	12506.5	17212.5	16675.5	22576.5	22207.5
R32							13087.0	12507.0	17213.0	16676.0	22577.0	22208.0
R33							13087.5	12507.5	17213.5	16676.5	22577.5	22208.5
R34							13088.0	12508.0	17214.0	16677.0	22578.0	22209.0
R35							13088.5	12508.5	17214.5	16677.5	22578.5	22209.5
R36							13089.0	12509.0	17215.0	16678.0	22579.0	22210.0
R37							13089.5	12509.5	17215.5	16678.5	22579.5	22210.5
R38							13090.0	12510.0	17216.0	16679.0	22580.0	22211.0
R39							13090.5	12510.5	17216.5	16679.5	22580.5	22211.5
R40							13091.0	12511.0	17217.0	16680.0	22581.0	22212.0
R41							13091.5	12511.5	17217.5	16680.5	22581.5	22212.5
R42							13092.0	12512.0	17218.0	16681.0	22582.0	22213.0
R43							13092.5	12512.5	17218.5	16681.5	22582.5	22213.5
R44							13093.0	12513.0	17219.0	16682.0	22583.0	22214.0
R45							13093.5	12513.5	17219.5	16682.5	22583.5	22214.5
R46							13094.0	12514.0	17220.0	16683.0	22584.0	22215.0
R47							13094.5	12514.5	17220.5	16683.5	22584.5	22215.5
R48							13095.0	12515.0	17221.0	16684.0	22585.0	22216.0
R49							13095.5	12515.5	17221.5	16684.5	22585.5	22216.5
R50							13096.0	12516.0	17222.0	16685.0	22586.0	22217.0
R51							13096.5	12516.5	17222.5	16685.5	22586.5	22217.5
R52							13097.0	12517.0	17223.0	16686.0	22587.0	22218.0
R53							13097.5	12517.5	17223.5	16686.5	22587.5	22218.5
R54							13098.0	12518.0	17224.0	16687.0	22588.0	22219.0
R55							13098.5	12518.5	17224.5	16687.5	22588.5	22219.5
R56							13099.0	12519.0	17225.0	16688.0	22589.0	22220.0
R57							13099.5	12519.5	17225.5	16688.5	22589.5	22220.5
R58									17226.0	16689.0	22590.0	22221.0
R59									17226.5	16689.5	22590.5	22221.5
R60									17227.0	16690.0	22591.0	22222.0
R61									17227.5	16690.5	22591.5	22222.5
R62									17228.0	16691.0	22592.0	22223.0
R63									17228.5	16691.5	22592.5	22223.5
R64									17229.0	16692.0	22593.0	22224.0
R65									17229.5	16692.5	22593.5	22224.6
R66									17230.0	16693.0	22594.0	22225.0
R67									17230.5	16693.5	22594.5	22225.5
R68									17231.0	16694.0		
R69									17231.5	16694.5		

[1] All frequencies in this table are shown in kilohertz.

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(b) The following table describes the frequencies and Channel Series with F1B or J2B emission which are assignable to ship stations for NB–DP and data transmission communications with public coast stations. Public coast stations may receive only on these frequencies:

Non-paired channels.

Channel series	Band [1]						
	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz	25 MHz
P1	[2] 4177.5	[2] 6268.0	8297.6	[2] 12520.0	[2] 16695.0	22226.0	25076.3
P2	4178.0	6268.5	8298.1	12520.5	16695.5	22226.5	25076.8
P3	4178.5	6269.0	8298.6	12521.0	16696.0		25077.3
P4	4179.0	6269.5	8299.1	12521.5	16696.5		25077.8
P5	4179.5		8299.6	12522.0	16697.0		25078.3
P6			[2] 8357.5	12522.5	16697.5		25078.8
P7				12523.0	16698.0		25079.3
P8				12523.5	16698.5		25079.8
P9				12524.0	16699.0		25080.3
P10				12524.5	16699.5		25080.8
P11				12525.0	16700.0		25081.3
P12				12525.5	16700.5		25081.8
P13				12526.0	16701.0		25082.3
P14				12526.5	16701.5		25082.8
P15				16702.0			25083.3
P16				16702.5			25083.8
P17				16703.0			25084.3
P18				16703.5			25084.8
P19				16704.0			25085.3
P20				16704.5			25085.8
P21				16705.0			25086.3
P22				16705.5			25086.8
P23							25087.3
P24							25087.8
P25							25088.3
P26							25088.8
P27							25089.3
P28							25089.8

[1] All frequencies in this table are shown in kilohertz.
[2] These frequencies and the frequency 2174.5 kHz are available only for distress and safety communications using NB–DP.

§ 80.363 Frequencies for facsimile.

The non-paired frequencies with FIC, F3C, J2C or J3C emission which are assignable to ship and coast stations for facsimile are as follows:

(a) *Ship station frequencies.* The following table describes two Channel Series of frequencies which are assignable to ship stations for facsimile. Only one Channel Series will be assigned to a ship station.

Carrier frequency (kHz)	
Series No. 1	Series No. 2
2089.1	2075.1
4159.2	4166.6
6327.2	6241.2
8324.6	6340.1
12483.6	12487.6
16652.6	16656.6
22184.6	22188.6

(b) *Coast station frequencies.* Frequencies in the 2000–2700 kHz bands listed in Part 2 of the Commission's rules as available for shared use by the maritime mobile service and other radio services are assignable to coast stations for facsimile.

Radiotelephony

§ 80.365 Scope.

The following sections describe the carrier frequencies and general conditions of use for the following types of radiotelephony:

—Distress, urgency, safety, call and reply.
—Working.
—Public.
—Private.

§ 80.367 General uses—radiotelephony.

(a) Ship stations communicating with foreign coast stations may operate on any frequency designated by that coast station.

(b) Radiotelephony stations communicating with a Government station may transmit on a Government frequency when authorized to do so by the Government station or agency if the emission, bandwidth and frequency tolerance of the maritime station are within the same limits as the Government station.

(c) Frequencies assigned to Government radio stations are assignable to non-Government maritime stations for radiotelephony communications with other non-Government stations in connection with activities performed in coordination with or on behalf of the Government.

(d) Frequencies in the 2000–27500 kHz band will be authorized only to ship stations that in addition are authorized to use frequencies in the 156–162 MHz band.

(e) Frequencies in the 2000–2850 kHz band will be authorized to private coast stations that in addition are authorized to use frequencies in the 156–162 MHz band.

(f) Ship and coast stations authorized to use frequencies in both the 2000–27500 kHz and 156–162 MHz bands must not use frequencies in the 2000–27500 kHz band for communications with any other station which is within the VHF service range.

(g) Coast and ship station radiotelephone working frequencies are available for DSC general purpose calling under the provisions of Section § 80.207(a).

(h) Digital selective calling techniques are not authorized on the frequencies 2182 kHz or 156.800 MHz.

§ 80.369 Distress, urgency, safety, call and reply frequencies.

This section describes the general uses and frequencies assignable to maritime stations for distress, urgency, safety, call and reply radiotelephony communications.

(a) In the 1605–3500 kHz band the frequency 2182 kHz is the international radiotelephony distress, urgency and safety frequency for ship, public and private coast stations and survival craft. It is also used for call and reply by ship stations on a primary basis and by public coast stations on a secondary basis. Ship, public and private coast, and survival craft stations must use J3E emission when operating on 2182 kHz. They may use H3E emission for communications with foreign coast and ship stations. Portable survival craft stations capable of operating on 500 kHz and transmitters authorized for use prior to January 1, 1972 may use A3E emission on 2182 kHz. See § 80.203(c).

(b) The frequencies 4125.0 kHz, 6215.5 kHz, 8257.0 kHz, 12392.0 kHz and 16.522.0 kHz may be used by coast and ship stations on a simplex basis for distress and safety communications. The frequency 4125.0 kHz may also be used for distress and safety communications between aircraft and maritime mobile stations.

(c) The frequency 5167.5 kHz may be used by any station for emergency communications in the State of Alaska. Peak envelope power of stations operating on this frequency must not exceed 150 watts. This frequency may also be used for calling and listening by stations authorized in the State of Alaska, but only for establishing communication.

(d) In the 4000–27500 kHz band ship and public coast stations may use the following frequency pairs for call and reply communications:

Call and reply frequency pairs in the 4000–27500 kHz band

Channel No.	Carrier frequency (kHz)	
	Ship transmit	Coast transmit
0821	8257.0	8780.9
1221	12392.0	13162.8
1621	16522.0	17294.9
2221	22062.0	22658.0

(e) In the 120–156 MHz band the following frequencies are used as indicated:

(1) The frequencies 121.500 MHz and 123.100 MHz using A3E emission are available for scene of action search and rescue operations to ship, coast and aircraft stations. Communications in support of search and rescue operations must employ the frequency 121.500 MHz only when communications on 123.100 MHz or other VHF frequencies is not practicable. Ship, coast and aircraft stations engaged in such communications on 121.500 MHz must shift to 123.100 MHz as soon as possible.

(2) The frequency 156.525 MHz is available for intership, ship and coast general purpose, distress and safety DSC calls.

(3) The frequency 156.800 MHz is the international radiotelephone distress, urgency, safety, call and reply frequency for ship, public and private coast stations. Stations operating on 156.800 MHz must be able to transmit and receive using G3E emission.

§ 80.371 Public correspondence frequencies.

This section describes the radiotelephony working frequencies assignable to ship and public coast stations.

(a) *Working frequencies in the 2000–4000 kHz band.* The following table describes the working carrier frequency pairs in the 2000–4000 kHz band.

Working frequency pairs in the 2000–4000 kHz band

Region	Carrier frequency (kHz)	
	Ship transmit	Coast transmit
East Coast:	2031.5	2490.0
	2116.0	[1] 2514.0
	2126.0	2522.0
	2142.0	2538.0
	2166.0	2558.0
	2198.0	2590.0
	2366.0	2450.0
	2382.0	2482.0
	2390.0	2566.0
	2400.0	2400.0
	2406.0	2442.0
West Coast:	2003.0	2450.0
	2009.0	2442.0
	2009.0	2566.0
	2031.5	2566.0
	2126.0	2522.0
	2206.0	2598.0
	2382.0	2466.0
	2406.0	2508.0
	2430.0	2482.0
Gulf Coast:	2009.0	2466.0
	2134.0	2530.0
	2142.0	2538.0
	[1] 2158.0	[1] 2550.0
	2166.0	2558.0
	2206.0	2598.0
	2366.0	2450.0
	2382.0	2482.0
	2430.0	2572.0
	2458.0	2506.0

Working frequency pairs in the 2000–4000 kHz band

Region	Carrier frequency (kHz)	
	Ship transmit	Coast transmit
Great Lakes [3]:	2118.0	2514.0
	2158.0	2550.0
	2206.0	2582.0
Alaska:	2131.0	2309.0
	2134.0	2312.0
	2237.0	2397.0
	2240.0	2400.0
Hawaii	2134.0	2530.0
Caribbean:	2009.0	2506.0
	[2] 2086.0	2585.0
	2134.0	2530.0
Guam	2009.0	2506.0

[1] Unlimited hours of use from December 15 to April 1 and day only from April 1 to December 15. Harmful interference must not be caused to any ship station in the Great Lakes region.

[2] In the Great Lakes region 2206 kHz is not available for transmission to U.S. ships except in the case of distress. U.S. coast stations in the Great Lakes area may use 2514, 2550 and 2582 kHz on a shared basis with coast stations of Canada. Except in the case of distress, the frequency 2550 kHz must not be used for transmission to ship stations of Canada since the associated ship station transmit frequency 2158 kHz is not available to Canadian ship stations for transmission and 2582 kHz must not be used for public correspondence transmissions to U.S. ship stations since the associated ship transmit frequency 2206 kHz is not available to U.S. ship stations for transmissions except in the case of distress.

[3] Limited to a peak envelope power of 150 watts.

(b) *Working frequencies in the 4000–27500 kHz band.* The following table describes the working carrier frequency pairs in the 4000–27500 kHz band:

Working carrier frequency pairs in the 4000–27500 kHz band

Region	Channel designation	Carrier frequency (kHz)	
		Ship transmit	Coast transmit
East Coast:	403	4089.2	4363.6
	410	4090.9	4365.3
	411	4094.0	4368.4
	412	4097.1	4391.5
	416	4109.5	4403.9
	417	4112.6	4407.0
	422	4126.1	4422.5
	423	4131.2	4425.6
	802	8196.1	8722.0
	805	8207.4	8731.3
	806	8216.7	8740.6
	810	8222.9	8746.8
	811	8226.0	8749.9
	814	8235.3	8759.2
	815	8238.4	8762.3
	825	8269.4	8793.3
	826	8272.5	8796.4
	831	8288.0	8811.9
	1203	12336.2	13107.0
	1206	12345.5	13116.3
	1208	12351.7	13122.5
	1209	12354.8	13125.8
	1210	12357.9	13128.7
	1211	12361.0	13131.8
	1215	12373.4	13144.2
	1222	12359.1	13165.9
	1223	12396.2	13169.0
	1228	12413.7	13184.5
	1230	12419.9	13190.7
	1601	16460.0	17232.9
	1605	16472.4	17245.3
	1609	16484.8	17257.7
	1610	16487.9	17260.8
	1611	18491.0	17263.9
	1618	16506.5	17279.4
	1620	16518.9	17291.8
	1626	16537.5	17310.4
	1631	16553.0	17325.9
	2201	22000.0	22596.0
	2205	22012.4	22608.4
	2210	22027.9	22623.9
	2215	22043.4	22639.4
	2216	22046.5	22642.5
	2222	22065.1	22661.1
	2236	22108.5	22704.5
West Coast:	401	4063.0	4357.4
	416	4109.5	4403.9
	417	4112.6	4407.0

Working carrier frequency pairs in the 4000-27500 kHz band

Region	Channel designation	Carrier frequency (kHz)	
		Ship transmit	Coast transmit
Gulf Coast:	804	8204.3	8728.2
	809	8219.8	8743.7
	814	8235.3	8759.2
	822	8260.1	8784.0
	1201	12330.0	13106.6
	1202	12339.1	13103.9
	1209	12336.2	13107.0
	1229	12418.8	13187.6
	1230	12419.9	13190.7
	1602	16463.1	17236.0
	1603	16466.2	17239.1
	1618	16506.5	17279.4
	1624	16531.3	17304.2
	2214	22040.3	22636.3
	2223	22068.2	22664.2
	2228	22083.7	22679.7
	2236	22106.5	22704.5
Great Lakes:	404	4072.3	4366.7
	405	4075.4	4369.8
	414	4103.3	4397.7
	419	4118.3	4413.2
	824	8266.3	8790.2
	829	8281.8	8805.7
	830	8284.9	8808.8
	1212	12364.1	13134.9
	1225	12404.4	13175.2
	1226	12407.5	13178.3
	1607	16478.6	17251.5
	1632	16556.1	17329.0
	1641	16584.0	17356.9
	2227	22060.8	22676.8
	2231	22093.0	22689.0
	2237	22111.6	22707.6
Hawaii:	405	4075.4	4369.8
	409	4087.8	4382.2
	418	4115.7	4410.1
	826	8272.5	8796.4
	418	4115.7	4410.1
	808	8216.7	8740.6
	1222	12395.1	13165.9
	1601	16460.0	17232.9
Caribbean:	604	6209.3	6515.7
	605	6212.4	6518.8
	1602	16463.1	17236.0
	1603	16466.2	17239.1
	2223	22068.2	22664.2

(c) *Working frequencies in the 156–162 MHz bond.* The following describes the working carrier frequency pairs in the 156–162 MHz band. No duplication of service areas is permitted on the same public coast station channel. Within the service area of a station, the ratio of desired to undesired co-channel signal strengths on public coast station channels must be at least 12 dB. Initial grants will be limited to one working frequency. An additional frequency may be assigned when the assigned working frequency is also used by a foreign station near enough to result in harmful radio interference by simultaneous operation or when the channel occupancy of the assigned frequency or frequencies exceeds 40 percent during its busiest hours of operation. An application for assignment of an additional working frequency based on channel occupancy must be accompanied by a factual showing that for any 4 days within a 10-consecutive-day period of station operation in each of 2 months immediately prior to the filing of the application, the assigned frequency or frequencies was in average daily use for exchanging communications at least 40 percent of the 3 busiest hours of each day, of which not more than half of the use time was waiting or setup time.

Working Carrier Frequency Pairs in the 156–162 MHz Band [1]

Channel designator	Carrier frequency (MHz)	
	Ship transmit	Coast transmit
24	157.200	161.800
84	157.225	161.825
25	157.250	161.850
85[2]	157.275	161.875
26	157.300	161.900
86	157.325	161.925
27	157.350	161.950
87	157.375	161.975
28	157.400	162.000
88[3]	157.425	162.025

[1] For special assignment of frequencies in this band in certain areas of Washington State, the Great Lakes and the east coast of the United States pursuant to arrangements between the United States and Canada, see Subpart B of this part.

[2] The frequency pair 157.275/161.875 MHz is available for assignment on a primary basis to ship and public coast stations. In Alaska it is also available on a secondary basis to private mobile repeater stations.

[3] Within 75 miles of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, the frequency 157.925 MHz is available for use by ship stations for public correspondence communications only. Seventy five miles from the United States/Canada border 157.425 MHz is available for intership and commercal communications. Outside the Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

(d) *Working frequencies in the Mississippi River System.* The Mississippi River System includes the Mississippi River and connecting navigable waters other than the Great Lakes. The following table describes the working carrier frequencies below 27500 kHz fr simplex radiotelephony communications on the Mississippi River System:

Mississippi River System Working Frequencies

Carrier frequency (kHz)		
[1] 2066.0	6209.3	8725.1
2782.0	6212.4	8737.5
4063.0	6515.7	12333.1
4087.8	6518.8	13103.9
4115.7	8201.2	16518.9
[2] 4410.1	8213.8	17291.8

[1] Limited to a maximum transmitter output power of 150 watts (PEP)

[2] J3E emission only.

(e) *Canda/U.S.A. channeling arrangement frequencies.* The VHF frequencies assignable to ship and coast stations in the State of washington and their usage limitations purusant to the Canada/U.S.A. channeling arrangement are described in Supart B of this Part.

§ 80.373 Private communications frequencies.

This section describes the carrier frequencies assignable for ship-to-ship and ship-to-coast private communications.

(a) *Special requirements for private coast stations.* Assignment to private coast stations of radiotelephony frequencies in the 2000–27500 kHz band are subject to the following:

(1) Private coast atations must see J3E emission.

(2) On 2182 kHz, private coast stations must be capable of receiving J3E and H3E emissions.

(3) Except in the Mississippi River System and Great Lakes, private coast stations serving lakes or rivers are not authorized on the 2000–2850 kHz band.

(4) Private coast stations may use DSC for calling on their assigned frequencies in the 2000–27500 kHz band and on those frequencies in the 156–162 MHz band which are allocated for maritime control, commercial and non-commercial communications.

(b) *Frequencies in the 2000–27500 kHz band for intership safety and other communications.* This paragraph describes the geographic areas of operation and the frequencies and liminations in the band available for assignment for intership safety and operational simplex radiotelephone communications.

(1) *Frequencies avaiable.*

Carrier frequency (kHz)	Geographic area
2003.0	Great Lakes only.
2082.5 [1, 2]	All areas.
2093.0 [1]	All areas.
2142.0	Pacific coast areas south of 42 degrees north on a day basis only.
2203.0 [2]	Gulf of Mexico.
2214.0 [1]	All areas.
2638.0 [1]	All areas.
2670.0	All areas.
2738.0 [1]	All areas except the Great Lakes.
2830.0	Gulf of Mexico only.

[1] Limited to a peak envelope power of 150 watts.
[2] Available on a secondary basis for intership communications by ships involved in non-commercial fishing.

(2) Except for 2093.0 kHz and 2214.0 kHz the frequencies shown in paragraph (b)(1) of this section are authorized primarily for intership safety communications in the indicated geographic area.

(3) Except for the frequencies 2093.0 kHz, 2214.0 Khz and 2670.0 kHz the frequencies shown in paragraph (b)(1) of this section may be used on a non-interference basis to safety communications, for operational communications and in the case of commercial transport ships and ships of municipal and state governments, for business communications.

(4) Ship stations may communicate with government coast stations on 2003.0 kHz about passage of vessels. Interference must not be caused to communications on the St. Lawrence Seaway and on the St. Mary's River.

(5) Ship stations may use 2670.0 kHz for communications with coast and ship stations of the U.S. Coast Guard. When a ship is not equipped to transmit on 2670.0 kHz or in the band 156–162 MHz the frequency 2003.0 kHz may be used on the Great Lakes for communications must not cause harmful interference to intership safety, operational and business communications.

(6) Navigational communications between ships and private coast stations may be exchanged on 2738.0 kHz and 2830.0 kHz. The frequencies 2214.0 kHz2738.0 kHz and 2830.0 kHz are assignable to private coast stations upon a showing that they need to communicate with commercial transport or Government ships. Private coast station applicants must show that public coast stations do not provide the required communications and harmful interference will not be caused to the intership use of these frequencies. The transmitter power must not exceed 150 watts. If 2214.0 kHz is authorized for ships, intership communication is also authorized. The geographic limitations to the frequencies 2738.0 kHz and 2830.0 kHz do not prohibit intership communication of less than 200 statute miles when only one of the ship stations is within a permitted use geographic area.

(7) Private aircraft stations may communicate with ship stations on 2738.0 kHz and 2830.0 kHz if:

(i) The communications are limited to business or operational needs of the vessel while it is engaged in commercial fishing activities in the open sea or adjacent waters;

(ii) Harmful interference must not be caused to intership communications;

(iii) The maximum output power used for such communication must not exceed 25 watts;

(c) *Frequencies in the 2000–27500 kHz bands for business and operational communications.* (1) The following table describes the frequencies available in the 2000–27500 kHz bands for business and operational radiotelephone simplex communications between ship and private coast stations or between ship stations:

Business and Operational Frequencies in the 2000–27500 kHz Band

Carrier frequency (kHz)			
2065.0 [1]	4419.4	8294.2	16593.3
2079.0 [1]	5680.0	12429.2	22124.0
2096.5 [1]	6218.8	12432.3	22127.1
3023.0	6221.8	12435.4	22130.2
4125.0 [2]	6521.9	16587.1	22133.3
4143.8	8291.1	16590.2	22136.4

[1] Limited to peak envelope power of 150 watts.
[2] Available domestically for distress and safety and internationally for calling purposes.

(2) Assignment of these frequencies is subject to the following limitations:

(i) These frequencies are shared and are not available for the exclusive use of any station. No more than one frequency from each of the frequency bands will be authorized to a private station without justification;

(ii) The emissions must be J3E except that when DSC is used the emission must be F1B or J2B;

(iii) Maximum transmitter output power is limited to 1 kW except as noted;

(iv) Authorization of the frequencies 2065.0 kHz and 2079.0 kHz must be coordinated with Canada;

(v) Ship, aircraft and private coast stations licensed to state and local governments may be authorized 3023.0 kHz and 5680.0 kHz for search and rescue scene of action coordination.

(d) *Radioprinter frequencies.* (1) The following table describes the bands available for radioprinter simplex communications between ship and private coast stations:

Frequency bands (kHz)	
2107–2170	4750–4850
2194–2495	5060–5450
2505–2850	5730–5950
3155–3400	7300–8100
4438–4650	7300–8100

(2) Ship stations may conduct radioprinter communications with private coast stations on frequencies within these bands which are assigned to their associated private coast stations;

(3) Any alphanumeric code may be used; and

(4) The bandwidth of radioprinter communications on frequencies within these bands must not exceed 300 Hz.

(e) *Frequencies in the 2000–27500 kHz band for medical advisory communications.* (1) Private coast stations may be authorized to use any frequencies within the 2030–27500 kHz band that are allocated to Government and non-Government fixed or fixed and mobile radio services shown in the Commission's Table of Frequency Allocations contained in § 2.106 of this chapter for communications with ship stations to provide medical treatment information or advice. Assignment of these frequencies is subject to the following limitations:

(2) No protection is provided from harmful interference caused by foreign stations; and

(3) A private coast station must cease operations on a frequency that causes harmful interference to a foreign station.

(f) *Frequencies in the 156–162 MHz band.* The following tables describe the carrier frequencies available in the 156–162 MHz band for radiotelephone communications between ship and private coast stations:

Frequencies in the 156–162 MHz band

Channel designator	Carrier frequency (MHz)		Points of communication (intership and between coast and ship unless otherwise indicated)
	Ship transmit	Coast transmit	
Port Operations			
01 [1]	156.050	156.050	
63 [1]	156.175	156.175	
05 [2]	156.250	156.250	
65	156.275	156.275	
66	156.325	156.325	
12 [2]	156.600	156.600	
73	156.675	156.875	
14 [2]	156.700	156.700	
74	156.725	156.725	
77 [4]	156.875		Intership only.
20 [1,3]	157.000	161.600	
Navigational (Bridge-to-Bridge) [4]			
13 [5]	156.650	156.650	
67 [1]	156.375	156.375	
Commercial			
01 [1]	156.050	156.050	
63 [1]	156.175	156.175	

Frequencies in the 156–162 MHz band			
Channel designator	Carrier frequency (MHz)		Points of communication (intership and between coast and ship unless otherwise indicated)
	Ship transmit	Coast transmit	
07	156.350	156.350	
67 [7]	156.375		Intership only.
08	156.400		Do.
09	156.450	156.450	
10	156.500	156.500	
11 [9]	156.550	156.550	
18	156.900	156.900	
19	156.950	156.950	
79	156.975	156.975	
80	157.025	157.025	
88 [8]	157.425		Intership only.
Digital Selective Calling			
70	156.525	156.525	
Noncommercial			
68	156.425	156.425	
69	156.450	156.450	
69	156.475	156.475	
71	156.575	156.575	
72	156.625		Intership only.
78	156.925	156.925	
Intership Safety			
06	156.300		a. Intership, or b. For SAR: Ship and aircraft for the U.S. Coast Guard.
Environmental			
15		156.750	Coast to ship only.
Maritime Control			
17 [6, 10]	156.850	156.850	Intership and ship to coast/coast to ship.
Liaison, U.S. Coast Guard			
22 [11]	157.100	157.100	Ship, aircraft, and coast stations of the U.S. Coast Guard and at Lake Mead, Nev., ship and coast stations of the National Park Service, U.S. Department of the Interior.

[1] 156.050 MHz and 156.175 MHz are available for port operations and commercial communications purposes when used only within the U.S. Coast Guard designated Vessel Traffic Services (VTS) area of New Orleans, on the lower Mississippi River from the various pass entrances in the Gulf of Mexico to Devil's Swamp Light at River Mile 242.4 above head of passes near Baton Rouge.

[2] 156.250 MHz is available for port operations communications use within the U.S. Coast Guard designated VTS radio protection areas of New Orleans and Houston described in § 80.383.

[3] 156.550 MHz, 156.600 MHz and 156.700 MHz are available in U.S. Coast Guard designated port areas only for VTS communications and in the Great Lakes available primarily for the Ship Movement Service (SMS) in sectors designated by the St. Lawrence Seaway Development Corporation or the U.S. Coast Guard. The use of these frequencies outside VTS and SMS protected areas is permitted provided they cause no interference to VTS and SMS communications in their respective designated sectors.

[4] Use of 156.875 MHz is limited to communications with pilots regarding the movement and docking of ships. Output power must not exceed 1 watt.

[5] Use of 156.375 MHz and 156.650 MHz primarily for intership communications. Available for coast to ship on a secondary basis. Normal output power must not exceed 1 watt. Maximum output power must not exceed 10 watts.

[6] Use of 156.650 MHz is available in the Great Lakes for ship movement service (SMS) in areas designated by the St. Lawrence Seaway Development Corporation or the U.S. Coast Guard. It is not available for use in the Mississippi River from South Pass Lighted Whistle Buoy "2" and Southwest Pass entrance Midchannel Lighted Whistle Buoy to mile 242.4 above head of Passes near Baton Rouge. Additionally it is not available for use in the Mississippi River-Gulf Outlet, the Mississippi River-Gulf Outlet Canal, and the Inner Harbor Navigational Canal, except to aid the transition from these areas.

[7] Use of 156.375 MHz is available for navigational communications only in the Mississippi River from South Pass Lighted Whistle Buoy "2" and Southwest Pass entrance Midchannel Lighted Whistle Buoy to mile 242.4 above head of Passes near Baton Rouge, and in addition over the full length of the Mississippi River-Gulf Outlet Canal from entrance to its junction with the Inner Harbor Navigation Canal, and over the full length of the Inner Harbor Navigation Canal from its junction with the Mississippi River to its entry to Lake Pontchartrain at the New Seabrook vehicular bridge.

[8] Within 75 miles of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, 157.425 MHz is half of the duplex pair designated as Channel 88. In this area, Channel 88 is available to ship stations for communications with public coast stations only. More than 75 miles from the United States/Canada border in the area of the Puget Sound and the Strait of Juan de Fuca, its approaches, the Great Lakes, and the St. Lawrence Seaway, 157.425 MHz is available for intership and commercial communications. Outside Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is also available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

[9] The frequency 156.850 MHz is authorized for search and rescue training exercises conducted by state or local governments.

[10] Coast stations on the Great Lakes may be authorized 156.850 MHz for transmission of scheduled Coded Marine Weather Forecasts (MAFOR), Great Lakes Weather Broadcast (LAWEB) and unscheduled Notices to Mariners or Bulletins. F3C and J3C emissions are permitted. Coast Stations on the Great Lakes must cease weather broadcasts which cause interference to stations operating on 156.800 MHz until the interference problem is resolved.

[11] The frequency 157.100 MHz is authorized for search and rescue training exercises by state or local government in conjunction with U.S. Coast Guard stations. Prior U.S. Coast Guard approval is required. Use must cease immediately on U.S. Coast Guard request.

[12] For intership communications, simplex operation must be used on the frequency 157.000 MHz.

(g) On-board communications: This section describes the carrier frequency pairs assignable for on-board mobile radiotelephony communications. The center of the on-board repeater antenna must not be located more than 10 feet above the ship's working deck. These frequencies are available on a shared basis with stations in the Business Radio Service.

Channel	Frequencies for On-Board Communications	
	Carrier frequency (MHz)	
	On-board mobile station	On-board repeater station [1]
1	467.750	457.525
2	467.775	457.550
3	467.800	457.575
4	467.825	457.600

[1] These frequencies may also be assigned to mobile stations for single frequency simplex operation.

(h) *Repeater frequencies in Alaska.* The following frequencies are assignable on a primary basis to public and on a secondary basis to private coast stations in Alaska for maritime repeater operations:

Repeater receive: 157.275 MHz
Repeater transmit: 161.875 MHz

(i) *Frequencies in the 1600–4500 kHz band for private communications in Alaska.* The following frequencies are also available for simplex radiotelephone communications between ship and private fixed stations located in the State of Alaska:

Carrier frequencies (kHz)		
1619.0	2382.0	2563.0
1622.0	2419.0	2566.0
1643.0	2422.0	2590.0
1646.0	2427.0	2616.0
1649.0	2430.0	3258.0
1652.0	2447.0	[1] 3261.0
1705.0	2450.0	4366.7
1709.0	2479.0	4369.8
1712.0	2482.0	4397.7
2003.0	2506.0	4403.9
2006.0	2509.0	4422.5
2115.0	2512.0	4425.6
2118.0	2535.0	5167.5
2379.0	2538.0	

[1] Ship stations must limit use of 3261.0 kHz to communications over distances which cannot be reached by the use of a frequency below 2700 kHz or above 156.000 MHz.

(j) *Frequencies for portable ship stations.* VHF frequencies authorized for stations authorized carrier frequencies in the 156.275 MHz to 157.450 MHz and 161.575 MHz to 162.025 MHz bands may also be authorized as marine utility stations. Marine-utility stations on shore must not cause interference to any VHF or coast station, VHF or UHF land mobile base station, or U.S. Government station.

Radiodetermination

§ 80.375 Radiodetermination frequencies.

This section describes the carrier frequencies assignable to radiodetermination stations. Only direction finding radar stations will be authorized on land.

(a) *Direction finding frequencies.* The carrier frequencies assignable to ship stations for direction finding operations are:

Carrier frequency
410 kHz
500 kHz
2182 kHz
8364 kHz
121.500 kHz
243.000 kHz

(1) Except in distress the assigned frequency for direction finding is 410 kHz;

(2) Ship stations may use 500 kHz for direction finding exclusively in Regions 1 and 3 outside areas of heavy radio traffic. Use must not interfere with distress urgency and safety signals or calls and replies.

(b) *Radiodetermination frequencies for cable-repair ships.* Except in Region 1 the channels in the 285–325 kHz band are assignable to ship stations for cable-repair radiodetermination operations. In Region 1 the channels available for assignment for such operations are limited to the 285–315 kHz band. The conditions of use of these channels are set forth in Subpart X of this part. Channel usage must comply with the following requirements:

(1) They are not permitted within the territorial waters of a foreign country;

(2) Their output power must not exceed 15 watts; and

(3) They must not cause interference to any maritime station in the radionavigation service.

(c) *Radionavigation frequencies.* The frequency bands assignable to ship and shore stations, including ship and shore radar stations, for radionavigation purposes are:

Ship transmit	Shore transmit
2900–3100 MHz 5460–5650 MHz 9300–9500 MHz 14.0–14.05 GHz	2900–3100 MHz 9300–9500 MHz

(d) *Radiolocation frequencies.* (1) The frequency bands assignable to ship and shore radiolocation stations are:

Ship and shore stations (MHz)
2450–2500 2900–3100 5460–5650 9300–9500

(2) The 2450–2500 MHz band may be used for radiolocation purposes on the conditions that harmful interference must not be caused to the fixed and mobile services and that no protection shall be given from interference caused by emissions from industrial, scientific, or medical equipment; and

(3) Use must not cause harmful interference to the radionavigation service and to the Government radiolocation service.

Ship Earth Stations

§ 80.377 Frequencies for ship earth stations.

The frequency band 1626.5–1645.5 MHz is assignable for communication, radiodetermination and telecommand messages, and developmental operations that are associated with the position, orientation and operational functions of maritime satellite equipment. The frequency band 1645.5–1646.5 MHz is reserved for use in the Future Global Maritime Distress and Safety System (FGMDSS).

Aircraft Stations

§ 80.379 Maritime frequencies assignable to aircraft stations.

This section describes the maritime frequencies assignable to aircraft stations for simplex operations:

(a) Available frequencies:

Carrier frequency	Conditions of use
2738 kHz	(1)
2830 kHz	(1)
3023 kHz	(2)
4125 kHz	(3)
5680 kHz	(2)
121.500 MHz	(4)
123.100 MHz	(4)
156.300 MHz	(5)
156.375 MHz	(5)
156.400 MHz	(5)
156.425 MHz	(5)
156.450 MHz	(5)
156.625 MHz	(5)
156.800 MHz	(5)
156.900 MHz	(5)
157.100 MHz	(6)
157.425 MHz	(5)(7)

(b) The conditions of use of the carrier frequencies in (a) above are:

(1) For permissible geographic areas of operation see §80.373(b)(1). For other limitations see § 80.373(b)(7);

(2) Aircraft and ship stations may use 3023.0 kHz and 5680.0 kHz for search and rescue scene-of-action coordination including communications between these stations and participating land stations. Stations using these frequencies must use J3E emission;

(3) Assignable for distress and safety communications between aircraft and maritime mobile stations;

(4) Assignable for search and rescue between ships and aircraft. Stations using these frequencies must use A3E emission;

(5) These frequencies may be used by aircraft stations when:

(i) The altitude of aircraft stations does not exceed 1,000 feet, except for reconnaissance aircraft participating in icebreaking operations where an altitude of 1,500 feet is allowed;

(ii) The mean power of aircraft stations must not exceed five watts;

(iii) Communications are limited to operations in which the maritime mobile stations are primarily involved and where direct communications between the aircraft and the ship or coast station is required;

(iv) Stations may use 156.300 MHz for safety purposes only;

(v) Stations may use 156.800 MHz for distress, safety and calling only; and

(vi) Use of 156.375 MHz by aircraft is not permitted in the New Orleans VTS area specified in §80.383.

(6) The use of 157.100 MHz is limited to communications with stations of the Department of Interior at Lake Mead, Nevada; and

(7) Commercial fishing vessels and associated aircraft may use 157.425 MHz while engaged in commercial fishing activities except within 75 miles of the United States/Canada border and Puget Sound and the Strait of Juan de Fuca and its approaches, the Great Lakes, and the St. Lawrence Seaway.

Operational Fixed Stations

§ 80.381 Frequencies for operational fixed stations.

The following carrier frequencies in the 72–76 MHz band are assignable to operational fixed stations using vertical polarization, if no harmful interference is caused to TV reception on Channels 4 and 5. These frequencies are shared with the Land Mobile and Aviation Radio Services.

OPERATIONAL FIXED FREQUENCIES IN THE 72–76 MHz BAND

CARRIER FREQUENCY IN MHz

72.02	72.28	72.64	72.90	75.68	75.94
72.04	72.30	72.66	72.92	75.70	75.96
72.06	[1] 72.32	72.68	72.94	75.72	75.98
[1] 72.08	72.34	72.70	[1] 72.96	75.74	.....
72.10	72.36	72.72	72.98	75.78	.....
72.12	72.38	72.74	75.42	75.78	.....
72.14	[1] 72.40	72.76	75.46	75.80	.....
[1] 72.16	72.42	72.78	75.50	75.82	.....
72.18	72.46	72.80	75.54	75.84	.....
72.20	72.50	72.82	75.58	75.86	.....
72.22	72.54	72.84	75.62	75.88	.....
[1] 72.24	72.56	72.86	[1] 75.64	75.90	.....
72.26	72.62	72.88	75.66	75.92	.....

[1] These frequencies are shared on a secondary basis with the Radio Control Service until December 17, 1987.

Vessel Traffic Services System (VTS)

§ 80.383 Vessel Traffic Services (VTS) System frequencies.

This section describes the carrier frequencies available for use in the Coast Guard Vessel Traffic Services (VTS) systems within the designated geographic radio protected areas.

(a) Assigned frequencies:

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
156.250	Seattle.
156.550	New York, New Orleans, Houston.
156.600	New York, New Orleans, Houston.
156.700	New York, New Orleans, Seattle.

(b) The U.S. Coast Guard designated radio protection areas for VTS are as follows:

(1) *New York.* The rectangle between north latitudes 40 degrees and 42 degrees and west longitudes 71 degrees and 74 degrees 30 minutes;

(2) *New Orleans.* The rectangle between north latitudes 27 degrees 30 minutes and 31 degrees 30 minutes and west longitudes 87 degrees 30 minutes and 92 degrees;

(3) *Houston.* The rectangle between north latitudes 28 degrees 30 minutes and 30 degrees 20 minutes and west longitudes 93 degrees 30 minutes and 96 degrees; and

(4) *Seattle (Puget Sound).* From 49 degrees North 121 degrees West on the United States-Canadian Border, south to 46 degrees 30 minutes North 121 degrees West, then west to 46 degrees 30 minutes North 125 West, then north to 48 degrees 30 minutes North 125 degrees West, then east to the United States-Canadian Border and thence along the United States-Canadian Border to 49 degrees North 121 degrees West.

(c) The use of the frequencies shown in paragraph (a) of this section is permitted in areas outside the Coast Guard radio protection areas provided there is no interference to VTS communications within the VTS areas.

Automated Systems

§ 80.385 Frequencies for automated systems.

This section describes the carrier frequencies for the Automated Maritime Telecommunications System (AMTS) and for other automated multi-station systems.

(a) *Automated Maritime Telecommunications System (AMTS).*

(1) The Automated Maritime Telecommunications System (AMTS) is an integrated and interconnected maritime communications system serving ship stations and offshore fixed platforms in the Mississippi River, its connecting waterways and the offshore waters of the Gulf of Mexico.

(2) The following carrier frequency pairs are available for radiotelephony, facsimile and teleprinter communications. Coast stations within 169 kilometers (105 miles) of a TV channel 13 station will not be authorized on the frequencies in Groups C and D. AMTS operations must not cause harmful interference to the U.S. Navy SPASUR system which operates in the band 216.880–217.080 MHz.

Channel No.	Carrier frequency (MHz)		
	Ship transmit	Coast transmit	Group
101	218.0125	216.0125	D
102	218.0375	216.0375	
103	218.0625	216.0625	
104	218.0875	216.0875	
105	218.1125	216.1125	
106	218.1375	216.1375	
107	218.1625	216.1625	
108	218.1875	216.1875	
109	218.2125	216.2125	
110	218.2375	216.2375	
111	218.2625	216.2625	
112	218.2875	216.2875	
113	218.3125	216.3125	
114	218.3375	216.3375	
115	218.3625	216.3625	
116	218.3875	216.3875	
117	218.4125	216.4125	
118	218.4375	216.4375	
119	218.4625	216.4625	
120	218.4875	216.4875	
121	218.5125	216.5125	C
122	218.5375	216.5375	
123	218.5625	216.5625	
124	218.5875	216.5875	
125	218.6125	216.6125	
126	218.6375	216.6375	
127	218.6625	216.6625	
128	218.6875	216.6875	
129	218.7125	216.7125	
130	218.7375	216.7375	
131	218.7625	216.7625	
132	218.7875	216.7875	
133	218.8125	216.8125	
134	218.8375	216.8375	
135	218.8625	216.8625	
136	218.8875	216.8875	
137	218.9125	216.9125	
138	218.9375	216.9375	
139	218.9625	216.9625	
140	218.9875	216.9875	
141	219.0125	217.0125	B
142	219.0375	217.0375	
143	219.0625	217.0625	
144	219.0875	217.0875	
145	219.1125	217.1125	
146	219.1375	217.1375	
147	219.1625	217.1625	
148	219.1875	217.1875	
149	219.2125	217.2125	
150	219.2375	217.2375	
151	219.2625	217.2625	
152	219.2875	217.2875	
153	219.3125	217.3125	
154	219.3375	217.3375	
155	219.3625	217.3625	
156	219.3875	217.3875	
157	219.4125	217.4125	
158	219.4375	217.4375	
159	219.4625	217.4625	
160	219.4875	217.4875	
161	219.5125	217.5125	A
162	219.5375	217.5375	
163	219.5625	217.5625	
164	219.5875	217.5875	
165	219.6125	217.6125	
166	219.6375	217.6375	
167	219.6625	217.6625	
168	219.6875	217.6875	
169	219.7125	217.7125	
170	219.7375	217.7375	
171	219.7625	217.7625	
172	219.7875	217.7875	
173	219.8125	217.8125	
174	219.8375	217.8375	
175	219.8625	217.8625	
176	219.8875	217.8875	
177	219.9125	217.8125	
178	219.9375	217.9375	
179	219.9625	217.9625	
180	219.9875	217.9875	

(b) *Automated multi-station system.* Great Lakes Region. The following table describes the assignable carrier frequency pairs to provide communication services including automated calling, teleprinter and facsimile:

Channel designator	Carrier frequency (MHz)	
	Ship transmit	Coast transmit
17	None	[1] 156.850
84	157.225	161.825
85	157.275	161.875
86	157.325	161.925
87	157.375	161.975

[1] The frequency 156.850 MHz is used only to transmit scheduled weather broadcasts.

Alaska Fixed Stations

§ 80.387 Frequencies for Alaska fixed stations.

(a) The carrier frequencies listed in (b) of this section are assignable for point-to-point simplex radiotelephone communications between private fixed stations in Alaska. The frequency pairs listed in paragraph (d) of this section are assignable for point-to-point duplex radiotelephone communications between private and public fixed stations in Alaska. Fixed stations in Alaska authorized to share carrier frequencies with the maritime mobile service must always give priority on such frequencies to maritime distress, urgency and safety communications.

(b) *Alaska-private fixed station frequencies:*

Carrier frequency (kHz)		
1643.0	2430.0	2773.0
1646.0	2447.0	3164.5
1649.0	2450.0	3183.0
1652.0	2463.0	3198.0
1657.0	2466.0	3201.0
[1] 1660.0	2471.0	3258.0
1705.0	2479.0	3231.0
1709.0	2482.0	3303.0
1712.0	2506.0	3335.0
2003.0	2509.0	4035.0
2006.0	2512.0	5164.5
2115.0	2535.0	5204.5
2118.0	2538.0	[2] 6948.5
2253.0	2563.0	[2] 7368.5
2400.0	2566.0	8067.0
2419.0	2601.0	8070.0
2422.0	2616.0	[2] 11437.0
2427.0	2691.0	[2] 11601.5

[1] Use of 1660.0 kHz must be coordinated to protect radiolocation on adjacent channels.
[2] Peak envelope power must not exceed 1 kW for radiotelephony. Teleprinter use is authorized.

(c) Use of the frequencies in (b) of this section must meet the following conditions:

(1) Communications between private coast and private fixed stations are prohibited; and

(2) Station licensees must not charge for third party communication services between their station and any other private fixed station.

(d) The following carrier frequency pairs are assignable for point-to-point communications between public fixed and private fixed stations:

Public fixed station frequencies (kHz)	Private fixed Station frequencies (kHz)
[1] 2312.0	2632.0
2604.0	2256.0
2781.0	[3] 2474.0
2784.0	2694.0
3167.5	3354.0
3180.0	2776.0
3241.0	3357.0
3362.0	3238.0
[2] 4791.5	5207.5
5370.0	[4] 5134.5, [4] 5137.5

[1] This frequency is assignable on a primary basis to public coast stations and on a secondary basis to public fixed stations.
[2] Teleprinter use is authorized.
[3] Peak envelope power must not exceed 1 kW.
[4] Licensees must cease all communications on 5134.5 kHz and 5137.5 kHz when notified by the State of Alaska of an emergency or disaster. Licensees may resume communication on these frequencies when notified by the State of Alaska that the disaster or harmful interference has ended.

VOL 51 ISS 169 SE 2 1986 UMI

(e) The public fixed station frequencies are assignable to common carriers.

(f) The private fixed station frequencies described in paragraph (d) of this section are assignable to private entities located in areas where common carrier facilities are not available. Private fixed stations operating on the frequencies in paragraph (d) must communicate with public fixed stations only. Private fixed stations are permitted to provide third party communications between their station and the public fixed stations. A charge for such service is prohibited.

(g) U.S. Government frequencies will be authorized if the Commission determines that the assignment is in the public interest.

Maritime Support Stations

§ 80.389 Frequencies for maritime support stations.

(a) *Marine receiver test.* Maritime support stations will be authorized to conduct receiver tests on the ship station frequencies of the channels assigned to the associated public coast station.

(b) *Shore radar and radiolocation tests.* The following frequency bands are available for assignment to demonstrate radar and radiolocation equipment. The use of frequencies within these bands must not cause harmful interference to the radionavigation service and the Government radiolocation service: 2450–2500 MHz, 2900–3100 MHz, 5460–5650 MHz, 9300–9500 MHz, 14.0–14.05 GHz.

Developmental Stations

§ 80.391 Frequencies for developmental stations.

(a) Ship and shore stations engaged in developmental operations may be assigned any frequency or frequencies assignable to the service and class of station they propose to operate. The following frequency bands are also assignable to ships and coast stations for developmental operations:

Ship transmit	Coast transmit
5350–5460 MHz [1] 6425–6525 MHz	5350–5460 MHz [1]
9000–9200 MHz [1] 11700–12200 MHz 17700–19700 MHz 27500–29500 MHz	9000–9200 MHz [1] 11700–12200 MHz

[1] The bands 5350–5460 MHz and 9000–9200 MHz are assignable for developmental operations at ship and shore radiolocation stations if their operations do not cause harmful interference to aeronautical radionavigation or Government radiolocation services.

(b) Stations authorized to conduct developmental operations are prohibited from communicating with any station of a country other than the United States.

(c) Stations authorized to conduct developmental operations must not cause harmful interference to the operation of stations authorized in other public services nor to any United States Government or foreign station.

Subpart I—Station Documents

§ 80.401 Station documents requirement.

Licensees of radio stations are required to have current station documents as indicated in the following table.

BILLING CODE 6712-01-M

LEGEND

R = REQUIRED

DOCUMENTS →

RADIO STATION CATEGORY	STATION LICENSE	APPROPRIATE OPERATOR AUTHORIZATION	STATION LOGS	APPROPRIATE SAFETY CONVENTION CERTIFICATE	COMMUNICATIONS ACT SAFETY CERTIFICATE	GREAT LAKES RADIO AGREEMENT SAFETY CERTIFICATE	BRIDGE-TO-BRIDGE ACT SAFETY CERTIFICATE	PART 80; FCC RULES AND REGULATIONS	ALPHABETICAL LIST OF MARITIME MOBILE CALL SIGNS	LIST OF SHIP STATIONS	MANUAL FOR USE BY MARITIME MOBILE (M/M) SERVICE & M/M SATELLITE SERV.	LIST OF COAST STATIONS	LIST OF RADIODETERMINATION AND SPECIAL SERVICES STATIONS	STATION EQUIPMENT RECORDS
SHIPBOARD: TELEGRAPH; TITLE III, PART II / SAFETY CONVENTION	R1	R	R	R				R	R	R	R	R	R	
TELEPHONE; TITLE III, PART II / SAFETY CONVENTION	R1	R	R	R				R			R	R2		
TELEPHONE; TITLE III, PART II	R1	R	R					R						
TELEPHONE; TITLE III, PART III	R1	R	R		R			R						
TELEPHONE; GREAT LAKES RADIO AGREEMENT	R	R	R			R								
TELEPHONE; BRIDGE-TO-BRIDGE ACT	R	R	R				R							
RADAR	R													
ON-BOARD	R													R
VOLUNTARY	R	R												
LAND: PUBLIC COAST (MF)	R	R	R					R	R3	R3	R3			
PUBLIC COAST (HF)	R	R	R					R	R	R	R			
PUBLIC COAST (VHF)	R	R	R					R						
PRIVATE COAST	R	R												
RADIODETERMINATION	R	R												
OPERATIONAL FIXED	R	R												
MARITIME SUPPORT	R	R												
ALASKA - PUBLIC FIXED	R	R	R											
ALASKA - PRIVATE FIXED	R	R												
SHIP/COAST: MARINE UTILITY	R	R												

BILLING CODE 6712-01-C

Notes:

1. The expired station license must be retained in the station records until the first Commission inspection after the expiration date.

2. Alternatively, a list of coast stations maintained by the licensee with which communications are likely to be conducted, showing watchkeeping hours, frequencies and charges, is authorized.

3. Required only if station provides a service to oceangoing vessels.

§ 80.403 Availability of documents.

Station documents must be readily available to the licensed operator(s) on duty during the hours of service of the station and to authorized Commission employees upon request.

§ 80.405 Station license.

(a) *Requirement.* Stations must have an authorization granted by the Federal Communications Commission.

(b) *Application.* Application for authorizations in the maritime services must be submitted on the prescribed forms in accordance with Subpart B of this part.

(c) *Posting.* The current station authorization or a clearly legible copy must be posted at the principal control point of each station. If a copy is posted, it must indicate the location of the original. When the station license cannot be posted, as in the case of a marine utility station operating at temporary unspecified locations, it must be kept where it will be readily available for inspection. The licensee of a station on board a ship subject to Parts II or III of Title III of the Communications Act or the Safety Convention must retain the most recently expired ship station license in the station records until the first Commission inspection after the expiration date.

§ 80.407 Operator authorization.

This section contains information and rules pertinent to the application for and posting of radio operator authorizations. Rules applicable to radio operator requirements are contained in Subpart D of this part and other rules pertinent to commercial radio operators are contained in Part 13 of this chapter.

(a) *Application.* Detailed information about application forms, filing procedures, and places to file applications for radio operator authorizations is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from any Commission District Office or from the FCC, Washington, DC 20554.

(b) *Posting.* When a Commission-authorized operator is required, the original authorization of each operator must be posted at the principal control point of the station. In lieu of posting, an operator who holds a restricted radiotelephone operator permit or a higher class operator license may have the operator authorization or a photocopy thereof available for inspection upon request by authorized Commission employees when operating the following:

(1) A voluntary station;

(2) Any class of ship station when the operator is on board solely to service the radio equipment; or

(3) A portable station.

§ 80.409 Station logs.

(a) *General requirements.* Logs must be established and properly maintained as follows:

(1) The log must be kept in an orderly manner. The required information for the particular class or category of station must be readily available. Key letters or abbreviations may be used if their proper meaning or explanation is contained elsewhere in the same log.

(2) Erasures, obliterations or willful destruction within the retention period are prohibited. Corrections may be made only by the person originating the entry by striking out the error, initialing the correction and indicating the date of correction.

(3) The log must identify the vessel name, country of registry, and official number of the vessel.

(4) The station licensee and the radio operator in charge of the station are responsible for the maintenance of station logs.

(b) *Availability and retention.* Station logs must be made available to authorized Commission employees upon request and retained as follows:

(1) Logs must be retained by the licensee for a period of one year from the date of entry, and when applicable for such additional periods as required by the following paragraphs:

(i) Logs relating to a distress situation or disaster must be retained for three years from the date of entry.

(ii) If the Commission has notified the licensee of an investigation, the related logs must be retained until the licensee is specifically authorized in writing to destroy them.

(iii) Logs relating to any claim or complaint of which the station licensee has notice must be retained until the claim or complaint has been satisfied or barred by statute limiting the time for filing suits upon such claims.

(2) Logs containing entries required by paragraphs (e) and (f) of this section must be kept at the principal radiotelephone operating location while the vessel is being navigated. All entries in their original form must be retained on board the vessel for at least 30 days from the date of entry.

(3) Ship radiotelegraph logs must be kept in the principal radiotelegraph operating room during the voyage.

(c) *Public coast station logs.* Public coast stations must maintain a log as follows:

(1) "ON DUTY" must be entered by the operator beginning a duty period, followed by the operator's signature. "OFF DUTY" must be entered by the operator being relieved of or terminating duty, followed by the operator's signature.

(2) The date and time of making an entry must be shown opposite the entry.

(3) Failure of equipment to operate as required and incidents tending to unduly delay communication must be entered.

(4) All measurements of the transmitter frequency(ies) must be entered with a statement of any corrective action taken.

(5) Entries must be made giving details of all work performed which may affect the proper operation of the station. The entry must be made, signed and dated by the operator who supervised or performed the work and, unless the operator is regularly employed on a full-time basis at the station, must also include the mailing address, class, serial number, and expiration date of the operator license.

(6) Entries must be made about the operation of the antenna tower lights when the radio station has an antenna structure requiring illumination by Part 17 of this chapter.

(7) All distress or safety related calls transmitted or received must be entered, together with the frequency used and the position of any vessel in need of assistance.

(8) Coast stations which maintain a watch on 500 kHz must enter the time this watch is begun, suspended or ended.

(d) *Ship radiotelegraph logs.* Logs of ship stations which are compulsorily equipped for radiotelegraphy and operating in the band 90 to 535 kHz must contain log entries as follows:

(1) The date and time of each occurrence or incident required to be entered in the log must be shown opposite the entry and the time must be expressed in Coordinated Universal Time (UTC).

(2) "ON WATCH" must be entered by the operator beginning a watch, followed by the operator's signature. "OFF WATCH" must be entered by the operator being relieved or terminating a watch, followed by the operator's

VOL 51 ISS 169 SE 2 1986 UMI

signature. All log entries must be completed by the end of each watch.

(3) During the watch, all calls and replies to and from the station must be entered to include the time, frequencies, and call letters of the station communicated with or heard. Also, any messages exchanged must be entered to include the time, frequency, and call letters of the station(s) communicated with or heard.

(4) During the watch, an entry must be made twice per hour stating whether the international silence period was observed. Entries must also be made indicating any signals or communications heard on 500 kilohertz during this period. If no signals are heard on 500 kHz, an entry to that effect must be made.

(5) The time and reason for discontinuance and the time of resuming the watch must be entered when the 500 kHz watch is discontinued.

(6) All distress calls, automatic-alarm signals, urgency and safety signals made or intercepted, the complete text, if possible, or distress messages and distress communications, and any incidents or occurrences which may appear to be of importance to safety of life or property at sea, must be entered, together with the time of such observation or occurrence and the position of the ship or other mobile unit in need of assistance.

(7) The position of the ship at least once per day.

(8) A daily entry must be made comparing the radio station clock with standard time, including errors observed and corrections made. For this purpose, authentic radio time signals received from land or fixed stations will be acceptable as standard time.

(9) All test transmissions must be entered, including the time of the transmissions and the approximate geographical location of the vessel.

(10) Any failure of equipment to operate as required and any incidents tending to unduly delay communications must be entered.

(11) A ship required to keep a radiotelegraph watch on 500 kHz must meet the following:

(i) Entries must be made of the results of tests of the emergency installation including transmitter antenna current, hydrometer readings of lead-acid storage batteries, voltage readings of other types of batteries, and quantity of fuel available for engine generators.

(ii) When the vessel is in the open sea, a log entry must be made each time the emergency power supply is used to carry on a communication other than during a safety watch.

(iii) When the vessel is in the open sea, a daily entry must be made showing whether the storage batteries were brought up to the normal full charge condition that day.

(iv) Entries must be made stating when each storage battery is placed on charge or off charge.

(v) Entries must be made about maintenance of survival craft radio equipment, including a record of charging of any storage batteries supplying power to such equipment. The record of charging must show when such storage battery is placed on charge and when it is taken off charge.

(vi) Results of inspections and tests of survival craft radio equipment, prior to departure of the vessel from a harbor or port and weekly inspections, must be entered.

(vii) On a cargo vessel equipped with an auto alarm, the entry "AUTO ALARM ON" and the entry "AUTO ALARM OFF", respectively, must be made whenever the operator places the auto alarm in and out of operation. Results of the required auto alarm tests must be entered daily, including the minimum number of 4-second dashes from the testing device which were necessary to properly operate the alarm.

(viii) On a cargo vessel equipped with an auto alarm, a log entry must be made whenever the auto alarm becomes inoperative. The entry must include a statement showing the time the operator was called to make repairs; the reason for the failure; parts changed; repairs; and the time the auto alarm was restored to service.

(e) *Ship radiotelephone logs.* Logs of ship stations which are compulsorily equipped for radiotelephony must contain the following applicable log entries and the time of their occurrence:

(1) A summary of all distress, urgency and safety traffic;

(2) A summary of communications conducted on other than VHF frequencies between the ship station and land or mobile stations;

(3) A reference to important service incidents;

(4) The position of the ship at least once a day;

(5) The name of the operator at the beginning and end of the watch period;

(6) The time the watch begins when the vessel leaves port, and the time it ends when the ship reaches port;

(7) The time the watch is discontinued, including the reason, and the time the watch is resumed;

(8) The times when storage batteries provided as a part of the required radiotelephone installation are placed on charge and taken off charge;

(9) Results of required equipment tests, including specific gravity of lead-acid storage batteries and voltage reading of other types of batteries provided as a part of the compulsory installation;

(10) Results of inspections and tests of compulsorily fitted lifeboat radio equipment;

(11) A daily statement about the condition of the required radiotelephone equipment, as determined by either normal communication or test communication;

(12) When the master is notified about improperly operating radiotelephone equipment.

(f) *Applicable radiotelephone log entries.* The log entries listed in paragraph (e) of this Section are applicable as follows:

(1) Radiotelephony stations subject to Parts II and III of Title III of the Communications Act and/or the Safety Convention must record entries indicated by paragraph (e)(1) through (e)(10) of this section.

(2) Radiotelephony stations subject to the Great Lakes Radio Agreement must record entries indicated by paragraphs (e) (1), (5), (8), (9), (11) and (12) of this section.

(3) Radiotelephony stations subject to the Bridge-to-Bridge Act must record entries indicated by paragraphs (e) (1), (5), (6), (7), (11) and (12) of this section.

§ 80.411 Vessel certification or exemption.

(a) *Application.* The application procedures for inspection and certification and for exemptions are contained in § 80.59.

(b) *Posting.* Communications Act, Safety Convention and Great Lakes Radio Agreement certificates or exemptions must be posted in a prominent, accessible place in the ship.

§ 80.413 On-board station equipment records.

(a) The licensee of an on-board station must keep equipment records which show:

(1) The ship name and identification of the on-board station;

(2) The number and type of repeater and mobile units used on-board the vessel; and

(3) The date and type of equipment which is added or removed from the on-board station.

§ 80.415 ITU publications.

(a) The following publications listed in the table contained in § 80.401 are published by the International Telecommunications Union (ITU):

(1) Manual for Use of the Maritime Mobile and Maritime Mobile-Satellite Services.
(2) List IV—List of Coast Stations.
(3) List V—List of Ship Stations.
(4) List VI—List of Radiodetermination and Special Services Stations.
(5) List VII A—Alphabetical List of Call Signs of Stations Used by the Maritime Mobile Service, Ship Station Selective Call Numbers or Signals and Coast Station Identification Numbers or Signals.

(b) The publications listed in paragraph (a) of this section may be purchased from:

International Telecommunication Union, General Secretariat—Sales Section, Place des Nations, CH–1211 Geneva 20, Switzerland

§ 80.417 FCC Rules and Regulations.

The Commission's printed publications are described in Subpart C of Part O of this chapter. These publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Commission does not furnish copies of these publications but will furnish a price list, Information Services and Publications-Bulletin No. 1, upon request. Requests for copies of this list should be directed to the Office of Congressional and Public Affairs, Federal Communications Commission, Washington, DC 20554.

STATIONS ON LAND

Subpart J—Public Coast Stations

§ 80.451 Supplemental eligibility requirements.

A public coast station license may be granted to any person meeting the citizenship provisions of § 80.15(b).

§ 80.453 Scope of communications.

Public coast stations provide ship/shore radiotelephone and radiotelegraph services.

(a) Public coast stations are authorized to communicate:
(1) With any ship or aircraft station operating in the maritime mobile service, for the transmission or reception of safety communication;
(2) With any land station to exchange safety communications to or from a ship or aircraft station;
(3) With Government and non-Government ship and aircraft stations to exchange public correspondence;
(b) Public coast stations are authorized to communicate with a designated station at a remote fixed location where other communication facilities are not available.
(c) Public coast stations are authorized to transmit meteorological and navigational information of benefit to mariners.
(d) Each public coast telegraphy station is authorized to communicate with other public coast telegraphy stations to exchange message traffic destined to or originated at mobile stations:
(1) To exchange operating signals, brief service messages or safety communication;
(2) To exchange message traffic destined for a mobile station when the coast station initially concerned is unable to communicate directly with the mobile station;
(3) In the Great Lakes region, to exchange message traffic originated at a mobile station when the use of available point-to-point communication facilities would delay the delivery of such message traffic;
(4) Utilization of radiotelegraphy must not incur additional charges or replace available point-to-point communication facilities;
(5) Only authorized working frequencies within the band 415 kHz to 5000 kHz must be employed for communications between coast stations;
(6) Harmful interference must not be caused to communication between mobile stations and coast stations or between mobile stations.

Use of Telegraphy

§ 80.455 Assignment and use of frequencies for manual Morse code telegraphy.

(a) The frequencies designated in §§ 80.355 and 80.357 may be licensed for use by coast stations employing telegraphy.

§ 80.459 Digital selective calling.

Subpart H of this part lists frequencies assignable for DSC.

§ 80.461 Narrow-band direct-printing.

Subpart H of this part lists the frequencies assignable to public coast stations for operations with ship stations. Operating procedures are listed in Subpart C of this part.

Use of Telephony

§ 80.465 Assignment and use of frequencies for telephony.

Subpart H of this part lists the frequencies available for assignment to public coast stations for telephony operations.

§ 80.467 Duplication of VHF service.

No duplication of service areas as determined by Subpart P of this part will be permitted by public coast stations operating on the same VHF public correspondence channel. Within the service area of a station, the ratio of desired to undesired co-channel signal strengths on public correspondence channels must be at least 12dB.

§ 80.469 Maritime mobile repeater stations in Alaska.

(a) Maritime mobile repeater stations are authorized to extend the range of communication between a VHF public coast station located in Alaska and ship stations.

(b) On a secondary basis, maritime mobile repeater stations may be authorized to extend the range of a private coast station:
(1) In an area where VHF common carrier service is not available;
(2) A maritime mobile repeater station license expires 60 days after a public coast station in the area begins service.

(c) Each application for a maritime mobile repeater station must include a statement showing why operational fixed frequencies cannot be employed.

(d) The provisions relating to duplication of service described in Subpart P apply to maritime mobile repeater stations.

(e) The frequencies 157.275 and 161.875 MHz are assignable to maritime mobile repeater stations.

(f) Each maritime mobile repeater station must:
(1) Deactivate automatically within 5 seconds after the signals controlling the station cease; and
(2) During periods when it is not controlled from a manned control point, deactivate automatically not more than 20 minutes after its activation by a mobile unit.

§ 80.471 Discontinuance of impairment of service.

A public coast station must not discontinue or impair service unless authorized to do so by the Commission.

Automated Systems

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

(a) An AMTS serving the eastern or western sector of the offshore waters of the Gulf of Mexico, that is, east or west of longitude 87°45' W., must provide service to the 100 fathom line or 40 nautical miles offshore, whichever is greater. Ships adjacent to any of these waterways may communicate with any AMTS station within its service area.

(b) AMTS applicants must show how the proposed system will provide continuity of service along more than 60% of each of one or more navigable

VOL 51 ISS 169 SE 2 1986 UMI

waterways encompassing the Mississippi River System, the Gulf Intracoastal Waterway, or the eastern or western sector of the offshore waters of the Gulf of Mexico. Waterways less than 240 kilometers (150 miles) long must be served in their entirety. A separate Form 503 is not required for each coast station in a system. However, the applicant must provide technical characteristics for each proposed coast station, including transmitter type, operating frequencies, emissions, transmitter output power, antenna arrangement and location.

(1) Applicants proposing to locate a coast station transmitter within 169 kilometers (105 miles) of a channel 13 television station or within 129 kilometers (80 miles) of a channel 10 television station or with an antenna height greater than 61 meters (200 feet) must submit an engineering study clearly showing the means of avoiding interference with television reception within the grade B contour. See § 80.215(g).

(2) Additionally, applicants required to submit the above specified must give written notice of the filing of such application(s) to the television stations which may be affected. A list of the television stations modified must be submitted with the subject applications.

(c) In lieu of public correspondence service an AMTS system may provide private coast station communications related to the operational requirements of ships including transmissions of fuel, weather, position and supply reports. However, such communications may be provided only to ship stations whose licensees make cooperative arrangements with the AMTS coast station licensees. In emergency and distress situations, services must be provided without prior arrangements.

§ 80.477 Points of communications.

(a) AMTS coast stations may communicate with fixed platform stations located in the offshore waters of the Gulf of Mexico and with ship stations.

(b) AMTS licensees in the offshore waters of the Gulf of Mexico may use AMTS coast and ship station frequencies on a secondary basis for fixed service communications to support offshore AMTS operations.

§ 80.479 Assignment and use of frequencies for AMTS.

(a) The frequencies assignable to AMTS stations are listed in Subpart H of this part. These frequencies are assignable to ship and public coast stations for voice, facsimile and radioteletypewriter communications.

Subpart K—Private Coast Stations and Marine Utility Stations

§ 80.501 Supplemental eligibility requirements.

(a) A private coast station or a marine utility station may be granted only to a person who is:

(1) Regularly engaged in the operation, docking, direction, construction, repair, servicing or management of one or more commercial transport vessels or United States, state or local government vessels; or is

(2) Responsible for the operation, control, maintenance or development of a harbor, port or waterway used by commercial transport vessels; or is

(3) Engaged in furnishing a ship arrival and departure service, and will employ the station only for the purpose of obtaining the information essential to that service; or is

(4) A corporation proposing to furnish a nonprofit radio communication service to its parent corporation, to another subsidiary of the same parent, or to its own subsidiary where the party to be served performs any of the eligibility activities described in this section; or is

(5) A nonprofit corporation or association, organized to furnish a maritime mobile service solely to persons who operate one or more commercial transport vessels; or is

(6) Responsible for the operation of bridges, structures or other installations that area part of, or directly related to, a harbor, port or waterway when the operation of such facilities requires radio communications with vessels for safety or navigation; or is

(7) A person controlling public moorage facilities; or is

(8) A person servicing or supplying vessels other than commercial transport vessels; or is

(9) An organized yacht club with moorage facilities; or is

(10) A nonprofit organization providing noncommercial communications to vessels other than commercial transport vessels.

(b) Each application for station authorization for a private coast station or a marine utility station must be accompanied by a statement indicating eligibility under paragraph (a) of this section.

§ 80.503 Cooperative use of facilities.

(a) A person engaged in the operation of one or more commercial transport vessels or government vessels may receive maritime mobile service from a private coast station or a marine utility station on shore even though not the licensee of the private coast station or the marine utility station. Restrictions on cooperative arrangements are as follows:

(1) Foreign persons must be the licensees of the radio stations installed on board their vessels.

(2) The licensee of a private coast station or marine utility station on shore may install ship radio stations on board United States commercial transport vessels of other persons. In each case these persons must enter into a written agreement verifying that the ship station licensee has the sole right of control of the ship stations, that the vessel operators must use the ship stations subject to the orders and instructions of the coast station or marine utility station on shore, and that the ship station licensee will have sufficient control of the ship station to enable it to carry out its responsibilities under the ship station license.

(b) Cooperative arrangements are limited concerning cost and charges as follows:

(1) The arrangement must be established on a non-profit, cost-sharing basis by written contract. A copy of the contract must be kept with the station records and made available for inspection by Commission representatives.

(2) Contributions to capital and operating expenses are to be prorated on an equitable basis among all persons who are parties to the cooperative arrangement. Records which reflect the cost of the service and its nonprofit, cost-sharing nature must be maintained by the licensee of the station and made available for inspection by Commission representatives.

§ 80.505 Points of communication.

(A) Private coast stations and marine utility stations are authorized to communicate:

(1) With any mobile station in the maritime mobile service for the exchange of safety communications;

(2) With any land station for the purpose of aiding the exchange of safety communications;

(3) With ship stations.

(b) Private coast stations of the same licensee may be authorized to communicate on a secondary basis between themselves if:

(1) The communications are confined exclusively to those for which authority has been granted the coast station, and concerns ships with which one or both of the coast stations are authorized to communicate; and

(2) Other satisfactory point-to-point communication facilities between the coast stations are unavailable; and

(3) Coast stations which communicate with each other are not more than 160 km (100 miles) apart; and

(4) Harmful interference is not cause to mobile stations.

(c) A private coast station and associated marine utility stations serving and located on a shipyard regularly engaged in construction or repair of commercial transport vessels or Government vessels are authorize to communicate between stations when they are licensed to the same entity and communications are limited to serving the needs of ships on a non-interference basis to other stations in the maritime mobile service. A separate showing is required.

§ 80.507 Scope of service.

(a) A private coast station or marine utility station using telephony serves the operational and business needs of ships including the transmission of safety communication.

(b) In areas where environmental communications are provided by U.S. Government stations or by public coast stations, private coast stations and marine utility stations on shore must not duplicate that service. In other areas, private coast stations and marine utility stations on shore may transmit weather and hydrographic information required for the ships with which they normally communicate. Private coast stations may provide environmental communication service in areas where adequate service is not available.

(c) Each marine utility station on shore must be operated as a private coast station except that it may be operated at temporary unspecified locations. Marine utility stations on ships are operated as ship stations.

§ 80.509 Frequency assignment.

Frequencies assignable to private coast stations and marine utility stations are listed in Subpart H.

§ 80.511 Assignment limitations.

(a) Only one port operation, one commercial and one non-commerical frequency will be assigned to a private coast station or marine utility station. Applications for authority to use more than one frequency in any one of the above three categories must include a showing of need as specified below.

(b) An application for an additional frequency by a person who services vessels, must include a description of the vessels with which communication is planned and a statement that the applicant has personal knowledge that the ship radio stations are not capable of operating on working frequencies already assigned to the coast station.

(c) An application for an additional frequency based on congestion of the assigned frequency must show that for any four periods of 5 consecutive days each, in the preceeding 6 months, the assigned frequency was in use at least 25 percent of the time during 3 hours of daily peak activity. If the application for an additional frequency is based on the congestion by other nearby stations, the showing must include the call signs and locations of such stations.

§ 80.513 Frequency coordination.

(a) Except as provided in paragraphs (b) and (c) of this section each application for a new VHF private coast station license or modification of an existing license to be located in an area having a recognized frequency coordinating committee must be accompanied by:

(1) A report based on a field study, indicating the degree of probable interference to existing stations operating in the same area. The applicant must consider all stations operating on the working frequency or frequencies requested or assigned within 80 km (50 miles) of the proposed station location, and

(2) The report must include a statement that all existing licensees on the frequency within 80 km (50 miles) and the frequency coordinating committee have been notified of the applicant's intention to file an application. The notice of intention to file must provide the licensees concerned and the advisory committee with the following information: The frequency and emission; transmitter location and power; and the antenna height proposed by the applicant.

(b) Applications for modification need not be accompanied by the field study where the modification does not involve any change in frequency(ies), power, emission, antenna height, antenna location or area of operation.

(c)(1) In lieu of the field study, a statement from a frequency coordinating committee may be submitted with the application. The committee must comment on the requested frequency or the proposed changes in the authorized station and give an opinion regarding the probable interference to existing stations. The committee must consider all stations operating on the requested frequency within 80 km (50 miles) of the proposed station location. The frequency coordinating committee statement must also recommend a frequency which will result in the least amount of interference to proposed and existing stations. Committee recommendations may also include comments on technical factors and may recommend restrictions to minimize interference.

(2) A frequency coordinating committee must be representative of all persons who are eligible for VHF private coast stations within the service area of the recognized frequency coordinating committee. A statement of organization, service area and composition of the committee must be submitted to the Commission for approval. The functions of any coordinating committee are purely advisory to the applicant and the Commission. Its recommendations are not binding upon either the applicant or the Commission.

§ 80.515 Limitations on use.

A private coast station or marine utility station using telephony must:

(a) Not be used for public correspondence;

(b) Not be used to transmit program material for radio broadcasting; and

(c) Not be used to transmit press material or news items which are not required to serve the needs of ships.

§ 80.517 Time limitation on communication.

All communication engaged in by private coast stations and marine utility stations must be limited to the minimum practicable transmission time. Each station licensee must employ standardized operating practices and procedures.

§ 80.519 Station identification.

(a) Stations must identify transmissions by announcing in the English language the station's assigned call sign. In lieu of the identification of the station by voice, the official call sign may be transmitted by tone-modulated telegraphy in international Morse Code manually or by means of an automatic device approved by the Commission. Transmissions on the navigation frequency (156.650 MHz) by stations on drawbridges may be identified by use of the name of the bridge in lieu of the call sign. Identification must be made:

(1) At the beginning and end of each exchange of communications and;

(2) At intervals not exceeding 15 minutes whenever transmissions or communications are sustained for more than 15 minutes.

(b) Marine utility stations or private coast stations when exchanging communications with marine utility stations may be identified by a unit identifier in lieu of the call sign. Identification by transmission of the assigned call sign must be at the end of the exchange of communications or at least once each 15 minutes.

VOL 51 ISS 169 SE 2 1986 UMI

Subpart L—Operational Fixed Stations

§ 80.551 Applicability.

This subpart contains rules applicable to operational fixed stations.

§ 80.553 Supplemental eligibility requirements.

An applicant for an operational fixed station must show that:

(a) The applicant is the licensee of a coast station;

(b) Other suitable telecommunications facilities are not available to satisfy coast station requirements.

§ 80.555 Scope of communication.

An operational fixed station provides control, repeater or relay functions for its associated coast station.

§ 80.557 Assignment and use of frequencies.

The specific frequencies for these stations are listed in Subpart H of this part.

80.559 Licensing limitations.

Operational fixed stations are subject to the following licensing limitations:

(a) A maximum of four frequencies will be assigned.

(b) Stations will not be authorized when applications indicate less than 16 km (10 miles) separation between a proposed station and a TV transmitter operating on either Channel 4 or 5, or from the post office of a community in which either channel is assigned but not in operation.

(c) Stations located between 16 km (10 miles) and 128 km (80 miles) of a TV transmitter operating on either Channel 4 or 5, or from the post office of a community in which either channel is assigned but not in operation, will be authorized only if there are fewer than 100 family dwelling units as defined by the U.S. Bureau of Census located within a circle centered at the location of the proposed fixed station. Dwelling units more than 112 km (70 miles) are excluded. The radius is determined by using charts entitled "Chart for Determining Radius From Fixed Station in 72–76 MHz Band to Interference Contour Along Which 10 percent of Service From Adjacent Channel Television Station Would Be Destroyed." Two charts are available, one for Channel 4 and one for Channel 5. Charts are available from Secretary, Federal Communications Commission, Washington, DC 20554. Authorization for the location of a fixed station within a circle containing 100 or more family dwelling units may be granted if:

(1) The proposed site is the only suitable location.

(2) It is not feasible to use other available frequencies.

(3) The applicant agrees to eliminate any interference caused by station operations.

Subpart M—Radiodetermination Stations

§ 80.601 Scope of communications.

Stations on land in the Maritime Radiodetermination Service provide a radionavigation or radiolocation service for ships.

§ 80.603 Assignment and use of frequencies.

The frequencies available for assignment to shore radionavigation/radiolocation stations are contained in Subpart H of this part.

§ 80.605 U.S. Coast Guard coordination.

Shore radionavigation stations operated to provide information to aid in the movement of any ship are private aids to navigation. Before submitting an application for a radionavigation station, an applicant must obtain written permission from the Commandant, U.S. Coast Guard, Washington, DC 20593 (attention Marine Radio Policy Branch, G–TPP–3). Documentation of the Coast Guard approval must be submitted with the application.

Note.—Shore surveillance radar stations do not require U.S. Coast Guard approval.

Subpart N—Maritime Support Stations

§ 80.651 Supplemental eligibility requirements.

(a) An applicant for a maritime support station must demonstrate a requirement for training personnel associated with the maritime service or for the testing, demonstration or maintenance of ship or coast radio equipment.

§ 80.653 Scope of communications.

(a) Maritime support stations are land stations authorized to operate at permanent locations or temporary unspecified locations.

(b) Maritime support stations are authorized to conduct the following operations:

(1) Training of personnel in maritime telecommunications;

(2) Transmissions necessary for the test and maintenance of maritime radio equipment at repair shops; and

(3) Transmissions necessary to test the technical performance of the licensee's public coast station(s) radiotelephone receiver(s); and

(4) Transmissions necessary for radar/racon equipment demonstration.

§ 80.655 Use of frequencies.

(a) The frequencies available for assignment to maritime support stations are described or listed in:

(1) Section 80.373 for scope of communications described in § 80.653 (b)(1) and (b)(2); and

(2) Section 80.389 for scope of communications described in § 80.653 (b)(3) and (b)(4).

(b) Frequencies must be used only on a secondary, non-interference basis to operational maritime communications.

(c) Use of frequencies assigned to services other than the maritime radiolocation service is limited to one hour per twenty four hour period.

§ 80.659 Technical requirements.

The authorized frequency tolerance, class of emission, bandwidth, and transmitter power for maritime support stations are contained in Subpart E of this part under the category associated with the intended use except for power limitations imposed upon stations operating within the scope of § 80.653(b)(3), which are further limited by the provisions of § 80.215(f).

Subpart O—Alaska Fixed Stations

§ 80.701 Scope of service.

There are two classes of Alaska Fixed stations. Alaska-public fixed stations are common carriers, open to public correspondence, which operate on the paired duplex channels listed in Subpart H of this part. Alaska-private fixed stations may operate on simplex frequencies listed in Subpart H of this part to communicate with other Alaska private fixed stations or with ship stations, and on duplex frequencies listed in Subpart H of this part when communicating with the Alaska-public fixed stations. Alaska-private fixed stations must not charge for service, although third party traffic may be transmitted. Only Alaska-public fixed stations are authorized to charge for communication services.

§ 80.703 Priority of distress and other signals.

Alaska-public fixed stations, when operating on an authorized carrier frequency which is also used by the maritime mobile service, must give priority to distress, urgency or safety signals, or to any communication preceded by one of these signals.

§ 80.705 Hours of service of Alaska-public fixed stations.

Each Alaska-public fixed station whose hours of service are not continuous must not suspend operations before having concluded all

communications of an emergency nature.

§ 80.707 Cooperative use of frequency assignments.

(a) Only one Alaska-public fixed station will be authorized to serve any area whose point-to-point communication needs can be adequately served by a single radio communication facility.

(b) Each radio channel authorized for use by an Alaska-private fixed station is available on a shared basis only. All station licensees must cooperate in the use of their respective frequency assignments to minimize interference.

§ 80.709 Frequencies available.

Frequencies assignable to Alaska fixed stations are listed in Subpart H of this part.

§ 80.711 Use of U.S. Government frequencies.

Alaska-public fixed stations may be authorized to use frequencies assigned to U.S. Government radio stations for communications with Government stations or for coordination of Government activities.

Subpart P—Standards for Computing Public Coast Station VHF Coverage

§ 80.751 Scope.

This subpart specifies receiver antenna terminal requirements in terms of power, and relates the power available at the receiver antenna terminals to transmitter power and antenna height and gain.

§ 80.753 Signal strength requirements at the service area contour.

(a) The requirements for reception by a marine VHF shipboard receiver are satisfied if the field strength from the coast station, calculated in accordance with § 80.771 is at least +17 dBu above one microvolt.

(b) These field strengths, voltages and powers at the receiver input are equivalent:

(1) −132 dBW (decibels referred to 1 watt).

(2) 1.8 microvolts across 50 ohms.

(3) +17 dBu (decibels referred to 1 microvolt per meter).

(4) 7 microvolts per meter.

§ 80.755 Applicability.

Applications for maritime frequencies in the 156–162 MHz band must include a map showing the proposed service area contour. The service area contour must be computed in accordance with the following procedures.

§ 80.757 Topographical data.

(a) In the preparation of profile graphs and in determining the location and height above sea level of the antenna site, the elevations or contour intervals must be taken from U.S. Geological Survey topographic quadrangle maps, U.S. Army Corps of Engineers maps or Tennessee Valley Authority maps, whichever is the latest, for all areas for which maps are available. If such maps are not published for the area in question, the next best topographic information must be used. The maps used must include the principal area to be served. U.S. Geological Survey topographic quadrangle maps may be obtained from the Eastern Distribution Branch, U.S. Geological Survey, 1200 South Eads Street, Arlington, VA 22202, for maps of areas east of the Mississippi River, including Minnesota, Puerto Rico, and the Virgin Islands, and from the Western Distribution Branch, U.S. Geological Survey, Federal Center, Denver CO 80225, for maps of areas west of the Mississippi River, including Alaska, Hawaii, Louisiana, Guam and American Samoa. Sectional aeronautical charts are available from the Distribution Division, National Ocean Service, Riverdale, MD 20840.

(b) In lieu of maps, the average terrain elevation may be computer generated, using elevations from a 30 second point or better topographic data file such as those available for the U.S. Geological Survey's National Geographic Information Center or the National Oceanic and Atmospheric Administration's National Geophysical Data Center. In case of dispute maps will be used to determine the correct value.

§ 80.759 Average terrain elevation.

(a)(1) Draw radials from the antenna site for each 45 degrees of azimuth starting with true north. Any such radial which extends entirely over land from the antenna site to the point of +17 dBu field strength need not be drawn.

(2) If the distance from the antenna site to the point of +17 dBu field strength between any of the 45 degrees radials would be less than the distances calculated along these radials, an additional radial between such adjacent radials must be plotted and calculations made in each case. Each additional radial must be that radial along which it appears by inspection that transmission loss would be greatest.

(b) Draw a circle of 10 statute mile radius using the antenna site as the center. Divide each radial into 0.2 statute mile increments inside the circumference to the 2.0 statute mile point.

(c) Calculate the height above sea level of each 0.2 statute mile division by interpolating the contour intervals of the map, and record the value.

(d) Average the values by adding them and dividing by the number of readings along each radial.

(e) Calculate the height above average terrain by averaging the values calculated for each radial.

§ 80.761 Conversion graphs.

The following graphs must be employed where conversion from one to the other of the indicated types of units is required.

(a) Graph 1. To convert effective radiated power in watts to dBk or to dBW, find the power in watts on the horizontal axis. Move vertically along the line representing the power to the diagonal line. Move horizontally from the diagonal to the right side to read dBW and to the left to read dBk.

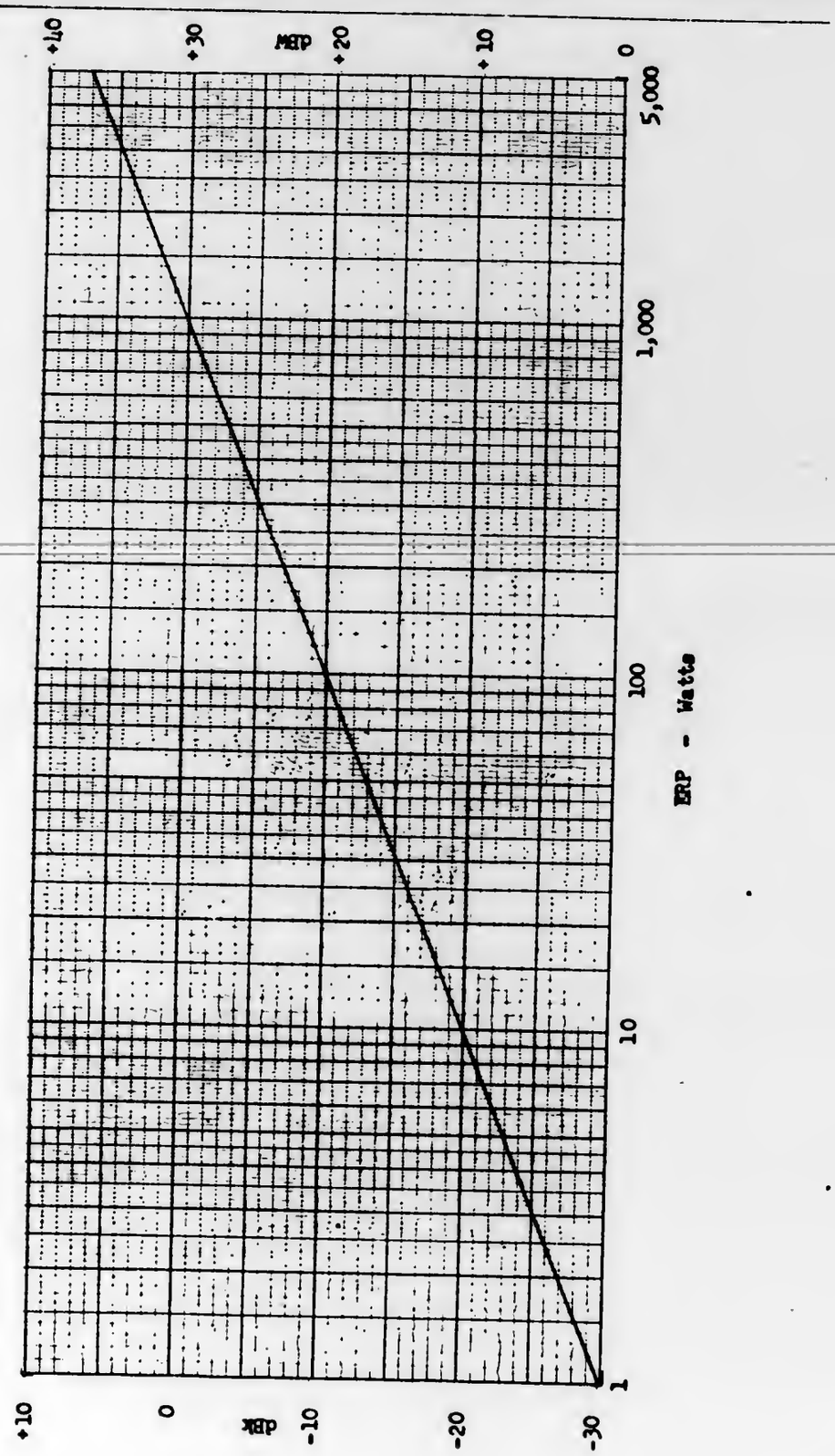
(b) Graph 2. To convert microvolts across 50 ohms to received power in dBW, find the signal in microvolts on the horizontal axis. Move vertically to the diagonal line, then move right horizontally to read dBW.

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Graph 1

EFFECTIVE RADIATED POWER (ERP)

Translation: ERP to dBk 0 dBk = 1,000 Watts
ERP to dBW 0 dBW = 1 Watt

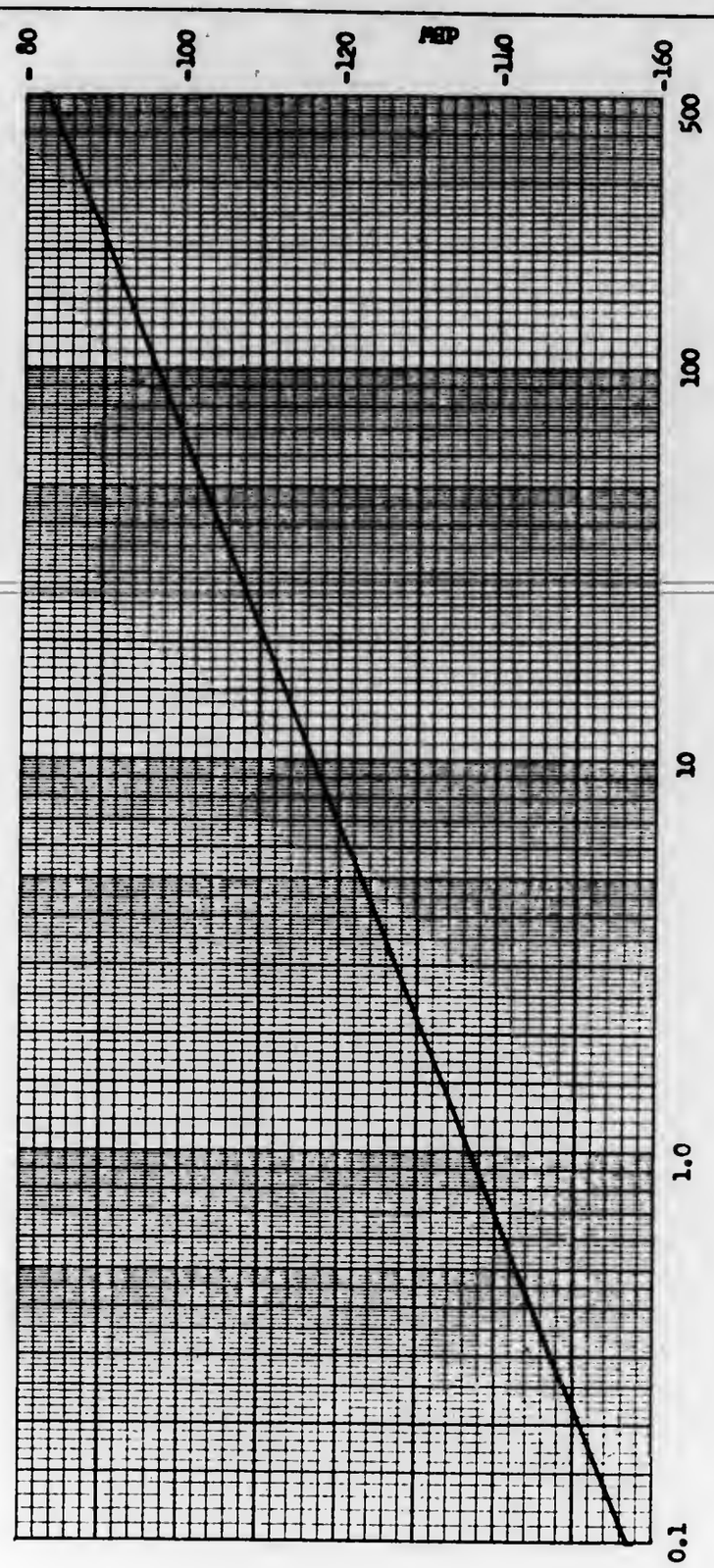


Graph 2

RECEIVED POWER

Translation: dBW to uv/50 Ohms
uv/50 Ohms to dBW

0 dBW = 1 Watt



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(c) Graph 3. To convert received power in dBW to field intensity in dBu find the received power in dBW on the horizontal axis. Move vertically to the diagonal line, then move right horizontally to read dBu.

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VOL 51 ISS 169 SE 2 1986 UMI

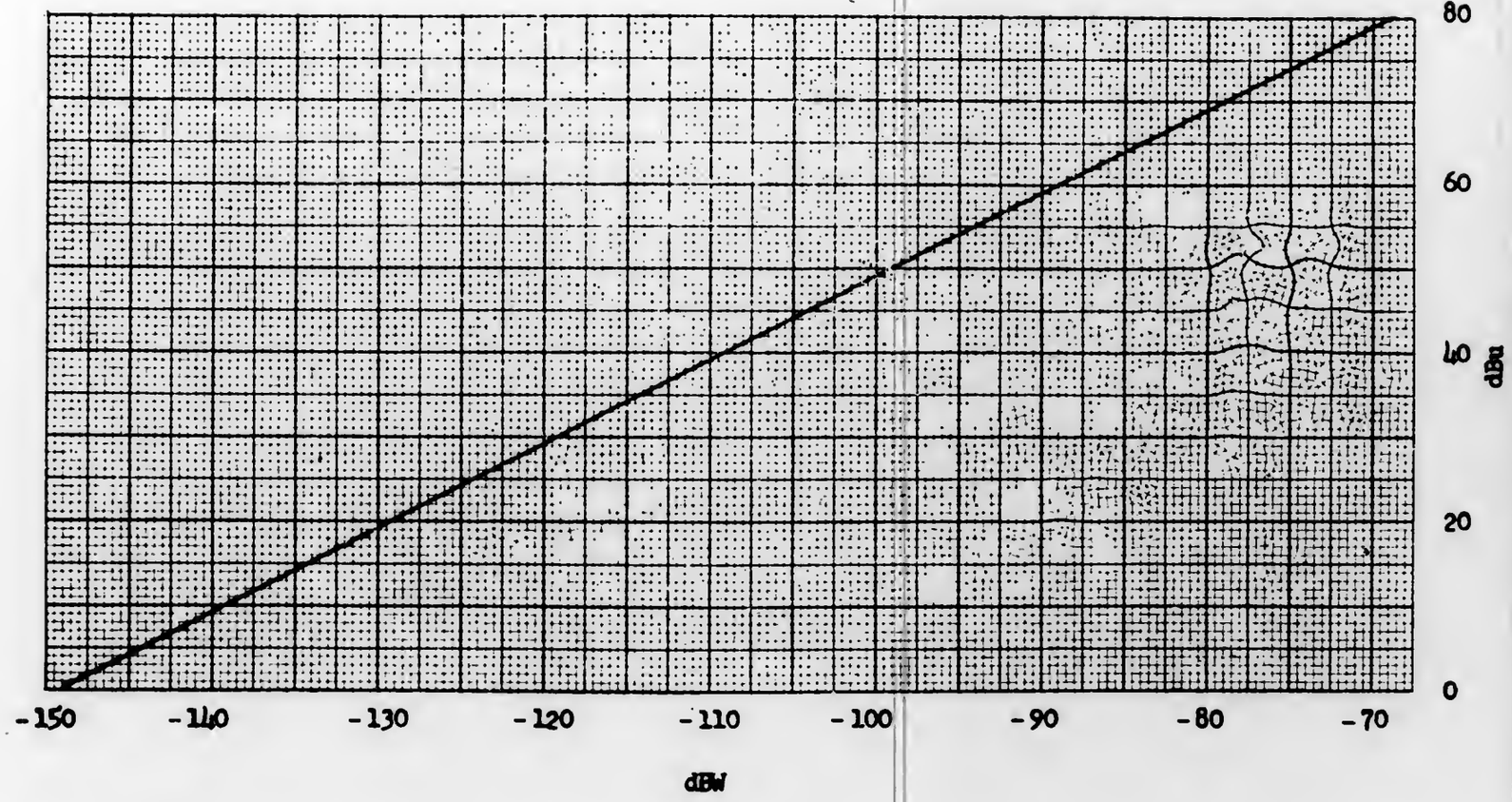
Graph 3

FIELD INTENSITY VS RECEIVED POWER

For Half-Wave Dipole

Received Power in uv/50 Ohms

0 dBW = 1 Watt
0 dBu = 1 microvolt/meter



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§ 80.763 Effective antenna height.

The effective height of the antenna is the vertical distance between the center of the radiating system above the mean sea level and the average terrain elevation.

§ 80.765 Effective radiated power.

Effective radiated power is used in computing the service area contour. The effective radiated power is derived from the transmitter output power, loss in the transmission system including duplexers, cavities, circulators, switches and filters, and the gain relative to a half-wave dipole of the antenna system.

§ 80.767 Propagation curve.

The propagation graph, § 80.767 Graph 1, must be used in computing the service area contour. The graph provides data for field strengths in dBu for an effective radiated power of 1 kW, over sea water, fresh water or land (smooth earth); transmitting antena heights of 4,800, 3,200, 1,600, 800, 400, 200, and 100 feet; based on a receiving antenna height of 9 meters (30 feet), for the 156–162 MHz band. The use of this is described in this section.

(a) Calculate the effective radiated power of the coast station, Ps in dB referred to 1 kW (dBk), as follows:

$$Ps = Pt + G - L$$

where,

Pt = Transmitter output power in dB referred to 1 kW: Transmitter output power in watts is converted to dBk by Pt = 10 [log10 (Power in watts)] − 30. Also see § 80.761 Graph 1 for a conversion graph.

G = Antenna gain in dB referred to a standard half-wave dipole, in the direction of each plotted radial, and

L = Line losses between the transmitter and the antenna, in dB.

Note.—To determine field strengths where the distance is known, for effective radiated powers other than 1kW (0 dBk): Enter the graph from the "statute miles" scale at the known distance, read up to intersection with the curve for the antenna height, read left to the "dBu for 1 kW radiated" scale and note the referenced field strength (Fe). The value of the actual field strength (F) in dBu will be F = Fe + Ps where Ps is the effective radiated power calculated above.

Note.—To determine distance, where the actual field strength is specified, for effective radiated powers other than 0 dBk: The value of the field referenced strength will be Fe = F − Ps in dBu. Enter the graph, from the "dBu for 1 kW radiated" scale at the corrected value of Fe, read right to intersection with the antenna height, read down to "statute miles" scale.

(b) Determine the antenna height. For antenna heights between the heights for which this graph is drawn, use linear interpolation; assume linear height-gain for antennas higher than 4,800 feet.

(c) For receiver antenna heights lower than 9 meters (30 feet), assume that the field strength is the same as at 9 meters (30 feet).

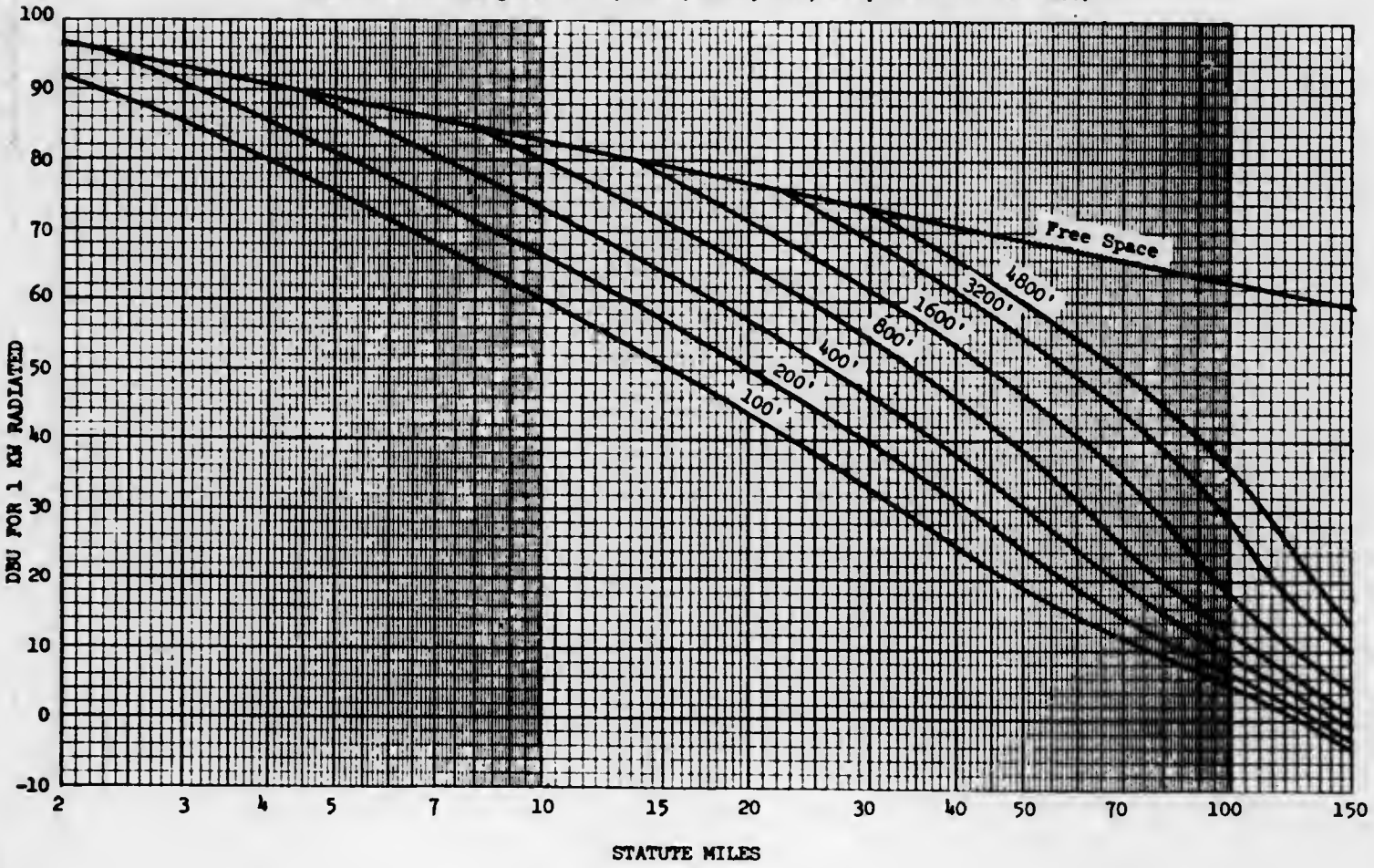
(d) Assume that propagation over fresh water or over land is the same as that over sea water.

Graph 1

PROPAGATION CURVES FOR THE VHF MARITIME MOBILE RADIO SERVICE
Seawater, Fresh Water Or Land (Smooth Earth)

Field Strengths, In dB From 1 Microvolt Per Meter (dBu), For An Effective Radiated Power Of 1 KW.

Vessel Antenna Height = 30 Feet.
Coast Antenna Heights: 4800, 3200, 1600, 800, 400, 200 and 100 Feet.



§ 80.769 Shadow loss.

Where the transmission path is obstructed the received signal must be adjusted to include shadow loss. Attenuation due to shadowing must be taken from § 80.769 Graph 1, as follows:

(a) Inspect the map(s) to determine if a hill(s) obstructs an imaginary line of sight (dashed line on illustrative profiles of § 80.769 Graph 1 from the average terrain elevation at the coast station antenna to the water level at the ship location. If average terrain elevation exceeds the actual ground elevation at the antenna site, the latter elevation must be used as the average terrain elevation.

(b) If a hill appears to obstruct the radio path, plot the antenna site elevation, the obstruction elevation and the height of the ship station on rectangular coordinate paper using elevation above mean sea level as the vertical scale and distance in statute miles as the horizontal scale. Then draw a straight line between the antenna and the ship.

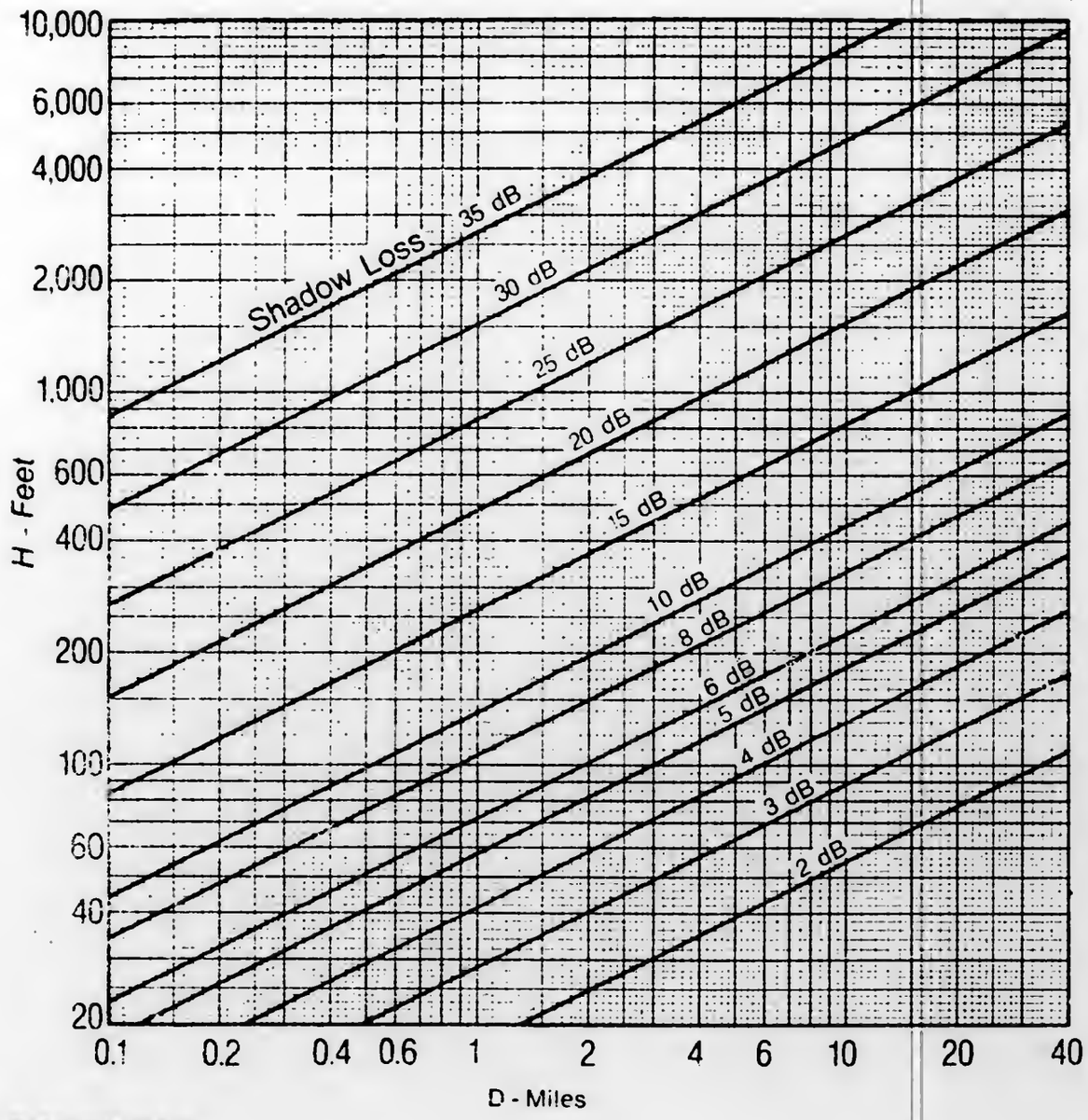
(c) If a hill obstructs the imaginary line of sight, determine its height (H) above the imaginary line and its distance (D) from either the coast or ship station, whichever is nearer, as illustrated by examples "A" and "B" on Graph 1.

(d) Read the shadow loss from this Graph 1 and subtract that loss from the computed received signal.

(e) Where more than one hill obstructs the transmission path, determine the height and position of a single equivalent hill, as illustrated by example "C" on this graph. Read the shadow loss from this graph for the equivalent hill.

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Graph 1



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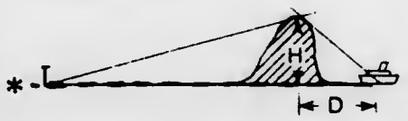
Shadow Loss Chart for VHF Maritime Service

D and H are determined from path profiles

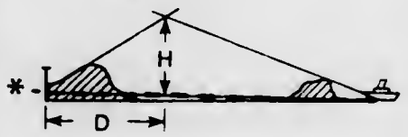
Example A



Example B



Example C



* Average terrain elevation

§ 80.771 Method of computing coverage.

Compute the +17 dBu contour as follows:

(a) Determine the effective antenna height above mean sea level according to the procedures in § 80.757–§ 80.761.

(b) Determine the effective radiated power according to § 80.765. Determine for each radial the distance from the antenna site to the +17 dBu point of field strength using procedures of § 80.765 and § 80.767.

(c) Plot on a suitable map each point of +17 dBu field strength for all radials and draw the contour by connecting the adjacent points by a smooth curve.

§ 80.773 Ratio of desired to undesired signal strengths.

Where a frequency is shared the ratio of desired to undesired signal strengths must be at least 12 dB within the service area of a station.

STATIONS ON SHIPBOARD

Subpart Q—Compulsory Radiotelegraph Installations for Vessels 1600 Gross Tons

§ 80.801 Applicability.

The radiotelegraph requirements of Part II of Title III of the Communications Act apply to all passenger ships irrespective of size and cargo ships of 1600 gross tons and upward. The Safety Convention applies to such ships on international voyages. These ships are required to carry a radiotelegraph installation complying with this Subpart.

§ 80.802 Inspection of station.

(a) Every ship of the United States subject to Part II of Title III of the Communications Act or the radio provisions of the Safety Convention must have the required equipment inspected at least once every 12 months. If the ship is in compliance with the requirements of the Safety Convention, a Safety Certificate will be issued; if in compliance with the Communications Act, the license will be endorsed accordingly.

(1) The effective date of ship safety certificates is the date the station is found to be in compliance or not later than one business day later.

(2) At inspection, the minimum field strength capability of the main installation and reserve installation when connected to the main antenna may be shown by the licensee by either producing a record of communications on 500 kHz over a minimum distance of 200 nautical miles for the main installation and 100 nautical miles for the reserve installation which demonstrates the transmission and reception of clearly perceptible signals from ship to ship by day and under normal conditions and circumstances, or providing documentation by a professional engineer not affiliated with the licensee or its service company that the installation produces at one nautical mile a minimum field strength of thirty (30) millivolts per meter for the main installation and ten (10) millivolts per meter for the reserve installation.

(b) Certificates issued in accordance with the Safety Convention must be posted in a prominent and accessible place in the ship.

§ 80.804 Radio station.

The required radio station must comply with the provisions of this subpart in addition to all other applicable requirements of this part. The radio station consists of a radiotelegraph station and a ship radar station. The radiotelegraph station comprises a main and a reserve radiotelegraph installation, electrically separate and electrically independent of each other except as otherwise provided in paragraph (b) of § 80.805, a radiotelephone installation and such other equipment as may be necessary for the proper operation of these installations. The ship radar station comprises a radar installation and such other equipment and facilities as may be necessary for its proper operation.

§ 80.805 Radio installations.

(a) The main radiotelegraph installation includes a main transmitter, a main receiver, a main power supply, a main antenna system and a 2182 kHz radiotelephone distress frequency watch receiver.

(b) The reserve radiotelegraph installation includes a reserve transmitter, a reserve receiver, a reserve power supply, emergency electric lights and reserve antenna system: except that:

(1) In installations on cargo ships of 300 gross tons and upwards but less than 1,600 gross tons, and in installations on cargo ships of 1,600 gross tons and upwards installed prior to November 19, 1952, if the main transmitter complies with all the requirements for the reserve transmitter, the latter may be omitted.

(2) A cargo ship the keel of which was laid prior to June 1, 1954, may either be equipped with a reserve antenna or provided a spare antenna consisting of a single-wire transmitting antenna (including suitable insulators) completely assembled for immediate installation.

(c) The medium frequency radiotelephone installation includes a radiotelephone transmitter, a radiotelephone receiver and an appropriate antenna system.

§ 80.806 Requirements of main installation.

All main radiotelegraph installations must meet the following requirements:

(a) The main antenna must be installed and protected to ensure proper operation of the station. Effective October 14, 1986, the main antenna energized by the main transmitter on the frequency 500 kHz must produce at one nautical mile a minimum field strength of thirty (30) millivolts per meter. If the main antenna is suspended between masts or other supports liable to whipping, a safety link must be installed which, under heavy stress, will reduce breakage of the antenna, the halyards, or any other antenna-supporting elements.

(b) The main transmitter must be capable of meeting the requirements of § 80.253.

(c) The main receiver must efficiently receive A1A and A2A emission on all frequencies within the bands 100–200 kHz and 405–535 kHz. It must have headphones capable of effective operation. The main receiver must have sufficient sensitivity to effectively operate headphones or a loudspeaker when the receiver input is 50 microvolts.

(d) The main power supply must simultaneously (1) energize the main transmitter at its required antenna power, and the main receiver, (2) charge at any required rate all batteries forming part of the radiotelegraph station, and (3) charge the main power supply for this purpose at all times including times of inspection. Under this load condition the voltage of the main power supply at the radio room terminals must not deviate from its rated value by more than 10 percent on vessels completed on or after July 1, 1941, nor by more than 15 percent on vessels completed before that date. While at sea, batteries forming part of the main installation must be fully charged daily.

(e) To measure voltage(s) of the main power supply at its radio room terminals, voltmeter(s) must be permanently installed in the radiotelegraph operating room.

(f) The main installation must be provided with a device permitting changeover from transmission to reception and vice versa without manual switching.

(g) The main installation must be capable of being quickly connected with and tuned to the main antenna and the reserve antenna if one is installed.

VOL 51 ISS 169 SE 2 1986 UMI

§ 80.807 Requirements of radiotelephone installation.

All radiotelephone installations in radiotelegraph equipped vessels must meet the following conditions.

(a) The radiotelephone transmitter must be capable of transmission of A3E or H3E emission on 2182 kHz and must be capable of transmitting clearly perceptible signals from ship to ship during daytime, under normal conditions over a range of 150 nautical miles when used with an antenna system in accordance with paragraph (c) of this section. The transmitter must:

(1) Have a duty cycle which allows for transmission of the radiotelephone alarm signal described in § 80.221.

(2) Provide 25 watts carrier power for A3E emission or 60 watts peak power on H3E emission into an artificial antenna consisting of 10 ohms resistance and 200 picofarads capacitance or 50 ohms nominal impedance to demonstrate compliance with the 150 nautical mile range requirement.

(3) Have a visual indication whenever the transmitter is supplying power to the antenna.

(4) Have a two-tone alarm signal generator that meets § 80.221.

(5) The radiotelephone transmitter required by this paragraph may be contained in the same enclosure as the receiver required by paragraph (b) of this section. Additionally, these transmitters may have the capability to transmit J3E emissions.

(b)(1) The radiotelephone receiver must receive A3E and H3E emissions when connected to the antenna system specified in paragraph (c) this section and must be preset to 2182 kHz. The receiver must additionally:

(i) Provide an audio output of 50 milliwatts to a loudspeaker when the RF input is 50 microvolts. The 50 microvolt input signal must be modulated 30 percent at 400 Hertz and provide at least a 6 dB signal-to-noise ratio when measured in the rated audio bandwidth.

(ii) Be equipped with one or more loudspeakers capable of being used to maintain a watch on 2182 kHz at the principal operating position or in the room from which the vessel is normally steered.

(2) The receiver required by § 80.805 may be used instead of this receiver. If the watch is stood at the place from which the ship is normally steered, a radiotelephone distress frequency watch receiver must be used for this purpose.

(3) This receiver may be contained in the same enclosure as the transmitter required by paragraph (a) of this section. Additionally, these receivers may have the capability to receive J3E emissions.

(c) The antenna system must be as nondirectional and efficient as is practicable for the transmission and reception of radio ground waves over seawater. The installation and construction of the required antenna must ensure, insofar as is practicable, proper operation in time of emergency. If the required antenna is suspended between masts or other supports subject to whipping, a safety link must be installed which under heavy stress will reduce breakage of the antenna, the halyards, or any other supporting elements.

(d) The radiotelephone installation must be provided with a device for permitting changeover from transmission to reception and vice versa without manual switching.

(e) An artificial antenna must be provided to permit weekly checks, without causing interference, of the automatic device for generating the radiotelephone alarm signal on frequencies other than the radiotelephone distress frequency.

(f) The radiotelephone installation must be located in the radiotelegraph operating room or in the room from which the ship is normally steered.

(g) Demonstration of the radiotelephone installation may be required by Commission representatives to show compliance with applicable regulations.

(h) The radiotelephone installation must be protected from excessive currents and voltages.

(i) The radiotelephone installation must be maintained in an efficient condition.

§ 80.808 Requirements of reserve installation.

(a) All reserve radiotelegraph installations must comply with the following conditions, in addition to all other requirements:

(1) The reserve installation must be capable of being placed in operation within a maximum time of 1 minute.

(2) The reserve antenna must be installed and protected to ensure proper operation in time of an emergency.

(3) Effective October 14, 1986, the main antenna energized by the reserve transmitter on 500 kHz must produce at one nautical mile a minimum field strength of ten (10) millivolts per meter.

(4) The reserve transmitter must meet the requirements of § 80.255.

(5) The reserve receiver must receive A1A and A2B emissions on all frequencies within the band 405–535 kHz. It must have headphones. Additionally a loudspeaker may be provided for use in accordance with the provisions of § 80.313. The reserve receiver must be able to operate headphones or a loudspeaker when the receiver RF input is 100 microvolts.

(6) The reserve installation must be capable of being quickly connected with and tuned to the main antenna, and the reserve antenna if one is installed.

(7) Emergency electric lights, energized solely by the reserve power supply and connected to it through individual fuses must be provided. The emergency electric lights must illuminate the operating controls of the main and reserve radiotelegraph installations and the radio station clock. The emergency lighting circuits must avoid excessive voltage to the emergency lights during the charging of any batteries forming part of the reserve installation. The provisions of this paragraph do not preclude the use of any other power supply for energizing these lights solely as an additional provision. If a separate emergency radiotelegraph operating room is provided, the requirements of this paragraph apply to it.

(8) The emergency electric lights must be controlled by two-way switches placed near the main entrance to the radiotelegraph operating room and at the radiotelegraph operating position, in all cases where the distance between these points is greater than 8 feet. This requirement applies to stations which replace, or initially install the main or reserve radiotelegraph transmitter on and after May 28, 1965.

(9) There must be readily available under normal load conditions a reserve power supply for the reserve installation which must be independent of the propelling power of the ship and of any other electrical system. The reserve power supply must simultaneously energize the reserve transmitter at its required antenna power and the reserve receiver for at least 6 hours continuously under normal working conditions, and energize the automatic-alarm-signal keying device continuously for a period of 1 hour.

(10) The reserve power supply may be used to energize the following apparatus provided it has adequate capacity:

(i) The audible warning apparatus included as a component of an approved radiotelegraph auto alarm;

(ii) The VHF installation required by Subpart R of this chapter simultaneously with the reserve transmitter in the case of distress, urgency and safety communications;

(iii) The VHF installation required by Subpart R of this chapter alternately with the reserve transmitter. A switching device must be fitted to ensure alternate operation only in the

case of distress, urgency and safety communications;

(iv) The radiotelephone alarm signal generator;

(v) The bridge-to-bridge VHF radiotelephone installation required by Subpart U of this chapter.

(11) The reserve power supply must be located as near to the reserve transmitter and reserve receiver as is practicable and must comply with all applicable rules and regulations of the United States Coast Guard. The switchboard of the reserve power supply must wherever possible, be situated in the radiotelegraph operating room. If it is not, it must be illuminated.

(12) All reserve power supply circuits must be protected from overloads.

(13) Means must be provided for charging any batteries forming a part of the reserve installation, and such batteries must be maintained in a fully charged condition daily while at sea. There must be a device which, during charging of the batteries, gives a continuous indication of the rate and polarity of the charging current.

(14) The cooling system of each internal combustion engine used as a part of the reserve power supply must be protected to prevent freezing or overheating consistent with the season and route to be traveled by the particular vessel.

(b)(1) The shipowner, operating company, or station licensee, if directed by the Commission or its authorized representative must demonstrate that the reserve installation satisfies the 6-hour operating requirement of law.

(2) When the reserve power supply includes a battery, proof of the ability of such battery to operate continuously and effectively for 6 hours can be established by a discharge test over a prescribed period of time, when supplying power at the voltage required for normal operation to an electrical load as prescribed by paragraph (b)(4).

(3) When the reserve power supply includes an engine-driven generator, proof of the adequacy of the engine fuel supply to operate the unit continuously and effectively for 6 hours may be established by measuring the fuel consumption during 1 hour when supplying power, at the voltage required for normal operation, to an electrical load as prescribed by paragraph (b)(4).

(4) To determine the electrical load to be supplied by the reserve power supply, the following formula must be used:

(i) One-half of the reserve transmitter current with the key closed; plus

(ii) One-half of the reserve transmitter current with the key open; plus

(iii) One sixth of the current of the automatic radiotelegraph alarm signal keying device when this device is energized; plus

(iv) Current of the reserve receiver; plus

(v) Current of emergency lights; plus

(vi) Current of the bridge-to-bridge transceiver when connected.

(5) At the conclusion of the tests specified in paragraphs (b) (2) and (3) of this section, no part of the reserve power supply must have an excessive temperature rise, nor must the specific gravity or voltage of the battery be below the 90 percent discharge point.

§ 80.809 Routing of power supply wiring.

The conductors connecting the main power supply to the main installation, the reserve supply to reserve installation and the radar power supply to the ship radar station, must be routed to ensure adequate protection from overload, mechanical injury and be kept clear of electrical grounds.

§ 80.810 Use of reserve installation.

The reserve transmitter, and the reserve power supply for the reserve transmitter, are primarily for safety and test communication. This equipment may be used for other communication for a period not to exceed 1 hour per day in the aggregate. The reserve receiver, and the reserve power supply for the reserve receiver if a battery, may be used at any time to maintain a safety watch if such use will not reduce the capabilities of the reserve power supply to energize the associated component or components of the reserve installation for at least 6 consecutive hours.

§ 80.811 Tests of reserve installation and automatic-alarm-signal keying device.

(a) The condition of the reserve installation and of the automatic alarm signal keying device must be determined (with the exception noted in paragraph (b) of this section) prior to the vessel's departure from each port and on each day the vessel is outside of a harbor or port. If the vessel is in two or more ports within one day, the required tests need be made only once. If the vessel is in port for less than one day, the required test for that day may be made before arrival or after departure. The following tests must be made and the results entered in the radiotelegraph station log:

(1) Check the reserve power supply as follows:

(i) Test battery charging circuits for correct polarity and charging rate:

(ii) In the case of lead-acid batteries, determine the specific gravity of the electrolyte.

(iii) In the case of other types of batteries, take voltage readings under normal battery load.

(iv) When an engine-driven generator is used, check the quantity of fuel in the fuel tank;

(2) Test the emergency lighting circuits and emergency electric lights by actual operation;

(3) Test the reserve receiver, while energized by the reserve power supply, by actual operation and comparison of received signals with similar signals received by the main receiver;

(4) On days when not used for communication, the reserve transmitter energized by the reserve power supply must be tested by actual operation when connected to the main antenna, an artificial antenna or a reserve antenna.

(5) If installed, the reserve antenna must be used at least once each voyage, noting antenna currents;

(6) Test the automatic-alarm-signal keying device for correct timing adjustment of the keying mechanism. *Do not transmit when making this test.*

(b) In the case of vessels loading or discharging flammable, unstable or dangerous cargo, or while berthed at oil terminals or in other comparable areas, predeparture transmitter tests need not be made. In such cases, the provisions of paragraph (a)(4) of this section, in connection with predeparture tests, do not apply if a suitable explanation is entered in the radio station log.

§ 80.812 Automatic-alarm-signal keying device.

The required radiotelegraph station includes one or more devices, of a type accepted by the Commission in accordance with Subpart F of this part capable of automatically operating the normal keying circuits of a required radiotelegraph transmitter to transmit the international radiotelegraph alarm signal.

§ 80.813 Installation of automatic-alarm-signal keying device.

(a) The automatic radiotelegraph alarm signal keyer must be installed in the radiotelegraph operating room. It must be possible to key, nonsimultaneously, the main transmitter and the reserve transmitter, and to permit the device to be taken out of operation at any time in order to permit immediate manual transmitter operation. Only one control must be provided for each automatic alarm signal keying device. This control must be located in the radiotelegraph operating room.

(b) The required automatic radiotelegraph alarm signal keying

device must be capable of operating efficiently for a continuous period of 1 hour when energized solely by the reserve power supply.

§ 80.814 Radiotelegraph auto alarm.

An auto alarm which is installed and used on board a cargo ship of the United States pursuant to the provisions of § 80.315 comprises a complete receiving, selecting and warning device of a type accepted by the Commission in accordance with section 3(x) of the Communications Act, capable of being actuated automatically by intercepted radio frequency waves forming the international radiotelegraph alarm signal.

§ 80.815 Installation of radiotelegraph auto alarm.

Installation of a radiotelegraph auto alarm must comply with the following conditions.

(a) The auto alarm must be located in the radiotelegraph operating room and be installed and protected to insure proper operation. The radiotelegraph auto alarm system must be operated from the radiotelegraph operating room. A switch must be provided to: (1) Transfer the main antenna from all other equipment and connect it to the radiotelegraph auto alarm receiver and place the auto alarm in service and, back to the original configuration A voltmeter must be provided for the determining that the supply voltages are within the operating limits.

(b) The auto alarm must give an audible warning in the radiotelegraph operating room, in the radio officer's cabin, and on the navigating bridge. The alarm must operate continuously after the alarm has been actuated by a radiotelegraph alarm signal or by failure of the system, until manually turned off. Only one switch for stopping the alarm is authorized, and this must be located in the radiotelegraph operating room and be capable of manual operation only. However ships operating under the general exemption of § 80.836(c) may install an additional switch on the bridge for stopping the warning apparatus.

(c) Failure of the auto alarm if of a type approved prior to July 23, 1951, to function normally due to prolonged interference must operate a visual indicator on the bridge. The type and method of installation of such visual indicator must comply with the requirements of the U.S. Coast Guard.

(d) The power supply voltage of an auto alarm must be maintained within definite upper and lower limits. The power supply must have an auxiliary device which: (1) Will energize the alarm if this power supply fails or its voltage exceeds the limits specified for the particular type of auto alarm involved; or (2) will automatically connect the auto alarm to an auxiliary power supply, the voltage of which is within the specified limits.

§ 80.817 Tests of radiotelegraph auto alarm.

(a) The radio officer must at least once every 24 hours while the ship is in the open sea:

(1) Test the auto alarm by using the testing device to determine whether the auto alarm will respond to not less than 4 nor more than 12 consecutive dashes having an approximate duration of 4 seconds and an approximate spacing of 1 second.

(2) Determine the proper functioning of the auto alarm receiver while connected to its normal antenna, by actual operation and comparison of received signals with similar signals received on 500 kHz by the main receiver.

(b) If the auto alarm is not in proper operating condition, the radio officer must report that fact to the master or officer on watch on the bridge.

(c) A statement that the tests specified in this section have been made, and the results of such tests, must be inserted in the radiotelegraph station log.

§ 80.818 Direction finding and homing equipment.

Each compulsory ship of 1,600 gross tons or over whose keel was laid:

(a) *Prior to May 25, 1980,* must be equipped with radio direction finding apparatus in operating condition and approved by the Commission during an inspection.

(b) *On or after May 25, 1980,* must be equipped with radio direction finding apparatus having a homing capability in operating condition and approved by the Commission during an inspection.

§ 80.819 Requirements for radio direction finder.

(a) To be approved by the Commission during an inspection the radio direction finding apparatus must:

(1) Be capable of receiving signals A1A, A2B and R2B emission, on each frequency within the band 285–515 kHz assigned by the Radio Regulations for distress and direction finding and for maritime radio beacons, and be calibrated to take bearings on such signals from which the true bearing and direction may be determined; and

(2) Possess a sensitivity, sufficient to permit the taking of bearings on a signal having a field strength of 50 microvolts per meter.

(b) The calibration of the direction finder must be verified by check bearings or by a further calibration whenever any changes are made in the physical or electrical characteristics or the position of any antennas, and whenever any changes are made in the position of any deck structures which might affect the accuracy of the direction finder. In addition, the calibration must be verified by check bearings at yearly intervals. A record of the calibrations, and of the check bearings made of their accuracy and the accuracy of the check bearings must be kept on board the ship for a period of not less than 1 year.

§ 80.820 Auxiliary receiving antenna.

An auxiliary receiving antenna must be provided when necessary to avoid unauthorized interruption or reduced efficiency of the required watch because the normal receiving antenna is not available because a radio direction finder on board the vessel is operated.

§ 80.821 Installation of direction finder.

(a) The direction finder must be located to minimize interference from noise.

(b) The direction finder antenna system must be erected so that the determination of bearings will not be hindered by the proximity of other antennas, cranes, wire halyards, or large metal objects.

§ 80.822 Contingent acceptance of direction finder calibration.

(a) When the required calibration can not be made before departure from a harbor or port for a voyage in the open sea, the direction finder may be tentatively approved on condition that the master certifies in writing that the direction finder will be calibrated by a competent technician; and

(b) In the absence of acceptable calibration at the time of the subsequent inspection the Commission may withdraw approval of the direction finder until such evidence is available.

§ 80.823 Check bearings by authorized ship personnel.

The requirement for calibration by check bearings is met if:

(a) The required verification by check bearings are made not more than 90 days prior to the date of the annual detailed inspection of the radiotelegraph station;

(b) The verification consists of a comparison of simultaneous visual and radio direction finder bearings. At least one comparison bearing must be taken in each quadrant, within plus or minus 20 degrees from the following bearings

relative to the ship's heading: 45 degrees; 135 degrees; 225 degrees; 315 degrees;

(c) The verification shows the visual bearing relative to the ship's heading and the difference between the visual and radio direction finder bearing, and the date each check bearing is taken.

§ 80.824 Homing facility requirements.

(a) Direction finding equipment used on compulsory vessels whose keel was laid on or after May 25, 1980, must additionally have a homing facility which is:

(1) Capable of operating with A1A, A2B, H2B and H8E emission on any frequency in the band 2167–2197 kHz;

(2) Capable of taking direction finding bearings on the radiotelephone distress frequency 2182 kHz without ambiguity of sense within an arc of 30 degrees on either side of the bow;

(3) Installed with due regard to CCIR Recommendation 428–2:

(4) Sufficiently sensitive, in the absence of interference, to take bearings on a signal having a field strength of 25 microvolts per meter;

(5) Capable of determining its accuracy by comparison of visual or calculated bearings and homing facility bearings. Comparisons must be made at −30, 0 and +30 degrees relative to the ships heading to show that the correct sense is indicated.

§ 80.825 Radar installation requirements and specifications.

(a) On ships between 500 and 1,600 gross tons that are constructed on or after September 1, 1984, and are engaged in international voyages, all compulsory ship radars must comply with Regulation 12, Chapter V of the Safety Convention as amended. Performance standards must meet the recommendations in IMO Resolution A.477 (XII).

(b) On ships over 1,600 gross tons all radar installations provided to meet the requirements of the Safety Convention must comply with the following requirements.

(1) The main display position of the radar station must be located in the wheelhouse and the radar must be capable of being switched on and off and operated from that position.

(2) A reflection plotter must be available and facilities for plotting provided as necessary.

(c) On ships over 1,600 gross tons all compulsory ship radar stations must comply with the radar specifications issued by the Radio Technical Commission for Marine Services dated July 18, 1978, in the Final Report of Special Committee No. 65-Ship Radar, as amended by Change 1 to Volume II. These requirements took effect on April 27, 1981, and were not retroactive. These specifications may be obtained from the Commission's copy contractor. The name and address of the current contractor is contained in Section 0.465 of this chapter. The applicable specifications are as follows:

(1) For radar equipment installed after May 25, 1980, "Performance Specification for a General Purpose Navigational Radar Set for Oceangoing Ships of 1,600 Tons Gross Tonnage and Upwards, For New Radar Installations." This specification including its Appendix A—Design and Testing Specifications—is found in Part I of Volume II of the RTCM SC–65 Final Report.

(2) For equipment installed before May 25, 1980 "Performance Specification for a General Purpose Navigational Radar Set For Oceangoing Ships of 1,600 Tons Gross Tonnage and Upwards for Ships Already Fitted." This specification is found in Part II of Volume II of the RTCM SC–65 Final Report.

(3) Recommendations for tools, test instruments, spares and technical manuals are found in Appendixes I, II, III and IV of Part IV of Volume III of the RTCM SC–65 Final Report.

(d) For ships of 10,000 gross tons or more or any other ship that is required to be equipped with two radar systems, each of these systems must be capable of operating independently and must comply with the specifications referenced in paragraphs (a), (b) and (c) of this section. One of the systems must provide a display with an effective diameter of not less than 340 millimeters (13.4 inches), (16 inch cathode ray tube); and the other system must provide a display with an effective diameter of not less than 250 millimeters (9.8 inches), (12 inch cathode ray tube).

§ 80.826 Interior communication systems.

(a) An interior communicaiton system must be provided between the bridge of the ship and the radiotelegraph operating room in all cases where the radiotelegraph operating room does not adjoin or open onto the navigating bridge structure. An interior communication system must also be provided between the bridge and the location of the radio direction finding apparatus whenever the latter is not located on the bridge or within any compartment adjoining or opening onto the navigating bridge structure. If the operating position of the reserve radio installation is not located in the room normally used for operating the main radio installation, an interior communication system must be separately provided between the bridge and each of these radio operating positions.

(b) If a vessel has more than one location from which it is normally controlled and steered, the interior communication system between the radiotelegraph operating room and bridge must include communication to each such location. The existence at a location of all of the following factors will require that a point of communication be established there: (1) A steering wheel; (2) a compass; (3) an engine order telegraph; (4) control of the whistle; and (5) a wheelhouse enclosure.

(c) Paragraph (b) of this section does not apply to locations established solely for emergency use in event of failure of the normal steering facilities or locations used solely while docking or maneuvering a ship while in port or for brief periods while navigating the ship in close quarters on inland waters.

§ 80.827 Requirements for interior communication systems.

The interior communication systems required by § 80.826 must provide two-way calling and voice communication, be independent of any other communication system in the ship, and be of a type approved by the United States Coast Guard. The location and termination of individual systems is subject to approval by the Commission.

§ 80.828 Radiotelegraph station clock.

A working clock equipped with a sweep seconds hand and having a dial not less than 5 inches in diameter, the face of which is marked to indicate the silence periods prescribed for the radiotelegraph service by the International Radio Regulations, must be provided. It must be securely mounted in the radiotelegraph operating room in such a position that the entire dial can be clearly observed by the radio officer from the normal radiotelegraph operating position, from the operating position where the international radiotelegraph alarm signal would ordinarily be transmitted by hand, and from the position used for testing the auto alarm (if installed). If a separate emergency radiotelegraph operating room is provided, the requirements of this section apply to it also.

§ 80.829 Survival craft nonportable radiotelegraph installation.

(a) A survival craft nonportable radiotelegraph installation required by law to be provided in a motor lifeboat must include the following components as a minimum:

(1) A transmitting and receiving antenna and antenna accessories,

(2) An artificial antenna for testing purposes;

(3) A transmitter with keying arrangements for use of radiotelegraphy, an associated radio receiver with headphones, and a suitable device for converting from the power supply battery voltage to the voltages used by the transmitter and receiver;

(4) A power supply;

(5) A device for a ground connection to the water when the lifeboat is afloat.

(b) Components of a survival craft nonportable radiotelegraph installation specified in paragraph (a)(2) of this section must be type accepted of § 80.263 and § 80.265.

(c) The radiotelegraph equipment must be installed in a cabin large enough to accommodate both the equipment and the person using it. The operation of the radiotelegraph installation must not be interfered with by the survival craft engine while it is running, whether or not a battery is on charge.

(d) The antenna must be a single wire inverted L type with a horizontal section of the maximum practicable length and a height above the mean waterline of not less than 6 meters (20 feet), and must be so designed that it can be quickly erected and utilized by a person in the lifeboat while afloat.

(e) The ground system must comply with the following requirements:

(1) The radio installation when installed in a metal hull lifeboat must be grounded to the hull of the lifeboat. The ground connection must be physically located in a position where it is inaccessible to the normal movement of occupants or accessories in the lifeboat;

(2) The radio installation when installed in a lifeboat having a nonmetallic hull must be grounded to a bare plate or strips of corrosion resistant metal having a total area of at least 6 square feet and located on the hull of the lifeboat below the waterline.

(f) When the lifeboat is afloat the installation must be capable of developing an antenna current such that the product of the maximum height of the antenna above the mean surface of the water, expressed in feet, and the r.m.s. antenna current on the frequency 500 kHz, expressed in amperes, is not less than 32.

§ 80.830 Power supply for survival craft nonportable radiotelegraph installation.

(a) The power supply for the survival craft nonportable radiotelegraph installation must consist of a battery capable of operating the survival craft radiotelegraph installation for at least 6 hours continuously under normal working conditions.

(b) The battery may power equipment other than the radiotelegraph installation (except that it must not be used to supply power to any engine starting motor or ignition system) provided such additional use will not adversely affect the required capabilities of the battery. All circuits connected to the battery must be independently fused.

(c) The battery must be kept charged at all times while at sea. The charging of the battery must not require its removal from the survival craft in which it is installed. The necessary charging equipment must not interfere with the launching of the survival craft, and must be easily and quickly removable. The charging circuit for the battery must be routed through the radiotelegraph operating room, and include a device located in the radiotelegraph operating room which will give continuous indication of the polarity and the rate of charge.

(d) Installation must provide for charging of the battery by means of a generator on the survival craft engine.

(e) Subject to approval of the United States Coast Guard, the battery must be mounted in a suitable container that will provide protection from salt water spray and also allow proper ventilation.

§ 80.831 Survival craft portable radiotelegraph equipment.

(a) Survival craft portable radiotelegraph equipment required by law to be provided must be type accepted by the Commission as capable of meeting the provisions of § 80.263 and § 80.265.

(b) The equipment must be stowed in the radio room, bridge or a protected location near a lifeboat and be readily accessible for transfer to a lifeboat. However, in tankers of 3,000 gross tons and over in which lifeboats are fitted amidships and aft, this equipment must be kept in a suitable place in the vicinity of those lifeboats which are farthest away from the ship's main transmitter.

(c) Equipment for totally enclosed lifeboats must meet the extra requirements specified in § 80.265.

§ 80.832 Tests of survival craft radio equipment.

(a) Except for emergency position indicating radio beacons and two-way radiotelephone equipment, inspections and tests of survival craft radio equipment must be conducted by the licensee at weekly intervals while the ship is at sea or, if a test or inspection has not been conducted within a week prior to its departure, within 24 hours prior to the ship's departure from a port. The inspection and tests must include operation of the transmitter connected to an artificial antenna and determination of the specific gravity or voltage under normal load of any batteries.

(b) When the ship is in a harbor or port of the United States an authorized representative of the Commission may require:

(1) Inspection and test of the survival craft radio equipment in the survival craft afloat, including an operational test of the transmitter and receiver connected to the required antenna to determine that the equipment is in operating condition;

(2) Demonstration in accordance with § 80.808 that a battery used as a part of the survival craft nonportable radio installation is capable of energizing the installation for the required 6 hours.

(c) The results of the inspections and test must be made known to the master, and be entered in the ship's radio station log, or in the ship's log if the ship is not provided with a radio station.

§ 80.833 Class S survival craft emergency position indicating radiobeacons (EPIRB's).

(a) Survival craft emergency position indicating radiobeacons, Class S, required to comply with Title 46 of the Code of Federal Regulations must be type accepted to meet the provisions of § 80.1059.

(b) The Class S EPIRB must be stowed in the survival craft.

(c) The Class S EPIRB must be tested at intervals not to exceed twelve months.

(d) Batteries must be replaced after the date specified in § 80.1053(e), or after the transmitter has been used in an emergency situation, whichever is earlier.

§ 80.834 Survival craft portable two-way radiotelephone.

(a) Survival craft portable two-way radiotelephone transceivers must meet the provisions of § 80.271.

(b) The equipment must be stowed in the radio room, on the bridge or in a location readily accessible for transfer to life boats when not being used by shipboard personnel to satisfy the vessel's operational requirements.

(c) When not in routine use the survival craft two-way radiotelephone transceivers must be operationally tested once a week. Operational test should be conducted with equipment separated as far as practical and in the case of UHF equipment must include tests on the frequency 457.525 MHz.

VOL 51 ISS 169 SE 2 1986 UMI

(d) All survival craft two-way radiotelephones associated with a ship must operate in the same frequency band (VHF or UHF).

§ 80.835 Ship and survival craft station spare parts, tools, instruction books, circuit diagrams and testing equipment.

(a) Each ship station must be provided with such spare parts, tools, testing equipment, instruction books and circuit diagrams as will enable the radiotelegraph installation and survival craft station to be maintained in working condition while at sea. Each ship station licensee must compile a list of spare parts, tools, test equipment and circuit diagrams it considers necessary for compliance with this requirement. This list must be available at inspection. The Commission may consider equipment manufacturer lists of recommended spare parts, tools, test equipment and repair circuit diagrams in determining compliance with this subsection. Spare parts for the survival craft station must be kept with that station. Other items must be located convenient to the radio room.

(b) The testing equipment must include an instrument or instruments for measuring A.C. volts, D.C. volts and ohms.

§ 80.836 General and individual ship exemptions.

(a) All U.S. passenger vessels of less than 100 gross tons, not subject to the radio provisions of the Safety Convention, are exempt from the radiotelegraph provisions of Title III, Part II of the Communications Act, provided that the vessels are navigated not more than 100 nautical miles from the nearest land and are equipped with a radiotelephone installation fully complying with the provisions of Part III of Title III of the Communications Act and the Commission's rules and regulations including the requirements with respect to certificates, operators and listening watches.

(b) All newly constructed U.S. cargo vessels of 1600 gross tons and upward are exempt from the radiotelegraph and radio direction finding provisions of Part II of Title III of the Communications Act when navigated on sea trials, not more than 150 nautical miles from the nearest land, if the following conditions are met:

(1) The vessel is equipped with a radiotelephone capable of operation on 2182 kHz and equipped with a radiotelephone alarm signal generator. The vessel may carry an additional portable radiotelephone, located in the wheelhouse, equipped with a radiotelephone alarm signal generator to satisfy the radiotelephone alarm signal generator requirement;

(2) The radio direction-finding apparatus is calibrated during the sea trials;

(3) A continous watch is maintained in 2182 kHz whenever the radiotelephone is not being used for authorized traffic during the sea trials; and

(4) The local FCC Engineer in Charge is advised of the dates and routes of the sea trials.

(c) Cargo ships of 1600 gross tons and upward navigated on domestic voyages along the coasts of the contiguous 48 states are exempt from the radio telegraph requirements of Part II of Title III of the Communications Act, if the following criteria are met:

(1) The routes of the voyage are never more than 150 nautical miles from the nearest land.

(2) The ship has a satellite terminal providing both voice and telex.

(3) The ship has a single sideband radiotelephone with voice channels capable of operating on any distress and safety channel in the marine bands.

(4) The ship has a narrow-band direct printing radiotelegraph with SITOR.

(5) The ship has a separate 2182 kHz radiotelephone distress frequency watch receiver with a radiotelephone alarm signal generator.

(6) The ship has at least two VHF transceivers.

(7) The above equipment has provisions for emergency and reserve power sources.

(8) The ship has a 500 kHz auto alarm receiver and the capability of relaying the distress messages received to shore via one of the systems listed above.

(9) The ship participates in the AMVER system.

(10) The ship carries licensed operators to operate and maintain all of the ship's systems used for distress and safety.

(d) These exemptions may be terminated at any time without hearing if, in the Commission's discretion, the need for such action arises.

Subpart R—Compulsory Radiotelephone Installations for Vessels 300 Gross Tons

§ 80.851 Applicability.

The radiotelephone requirements of Part II of Title III of the Communications Act apply to cargo ships of 300 gross tons and upward but less than 1600 gross tons. The radiotelephone requirements of the Safety Convention apply to passenger ships irrespective of size and cargo ships of 300 gross tons and upward on international voyages. These ships are required to carry a radiotelephone installation complying with this subpart.

§ 80.853 Radiotelephone station.

(a) The radiotelephone station is a radiotelephone installation and other equipment necessary for the proper operation of the installation.

(b) The radiotelephone station must be installed to insure safe and effective operation of the equipment and to facilitate repair. Adequate protection must be provided against the effects of vibration, moisture, and temperature.

(c) The radiotelephone station and all necessary controls must be located at the level of the main wheelhouse or at least one deck above the ship's main deck.

(d) The principal operating position of the radiotelephone station must be in the room from which the ship is normally steered while at sea. In installations on cargo ships of 300 gross tons and upwards but less than 500 gross tons on which the keel was laid prior to January 1, 1965, the location of the principal operating controls may be in a room adjoining and opening into the room from which the vessel is normally steered while at sea. If the station can be operated from any location other than the principal operating position, a positive means must be provided at the principal operating position to take full control of the station.

(e) The use of a independent communication system between the principal operating position and all other operating locations is acceptable as a method for taking control at the principal operating position. For stations first placed in service on or after June 1, 1956 the use of this method for taking control at the principal operating position is acceptable only for operating locations in the chartroom or master's quarters.

§ 80.854 Radiotelephone installation.

The radiotelephone installation includes:

(a) A radiotelephone transmitter;

(b) A receiver as specified in § 80.858(a);

(c) A radiotelephone distress frequency watch receiver specified in § 80.269;

(d) A main source of energy;

(e) A reserve source of energy, when required by § 80.860(a);

(f) An antenna system.

§ 80.855 Radiotelephone transmitter.

(a) The transmitter must be capable of transmission of H3E and J3E emission on 2182 kHz, and J3E emission on 2638

kHz and at least two other frequencies within the band 1605 to 3500 kHz available for ship-to-shore or ship-to-ship communication.

(b) The duty cycle of the transmitter must permit transmission of the international radiotelephone alarm signal.

(c) The transmitter must be capable of transmitting clearly perceptible signals from ship to ship during daytime under normal conditions over a range of 150 nautical miles.

(d) The transmitter complies with the range requirement specified in paragraph (c) of this section if:

(1) The transmitter is capable of being matched to actual ship station transmitting antenna meeting the requirements of § 80.863; and

(2) The output power is not less than 60 watts peak envelope power for H3E and J3E emission on the frequency 2182 kHz and for J3E emission on the frequency 2638 kHz into either an artificial antenna consisting of a series network of 10 ohms resistance and 200 picofarads capacitance, or an artificial antenna of 50 ohms nominal impedance. An individual demonstration of the power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required.

(e) The transmitter must provide visual indication whenever the transmitter is supplying power to the antenna.

(f) The transmitter must be protected from excessive currents and voltages.

(g) A durable nameplate must be mounted on the transmitter or made an integral part of it showing clearly the name of the transmitter manufacturer and the type or model of the transmitter.

(h) An artificial antenna must be provided to permit weekly checks of the automatic device for generating the radiotelephone alarm signal on frequencies other than the radiotelephone distress frequency.

§ 80.856 Automatic radiotelephone alarm signal generator.

The transmitter must be equipped with an international radiotelephone alarm signal generator type accepted by the Commission. See § 80.221.

§ 80.857 Installation of automatic radiotelephone alarm signal generator.

The controls of the automatic radiotelephone alarm signal generator required by § 80.856 must be located at the principal radiotelephone operating position only. The controls must permit instant use of this device to modulate the required transmitter and permit the device to be taken out of operation at any time so that the transmitter may be immediately voice modulated for transmission of a distress call and message.

§ 80.858 Radiotelephone receiver.

(a) The receiver required by § 80.854(a) of this part must be capable of reception of H3E and J3E emissions on the radiotelephone distress frequency. The receiver must be capable of reception of J3E emissions on 2638 kHz and the receiving frequencies associated with the transmitting frequencies authorized pursuant to § 80.855(a).

(b) In addition to the receiver required by paragraph (a) of this section, a radiotelephone distress frequency watch receiver meeting the technical standards of § 80.269 must be provided.

(c) One or more loudspeakers capable of being used to maintain the distress frequency (2182 kHz) watch at the principal operating position and at any other place where the listening watch is performed must be provided.

(d) The receiver required by paragraph (a) of the section must:

(1) Have a sensitivity of 50 microvolts;

(2) Be capable of operation when energized by the main source of energy, and by the reserve source of energy if a reserve source is required by § 80.860(a);

(3) Be protected from excessive currents and voltages;

(4) Be provided with a nameplate showing the name of the receiver manufacturer and the type or model.

(e) The sensitivity of a receiver is the strength in microvolts of a signal, modulated 30 percent at 400 cycles per second, required at the receiver input to produce an audio output of 50 milliwatts to the loudspeaker with a signal-to-noise ratio of at least 6 decibels. Evidence of a manufacturer's rating or a demonstration of the sensitivity of a required receiver computed on this basis must be furnished upon request of a Commission representative.

§ 80.859 Main power supply.

(a) The main power supply must simultaneously energize the radiotelephone transmitter at its required antenna power and the required receivers. Under this load condition the voltage of the main power supply at the radiotelephone input terminals must not deviate from its rated potential by more than 10 percent on ships completed on or after July 1, 1941, nor by more than 15 percent on ships completed before that date.

(b) Means must be provided for charging any batteries used as a main power supply. A continuous indication of the rate and polarity of the charging current must be provided during charging of the batteries.

§ 80.859 Reserve power supply.

(a) When the main power supply is not on the same deck as the main wheelhouse or at least one deck above the vessel's main deck, a reserve power supply must be provided and must be so situated. The location of the reserve power supply must be located as near to the required transmitter and receivers as practicable and meet all applicable rules and regulations of the United States Coast Guard.

(b) The reserve power supply must be independent of the propelling power of the ship and of any other electrical system, and must simultaneously energize the radiotelephone transmitter at its required antenna power, the required receivers, the emergency light and the automatic radiotelephone alarm signal generator. The reserve power supply must be available at all times.

(c) The reserve power supply may be used to energize the bridge-to-bridge radiotelephone and the VHF radiotelephone installation required by § 80.871.

(d) All circuits connected to the reserve power supply must be protected from overloads.

(e) Means must be provided for charging any batteries used as a reserve power supply. A continuous indication of the rate and polarity of the charging current during charging of the batteries must be provided.

(f) The cooling system of each internal combustion engine used as a part of the reserve power supply must be adequately treated to prevent freezing or overheating consistent with the season and route to be traveled by the particular vessel involved.

(g) The reserve power supply must be available within 1 minute.

§ 80.861 Required capacity.

If the main power supply or the reserve power supply provided for the purpose of complying with § 80.859 and § 80.860 consists of batteries, the batteries must have sufficient reserve capacity available at all times while the vessel is leaving or attempting to leave a harbor or port for a voyage in the open sea, and while being navigated in the open sea outside of a harbor or port, to permit operation of the radiotelephone transmitter and the required receivers for at least 6 hours continuously under normal working conditions.

§ 80.862 Proof of capacity.

(a) When directed by the Commission or its authorized representative, the

station licensee must prove that the requirements of § 80.861 are met.

(b) Proof of the ability of a battery used as a main or reserve source to operate continuously for 6 hours can be established by a discharge test over a prescribed period of time, when supplying power at the voltage required for normal and operation to an electrical load as prescribed by paragraph (d).

(c) When the reserve power supply is an engine-driven generator, proof of the adequacy of the engine fuel supply to operate the unit contiuously for 6 hours can be established by measuring the fuel consumption for 1 hour when supplying power, at the voltage required for normal operation, to an electrical load as prescribed by paragraph (d).

(d) In determining the electrical load to be supplied, the following formula must be used:

(1) One-half of the current of the required transmitter at its rated power output.

(2) One fourth of the current of the automatic radiotelephone alarm signal generator; plus

(3) Current of receiver; plus

(4) Current of emergency light(s); plus

(5) Current of the bridge-to-bridge transceiver when connected.

(e) At the conclusion of the test specified in paragraphs (b) and (c) of this section, no part of the main or reserve power supply must have an excessive temperature rise, nor must the specific gravity or voltage of any battery be below 90 percent discharge point of the fully charged value.

§ 80.863 Antenna system.

(a) An antenna system must be installed which is as nondirectional and as efficient as is practicable for the transmission and reception of radio ground waves over seawater. The installation and construction of the required antenna must insure operation in time of emergency.

(b) If the required antenna is suspended between masts or other supports liable to whipping, a safety link which, under heavy stress, will operate to greatly reduce such stress without breakage of the antenna, the halyards, or other antenna-supporting elements, must be installed.

(c) When an electrical ground connection is used as an element of the antenna system, the connection must be efficient.

§ 80.864 Emergency electric lights.

(a) Emergency electric light(s) must be installed to illuminate the operating controls of the radiotelephone installation at the principal operating position, the card of instructions, and the radiotelephone station clock if the latter is not self-illuminated.

(b) The emergency electric light(s) must be energized from the reserve power supply, if a reserve power supply is required. In cases where a reserve power supply is not required, the emergency lights must be energized independently of the system which supplies the normal lighting.

§ 80.865 Radiotelephone station clock.

A clock having a face of at least 5 inches in diameter must be mounted in a position that can be observed from the principal operating position.

§ 80.866 Spare antenna.

A spare transmitting antenna completely assembled for immediate erection must be provided. If the installed transmitting antenna is suspended between supports, this spare antenna must be a single-wire transmitting antenna of the same length and must also include suitable insulators.

§ 80.867 Ship station tools, instruction books, circuit diagrams and testing equipment.

(a) Each ship station must be provided with such tools, testing equipment, instruction books and circuit diagrams to enable the radiotelephone installation to be maintained in efficient working condition while at sea. Each ship station licensee must compile a list of spare parts, tools, test equipment and circuit diagrams it considers necessary for compliance with this requirement. This list must be available at inspection. The Commission may consider equipment manufacturer lists of recommended spare parts, tools, test equipment, and repair circuit diagrams in determining compliance with this subsection. These items must be located convenient to the radio room.

(b) The testing equipment must include an instrument or instruments for measuring A.C. volts, D.C. volts and ohms.

§ 80.868 Card of instructions.

A card of instructions giving a clear summary of the radiotelephone distress procedure must be securely mounted and displayed in full view of the principal operating position.

§ 80.869 Test of radiotelephone station.

Unless the normal use of the required radiotelephone station demonstrates that the equipment is operating, a test communication on a required or working frequency must be made each day the ship is navigated. When this test is performed by a person other than the master and the equipment is found to be defective the master must be promptly notified.

§ 80.870 Survival craft radio equipment.

(a) A Class S survival craft emergency position indicating radiobeacon, (EPIRB) required to be carried to comply with Title 46 of the Code of Federal Regulations must meet the provisions of § 80.833.

(b) A survival craft two-way radiotelephone apparatus must meet the provisions of § 80.834.

§ 80.871 VHF radiotelephone station.

(a) All passenger ships irrespective of size and all cargo ships of 300 gross tons and upwards subject to Part II of Title III of the Communications Act or to the Safety Convention are required to carry a VHF radiotelephone station complying with this subpart. Ships subject only to the Communications Act may use a VHF radiotelephone installation meeting the technical standards of the Bridge-to-Bridge Act to satisfy the watch requirements of § 80.305(2)(3) if the equipment can transmit and receive on 156.800 MHz.

(b) The VHF radiotelephone station must be installed to insure safe and effective operation of the equipment and facilitate repair. It must be protected against vibration, moisture and temperature.

(c) The principal operating position of the radiotelephone station must be in the room from which the ship is normally steered while at sea.

(d) The radiotelephone stations on ships subject to Part II of Title III of the Communications Act must be capable of operating on the frequency 156.800 MHz and in other respects meet the requirements of § 80.143. The radiotelephone stations on ships subject to the Safety Convention must be capable of operating in the simplex mode on the ship station transmitting frequencies specified in the frequency band 156.025 MHz to 157.425 MHz and in the semiduplex mode on the two frequency channels specified in the following table:

Channel designators	Transmitting frequencies (MHz)	
	Ship station	Coast station
60	156.025	160.625
01	156.050	160.650
61	156.075	160.675
02	156.100	160.700
62	156.125	160.726
03	156.150	160.750
63	156.175	160.775
04	156.200	160.800
64	156.225	160.825
05	156.250	160.850
65	156.275	160.875
06	156.300	
66	156.325	160.925
07	156.350	160.950
67	156.375	156.375

Channel designators	Transmitting frequencies (MHz)	
	Ship station	Coast station
08	156.400	
68	156.425	156.425
09	156.450	156.450
69	156.475	156.475
10	156.500	156.500
70	156.525	
11	156.550	156.550
71	156.575	156.575
12	156.600	156.600
72	156.625	
13	156.650	156.650
73	156.675	156.675
14	156.700	156.700
74	156.725	156.725
15	156.750	156.750
75	(1)	(1)
16	156.800	156.800
76	(1)	(1)
17	156.850	156.850
77	156.875	
18	156.900	161.500
78	156.925	161.525
19	156.950	161.550
79	156.975	161.575
20	157.000	161.600
80	157.025	161.625
21	157.050	157.050
81	157.075	161.675
22	157.100	161.700
82	157.125	161.725
23	157.150	156.150
83	157.175	156.175
24	156.200	161.800
84	157.225	161.825
25	157.250	161.850
85	157.275	161.875
26	157.300	161.900
86	157.325	161.925
27	157.350	161.950
87	157.375	161.975
28	157.400	162.000
88	157.425	162.025

[1] Guard band.

§80.872 The VHF radiotelephone installation.

The VHF radiotelephone installation includes:

(a) A VHF radiotelephone transmitter,

(b) A VHF radiotelephone receiver,

(c) A power supply,

(d) An antenna system.

§ 80.873 VHF radiotelephone transmitter.

(a) The transmitter must be capable of transmission of G3E emission on 156.300 MHz and 156.800 MHz, and on frequencies which have been specified for use in a system established to promote safety of navigation. Vessels in waters of other Administrations are required to communicate on any channel designated by that Administration for navigational safety in the bands specified in §80.871(d).

(b) The transmitter must be adjusted so that the transmission of speech normally produces peak modulation within the limits of 75 percent and 100 percent.

(c) The transmitter must deliver a carrier power between 6 and 25 watts into a 50 ohm effective resistance. Provision must be made for reducing the carrier power to a value between 0.1 and 1.0 watts.

(d) The transmitter complies with the power output requirements specified in paragraph (c) of this section when:

(1) The transmitter is capable of being adjusted for efficient use with an actual ship station transmitting antenna meeting the requirements of § 80.876; and

(2) The transmitter has been demonstrated capable, with normal operating voltages applied, of delivering not less than 8 watts of carrier power into 50 ohms effective resistance over the frequency band specified in § 80.871(d). An individual demonstration of the power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required; and

(3) It is type accepted as required by Subpart F of this part.

§ 80.874 VHF radiotelephone receiver.

(a) The receiver used for providing the watch for navaigational safety required by § 80.313 must be type accepted by the Commission and capable of effective reception of G3E emission on the frequencies required by § 80.871(d) when connected to the antenna specified in § 80.876.

(b) The receiver must have a usable sensitivity of 0.5 microvolts.

(c) The receiver must deliver adequate audio output power to be heard in the ambient noise level likely to be expected on board ships with a loudspeaker and/or a telephone handset.

(d) In the simplex mode when the transmitter is activated the receiver output must be muted.

§ 80.875 VHF radiotelephone power supply.

(a) There must be readily available for use under normal load conditions a power supply sufficient to simultaneously energize the VHF transmitter at its required antenna power, and the VHF receiver. Under this load condition the voltage of the source of energy at the power input terminals of the VHF radiotelephone installation must not deviate from its rated value by more than 10 percent on ships completed on or after March 1, 1957, nor by more than 15 percent on ships completed before that date.

(b) When the power supply for the VHF radiotelephone installation consists of batteries, they must be installed in the upper part of the ship, secured against shifting with motion of the ship, capable of operating the installation for 6 hours, and accessible with not less than 10 inches head room.

(c) Means must be provided for charging any rechargeable batteries used in the ship's VHF radiotelephone installation. There must be provided a device which, during charging of the batteries, will give a continuous indication of the charging current.

(d) The VHF radiotelephone installation may be connected to the reserve power supply of a compulsorily fitted radiotelephone or radiotelegraph installation.

§ 80.876 VHF radiotelephone antenna system.

A vertically polarized nondirectional antenna must be provided for VHF radiotelephone installations. The construction and installation of this antenna must insure proper operation in an emergency.

§ 80.877 Controls and indicators required for VHF radiotelephone installations.

The controls and indicators used on equipment of the VHF radiotelephone installation must meet the following standards:

(a) The size of controls must easily permit normal adjustment. The function and the setting of the controls must be clearly indicated.

(c) Controls must be illuminated to permit satisfactory operation of the equipment.

(c) Means must be provided to reduce to extinction any light output from the equipment which could affect safety of navigation.

(d) An on/off switch must be provided for the entire installation with a visual indication that the installation is switched on.

(e) The equipment must indicate the channel number, as given in the Radio Regulations, to which it is tuned. It must allow the determination of the channel number under all conditions of external lighting. Channel 16 must be distinctively marked.

(f) The receiver must have a manual volume control and a squelch control.

(g) If the external controls are on a separate control unit and more than one such control unit is provided, the one on the bridge must have priority over the others. When there is more than one control unit, indication must be given to the other(s) that the transmitter is in operation.

Subpart S—Compulsory Radiotelephone Installations for Small Passenger Boats

§ 80.901 Applicability.

The provisions of Part III of Title III of the Communication Act require United States vessels which transport more than six passengers for hire while such vessels are being navigated on any

tidewater within the jurisdiction of the United States adjacent or contiguous to the open sea, or in the open sea to carry a radiotelephone installation complying with this Subpart. The provisions of Part III do not apply to vessels which are equipped with a radio installation for compliance with Part II of Title III of the Act, or for compliance with the Safety Convention, or to vessels navigating on the Great Lakes.

§ 80.903 Inspection of radiotelephone installation.

Every vessel subject to Part III of Title III of the Communications Act must have a detailed inspection by the Commission of the prescribed installation once every five years. If after inspection the Commission determines that all relevant provisions of Part III of Title III of the Communications Act, the rules of the Commission, and the station license are met a Communications Act Safety Radiotelephone Certificate will be issued. The effective date of this certificate is the date the installation is found to be in compliance, or not more than one business day later.

§ 80.905 Radiotelephone installation.

(a)(1) The required radiotelephone installation must include a medium-frequency transmitter capable of J3E emission and a receiver capable of reception of J3E emission within the band 1605 to 2850 kHz unless the vessel is within communication range of a public coast station or U.S. Coast Guard station operating in the band 156 to 162 MHz which maintains a watch on 156.800 MHz at all times while the vessel is navigated in waters specified in § 80.901, and the vessel is never more than 20 nautical miles from the receiving location of such a station. In that case the radiotelephone installation may include a VHF transmitter and receiver in lieu of the medium frequency equipment.

(2) For a vessel that is navigated within the communication range of a VHF public coast station or U.S. Coast Guard station, but beyond the 20-nautical mile limitation specified in paragraph (a)(1) of this section, an exemption from the band 1605 to 2850 kHz installation requirements may be granted if the vessel is equipped with a VHF transmitter and receiver. An application for exemption must include a chart showing the route of the voyage or the area of operation of the vessel, and the receiving service area of the VHF public coast or U.S. Coast Guard station. The coverage area of the U.S. Coast Guard station must be based on written information from the District Commander, U.S. Coast Guard, a copy of which must be furnished with the application. The coverage area of a public coast station must be computed by the method specified in Subpart P of this Part.

(b) The radiotelephone installation must be installed to insure safe operation of the equipment and to facilitate repair. It must be protected against the vibration, moisture, temperature, and excessive currents and voltages.

(c) A VHF radiotelephone installation or a remote unit must be located at each steering station except those auxiliary steering stations which are used only during brief periods for docking or for close-in maneuvering. A single portable radiotelephone set meets the requirements of this paragraph if adequate permanent mounting arrangements with suitable power provision and antenna feed are installed at each operator steering station. Additionally, for vessels of more than 100 gross tons, the radiotelephone installation must be located at the level of the main wheelhouse or at least one deck above the vessel's main deck.

§ 80.907 Principal operating position.

The principal operating position of the radiotelephone installation on vessels over 100 gross tons must be in the room from which the vessel is normally steered while at sea. If the station can be operated from any location other than the principal operating position, a positive means must be provided at the principal operating position to take full control of the station.

§ 80.909 Medium frequency transmitter.

(a) The transmitter must have a peak envelope output power of a least 60 watts for J3E emissions on 2182 kHz and at least one ship-to-shore working frequency within the band 1605 to 2850 kHz enabling communication with a public coast station if the region in which the vessel is navigated is served by a public coast station operating in this band.

(b) The transmitter complies with the power output requirement in paragraph (a) of this section when:

(1) The transmitter can be adjusted for efficient use with an actual ship station transmitting antenna meeting the requirements of § 80.923; and

(2) The transmitter has been demonstrated with normal operating voltages applied, of delivering not less than 60 watts peak envelope power for J3E emissions on the frequencies 2182 and 2638 kHz into either an artificial antenna consisting of a series network of 10 ohms effective resistance and 200 picofarads capacitance or an artificial antenna of 50 ohms nominal impedance. An individual demonstration of power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required.

§ 80.911 VHF transmitter.

(a) The transmitter must be capable of transmission of G3E emission on 156.800 MHz, 156.300 MHz, and on the ship-to-shore working frequencies necessary to communicate with public coast stations serving the area in which the vessel is navigated.

(b) The transmitter must be adjusted so that the transmission of speech normally produces peak modulation within the limits 75 percent and 100 percent.

(c) The transmitter must be type accepted to transmit between 20 watts and 25 watts, on each of the frequencies 156.300 MHz, 156.800 MHz and on ship-to-shore public correspondence channels, into 50 ohms effective resistance when operated with a primary supply voltage of 13.6 volts DC.

(d) When an individual demonstration of the capability of the transmitter is necessary the output power requirements prescribed in this paragraph must be met as follows:

(1) Measurements of primary supply voltage and transmitter output power must be made with the equipment drawing energy only from ship's battery;

(2) The primary supply voltage, measured at the power input terminals to the transmitter, and the output power of the transmitter, terminated in a matching artificial load, must be measured at the end of 10 minutes of continuous operation of the transmitter at its full power output.

(3) The primary supply voltage must not be less than 11.5 volts.

(4) The transmitter output power must be not less than 15 watts.

§ 80.913 Radiotelephone receivers.

(a) If a medium frequency radiotelephone installation is provided, the watch receiver must be capable of effective reception of J3E emissions, be connected to the antenna system specified by § 80.923, and be preset to, and capable of accurate and convenient selection of, the frequencies 2182 kHz, 2638 kHz, and the receiving frequency(s) of public coast stations serving the area in which the vessel is navigated.

(b) If a very high frequency radiotelephone installation is provided, the receiver used for maintaining the watch required by § 80.303 must be capable of effective reception of G3E

emission, be connected to the antenna system specified by § 80.923 and be preset to, and capable of selection of, the frequencies 156.300 MHz, 156.800 MHz, and the receiving frequency(s) of public coast stations serving the area in which the vessel is navigated.

(c) One or more loudspeakers must be provided to permit reception on 2182 kHz or 156.800 MHz at the principal operating position and at any other place where listening is performed.

(d) Any receiver provided as a part of the radiotelephone installation must have a sensitivity, of 50 microvolts in the case of MF equipment, and 1 microvolt in the case of VHF equipment.

(e) The receiver required in paragraph (a) or paragraph (b) of this section must be capable of efficient operation when energized by the main source of energy, and when energized by the reserve source of energy if a reserve source of energy is required by § 80.917.

(f) The sensitivity of a receiver is the strength in microvolts of a signal, modulated 30 percent at 400 Hertz, required at the receiver input to produce an audio output of 50 milliwatts to the loudspeaker with a signal-to-noise ratio of at least 6 decibels. Evidence of a manufacturer's rating or a demonstration of the sensitivity of a required receiver computed on this basis must be furnished upon request of the Commission.

§ 80.915 Main power supply.

(a) There must be readily available for use under normal load conditions a main power supply sufficient to simultaneously energize the radiotelephone transmitter at its required antenna power, and the required receiver. Under this load condition the potential of the main power supply at the power input terminals of the radiotelephone installation must not deviate from its rated potential by more than 10 percent on vessels completed on or after March 1, 1957, nor by more than 15 percent on vessels completed before that date.

(b) When the main power supply consists of batteries, they must be installed as high above the bilge as practicable, secured against shifting with motion of the vessel, and accessible with not less than 10 inches head room.

(c) Means must be provided for adequately charging any batteries used as a main power supply. There must be a device which gives a continuous indication of the rate and polarity of the charging current during charging.

§ 80.917 Reserve power supply.

(a) A vessel of more than 100 gross tons the keel of which was laid after March 1, 1957, must have a reserve power supply located on the same deck as the main wheel house or at least one deck above the vessel's main deck, unless the main power supply is so situated.

(b) The reserve power supply must be independent of the ship's propulsion and of any other electrical system, and be sufficient to simulataneously energize the radiotelephone transmitter at its required output power, and the receiver. The reserve power supply must be available for use at all times.

(c) When the reserve power supply consists of batteries, they must be installed as high above the bilge as practicable, secured against shifting with motion of the vessel, and accessible with not less than 10 inches head room.

(d) The reserve power supply must be located as near the required transmitter and receiver as practicable.

(e) All reserve power supply circuits must be protected from overloads.

(f) Means must be provided for charging any storage batteries used as a reserve power supply for the required radiotelephone installation. There must be a device which will give continuous indication of the rate and polarity of the charging current during charging.

(g) The cooling system of each internal combustion engine used as a part of the reserve power supply must be adequately treated to prevent freezing or overheating consistent with the season and route to be travelled by the particular vessel involved.

§ 80.919 Required capacity.

If either the main or reserve power supply includes batteries, these batteries must have sufficient reserve capacity to permit proper operation of the required transmitter and receiver for at least 3 hours under normal working conditions.

§ 80.921 Proof of capacity.

(a) When directed by a representative of the Commission the vessel must prove by demonstration as prescribed in paragraphs (b), (c), (d) and (e) of this section, that the requirements of § 80.919 are met.

(b) Proof of the ability of a storage battery used as a main or reserve power supply to operate over the 3-hour period established by a discharge test over the prescribed period of time, when supplying power at the voltage required for an electrical loss as prescribed by paragraph (d) of this section.

(c) When the required power supply consists of an engine-driven generator, proof of the adequacy of the engine fuel supply to operate the unit over the 3-hour period of time may be established by using as a basis the fuel consumption during a 1 hour period when supplying power, at the voltage required for operating an electrical load as prescribed by paragraph (d) of this section.

(d) In determining the required electrical load the following formula must be used:

(1) One-half of the current of the required transmitter at its rated output power; plus

(2) Current of the required receiver; plus

(3) Current of electric light, if required by § 80.925; plus

(4) The sum of the current of all other loads the reserve power supply may provide in time of emergency.

(e) At the conclusion of the test specified in paragraphs (b) and (c) of this section, no part of the main or reserve power supply must have an excessive temperature rise, nor must the specific gravity or voltage of any storage battery be below the 90 percent discharge point.

§ 80.923 Antenna system.

An antenna must be provided in accordance with the applicable requirements of § 80.71 which is as nondirectional and as efficient as practicable for the transmission and reception of radio ground waves. The construction and installation of this antenna must insure proper emergency operation.

§ 80.925 Electric light.

(a) If the vessel is navigated at night an electric light or dial lights which clearly illuminate the operating controls must be installed to provide illumination of the operating controls at the principal operating position.

(b) The electric light must be energized from the main power supply and, if a reserve power supply for the radiotelephone installation is required, from the reserve power supply.

§ 80.927 Antenna radio frequency indicator.

The transmitter must be equipped with a device which provides visual indication whenever the transmitter is supplying power to the antenna.

§ 80.929 Nameplate.

A durable nameplate must be mounted on the required radiotelephone equipment. When the transmitter and receiver comprise a single unit, one

VOL 51 ISS 169 SE 2 1986 UMI

nameplate is sufficient. The nameplate must show the name of the manufacturer and the type or model number.

§ 80.931 Test of radiotelephone installation.

Unless normal use of the radiotelephone installation demonstrates that the equipment is in proper operating condition, a test communication on a required frequency in the 1605 to 2850 kHz band or the 156–162 MHz band must be made by a qualified operator each day the vessel is navigated. If the equipment is not in proper operating condition, the master must be promptly notified.

§ 80.933 General exemptions.

(a) Subject U.S. vessels less than 50 gross tons which are navigated not more than 1,000 feet from the nearest land at mean low tide are exempt from the provisions of Title III, Part III of the Communications Act.

(b) Subject U.S. vessels less than 100 gross tons which are equipped with VHF installations meeting the requirements of this subpart are exempt from the medium frequency radiotelephone requirements if the vessels remain within the effective coverage area of U.S. Coast Guard or public coast stations operating in the band 156–162 MHz when the vessels are:

(1) Navigated in waters contiguous to Hawaii or the Virgin Islands; or

(2) Navigated in waters contiguous to the coast of Southern California from Point Conception south to the U.S. Mexico Border. The Islands of San Miguel, Santa Rosa, Santa Cruz, Anacopa, San Nicolas, Santa Barbara, Santa Catalina and San Clemente are considered to be within these waters.

(c) These exemptions may be terminated at any time without hearing, if in the Commission's discretion, the need for such action arises.

§ 80.935 Station clock.

Each station subject to this subpart must have a working clock or timepiece readily available to the operator.

Subpart T—Radiotelephone Installation Required for Vessels on the Great Lakes

§ 80.951 Applicability.

The Agreement Between the United States of America and Canada for Promotion of Safety on the Great Lakes by Means of Radio, 1973, applies to vessels of all countries when navigated on the Great Lakes. The Great Lakes Radio Agreement defines the Great Lakes as "all waters of Lakes Ontario, Erie, Huron (including Georgian Bay), Michigan, Superior, their connecting and tributary waters and the River St. Lawrence as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada," but does not include such of the connecting and tributary waters as may be specified in the Technical Regulations. The Technical Regulations do not include any connecting and tributary waters except the St. Mary's River, the St. Clair River, Lake St. Clair, the Detroit River and the Welland Canal. A vessel to which the Great Lakes Radio Agreement applies and which falls into the specific categories by paragraph (a), (b) or (c) of this section and not excepted by paragraph (d) or (e) of this section must comply with this subpart while navigated on the Great Lakes.

(a) Every vessel 20 meters (65 feet) or over in length (measured from end to end over the deck, exclusive of sheer).

(b) Every vessel engaged in towing another vessel or floating object, except:

(1) Where the maximum length of the towing vessel, measured from end to end over the deck exclusive of sheer, is less than 8 meters (26 feet) and the length or breadth of the tow, exclusive of the towing line, is less than 20 meters (65 feet);

(2) Where the vessel towed complies with this subpart;

(3) Where the towing vessel and tow are located within a booming ground (an area in which logs are confined); or

(4) Where the tow has been undertaken in an emergency and neither the towing vessel nor the tow can comply with this part.

(c) Any vessel carrying more than six passengers for hire.

(d) The requirements of the Great Lakes Radio Agreement do not apply to:

(1) Ships of war and troop ships;

(2) Vessels owned and operated by any national government and not engaged in trade.

(e) The Commission may if it considers that the conditions of the voyage or voyages affecting safety (including but not necessarily limited to the regularity, frequency and nature of the voyages, or other circumstances) are such as to render full application of the Great Lakes Agreement unreasonable or unnecessary, exempt partially, conditionally or completely, any individual vessel for one or more voyages or for any period of time not exceeding one year.

§ 80.953 Inspection and certification.

Each U.S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation not less than once every twelve months. However, a one month extension of an FCC certificate may be granted by the Commission. This inspection must be made while the vessel is in active service or within not more than one month before the date on which it is placed in service. A Great Lakes Agreement Radiotelephony Certificate will be issued to vessels in compliance. The certificate must be posted at the principal operating position of the radiotelephone installation.

§ 80.955 Radiotelephone installation.

(a) Each U.S. flag vessel of less than 38 meters (124 feet) in length while subject to the Great Lakes Agreement must have a radiotelephone meeting the provisions of this subpart in addition to the other rules in this part governing ship stations using telephony.

(b) Each U.S. flag vessel of 38 meters (124 feet) or more in length while subject to the Great Lakes Agreement must have a minimum of two VHF radiotelephone installations in operating condition meeting the provisions of this subpart. The second VHF installation must be electrically separate from the first VHF installation. However, both may be connected to the main power supply provided one installation can be operated from a separate power supply located as high as practicable on the vessel.

(c) This paragraph does not require or prohibit the use of other frequencies for use by the same "radiotelephone installation" for communication authorized by this part.

§ 80.956 Required frequencies and uses.

(a) Each VHF radiotelephone installation must be capable of transmitting and receiving G3E emission as follows:

(1) Channel 16—156.800 MHz-Distress. Safety and Calling; and

(2) Channel 6—156.300 MHz—Primary intership.

(b) The radiotelephone station must have additional frequencies as follows:

(1) Those ship movement frequencies appropriate to the vessel's area of operation: Channel 11—156.550 MHz, Channel 12—156.600 MHz, Channel 13—156.650 MHz or Channel 14—156.700 MHz.

(2) Such other frequencies as required for the vessel's service.

(3) One channel for receiving marine navigational warnings for the area of operation.

(c) Every radiotelephone station must include one or more transmitters, one or more receivers, one or more sources of energy and associated antennas and control equipment. The radiotelephone

station, exclusive of the antennas and source of energy, must be located as high as practicable on the vessel, preferably on the bridge, and protected from water, temperature, and electrical and mechanical noise.

§ 80.957 Principal operating position.

(a) The principal operating position of the radiotelephone installation must be on the bridge, convenient to the conning position.

(b) When the radiotelephone station is not located on the bridge, operational control of the equipment must be provided at the location of the radiotelephone station and at the bridge operating position. Complete control of the equipment at the bridge operating position must be provided.

§ 80.959 Radiotelephone transmitter.

(a) The transmitter must be capable of transmission of G3E emission on the required frequencies.

(b) The transmitter must deliver a carrier power of between 10 watts and 25 watts into 50 ohms nominal resistance when operated with its rated supply voltage. The transmitter must be capable of readily reducing the carrier power to one watt or less.

(c) To demonstrate the capability of the transmitter, measurements of primary supply voltage and transmitter output power must be made with the equipment operating on the vessel's main power supply, as follows:

(1) The primary supply voltage measured at the power input terminals to the transmitter terminated in a matching artificial load, must be measured at the end of 10 minutes of continuous operation of the transmitter at its rated power output.

(2) The primary supply voltage, measured in accordance with the procedures of this paragraph, must be not less than 11.5 volts.

(3) The transmitter at full output power measured in accordance with the procedure of this paragraph must not be less than 10 watts.

§ 80.961 Radiotelephone receiver.

(a) The receiver must be capable of reception of G3E emission on the required frequencies.

(b) The receiver must have a sensitivity of at least 2 microvolts across 50 ohms for a 20 decibel signal-to-noise ratio.

§ 80.963 Main power supply.

(a) A main power supply must be available at all times while the vessel is subject to the requirements of the Great Lakes Radio Agreement.

(b) Means must be provided for charging any batteries used as a source of energy. A device which during charging of the batteries gives a continuous indication of charging current must be provided.

§ 80.965 Reserve power supply.

(a) Each passenger vessel of more than 100 gross tons and each cargo vessel of more than 300 gross tons must be provided with a reserve power supply independent of the vessel's normal electrical system and capable of energizing the radiotelephone installation and illuminating the operating controls at the principal operating position for at least 2 continuous hours under normal operating conditions. When meeting this 2 hour requirement, such reserve power supply must be located on the bridge level or at least one deck above the vessel's main deck.

(b) Instead of the independent power supply specified in paragraph (a) of this section, the vessel may be provided with an auxiliary radiotelephone installation having a power source independent of the vessel's normal electrical system. Any such installation must comply with §§ 80.955, 80.956, 80.957, 80.959, 80.961, 80.969 and 80.971, as well as the general technical standards contained in this part. Additionally, the power supply for any such auxiliary radiotelephone must be a "reserve power supply" for the purposes of paragraphs (c), (d) and (e) of this section.

(c) Means must be provided for adequately charging any batteries used as a reserve power supply for the required radiotelephone installation. A device must be provided which, during charging of the batteries, gives a continuous indication of charging.

(d) The reserve power supply must be available within one minute.

(e) The station licensee, when directed by the Commission, must prove by demonstration as prescribed in paragraphs (e)(1), (2), (3) and (4) of this section that the reserve power supply is capable of meeting the requirements of paragraph (a) of this section as follows:

(1) When the reserve power supply includes a battery, proof of the ability of the battery to operate continuously for the required time must be established by a discharge test over the required time, when supplying power at the voltage required for normal operation to an electric load as prescribed by paragraph (e)(3) of this section.

(2) When the reserve power supply includes an engine driven generator, proof of the adequacy of the engine fuel supply to operate the unit continuously for the required time may be established by using as a basis the fuel consumption during a continuous period of one hour when supplying power, at the voltage required for normal operation, to an electrical load as prescribed by paragraph (3)(e) of this section.

(3) For the purposes of determining the electrical load to be supplied, the following formula must be used:

(i) One-half of the current of the radiotelephone while transmitting at its rated output, plus one-half the current while not transmitting; plus

(ii) Current of the required receiver; plus

(iii) Current of the source of illumination provided for the operating controls prescribed by Section 80.969; plus

(iv) The sum of the currents of all other loads to which the reserve power supply may provide power in time of emergency or distress.

(4) At the conclusion of the test specified in paragraphs (e)(1) and (2) of this section, no part of the reserve power supply must have excessive temperature rise, nor must the specific gravity or voltage of any battery be below the 90 percent discharge point.

§ 80.967 Antenna system.

The antenna must be omnidirectional, vertically polarized and located as high as practicable on the masts or superstructure of the vessel.

§ 80.969 Illumination of operating controls.

(a) The radiotelephone must have dial lights which illuminate the operating controls at the principal operating position.

(b) Instead of dial lights, a light from an electric lamp may be provided to illuminate the operating controls of the radiotelephone at the principal operating position. If a reserve power supply is required, arrangements must permit the use of that power supply for illumination within one minute.

§ 80.971 Test of radiotelephone installation.

At least once during each calendar day a vessel subject to the Great Lakes Radio Agreement must test communications on 156.800 MHz to demonstrate that the radiotelephone installation is in proper operating condition unless the normal daily use of the equipment demonstrates that this installation is in proper operating condition. If equipment is not in operating condition, the master must have it restored to effective operation as soon as possible.

VOL 51 ISS 169 SEP 2 1986 UMI

Subpart U—Radiotelephone Installations Required by the Bridge-To-Bridge Act

§ 80.1001 Applicability.

The Bridge-to-Bridge Act and the regulations of this part apply to the following vessels in the navigable waters of the United States:

(a) Every power-driven vessel of 300 gross tons and upward while navigating;

(b) Every vessel of 100 gross tons and upward carrying one or more passengers for hire while navigating;

(c) Every towing vessel of 26 feet (7.8 meters) or over in length, measured from end to end over the deck excluding sheer, while navigating; and

(d) Every dredge and floating plant engaged, in or near a channel or fairway, in operations likely to restrict or affect navigation of other vessels. An unmanned or intermittently manned floating plant under the control of a dredge shall not be required to have a separate radiotelephone capability.

§ 80.1003 Station required.

Vessels subject to the Bridge-to-Bridge Act must have a radiotelephone installation to enable the vessel to participate in navigational communications. This radiotelephone installation must be continuously associated with the ship even though a portable installation is used. Foreign vessels coming into U.S. waters where a bridge-to-bridge station is required may fulfill this requirement by use of portable equipment brought a board by the pilot. Non portable equipment, when used, must be arranged to facilitate repair. The equipment must be protected against vibration, moisture, temperature and excessive currents and voltages.

§ 80.1005 Inspection of station.

The bridge-to-bridge radiotelephone station will be inspected on vessels subject to regular inspections pursuant to the requirements of Parts II and III of Title III of the Communications Act, the Safety Convention or the Great Lakes Agreement at the time of the regular inspection. If after such inspection, the Commission determines that the Bridge-to-Bridge Act, the rules of the Commission and the station license are met, an endorsement will be made on the appropriate document. The validity of the endorsement will run concurrently with the period of the regular inspection. Each vessel must carry a certificate with a valid endorsement while subject to the Bridge-to-Bridge Act. All other bridge-to-bridge stations will be inspected from time to time.

§ 80.1007 Bridge-to-bridge radiotelephone installation.

Use of the bridge-to-bridge transmitter must be restricted to the master or person in charge of the vessel, or the person designated by the master or person in charge to pilot or direct the movement of the vessel. Communications must be of a navigational nature exclusively.

§ 80.1009 Principal operator and operating position.

The principal operating position of the bridge-to-bridge station must be the vessel's navigational bridge or, in the case of dredges, its main control station. If the radiotelephone installation can be operated from any location other than the principal operating position, the principal operating position must be able to take full control of the installation.

§ 80.1011 Transmitter.

The bridge-to-bridge transmitter must be capable of transmission of G3E emission on the navigational frequency 156.650 MHz (channel 13).

§ 80.1013 Receiver.

The bridge-to-bridge receiver must be capable of reception of G3E emission on 156.650 MHz.

§ 80.1015 Power supply.

(a) There must be readily available for use under normal load conditions, a power supply sufficient to simultaneously energize the bridge-to-bridge transmitter at its required antenna power, and the bridge-to-bridge receiver. Under this load condition the voltage of the power supply at the power input terminals of the bridge-to-bridge radiotelephone installation must not deviate from its rated voltage by more than 10 percent on vessels completed on or after March 1, 1957, nor by more than 15 percent on vessels completed before that date.

(b) When the power supply for a nonportable bridge-to-bridge radiotelephone installation consists of or includes batteries, they must be installed as high above the bilge as practicable, secured against shifting with motion of the vessel, and accessible with not less than 10 inches head room.

(c) Means must be provided for adequately charging any rechargeable batteries used in the vessel's bridge-to-bridge radiotelephone installation. There must be provided a device which will give a continuous indication of the charging current during charging.

§ 80.1017 Antenna system.

(a) An antenna must be provided for nonportable bridge-to-bridge radiotelephone installations which is nondirectional and vertically polarized. The construction and installation of this antenna must insure proper operation in time of an emergency.

(b) In cases where portable bridge-to-bridge equipment is permanently associated with a vessel, the equipment must be provided with a connector for an external antenna of a type capable of meeting requirements of paragraph (a) of this section and § 80.71. The vessel must be equipped with an external antenna meeting requirements of paragraph (a) of this section and § 80.71, capable of use with the portable equipment during a normal listening watch.

§ 80.1019 Antenna radio frequency indicator.

Each nonportable bridge-to-bridge transmitter must be equipped at each point of control with an RF carrier operated device which will provide continuous visual indication when the transmitter is supplying power to the antenna transmission line.

§ 80.1021 Nameplate.

A durable nameplate must be mounted on the required radiotelephone or be an integral part of it. When the transmitter and receiver comprise a single unit, one nameplate is sufficient. The nameplate must show at least the name of the manufacturer and the type or model number.

§ 80.1023 Test of radiotelephone installation.

Unless normal use of the required radiotelephone installation demonstrates that the equipment is in proper operating condition, a test communication for this purpose must be made by a qualified operator each day the vessel is navigated. If the equipment is not in proper operating condition, the master must be promptly notified. The master must have it restored to effective operating condition as soon as possible.

Subpart V—Emergency Position Indicating Radiobeacons (EPIRB's)

§ 80.1051 Scope.

This subpart describes the technical requirements for Class A, B, C, and S EPIRB stations.

§ 80.1053 Special requirements for Class A EPIRB stations.

(a) A Class A EPIRB station must meet the following:

(1) Float free of a sinking ship;

(2) Activate automatically when it floats free of a sinking ship;

(3) Have an antenna that deploys automatically when the EPIRB activates;

(4) Use A3N emission on the frequencies 121.500 MHz and 243.000 MHz;

(5) The effective radiated power must not be less than 75 milliwatts after 48 hours of continuous operation and without replacement or recharge of batteries. The effective radiated power must be determined according to FCC Bulletin OCE 45.

(6) The carrier must be amplitude modulated with an audio signal swept downward between 1600 and 300 Hz. The sweeping range of the audio signal must be 700 Hz or greater. Its sweep rate must be between 2 and 4 times per second. The modulation applied to the carrier must comply with the Radio Technical Commission for Aeronautics (RTCA) Document Number DO–183;

(7) Have a visible or audible indicator which clearly shows that the device is operating. The indicator must be activated by the RF output power. The indicator must be protected from damage due to dropping or contact with other objects;

(8) Float in calm water with at least the upper 5 cm (2 in.) of the EPIRB out of the water and the base of the antenna at least 5 cm (2 in.) above the water, with the antenna in a vertical position completely above the water surface;

(9) Be ballasted to right itself from a position of 90 degrees from its upright position in one second or less;

(10) Meet the requirements of (a)(1) through (a)(9) of this section after free fall into water 3 times from a height of 18 meters (60 ft.);

(11) Bear a designation that indicates it is a "Class A" EPIRB;

(12) Have a positive means of turning the equipment off. When an on-off switch is employed a guard must be provided to prevent inadvertent operation.

(b) Class A EPIRB's must have a manually activated test switch which must be held in position for test operation and when released return the EPIRB to its normal state. A switch guard must be provided to prevent inadvertent activation. Class A EPIRB's must also have an associated test circuit and an RF output power indicator which in the test position must:

(1) Permit the operator to determine that the unit is operative;

(2) Switch the transmitter output to an artificial antenna equivalent to that of the EPIRB antenna;

(3) Reduce radiation to a level not to exceed 25 microvolts per meter at a distance of 46 meters (150 feet) irrespective of direction.

(c) The power and modulation requirements specified in paragraphs (a)(5) and (6) of this section must be met under the environmental test conditions specified in the RTCA Document Number DO–183 except that the air temperature limits for testing these devices must be from –20 to +55 degrees Celsius. Tests specified by RTCA with regard to altitude, decompression and overpressure are not applicable to EPIRB stations.

(d) Vacuum tubes are not permitted in EPIRB's. The equipment must meet the requirements after extended periods of inaction while carried in vessels and subjected to the environmental conditions prescribed. Operation into any RF load from open to short must not cause continuing degradation in performance.

(e) The EPIRB must be powered by a battery contained within the transmitter case or in a battery holder that is rigidly attached to the transmitter case. The battery connector must be corrosion resistant and positive in action and must not rely for contact upon spring force alone. The useful life of the battery is the length of time that the battery must be stored under marine environmental conditions without the EPIRB transmitter output power falling below 75 milliwatts prior to 48 hours of continuous operation. The month and year of the battery's manufacture must be permanently marked on the battery and the month and year upon which 50 percent of its useful life will have expired must be permanently marked on both the battery and the outside of the transmitter. The batteries must be replaced if 50 percent of their useful life has expired or if the transmitter has been used in an emergency situation.

(f) The EPIRB must be waterproof and must not be accidentally activated by rain, seaspray, hose wash-down spray or storage in high humidity conditions. Standing water on the outer surface must not significantly affect its performance.

(g) Operating instructions understandable by untrained personnel must be permanently displayed on the equipment.

(h) The exterior of the equipment must have no sharp edges or projections. Means must be provided to fasten the EPIRB to a survival craft or person.

(i) The antenna must be deployable to its designed length and operating position in a foolpoof manner. The antenna must be securely attached to the EPIRB and easy to de-ice. The antenna must be vertically polarized and omnidirectional.

§ 80.1055 Special requirements for Class B EPIRB stations.

(a) A Class B EPIRB must meet the following:

(1) The EPIRB must be turned on automatically, as by water activated battery, or manually by an on-off switch. A positive means of turning the equipment off must be provided. Where an on-off switch is employed, a guard must be provided to prevent inadvertent operation;

(2) The equipment must be designed to be deployed, its controls actuated, or its antenna erected, each by a single action task which can be performed by either hand;

(3) Meet the requirements in § 80.1053 (a)(4) through (a)(7), (a)(12), (e), (f), (g), (h), (i) and (j).

(4) Bear a designation that indicates it is a "Class B" EPIRB.

(b) A Class B EPIRB may have a manually activated test switch which meets the requirements in § 80.1053 (b) and (c).

(c) If testing of an EPIRB with Coast Guard coordination is not possible, brief operational tests are authorized provided the tests are conducted within the first five minutes of any hour and are not longer than three audio sweeps or one second whichever is longer.

§ 80.1057 Special requirements for Class C EPIRB stations.

(a) A Class C EPIRB must operate on the frequencies 156.750 and 156.800 MHz, must use G3N modulation, and employ the international Radiotelephone Two Tone Alarm signal. The EPIRB transmission must be cycled. Each cycle must consist of 6 periods (T1 to T6) as shown in the table below. During T1, T2, T3, and T5 the 156.750 MHz and 156.800 MHz carriers must be modulated alternately by a 2200 Hz and a 1300 Hz tone.

The modulating duration of each tone must be 250 milliseconds. The maximum tolerance of the frequency and modulating duration of each tone must be ±5 percent. During T4 and T6 neither of the RF carriers must be emitted. The T4 and T6 time periods must be varied according to the predetermined schedule shown in the table below. After the last cycle the transmissions must be terminated. The EPIRB must be able to recycle its transmissions in accordance to the schedule shown in the table below by placing the activation switch to the "off" and then "on" position.

Period	Duration in seconds	Transmission frequency in MHz
T_1	1.5	156.800
T_2	14.5	156.750
T_3	1.5	156.800
T_4	40.0 (16 cycles)	None.
T_5	80.0 (32 cycles)	

Period	Duration in seconds	Transmission frequency in MHz
T_1	160.0 (64.2 cycles)	
T_2	320.0 (83.2 cycles)	
T_3	14.5	156.750
T_4	Same as T_1 duration	None.

(b) The effective radiated power must not be less than 1 watt. The power must be determined according to FCC Bulletin OCE 45. The EPIRB must meet the power requirements over each of the following temperature ranges for the time period shown below. Batteries may be replaced after completion of tests for each temperature range:

(1) 0 to +50 degrees Celsius for 24 hours continuous operation.

(2) −20 to 0 degrees Celsius for 12 hours continuous operation.

(c) The equipment must have a transmitter, an integral antenna and a power supply. The transmitter and power supply must be in separate compartments in a single watertight case.

(d) The equipment must be provided with a visible or audible indicator which clearly shows the device is operating. The indicator must be activated by the RF output power.

(e) The equipment must operate when hand held or when floating in water after storage for extended periods under marine environmental conditions.

(f) The switch used to activate the EPIRB must indicate the state of the equipment (on-off) by the physical position of the switch. A guard must be provided to prevent inadvertent operation.

(g) The equipment case must be waterproof and resealable without special tools or sealing compounds. EPIRB operation must not be degraded by submersion in sea water for a period of 24 hours.

(h) The EPIRB must float in fresh water with the antenna vertical and completely out of the water.

(i) Vacuum tubes are not permitted in EPIRB's. The EPIRB must meet the requirements after extended periods of inaction while carried in vessels and subjected to marine environmental conditions. Operation into any load from open to short must not result in continuous degradation of performance.

(j) The exterior of the equipment must have no sharp edges or projections. Means must be provided to secure the EPIRB to a survival craft or person.

(k) Operating instructions understandable by untrained personnel must be permanently displayed on the equipment. It must indicate that the device is "to be used solely for distress purposes."

(l) The equipment must have no exposed areas or terminals that could ignite flammable gases or materials.

(m) The omndirectional antenna must be securely attached to the case and capable of being stowed without being damaged.

(n) The equipment must meet the technical standards after being dropped into water from a height of 6 meters (20 feet).

(o) The EPIRB must meet the technical standards when plunged into sea water at +20 degrees Celsius after storage at a temperature of +50 degrees Celsius.

(p) If testing of an EPIRB with Coast Guard coordination is not possible, brief operational tests are authorized provided the tests are conducted within the first five minutes of any hour for not more than 10 seconds.

(q) The EPIRB must automatically turn off after 24 hours ±5 percent. It must be possible to restart the transmission sequence by placing the on-off switch momentarily in the off position and returning it to the on position.

(r) The EPIRB must be equipped with a visual indication of a low battery condition.

(s) The EPIRB must have a designation that indicates it is a "Class C" EPIRB.

§ 80.1059 Special requirements for Class S EPIRB stations.

(a) A Class S EPIRB station must be able to float or be permanently secured to a survival craft.

(b) A Class S EPIRB able to float must meet the following:

(1) Be watertight and float in calm water with at least 5 cm (2 in.) of the EPIRB out of the water and the base of the antenna at least 5 cm (2 in.) above the water, with the antenna in a vertical position completely above the water surface;

(2) Be ballasted to right itself from a position 90 degrees from its upright position in one second or less;

(3) Meet the requirements in § 80.1053 (a)(4) through (a)(9) after free fall into water 3 times from a height of 20 meters (67 ft.).

(c) A Class S EPIRB intended to be permanently secured to a survival craft is not required to float in water.

(d) Additionally, all Class S EPIRB's must meet the following:

(1) Be capable only of manual activation by an on-off switch protected by a guard to prevent inadvertent operation;

(2) Be designed to be deployed, its controls actuated, or its antenna erected, each by a single action task which can be performed by either hand;

(3) Meet the requirements in § 80.1053 (a)(4) through (a)(7) and (b) through (i);

(4) Class S EPIRB's may provide either continuous or intermittent operation. If designed for intermittent operation, the duty cycle must be 50 percent and the period two minutes ± 12 seconds.

(5) If testing of an EPIRB with Coast Guard coordination is not possible, brief operational tests are authorized provided the tests are conducted within the first five minutes of any hour and are not longer than three audio sweeps or one second whichever is longer;

(6) Have a designation that indicates it is a "Class S" EPIRB.

(b) Applications for type acceptance must include a letter from the manufacturer stating that the EPIRB meets the requirements in paragraphs (b) and (d), or (c) and (d) of this section.

Subpart W—Future Global Maritime Distress and Safety System (FGMDSS)—[Reserved]

Subpart X—Voluntary Radio Installations

General

§ 80.1151 Voluntary radio operations.

Voluntary ships must meet the rules applicable to the particular mode of operation as contained in the following subparts of this part and as modified by § 80.1153:

Operating Requirements and Procedures—Subpart C
Equipment Technical Requirements—Subpart E
Frequencies—Subpart H

§ 80.1153 Station log and radio watches.

(a) Licensees of voluntary ships are not required to operate the ship radio station or to maintain radio station logs.

(b) When a ship radio station of a voluntary ship is being operated, appropriate general purpose watches must be maintained in accordance with §§ 80.146, 80.147 and 80.148.

Voluntary Telegraphy

§ 80.1155 Radioprinter.

Radioprinter operations provide record communications between authorized maritime mobile stations.

(a) *Supplementary eligibility requirements.* Ships must be less than 1600 gross tons.

(b) *Scope of communication.* (1) Ship radioprinter communications may be conducted with an associated private coast station.

(2) Ships authorized to communicate by radioprinter with a common private

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coast station may also conduct intership radioprinter operations.

(3) Only those communications which are associated with the business and operational needs of the ship are authorized.

(c) *Assignment and use of frequencies.* (1) Frequencies for radioprinter operations are shared by several radio services including the maritime mobile service.

(2) Ship stations must conduct radioprinter operations only on frequencies assigned to their associated private coast station for that purpose.

(d) *Authorization procedure.* The authorization procedure for ship station radioprinter operations is as follows:

(1) The associated private coast station must submit an application for specific radioprinter frequencies and provide the names of ships to be served.

(2) When the private coast station receives a radioprinter license, it must provide copies of their license to all ships with which they are authorized to conduct radioprinter operations. The private coast station license copy must be kept as part of the ship station license.

(3) Any addition or deletion of ships must be notified to the Commission by letter.

§ 80.1157 Facsimile.

Facsimile is a form of telegraphy for the transmission and receipt of fixed images. Ships must use facsimile techniques only with authorized public coast stations.

§ 80.1159 Narrow-band direct-printing (NB-DP).

NB-DP is a form of telegraphy for the transmission and receipt of direct printing public correspondence. Ships must use NB-DP techniques only with authorized public coast stations.

§ 80.1161 Emergency position indicating radiobeacon (EPIRB).

EPIRB transmissions must be used only under emergency conditions. The various classes of EPIRB's are described in Subpart V of this part.

Voluntary Telephony

§ 80.1165 Assignment and use of frequencies.

Frequencies for general radiotelephone purposes are available to ships in three radio frequency bands. Use of specific frequencies must meet the Commission's rules concerning the scope of service and the class of station with which communications are intended. The three frequency bands are:

(a) *156–158 MHz (VHF/FM Radiotelephone).* Certain frequencies within this band are public correspondence frequencies and they must be used as working channels when communicating with public coast stations. Other working frequencies within the band are categorized by type of communications for which use is authorized when communicating with a private coast station or between ships. Subpart H of this part lists the frequencies and types of communications for which they are available.

(b) *1600–4000 kHz (SSB Radiotelephone).* Specific frequencies within this band are authorized for single sideband (SSB) communications with public and private coast stations or between ships. The specific frequencies are listed in Subpart H of this part.

(c) *4000–23000 kHz (SSB Radiotelephone).* Specific frequencies within this band are authorized for SSB communications with public and private coast stations. The specific frequencies are listed in Subpart H of this part.

Automated Systems

§ 80.1169 Automated Maritime Telecommunications System (AMTS).

(a) AMTS is an automated, integrated communication system along the Mississippi River and connecting waterways, the Gulf Intracoastal Waterway, and the offshore waters of the Gulf of Mexico.

(b) Each application for a ship station or fleet license to operate in the AMTS must be accompanied by a letter from the AMTS coast station licensee stating that business arrangements have been completed for the provision of service.

§ 80.1171 Assignment and use of frequencies.

(a) The frequencies assignable to AMTS stations are listed in §80.385(a). These frequencies are assignable to ship and coast stations for voice, facsimile and radioteletypewriter communications.

On-Board Communications

§ 80.1175 Scope of communications of on-board stations.

(a) On-board stations communicate:

(1) With other units of the same station for operational communications on the ship.

(2) With on-board stations of another ship or shore facility to aid in oil pollution prevention during the transfer of 250 or more barrels of oil.

(3) With other units of the same station in the immediate vicinity of the ship for operational communications related to docking, life boat and emergency drills or in the maneuvering of cargo barges and lighters.

(b) An on-board station may communicate with a station in the Business Radio Service operating on the same frequency when the vessel on which the on-board station is installed is alongside the dock or cargo handling facility.

§ 80.1177 Assignment and use of frequencies.

On-board frequencies are assignable only to ship stations. When an on-board repeater is used, paired frequencies must be used. On-board repeater frequencies must be used for single frequency simplex operations. On-board frequencies are listed in Subpart H.

§ 80.1179 On-board repeater limitations.

When an on-board repeater is used, the following limitations must be met:

(a) The on-board repeater antenna must be located no higher than 10 feet above the vessel's highest working deck.

(b) Each on-board repeater must have a timer that deactivates the transmitter if the carrier remains on for more than 3 minutes.

§ 80.1181 Station identification.

(a) On-board stations must identify when:

(1) The vessel is within 20 miles of any coastline; or

(2) The communications are likely to be received aboard another vessel.

(b) Identification, when required, must be:

(1) Transmitted at the beginning and the end of a series of communications. Whenever communications are sustained for a period exceeding 15 minutes, station identification must be transmitted at intervals not exceeding 15 minutes.

(2) In English and must include the name of the vessel, followed by a number or name designating the respective mobile unit, for example: "S.S. United States Mobile One, this is Mobile Two."

§ 80.1183 Remote control for maneuvering or navigation.

(a) An on-board station may be used for remote control of maneuvering or navigation control systems aboard the same ship or, where that ship is towing a second ship, aboard the towed ship.

(b) The remote control system transmissions must contain a synchronization signal and a message signal composed of a documentation number group, a company control group, an actuation instruction group, and a termination of transmission group.

VOL 51 ISS 169 SE 2 1986 UMI

(1) The synchronization signal must be the control character "SYN", transmitted twice.

(2) The message signal is composed of the following groups:

(i) The documentation number group must be transmitted once and be the ship's U.S. Coast Guard documentation number or, if the ship is **not** documented, the call sign of the on-board station.

(ii) The company control group, composed of three letters taken from AAA through ZZZ, which must be transmitted one time.

(iiii) The actuation instruction group, composed of two letters taken from AA through ZZ, which must be transmitted one time.

(iv) The termination of transmission group, composed of the control character "EM", which must be transmitted twice.

(c) The receiving system must:

(1) Reject any actuation instruction until it recognizes and accepts the company control group.

(2) Reject any company control group until it recognizes and accepts the documentation number group.

(d) The emission employed must be G2D. The provisions applicable to G3E emission are also applicable to G2D emission.

(e) The binary information must be applied to the carrier as frequency-shift keying (FSK) of the standard tones 1070 and 1270 Hz. "0" (low) must correspond to 1070 Hz and "1" (high) must correspond to 1270 Hz. The signalling rate must be 300 bits per second.

(f) The alphabet employed must be the United States of America Standard Code for Information Interchange (USASCII), contained in the United States of America Standards Institute publication USAS X3.4–1968.

(1) The bit sequence must be least significant bit first to most significant bit (bit 1 through bit 7), consecutively.

(2) The character structure must consist of 8 bits (seven bits plus one character parity bit) having equal time intervals.

(3) "Odd" parity is required.

Satellite Stations

§ 80.1185 Supplemental eligibility requirements for satellite stations.

A station license for a ship earth station in the maritime mobile-satellite service may be issued to:

(a) The owner or operator of a ship; or

(b) A corporation proposing to furnish a nonprofit radio communication service to its parent corporation, to another subsidiary of the same parent, or to its own subsidiary, where the party to be served is the owner or operator of the ship aboard which the ship earth station is to be installed and operated.

§ 80.1187 Scope of communication.

Ship earth stations must be used for telecommunications related to the operation of ships and for public correspondence of persons on board. The types of emission are determined by the INMARSAT organization.

Radiodetermination

§ 80.1201 Special determination for cable-repair ship stations.

(a) A ship station may be authorized to use radio channels in the 285–315 kHz band in Region 1 and 285–325 kHz in any other region for cable repair radiodetermination purposes under the following conditions:

(1) The radio transmitting equipment attached to the cable-marker buoy associated with the ship station must be described in the station application;

(2) The call sign used for the transmitter operating under the provisions of this section is the call sign of the ship station followed by the letters "BT" and the identifying number of the buoy.

(3) The buoy transmitter must be continuously monitored by a licensed radiotelegraph operator on board the cable repair ship station; and

(4) The transmitter must operate under the provisions in § 80.375(b).

[FR Doc. 86–19723 Filed 8–29–86; 8:45 am]
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47 CFR Parts 0, 1, 2, 13, 21, 63, 87, 90 and 94

[FCC 86–142]

Amendment of the Rules to Reflect Reorganization of the Maritime Rules into a New Part 80

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends Parts 0, 1, 2, 13, 21, 63, 87, 90 and 94 of the Commission's rules to make various non-substantive changes. These amendments are primarily editorial. This action will update references to the maritime rules and aid the public in using the rules.

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: James A. Shaffer, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Commission Organization.

47 CFR Part 1

Practice and Procedure.

47 CFR Part 2

Frequency Allocation and Radio Treaty Matters; General Rules and Regulations.

47 CFR Part 13

Commercial Radio Operators

47 CFR Part 21

Domestic Public Fixed Radio Service.

47 CFR Part 63

Extension of Lines and Discontinuance of Service by Carriers.

47 CFR Part 87

Aviation Service.

47 CFR Part 90

Private Land Mobile Radio Sevice.

47 CFR Part 94

Private Operational Fixed Microwave Service.

Order

In the Matter of Amendment of Parts 0, 1, 13, 21, 63, 87, 90 and 94 of the Commission's rules to reflect the reorganization of the maritime service rules into new Part 80.

Adopted: April 3, 1986.

Released: April 16, 1986.

By the Commission.

1. In the *Report and Order* in Docket No. 85–145, adopted on the same date as this *Order*, the Commission's rules governing the maritime radio services were rewritten and reorganized. Part 81 (Stations on Land in the Maritime Services and Alaska Fixed Service) and Part 83 (Station on Shipboard in the Maritime Services) were consolidated into a new Part 80 (Maritime Services). This action clarified and simplified the rules as well as reduced the size of the maritime rules by approximately 40 percent.

2. As a result of the removal of Parts 81 and 83 and the addition of new Part 80, references to the maritime rules throughout other parts of the Commission's regulations must be corrected or modified to conform to the new Part 80. After reviewing the remainder of the Commission's regulations we are amending the rules where appropriate to reflect changes resulting from the adoption of new Part 80 in PR Docket No. 85–145. Additionally, obsolete language has

VOL 51 ISS 169 SE 2 1986 UMI

been deleted and minor clarifications have been made. Rule changes are being made in Parts 0, 1, 2, 13, 21, 63, 87, 90 and 94 of Title 47 of the Code of Federal Regulations.

3. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Because these rules amendments are non-substantive and reference changes adopted in another proceeding, this action constitutes a minor amendment to our rules in which the public is not likely to be interested. Therefore, we find for good cause that compliance with the notice and comment provisions of the Administrative Procedure Act are unnecessary. *See* 5 U.S.C. 553(b).

4. Accordingly, it is ordered, That Parts 0, 1, 2, 13, 21, 63, 87, 90 and 94 of the rules are amended as set forth, effective October 1, 1986.

5. For further information call James Shaffer, (202) 632–7197, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Parts 0, 1, 2, 13, 21, 63, 87, 90, and 94 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

§ 0.314 [Amended]

2. Section 0.314(e)(1) is amended by removing the reference "§ 83.512" and inserting in its place the reference "§ 80.903".

3. Section 0.314(o) is amended by removing the reference "§ 83.47" and inserting in its place the reference "§ 80.59(d)(2)".

§ 0.415 [Amended]

4. Section 0.415 is amended by removing paragraph (b).

§ 0.457 [Amended]

5. Section 0.457(d)(2) introductory text is amended by removing the references "81.506, 83.436" and inserting in their place the reference "80.33".

§ 0.487 [Removed]

6. Section 0.487 is removed.

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

§ 1.741 [Amended]

2. Section 1.741 is amended by removing the numbers "81, 83", where appearing, and inserting in their place the number "80".

§ 1.761 [Amended]

3. Section 1.761 is amended by removing "81, 83" and inserting "80."

4. Section 1.925(a) is revised to read as follows:

§ 1.925 Applications for special temporary authorizations, temporary permit or temporary operating authority.

(a) A licensee of or an applicant for a station in the Private Radio Services may file either a formal or informal application for a special temporary authority not to exceed 180 days for (1) operation of a new station or (2) operation of a licensed station in a manner which is beyond the scope of that authorized by the existing license. (See § 1.962(b)(5) and (f). The nature of the extraordinary circumstance which, in the opinion of the applicant justifies issuance of a special temporary authorization, must be fully described in the request. Information presently on file with the Commission may be included by reference, except the applications for special temporary authority under Part 90 must be clear and complete within themselves and shall not rely on any pending applications. Applications for special temporary authority must be filed at least 10 days prior to the proposed operation. Applications filed less than 10 days prior to the proposed operation date will be accepted only upon a showing of good cause. In situations involving the safety of life or property or where equipment has been damaged, a request for special temporary authority may be made by telephone or telegraph provided a properly signed application is filed within 10 days of such request.

* * * * *

§ 1.926 [Amended]

4. Section 1.926(a)(2) is amended by removing the parenthetical phrase "(§ 81.37 of this chapter)" and inserting in its place the parenthetical phrase "(§ 80.19 of this chapter)".

5. In § 1.951, paragraph (a)(2) is revised to read as follows:

§ 1.951 How applications are distributed.

(a) * * *

(2) Marine Radio Service applications: Stations in the Maritime Mobile Service, Stations in the Maritime Radiodetermination Service, and Fixed Stations associated with the maritime services.

* * * * *

§ 1.972 [Amended]

6. Section 1.972(a)(1) is amended by removing the words "Part 81—Stations on Land in the Maritime Services" and inserting in their place the words "Part 80—Stations in the Maritime Services".

7. Section 1.972(c) is amended by removing "Part 81" and inserting "Part 80".

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 2.106 [Amended]

2. The table in § 2.106 is amended in column 6 by removing the words "MARITIME (80)" where appearing and inserting in their place the words "MARITIME (81 & 83)", and by removing the words "Maritime (81 & 83)" where appearing and inserting in their place the words "Maritime (80)".

3. The table in § 2.106 is amended in column 6 by removing the words "ALASKA FIXED (81)" where appearing and inserting in their place the words "ALASKA FIXED (80)".

4. The table in § 2.106 is amended in column 6 by adding the words "Maritime (80)" in the 18168–18780 kHz band under the words "INTERNATIONAL FIXED PUBLIC (23)".

§ 2.995 [Amended]

5. In § 2.995(a)(2), the first sentence is amended by removing the words "Parts 81 and 83" and inserting in their place the words "Part 80".

PART 13—COMMERCIAL RADIO OPERATORS

1. The authority citation for Part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 13.61 [Amended]

2. Section 13.61 is amended by removing the numbers "81, 83" and inserting in their place the number "80".

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In § 21.2, the note following the definition of "Domestic public radio services" is revised to read as follows:

§ 21.2 [Definitions]

* * * * *

Note.—Part 80 of this chapter is applicable to the maritime services and Fixed Stations associated with the maritime services; Part 87 is applicable to aeronautical services.

* * * * *

PART 63—EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS

1. The authority citation for Part 63 continues to read as follows:

Authority: Secs. 4, 48 Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended; 47 U.S.C. 214, unless otherwise noted.

§ 63.60 [Amended]

2. Section 63.60(a)(1) is amended by removing the reference "§ 61.3" and inserting in its place reference "§ 60.5".

PART 87—AVIATION SERVICES

1. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

§ 87.77 [Amended]

2. Section 87.77(b) is amended by removing the number "83" from the last sentence and inserting in its place the number "80".

§ 87.183 [Amended]

3. Section 87.183(j)(1) is amended by removing the number "83" and inserting in its place the number "80".

§ 87.237 [Amended]

4. In § 87.237, the last sentence is amended by removing the number "83" and inserting in its place the number "80".

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

§ 90.53 [Amended]

2. Section 90.53(b)(1) introductory text is amended by removing the number "83" and inserting in its place the number "80".

3. Section 90.53(b)(1)(ii) is amended by removing the reference "§ 81.302(b)" and inserting in its place the reference "§ 80.453".

4. Section 90.53(b)(1)(iii) is amended by removing the number "83" and inserting in its place the number "80".

§ 90.103 [Amended]

5. In § 90.103 paragraphs (c)(11), (15), and (16) are amended by removing the words "Maritime Radionavigation Service (Part 83)" and inserting in their place the words "Maritime Radionavigation Stations (Part 80)".

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

§ 94.5 [Amended]

2. Section 94.5 is amended by removing the number "81" and inserting in its place the number "80".

§ 94.9 [Amended]

3. Section 94.9(b)(1) is amended by removing the number "81" and inserting in its place the number "80".

[FR Doc. 86-19615 Filed 8-29-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 86-340; RM-5227; FCC 86-371]

Amendment of the Maritime Services Rules Concerning Compulsory Ship Radar Equipment Specifications for New Installations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to provide new performance specifications for new compulsory navigational radar equipment on board ships of 500 gross tons and upwards. This action was initiated by a petition for rulemaking filed by the Radio Technical Commission for Maritime Services. The effect of the proposed rules would be to update and consolidate standards for shipboard radar equipment.

DATE: Comments must be received on or before November 20, 1986; reply comments must be received on or before December 20, 1986.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rule Making

Adopted: August 6, 1986; Released: August 19, 1986.

By the Commission.

1. The Radio Technical Commission for Maritime Services (RTCM) has filed a petition (RM-5227) on behalf of the maritime industry requesting that new radar specifications be incorporated into the Commission's rules. In September 1983 RTCM established a special committee to conduct a review of existing Commission rules applicable to shipboard radar and to determine whether Commission rule changes should be recommended. The special committee was composed of representatives from radar equipment users, manufacturers and the government. As a result, RTCM has formulated radar performance specifications and standards based upon resolutions of the International Maritime Organization (IMO), draft specifications of the International Eletro-technical Commission (IEC) and the Final Report of RTCM Special Committee No. 65.

2. The current radar specifications are contained in three separate documents which are applicable to three separate ship categories. These categories are based upon ship size, date of ship construction and date of radar installation. The purpose of the requested rule change is to reconcile the minor differences contained in the separate radar documents and have a single document apply to new radar installations on all compulsory equipped ships installed on or after July 1, 1988. This is intended to reduce confusion resulting from multiple documents containing specifications and multiple categories of ships.

3. We propose to amend the rules as requested by RTCM. The new radar document prepared by RTCM essentially updates and consolidates existing documents containing radar standards and specifications which are incorporated in the rules. These standards and specifications only apply to ships which are required by the International Convention for the Safety of Life at Sea (Safety Convention) or U.S. Coast Guard regulations to carry radar installations on board. The proposed amendment will not cause ships to replace any existing radar equipment nor will manufacturers need to redesign radar equipment which meets existing requirements. The radar requirements contained in currently referenced documents will be "grandfathered" indefinitely to avoid any possible burden on industry or users.

4. In accordance with the Administrative Procedure Act, 5 U.S.C. 552(a), we propose to incorporate by reference in the rules the International Maritime Organization and RTCM documents which contain the applicable radar installation requirements. These documents are reasonably available to the persons affected through the Commission Headquarters and RTCM. Incorporation by refernce will avoid unnecessary duplication in the rules.

5. The proposed amendments to the Commissioner's rules set forth below are issued under the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). The amendments proposed in this proceeding address revisions in the recently adopted Part 80 (Stations in the Maritime Services) of the rules. See Report and Order, PR Docket No. 85-145, FCC 86-141, released April 25, 1986. Part 80 will not be effective until 30 days after publication in the **Federal Register**. Publication in the **Federal Register** is planned on or about October 1, 1986. Any amendments to the rules ultimately resulting from this proceeding would be effective after that date.

6. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments by the dates indicated in the Preamble to this document. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

7. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

9. We have determined that section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) does not apply to this rule making proceeding because if promulgated, it wil not have a significant economic impact on a substantial number of small entities. These proposed rules only affect large oceangoing ships that are required to carry radar installations. No additional equipment would be required nor currently carried equipment obsoleted by this action.

10. It is ordered, That a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

11. Regarding questions on matters covered in this document, contact Robert E. Mickley, (202) 632-7175.

List of Subjects in 47 CFR Part 80

Marine safety, Ship stations, Vessels.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Proposed Rules

Part 80 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48, Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.825 is revised to read as follows:

§80.825 Radar installation requirements and specifications.

(a) Radar installations on board ships which are required by the Safety Convention or the U.S. Coast Guard to be equipped with radar must comply with either the document referenced in subparagraph (1) of this paragraph or the applicable document referenced in subparagraphs (2) through (4) of this paragraph. These documents are incorporated by reference in accordance with 5 U.S.C. 552(a). The documents contain specifications, standards and general requirements applicable to shipboard radar equipment and shipboard radar installations. For purposes of this part, the specifications, standards and general requirements stated in these documents are mandatory irrespective of dicretionary language. Radar documents are available for inspection at the Commission Headquarters in Washington, DC or may be obtained from the Radio Technical Commission for Maritime Services (RTCM), P.O. Box 19087, Washington, DC 20036.

(1) Radar installations installed on ships of 500 gross tons and upwards on or after July 1, 1988, must comply with the provisions of RTCM Paper 153–85/SC 103–30 including Appendix A. Title: "Performance Specification for a General Purpose Navigational Radar Set for Oceangoing Ships of 500 Gross Tons and Upwards for New Radar Installations." Title of Appendix A: "General Purpose Shipborne Navigational Radar Set for Oceangoing Ships *Design and Testing Specifications.*" Document approved by RTCM August 15, 1985.

(2) Radar installations installed on ships of 1,600 gross tons and upwards on or before April 27, 1981 must comply with the provisions of Volume II of RCTM Special Committee No. 65 Final Report; Part II. Title: "Performance Specification For A General Purpose Navigational Radar Set For Oceangoing Ships Of 1,600 Tons Gross Tonnage and Upwards for Ships Already Fitted." Document undated; effective as FCC requirement on April 27, 1981.

(3) Radar installations installed on ships of 1,600 gross tons and upwards after April 27, 1981 and before July 1, 1988, must comply with the provisions of Volume II of RTCM Special Committee No. 65 Final Report with Change 1 entered; Part 1 including Appendix A. Title: "Performance Specification For a General Purpose Navigational Radar Set For Oceangoing Vessels of 1,600 Tons Gross Tonnage and Upwards For New Radar Installations." Title of Appendix A: "General Purpose Shipborne Navigational Radar Set For Oceangoing Ships *Design And Testing Specifications.*" Document undated; effective as FCC requirement on April 27, 1981.

(4) Ships between 500 and 1,600 gross tons constructed on or after September 1, 1984, with radar installations installed before July 1, 1988, must comply with the provisions of Inter-Governmental Maritime Consultative Organization (IMCO) [Now International Maritime Organization (IMO)] Resolution A.477 (XII). Title: "Performance Standards for Radar Equipment." Adopted by IMCO November 19, 1981.

(b) For ships of 10,000 gross tons or more or any other ship that is required to be equipped with two radar systems, each of these systems must be capable of operating independently and must comply with the specifications, standards and general requirements established by paragraph (a) of this section. One of the systems must provide a display with an effective diameter of not less than 340 millimeters (13.4 inches), (16 inch cathode ray tube); and the other system must provide a display with an effective diameter of not less than 250 millimeters (9.8 inches), 12 inch cathode ray tube).

(c) Recommendations for tools, test equipment, spares and technical manuals are contained in Appendices I, II, III and IV of Part IV of Volume III of the RTCM SC–65 Final Report.

[FR Doc. 19555 Filed 8–29–86; 8:45 am]
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Vol. 51, No. 169

Tuesday, September 2, 1986

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Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

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Printing schedules and pricing information	523-3419

Laws 523-5230

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United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308.....2

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 27, 1986

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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4	11.00	Jan. 1, 1986
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1–1199	18.00	Jan. 1, 1986
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7 Parts:		
0–45	24.00	Jan. 1, 1986
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52	18.00	Jan. 1, 1986
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300–399	11.00	Jan. 1, 1986
400–699	19.00	Jan. 1, 1986
700–899	17.00	Jan. 1, 1986
900–999	20.00	Jan. 1, 1986
1000–1059	12.00	Jan. 1, 1986
1060–1119	9.50	Jan. 1, 1986
1120–1199	8.50	Jan. 1, 1986
1200–1499	13.00	Jan. 1, 1986
1500–1899	7.00	Jan. 1, 1986
1900–1944	23.00	Jan. 1, 1986
1945–End	23.00	Jan. 1, 1986
8	7.00	Jan. 1, 1986
9 Parts:		
1–199	14.00	Jan. 1, 1986
200–End	14.00	Jan. 1, 1986
10 Parts:		
0–199	22.00	Jan. 1, 1986
200–399	13.00	Jan. 1, 1986
400–499	14.00	Jan. 1, 1986
500–End	23.00	Jan. 1, 1986
11	7.00	Jan. 1, 1986
12 Parts:		
1–199	8.50	Jan. 1, 1986
200–299	22.00	Jan. 1, 1986
300–499	13.00	Jan. 1, 1986
500–End	26.00	Jan. 1, 1986
13	19.00	Jan. 1, 1986
14 Parts:		
1–59	20.00	Jan. 1, 1986
60–139	19.00	Jan. 1, 1986
140–199	7.50	Jan. 1, 1986
200–1199	14.00	Jan. 1, 1986
1200–End	8.00	Jan. 1, 1986
15 Parts:		
0–299	7.00	Jan. 1, 1986
300–399	20.00	Jan. 1, 1986
400–End	15.00	Jan. 1, 1986
16 Parts:		
0–149	9.00	Jan. 1, 1986
150–999	10.00	Jan. 1, 1986
1000–End	18.00	Jan. 1, 1986
17 Parts:		
1–239	26.00	Apr. 1, 1986
240–End	19.00	Apr. 1, 1986
18 Parts:		
1–149	15.00	Apr. 1, 1986
150–399	25.00	Apr. 1, 1986
400–End	6.50	Apr. 1, 1986
19	29.00	Apr. 1, 1986
20 Parts:		
1–399	10.00	Apr. 1, 1986
400–499	22.00	Apr. 1, 1986
500–End	23.00	Apr. 1, 1986
21 Parts:		
1–99	12.00	Apr. 1, 1986
100–169	14.00	Apr. 1, 1986
170–199	16.00	Apr. 1, 1986
200–299	6.00	Apr. 1, 1986
300–499	25.00	Apr. 1, 1986
500–599	21.00	Apr. 1, 1986
600–799	7.50	Apr. 1, 1986
800–1299	13.00	Apr. 1, 1986
1300–End	6.50	Apr. 1, 1986
22	28.00	Apr. 1, 1986
23	17.00	Apr. 1, 1986
24 Parts:		
0–199	15.00	Apr. 1, 1986
200–499	24.00	Apr. 1, 1986
500–699	8.50	Apr. 1, 1986
700–1699	17.00	Apr. 1, 1986
1700–End	12.00	Apr. 1, 1986
25	24.00	Apr. 1, 1986
26 Parts:		
§§ 1.0–1.169	29.00	Apr. 1, 1986
§§ 1.170–1.300	16.00	Apr. 1, 1986
§§ 1.301–1.400	13.00	Apr. 1, 1986
§§ 1.401–1.500	20.00	Apr. 1, 1986
§§ 1.501–1.640	15.00	Apr. 1, 1986
§§ 1.641–1.850	16.00	Apr. 1, 1986
§§ 1.851–1.1200	29.00	Apr. 1, 1986
§§ 1.1201–End	29.00	Apr. 1, 1986
2–29	19.00	Apr. 1, 1986
30–39	13.00	Apr. 1, 1986
40–299	25.00	Apr. 1, 1986
300–499	14.00	Apr. 1, 1986
500–599	8.00	[1] Apr. 1, 1980
600–End	4.75	Apr. 1, 1986
27 Parts:		
1–199	20.00	Apr. 1, 1986
200–End	14.00	Apr. 1, 1986
28	16.00	July 1, 1985
29 Parts:		
0–99	11.00	July 1, 1985
100–499	5.00	July 1, 1985
500–899	19.00	July 1, 1985
*900–1899	9.00	July 1, 1986
1900–1910	21.00	July 1, 1985
1911–1919	5.50	[2] July 1, 1984
1920–End	20.00	July 1, 1985
30 Parts:		
0–199	16.00	July 1, 1985
200–699	8.50	July 1, 1986
700–End	13.00	July 1, 1985
31 Parts:		
*0–199	11.00	July 1, 1986
200–End	16.00	July 1, 1986

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	[3] July 1, 1984
1–39, Vol. II	19.00	[3] July 1, 1984
1–39, Vol. III	18.00	[3] July 1, 1984
1–189	13.00	July 1, 1985
190–399	23.00	July 1, 1986
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1000–End	5.50	July 1, 1985
33 Parts:		
1–199	20.00	July 1, 1985
200–End	14.00	July 1, 1985
34 Parts:		
1–299	15.00	July 1, 1985
300–399	11.00	July 1, 1986
400–End	18.00	July 1, 1985
35	7.00	July 1, 1985
36 Parts:		
1–199	9.00	July 1, 1985
200–End	14.00	July 1, 1985
37	9.00	July 1, 1985
38 Parts:		
0–17	16.00	July 1, 1985
18–End	11.00	July 1, 1985
39	12.00	July 1, 1986
40 Parts:		
1–51	16.00	July 1, 1985
52	21.00	July 1, 1985
53–80	23.00	July 1, 1985
81–99	18.00	July 1, 1985
100–149	18.00	July 1, 1985
150–189	13.00	July 1, 1985
190–399	19.00	July 1, 1985
400–424	14.00	July 1, 1985
425–699	13.00	July 1, 1985
700–End	8.00	July 1, 1985
41 Chapters:		
1, 1–1 to 1–10	13.00	[4] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[4] July 1, 1984
3–6	14.00	[4] July 1, 1984
7	6.00	[4] July 1, 1984
8	4.50	[4] July 1, 1984
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42 Parts:		
1–60	12.00	Oct. 1, 1985
61–399	7.00	Oct. 1, 1985
400–429	16.00	Oct. 1, 1985
430–End	11.00	Oct. 1, 1985

Title	Price	Revision Date
43 Parts:		
1–999	10.00	Oct. 1, 1985
1000–3999	18.00	Oct. 1, 1985
4000–End	8.50	Oct. 1, 1985
44	13.00	Oct. 1, 1985
45 Parts:		
1–199	10.00	Oct. 1, 1985
200–499	7.00	Oct. 1, 1985
500–1199	13.00	Oct. 1, 1985
1200–End	9.00	Oct. 1, 1985
46 Parts:		
1–40	10.00	Oct. 1, 1985
41–69	10.00	Oct. 1, 1985
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156–165	10.00	Oct. 1, 1985
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200–499	15.00	Oct. 1, 1985
500–End	7.50	Oct. 1, 1985
47 Parts:		
0–19	13.00	Oct. 1, 1985
20–69	21.00	Oct. 1, 1985
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48 Chapters:		
1 (Parts 1–51)	16.00	Oct. 1, 1985
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15–End	17.00	Oct. 1, 1985
49 Parts:		
1–99	7.00	Oct. 1, 1985
100–177	19.00	Nov. 1, 1985
178–199	15.00	Nov. 1, 1985
200–399	13.00	Oct. 1, 1985
400–999	16.00	Oct. 1, 1985
1000–1199	13.00	Oct. 1, 1985
1200–1299	13.00	Oct. 1, 1985
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[2] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

VOL 51 ISS 169 SE 2 1986 UMI

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DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
September 2	September 17	October 2	October 17	November 3	December 1
September 3	September 18	October 3	October 20	November 3	December 2
September 4	September 19	October 6	October 20	November 3	December 3
September 5	September 22	October 6	October 20	November 4	December 4
September 8	September 23	October 8	October 23	November 7	December 8
September 9	September 24	October 9	October 24	November 10	December 8
September 10	September 25	October 10	October 27	November 10	December 9
September 11	September 26	October 14	October 27	November 10	December 10
September 12	September 29	October 14	October 27	November 12	December 11
September 15	September 30	October 15	October 30	November 14	December 15
September 16	October 1	October 16	October 31	November 17	December 15
September 17	October 2	October 17	November 3	November 17	December 16
September 18	October 3	October 20	November 3	November 17	December 17
September 19	October 6	October 20	November 3	November 18	December 18
September 22	October 7	October 22	November 6	November 21	December 22
September 23	October 8	October 23	November 7	November 24	December 22
September 24	October 9	October 24	November 10	November 24	December 23
September 25	October 10	October 27	November 10	November 24	December 24
September 26	October 14	October 27	November 10	November 25	December 26
September 29	October 14	October 29	November 13	November 28	December 29
September 30	October 15	October 30	November 14	December 1	December 29

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22
22
23
24
26
29
29

VOL
51
ISS
1
6
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VOL
51
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170
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9-3-86
Vol. 51 No. 170

federal register

Wednesday
September 3, 1986

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VOL
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ISS
170
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1986
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9-3-86
Vol. 51
Pages

9-3-86
Vol. 51 No. 170
Pages 31309-31604

Federal Register

Wednesday
September 3, 1986

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VOL
51
ISS
170
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3
1986
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RESERVATIONS: Doris Tucker 202–523–3419

Contents

Federal Register

Vol. 51, No. 170

Wednesday, September 3, 1986

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
Eastern Colorado, 31340

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Food and Nutrition Service

Air Force Department
NOTICES
Procurement:
Transportation and travel payment system, 31354

Army Department
NOTICES
Meetings:
Science Board, 31354
(2 documents)

Arts and Humanities, National Foundation
See National Foundation on the Arts and Humanities

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 31353

Commodity Credit Corporation
RULES
Loan and purchase programs:
Emergency feed program
Correction, 31316

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 31388

Defense Department
See also Air Force Department; Army Department
RULES
Defense Audiovisual Agency; CFR Part removed, 31325
Federal Acquisition Regulation (FAR):
Publicizing and response time, certificate of competancy, etc., 31424

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation applications:
CEPEX, Inc., 31356
Great Lakes Gas Transmission Co., 31356
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
Public Service Co. of New Hampshire, 31357
Remedial orders:
Pennzoil Co., 31356

Energy Department
See also Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission
RULES
Acquisition regulations:
Competition in contracting; protest procedures, 31335
Standby federal emergency energy conservation plan; CFR Part removed, 31316
NOTICES
Cooperative agreements:
Agricultural commodities irradiation research centers in—
Florida, 31355
Oklahoma, 31355
Meetings:
National Petroleum Council, 31355

Energy Research Office
NOTICES
Meetings:
Energy Research Advisory Board, 31358

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 31328
Hazardous waste:
Identification and listing—
Exclusions; correction, 31330
Pesticides; tolerances in foods:
Ethephon, 31324
NOTICES
Meetings:
Science Advisory Board, 31368

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Meetings:
Advisory Committee, 31368

Farm Credit Administration
NOTICES
Farm credit system:
Prior approval of district board directors special assignments, 31369

Federal Aviation Administration
RULES
Aircraft products and parts, certification:
Fairchild, 31317
IFR altitudes, 31319
Standard instrument approach procedures, 31322
PROPOSED RULES
Airworthiness directives:
Boeing, 31342
Short Brothers, Ltd., 31343

Federal Communications Commission
RULES
Common carrier services:
Telephone network, connection of telephone equipment—
Loop-powered repertory dialers, registration; correction, 31335
NOTICES
Agency information collection activities under OMB review, 31368

Federal Election Commission
NOTICES
Meetings:
Clearinghouse Advisory Panel, 31369

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Missouri et al., 31330

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Consumers Power Co. et al, 31359
Pennsylvania Power & Light Co. et al., 31361
Natural gas certificate filings:
ANR Pipeline Co. et al., 31362
Mississippi River Transmission Co. et al., 31363
Preliminary permits surrender:
Porthill Hydro Partners, 31368
Small power production and cogeneration facilities; qualifying status:
San Joaquin Cogen, Inc., et al., 31358

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Stark County, OH, 31385

Federal Maritime Commission
NOTICES
Agreements filed, etc., 31369

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Bank Maryland Corp. et al., 31369
First Sunbelt Bankshares, Inc., et al., 31370

Fish and Wildlife Service
RULES
Endangered and threatened species:
Concho water snake, 31412
Migratory bird hunting:
Waterfowl hunting; nontoxic shot zones, 31430

Food and Drug Administration
RULES
Color additives:
FD&C Red No. 3, etc.; provisional listing, 31323
NOTICES
Human drugs:
Single-entity coronary vasodilators, nitroglycerin ointment; drug efficacy study implementation, etc., 31371
Meetings:
Advisory committees, panels, etc., 31374

Food and Nutrition Service
RULES
Child nutrition programs:
Child care food program—
Key element reporting system, 31313

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Publicizing and response time, certificate of competancy, etc., 31424
PROPOSED RULES
Acquisition regulations:
Multiple award schedule program, 31344
NOTICES
Agency information collection activities under OMB review, 31370

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Human Development Services Office; Public Health Service

Health Care Financing Administration
RULES
Medicare:
Hospital inpatient prospective payment system, 31454
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
North Carolina, 31375

Human Development Services Office
NOTICES
Grants; availability, etc.:
Native American programs, 31406

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Reclamation Bureau
NOTICES
Missing children, use of official mail in location and recovery; implementation, 31377

International Trade Administration
NOTICES
Antidumping:
Jalousie and awning window operator from El Salvador, 31350
Meetings:
Importers and Retailers' Textile Advisory Committee, 31350
Management-Labor Textile Advisory Committee, 31350

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Chicago & North Western Transportation Co., 31381
Soo Line Railroad Co., 31381

Land Management Bureau
NOTICES
Alaska Native claims selection:
Kootznoowoo Inc., 31379
Meetings:
Shoshone District Grazing Advisory Board, 31380
Motor vehicles; off-road vehicle designations:
New Mexico, 31379

Recreation use permit systems:
California Desert District, CA, 31380
Resource management plans, etc.:
Brothers/LaPine, OR; meeting, 31378
Survey plat filings:
California, 31377–31378
(5 documents)

Maritime Administration
NOTICES
Trustees; applicants approved, disapproved, etc.:
Colonial Bank, 31386

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Publicizing and response time, certificate of competancy, etc., 31424

National Foundation on the Arts and Humanities
NOTICES
Agency information collection activities under OMB review, 31381

National Labor Relations Board
NOTICES
Privacy Act; systems of records, 31382

National Oceanic and Atmospheric Administration
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs—
Evaluation findings availability, 31352
Intent to evaluate performance, 31352
Permits:
Marine mammals, 31353

National Technical Information Service
NOTICES
Inventions, Government-owned; availability for licensing, 31353

Nuclear Regulatory Commission
PROPOSED RULES
Practice rules:
Domestic licensing proceedings; hearing process, 31340
Rulemaking petitions:
Committee to Bridge the Gap, 31341
NOTICES
Regulatory guides:
Issuance, availability, and withdrawal, 31384
Three Mile Island Unit 2; leak rate data falsification:
Inquiry and hearing, 31383
Applications, hearings, determinations, etc.:
Florida Power & Light Co., 31383
Florida Power Corp., 31383
Pacific Gas & Electric Co., 31384

Postal Rate Commission
NOTICES
Complaints filed:
Sacramento Bee et al., 31385

Postal Service
RULES
International Mail Manual:
Priority Airmail Service, 31325
Organization and administration:
Chief Postal Inspector; seizure for forfeiture, 31328

Presidential Documents
PROCLAMATIONS
Special observances:
Adult Literacy Awareness Month (Proc. 5519), 31309
P.O.W./M.I.A. Recognition Day, National (Proc. 5520), 31311

Public Health Service
See also Food and Drug Administration
NOTICES
National Toxicology Program:
Toxicology and carcinogenesis studies—
1,3-Butadiene, etc., 31376
Chlorinated paraffins, 31376
C.I. Disperse Blue 1, 31376

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Central Utah Project, UT, 31380

Saint Lawrence Seaway Development Corporation
NOTICES
Meetings:
Strategic Planning for St. Lawrence Seaway Advisory Group, 31386

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 31385

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration; Federal Highway Administration; Maritime Administration; Saint Lawrence Seaway Development Corporation

Treasury Department
NOTICES
Agency information collection activities under OMB review, 31386

Veterans Administration
NOTICES
Meetings:
Career Development Committee, 31387
Former Prisoners of War Advisory Committee, 31387
Medical Research Service Merit Review Boards, 31387

Separate Parts In This Issue

Part II
Department of Health and Human Services, Human Development Services Office, 31406

Part III
Department of the Interior, Fish and Wildlife Service, 31412

Part IV
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 31424

Part V
Department of the Interior, Fish and Wildlife Service, 31430

Part VI
Department of Health and Human Services, Health Care Financing Administration, 31454

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5519.....31309
5520.....31311

7 CFR
226.....31313
1475.....31316
Proposed Rules:
1137.....31340

10 CFR
477.....31316
Proposed Rules:
2.....31340
50.....31341

14 CFR
21.....31317
95.....31319
97.....31322
Proposed Rules:
39 (2 documents).....31342, 31343

21 CFR
81.....31323
193.....31324

32 CFR
205.....31325

39 CFR
10.....31325
233.....31328

40 CFR
52.....31328
261.....31330

42 CFR
405.....31454
412.....31454

44 CFR
64.....31330

47 CFR
22.....31335

48 CFR
5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
47.....31424
50.....31424
52.....31424
914.....31335
933.....31335
952.....31335
970.....31335

Proposed Rules:
515.....31344
538.....31344
552.....31344

50 CFR
17.....31412
20.....31430

VOL 51 ISS 170 SE 3 1986 UMI

Federal Register
Vol. 51, No. 170
Wednesday, September 3, 1986

Presidential Documents

Title 3—

The President

Proclamation 5519 of August 27, 1986

Adult Literacy Awareness Month, 1986

By the President of the United States of America

A Proclamation

The incidence of illiteracy and functional illiteracy among the Nation's adult population negatively affects our economy, our social institutions, and our security. It also limits the opportunities open to those who lack basic reading and writing skills. Estimates of the number of illiterate or functionally illiterate Americans range from twenty-three million to over fifty million.

Adult illiteracy has not received the attention it deserves. As Americans come to understand the problem better they will come to grips with it. Illiteracy is not limited to any region of the Nation, nor to any social or ethnic group. We must take this problem seriously and provide the means and the motivation to help those with literacy deficiencies to master the ability to read and write.

Americans traditionally have responded when they become aware of a problem, especially when it comes to helping their fellow Americans. The problem of adult illiteracy can be solved if enough Americans volunteer to serve as tutors, provide in-kind services, and support other targeted efforts. There must be maximum private initiative, public-private cooperation, and coordinated community action. The Federal government has recognized the need to address adult illiteracy, and the private sector is beginning to do its part through a number of promising initiatives.

I am pleased to learn that many organizations will be involved in addressing this problem. Others in communications—television producers, magazine publishers, book publishers, broadcasters, and advertising agencies—will be supporting and encouraging efforts to raise awareness of the problem of adult illiteracy in September 1986 and beyond.

In order to call attention to these efforts, the Congress, by Senate Joint Resolution 358, has designated the month of September 1986 as "Adult Literacy Awareness Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of September 1986 as Adult Literacy Awareness Month. I call on the American people and organizations of every kind to observe the month with activities to increase awareness of the problem of adult illiteracy and to encourage involvement in programs to help eliminate illiteracy and functional illiteracy among adults in our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of August, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-20014
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VOL
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Presidential Documents

Proclamation 5520 of August 28, 1986

National P.O.W./M.I.A. Recognition Day, 1986

By the President of the United States of America

A Proclamation

Courage and sacrifice are no strangers to America. In every war since our first struggle for independence, America's prisoners of war have endured terrible hardships and have been called upon to make extraordinary sacrifices. The bravery, perseverance, and profound devotion to duty of our POWs and MIAs have earned them a place of honor in the hearts of all Americans. Their heroism is an inspiration to future generations. Their spirit of hope and their commitment to the defense of freedom are a claim on our loyalty to them.

All Americans are also deeply moved by the pain and suffering endured by the families and friends of those who remain missing or unaccounted for. We share both their burden and their commitment to secure the release of any U.S. personnel who may still be held against their will, to recover the missing, to resolve the accounting, and to relieve the suffering of our missing servicemen. Until the P.O.W./M.I.A. issue has been resolved, it will continue to be a matter of the highest national priority. As a symbol of this national commitment, the P.O.W./M.I.A. Flag will fly over the White House, the Departments of State and Defense, the Veterans' Administration, and the Vietnam Veterans Memorial on September 19, 1986. It will also fly over the Vietnam Veterans Memorial on Memorial Day and Veterans Day.

In order to recognize the special debt all Americans owe to the men and women who gave up their freedom in the service of our country and to reaffirm our commitment to their families, the Congress, by Senate Joint Resolution 220, has designated September 19, 1986, as "National P.O.W./M.I.A. Recognition Day," and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, September 19, 1986, as National P.O.W./M.I.A. Recognition Day. I call on all Americans to join in honoring all former American prisoners of war, those still missing, and their families who have made extraordinary sacrifices on behalf of this country. I also call upon State and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of August, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

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SUPPLE

Rules and Regulations

Federal Register
Vol. 51, No. 170
Wednesday, September 3, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

[Amdt. 13]

Child Care Food Program; Key Element Reporting System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Child Care Food Program (CCFP regulations to incorporate a Key Element Reporting System (KERS) into the CCFP review requirements. Under KERS, all agencies which administer the CCFP at the State leave will be required to report to the Department specified information on program operations collected during normal reviews of institutions conducted through December 31, 1987. This system is designed to (1) improve the evaluation and monitoring process at the institution level, (2) focus review efforts on those deficiencies that most significantly affect the quality of the program and the efficient use of funds, (3) help program administrators at all levels to evaluate institutional management and compliance with program requirements, and (4) enable the Department to assess the need for specific performance standards.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620. Copies of all written comments on the proposed rule are available for review during normal business hours at 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for Program participants, individuals industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This regulation has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584–0055.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate and any subsequent notices that may apply.)

Background

On January 29, 1986, the Department published a proposed rule at 51 FR 3603 to incorporate a Key Element Reporting System (KERS) into the Child Care Food Program (CCFP) regulations. Under this proposal, administering agencies were to be required to report the results of all institution and facility reviews and verification reviews, if separate, conducted through December 31, 1987. The purpose of this requirement, was to provide the Department with detailed information on institutional compliance with certain "key elements" of program operations. Such a system would enhance the Department's ability to analyze the delivery of benefits at the local and State levels and to assess the need for program guidance or regulatory or legislative change. The Department also considered that data obtained through this system could be helpful in developing comprehensive performance standards for the CCFP review system. For a more complete description of the proposed design of KERS and for a list of potential key elements which the Department is considering for inclusion, interested parties should consult the preamble to the proposed rulemaking.

During the official comment period, 29 commenters responded to the proposal (22 State agencies; 4 FNS regional offices; 3 interested parties). Although some commenters expressed support for the general goals of KERS, the majority of the comments were negative. In general, commenters' concerns were concentrated in three areas: (1) Conceptual/statistical problems; (2) increased burden on State agencies and (3) difficulties with reporting deadlines. In addition, a number of commenters expressed support for a CCFP review system comparable to the AIMS system used in the National School Lunch and School Breakfast Programs. For the most part, however, these commenters had reservations about the use of KERS data to develop specific performance standards for such a system, and several suggested that the Department propose such standards independently of the KERS process. Finally, several commenters offered technical suggestions concerning specific data items on the KERS instruments. All of these technical comments will be considered in the development of final reporting forms for KERS. The remainder of this preamble addresses the other major concerns raised by commenters.

KERS Concept/Utility

Four commenters agreed with the idea that uniform national data should be collected, although two of these comments did express reservations about the potential increase in administrative burden. The majority of commenters, however, opposed KERS on several grounds. Some commenters believed that the goals of the data collection had not been sufficiently clarified. To these commenters, it appeared that the Department had not

decided whether KERS would be a data reporting system or a management improvement system.

The Department reiterates that KERS, itself, is an information collection system designed to provide data on the overall operation of the CCFP at all levels. As stated in the preamble to the proposed rule, the Department forsees a number of uses to which this data may be put, including assessing the program at the local, State, regional and national levels, evaluating the effectiveness of program regulations and guidance materials, analyzing the need for possible legislative changes, and developing comprehensive performance standards for the CCFP review system. In short, the Department anticipates that KERS can contribute to improved administration of the CCFP in many ways. It would be premature, however, to speculate about any specific program initiatives which may be suggested by KERS.

Several commenters saw KERS as duplicative of the current study of the CCFP being conducted by Abt Associates, Inc. (AAI). These commenters also tended to believes that KERS data would be less valid than data generated by the AAI study, because KERS has a 15-month time limit while the sampling cycle for the CCFP is four years. Moreover, these commenters noted that the likely targetting of problem institutions for more frequent reviews would create the impression that error rates are higher than, in fact, is the case. The Department is aware that differences in the way States select institutions for review could bias any estimates derived by simply totaling responses in a particular category. Therefore, the Department will seek information on the frequency at which each institution has been selected for review and on the methods utilized by each State in selecting institutions for review. This information will be used to adjust estimates so that national estimates and State comparisons will not be distorted. Consequently, the Department continues to consider KERS to be a useful tool in developing program policy and monitoring administrative effectiveness. To this end, the Department notes that while the reporting requirements of this rule will end on December 31, 1987, the Department plans to implement additional rules which will incorporate KERS as a permanent program feature. The Department wishes to assess the effectiveness of the system and to refine the use of data before implementing KERS permanently. The Department, therefore, anticipates a future rulemaking to incorporate KERS in some fashion as an ongoing element in the CCFP.

Finally, the Department recognizes certain similarities between the data reported through KERS and the information generated by the AAI study. Nevertheless, the two differ in certain key respects. For one thing, the AAI study will not yield data at the State level. Consequently, it will not be possible to use AAI to determine the ways in which the program may be influenced by conditions in specific States. Moreover, the data collection employed by KERS will have a different emphasis from that developed for the AAI study. Whereas the AAI data will be descriptive of recipients, including children, the KERS data will derive from the States' normal administrative reviews and will, therefore, be directed toward compliance with program requirements. For these reasons, the Department does not believe that AAI data could be substituted for KERS.

Ten commenters suggested that KERS is not necessary because the States maintain all data from reviews and FNS can compile State totals when management evaluations are conducted. In this way, FNS would obtain necessary data without States having to submit periodic reports. The Department notes, however, that it is not always possible to conduct management evaluations annually in every State. Moreover, management evaluations entail a review of all aspects of a State's administration of the CCFP; they are not designed for data collection. It is not feasible to survey all of a State's annual administrative reviews of institutions during the course of a normal management evaluation. Finally, even if FNS were able to collect data in this fashion, the collection would occur at irregular intervals and would provide information more dated than the Department is planning to obtain through regular, ongoing submissions under KERS. For these reasons, the Department does not consider that a management evaluation is the appropriate method for the collection of KERS data.

A number of commenters expressed concern about the objectivity of the data reported through KERS. Some noted that variations among States in the conduct of administrative reviews are inevitable because conditions vary from State to State; other commenters remarked that the individual reviewers who initially generate the data will use subjective judgment in determining institutional compliance with program requirements. Moreover, some States may employ more rigorous review methods than others. In both instances, the reported error rate may not be indicative of the quality of program administration at either the State or institutional levels. Finally, some commenters questioned the validity of attempting to describe complex qualitative evaluations of performance in quantitative terms.

The Department recognizes that some element of subjectivity will always exist in any review system, no matter how highly structured. Nevertheless, most of the important aspects of the CCFP can be reasonably and consistently quantified. For example, meal component and quantity requirements should be standard throughout the States. While some variation in crediting food items may occur, it is unlikely that States would differ significantly with regard to their standards for reimbursable meals. By the same token, the requirements for documentation of free or reduced price status are explicit, as are the directions for verifying this documentation. Consequently, there is no reason for significant differences among States in this area, and the same is true of virtually all other key elements of the program. Finally, the Department concedes that some program areas (e.g., training, corrective action) can involve qualitative judgments on the part of reviewers. Nevertheless, compliance in most key areas can be reasonably assessed quantitatively. Indeed, States must make some sort of quantitative assessment when determining overclaims. For these reasons, the Department believes the influence of subjective or qualitative findings can be minimized in KERS.

Finally, some commenters addressed the issues of State autonomy and flexibility. These commenters regarded KERS as a potential infringement on the States' administration of the CCFP and suggested that an emphasis on national data could result in States and FNS overlooking isolated, but serious, local problems. The Department emphasizes that the purpose of KERS is to provide information which may be used to analyze program policies and needs. It is not the Department's intent to involve itself directly in the States' administration of the program. The Department does note, however, that FNS is responsible for the overall operation of the CCFP, and it is anticipated that KERS will enable FNS to fulfill its administrative responsibilities better. The Department also stresses that KERS will not inhibit the ability of States to tailor their reviews to deal with unique local problems. While KERS will provide data

VOL 51 ISS 170 SE 3 1986 UMI

on certain key aspects of the CCFP, States will still need to review all areas of an institution's operations to ensure total compliance with all requirements. Consequently, KERS will not affect the States' ability to correct problems arising from purely local situations.

Reporting Burden

Sixteen commenters took issue with the proposal on the grounds that it would substantially increase the burden on both administering agencies and the Federal Government. In general, commenters assumed that the Department had underestimated the time and effort required to review all KERS elements and code the forms. In keeping with this assumption, four commenters remarked that KERS would require an increase in staff time even though staffing is already inadequate and anticipated funding cuts may lead to further reductions in personnel. Other commenters believed the increase in paperwork would be contrary to the intent of the Paperwork Reduction Act and questioned the increase in data processing and analysis costs at the Federal level when the Federal Government is seeking to reduce its spending. In this view, time could better be spent providing additional technical assistance to all levels. In addition, some commenters cited specific technical difficulties. First, some States perform verification during audits or special verification reviews, rather than during administrative reviews. Since the audits and/or the special reviews are not being performed in the same fiscal year as the administrative reviews, it would not be possible to report all KERS data in the same fiscal year (as suggested in the proposed regulation) without large scale disruptions. A second technical difficulty cited is that some States might need to redesign their review forms to accommodate KERS.

As the Department noted in the preamble to the proposed rule, KERS is intended to be a reporting system. Nevertheless, at that time, the Department believed the report forms could be designed to serve as review forms as well. The intent of this plan was to prevent States from incurring the burdens associated with copying data from one form to another. The Department recognized, however, that some program areas (e.g., civil rights, procurement) were not covered by KERS and would, therefore, continue to require a separate review instrument. The Department agrees that the proposed system presented certain problems. Therefore, in refining KERS, the Department has considered reducing the number of key areas for which data would be reported and is reducing the number of forms which would be submitted. Under the orginial concept, States would have submitted a separate form for each facility visited as part of a sponsor review. The Department now considers that the same goals can be met if States submit aggregate data on key elements for each sponsor reviewed. This revision will offer several advantages. First, since data will be aggregated, the number of separate submissions will be sharply reduced. Secondly, States will continue to use their own review forms without disruption. Finally, since sponsor data must be aggregated by the States in order to determine what, if any, overclaim must be assessed, KERS should entail little additional burden beyond copying numbers from one form to another.

The Department recognizes that the system will still entail some additional burden for States and will require an increased data processing commitment by the Department. The Department believes, however, that the emphasis on key elements of the program can result in more efficient reviews. The Department also expects that analysis of the data at the national level can yield information on program operations that will enable the Federal Government and States to concentrate limited resources on major problems. Consequently, the Department believes that any additional burden will be more than offset by enhanced management of the program.

Finally, the Department acknowledges that the system, as proposed, could possibly disrupt some States' schedules for verifying applications for free and reduced price meals. In developing a verification system for the CCFP, the Department made every effort to offer State agencies maximum flexibility. While it was assumed that most States would incorporate verification into their administrative reviews, States were permitted alternatives, such as conducting separate verification reviews or including verification in routine audits. The Department continues to believe that these alternatives can be useful, particularly in the case of larger sponsors, and the Department recognizes that such activity may not always be conveniently scheduled in the same fiscal year as the administrative review. Therefore, the proposed requirement that separate verification activity be completed and reported in the same fiscal year as the administrative review, is modified in this final regulation. Specifically, the final regulation stipulates that, when verification is conducted separate from administrative reviews, both processes must be completed within a 12-month period. This will provide States with greater flexibility in scheduling audits, verification reviews, and administrative reviews, since all the data elements for the KERS report will not have to be collected in the same fiscal year. At the same time, the KERS report will provide a more accurate "snapshot" of program administration in particular institutions at a given point in time. It should also be emphasized that during the first year of KERS implementation, States conducting verification activities separate from administrative reviews may utilize results from already-completed audits or verification reviews, provided that they were conducted no more than 12 months prior to the administrative review. This results in a 24-month scheduling "window" for review activity.

Submission Deadlines

Fourteen commenters responded to the proposed 30-day deadline for reporting the data collected. Twelve of the comments were opposed to the limit, while one commenter acknowledged the provision and another requested clarification without expressing a definite position on the proposal. In general, commenters believed that 30 days was insufficient, and they suggested a variety of alternatives such as longer time limits (60 or 90 days) or the submission of cumulative data (quarterly or semiannually). Because of the large amount of data which the Department will need to process under KERS, a quarterly or semiannual submission of individual reports would not be feasible. Either of these alternatives would result in an uneven flow of data which could make the system unmanageable. Furthermore, if States were to compile all of the data from several months of review activity and submit a consolidated report, the burden associated with KERS would be substantially increased, and the Department has made every effort to minimize the burden. The Department agrees, however, that States may need longer than 30 days in which to transmit KERS data, especially when larger institutions such as sponsors of day care homes are involved. Since the Department wishes to provide State agencies with as much flexibility as possible in this area, this final rule extends the submission limit to 90 days.

Finally, with respect to the submission deadline, one commenter considered that the proposal was unclear as to when the time limit would begin. This commenter noted that reviews can often

remain open long after the actual data has been collected. The commenter wished to know, therefore, whether the reporting period begins when the State completes the data collection or when the review is actually completed. The Department agrees that clarification of this matter was needed, and the final rule states that the submission deadline is 90 days after the completion of the data collection.

Performance Standards

Several commenters responded to the statement in the preamble to the proposed rule that the Department would use KERS data when considering whether or not to develop specific performance standards and guidelines for the CCFP review system. Six of these commenters explicitly favored the establishment of a performance-based review system such as the AIMS system used in the National School Lunch and School Breakfast Programs. Another four commenters implied approval of performance standards, though they recommended that standards be developed without introducting KERS. Two commenters opposed the introduction of performance standards in the CCFP. Although the idea of performance standards was not a part of the proposed rule, itself, the Department wishes to take this opportunity to clarify this subject with respect to KERS.

First, while the Department expects KERS data to influence any standards which may be developed, the Department foresees other uses for the system as well, particularly in the long term analysis of program trends. Secondly, the Department would not base performance standards purely on KERS data. Complementary information on the program is available from a variety of other sources, and the Department will consider all data at its disposal before deciding what performance standards, if any, would be meaningful in the CCFP.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Sections 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); Section 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Section 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. Section 226.2 is amended by adding the definition of "Key Element Reporting System" in alphabetical order, to read as follows:

§ 226.2 Definitions.

* * * * *

"Key Element Reporting System" (KERS) means a comprehensive national system for reporting critical key element performance data on the operation of the program in institutions.

* * * * *

3. Section 226.6 is amended by adding a new paragraph (o) to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(o) Following its reviews of institutions and facilities under §§ 226.6(k) and 226.23(h) conducted prior to January 1, 1988, the State agency shall report data on key elements of program operations on a form designated by FNS. These key elements include but are not limited to the program areas of meal requirements, determination of eligibility for free and reduced price meals, and the accuracy of reimbursement claims. These forms shall be submitted within 90 days of the completion of the data collection for the institutions except that, if the State has elected to conduct reviews of verification separate from its administrative reviews, the State shall retain data until all key elements have been reviewed and shall report all data for each institution on one form within 90 days of the completion of the data collection for all key elements for that institution. States shall ensure that all key element data for an institution is collected during a 12-month period.

Dated: August 27, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86–19845 Filed 9–2–86; 8:45 am]

BILLING CODE 3410-30-M

Commodity Credit Corporation

7 CFR Part 1475

Emergency Feed Program

Correction

In FR Doc. 86–16174 beginning on page 28803 in the issue of Tuesday, August 12, 1986, make the following correction on page 28804:

§ 1475.54 [Corrected]

In the third column, in § 1475.54(a), after "(a) *General.*", insert "(1)".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

10 CFR Part 477

Recession of Standby Federal Emergency Energy Conservation Plan

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is rescinding the Standby Federal Emergency Energy Conservation Plan regulations because the statutory authority for these regulations has expired.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT:

Lorn Harvey, Program Manager, Energy Emergency Plans and Integration, Plans and Testing Division, International Affairs and Energy Emergencies, Department of Energy, Room GH–060, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–1976;

Samuel M. Bradley, Deputy Assistant General Counsel, International Affairs, Department of Energy, Room 6A–167, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–2900.

SUPPLEMENTARY INFORMATION: Title II of the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. 96–102 (42 U.S.C. 8501 *et seq.*), which expired on July 1, 1983 (42 U.S.C. 8541(c)(1)), authorized the President to establish energy conservation targets for various energy sources on a nationwide and state-by-state basis if the President determined that a "severe energy supply interruption" existed or that such action was required in order to fulfill U.S. obligations under the International Energy Program. If such targets were set, the states were required to develop and submit to the Department of Energy plans to provide for emergency reduction in the public and private use of each energy source for which an emergency conservation target was in effect. If the President found compliance with a target in a state to be inadequate, he could substitute a standby federal plan in that state.

On February 4, 1980, the Department adopted the "Standby Federal Emergency Energy Conservation Plan," 10 CFR Part 477 (45 FR 8462, February 7, 1980), to implement EECA Title II. The

Plan was amended in 1982 (47 FR 5688, February 5, 1982).

Since the President's authority to impose state energy conservation targets and to carry out the Standby Federal Emergency Energy Conservation Plan expired on July 1, 1983, the Department is rescinding and removing 10 CFR Part 477.

List of Subjects in 10 CFR Part 477

Administrative practice and procedure,
Emergency powers,
Energy conservation
Intergovernmental relations,
Penalties,
Petroleum.

Issued in Washington, DC, August 20, 1986

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

PART 477—STANDBY FEDERAL EMERGENCY ENERGY CONSERVATION PLAN [REMOVED]

10 CFR is amended by removing Part 477.

[FR Doc. 86–19673 Filed 9–2–86; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 016CE, Special Conditions No. 23–ACE–15]

Special Conditions; Fairchild Model SA227–AC Airplanes Incorporating Electronic Flight Instrument Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for the Fairchild Aircraft Corporation Model SA227–AC airplanes incorporating Electronic Flight Instrument Systems (EFIS). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of Part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of an electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional airworthiness standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards applicable to the Fairchild Aircraft Corporation Model SA227–AC airplanes.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: David Warner, Aerospace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1986, King Radio Corporation, 400 N. Rogers Road, Olathe, Kansas 66062, made application to the FAA for approval of installation of a Bendix EFS–10 Electronic Flight Instrument System (EFIS) on the Fairchild Aircraft Corporation Model SA227–AC airplanes. This installation incorporates an electronic attitude direction indicator (EADI) and an electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flight crew.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

King Radio Corporation has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading and navigation cockpit displays. The cockpit instrument panel configuration would feature five EFIS displays, an EADI and EHSI in the left and right instrument panels and a multi-function display in the center panel. All other displays; i.e., airspeed, altitude, vertical speed, etc., will be conventional instruments. An optional configuration would provide for an EADI and EHSI on the pilot's side, conventional instruments on the copilot's side, and a multi-function display in the center panel.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Model SA227–AC airplane is as follows: Part 23 of the Federal Aviation Regulations, effective February 1, 1965, as amended by Amendments 23–1 through 23–6; § 23.175(d) as amended by Amendment 23–14, effective December 20, 1973; Special Conditions outlined in FAA letters November 19, 1965, August 22, 1967, February 5, 1968, and April 4, 1968; Amendment B of SFAR No. 41, including paragraph 4(c) and the compartment interior requirements of §§ 25.853(a), (b), (b–1), (b–2), and (b–3) effective September 26, 1978; Part 36, Appendix F, effective December 1, 1969, as amended by Amendments 36–1 through 36–6; and these special conditions.

Discussion of Comments

The FAA received one set of comments in response to Notice No. 23–ACE–15. The closing date for comments was July 4, 1986. Prior to Notice No. 23–ACE–15, Notice No. 23–ACE–12 (51 FR 19354, May 29, 1986) proposed a substantively identical set of special conditions for EFIS in the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT, and Notice No. 23–ACE–11 (51 FR 11933, April 8, 1986) proposed special conditions for the Beech Model 2000 that contained similar requirements for EFIS. The FAA received no comments in response to Notice No 23–ACE–12. However, Notice No. 23–ACE–11 received extensive comments.Those comments were analyzed, disposed of, and the final special conditions for the Beech Model 2000 were published in the Federal Register on August 8, 1986 (51 FR 28509). Clarifying changes as a result of comments to the Beech Model 2000 special conditions were incorporated into the Fairchild Models SA227–AT and SA227–TT special conditions, section 1(a) and (b), for consistency. Those same clarifying changes are incorporated into these special conditions for the Fairchild Models SA227–AC. These changes do not change the applicable requirements.

The set of comments received to Notice No. 23–ACE–15 are summarized as follows:

1. Civil Air Regulations (CAR) 03 of November 1945 referenced other CAR parts for equipment necessary for a specific operation and contained the requirement "each item of equipment which is essential to the safe operation

VOL 51 ISS 170 SE 3 1986 UMI

of the airplane shall function satisfactorily, . . . " The commenter contends these words were carried forward into the current Part 23 and that the systems now labeled "complex safety critical systems" (King/Bendix EFIS–10) are not materially different from the requirement in CAR 03 of 1945.

2. Certification basis for affected airplane (Part 23 through Amendment 23–6) did not contain the § 23.1321(a), Amendment 23–14, requirement cited in the preamble. The § 23.1321(a) requirement, as paraphrased in the preamble, states, "Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments."

3. Inclusion of the phrase "continued safe flight and landing" is viewed as imposing a requirement to continue to a scheduled destination and landing rather than use of a "divert and immediate landing" philosophy included in Part 3 of the CAR and Part 23 of the FAR.

4. In discussing safety assessment of EFIS in the preamble, it was stated "use of these rational methods for safety assessment of systems do not mandate use of numerical analysis." The commenter contends this is a direct conflict as a collective reliability study cannot be made without a numerical analysis. Further, the commenter wants an explanation of "collective reliability of tradional instruments" without use of numerical analysis.

5. This commenter recommends requirements be included that would eliminate power sources common mode failures when dual EFIS is installed by requiring two independent power sources.

6. This commenter states that no mention is made of the need for adequate cooling air and/or environmental control to provide cooling air to the displays and/or symbol generators, and requests installation guidance and definitive installation cooling margins for the manufacturers from FAA policy groups.

7. This commenter states that no mention is made of the need for adequate national policy on software control, that it is very easy to change configuration of these systems software, and that there is no requirement to provide a cockpit display to enable verification of the active software version. Further the commenter states such guidance and policy is long overdue.

The FAA has reviewed Civil Air Regulation (CAR) 03 requirements cited by the commenter and finds it has been amended several times since 1945. As currently codified in § 23.1301, it states "each item of installed equipment must: be of a kind and design appropriate to its intended function; be labeled as to its identifications, function, or operating limitations, or any applicable combination of these factors; be installed according to limitations specified for that equipment; and function properly when installed." The systems and equipment being installed at the time a rule was promulgated and their typical failure modes are indications of possible concerns considered in promulgating the rule. The FAA position remains that the EFIS now being installed were not envisioned and considered by the FAA when the last amendment of § 23.1301 was developed and issued (July 11, 1977); further, that EFIS is a complex system that may be critical to safe flight and that such systems are novel and unusual relative to the applicable requirements.

The FAA agrees that § 23.1321(a) is not part of the affected airplanes' certification basis, but a substantively equivalent requirement relative to grouping of flight instruments is incorporated by reference into SFAR 41, which may be part of the affected airplanes' certification basis (see subsequent discussion herein relative to affected airplane serial numbers). Further, if the affected airplane is operated under Part 135 requirements, with 10 or more passenger seats, the additional requirements of Part 135, Appendix A, are applicable, regardless of whether SFAR 41 is part of the affected airplanes' certification basis. Appendix A contains the cited substantively equivalent requirement.

The FAA does not agree that the use of the term "continued safe flight and landing" implies continuation to the scheduled destination. This phrase is used to require that the affected airplane be capable of continued controlled flight and landing, possibly using emergency procedures and without exceptional pilot skill or strength, after any failure condition which has not been shown to be extremely improbable. This allows landing at the first opportunity.

The FAA does not agree with the commenter's contention that the FAA statement in the preamble on use of numerical analysis is a direct conflict with use of probabilistic terms in the requirements. These terms have been used in Part 25 since 1970 and AC 25.1309–1 contains guidance for both qualitative and quantitative analytical approaches to supporting findings of compliance with requirements using these terms.

The FAA does not agree with the commenter's recommendation to specifically require independent power sources for multiple EFIS installations. Existing requirements for instrument power sources and criticality of the failure mode, as required to be determined in accordance with these special conditions, determine the necessity for independent power sources.

The FAA finds that the commenter's reference to equipment cooling is adequately addressed in paragraph (d) of these special conditions.

The commenter's reference to national policy on software control is not within the scope of these special conditions.

The SA227–AC airplane may or may not incorporate SFAR 41 requirements depending on the airplane serial number in accordance with Note 10 on Type Certificate Data Sheet A8SW. Since SFAR 41 contains requirements substantively equivalent to special conditions section 1 (b), (c), and (d), those special conditions are redundant on airplanes that incorporate SFAR 41 in the certification basis as cited in Note 10 of the data sheet.

Conclusion

This action affects only the Fairchild Model SA227–AC airplanes incorporating EFIS. It is not a rule of general applicability and applies only to the series and model of airplane identified in these final special conditions.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Condition

In consideration of the foregoing, the following special condition is issued as a part of the type certification basis for the Fairchild Aircraft Corporation Model SA227–AC airplanes when equipped with the Electronic Flight Instrument Systems:

1. In addition to the applicable airworthiness requirements, and requirements to the contrary, for instruments, systems, and installations whose design incorporates: Electronic displays that feature design characteristics where a single malfunction or failure could affect more

than one primary instrument display or system; and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination, upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following additional requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no other single failure or probable combination of failures under any anticipated operating condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunctions and damage from foreseeable sources;

(ii) Consequence of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequences;

(iv) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numercial analysis may be used to support the engineering examination.

(b) Each item of equipment of each system and each installation whose functioning is essential for safe operation and that requires a power supply is an "essential load" on the power supply. The power sources and its distribution system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential equipment of each system (loads) after failure of:

(i) Any one engine on the airplane;

(ii) Any power converter, or energy storage device; or

(iii) Essential loads for which an alternate source of power is required by this special condition, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(c) In determining compliance with paragraph (b)(2) of this special condition, the power loads may be assumed to be reduced or shed under a monitoring procedure consistent with safety.

(d) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this special condition, the ability to provide continuous, safe service under foreseeable environmental and atmospheric conditions may be shown by tests, design analysis, or reference to previous comparable service experience on other airplanes.

(e) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation do not inhibit the primary display of attitude;

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units; and

(iv) Incorporate visual displays of instrument markings, required by §§ 23.1541 through 23.1553 or visual displays that alert the pilot to abnormal operational values, or approaches to unsafe values, of any parameter required to be displayed by Part 23/SFAR 41 requirements.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to continued safe flight and landing will remain available to the crew, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

Issued in Kansas City, Missouri on August 20, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-19568 Filed 9-2-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 25070; Amdt. No. 332]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operating of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes,

or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on August 27, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of The Amendment

PART 95—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t.:

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 332 EFFECTIVE DATE, AUGUST 28, 1986

FROM	TO	MEA

§95.1001 DIRECT ROUTES-U.S.

IS ADDED TO READ

CONCORD, NH VORTAC	KHRIS, NH FIX	3000 MAA- 8000
KHRIS, NH FIX	LAWRENCE, MA VOR/DME	3000 MAA- 8000

IS AMENDED TO READ IN PART

NANTUCKET, MA VORTAC *1700 - MOCA	BOSTON, MA VORTAC	*4000 MAA-17500

IS AMENDED TO DELETE

DATON, WY FIX	JACKSON, WY VOR/DME	13000 MAA-25000
OGDEN, UT VORTAC VIA OGD VORTAC 008 & JAC VOR 186	DATON, WY FIX COP 70 OGD	#22000 MAA-30000

#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.

§95.1001 DIRECT ROUTES-U.S.

ATLANTIC ROUTES

AR 12 **IS ADDED TO READ**

SATELLITE, FL NDB	OZENA, FL FIX	18000 MAA-45000

AR 13

GRAND BAHAMA, BF NDB	TORRY, FL FIX	18000 MAA-45000

§95.6026 VOR FEDERAL AIRWAY 26

IS AMENDED TO READ IN PART

GRAND JUNCTION, CO VORTAC	*LINDI, CO FIX	
	N BND	11000
	S BND	10000
*12000 - MRA		

§95.6060 VOR FEDERAL AIRWAY 60

IS AMENDED TO READ IN PART

GALLUP, NM VORTAC *10000 - MCA CUBBA FIX, W BND	*CUBBA, NM FIX	11000

§95.6072 VOR FEDERAL AIRWAY 72

IS AMENDED TO READ IN PART

BUNKS, MO FIX	FARMINGTON, MO VORTAC	3500

§95.6190 VOR FEDERAL AIRWAY 190

IS AMENDED TO READ IN PART

BUNKS, MO FIX	FARMINGTON, MO VORTAC	3500

§95.6278 VOR FEDERAL AIRWAY 278

IS AMENDED TO READ IN PART

MINIM, AL FIX	VULCAN, AL VORTAC	2600

FROM	TO	MEA

§95.6295 VOR FEDERAL AIRWAY 295

IS AMENDED TO READ IN PART

VERO BEACH, FL VORTAC	BAIRN, FL FIX	2000

§95.6306 VOR FEDERAL AIRWAY 306

IS AMENDED TO READ IN PART

AUSTIN, TX VORTAC	PODDS, TX FIX	2500
PODDS, TX FIX	COUTH, TX FIX	*2500
*1800 - MOCA		

§95.6442 VOR FEDERAL AIRWAY 442

IS AMENDED TO READ IN PART

PARADISE, CA VORTAC	APLES, CA FIX	*10000
*7700 - MOCA		

§95.6451 VOR FEDERAL AIRWAY 451

IS AMENDED TO READ IN PART

SEEDY, NH FIX	BRUNSWICK (NAVY) ME VORTAC	*8000
*1500 - MOCA		

§95.6401 HAWAII VOR FEDERAL AIRWAY 1

IS ADDED TO READ

KONA, HI VORTAC	*REEFS, HI FIX	5000
*3600 - MCA REEFS FIX, SE BND		
REEFS, HI FIX	MOANA, HI FIX	2000
MOANA, HI FIX	*ROWIN, HI FIX	4000
*5500 - MCA ROWIN FIX, N BND		
ROWIN, HI FIX	*LAVAS, HI FIX	7000
*7000 - MRA		
LAVAS, HI FIX	HARPO, HI FIX	7000
HARPO, HI FIX	MAUI, HI VORTAC	6000

§95.6405 HAWAII VOR FEDERAL AIRWAY 5

IS DELETED

KONA, HI VORTAC	*REEFS, HI FIX	
VIA W ALTER.	VIA W ALTER.	5000
*3600 - MCA REEFS FIX, SE BND		
REEFS, HI FIX	MOANA, HI FIX	
VIA W ALTER.	VIA W ALTER.	2000
MOANA, HI FIX	*ROWIN, HI FIX	
VIA W ALTER.	VIA W ALTER.	4000
*5500 - MCA ROWIN FIX, N BND		
ROWIN, HI FIX	MAKEN, HI FIX	
VIA W ALTER.	VIA W ALTER	7000

FROM	TO	MEA	MAA

§95.7053 JET ROUTE NO. 53

IS AMENDED TO READ IN PART

PULASKI, VA VORTAC	ELLWOOD CITY, PA VORTAC	26000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM

V-306

IS AMENDED TO DELETE

AUSTIN, TX VORTAC	NAVASOTA, TX VORTAC	42	AUSTIN

[FR Doc. 86-19765 Filed 9-2-86; 8:45 am]
BILLING CODE 4910-13-C

VOL 51 ISS 170 SE 3 1986 UMI

14 CFR Part 97

[Docket No. 25068; Amdt. No. 1328]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigation airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on August 22, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: Section 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS,

ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective October 23, 1986

Big Lake, AK—Big Lake, VOR RWY 6, Amdt. 4
Unalaska, AK—Unalaska, NDB/DME-B, Amdt. 1, CANCELLED
Globe, AZ—Globe-San Carlos Regional Air Facility, NDB-A, Amdt. 2
Sacramento, CA—Sacramento Metropolitan, NDB RWY 16, Amdt. 8
Sacramento, CA—Sacramento Metropolitan, NDB RWY 34, Amdt. 2
Sacramento, CA—Sacramento Metropolitan, ILS RWY 16, Amdt. 11
Sacramento, CA—Sacramento Metropolitan, ILS RWY 34, Amdt. 3
Salinas, CA—Salinas Muni, LOC/DME RWY 31, Amdt. 3
Salinas, CA—Salinas Muni, ILS RWY 31, Amdt. 3
De Kalb, IL—De Kalb Taylor Muni, NDB RWY 27, Amdt. 6, CANCELLED
De Kalb, IL—De Kalb Taylor Muni, NDB RWY 27, Orig.
Madison, IN—Madison Muni, VOR/DME RWY 3, Amdt. 5
Madison, IN—Madison Muni, NDB RWY 3, Amdt. 1
North Vernon, IN—North Vernon, NDB RWY 5, Amdt. 4
Warsaw, IN—Warsaw Muni, VOR RWY 9, Amdt. 2
Warsaw, IN—Warsaw Muni, VOR RWY 27, Amdt. 2
Warsaw, IN—Warsaw Muni, SDF RWY 9, Amdt. 1
Ann Arbor, MI—Ann Arbor Muni, VOR RWY 24, Amdt. 12
Coldwater, MI—Branch County Memorial, VOR RWY 6, Amdt. 2
Coldwater, MI—Branch County Memorial, VOR RWY 24, Amdt. 2
Frankfort, MI—City-County, VOR-A, Amdt. 1
Petersburg, MI—Lada, VOR-A, Amdt. 5
Plymouth, MI—Mettetal-Canton, VOR-A, Amdt. 7
Alliance, OH—Berlin Airpark, VOR-A, Amdt. 8
East Liverpool, OH—Columbiana County, VOR RWY 25, Amdt. 1
East Liverpool, OH—Columbiana County, NDB RWY 25, Amdt. 5
Ponape Island Trust Territory—Pohnpei Intl, NDB/DME RWY 9, Amdt. 1
Ponape Island Trust Territory—Pohnpei Intl, NDB/DME-A, Amdt. 1
Ponape Island Trust Territory—Pohnpei Intl, NDB-B, Amdt. 2
Ponape Island Trust Territory—Pohnpei Intl, NDB-C, Amdt. 2
Bellingham, WA—Bellingham Intl, ILS RWY 16, Amdt. 1
Phillips, WI—Price County, NDB RWY 24, Orig.
Phillips, WI—Price County, NDB-A, Amdt. 3, CANCELLED
West Bend, WI—West Bend Muni, VOR RWY 13, Amdt. 5
West Bend, WI—West Bend Muni, VOR RWY 24, Amdt. 2
West Bend, WI—West Bend Muni, VOR RWY 31, Amdt. 8
West Bend, WI—West Bend Muni, NDB RWY 31, Amdt. 9
West Bend, WI—West Bend Muni, RNAV RWY 13, Amdt. 5

. . . Effective September 25, 1986

Orlando, FL—Orlando Executive, LOC BC RWY 25, Amdt. 17
Orlando, FL—Orlando Executive, ILS RWY 7, Amdt. 20
Centerville, IA—Centerville Municipal, NDB RWY 15, Orig.
Centerville, IA—Centerville Municipal, NDB RWY 33, Orig.
Millinocket, ME—Millinocket Muni, LOC RWY 29, Orig.
Oxford, MS—University-Oxford, LOC RWY 9, Orig.
Jamestown, NY—Chautauqua County, VOR RWY 25, Amdt. 7
Jamestown, NY—Chautauqua County, ILS RWY 25, Amdt. 5
Jamestown, NY—Chautauqua County, RNAV RWY 13, Amdt. 2
Jamestown, NY—Chautauqua County, RNAV RWY 31, Amdt. 1
Washington, PA—Washington County, VOR-A, Amdt. 4
Washington, PA—Washington County, VOR-B, Amdt. 5

. . . Effective August 28, 1986

Augusta, ME—Augusta State, LOC RWY 17, Amdt. 3, CANCELLED
Augusta, ME—Augusta State, ILS RWY 17, Orig.

. . . Effective August 12, 1986

Jasper, TN—Marion County-Brown Fld, NDB RWY 4, Amdt. 2

[FR Doc. 86-19766 Filed 9-2-86; 8:45 am]
BILLING CODE 4910-13

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs and of Its Lakes in Food and Ingested Drugs; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food and ingested drugs. The new closing date for the provisional listing of this color additive will be November 3, 1986. This postponement will provide additional time for FDA to review and to evaluate the report of a scientific review panel on FD&C Red No. 3 and then to take final action on the recommendations of the panel while permitting the uninterrupted use of this color additive. This panel was assembled to consider data supporting the sponsors' claim that a secondary mechanism may be responsible for tumorigenic effects observed in connection with FD&C Red No. 3 in animal testing.

DATES: Effective September 3, 1986, the new closing date for FD&C Red No. 3 and its lakes will be November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1985 (50 FR 35783), FDA established the current closing date of September 3, 1986, for the provisional listing of FD&C Red No. 3 for use in cosmetics and in externally applied drugs for the provisional listing of the use of its lakes in food and ingested drugs. FDA established this closing date to provide time for resolution of the complex scientific issues presented by the information available on the safety of the use of this color additive.

The Commissioner of Food and Drugs has found it necessary to refer these complex issues to a new Color Additive Scientific Review Panel (the panel) for consideration. On June 18, 1986, this new panel received its charge concerning, among other things, the question of a secondary carcinogenic mechanism for FD&C Red No. 3. The agency has forwarded all available data to the panel and is now awaiting the panel's conclusions and recommendations.

The postponement made effective by this final rule will afford the time necessary for the panel to conduct its review, to formulate conclusions and recommendations, and to report to the Commissioner; and for the agency to review the panel's recommendations and to develop the appropriate **Federal Register** documents.

FDA finds that this extension is consistent with the public health, and

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that referral of the information to the panel is consistent with completion of the agency's review of the studies on FD&C Red No. 3 as soon as is reasonably practicable. Therefore, this action is consistent with *McIlwain* v. *Hayes*, 690 F.2d, 1041, 1047 (D.C. Cir. 1982).

Because of the shortness of time until the September 3, 1986, closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing the postponement as a final rule and for an effective date of September 3, 1986. This regulation will permit the uninterrupted use of this color additive until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on September 3, 1986. However, in accordance with 21 CFR 10.40(e)(1), interested persons may comment on this action.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing date for "FD&C Red No. 3" in paragraph (a) to read "November 3, 1986."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing date for "FD&C Red No. 3" in paragraph (d) to read "November 3, 1986."

Dated: August 28, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-19875 Filed 8-29-86; 10:36 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP OH5263/R849; FRL-3071-4]

Ethephon; Extension of Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a food additive regulation for the plant growth regulator ethephon in or on sugarcane molasses. This regulation is extended in conjunction with an experimental use permit requested by Union Carbide to permit the continued marketing of sugarcane molasses while further data are collected on ethephon.

EFFECTIVE DATE: Effective on September 3, 1986.

ADDRESS: Written objections, identified by the document control number [FAP OH5263/R849], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM–25), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a regulation, published in the **Federal Register** of March 12, 1981 (49 FR 16256), permitting the residues of the plant growth regulator ethephon [(2-chloroethyl)phosphonic acid] in sugarcane molasses with a tolerance limitation of 7 parts per million (ppm), resulting from the application of the plant growth regulator to growing sugarcane in conjunction with an experimental use program.

In the **Federal Register** of July 28, 1982 (47 FR 32525), at the request of the Union Carbide Agricultural Products Co., P.O. Box 12014, T.W. Alexander Dr., Research Triangle Park, NC 27799, EPA renewed the regulation to expire July 16, 1984. In the **Federal Register** of October 17, 1984 (49 FR 40575), at the request of Union Carbide, EPA again renewed the regulation, to expire July 19, 1986.

The data submitted in the petition and other relevant material were evaluated and discussed in the initial regulation and published in the **Federal Register** of March 12, 1981 (46 FR 16256).

The metabolism of ethephon is adequately understood, and an adequate analytical method is available for enforcement purposes. The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973; 7 U.S.C. 136 et seq.).

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)).)

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: August 20, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 193—[AMENDED]

Therefore, 21 CFR Part 193 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 193.186(b) is amended by extending the expiration date for sugarcane, molasses, to read as follows:

§ 193.186 Ethephon.

* * * * *

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(b) * * *

Foods	Parts per million	Company	Expiration data
Sugarcrane, molasses.	7.0	Union Carbide.....	July 14, 1988.

* * * * *

[FR Doc. 86-19495 Filed 9-2-86; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 205

Defense Audiovisual Agency

AGENCY: Office of the Secretary, DOD.
ACTION: Final rule.

SUMMARY: Due to the disestablishment of the Defense Audiovisual Agency, this action is to remove Part 205 of the Code of Federal Regulations.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Lawson, Office of the Assistant Secretary of Defense, Washington Headquarters Services, The Pentagon, Washington, DC 20301-1155, telephone 697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 205

Authority delegations (Government agencies), Organization and functions (Government agencies).

PART 205—[REMOVED]

Accordingly, 32 CFR Part 205 is removed in its entirety.

Authority: 10 U.S.C. 133.

Patricia H. Means,
OSD Federal Register Liaison Officer. Department of Defense.
August 26, 1986.

[FR Doc. 86-19567 Filed 9-2-86; 8:45 am]
BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 10

International Priority Airmail Service

AGENCY: Postal Service.
ACTION: Final rule.

SUMMARY: This rule adopts final regulations governing a new service called International Priority Airmail Service, which is available to bulk mailers of all categories of international mail other than parcel post items. In order to qualify for the service, mailers must meet specified minimum volume requirements and sort their mailings to the destination countries. The new service is intended to meet an increasing demand by business mailers for an international service that is faster than regular airmail. The rate for this new service is $6.80 per pound. Service is available to all foreign countries, except Canada.

This new service began on May 18, 1986, when interim implementing regulations, published in the **Federal Register** on May 8, 1986 (51 FR 17017), became effective. Comments on the interim regulations were requested from the public by June 7, 1986. The final rule adopted here revises and replaces the interim regulations on the basis of the comments received.

EFFECTIVE DATE: October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Peter T. Zeranski at (202) 268-2275.

SUPPLEMENTARY INFORMATION: A detailed explanation of the nature and background of the new service was published with the request for comments on the interim implementing regulations that appeared in the **Federal Register** on May 8, 1986. The Postal Service received nine letters of comment, six of which supported the new service and three of which opposed its continuation.

Several of the six supportive comments offered suggestions for improving the regulations.

Three commenters asked whether it is necessary that the regulations in 284.22 require senders to mark both the front and back of each item with the words PAR AVION or affix Label 19, *Airmail* PAR AVION. Upon reflection, the Postal Service agrees that it is not necessary and believes that marking the items only on the address side would be adequate. The regulation has been revised accordingly.

One commenter questioned the need to mark "PRINTED MATTER" on publishers' periodicals. Under international postal regulations, publishers' periodicals and other printed matter items may be mailed as letters if they do not exceed four pounds in weight. In this service all items weighing up to four pounds may be considered to be mailed as air letters. Therefore, we have revised our proposed regulation to provide that only printed matter items weighing over four pounds must bear this endorsement.

Another commenter suggested that it would be unnecessary to place the PAR AVION endorsement on each piece since this function would be accomplished by the facing slips. This endorsement is required under the rules of the Universal Postal Convention. It also serves the practical function of ensuring that the destination country will process and deliver each item in the dispatch at the airmail service standard.

Three commenters requested clarification on how package labels should be addressed. Section 284.415 has been revised to clarify the correct completion of package labels.

One commenter suggested that items should be made up to a continent when there are not enough (six pieces) to require a package to a particular country. Under § 284.412, all items remaining after country packages have been prepared for each country with six or more pieces must be combined in one or more mixed-country packages. To have the mailer separate the residue into continent packages would be no easier for the mailer and would not benefit the Postal Service since it would still have to separate these items to the individual destination countries prior to dispatch.

A commenter mistakenly thought the regulations required that each package had to be secured by rubber bands and that plastic ties were not permitted. Section 284.52 does not require that each package be securely tied with rubber bands. It requires only that each package be securely tied. The regulation indicates that rubber bands are generally preferred for tying packages of letter-size mail and that plastic strapping is generally preferred for tying flat-size mail. However, the Postal Service has no objection to receiving packages of letter-size items tied by plastic strapping if this is more convenient for the mailer.

Another commenter raised the point that 284.61 does not specify whether or not blue international bags are to be used for all destination separations. They are. The regulation has been revised to clarify the matter.

One commenter suggested that the Postal Service should adopt uniform bag labels to offset the need for different indicia and markings for different countries. The regulations require that all blue direct country sacks be labeled with the appropriate PS Tag 116, a tag pre-coded to a specific airport or destination. Pouches of working mail (residue and direct bundles for destinations with less than 10 pounds) must be labeled to the appropriate acceptance office (as advised by the local coordinator) and identified as "International Priority Airmail."

Another commenter requested that a definitive service standard be developed rather than simply stating that this mail

is faster than regular airmail. The Postal Service cannot offer service standards because we do not maintain control of the mail once it is handed over to foreign postal administrations. Service performance tests conducted on International Priority Airmail have indicated that the program is now providing service that is, on the average, at least one day faster than airmail. These tests will be conducted on a periodic basis.

It was suggested that a volume incentive be offered to customers mailing very large quantities to a given city or country. Since the International Priority Airmail service is still quite new, it is too early for the Postal Service to evaluate the need for such a fundamental modification.

Three commenters were critical of the proposed service.

One commenter perceived International Priority Airmail as a vehicle for competition with private companies as opposed to a means for increasing revenue or improving service to customers. This commenter also suggested that the service would not be viable and that the Postal Service should have considered using private marketing skills (like those of the commenter) to develop national market penetration. The Postal Service developed this service in direct response to an expression of growing need by mailers for a service faster than the current international airmail service and more closely tailored to the needs of bulk business mailers. The Postal Service believes that the basic structure of the service is appropriate for these purposes.

One commenter said that the Postal Service should suspend the service while it develops a public record to show that the service is not priced below cost. This commenter mistrusted the proposal on the theory that the Postal Service has an incentive to divert costs of international services to domestic services in "order to circumvent effective regulation of its domestic monopoly services." The Postal Service's experience differs from this reading of the internal incentives which drive its decision making. The Postal Service is a public institution managed by public officials to provide service to the public on a financially self-supporting basis, and not a private organization seeking to maximize profits for shareholders. The public managers of the Postal Service are judged as much as anything on their ability to keep all postage rates as low as possible, while covering costs. In practice this factor produces a strong incentive to hold down the rates for First-Class Mail and other "monopoly" mail categories to the greatest extent possible consistent with break-even requirements. The Postal Service developed a rate for International Priority Airmail service designed to assure ample cost coverage and substantial contributions to institutional costs.

A commenter expressing a similar viewpoint stated that the domestic portion of the rate for the service must be reviewed by the Postal Rate Commission. The International Priority Airmail rate is a unitary one. No purely domestic service is obtainable under this service, and there is therefore no domestic portion of the rate. The rate is an international one. The Postal Rate Commission has agreed in several of its recommended decisions on domestic rates that it does not have jurisdiction over international postal rates.

For the reasons given, the Postal Service hereby adopts as final the amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, see 39 CFR 10.1) that were published in the **Federal Register** on May 8, 1986 on an interim basis and revises these regulations to read as follows:

List of Subjects in 39 CFR Part 10

Postal service, International mail

PART 10—[AMENDED]

1. The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

Chapter 2—Conditions for Mailing

2. Chapter 2 of the International Mail Manual is revised by adding a new subchapter 280 to read as follows:

280 International Priority Airmail Service.

281 Description.

281.1 General.

International Priority Airmail service is faster than regular international airmail service. It is available to bulk mailers of all LC and AO items that are sorted by the sender to the individual destination countries.

281.2 Qualifying Mail and Minimum Quantity Requirements.

Any item falling into the LC or AO classifications, as defined in 141.2, which is prepared in compliance with the applicable mailing conditions set forth in this chapter, may be sent in this service. To qualify for the service, the sender must have a minimum volume of 200 items or 10 pounds of mail in one or both of these classifications. The minimum volume or weight criteria apply to the entire mailing and not to each country of destination. Items do not have to be of the same size and weight to qualify.

281.3 Dutiable Items.

Dutiable items may be sent in LC letter packages or AO small packets if entered in accordance with the applicable rules set forth in this chapter for those classes of mail. Items entered under the parcel post (CP) classification, either ordinary or insured, may *not* be entered as International Priority Airmail.

281.4 Origin and Destination Locations.

The service is available to all bulk mailers who are located within designated three-digit ZIP Code areas. It is provided from designated gateway areas to all foreign countries, except Canada. Collection service is available in specified geographic locations. A listing of these areas is available from the Postal Service.

281.5 Special Services Not Available.

The special services provided for in Chapter 3 are not available for items sent in this service.

282 Postage.

282.1 Rate.

The postage rate for this service is $6.80 per pound (or any fraction of a pound). The tare weight of the sack(s) is not to be included in determining the weight of the mailing for postage calculation purposes.

282.2 Payment of Postage.

Postage must be paid by postage stamps, by postage meter, by an advance deposit account or through penalty mail billing procedures. Where stamps or a meter are used, the postage must be affixed directly to the statement of mailing, PS Form 3652.

283 Weight and Size Limits.

The weight and size limits for LC items sent in this service are set forth in 223 and 233. The weight and size limits for AO items sent in this service are set forth in 243, 253, and 263.

284 Preparation Requirements.

284.1 Addressing.

See 122.

284.2 Marking.

.21 Postage Paid Imprint.

Each item sent in this service must bear an indication that United States postage has been paid. Senders who are

authorized use of one of the permit imprints specified in Exhibit 152.3 may use that permit imprint for items sent in this service.

.22 Other Postage Payment Methods.

a. Senders who pay postage by stamps or meter will be assigned a sequential customer identification number for International Priority Airmail purposes only. No fee is to be charged in conjunction with the issuance of this customer identification number. A separate number will be assigned at each post office where a customer enters mail.

b. When payment is by stamps or meter, the postage is to be affixed to Copy 1 of the mailing statement. The individual pieces must be endorsed "U.S. INTERNATIONAL AIRMAIL POSTAGE PAID."

c. The required postage payment endorsement may be applied either by utilizing one of the authorized methods specified in DMM 145.3, or by utilizing an appropriate meter "ad plate" in combination with a meter impression showing a "zero" postage amount. The imprint may not be typewritten or handwritten.

.23 Airmail.

The sender must mark PAR AVION or affix Label 19, *Airmail* PAR AVION, on the address side of each piece. The red, white and blue airmail border envelope is optional and may also be used for items sent in this service in addition to the required Airmail endorsement.

.24 Printed Matter.

a. Each item containing printed matter and weighing more than four pounds must be marked with the words "PRINTED MATTER," "PRINTED MATTER—BOOKS," "PRINTED MATTER—CATALOGS," and "PRINTED MATTER—SECOND CLASS," as appropriate (see 244.2). If second-class publications are paid for by means of an advance deposit account, the imprint authorized under 244.21d may be used in lieu of the "PRINTED MATTER—SECOND CLASS" endorsement.

b. An item containing printed matter and weighing four pounds or less is not required to be marked with one of the endorsements referred to in 284.24a, but may be marked with such an endorsement at the discretion of the sender.

284.3 Sealing.

Any item sent in this service may be sealed at the option of the sender.

284.4 Makeup Requirements for International Priority Airmail.

.41 Packaging Requirements.

.411 Country.

When there are six or more items for the same country (except Great Britain, Federal Republic of Germany and Mexico, see 284.412), they must be made up into a country package of six or more items. Each package must be labeled and faced in accordance with 284.414 and .415.

.412 Federal Republic of Germany, Great Britain, and Mexico.

Items for these three countries must be made up into packages of six or more items in accordance with sortation instructions from the acceptance post office.

.413 Residue.

Items remaining after packages have been made up as stated above must be made into mixed-country packages. A mixed-country package label, completed in accordance with 284.415 below, must be placed on the top item of each package.

.414 Facing of Pieces Within Package.

All items in a package must be faced the same way with an address visible on the top copy, and facing up on each item.

.415 Package Labels.

A package label must be placed on the address side of the top item of each package. Pressure sensitive labels and the optional endorsement line used for domestic presort mailings *must not* be used. For packages containing six or more items for each separation, the package label should be completed as follows:

Line 1: Foreign Exchange Office
Line 2: Country of Destination
Line 3: Mailer

For residue packages, the package label should be completed as follows:

Line 1: U.S. Exchange Office
Line 2: "International Priority Airmail—WKG"
Line 3: Mailer

284.5 Physical Characteristics and Requirements for Packages.

.51 Thickness.

Packages of letter-size pieces should be no thicker than approximately a handful of mail, 4 to 6 inches thick.

.52 Securing.

Each package must be securely tied. Placing rubber bands around the length and girth is the preferred method of securing packages of letter-size mail. Plastic strapping placed around the length and girth is the preferred method of securing packages of flat-size mail.

.53 Type of Mail.

Letter-size and flat-size mail must be packaged separately. LC and AO mail classes may be commingled in a letter-size or flat-size mail package.

284.6 Sacking Requirements.

.61 Country (Except Great Britain, Federal Republic of Germany and Mexico, See 284.62).

When there are 10 pounds or more addressed to the same country, the packages must be sacked in blue international airmail pouches and labeled to that country using PS Tag 116.

.62 Great Britain, Federal Republic of Germany and Mexico.

When there are 10 pounds or more addressed to one of the required separations for Great Britain, the Federal Republic of Germany, or Mexico, the packages must be sacked in blue international airmail pouches and labeled in accordance with the sortation requirements provided by the acceptance post office.

.63 Residue.

When, after all country sacks are prepared (including those for Great Britain, the Federal Republic of Germany and Mexico), there are packages remaining for different country destinations, they must be placed in equipment as directed by the acceptance post office and labeled as follows:

Line 1: Acceptance Post Office
Line 2: "International Priority Airmail"
Line 3: Mailer

.64 Physical Characteristics and Requirements for Sacks.

The weight of the sack must not exceed 66 pounds.

Note.—The weight of tying, wrapping, and packaging materials is included in determining the weight of the mail enclosed in a sack. The blue international airmail pouch must be used for direct country sacks; residue (mixed-country) packages must be placed in whatever equipment is designated by the local acceptance office.

284.7 Customs Forms Requirements.

.71 Letters, and Letter Packages. See 224.5.

.72 Printed Matter. See 244.6.

.73 Small Packets. See 264.5.

A transmittal letter making these changes in the pages of the International

Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 86-19822 Filed 9-2-86; 8:45 am]

BILLING CODE 7710-12-M

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39 CFR Part 233

Seizure for Forfeiture; Designation of Postal Service; Assignment of Authority to Chief Postal Inspector

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On August 22, 1986, the Attorney General of the United States issued an order granting authority to the Postal Service to conduct civil forfeitures under section 2254 of the Protection of Children Against Sexual Exploitation Act of 1977, as amended. The purpose of this final rule is to amend postal regulations to reflect the Attorney General's order and to assign to the Chief Postal Inspector the responsibilities of the Postal Service under that order.

EFFECTIVE DATE: September 3, 1986.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268-3076.

SUPPLEMENTARY INFORMATION: The Postal Inspection Service, the investigative arm of the Postal Service, investigates violations of the Protection of Children Against Sexual Exploitation Act, as amended by the Child Protection Act of 1984, 18 U.S.C. 2251-2255. Pursuant to 18 U.S.C. 2254(b), the Postal Service has been designated to perform various duties with respect to the seizure and forfeiture of property subject to forfeiture under 18 U.S.C. 2254(a). The order of designation, dated August 22, 1986, provides as follows:

Designation of Postal Service Under 18 U.S.C. 2254

By virtue of the authority vested in me by 18 U.S.C. 2254, I hereby designate the Postal Service with the authority to conduct civil forfeitures under section 2254 of the Protection of Children Against Sexual Exploitation Act, as amended by the Child Protection Act of 1984, 18 U.S.C. 2251-2255.

In utilizing the authority hereby granted, all rules, regulations, and procedures of the Federal Bureau of Investigation relating to the aforementioned Act must be followed, including the Federal Bureau of Investigation's Manual of Investigative Operations and Guidelines.

The authority hereby granted to enforce Section 2254 of the Protection of Children Against Sexual Exploitation Act, as amended by the Child Protection Act of 1984, is subject to the direction of the Attorney General.

Dated: August 22, 1986.

Arnold I. Burns,

Acting Attorney General.

This rule amends postal regulations to provide for the exercise of the assigned civil forfeiture responsibilities by the Chief Postal Inspector or his designees within the Postal Inspection Service.

In consideration of the foregoing, Part 233 of Title 39, Code of Federal Regulations, is amended as follows:

List of Subjects in 39 CFR Part 233

Crime, Postal Service.

PART 233—INSPECTION SERVICE AUTHORITY

1. The authority citation for Part 233 is revised to read as set forth below, and the authority citations following all the sections in Part 233 are removed.

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); Title XI, Pub. L. 95-630, 92 Stat. 3697; 18 U.S.C. 2254.

2. Add new § 233.7 reading as follows:

§ 233.7 Civil forfeiture authority of the Postal Service.

(a) By order of August 22, 1986 the Attorney General of the United States granted the Postal Service the authority to conduct civil forfeitures under section 2254 of the Protection of Children Against Sexual Exploitation Act, as amended by the Child Protection Act of 1984, 18 U.S.C. 2251-2255.

(b) The Chief Postal Inspector is authorized to exercise the authority of the Postal Service under paragraph (a) of this section and to delegate all or any part of this authority to any or all postal inspectors.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-19825 Filed 9-2-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-3073-3]

Approval and Promulgation of State Implementation Plans; Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act requires that all states which received an extension beyond December 31, 1982, to attain the ozone or carbon monoxide air quality standards submit revised plans showing how the standards will be attained by December 31, 1987.

The State of Missouri has submitted such a plan for the St. Louis area. EPA has previously approved all portions of this plan except for the demonstration that the ozone standard will be attained and certain specific control measures as discussed in this document.

This document takes final action to approve the State's most recent attainment demonstration. Approval of this State submission means that the one control measure contained in it is now enforceable by the Federal Government as well as by the State. Other control measures promised by this plan have already been approved or are in review within EPA.

EFFECTIVE DATE: This action will be effective October 3, 1986.

ADDRESSES: Copies of the State submission, public comments, and EPA's technical evaluation are available at the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson Building, 205 Jefferson Street, Jefferson City, Missouri 65100. A copy of the State's submission is also available at the Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC, and the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, (913) 236-2893, FTS 757-2893.

SUPPLEMENTARY INFORMATION: The Clean Air Act, as amended in 1977, required states to submit plans by January 1, 1979, showing how the National Ambient Air Quality Standards (NAAQS) will be attained in areas of the country where air pollution still violated the standards. The standards were to be attained by December 31, 1982, unless a demonstration could be made that the ozone or carbon monoxide standards could not be met by that date. In that case, an extension until December 31, 1987, could be granted if the State committed to submit a revised plan with additional control measures by July 1, 1982.

The State of Missouri made such a demonstration and commitment for the St. Louis area, received an attainment date extension, and submitted its required 1982 plan. EPA approved all parts of that plan except for the automobile inspection and maintenance (I/M) program and the attainment demonstration (see 49 FR 40164, October

15, 1984). The I/M program elements were submitted August 27, 1984, and were approved on August 12, 1985 (see 50 FR 32411).

The revised attainment demonstration was submitted by August 1, 1985, as the State had previously committed (see 49 FR 40105). This revised demonstration updated the emission inventory with newer and more accurate information that had not previously been available and then applied four new control measures to reduce emissions to a level representing attainment of the ozone standard. On January 28, 1986 (51 FR 3475), EPA proposed to approve this submission as demonstrating that the NAAQS for ozone will be attained in the St. Louis Ozone Nonattainment Area by December 31, 1987.

This demonstration is based on a slightly different emission inventory than the previous version. The adjustments are discussed more fully in the January 28 proposed rulemaking document, but they are based on recalculations of source emissions due to information gleaned from permit applications and from reevaluating the emissions from other ongoing activities. Three of the control measures contained in the plan are significant. As discussed in the proposal, EPA has determined that no emission reduction credit is available for one of the measures, the check of autombile gas tank filler necks. The others are discussed briefly below and more fully in the January 28 proposed rulemaking.

The State has adopted a new regulation requiring reasonably available control technology (RACT) on one chemical plant which manufactures maleic anhydride. EPA has determined that this rule follows the Control Techniques Guideline (CTG) for air oxidation processes and has approved it (see 51 FR 30963, August 22, 1986).

The State has adopted a consent order with one major source which will allow the source to operate in excess of its applicable emission limit, but which also requires the source to close at the end of 1987. This consent order is embodied in the attainment demonstration and is approved today along with the demonstration.

The State has adopted a new regulation requiring the control of volatile emissions from the refueling of motor vehicles at gasoline stations. There is no CTG for this category of source, but EPA has evaluated the rule against other similar rules and has proposed to approve it. See 51 FR 21932 (June 17, 1986). The emissions reductions that would result from the refueling rule comprise a large portion of the additional emissions reductions on which the state is relying to demonstrate attainment in the St. Louis area. For that reason, EPA is making its approval today of the attainment demonstration and control strategy for the St. Louis area contingent on EPA's final approval of the refueling rule.

As noted above, EPA published a proposed rulemaking document on January 28, 1986. Two public comments were received. Both commentors favored the approval of the ozone attainment demonstration.

This State submission constitutes a proposed revision to the Missouri SIP. The Administrator's decision to approve or disapprove a proposed revision is based on the comments received and on a determination of whether the revision meets the requirements of sections 110 and 172 of the Clean Air Act, of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, and of the 1982 SIP policy (46 FR 7184, January 22, 1981). I hereby find the portions of the Missouri SIP described above to be approvable.

The Agency's approval of the St. Louis attainment demonstration is based in part on previous submittals from the State of Missouri. These submittals were in conformance with policies and procedures in effect at the time they were made. The submittals were approved by EPA. The attainment demonstration relied on an early version of the mobile source emission model. Use of that model may have resulted in an underprediction of emission reductions needed. Use of recently improved data collection techniques and of a revised mobile source model could provide a different estimation of attainment status.

St. Louis is but one of many large metropolitan areas that are currently designated nonattainment for ozone. EPA is presently developing a comprehensive new strategy to address the nationwide ozone problem. When this strategy is adopted, it may be necessary to reexamine the attainment demonstration for St. Louis and other major cities. Where emission reduction shortfalls are demonstrated, additional controls will be required. Consequently, approval of this attainment demonstration does not relieve the State of any subsequent requirements which may be imposed under a new policy.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Office of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 22, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding a new paragraph (c)(58) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(58) A plan revision demonstrating that the ozone standard will be attained in the St. Louis ozone nonattainment area by December 31, 1987, was submitted by the Department of Natural Resources on August 1, 1985.

(i) *Incorporation by reference.* (A) An agreement and variance modification order dated July 18, 1985, signed by the Missouri Air Conservation Commission and the General Motors (GM) Corporation requiring that the GM St. Louis assembly plant meet interim emission limitations and comply with the SIP by shutdown by December 31, 1987.

(ii) Additional material.

(A) A revised and corrected emission inventory for base year 1980.

(B) A revised projected year 1987 inventory demonstrating that the additional emission reductions from two new regulations and one plant shutdown, in addition to reductions already required, will be adequate to reduce ambient ozone concentrations to

the National Ambient Air Quality Standard for ozone.

3. Section 52.1323 is amended by designating the entire existing text as paragraph (a) and adding a new paragraph (b) as follows:

§ 52.1323 Approval status.

* * * * *

(b) EPA's approval of the plan revision described in Section 52.1320(58) of this chapter as meeting the requirements of Part D of the Clean Air Act is contingent on EPA's final approval of the amendment to state Rule 10 CSR 10–5.220 that the state submitted to EPA on March 4, 1986, relating to the control of VOC emissions from the refueling of motor vehicles.

[FR Doc. 86–19820 Filed 9–2–86; 8:45 am]

BILLING CODE 6560–50–M

Environmental Protection Agency

40 CFR Part 261

[SW–FRL–3073–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors presented in a final rule denying delisting petitions from 10 petitioners which appeared in the **Federal Register** on July 17, 1986 (51 FR 25887).

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Ms. Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: EPA is correcting errors in two tables presented in a final rule on July 17, 1986 which denied delisting petitions filed by ten petitioners. One petitioner addressed in that rule, Bethlehem Steel Corporation (petition #0187), was listed in the tables erroneously. The Agency proposed to deny Bethlehem Steel's petition on January 17, 1986 (see 50 FR 2526). The Agency then re-proposed to deny Bethlehem Steel's petition in a subsequent notice (see 51 FR 26417, July 23, 1986) for technical reasons as well as for incompleteness. The Agency has not yet made a final determination on Bethlehem Steel's petition. Therefore, this correction notice deletes their petition from the list of those addressed in the July 17, 1986, final rule.

Dated: August 28, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

The following corrections are made in FRL–3050–3, the Hazardous Waste Management System: Identification and Listing of Hazardous Waste final rule published in the **Federal Register** on July 17, 1986 (50 FR 25887).

1. On page 25888, first column, table 1, delete "*0187 Bethlehem Steel Corporation, Chesterton, IN;".

2. On page 25888, third column, table 3, delete "*0187 Bethlehem Steel Corporation, Chesterton, IN;".

[FR Doc. 86–19821 Filed 9–2–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6727]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Deputy Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Missouri: Carter	Unincorporated areas	290060	July 10, 1986, Emerg	
Nebraska: Buffalo	....do	310419A	....do	Apr. 17, 1979.
Pennsylvania: Franklin	Southampton, township of	421657	Apr. 30, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.; July 1, 1986, Rein.	June 28, 1974, July 18, 1978 and June 17, 1978.
Rhode Island: Washington	Exeter, town of	440032	Feb. 4, 1976, Emerg.; Mar. 1, 1982, Reg.; Mar. 1, 1982, Susp.; July 8, 1986, Rein.	Mar. 14, 1975 and Mar. 1, 1982.
Pennsylvania: Somerset	Meyersdale, borough of	422044B	Mar. 21, 1977, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.; July 10, 1986, Rein.	Apr. 15, 1974, Sept. 12, 1980 and June 17, 1986.
Michigan:				
Oceana	Claybanks, township of	260482	July 21, 1986, Emerg	
Charlevoix	Norwood, township of	260769-New	....do	
Leelanau	Suttons Bay, township of	260770-New	....do	
Mackinac	St. Ignace, township of	260444A	....do	July 28, 1977.
Oklahoma: Kay	Braman, town of	400264	....do	
Tennessee: Lauderdale	Henning, town of	470259A	....do	Jan. 3, 1975.
Texas:				
Wise	Unincorporated areas	481051A	....do	June 7, 1977.
Montgomery	Chateau Woods, city of	481537	July 17, 1986, Emerg.; July 17, 1986, Reg	Apr. 25, 1978, Mar. 25, 1980 and July 17, 1986.
Pennsylvania: Cambria	Barr*, township of	421434	May 11, 1976, Emerg.; Oct. 15, 1985, Reg.; Oct. 15, 1985, Susp.; July 21, 1986, Rein.	Jan. 17, 1975, May 28, 1976 and Oct. 15, 1985.
New York: Washington	Dresden, town of	361410A	Jan. 25, 1977, Emerg.; July 3, 1986, Reg.; July 3, 1986, Susp.; July 22, 1986, Rein.	Feb. 14, 1975 and July 3, 1986.
Tennessee: Campbell	Caryville, town of	470298	July 28, 1986, Emerg	Sept. 3, 1976.
Iowa: Poweshiek	Brooklyn, city of	190495A	May 4, 1978, Emerg.; July 17, 1986, Reg.; July 17, 1986, Withdrawn.	Apr. 18, 1975 and July 17, 1986.
Arkansas: Sebastian	Lavaca, city of	050201	May 8, 1975, Emerg.; Mar. 15, 1982, Reg.; Mar. 15, 1982, Susp.; July 21, 1986, Rein.	May 10, 1974, Nov. 28, 1975 and Mar. 15, 1982.
Vermont: Rutland	Benson, town of	500259B	June 24, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; July 29, 1986, Rein.	Dec. 13, 1974, Oct. 8, 1976 and Sept. 27, 1985.
Mississippi: Marshall	Unincorporated areas	280274A	August 4, 1986, Emerg	Oct. 28, 1977.
Michigan: Sanilac	Forester, township of	260771-New	....do	
Maryland:				
Montgomery	Brookeville, town of	240166-New	....do	
Garrett	Grantsville, town of	240165-New	....do	
Michigan: Arenac	Arenac, township of	260251B	May 16, 1974, Emerg.; July 3, 1986, Reg.; July 3, 1986, Susp.; Aug. 4, 1986, Rein.	Aug. 16, 1974, June 25, 1976 and July 3, 1986.
Colorado: Prowers	Unincorporated areas	080272	June 30, 1975, Emerg.; July 1, 1986, Reg.; July 1, 1986, Susp.; Aug. 4, 1986, Rein.	July 12, 1977 and July 1, 1986.
Pennsylvania: Lancaster	Wind Gap, borough of	420734B	Nov. 14, 1975, Emerg.; May 19, 1981, Reg.; May 19, 1981, Susp.; Aug. 4, 1986, Rein.	June 28, 1974, June 4, 1976 and May 19, 1981.
New York:				
Washington	Easton, town of	361224B	June 17, 1976, Emerg.; July 3, 1986, Reg.; July 3, 1986, Susp.; Aug. 7, 1986, Rein.	Dec. 20, 1974, July 23, 1976 and July 3, 1986.
Oswego	Orwell*, town of	361262A	Jan. 3, 1977, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.; Aug. 7, 1986, Rein.	Oct. 25, 1974, June 4, 1976 and Feb. 19, 1986.
Pennsylvania: Greene	Waynesburg, borough of	420480B	Apr. 30, 1975, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.; Aug. 18, 1986, Rein.	June 24, 1975, July 16, 1976 and June 17, 1986.
Maine: Somerset	St. Albans*, town of	230369A	Aug. 6, 1975, Emerg., Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; Aug. 18, 1986, Rein.	Apr. 11, 1975 and Sept. 27, 1985.
Illinois: Iroquois	Thawville*, village of	170913B	Jan. 2, 1978, Emerg.; Aug. 1, 1986, Reg.; Aug. 1, 1986, Susp.; Aug. 19, 1986, Rein.	Jan. 28, 1979 and Aug. 1, 1986.
Vermont: Windsor	Barnard*, town of	500292A	June 16, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.; Aug. 19, 1986, Rein.	Sept. 6, 1974, Nov. 19, 1976 and Sept. 18, 1985.
Illinois: Ogle	Rochelle, city of	170532A	Mar. 7, 1975, Emerg.; Oct. 15, 1981, Withdrawn.; Aug. 19, 1986, Rein.; Aug. 19, 1986, Reg.	Sept. 7, 1973, May 28, 1976 and Apr. 1, 1982.
Indiana: Franklin	Cedar Grove*, town of	180304B	Nov. 22, 1975, Emerg.; Aug. 5, 1986, Reg.; Aug. 5, 1986, Susp.; Aug. 22, 1986, Rein.	Dec. 7, 1973, Jan. 30, 1976 and Aug. 5, 1986.
Kentucky: Hart	Bonnieville*, town of	210108	Oct. 9, 1974, Emerg.; June 17, 1986, Reg.; June 17, 1986, Susp.; Aug. 25, 1986, Rein.	June 28, 1974, Feb. 20, 1976 and June 17, 1986.
Michigan:				
Leelanau	Bingham, township of	260772-New	Aug. 29, 1986, Emerg	
Genesee	Thetford, township of	260683A	....do	Feb. 10, 1978.
Tennessee: Williamson	Fairview, city of	470242	Aug. 18, 1986, Emerg	Apr. 11, 1975.
Vermont: Addison	Granville, town of	500003	Aug. 29, 1986, Emerg	Jan. 24, 1975.
Texas: Fort Bend and Harris Counties.	West Keegans Bayou [1]	481602-New	Aug. 18, 1986, Emerg.; Aug. 18, 1986, Reg	
North Dakota: Wells	Harvey*, city of	380231B	July 31, 1975, Emerg.; Aug. 5, 1986, Reg.; Aug. 5, 1986, Susp.; Aug. 29, 1986, Rein.	Jan. 24, 1975, May 14, 1976 and Aug. 5, 1986.

* Minimal Conversions.

[1] West Keegans Bayou Improvement District has adopted by reference Fort Bend and Harris Counties Flood Insurance Studies with the accompanying Flood Hazard Boundary Maps (FHBMs), Flood Insurance Rate Maps (FIRMs), Flood Boundary-Floodway (FBFMs) maps and any revisions thereto for floodplain management and flood insurance purposes.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Region I			
Massachusetts:			
Marshfield, town of, Plymouth County	250273C	July 3, 1986, suspension withdrawn	Aug. 30, 1974, Oct. 14, 1977, Oct. 1, 1983, and July 3, 1986.
Stoneham, town of, Middlesex County	250215B	....do	Aug. 2, 1974, Dec. 13, 1977, and July 3, 1986.
Eastham, town of, Barnstable County	250006C	....do	Mar. 22, 1974, Aug. 13, 1976, Oct. 1, 1983, and July 3, 1986.
Dennis, town of, Barnstable County	250005C	....do	July 26, 1974, Oct. 6, 1976, Oct. 1 1983, and July 3, 1986.
Vermont: St. Johnsbury, towr of, Caledonia County	500031B	....do	Aug. 2, 1974, Jan. 14 1977 and July 3, 1986.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Region II			
New Jersey: Pequannock, township of, Morris County	345311B	do	May 21, 1971, July 1, 1974, Sept. 3, 1976, and July 3, 1986.
New York:			
Hamptonburgh, town of, Orange County	360317B	do	Apr. 5, 1974, July 9, 1976, and July 3, 1986.
Attica, village of, Wyoming and Genesee Counties	360985D	do	May 24, 1974, June 11, 1976, May 14, 1982, Oct. 7, 1983, and July 3, 1986.
Bolton, town of, Warren County	360869C	do	Oct. 18, 1974, July 2, 1976, Feb. 4, 1977, and July 3, 1986.
Whitehall, town of, Washington County	361239A	do	Dec. 23, 1977 and July 3, 1986.
Greenwich, town of, Washington County	36123B	do	Sept. 24, 1976 and July 3, 1986.
Patterson, town of, Putnam County	361023	do	Apr. 12, 1974, Apr. 23, 1976, and July 3, 1986.
North Salem, town of, Westchester County	361240A	do	Jan. 31, 1975, and July 3, 1986.
Region III			
Pennsylvania:			
Brady's Bend, township of, Armstrong County	421302	do	Nov. 29, 1974, and Dec. 28, 1979.
South Greensburg, borough of, Westmoreland County	420900	do	June 14, 1974, Sept. 10, 1976, and July 3, 1986.
Region IV			
Kentucky: Winchester, city of, Clark County	210058B	do	May 31, 1974, Sept. 3, 1976, and July 3, 1986.
Ohio: Bucyrus, city of, Crawford County	390090C	do	Nov. 18, 1973, May 21, 1976, and July 3, 1986.
Region VII			
Kansas:			
Ford County, unincorporated areas	200101B	do	Dec. 6, 1977, and July 3, 1986.
Hays, city of, Ellis County	200096B	do	Jan. 23, 1974, Nov. 28, 1975, and July 3, 1986.
Ellis County, unincorporated areas	200094B	do	Oct. 18, 1977, and July 3, 1986.
Pawnee Rock, city of, Barton County	200021B	do	Jan. 10, 1975, Jan. 14, 1977, and July 3, 1986.
Region IX			
California: Del Norte County, unincorporated areas	065025	do	Dec. 27, 1974, April 4, 1978, Jan. 24, 1983, and July 3, 1986.
Region I			
Connecticut: Farmington, town of, Hartford County	090029B	July 17, 1986, suspension withdrawn	June 28, 1974 and July 17, 1986.
Maine: Portland, city of, Cumberland County	230051B	do	Apr. 29, 1977 and July 17, 1986.
Massachusetts:			
Essex, town of, Essex County	250060B	do	July 26, 1974, July 23, 1976 and July 17, 1986.
Newbury, town of, Essex County	250099B	do	Mar. 15, 1977, and July 17, 1986.
Plymouth, town of, Plymouth County	250278C	do	June 28, 1974, May 25, 1977, Oct. 1, 1983, and July 17, 1986.
Somerville, city of, Middlesex County	250214B	do	July 26, 1974, Nov. 26, 1976, and July 17, 1986.
Swansea, town of, Bristol County	255221C	do	June 20, 1970, Aug. 6, 1971, July 1, 1974, July 30, 1976, Oct. 1, 1983, and July 17, 1986.
Vermont: Arlington, town of, Bennington County	500012C	do	Aug. 2, 1974, Dec. 10, 1976, Nov. 29, 1977, and July 17, 1986.
Region II			
New York: Springville, village of, Erie County	360258C	do	May 17, 1974, June 4, 1976, and July 17, 1986.
Region VI			
Texas:			
White Settlement, city of, Tarrant County	480617B	do	May 24, 1974, Sept. 3, 1976, and July 17, 1986.
Albany, city of, Shackelford County	480565B	do	May 3, 1974, Mar. 5, 1976, and July 17, 1986.
Region VIII—Minimal Conversions			
Utah:			
Glenwood, town of, Sevier County	490126	July 1, 1986, suspension withdrawn	Oct. 22, 1976.
Kane County, unincorporated areas	490083	do	Jan. 10, 1978.
Region IV			
Kentucky:			
Liberty, city of, Casey County	210054B	July 3, 1986, suspension withdrawn	May 24, 1974, Feb. 27, 1976, and July 3, 1986.
Lincoln County, unincorporated areas	210325B	do	Aug. 26, 1977 and July 3, 1986.
North Carolina:			
Richlands, town of, Onslow County	370341A	do	July 11, 1975, and July 3, 1986.
Robbins, town of, Moore County	370166B	do	Nov. 22, 1974, Feb. 1, 1980, and July 3, 1986.
Region IV—Minimal Conversions			
North Carolina: Valdese, town of, Burke County	370298A	do	July 25, 1975, and July 3, 1986.
South Carolina: Saluda, town of, Saluda County	450175	do	June 28, 1974, Apr. 9, 1976, June 3, 1977, June 27, 1980, and July 3, 1986.
Tennessee: Calhoun, city of, McMinn County	470232B	do	Mar. 8, 1974, Sept. 3, 1976, and July 3, 1986.
Region V			
Indiana: Steuben County, unincorporated areas	180243B	do	Dec. 27, 1974, Sept. 2, 1977, and July 3, 1986.
Michigan: Shiawassee, township of, Shiawassee County	260523A	do	Oct. 10, 1975, and July 3, 1986.
Minnesota: Pipestone County, unincorporated areas	270627B	do	July 27, 1979, and July 3, 1986.
Wadena County, unincorporated areas	270637B	do	Aug. 19, 1977, and July 3, 1986.
Region VII			
Kansas: Caney, city of, Montgomery County	200230B	do	Feb. 15, 1974, Oct. 24, 1975, and July 3, 1986.
Region IV—Minimal Conversions			
Alabama: Crenshaw County, unincorporated areas	010246B	July 17, 1986, suspension withdrawn	Dec. 6, 1974, Jan. 27, 1978, and July 17, 1986.
Kentucky: McKee, city of, Jackson County	210119B	do	Oct. 25, 1974, Feb. 20, 1976, and July 17, 1986.
Mississippi:			
Doddsville, town of, Sunflower County	280162A	do	Nov. 8, 1974, and July 17, 1986.
Sharkey County, unincorporated areas	280152B	do	Dec. 9, 1977, and July 17, 1986.
North Carolina: Kenansville, town of, Duplin County	370399B	do	June 24, 1977, and July 17, 1986.
South Carolina: Estill, town of, Hampton County	450097B	do	May 31, 1974, Aug. 22, 1975, and July 17, 1986.
Scotia, town of, Hampton County	450101A	do	Feb. 21, 1975 and July 17, 1986.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Tennessee:			
Camden, city of, Benton County	470010C	do	June 14, 1974, Oct. 1, 1976, Mar. 11, 1977, and July 17, 1986.
Erin, city of, Houston County	470213B	do	June 14, 1974, June 18, 1976, and July 17, 1986.
Region V			
Minnesota:			
Bertha, city of, Todd County	270474B	do	Apr. 12, 1974, June 18, 1976 and July 17, 1986.
Wadena, city of, Wadena County	270495C	do	June 21, 1974, Aug. 6, 1976, Apr. 16, 1982, and July 17, 1986.
Wisconsin:			
Shullsburg, city of, Lafayette County	550230B	do	May 17, 1974, May 28, 1976, and July 17, 1986.
Tigerton, village of, Shawano County	550422B	do	May 24, 1974, June 4, 1976, and July 17, 1986.
Ohio: West Salem, village of, Wayne County	390668B	do	Apr. 5, 1974, June 4, 1976, and July 17, 1986.
Region VII			
Iowa: Brooklyn, city of, Poweshiek County	190495A	do	Apr. 18, 1975 and July 17, 1986.
Region VIII			
Utah: Iron County, unincorporated areas	490073B	do	Apr. 11, 1978 and July 17, 1986.
Region X			
Washington: Stevenson, city of, Skamania County	530161A	do	Apr. 23, 1978 and July 17, 1986.
Region I			
Maine: Phippsburg, town of, Sagadahoc County	230120C	August 5, 1986, suspension withdrawn	Oct. 25, 1974, Dec. 3, 1976, Oct. 1, 1983, and Aug. 5, 1986.
Massachusetts: Melrose, city of, Middlesex County	250206B	do	June 28, 1974, June 18, 1976, and Aug. 5, 1986.
New Hampshire: New Castle, town of, Rockingham County	330135B	do	May 31, 1974, Dec. 3, 1976, and Aug. 5, 1986.
Vermont: Waltham, town of, Addison County	500173B	do	July 7, 1975, July 25, 1978, and Aug. 5, 1986.
Region II			
Puerto Rico: Puerto Rico, Commonwealth of	720000C	do	Aug. 1, 1978, July 2, 1981, July 19, 1982, and Aug. 5, 1986.
Region III			
Pennsylvania: Pocono, township of, Monroe County	421892B	do	Dec. 6, 1974, Apr. 25, 1980, and Aug. 5, 1986.
Region V			
Illinois: New Haven, town of, unincorporated areas	170246B	do	Jan. 16, 1974, Apr. 2, 1976, and Aug. 5, 1986.
Minnesota: Kennedy, city of, Kittson County	270686B	do	Sept. 24, 1976 and Aug. 5, 1986.
Region VI			
Texas:			
Big Oaks Municipal Utility District, Fort Bend County	481596B	do	Nov. 29, 1985 and Aug. 5, 1986.
Fort Bend County Levee Improvement District #7, Fort Bend County.	481594B	do	Sept. 6, 1985 and Aug. 5, 1986.
Fort Bend County Municipal Utility District #34, Fort Bend County	481520B	do	Sept. 10, 1984 and Aug. 5, 1986.
Fort Bend County Municipal Utility District #35, Fort Bend County	481519B	do	July 20, 1984 and Aug. 5, 1986.
Fort Bend County Municipal Utility District #41, Fort Bend County	481591B	do	June 27, 1985 and Aug. 5, 1986.
Kingsbridge Municipal Utility District, Fort Bend and Harris Counties	481567B	do	May 26, 1970, July 9, 1976, Dec. 20, 1977, and Aug. 5, 1986.
Lake Dallas, city of, Denton County	480780A	do	Sept. 26, 1975 and Aug. 5, 1986.
Weatherford, city of, Parker County	480522B	do	Mar. 8, 1974, June 11, 1976, and Aug. 5, 1986.
Region VII			
Iowa: Atlantic, city of, Cass County	190049B	do	May 3, 1974, Apr. 9, 1976, and Aug. 5, 1986.
Missouri: Kansas City, city of, Clay, Platte, and Jackson Counties	290173B	do	Nov. 8, 1974, Sept. 29, 1978, and Aug. 5, 1986.
Region IX			
Arizona: Bullhead City, city of, Mohave County	040125C	do	Jan. 10, 1975, Feb. 6, 1979, Mar. 15, 1982, and Aug. 5, 1986.
California:			
Chula Vista, city of, San Diego County	065021D	do	Apr. 8, 1977, Mar. 14, 1978, Aug. 15, 1983, and Aug. 5, 1986.
Humboldt County, unincorporated areas	060060C	do	Sept. 13, 1977, July 19, 1982, and Aug. 5, 1986.
Monterey County, unincorporated areas	060195E	do	Feb. 21, 1978, Apr. 24, 1979, Nov. 17, 1981, Jan. 30, 1984, and Aug. 5, 1986.
San Mateo County, unincorporated areas	060311C	do	Nov. 1, 1974, April 15, 1977, July 5, 1984, and Aug. 5, 1986.
Sonoma County, unincorporated areas	060375B	do	Jan. 20, 1982, and Aug. 5, 1986.
Region X			
Oregon: Benton County, unincorporated areas	410008C	do	Dec. 27, 1974, Apr. 8, 1977, Mar. 8, 1979, and Aug. 5, 1986.
Region I			
Connecticut:			
Fairfield, town of, Fairfield County	090007B	Aug. 19, 1986, suspension withdrawn	Aug. 2, 1974, Aug. 15, 1978, and Aug. 19, 1986.
Guilford, town of, New Haven County	090077B	do	Aug. 2, 1974, May 1, 1978, and Aug. 19, 1986.
Norwalk, city of, Fairfield County	090012C	do	Oct. 25, 1974, Apr. 3, 1978, and Aug. 19, 1986.
Greenwich, town of, Fairfield County	090008B	do	Oct. 18, 1974, Sept. 30, 1977, and Aug. 19, 1986.
New Hampshire: Lisbon, town of, Grafton County	330063B	do	Feb. 21, 1975, Oct. 22, 1976, and Aug. 19, 1986.
Vermont:			
Manchester, village of, Bennington County	500179B	do	Oct. 13, 1974, Oct. 1, 1986, Aug. 19, 1986.
Bristol, village of, Addison County	500165B	do	Dec. 13, 1974, Sept. 17, 1976, and Aug. 19, 1986.
Lincoln, town of, Addison County	500007B	do	Aug. 2, 1974, Oct. 1, 1976, and Aug. 19, 1986.
Region II			
New Jersey: Lincoln Park, Borough of, Morris County	345300B	do	Sept. 15, 1971, July 1, 1974, and Aug. 6, 1976.
Region V			
Indiana:			
Miami County, unincorporated areas	180409B	do	Feb. 3, 1978, and Aug. 19, 1986.
North Manchester, town of, Wabash County	180269C	do	Dec. 21, 1973, Sept. 19, 1975, and Aug. 19 1986

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Minnesota: Detroit Lakes, city of, Becker County	270564A	do	Jan. 31, 1975, and Aug. 19, 1986.
Wisconsin: Brookfield, city of, Waukesha County	550478	do	Nov. 9, 1973, July. 1 1977, and Aug. 19, 1986.
Region VI			
Arkansas: Fort Smith, city of, Sebastian County	055013C	do	Aug. 28, 1971, May 29, 1981, July 1, 1984, and Aug. 19, 1986.
Texas:			
Brazoria County, unincorporated areas	485458E	do	May 8, 1971, July 1, 1974, June 10, 1977, Oct. 27, 1978, Oct. 1, 1983, and Aug. 19, 1986.
Clarendon, city of, Donley County	481584A	do	Aug. 19, 1986.
Edgecliff Village, town of, Tarrant County	480592B	do	Dec. 28, 1973, Feb. 4, 1977, and Aug.19, 1986.
Hearne city of, Robertson County	480542B	do	Mar. 29, 1974, Feb. 20, 1976, and Aug. 19, 1986.
Region IX			
California: Seaside, city of, Monterey County	060203C	do	June 7, 1974, Dec. 19, 1975, July 2, 1981, and Aug. 19, 1986.
Region III—Minimal Conversions			
Pennsylvania:			
Burnside, township of, Clearfield County	421518A	Aug. 1, 1986, suspension withdrawn	Jan. 24, 1975, and Aug. 1, 1986.
Cooper, township of, Clearfield County	421520A	do	Dec. 20, 1974, and Aug. 1, 1986.
East Mahoning, township of, Indiana County	422436A	do	Jan. 17, 1975, and Aug. 1, 1986.
Montgomery, township of, Franklin County	422426A	do	Dec. 13, 1974, and Aug 1, 1986.
Region IV			
Kentucky:			
Burgin, city of, Mercer County	210171B	do	May 10, 1974, July 30, 1976, and Aug. 1, 1986.
Region VII			
Iowa			
Dumont, city of, Butler County	190096B	do	May 24, 1974, Dec. 12, 1975, and Aug. 1, 1986.
Missouri:			
Greenville, city of, Wayne County	290450B	do	Oct. 18, 1974, Nov. 14, 1975, and Aug. 1, 1986.
Memphis, city of, Scotland County	290406B	do	May 24, 1977 and Aug. 1, 1986.
Williamsville, city of, Wayne County	290452	do	Oct. 18, 1974, Mar. 5, 1976 and Aug. 1, 1986.
Region IV—Minimal Conversions			
Kentucky:			
Campbellsville, city of, Taylor County	210213B	August 5, 1986, suspension withdrawn	May 24, 1974, Feb. 27, 1976, and Aug. 5, 1986.
Central City, city of, Muhlenburg County	210175B	do	Feb. 1, 1974, Feb. 27, 1976, and Aug. 5, 1986.
Morgan County, unincorporated areas	210292B	do	Nov. 28, 1980 and Aug. 5, 1986.
West Liberty, city of, Morgan County	210174B	do	Feb. 1, 1974, July 9, 1976, and Aug. 5, 1986
North Carolina: Lansing, Town of, Ashe County	370374	do	Feb. 22, 1974, July 16, 1980, and Aug. 5, 1986.
Region V			
Minnesota: Maplewood, city of, Ramsey County	270378C	do	May 1, June 4, 1978, Nov. 4, 1977, and Aug. 5, 1986.
Wisconsin: Lancaster, city of, Grant County	550150B	do	May 31, 74 and Aug. 5, 1986.
Region VII			
Iowa: Maquoketa, city of, Jackson County	190160B	do	June 28, 1974, Feb. 20, 1976, and Aug. 5, 1986.
Missouri: Bloomfield, city of, Stoddard County	290423B	do	Dec. 21, 1973, Dec. 5, 1975, and Aug. 5, 1986.
Region VIII			
Colorado:			
Fairplay, town of, Park County	080239A	do	July 18, 1975 and Aug. 5, 1986.
Ramah, town of, El Paso County	080066B	do	Sept. 13, 1974, Feb. 20, 1976, and Aug. 5, 1986.
Rico, town of, Dolores County	080048A	do	Dec. 20, 1974 and Aug. 5, 1986.
Colorado: Walden, town of, Jackson County	080086B	do	June 28, 1974, Jan. 16, 1976, and Aug. 5, 1986.
Montana: Wibaux County	300173B	do	Jan. 15, 1980 and Aug. 5, 1986.
North Dakota: Harvey, city of, Wells County	380231B	do	Jan. 24, 1975, May 14, 1976, and Aug. 5, 1986.
South Dakota:			
Faulkton, city of, Faulk County	460175B	do	Feb. 21, 1975, Oct. 10, 1975, and Aug. 5, 1986.
Midland, city of, Haakon County	460032B	do	Sept. 13, 1974, Jan. 9, 1976, and Aug. 5, 1986.
South Dakota: Spink County, unincorporated areas	460076B	do	Jan. 10, 1978 and Aug. 5, 1986.
Region X			
Washington: Skamania County, unincorporated areas	530160B	do	Feb. 8, 1983 and Aug. 5, 1986.
Region III—Minimals Conversion			
Pennsylvania:			
Black Lick, township of, Indiana County	421213A	Aug. 19, 1986, suspension withdrawn	Nov. 15, 1974 and Aug. 19, 1986.
Sykesville, borough of, Jefferson County	420515B	do	Apr. 12, 1974, Oct. 10, 1975, and Aug. 19, 1986.
Region IV			
Alabama:			
Headland, city of, Clark County	010097B	do	June 28, 1974, Jan. 2, 1976, and Aug. 19, 1986.
Riverside, town of, St. Clair County	010288A	do	Apr. 4, 1975 and Aug. 19, 1986.
Kentucky:			
Clay, city of, Webster County	210222B	do	Feb. 1, 1974, Feb. 27, 1976, and Aug. 19, 1986.
Dawson Springs, city of, Hopkins County	210113B	do	Feb. 1, 1974, Feb. 20, 1976, and Aug. 19, 1986.
Hodgenville, city of, Larue County	210133B	do	May 17, 1974, July 16, 1976, and Aug. 19, 1986.
Princeton, city of, Caldwell County	210031B	do	May 23, 1974, Feb. 13, 1976, and Aug. 19, 1986.
Sebree, city of, Webster County	210224B	do	May 17, 1974, Mar. 5, 1976, and Aug. 19, 1986.
Sparta, city of, Gallatin County	210079B	do	Feb. 1, 1974, Mar. 5, 1976, and Aug. 19, 1986.
Wickliffe, city of, Ballard County	210006B	do	May 24, 1974, Jan. 30, 1976, and Aug. 19, 1986.
North Carolina: Tryon, town of, Polk County	370271A	do	Apr. 16, 1976 and Aug. 19, 1986.
South Carolina: Ridgeland, town of, Jasper County	450114B	do	Mar. 3, 1976, May 9, 1980, and Aug. 19, 1986.
Region V			
Indiana: Hamilton, town of, Steuben County	180036C	do	Sept. 6, 1974, Aug. 27, 1976, Apr. 15, 1977, and Aug. 19, 1986.
Michigan:			
Eckford, township of, Calhoun County	260653B	do	July 22, 1977, and Aug. 19, 1986.
Rutland, township of, Barry County	260656B	do	Nov. 4, 1977, and Aug. 19, 1986.
Constantine, village of, St. Joseph County	260512A	do	July 25, 1975, and Aug. 19, 1986.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Ohio: Grover Hill, village of, Paulding County	390436B	....do	June 24, 1977, and Aug. 19, 1986.
Wisconsin: Bloomington, village of, Grant County	550146C	....do	June 28, 1974, May 28, 1976, July 7, 1978, and Aug. 19, 1986
Region VIII			
Iowa:			
Defiance, city of, Shelby County	190246A	....do	Dec. 20, 1974, and Aug. 19, 1986.
Vail, city of, Crawford County	190101A	....do	Feb. 7, 1975 and Aug. 19, 1986.
Kansas: Walnut, city of, Crawford County	200373A	....do	Aug. 22, 1975, and Aug. 19, 1986.
Missouri:			
Ellsinore, city of, Carter County	290466B	....do	Oct. 18, 1974, Nov. 14, 1975, and Aug. 19, 1986.
Gainsville, city of, Ozark County	290273B	....do	Dec. 28, 1973, Feb. 20, 1976, and Aug. 19, 1986.

Issued: August 27, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-19798 Filed 9-2-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85-347]

Amendment of the Rules Concerning Cellular Construction Period

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On August 6, 1986, the Commission published a summary of its Memorandum Opinion and Order in CC Docket No. 81-216 concerning the registration of loop-powered repertory dialers (51 FR 28237, August 6, 1986). The date referred to as the release date of the actual Memorandum Opinion and Order was incorrectly stated as being June 1986. The correct release date is July 21, 1986.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, (202) 634-1832.

William J. Tricarico,

Secretary.

[FR Doc. 86-19792 Filed 9-2-86; 8:45 am]

BILLING CODE 8712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 914, 933, 952 and 970

Acquisition Regulations Concerning Protest Provisions of the Competition in Contracting Act

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This rule is to amend the Department of Energy Acquisition Regulation (DEAR). The revisions are intended to update the DEAR with respect to the protest provisions of the Competition in Contracting Act of 1984 (CICA), Pub. L. 98-369.

The DEAR is being supplemented by this regulation because the Federal Acquisition Regulation (FAR) has been amended to incorporate and reflect the changes to Federal procurement policy required by the Competition in Contracting Act.

EFFECTIVE DATE: This rule will be effective November 3, 1986.

FOR FURTHER INFORMATION CONTACT:

G.L. Allen, Contract Business Clearance Division (MA-441), Procurement and Assistance, Management Directorate, Washington, DC 20585, (202) 252-9065

Paul J. Sherry, Office of AGC for Procurement and Finance, GC-34, Washington, DC 20585, (202) 252-1526

SUPPLEMENTARY INFORMATION:

I. Background.
II. Procedural Requirements.
A. Executive Order 12291.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
D. National Environmental Policy Act.
III. Public Comments.

I. Background

Under Section 644 of the Department of Energy Organization Act, Pub. L. 95-91, (42 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the Department of Energy Acquisition Regulation (DEAR) was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The primary purpose of this rulemaking is to revise the DEAR, as necessary, to implement the Federal Acquisition Regulation (FAR) protest procedures required by the Competition in Contracting Act of 1984, Pub. L. 98-369. This final rule follows a notice of proposed rulemaking and public comment period. The notice was published March 27, 1985 at 50 FR 12053. The only comment received is discussed at III below. The purpose of the FAR and related DEAR coverages is to provide new procedures for submitting protests to the Department, the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA).

This rule provides new protest procedures, including a solicitation provision at 933.106, and section 933.170 involving subcontract level protests. Also, the previous protest coverage of the DEAR is removed from 914.407-8 and 914.407-70 and the revised coverage is placed in 933.103, Protests to the agency. The rule also sets forth new coverage at 952.233-2, Service of protest, instructing to whom and where protests are to be served. DEAR coverage is also provided at 970.4406, Protest of contractor procurements, to include procedures to be followed if a protest occurs against management and operating contractor award.

II. Procedural Requirements

A. Review Under Executive Order 12291

Procurement rules are normally exempt from review under Executive Order 12291, entitled "Federal Regulation," based on a determination that they generally relate only to the management of an agency function and do not have any major economic impact. The Office of Management and Budget (OMB), has decided however that agency implementations of the Competition in Contracting Act of 1984, Pub. L. 98-369, warrant review. Accordingly, the proposed rule was coordinated with OMB for review in accordance with Executive Order 12291 and OMB Circular 85-7. This final rule was informally coordinated with OMB on March 11, 1986.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant

VOL 51 ISS 170 SE 3 1986 UMI

economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR Part 1320.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environment Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.* 1976), or the Council on Environmental Quality regulations (40 CFR Parts 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

III. Public Comments

Six comments were received from one entity outside the Department. Four of the comments commended features of the proposed rulemaking and require no further consideration.

One comment sought clarification of the meaning of the sentence at paragraph 933.102(a)(1) which reads, "The contracting officer shall attempt to informally resolve a protest by discussions except when such attempts would be inappropriate." The statement has been amended to provide an example of an inappropriate circumstance.

One comment on the clause entitled "Service of Protest," proposed at 952.233–2, stated "The clause requires written and dated acknowledgment of service by the contracting officer or his designee and provides addresses for service of copies of protests lodged with GAO and GSBCA. The same problems posed by the related FAR Service of Protest Provision are inherent in the DEAR provision: the protestor's ability to effect service is directly related to the actions of the contracting officer or his designee in acknowledging receipt. These procedures are unnecessary and are likely to cause much litigation and unjust results." The comment involves a reguest for a deviation to the Federal Acquisition Regulation which the Department is not persuaded it should pursue. However, the Civilian Agency Acquisition Council (CAAC) is considering the same issue under CAAC Case 85–38 and DOE will follow the FAR coverage as it may be amended.

The following changes were also made as the result of the Department's own review.

Paragraph 933.103(a) was revised as a result of the change in the position of Department of Justice regarding constitutional issues relating to the suspension of contract awards as required in section 3553(c) of the Competition in Contracting Act of 1984 (CICA). The paragraph was revised to reinstate provisions of the CICA that had been removed from the FAR but were added back. The change was necessary to set forth standards for withholding award on protests to the Department as opposed to protests to the GAO.

Paragraphs 933.104(b) and 933.104(c) were revised to be consistent with sections 3553 (c) and (d) of CICA which were incorporated into the FAR subsequent to the proposed rule. Internal processing procedures were added and the reference in paragraph (c) was changed to reflect the proper paragraph. Paragraphs 933.104(b), 933.104(c), and 933.170(b) discuss the handling of subcontract level protests.

Paragraphs 933.105(a)(1) (i) and (ii) were revised to discuss minor internal procedures involving protests to the GSBCA.

Section 933.170 was edited in paragraph (a) to provide a reference to section 970.4406 and in paragraph (c) to change the reference to "GAO or DOE" procedures to "applicable" procedures and renumber the paragraph as (d). Paragraphs (d) and (e) were identified as (e) and (f) respectively. Paragraph (b) was revised and a new paragraph (c) was added to reflect a provision requiring the contracting officer to seek internal guidance relating to suspension of award or staying of performance in the event of a subcontract level protest to the GAO or the Department.

Section 970.4406 was rewritten to clarify certain ambiguities and to reflect the changes in staying award and performance of subcontracts as a result of the change in the Department of Justice positions on constitutionality of these requirements as included in CICA. It was revised to include internal procedures for handling subcontract level protests under management and operating contracts. It was also edited to provide separate paragraphs for protests to the Department and to the GAO. A new paragraph was also added to provide procedures in the event of an ADP protest to the GSBCA.

Edits to enhance the grammar, punctuation, and clarity were made in the following paragraphs: 933.102(a)(1), 933.102(a)(2); 933.103(c), 933.103(d)(1), 933.103(d)(2), 933.103(d)(5), 933.103(e); 933.104(a), 933.104(a)(3), 933.104(a)(4), 933.104(b)(1), 933.104(f)(1); 933.105(b), 933.105(c); 933.106; 952.233–2; 970.4406(a), 933.4406(b), 933.4406(c) and 933.4406(d).

List of Subjects in 48 CFR Parts 914, 933, 952 and 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on August 22, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

The authority citation for Parts 914, 933, 952 and 970 continues to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

PART 914—[AMENDED]

914.407–8 and 914.407–70 [Removed]

1. Subpart 914.4 is amended by removing subsections 914.407–8—Protests against award, and 914.407–70—Protest authorities.

2. Part 933 is amended by revising the title of the part; adding a new subpart 933.1; and redesignating section 933.011 as section 933.211 and revising paragraph (a) by removing FAR reference "33.011" and inserting "33.211"; and removing the "Authority" paragraph at the end of the old section 933.011. As revised, Part 933 reads as follows:

PART 933—PROTESTS, DISPUTES, AND APPEALS

Subpart 933.1—Protests

933.102 General.
933.103 Protests to the agency.
933.104 Protests to GAO.
933.105 Protests to GSBCA.
933.106 Solicitation provision.
933.170 Subcontract level protests.

Subpart 933.2—Disputes and Appeals

933.211 Contracting officer's decision.

Subpart 933.1—Protests

933.102 General.

(a)(1) The contracting officer shall attempt to informally resolve a protest by discussions except when such attempts would be inappropriate (e.g., further communications would be futile). Protests to the Department and to the General Accounting Office (GAO) may

be withdrawn by a telephone call from the protester.

(2) The contracting officer should coordinate the handling of any protest with counsel. Communications to a protester or other interested party should almost always be coordinated with counsel. When conferences are held with the GAO, counsel shall play a key role in representing the Department. The Department's defense of a protest to the General Services Administration Board of Contract Appeals or to a court shall be managed by counsel.

(c) If a protest involves a decision of a source selection official at the Headquarters level, the contracting activity position shall be coordinated with the Assistant General Counsel for Procurement and Finance, Headquarters, before submitting a report in response to a protest.

933.103 Protests to the agency.

(a) When a protest to an acquisition under which no award has been made is filed only with the Department of Energy (contracting activity or Headquarters), an award shall not be made until the matter is resolved unless a Head of the Contracting Activity (HCA) request to make award, concurred in by counsel, using the criteria of FAR 33.103(a), endorsed by the program secretarial officer, is approved by the Procurement Executive. The request shall establish that one of the following applies:

(1) The supplies or services to be contracted for are urgently required,

(2) Delivery or performance will be unduly delayed by failure to make award promptly.

(3) A prompt award will otherwise be advantageous to the Government.

(c) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals must be filed prior to bid opening or the closing date for receipt of initial proposals. In acquisitions where proposals are requested, improprieties which do not exist in the initial solicitation but which are allegedly subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. In cases other than these, protests must be filed no later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. These time limits may be waived by the deciding official if it is determined to be in the Department's best interest.

(d) (1) Protests made before or after award filed at the Headquarters level shall be decided by the Procurement Executive.

(2) Protests made before or after award to a DOE contracting activity shall be decided by the HCA except for the following cases, which shall be decided by the Procurement Executive:

(i) The action is protested to the Headquarters level prior to its resolution by the HCA.

(ii) The HCA is the signatory contracting officer.

(iii) The HCA finds that the issues raised have the potential for significant impact on DOE acquisition policy.

(3) The Department will cease processing an agency protest which is also made outside the Department.

(4) If a protest is filed with a contracting activity and a decision is rendered, the Department will not entertain a protest of the same issue to Headquarters.

(5) The Business Clearance Division, Headquarters, shall be notified immediately of all protests (Headquarters or contracting activity) filed with the contracting activity.

(e) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(2). In the case of a protest filed at the Headquarters level, the report shall be forwarded to the Business Clearance Division within 25 working days of being notified of such a protest with a proposed response to the protest. The contracting officer shall check with the Business Clearance Division as to the number of copies of the report to be submitted. The Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in d(2) above) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 45 working days, unless a longer period of time is determined to be needed. In the case of a protest to a contracting activity, the contracting officer shall immediately furnish the Business Clearance Division with a copy of the protest and an information copy of the protest report and the HCA's decision when issued.

933.104 Protests to GAO.

(a) (1) The Department's position, to be set forth in an agency report, shall be coordinated with counsel as soon as practical.

(3) The notice to other persons, discussed at FAR 33.104(a)(3), shall be given by the contracting officer. The interested parties shall be advised that they may submit their views and relevant information directly to the GAO, with a copy to the contracting officer and another copy to the U.S. Department of Energy, Business Clearance Division (MA-441), Washington D.C. 20585.

(4) The contracting activity shall submit—

(i) a complete report in quadruplicate plus one copy for each interested party,

(ii) the name and address of each interested party, and

(iii) identification of the privileged information not to be released outside of the Government, to the following address within 20 working days of the date of receipt from GAO of the telephonic notice of such protest (unless a different time period is established by the Business Clearance Division), or within 7 working days after receipt of notification of a determination to use the express option (unless a different time period is established by the Business Clearance Division), unless the factors at FAR 33.104(a)(4) (i) and (ii) apply:

U.S. Department of Energy
Business Clearance Division (MA-441)
Forrestal Building, Room 1I-030
1000 Independence Avenue, SW.
Washington, DC 20585

If the contracting officer anticipates any delay in meeting these due dates, immediate contact shall be made with the Business Clearance Division, Headquarters. This shall be followed up with a written explanation of the reason for delay to the Business Clearance Division.

(5)(i) Distribution of the agency report to the GAO, the protester and the other interested parties regarding the protest, shall be made by the Business Clearance Division.

(6) The Procurement Executive has the authority and responsibility for reviewing and forwarding to the GAO the information required by FAR 33.104(a)(2) and otherwise coordinating communications with the GAO. This authority has been delegated to the Director, Business Clearance Division.

(b) *Protests before award.* (1) Except in the case of a subcontract level protest, when the Department has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded until the matter is resolved, unless authorized by the head of the contracting activity in accordance with FAR 33.104(b). Before the head of the contracting activity authorizes the award, the required finding shall be concurred in by counsel, endorsed by the program secretarial officer, and approved by the Procurement Executive. The finding shall address the likelihood that the protest will be sustained by the GAO. A copy of the signed authorization shall be furnished to the Business Clearance

Division, Headquarters. If a protest is at the subcontract level, the award decision will be resolved on a case-by-case basis as discussed in 933.170.

(c) *Protests after award.* (1) If a protest is at the subcontract level, the provisions of 933.170 shall apply.

(2) If a contracting activity believes that it should not immediately suspend performance or terminate the prime contract, it shall contact the Business Clearance Division, Headquarters, for instructions on required due dates and clearance approvals for the written authorization to continue performance. The written finding authorizing contract performance shall address the likelihood that the protest will be sustained by the GAO. A copy of the signed finding and authorization shall be furnished to the Business Clearance Division, Headquarters.

(f) *Notice to GAO.* (1) The notice to the GAO, discussed at FAR 33.104(f), shall be given by the HCA making the award, after approval of the Procurement Executive, provided no DOE-wide policy issue is involved, in which case the notice shall be given by the Procurement Executive.

(2) It is the policy of the Department to promptly comply with recommendations set forth in Comptroller General Decisions except for compelling reasons.

(3) Requests for reconsideration shall be handled in accordance with GAO Bid Protest Regulations 21.12.

933.105 Protests to GSBCA.

(a)(1)(i) Subcontract level acquisition of ADP equipment and services is rarely conducted under section 111 of the Federal Property and Administrative Services Act of 1949 as amended to reflect Pub. L. 89–306 (the Brooks Act). Since the GSBCA has jurisdiction only over a protest involving an ADP acquisition conducted under the Brooks Act, subcontract level protests normally will not be heard by the GSBCA. If such a protest is lodged, the local counsel and the Office of the Assistant General Counsel for Procurement and Finance, Headquarters, shall be promptly notified.

(ii) Communications from a contracting activity to the GSBCA which are likely to provoke unusual public interest or are of a new or unusual nature (e.g., communications regarding a subcontract level protest) shall be coordinated with the Office of the Assistant General Counsel for Procurement and Finance, Headquarters prior to their submission. This office (and/or the Business Clearance Division, Headquarters) is available for consultation and assistance to personnel of a contracting activity.

(2)(i) The interested parties shall be advised that they may submit their views and relevant information directly to the GSBCA with a copy to the contracting officer.

(iii) The respondent (DOE) may appear before the GSBCA by an attorney at law or by the contracting officer or that individual's representative (GSBCA Rules of Procedure, Rule 6). DOE appearances before the GSBCA shall be managed by counsel of the cognizant contracting activity.

(iv) A prehearing conference will ordinarily be held within 6 calendar days after the filing of the protest (GSBCA Rules of Procedures, Rule 10). The DOE shall be represented by counsel of the cognizant contracting activity at such conference.

(b) The agency file, to be submitted within 10 working days of the filing of a protest, as required by Rule 4 of the GSBCA Rules of Procedure, shall be assembled by the contracting officer in coordination with counsel of the cognizant contracting activity.

(c) The preparation of the agency response setting forth the Department's defenses to the protest to be submitted within 15 working days after the filing of a protest (GSBCA Rules of Procedure, Rule 7) shall be managed by counsel of the cognizant contracting activity.

(d)(1) At a hearing on a request for suspension of procurement authority, the DOE shall be represented by counsel of the cognizant contracting activity.

(2) The determinations and findings required by FAR 33.105(d)(2) shall be executed by the HCA.

(4) If the GSBCA suspends the procurement authority to acquire any goods or services not previously delivered and accepted under an awarded contract, the contracting officer shall invoke the clause entitled "Stop-Work Order" (FAR 52.212–13) or otherwise cause the contractor to cease performance and to suspend related activities that may result in additional obligations being incurred by the Government.

(g) Prior to appealing a final decision of the GSBCA, the contracting activity shall consult with the Office of the Assistant General Counsel for Procurement and Finance and with the Business Clearance Division, Headquarters.

(h) The contracting officer promptly after receipt shall furnish an information copy of a protest and the Decision(s) of the GSBCA to the Business Clearance Division.

933.106 Solicitation provision.

The contracting officer shall supplement the provision at 52.233–2, Service of Protest, in solicitations for other than small purchases by adding the provision at 952.233–2.

933.170 Subcontract level protests.

(a) The General Accounting Office has stated it will not consider subcontract level protests except where the subcontract is "by" or "for" the Government (see *Optimum Systems, Incorporated*, 54 Comp. Gen. 767 (1975), 75–1 CPD ¶ 166). The Department also will not consider a subcontract level protest except where the subcontract is "by" or "for" the Government. If the subcontract level protest involves a management and operating prime contractor, see Subpart 970.4406.

(b) Upon receiving notice of a subcontract level protest to the Department prior to award, the contracting officer shall notify the prime contractor and shall direct that award not be made prior to resolution of such protest unless a request to make an award in the face of a protest is approved by the Procurement Executive in accordance with 933.103(a). If notice of a protest is filed with the contracting officer within 10 days after award, the contracting activity shall contact the Headquarters Business Clearance Division for guidance.

(c) Upon receiving notice of a subcontract level protest to the GAO either before or after award the contracting officer shall contact the Business Clearance Division Headquarters for guidance relating to suspension of award or stay of performance.

(d) Within 3 working days of notice of a subcontract level protest, to the Department or with the GAO, the contracting officer shall develop a position on whether the protest falls within the scope of paragraph (a) above and shall communicate that position to the Business Clearance Division. If it is determined that the protest falls within the scope of paragraph (a), a report shall be prepared in accordance with applicable procedures. If it is determined that the protest does not fall within the scope of paragraph (a), a report shall be prepared making a case for nonjurisdiction. Where a reasonable question exists as to whether the GAO or DOE should take jurisdiction, the Department's report should address both the jurisdiction and merit issues.

(e) If the GAO or the Procurement Executive does not agree with a report recommending nonjurisdiction, a supplemental report addressing the

merit issue shall be provided to the Business Clearance Division within 15 working days of notification of such disagreement.

(f) Preparation of reports on subcontract level protests is the responsibility of the contracting officer. Assistance shall be obtained from DOE counsel and may be obtained from the prime contractor to the degree deemed appropriate.

Subpart 933.2—Disputes and Appeals

933.211 Contracting officer's decision.

(a) In addition to the information specified in FAR 33.211, the contracting officer's decision shall include the contracting officer's written findings of fact.

PART 952—[AMENDED]

3. Subpart 952.2 is amended by adding a new subsection 952.233–2.

952.233–2 Service of protest.

As prescribed in 933.106, add the following to the end of the clause at FAR 52.233–2:

Another copy of a protest lodged with the General Accounting Office shall be furnished to the following address:

U.S. Department of Energy
Business Clearance Division (MA–441)
Forrestal Building, Room 1I–030
1000 Independence Avenue, SW.
Washington, DC 20585

Another copy of a protest lodged with the General Services Administration Board of Contract Appeals shall be furnished to the following address:

U.S. Department of Energy
Assistant General Counsel for Procurement and Finance (GC–34)
1000 Independence Avenue, SW.
Washington, DC 20585

PART 970—[AMENDED]

4. Subpart 970.44 is amended by revising 970.4406 to read as follows:

970.4406 Protest of managing and operating contractor procurements.

(a) The General Accounting Office (GAO) policies on protests state that GAO will consider subcontract-level protests when the subcontracts are "by" or "for" the Government. The term "for" has generally been defined by the GAO as including acquisitions by management and operating (M&O) contractors.

(b) The Department of Energy will also consider protests of acquisitions of M&O contractors.

(c) Upon receipt or notice of a protest filed with the GAO, or with the Department against an M&O contractor acquisition, the cognizant DOE contracting activity shall assure that the M&O contractor is aware of such protest and prepare or coordinate the preparation by the contractor of a report for submittal to the GAO or the Departmental official deciding the protest. Such a report shall be prepared in accordance with the applicable procedures in FAR Part 33 and Part 933 of the DEAR.

(d) Assistance shall be obtained from the local DOE Counsel in the preparation of the reports setting forth the position of the contracting activity relative to a protest.

(e) Upon receiving notice of a protest to the Department involving an M&O procurement action prior to award, the contracting activity shall direct that award not be made prior to resolution of such protest unless an HCA request to make award, concurred in by counsel, using the criteria of 933.103(a), endorsed by the program secretarial officer, is approved by the Procurement Executive. If notice of a protest is filed with the contracting officer within 10 days after award, the contracting activity shall contact the Business Clearance Division, Headquarters, for guidance as to continuation of performance or issuance of a stop work order.

(f) Since the bid protest provisions of the Competition in Contracting Act of 1984 (Pub. L. 98–369) (CICA) only apply to acquisitions by Federal executive agencies, the CICA "stay" provisions (sections 3553 (c) and (d) of Pub. L. 98–369) and cost recovery provisions (section 3554(c), Pub L. 98–369) do not apply to protests lodged with the GAO that involve M&O contractor acquisitions. Nevertheless, upon receiving notice of a protest to the GAO involving an M&O acquisition whether prior to or after award, the contracting activity shall immediately contact the Business Clearance Division, Headquarters, on suspending award or suspending performance.

(g) Subcontract level acquisition of ADP equipment and services is rarely conducted under section 111 of the Federal Property and Administrative Services Act of 1949 as amended to reflect Pub. L. 89–306 (the Brooks Act). Since the GSBCA has jurisdiction only over a protest involving an ADP acquisition conducted under the Brooks Act, subcontract level protests normally will not be heard by the GSBCA. If such a protest is lodged, the contracting officer shall promptly notify the local counsel and the Office of the Assistant General Counsel for Procurement and Finance, Headquarters. The Department's position on such subcontract level protests shall be coordinated with this office. The contracting officer promptly after receipt of a protest and the Decision(s) of the GSBCA shall furnish a copy thereof with related pertinent correspondence to the Business Clearance Division, Headquarters.

[FR Doc. 86–19805 Filed 9–2–86; 8:45 am]
BILLING CODE 6450–01–M

Proposed Rules

Federal Register
Vol. 51, No. 170
Wednesday, September 3, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Eastern Colorado Federal milk order for the months of September 1986 through February 1987. Provisions proposed to be suspended relate to the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period. Suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than September 10, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, AMS, Room 2968, South Building; U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for September 1986 through February 1987:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a", and "of March through August".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, AMS, Room 2968, South Building, U. S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1986 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. The suspension would remove the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February.

Mid-Am states that during the first six months of 1986 producer receipts pooled under the Eastern Colorado order increased 12.5 percent over the same period of the previous year, while producer milk in Class I rose only slightly. The cooperative attributes the increased milk supply to good weather conditions, ample feed supplies and the conclusion of the Milk Diversion program. Mid-Am recognizes that the Dairy Termination Program will reduce milk supplies, but states that ample supplies of locally-produced milk will still be available to the Eastern Colorado marketing area. The cooperative estimates that during the period for which the suspension is requested, up to 75 tanker loads of milk will have to be moved each month from the Denver area eastward to surplus outlets in Nebraska and Kansas. At the same time, without the suspension Mid-Am would be required to move 50 percent of the producer milk receipts at its supply plants located in Kansas and Nebraska to the Denver area. Without the requested suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Signed at Washington, DC, on: August 27, 1986.

William J. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-19800 Filed 9-2-86; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of comment period.

SUMMARY: On July 3, 1986 (51 FR 24365) the NRC published for public comment a notice of proposed rulemaking regarding amendments to its rules of practice to improve the hearing process. The notice provided that the comment period would expire on September 2, 1986. The Nuclear Information and Resource Service has requested a ninety-day extension in the comment period. The NRC has determined that the proposed rulemaking is not sufficiently complex to warrant the full extension requested.

However, in view of the importance of the proposed rule and the desirability of obtaining meaningful public comments, the NRC has decided to extend the comment period for an additional forty-five (45) days.

DATES: The comment period has been extended and now expires October 17, 1986. Comments received after that date will be considered if it is practicable to do so, but assurance of consideration can be given only for comments received on or before that date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to Room 1121, 1717 H Street NW., Washington, DC between 8:15 a.m. and 5:00 p.m. Copies of any comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda S. Gilbert, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7878.

Dated at Washington, DC, this 27th day of August 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–19630 Filed 9–2–86; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 50

[Docket No. PRM–50–44]

Committee to Bridge the Gap; Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Receipt of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission requests public comments on this notice of receipt of a petition for rulemaking dated July 7, 1986, that was filed by the Committee to Bridge the Gap (CBG). The petition was docketed by the Commission on July 7, 1986, and assigned Docket No. PRM–50–44. The petition requests that the Commission amend its regulations to require operators of reactors that use graphite as a moderator or reflector to (1) prepare and submit for NRC approval fire response plans and evacuation plans for a graphite fire and (2) measure the energy stored in their graphite, and revise their safety analyses to consider the risks and consequences of a graphite fire in their facilities. The petitioner believes this action is necessary to adequately protect the public in the event of a fire.

DATE: Submit comments by November 3, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Correspondence and Records Branch.

For a copy of the petition write: Division of Rules and Records, Office of Administration, 4000 MNBB, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Inspect and copy the petition or comments received on the petition at: The NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7086 or Toll Free (800) 368–5642.

SUPPLEMENTARY INFORMATION:

I. Basis for Petition

The petitioner states that two recent developments indicate that the potential for a graphite fire at U.S. reactors has been inadequately addressed.

Credibility of Graphite Fires

The petitioner states that NRC and reactor licensees have held that graphite fires are "non-credible" events and as a result have failed to take measures to help mitigate or extinguish such fires, should they occur. The petitioner asserts that the occurrence of a graphite fire at the Chernobyl plant in the Soviet Union demonstrates that graphite fires are credible events.

The petitioner asserts that because the NRC has deemed graphite fires non-credible, it has failed to require basic safety measures that could help reduce the threat of such a fire. Petitioner alleges that licensees whose reactors use graphite, including dozens of nonpower research reactors, the Fort St. Vrain plant in Colorado, and the Department of Energy's N reactor,[1] have no fire response plans for combatting graphite fires. The petitioner further alleges that research reactor licensees do not have adequate emergency plans to evacuate members of the public in the event of a graphite fire.

Stored (Wigner) Energy

The petitioner states that new experimental data show that the NRC's generic analysis of energy stored in research reactor graphite significantly underestimates the actual amount of stored energy and thus, underestimates the associated risk of graphite fire. The petitioner states that in a generic study (NUREG/CR–2079) which discusses the amount of stored energy present in research reactor graphite, that NRC contractors predicted that 5 calories per gram might be stored in the graphite of an Argonaut-type research reactor. The petitioner states that the UCLA research reactor is an Argonaut-type and in contrast to predictive calculations by both NRC and UCLA, UCLA researchers recently reported measurements of stored energy in the reactor graphite as high as 33.2 cal/gram; while CBG, the intervenor in the UCLA reactor relicensing proceeding calculated a minimum stored energy of 113 calories/gram in the year 2000, which corresponds to 39 calories/gram in 1983.

The petitioner alleges that NRC's generic estimates of Wigner energy storage are inaccurate and stresses that as a remedy to the problem, actual empirical measurements of Wigner energy will be required to assess the magnitude of the energy stored in research reactor graphite and the magnitude of the fire hazard that it presents.

II. Proposed Amendments to 10 CFR Part 50

The petitioner requests that the NRC adopt regulations that would require all licensees[2] whose reactors employ graphite as a neutron moderator or reflector by January 1, 1987, to:

(a) Formulate and submit for NRC approval fire response plans for combatting a reactor fire involving graphite and other constituent reactor parts (e.g. fuel) which might be involved in such a fire, taking into consideration the potential for explosive reactions. Response plans shall identify precisely which materials will be used to suppress a fire without increasing the risk of explosion, and shall indicate where and in what quantities these materials will be stored.

(b) Formulate and submit for NRC approval evacuation plans for a reactor fire. Plans should include evacuation out

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[1] This reactor is not within the licensing and regulatory authority of the NRC.

[2] "Zero power" or "critical facilities", defined here as reactors which operate at 100 watts or less, are exempted from these requirements.

to a sufficient distance from the reactor such that no member of the public receives a dose to the thyroid greater than 5 rem, assuming a release to the environment of 25% of the equilibrium radioactive iodine inventory.

(c) Measure the "Wigner energy" stored in the graphite of their reactor. Revise the reactor safety analysis report to consider how a release of stored energy would affect the outcome of other accident scenarios (e.g., fire, reactivity accidents).

A sufficient number of graphite samples shall be measured to identify the location of maximum stored energy, and to determine the maximum quantity of stored energy to within 10%.

III. Conclusion

In conclusion, the petitioner contends that the Chernobyl accident proves that it is a mistake to assume that graphite fires are non-credible, and yet the NRC has based its regulatory approach to nonpower reactors on this assumption. Petitioner further states that just as the Soviets began after Three Mile Island to recognize the necessity of reactor containment, the NRC should learn from Chernobyl that graphite fires are credible accidents and regulate graphite reactors accordingly. Above all, the petitioner believes that the NRC must require preparation of fire response plans that include the prevention and mitigation of graphite fires and evacuation plans adequate to protect the public in the event of a fire.

New measurements, the petitioner further concludes, indicate that the NRC has underestimated the amount of stored energy in the graphite of nonpower reactors and, consequently, that the potential for a graphite fire in such reactors has also been underestimated. The petitioner argues that since licensee calculations (such as those made by UCLA) are similarly unreliable, the NRC should order actual empirical measurements of stored energy in all nonpower reactors that use graphite. Finally, the petitioner states that safety analysis reports and hazards analyses should be revised to consider generally the consequences of a release of stored energy and the risks and consequences of reactor fires.

Dated at Washington, DC this 27th day of August 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-19629 Filed 9-2-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-174-AD]

Airworthiness Directives; Boeing Model 767-200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to Boeing Model 767-200 airplanes, which would require a reduction in the limiting takeoff and landing braking performance, as defined by the Airplane Flight Manual. Recent certification testing on the Boeing Model 767-300 airplane, which uses the same brake, revealed an unexplained reduction in brake effectiveness and performance from that which was demonstrated during the Model 767-200 certification in 1982. This loss of performance exists on the Model 767-200 and could result in a runway overshoot in certain field-length-limited takeoff or landing operations.

DATES: Comments must be received on or before October 27, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-174-AD, 17900 Pacific Highway South, C-68966 Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. McElroy, Flight Test Branch, ANM-160S, telephone (206) 431-2695; or Mr. Gary D. Lium, Systems and Equipment Branch, ANM-130S, telephone (206) 431-2946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-174-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 91868.

Discussion

Recent Boeing Model 767-300 refused takeoff and landing certification tests have produced lower than expected stopping results for the Bendix steel brake. This brake is installed on the Model 767-200 as well. Vendor dynomometer testing has also substantiated a reduced brake capability compared to the original certification level experienced in 1982. To date, no satisfactory explanation has been determined for the lower brake performance.

The Boeing Company has issued all-operator telex messages and operations manual bulletins on this subject. In addition, FAA-approved revisions to Airplane Flight Manuals (AFM), Boeing Documents D6T11320 and D6T11321, include performance adjustments that affect takeoff V1 speeds, field-length-limited and obstacle-limited weights for takeoff, and landing field length. The FAA considers these performance adjustments necessary to maintain the minimum takeoff and landing safety requirements of Federal Aviation Regulations (FAR) Part 25. This notice proposes to amend the Model 767-200 AFM's to require, by incorporation of certain revisions, the correct Performance Operating Weights, as defined in the limitations section, page 2, of the AFM; or incorporation of the simplified and conservative performance adjustments that have been issued by Boeing and coordinated with the FAA.

Incidentally, Boeing is supplying a correction constant to accelerate-stop distance which can be implemented into airport analyses computer programs for carriers which make use of computer table presentations of AFM performance data.

It is estimated that 4 U.S. operators and approximately 66 airplanes of U.S. registry would be affected by this AD. The proposed change to the AFM's would require considerable administrative time by operators to incorporate the changes into their airport analyses and other dispatch and operations related manuals. The cost to each operator would be essentially independent of the number of Model 767–200 airplanes in his fleet, but would be dependent upon the number of runways systemwide. Assuming an average of 240 manhours per operator to implement these changes, by modification to existing presentations, plus the administrative and computer costs to generate and/or incorporate completely new performance formats, it is estimated that the total cost of compliance with this AD for U.S. operators would be $50,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have an economic impact on a substantial number of small entities because no Boeing Model 767–200 airplanes are operated by domestic small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 767–200 airplanes equipped with Bendix brakes, Part Numbers 2607092–1 and –2, certificated in any category. To preclude possible runway overshoot during certain runway-limited takeoffs or landings, due to erroneous braking performance information in the Airplane Flight Manual (AFM), accomplish either paragraph A. or B., below, within 30 days after the effective date of this AD, unless already accomplished:

A. Amend the applicable FAA-approved AFM's, Boeing Documents D6T11320 and D6T11321, to include the information contained in subject FAA-approved revisions below: D6T11320.222, Revision 13; D6T11320.231, Revision 13; D6T11321.223, Revision 16; D6T11321.232, Revision 16; Revision 2 to Appendix 8F to D6T11321; or

B. Amend the applicable FAA-approved AFM's, Boeing Documents D6T11320 and D6T11321, by incorporating the following performance adjustments:

1. Takeoff Speeds—Pre-correction (original) V1 speeds are reduced by two (2) knots for gross weights of 280,000 lbs. and greater, and by one (1) knot for gross weights below 280,000 lbs.

2. Takeoff Performance—Limited Weights—Pre-correction Field Length Limits weights are reduced by:

Field length limited weight 1,000 lbs.	Weight decrement (lbs.) for flap position shown			
	1	5	15	20
380 and above	4,900	4,900	4,400	4,500
360	4,600	4,700	4,400	4,300
340	4,300	4,500	4,300	4,000
320	4,000	4,100	4,000	3,600
300	3,600	3,500	2,600	2,500
280	2,800	2,100	1,300	1,300
260	1,200	1,100	1,200	1,200
240 and below	1,000	1,100	1,200	1,200

To determine corrected runway length (as in obatacle clearance calculations), increase gross weight by the above amounts before entering the Field Length Limits chart.

3. Landing Field Length Limits—For gross weights above 280,000 lbs., landing field length required is increased by 900 feet over the pre-correction value. For gross weights of 280,000 lbs. and below, the landing field length required is increased by 350 feet over the pre-correction value.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Issued in Seattle, Washington, on August 26, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–19661 Filed 9–2–86; 8:45 a.m.]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–144–AD]

Airworthiness Directives; Short Brothers PLC Model SD3–30 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require sealing the fuselage top skin on certain Short Brothers PLC Model SD3–30 series airplanes. This action is needed to prevent fuel leaks, should they occur in certain areas, from entering the main fuselage cabin.

DATES: Comments must be received no later than October 27, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–144–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA,

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Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-144-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which exists on certain Short Brothers Model SD3-30 series airplanes. An incident has been reported of a fuel failure with the potential for fuel entering into the main cabin. Short Brothers PLC has issued Service Bulletin SD330-53-58, dated January 1986, which describes the application of a sealant to certain areas of the fuselage top skin to prevent fuel from entering into the main cabin. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification in accordance with the previously mentioned service bulletin.

It is estimated that 68 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $81,600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,200). A final evaluation has been prepared for this regulation and placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD30-30 airplanes, Serial Numbers SH3002 through SH3116 inclusive, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished:

A. To prevent fuel entering into the main cabin, seal certain areas of the fuselage top skin in accordance with Short Brothers PLC, Service Bulletin SD330-53-58, dated January 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 26, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-19764 Filed 9-2-86; 8:45 am]

BILLING CODE 4910-13-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 515, 538, and 552

[GSAR Notice No. 5-38A]

General Services Administration Acquisition Regulation; Multiple Award Schedule Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR), that would revise section 515.804-3 to add instructions on claiming and granting exemptions to the requirement for submission of costs or pricing data in the Multiple Award Schedule (MAS) contracting process; add section 515.804-70 to provide the format of the Discount Schedule and Marketing Data (DSMD) sheets to be used in MAS solicitations; add Part 538 to provide procedures on the GSA schedule contracting process; and add section 552.238-70 to provide the text of the Price Reductions clause to be used in certain MAS solicitations and contracts. The intended effect is to incorporate the data collection requirements and contract clauses that apply to the MAS program into the regulation to conform to the Federal Acquisition Regulation (FAR) system.

DATE: Comments are due in writing on or before November 3, 1986.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW, Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McAndrew, Office of GSA Acquisition Policy and Regulations (VP), (202) 566-1224.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1985, and December 10, 1985, the General Services Administration (GSA) published in the **Federal Register** (50 FR 11910 and 51 50502) for public comment proposed clarifications and revisions to its Multiple Award Schedule Policy Statement of October 1, 1983, (47 FR 50242, November 5, 1982). In conjunction with the March 1985 proposal, GSA requested approval from the Office of Management and Budget (OMB) of information collection requirements in the proposed policy statement. In response to the GSA request, OMB stated that certain material in the Policy Statement was suitable for implementation in the GSAR under the FAR system. Specifically, OMB recommended that the Discount Schedule and Marketing Data (DSMD) sheets, the Price Reductions clause, and the Economic Price Adjustment (EPA) clause be included in the GSAR. Accordingly, GSA has developed this proposed change to the GSAR which will incorporate the DSMD sheets and the Price Reductions clause. Comments received on the proposed revisions to the MAS Policy Statement pertaining to these matters as a result of the March and December 1985 **Federal Register** notices have been reviewed, reconciled

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and incorporated, when appropriate, in this proposal. GSAR Change 18, issued on October 18, 1985, incorporated the EPA clause into the regulation.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). Therefore, no regulatory flexibility analysis has been prepared. The proposed GSAR incorporates and clarifies the data requirements on the Discount Schedule and Marketing Data (DSMD) sheets previously prescribed in the MAS policy statement that became effective in October 1982. It does not materially change the current MAS policy on the use of the DSMD sheets in MAS procurements. Since the issuance of the MAS policy statement, prospective MAS contractors have been required to provide certain data when responding to MAS solicitations. The proposed clarifications were deemed necessary after reviewing the implementation of the MAS policies in the contracting process. The clarifications in the proposed GSAR are designed to provide prospective MAS contractors with a better understanding of the data to be submitted on the DSMD sheets. Further, the proposed GSAR also prescribes a revised Price Reductions clause for use in MAS contracts. The revised clause alleviates the administrative burden on MAS contractors by reducing the reporting requirement under the clause. The information collection requirements in the proposed rule have been submitted to OMB for approval under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 515, 538, and 552

Government procurement.

The Proposed Amendment

Accordingly, GSA proposes to amend Parts 515, 538, and 552 of the General Services Administration Acquisition Regulation (48 CFR Parts 515, 538, and 552) as follows:

1. The authority citation for 48 CFR Parts 515 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 515—[AMENDED]

2. Section 515.804–3 is revised to read as follows:

515.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) *Claiming and granting exemption—Multiple Award Schedules (MAS).*

(1) MAS solicitations (except Teleprocessing Services Program (TSP) schedule solicitations) must require offerors to submit data with their initial proposals on sales, discount and marketing practices as specified in the Discount Schedule and Marketing Data (DSMD) sheets. Subsequent to the initial submission of data, offerors are required to update the discount and marketing data if the event that changes occur prior to the conclusion of negotiations, and provide such additional information as may be requested by the contracting officer during MAS negotiations. The required discount and marketing data includes business activity and transactions over the MAS maximum order limitation (MOL). Sales data submitted with initial proposals need not be updated during MAS negotiations unless inadvertent errors are discovered in the data initially submitted, changes in sales data occur which affect the commerciality of the products or services being offered to the Government, or an update is specifically requested by the contracting officer.

(2) Pursuant to FAR 15.804–3(e)(2), the Discount Schedule and Marketing Data (DSMD) sheets at GSAR 515.804–70 should be used in lieu of the SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data. Each MAS solicitation (except TSP schedule solicitation) must include DSMD sheets to be completed for each special item number in the solicitation and submitted as a part of the offeror's proposal.

(i) The required information will be used to determine whether to grant an exemption under FAR 15.804–3(c), to analyze the offeror's proposal, to establish the Government's negotiation objective, and to determine the reasonableness of the prices.

(ii) The DSMD sheets do not require the submission of sales, discount or marketing data relating to the Congress of the United States, including any of its offices or instrumentalities. Further, for IRMS MAS solicitations, the DSMD sheets do not require the submission of discount and marketing data relating to contracts with Federal agencies. However, discount and marketing data relating to other Federal agencies may be required by IRMS contracting officers on a case-by-case basis. While such data relating to contracts with Federal agencies may be required and used in MAS negotiations, Federal agencies will not be used as the basis of a MAS award.

(iii) The sales data in the DSMD will be submitted for the most recent 12-month period specified by the offeror in Paragraph 9 of the DSMD sheets. Paragraph 9(b) of the DSMD sheets only requires sales data for a representative sample of the offeror's largest dollar sales volume items sold to the Government under the MAS contract(s) or, for an offeror with no current or recent MAS contract, estimated to be sold to the Government under a MAS contract that claimed to be commercial by the offeror in accordance with FAR 15.804–3(c) and 15.804–3(f). The contracting officer will determine the number of items in the sample for which sales information must be furnished. Paragraph 9(c) of the DSMD requires the submission of sales data by the offeror for each item that does not meet the tests of commerciality in the Federal Acquisition Regulation (FAR).

(iv) A deviation has been obtained from the $25,000 threshold in FAR 15.804–3(e) for MAS in order to use the $100,000 threshold in the DSMD sheets. However, contracting officers are not precluded from requiring sales information on items whose annual sales are between $25,000 and $100,000 if the circumstances of a particular procurement action warrant.

(v) Offerors will certify, at the time their initial proposals are submitted, that sales, discount and marketing data included with those proposals is accurate, complete and current as of the date the proposal is submitted. At the conclusion of negotiations, offerors will certify that any additional information provided to the Government during the negotiation process is accurate, complete, and current.

(vi) Failure to submit sales, discount and marketing data specified in the DSMD sheets, furnish data requested by the contracting officer during negotiations or certify the accuracy, completeness or currency of any data submitted may result in no award. It, subsequent to award, the data submitted is found not to be accurate, complete and current, the Government will pursue its rights under the Defective Pricing clause and may consider cancelling the contract if it is still in effect. Additional remedial actions or sanctions may also be considered.

(b) *Waiver of exceptional cases.*

(1) Pursuant to FAR 15.804–3(i), the head of the contracting activity, as defined in GSAR 502.1, is authorized to

waive the statutory requirement for the submission of certified cost or pricing data.

(2) Requests for waiver will be submitted by the contracting director to the head of the contracting activity. Before submitting a waiver request, action will be taken at levels above the contracting officer to negotiate for the submission of the required cost or pricing data, or a formal determination made by the contracting director documenting the contract file with the reasons for not undertaking such higher level negotiations.

(3) The request for waiver will include a draft determination and finding that addresses (i) pertinent circumstances of the procurement necessitating the waiver of the requirement for certified cost or pricing data, (ii) the price analysis techniques to be used if the award cannot be foregone, (iii) the steps taken by higher authority to obtain the essential cost or pricing data; and (iv) the practicability of obtaining the Government's requirements from other sources.

3. Section 515.804–70 is added to read as follows:

515.804–70 Format of Discount Schedule and Marketing Data (DSMD) sheets.

As prescribed in GSAR 515.804–3(a), the contracting officer shall insert the following format for collecting the Discount Schedule and Marketing Data in MAS solicitations:

Discount Schedule and Marketing Data

Solicitation No.— ———————
Name of Offeror— ———————
GSA Special Item No.———————

Instructions to Offerors

Discount and sales information must be completed for each GSA Special Item Number (SIN) for which an offer is submitted. If discount information is the same for all products under each SIN, SINs may be combined. However, separate sales information required under paragraph 9 must be provided for each SIN.

Information required by each space *must* be furnished. If not applicable, indicate by "N/A". Information furnished relating to discounts, allowances and sales information will be treated as "CONFIDENTIAL" by the Government except for final price and discounts awarded by the Government. Submission of data fulfills the requirement of FAR 15.804–3(e) and eliminates the need for offerors to submit a Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data. *Failure to provide accurate, complete and current data as required may result in no award being made or may subject the contractor to liability for refunds pursuant to the defective pricing provisions of this contract.*

1. *Identification of a Price List as the Basis for This Offer* (check and attach ——— copies of the dated price list).

(a)——— Manufacturer's catalog/pricelist——— (indicate type).
(b)——— Dealer's catalog/pricelist.
(c)——— Retailer's catalog/pricelist.
(d)——— Other (specify)———.

2. *Identification of Items Offered.* How many model/type of catalog items do you offer under this GSA Special Item Number——— (enter number).

Discount and Sales Information

3. *Discounts.* The following concessions are offered to the Government for delivery FOB destination. In IRMS solicitations, list also concessions to the Government for delivery FOB origin.

(a) *Regular Discounts.*

Discount offered on the above GSA Special Item Number is ———% from pricelist dated ———, *plus* prompt payment discount, as stated on the first page of this solicitation (additional details may be entered below or attached). If discounts vary, show discounts on pricelist.

(b) *Quantity Discounts.*

(1) List any quantity discounts included in this offer.

(2) Can models/products be combined to obtain quantity discounts? Yes —— No——. If yes, provide details.

4. *Aggregate or End of Contract Additional Discounts.* An additional discount of ——— percent is offered to the Government which will be applied to the actual aggregate sales in excess of the following base figure under this contract:

(a) For current MAS contractors, aggregate sales (annualized) to the Government for most recent 12-month period under similar contract(s) is $———, based on sales during the period ——— to ———.

5. *Discount and Concessions.*

(a) List below the best discount and other concessions resulting in the lowest net price (regardless of quantity and terms and conditions) on sales other than sales under the GSA schedule from *pricelist* for the same or similar products or services offered to the Government under this solicitation. NOTE: Where the best (lowest) net price offered was based on other than a discount from a pricelist or was based on a discount from a pricelist other than the pricelist used as the basis of the offer to the Government under this solicitation, the lowest net price granted shall be translated into a discount from the pricelist and used as the basis of the offer to the Government under this solicitation. The discounts shown below should reflect the lowest net prices granted to any customer under any circumstances. (Show percentages and delivery terms).

	Percent (pct) of gross sales	Regular discounts (pct)	Quantity discounts (pct)	Aggregate discounts	Commissions to other than employees (pct)	Prompt payment	F.o.b. point	Other discounts concession
(1) To dealers/retailers								
(2) To distributors/wholesalers								
(3) To educational institutions								
(4) To state, county, city, and local governments								
(5) To original equipment manufacturers (OEM)								
(6) To others (specify); e.g., nat'l accts., sales agreements, Federal agencies (except in IRMS solicitations)								
(7) If a dealer, indicate discount received from mfg's pricelist								

Discount and Sales Information

(b) Do you offer, for any customer of any class within the MOL or outside of the MOL, other discounts and/or concessions including but not limited to the following, regardless of price list, which result in lower net prices than those offered the Government in this offer?

Yes ——— No ——— rebates of any kind, including year-end or end-of-contract discounts?

Yes ——— No ——— multiple quantity unit pricing plan?

Yes ——— No ——— cumulative discounts of any type which cover items being offered?

Yes ——— No ——— products (models)/services that may be combined for maximun discounts?

Yes ——— No ——— other (specify).

If answer to any of the above is "Yes", provide detailed explanation including the value expressed as a percentage of the list price and the manner in which the value of the discount/concession was calculated.

6. *Identical Products Information.*

(a) Are any of the models/products offered herein sold by the offeror under a different trade name(s)? Yes ———, No ———. If "Yes", explain and provide applicable price lists.

(b) To your knowledge, are there identical products offered herein contained in any other GSA Schedule contract? Yes ———, No ———. If "Yes, identify the product, schedule and contract.

7. *Allowances:* Do you offer any of the following allowances to any customer?

(a) ——— Trade-in allowances?

(b) ——— Return/Exchange goods policy?

(c) ——— Reduced prices on samples, demonstrator models, reconditioned items or floor models?

(d) ——— Do you give any allowances not mentioned above?

If the answer to any of the above is "yes," provide a detailed explanation of the allowance and identify the customer or category of customer to whom the allowance is offered.

8. *Blanket Purchase Agreements* (this section only applies to Federal Supply Service (FSS) solicitations).

Estimate the percentage of your sales made to the U.S. Government under Federal Supply Schedule Blanket Purchase Agreements. ——— Percent.

List agencies below:

1.———
2.———
3.———
4.———

9. *Sales Data.*

(a) This section requires (1) that sales information be provided to enable the contracting officer to determine that the items offered under this solicitation meet the tests of commerciality in (FAR 15.804–3(c)); and, (2) that pricing data is furnished in sufficient detail to enable the contracting officer to perform a price analysis in accordance with FAR 15.804–3(h).

(b) The offeror certifies that, except for individual models/types or catalog numbers cited in paragraph (c) below, all other models/types or catalog numbers offered to the Government under this solicitation meet the tests of commerciality in FAR 15.804–3(c) and the criterion prescribed in FAR 15.804–3(f). Of the individual models/types or catalog numbers so certified, sales information for the most recent 12-month period, as designaged by the offeror, must be provided in the table below for each of the ——— models/types or catalog numbers with the largest actual dollar sales volume under the offerors' MAS contract(s). Offerors who do not have, or have not recently had, a MAS contract shall provide actual sales information for the most recent 12-month period, as designated by the offeror, on the models/types or catalog numbers estimated to have the largest dollar volume sales against any contract resulting from this solicitation. The sales information provided is for the prior 12 months, from —— too——— for this special item number.

(1) Total annual sales to the Government under this special item number $———.

(2) Total annual sales to all entities (excluding sales included in #1 above) under this special item number $———.

1	2		3	4		5	6		7		8
	Total annual sales to Fed. Govt.		Total annual sales to non-Government customers at catalog price (Includes such sales at catalog list price less established or published discounts)	Total annual sales to non-Government customers at other than catalog price		Total annual sales: Columns 2, 3, and 4	Provide information below for largest discount granted to any customer. (For IRMS, see note 4 below)		List the lowest price at which the item was sold for comparable sales/quantities shown in col. 2 to any customer during the past year (for IRMS, see note 4 below)		Is the discount in column number 6 greater than your current offer under this solicitation? Yes—— No——. If yes, provide complete documentation and rationale of the difference. Merely submitting copies of documents such as terms and conditions of commercial contracts, commercial warranties, etc., will not be adequate to justify the difference
Model/ type or catalog No.	$	% of col. 5		$	% of total of col. 3 plus col. 4, if more than 25%		Qty	Discount	Qty	Price	

(c) Sales information in the table below shall be provided for each individual model/type or catalog number in the above special item number that is not certified commercial when experienced annual Government sales are $300,000 or more.

1	2		3	4		5	6		7		8
Model/ type or catalog No.	Total annual sales to Fed. Govt.		Total annual sales to non-Government customers at catalog price (includes such sales at catalog list price less establ-ished or published discounts)	Total annual sales to non-Government customers at other than catalog price		Total annual sales: Columns 2, 3, and 4	Provide information below for largest discount granted to any customer. (For IRMS, see note 4 below)		List the lowest price at which the item was sold for comparable sales/quantities shown in col. 2 to any customer during the past year (for IRMS, see note 4 below)		Is the discount in column number 6 greater than your current offer under this solicitation? Yes—— No——. If yes, provide complete documentation and rationale of the difference. Merely submitting copies of documents such as terms and conditions of commercial contracts, commercial warranties, etc., will not be adequate to justify the difference
	$	% of col. 5		$	% of total of col. 3 plus col. 4, if more than 25%		Qty	Discount	Qty	Price	

Note:
1. Federal Government sales include all sales to U.S. Government and its instrumentalities and for U.S. Government use, sales directly to U.S. Government prime contractors and to their subcontractors or suppliers at any tier, for use as an end item or as part of an end item, by the U.S. Government.
2. Non-Government customer is defined as other than Government or affiliates (include sales to distributors, dealers, OEM, national accounts, educational institutions, state, etc.).
3. Discounts are reductions to catalog or market prices (published or unpublished) applicable to any customer, including OEMs, dealers, distributors, national accounts, states, etc.; and any other form of price reduction such as concessions, rebates, quantity discounts, allowances, services.
4. In Information Resources Management Service solicitations, columns 5 and 7 do not include data relating to other Federal contracts.

4. Part 538 is added to read as follows:

PART 538—GSA SCHEDULE CONTRACTING

Sec.
538.000 Scope of part.

Subpart 538.2—Establishing and Administering Schedules

538.203 Solicitation preparation.
538.203–70 Submission of discount schedule and marketing data.
538.203–71 Price Reductions Clause.

Authority: 40 U.S.C. 486(c).

538.000 Scope of part.

Except for the Information Resources Management Service (IRMS), schedules awarded under the Teleprocessing Service Program (TSP) and unless otherwise stated, the policies and procedures in this part are prescribed for contracting for supplies and services by the Federal Supply Service (FSS) and the Information Resources Management Service (IRMS) under their respective schedule programs.

Subpart 538.2—Establishing and Administering Schedules

538.203 Solicitation preparation.

538.203–70 Submission of discount schedule and marketing data.

Multiple award schedule (MAS) solicitations require the submission of sales, discount and marketing data as prescribed in GSAR 515.804–3(a). The contracting officer shall insert the Discount Schedule and Marketing Data sheets at GSAR 515.804–70 in MAS solicitations.

538.203–71 Price Reductions clause.

(a) The contracting officer shall insert the clause at GSAR 552.238–70, Price Reductions, in multiple award schedule (MAS) solicitations and contracts (except Teleprocessing Services Program (TSP) schedules) for supplies and services.

(b) This clause is intended to maintain the relationship that is established at the time of award between the Government and the offeror's customer(s) upon which the MAS contract is predicated.

(c) At the conclusion of negotiations, the contracting officer and the offeror will identify the customer, category of customers, or customer(s) within the identified category upon which the MAS contract is predicated. In this regard, neither Federal agencies nor the Congress of the United States, including its officers or instrumentalities, shall be identified as the basis of a MAS contract for purposes of the price reductions clause.

Note: This does not effect the provisions in the clause concerning price reductions to Federal agencies.

(d) After the conclusion of negotiations, any changes in pricing (including prices, discounts or terms and conditions) by the contractor that result in a less advantageous relationship between the Government and the customer, category of customers or customer(s) within the identified category upon which the MAS contract is predicated will result in a price reduction to the Government to the extent necessary to retain the original relationship.

5. Section 552.238–70 is added to read as follows:

552.238–70 Price Reductions Multiple Award Schedules

As prescribed in GSAR 538.203–71, insert the following caluse:

Price Reductions—Multiple Award Schedules (June 1986)

(a) *General.* This Price Reductions clause is intended to ensure that throughout the term of the contract, the Government shall maintain its relative position to include price, discount, and terms and conditions, in relation to that of the Contractor's customer, category of customers, or customer(s) within the identified category upon which this contract award is predicated. The customer, category of customers, or customer(s) within the identified category upon which the contract award is predicated will be identified at the conclusion of negotiations. Price reduction means reducing prices, increasing discounts, or giving more favorable terms and conditions after the conclusion of negotiations to the customer, category of customers, or customer(s) within the identified category upon which the contract is predicated.

(b) *Reductions to Customers Other than Federal Agencies.*

(1) At the conclusion of negotiations, the Contracting Officer and the offeror shall reach an agreement as to the relationship between the Government and the offeror's identified customer, category of customers, or customer(s) within the identified category upon which the contract award is predicated. This relationship shall be maintained throughout the contract period. Any change in the Contractor's arrangement for the identified customer, category of customers, or customer(s) within the identified category which disturbs this relationship will constitute a price reduction.

(2) After the conclusion of negotiations, and for the duration of the contract period, the Contractor shall report all price reductions to that customer, category of customers, or customer(s) within the identified category upon which the award is predicated. The report shall include an explanation of the conditions under which the reductions were made. Those price reductions to a customer, category of customers, or customer(s) within the identified category not identified, pursuant to paragraph (b)(1) above, will not be subject to the provisions of the clause and will not be required to be reported. The Contracting Officer will determine whether the price reductions have disturbed the relationship between the Government and the identified customer, category of customers, or customer(s) within the identified category.

(3) If, after the date of the conclusion of negotiations, the Contractor (i) reduces the prices contained in the commercial catalog, pricelist, schedule, or other documents or grants any more favorable terms and conditions offered by the Contractor and used by the Government to establish the prices in the contract; or (ii) reduces the prices, increases discounts or changes terms and conditions of sales to the identified customer, category of customers, or customer(s) within the identified category upon which the award was predicated so as to distrub the relationship of the Government to the identified customer, category of customers, or customer(s) upon which the award was predicated, a price reduction shall apply to this contract for the remainder of the contract period, or until a further price reduction occurs, or, in the case of temporary price reductions, for the duration of any temporary price reduction period as agreed to by the Contracting Officer and the Contractor.

(4) The Government will not be due a price reduction under this clause in the event the Contractor enters into a firm fixed price definite quantity contract with a specific delivery in excess of the maximum order limitation specified in the contract or on the Contractor's sealed bid, single award contracts with state or local governments, or the District of Columbia. Price reductions of this type shall be reported under the circumstances described in paragraph (b)(2) above.

(5) The Contracting Officer may exempt from the application of this clause any sale at a price below the contract price if caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor immediately following the discovery of the error.

(c) *Reductions to Federal Agencies.* (This paragraph does not apply to Non-Schedule ADP/Communications/Teleprocessing Service contracts entered into with Federal agencies or to Federal Supply Service optional use schedule contracts for maintenance and repair of equipment.)

Except for temporary "Government-only" price reductions described below, if, after the conclusion of negotiations, the Contractor gives a price reduction on any contract item to any Federal agency and the sale falls within the contract maximum order limitation, such price reduction shall apply to all subsequent sales of the contract item to Federal agencies for the duration of the contract period or until a further price reduction is granted. The Contractor may offer to the Contracting Officer a temporary "Government-only" price reduction which has a duration of 30 calendar days or more, except during the last month of the contract period when any such offer must be for the remainder of the contract period.

(d) *Effective Dates and Notifications.* (This paragraph does not apply to Non-Schedule ADP/Communications/Teleprocessing Service Contracts entered into with Federal agencies or to the Federal Supply Service optional use schedule contracts for maintenance and repair of equipment.)

(1) Any price reduction pursuant to paragraph (b) above, shall be effective for the Government at the same time as the acceptance of the order by the Contractor from another customer.

(2) Any price reduction pursuant to paragraph (c) above shall be effective at the same time as the acceptance of the initial order from the Federal agency (Government) under the price reduction except a temporary "Government-only" price reduction, which shall be effective at the beginning of any temporary price reduction period as agreed to by the Contracting Officer and the Contractor. The effective date of any temporary price reduction due the Government under this clause will allow sufficient time for the notification of Federal agencies of the applicable price reduction prior to the beginning of the Government's temporary price reduction period.

(3) The amount of time allowed for notification of Federal agencies and the duration of the Government's temporary price reduction period will be commensurate with that provided by the Contractor to the customer, category of customers, or customer(s) within the identified category who received the temporary price reduction due the Government under the clause.

(4) Except for temporary "Government-only" price reduction notifications in paragraph (c) above, the Contractor shall notify the Contracting Officer and the Federal agencies in writing of any price reduction, pursuant to paragraphs (b) and (c) above, at the same time notice is given to the Contractor's customer of the price reduction. Price reductions of this type shall be reported under the circumstances described in paragraph (b)(2) above.

(5) Failure to give timely notice of any price reduction pursuant to paragraphs (b) and (c) above, shall require that such price reduction (including temporary price reductions) apply to the contract for the duration of the contract period, or until further price reduction is granted, and may constitute a basis for termination of the contract as provided in the Default clause of this contract.

(6) The Contractor shall invoice at such reduced price and indicate thereon that the price reduction is pursuant to this Price Reductions clause until such time as this contract is modified.

(e) *Contractor's Statement of Price Reductions.* (This paragraph does not apply to Non-Schedule ADP/Communications/Teleprocessing Service Contracts entered into with Federal agencies or to the Federal Supply Service optional use schedule contracts for maintenance and repair of equipment.)

The Contractor shall furnish, within 30 calendar days after the end of the contract period, a statement certifying either (1) that there were no applicable price reductions; or (2) that all applicable price reductions were reported to the Contracting Officer and that such price reductions were passed on to the Federal agencies.

(End of Clause)

Date: August 12, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86-19778 Filed 9-2-86; 8:45 am]

BILLING CODE 6820-61-M

Notices

Federal Register
Vol. 51, No. 170
Wednesday, September 3, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on September 24, 1986, 10:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meeting to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: August 28, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–19837 Filed 9–2–86; 8:45 am]

BILLING CODE 3510–DR–M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on October 2, 1986, at 1:30 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW, Washington, DC. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry.)

General Session: 1:30 p.m. Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: August 28, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–19838 Filed 9–2–86; 8:45 am]

BILLING CODE 3510–DR–M

[A–211–601]

Operators for Jalousie and Awning Windows From El Salvador; Preliminary Determination of Sales at Less Than Fair Value.

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that operators for jalousie and awning windows from El Salvador are being, or are likely to be, sold in the United States at less than fair value, and will notify the U.S. International Trade Commission [ITC] of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of operators for jalousie and awning windows from El Salvador that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 10, 1986.

EFFECTIVE DATE: September 3, 1986.

FOR FURTHER INFORMATION CONTACT: Gregory G. Borden (202–377–3003) or Mary S. Clapp (202–377–1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

We have preliminarily determined that operators for jalousie and awning windows from El Salvador are being, or are likely to be, sold in the United States at less than fair value as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). The dumping margin preliminarily found for the one company investigated is 30.69 percent *ad valorem*. We have also determined that critical circumstances do not exist.

Case History

On March 19, 1986, we received a petition in proper form filed by the Anderson Corporation and the Caribbean Die Casting Corporation, in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subject merchandise from El Salvador are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry. The petition also alleged that "critical circumstances" exist with respect to imports of the merchandise.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 8, 1986 (51 FR 13039, April 17, 1986), and notified the ITC of our action.

On May 8, 1986, the ITC found that there is a reasonable indication that imports of operators for jalousie and awning windows from El Salvador are materially injuring a U.S. industry (U.S. ITC Pub. No. 1843, Ma 1986).

We presented a questionnaire to Industrias Metalicas, S.A. (IMSA) on April 18, 1986, since we had information indicating that they accounted for virtually all of the exports to the United States during the period of investigation, October 1, 1985 to March 31, 1986. A response was received from IMSA on May 21, 1986. We verified the response at the company's offices in El Salvador from July 16, to July 18, 1986.

Scope of Investigation

The products covered by this investigation are operators for jalousie and awning windows, which are currently provided for under item 647.0365 of the *Tariff Schedules of the United States Annotated.*

Fair Value Comparisons

To determine whether sales of the subject merchandise by IMSA in the United States were made at less than fair value, we compared the United States price with the foreign market value as specified below.

United States Price

As provided for in section 772(b) of the Act, for sales by IMSA, we based United States price on purchase price because the operators for jalousie and awning windows were sold to unrelated purchasers in the United States prior to importation. We made a deduction from ex-factory, insured prices for marine insurance.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for IMSA on sales in the home market. We made deductions from delivered prices for a stamp tax, inland freight, and inland insurance. We made an adjustment for differences in credit terms between the respective markets, in accordance with § 353.15 of our regulations. We deducted home market packing and added U.S. packing.

Currency Conversion

We made currency conversions from El Salvadoran colones to U.S. dollars in accordance with § 353.56(a) of our regulations. Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for El Salvador. Therefore, we used monthly exchange rates published by Bank of America, London, as best information available. We have requested the Federal Reserve Bank to certify the exchange rates for El Salvador for the period of investigation. We intend to use certified rates for our final determination.

Preliminary Negative Determination of Critical Circumstances

The petitioners allege that "critical circumstances" exist within the meaning of section 733(e)(1) of the Act, with respect to imports of operators for jalousie and awning windows from El Salvador. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigations; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonable trends; and (3) the share of domestic consumption accounted for by the imports.

To determine whether imports have been massive over a relatively short period, we analyzed recent trade statistics on import levels for this merchandise for equal periods immediately preceding and following the filing of the petition. While there was an increase in imports for the second quarter over those for the first quarter of 1986, the monthly imports for the second quarter of 1986 were less than half the monthly imports for 1985. Even though there was an increase in second quarter 1986 imports, those imports represent an overall decline in imports since the beginning of 1985. It appears that with respect to recent history, the first quarter of 1986 imports (the period immediately preceding the filing of the petition) represents an unusually low shipment rate. Based on this analysis, we find that there is no reasonable basis to believe that imports of the subject merchandise have been massive over a short period.

Since we do not find there have been massive imports, we do not need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of operators for jalousie and awning windows from El Salvador.

Verification

Although verification is required in section 776(a) of the Act for final determinations, we were able to verify all company information used in making this preliminary determination. We were granted access to the books and records of the company involved. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entires of operators for jalousie and awning windows from El Salvador that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register.

The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price shown in the table below. This suspension of liquidation will remain in effect unit further notice.

Manufacturer/Producer/Exporter	Weighted average ad valorem margin percentage
Industrias metalicas, S.A.	39.69
All others	39.69

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the

ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), we will hold a public hearing, if one is requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on Septermber 26, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC, 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) The number of participants; (3) The reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 19, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46 within 30 days of this notice's publication, at the above address and in an least 10 copies.

This notice is published in accordance with section 733(f) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

August 26, 1986.

[FR Doc. 86-19840 File 9-2-86 86:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Reserves

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Virgin Islands, Alabama, and Wisconsin Coastal Management Programs and the Chesapeake Bay Interstate Grant to Pennsylvania, Maryland and Virginia. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)-(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673-5104).

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: August 25, 1986.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-19780 Filed 9-2-86; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management Programs; Intent To Evaluate Performance

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Washington Coastal Management Program (CMP); California CMP; Connecticut CMP; California's Tijuana River National Estuarine Research Reserve (NERR); Florida's Rookery Bay NERR; Washington's Padilla Bay NERR; and Puerto Rico's Jobos Bay NERR; through December 31, 1986. The reviews of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. The reviews of National Estuarine Research Reserves are conducted pursuant to section 315(f) of the CZMA, as amended by Pub. L. 99-272, which requires the Secretary of Commerce to evaluate periodically the operation and management of each Reserve, including education and interpretive activities, and the research being conducted within the reserve. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of those programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673-5104).

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: August 25, 1986.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-19779 Filed 9-2-86; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Application for Permit; Ringling Bros.-Barnum & Bailey Circus

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Ringling Bros.-Barnum & Bailey Circus (P384).

b. Address: Executive Offices, 3201 New Mexico Avenue, NW., Washington, DC 20016.

2. Type of Permit: Public Display/Import.

3. Name and Number of Marine Mammals: South American (Patagonian) sea lions 4 (Otaria flavescens).

4. Type of Activity: Captive bred South American sea lions will imported from Great Britain for captive maintenance in a treveling entertainment show.

5. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or request for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue, NW., Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, 70 West 9th Street, Federal Bldg., Juneau, Alaska 99802; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: August 25, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–19839 Filed 9–2–86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to:

Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Health and Human Services

SN 6–888,058 Date Filed: 07/22/86
Single-Stranded Self Hybridizing Nucleic Acid Probe

SN 6–888,059 Date Filed: 07/22/86
IgE Fc Directed Delivery System

SN 6–889,501 Date Filed: 07/25/86
Water Soluble Derivatives of Fredericamycin A

SN 6–889,502 Date Filed: 07/25/86
Screening for Tay-Sachs Disease with Cloned DNA for Beta-Hexosaminidase

SN 6–889,621 Date Filed: 07/28/86
Fermentation Level Cultivation of Bordetella Pertussis

SN 6–890,510 Date Filed: 07/30/86
Deletion Mutants and Monoclonal Antibodies Against RAS Proteins

[FR Doc. 86–19810 Filed 9–2–86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limits for Certain Man-Made Fiber Luggage Produced or Manufactured in the People's Republic of China

August 28, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 3, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 26, 1985, as amended, a notice was published in the Federal Register (50 FR 52824) which established an import restraint limit of 14,042,805 pounds for man-made fiber luggage in Category 670 pt. (only T.S.U.S.A. numbers 706.3420, 706.4144 and 706.4152, which were changed to 706.3415, 706.4130 and 706.4135), produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on September 3, 1985 and extends through September 2, 1986. This limit has been filled.

The Committee for the Implementation of Textile Agreements, in order to prevent market disruption, has decided, in the case of imports in Category 670 pt., exported from the People's Republic of China on and after September 3, 1985 and extending through September 2, 1985, to direct Customs to permit entry in amounts not to exceed 3,000,000 pounds, during each of the thirty-day periods stipulated in the letter to the Commissioner of Customs which follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was

published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 28, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to permit, effective on September 3, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 670 pt.,[1] produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on September 3, 1985 and extends through September 2, 1986, which are in excess of the limit established for that period, in the following amount in each thirty-day period:

Amount to be entered

3,000,000 pounds

The thirty-day periods shall be as follows:

September 3—October 2, 1986
October 3—November 3, 1986
November 4—December 3, 1986
December 4—January 2, 1987
January 3—February 2, 1987

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-19816 Filed 9-2-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 670 only T.S.U.S.A. numbers 706.3415, 706.4130 and 706.4135.

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 18-19 September 1986.

Times of meeting: 0800-1700 hours.

Places: Fort Belvoir.

Agenda: The Army Science Board for the Engineer Topographic Laboratory Effectiveness Review will meet for briefings by analytic agencies and government laboratories. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 86-19767 Filed 9-2-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 18 September 1986.

Times of meeting: 0800-1700 hours.

Places: Pentagon.

Agenda: The Army Science Board Ad Hoc Subgroup on Helicopter Lift Capabilities plans to meet to develop its final report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 86-19768 Filed 9-2-86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Air Force

Anticipated Procurement of a Transportation and Travel Payment System

AGENCY: Department of the Air Force.

ACTION: Notice of Anticipated Procurement of a Transportation and Travel Payment System.

SUMMARY: The U.S. Force and Navy anticipate a requirement for a transportation and travel payment system which will provide charge cards for official travel and related travel expenses on a worldwide basis. The requirement is anticipated to be a system of two types of official charge cards: one card issued and billed directly to a named individual and the second card issued and billed directly to a federal agency.

DATE: Interested parties should contact the Washington Area Contracting Center by September 18, 1986.

ADDRESS: Washington Area Contracting Center, Bldg 3534/CNV, Andrews AFB, Washington, DC 20331-5230.

FOR FURTHER INFORMATION CONTACT: Nancy Judd, telephone (301) 981-5891. No collect calls please.

Details: The card programs will include, but not be limited to, the following provisions. The card issued to the individual will include: No card issuance or annual fee to either the individual or the federal agency; interest and late charges assessable after a specified grace period with interest chargeable from the day the grace period ends; capability to access major networks of Automated Teller Machines (ATMs); issuance at agency direction without prior credit approval; no agency liability for unpaid bills or for lost and stolen credit cards; and no pre-set expenditure limit assuming no negative payment history on an individual account. The requirement also will be for a card program that will be implemented at all Air Force and Navy installation billeting offices and open messes. The anticipated charge card business for Air Force is: 340,000 cardholders; $170 million annual individual card billings; $230 million annual Air Force agency card billings. The anticipated charge card business for Navy is: 206,000 cardholders, $70 million

annual individual card billings; $20 million annual Navy agency card billings. The card system shall have capability of a broad geographic range of merchant acceptance such as: All domestic common carriers, international common carriers, car rental agencies, lodging establishments, restaurants. Significant factors, among others, to be used in the evaluation of the proposals are: the length of the grace period, the interest rate, the discount fee for charges at Air Force and Navy on-base activities, and funds availability from charges at on-base activities. Inability to meet all criteria should not discourage interested parties from suggesting alternate approaches. This is not a Request for Proposal. Firms responding to to this synopsis may request a copy of the solicitation, if or when the United States Air Force issues the solicitation.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-19818 Filed 9-2-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Economic and Environmental Impacts Task Group; Meeting

Notice is hereby given that the Economic and Environmental Impacts Task Group will meet in September 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Economic and Environmental Impacts Task Group will evaluate the impact of the 1970's energy crises on the U.S. economics—economic growth, employment, inflation, oil and gas industry cash flow, capital investment, international trade, the financial markets (U.S. and international), real interest rates, etc. This Task Group will also analyze the potential future economic impact of the factors on issues identified by the other Task Groups.

The Economic and Environmental Impacts Task Group will hold its fifth meeting on Monday and Tuesday, September 15–16, 1986, starting at 12:30 p.m., on September 15 and 9:00 a.m. on September 16 in the Parris Room of the Four Seasons Hotel, 200 Boylston Street, Boston, Massachusetts.

The tentative agenda for the Economic and Environmental Impacts Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review the factors affecting petroleum supply and demand.
3. Discuss the group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Economic and Environmental Impacts Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Economic and Environmental Impacts Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology, Extraction and Environmental Controls, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 20, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-19806 Filed 9-2-86; 8:45 am]

BILLING CODE 6450-01-M

Albuquerque Operations Office, Solicitation for Cooperative Agreement Proposal (SCAP); Florida

AGENCY: Albuquerque Operations Office, Department of Energy.

ACTION: Notice of Solicitation for Cooperative Agreement Proposal (SCAP).

SUMMARY: The Department of Energy, Albuquerque Operations Office, announces its intention to issue a solicitation for proposal to design, fabricate, assemble, install and operate an Agricultural Commodities Irradiation Research Center in central Florida.

Scope of Project: The Department of Energy, Albuquerque Operations Office, (DOE-AL) is seeking sources that are interested in entering into a cost sharing cooperative agreement with DOE-AL for the purpose of designing, fabricating, assembling, installing and operating an agricultural commodities irradiator research center in central Florida. This effort is part of DOE's Byproduct Utilization Program. The participant selected for award of a cooperative agreement will be required to select an acquire property for the facility, provide contractual arrangements for the design, fabrication, assembly and installation of the facility, obtain and maintain facility licenses, develop and manage a research and training program, provide for a 2-3 year demonstration phase, provide operating staff, disseminate information on agricultural commodity irradiation, and report on all research activities. Background and capabilities relating to procurement, construction management, and research facility operation, agricultural commodities processing technology, particularly for commodities amenable to radiation treatment, gamma irradiation technology, and knowledge of local (central Florida) agricultural products, research needs and handling requirements will be among the criteria for selection of the participant. DOE expects to issue the SCAP on September 15, 1986. Your request to be included on the mailing list for this solicitation should be submitted by September 15, 1986 to the individual listed below.

FOR FURTHER INFORMATION CONTACT: Barbara N. Moore, U.S. Department of Energy, Albuquerque Operations Office, Contracts & Industrial Relations Division, P.O. Box 5400, Albuquerque, NM, 87115, (505) 844-4229.

Issued in Albuquerque, NM August 19, 1986.

Kent A. Campbell,

Acting Assistant Manager for Administration.

[FR Doc. 86-19802 Filed 9-2-86; 8:45 am]

BILLING CODE 6450-01-M

Albuquerque Operations Office; Solicitation for Cooperative Agreement Proposal (SCAP); Oklahoma

AGENCY: Albuquerque Operations Office, Department of Energy.

ACTION: Notice of Solicitation for Cooperative Agreement Proposal (SCAP).

SUMMARY: The Department of Energy, Albuquerque Operations Office, announces its intention to issue a solicitation for proposal to design, fabricate, assemble, install and operate an Agricultural Commodities Irradiation Research Center in southeastern Oklahoma.

Cooperative Agreement Number: DE-SC04-86AL39692.

Scope of Project: The Department of Energy, Albuquerque Operations Office, (DOE-AL) is seeking sources that are interested in entering into a cost sharing cooperative agreement with DOE-AL for

the purpose of designing, fabricating, assembling, installing and operating an agricultural commodities irradiator research center in southeastern Oklahoma. This effort is part of DOE's Byproduct Utilization Program. The participant selected for award of a cooperative agreement will be required to select and acquire property for the facility, provide contractual arrangements for the design, fabrication, installation and assembly of the facility, obtain and maintain facility licenses, develop and manage a research and training program, provide for a 2–3 year demonstration phase, provide operating staff, disseminate information on agricultural commodity irradiation, and report on all research activities. Background and capabilities relating to procurement, construction management, and research facility operation, agricultural commodities processing technology, particularly for commodities amenable to radiation treatment, gamma irradiation technology, and knowledge of local (southeastern Oklahoma) agricultural products, research needs and handling requirements will be among the criteria for selection of the participant. DOE expects to issue the SCAP on September 5, 1986. Your request to be included on the mailing list for Solicitation DE–SC04–86AL39692 should be submitted by September 5, 1986 to the individual listed below.

FOR FURTHER INFORMATION CONTACT: Barbara N. Moore, U.S. Department of Energy, Albuquerque Operations Office, Contracts & Industrial Relations Division, P.O. Box 5400, Albuquerque, NM 87115, (505) 844–4229.

Issued at Albuquerque, NM, August 19, 1986.

Kent A. Campbell,

Acting Assistant Manager for Administration.

[FR Doc. 86–19803 Filed 9–2–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Remedial Order; Pennzoil Co.

AGENCY: Economic Regulatory Administration, U.S. Department of Energy.

ACTION: Notice of issuance of proposed remedial order to Pennzoil Company and notice of opportunity for objection.

Pursuant to 10 CFR. 205.192(c), the Economic Regulatory Administration of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Pennzoil Company (Pennzoil), 700 Milam Street, Houston, Texas 77101. This Proposed Remedial Order (PRO) charges Pennzoil with filing erroneous Refiners Monthly Reports (Form P102–M–1) for the months of September, October and December 1976, January, February, April and May 1977. Pennzoil misreported its crude oil receipts and runs to stills by excluding volumes of crude oil processed for a non-refiner. Alternatively, the PRO alleges that Pennzoil engaged in practices which resulted in the circumvention and contravention of the Entitlements Program. Pennzoil's misreporting and circumvention and contravention caused a loss to the Entitlements Program of $9,023,472, before interest. The impact was spread nationwide among all refiner participants in the Entitlements Program.

A copy of the PRO, with confidential information, if any, deleted, may be obtained from the Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the PRO. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC, on the 22d day of August 1986.

Carl A. Corrallo,

Solicitor, Economic Regulatory Administration

[FR Doc. 86–19846 Filed 9–2–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–25–NG]

Great Lakes Gas Transmission Co.; Conditional Order Amending Authorization

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Conditional Order Amending Authorization to Import and Export Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration of the Department of Energy (DOE) gives notice that it has issued a conditional order to Great Lakes Gas Transmission Company (Great Lakes) amending its authorization to increase the gas volume it imports into the United States and exports back to Canada for TransCanada PipeLines Limited (TransCanada). The amendment increases the volumes Great Lakes is authorized to import/export for TransCanada from 825,000 Mcf per day to 887,500 Mcf per day through November 1, 12005, conditioned upon an environmental review by the DOE and the Federal Energy Regulatory Commission pursuant to the National Environmental Policy Act of 1969 of the potential impact of transporting these volumes through the proposed Erie Pipeline System. The order allows these volumes to flow through existing facilities now.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, August 25, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–19804 Filed 9–2–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–49–NG]

Natural Gas Imports; CEPEX, Inc.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 4, 1986, of a blanket application from CEPEX, Inc. (CEPEX), to import up to 50 MMcf of Canadian natural gas per day over a two-year period beginning on the date of first delivery.

CEPEX would import natural gas from various Canadian producers on a short-term or spot market basis. The natural gas would be used as feedstock in its fertilizer facilities in Finley, Washington, and Beatrice, Nebraska, or in the facilities of CEPEX Pacific, Inc., its affiliate, in St. Helens, Oregon. The specific terms of each import sale would be negotiated on an individual basis including price and volume.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No.

0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than October 3, 1986.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–9394.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6667.

SUPPLEMENTARY INFORMATION: CEPEX states that the authorization of the import would enable CEPEX to purchase competitively priced natural gas for its own use, or for use by its affiliate, CEPEX Pacific, Inc., as a feedstock in the production of essential agricultural products. CEPEX states that no new facilities would be required.

CEPEX requests expedited consideration of its application, in light of the similarity of the proposed arrangement to other, recent authorizations and because the arrangement is consistent with DOE's market-oriented policies. An ERA decision on the applicant's request, particularly with respect to whether additional written comments or other procedures will be necessary in this case, will not be made until responses to this notice have been received.

The decision on the application to import natural gas will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures:

In response to the notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–9478. They must be filed no later than 4:30 p.m., October 3, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a confernence, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CEPEX's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 26, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–19848 Filed 9–2–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–C&E–86–52; OFP Case No. 52411–2367–04,05,06–25]

Acceptance for Temporary Exemptions and Availability of Certification; Public Service Company of New Hampshire

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for temporary exemptions and availability of certification by Public Service Company of New Hampshire.

SUMMARY: On August 4, 1986, Public Service Company of New Hampshire (Public Service or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a temporary exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for three (3) existing powerplant boilers located at their Schiller generating station in Portsmouth, New Hampshire. The petition was filed pursuant to 311(a) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.) ("FUA" or "the Act").

Regulations implementing the existing facility provisions of FUA were removed effective December 10, 1982. In the absence of regulatory language governing the content of an exemption petition, the ERA, based on the statutory language of FUA, has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of

Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATES: Written comments are due on or before October 20, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-52 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Phone (202) 252-9624

Steven Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Phone (202) 252-6947

SUPPLEMENTARY INFORMATION: Public Service proposes to operate its coal capable Units 4, 5 and 6 at the Schiller Generating Station, located in Portsmouth, New Hampshire, on petroleum at such times, during a ten year period, when the petitioner's cost to burn coal substantially exceeds the cost to burn imported petroleum in accordance with section 311(a) of FUA.

The Schiller units were issued final Prohibition Orders, subject to section 301(a) of the Fuel Use Act, on January 15, 1985. The Orders became effective January 1, 1986.

Section 301(a) encourages coal use by enabling voluntary powerplant conversions to coal. Since the conversions were completed pursuant to prohibition orders, Units 4, 5 and 6 cannot be treated as new sources under section 113(d)(5) of the Clean Air Act.

Section 311(a)(1) of the Act provides for a temporary exemption due to the availability of an adequate and reliable supply of an alternate fuel at a cost which does not substantially exceed the cost of using imported petroleum.

Based on their current fuel cost of $1.363 per million BTU for petroleum and $2.382 per million BTU for coal, Public Service estimates that at an 87% capacity factor, it could realize a fuel cost savings that could approach $12 million per year burning petroleum rather than coal.

Public Service proposes that it be permitted to burn petroleum during the period of the temporary exemption if, in its discretion, it determines that the difference between the cost of using coal and the cost of using imported petroleum is greater than $0.

The grant or denial of any temporary exemption under the Act is not deemed to be a major Federal action for purposes of section 102(2)(C) of the National Environmental Policy Act of 1969. Therefore, an environmental impact statement, environmental assessment, or memorandum to the file on the environmental findings on this exemption request will not be prepared.

The acceptance of the petition by ERA does not constitute a determination that Public Service is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on August 28, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-19881 Filed 9-2-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Technical Panel on Magnetic Fusion; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat 770), notice is hereby given of the following meeting:

Name: Technical Panel on Magnetic Fusion of the Energy Research Advisory Board.

Date and time: September 23 and 24, 1986-9:00 a.m.-5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW, Room 4A-110, Washington, DC 20585.

Contact: Charles E. Cathey, Department of Energy, Office of Energy Research (ER-6), 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 252-2263.

Purpose of the technical panel: To perform a review of the conduct of the national magnetic fusion energy program and make recommendations to the Energy Research Advisory Board. After consideration of the Panel report, the Board shall submit such report, together with any comments that the Board deems appropriate, to the Secretary of Energy. The purpose of the Energy Research Advisory Board is to advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

TENTATIVE AGENDA

September 23, 1986

- Update on magnetic fusion program by DOE staff, including recent US/USSR meeting and the possibility of joint projects.
- Presentation of an alternative strategy for the magnetic fusion program.
- Discussion of draft report sections prepared by Panel members.
- Public Comment—10 minute rule.

TENTATIVE AGENDA

September 24

- Discussion of draft report sections by Panel members.
- Preparation of a draft report.
- Public Comment-10 minute rule.

Public participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 28, 1986.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 86-19847 Filed 9-2-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF86-971-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; San Joaquin Cogen, Inc., et al.

Comment date: Thirty days from publication in the Federal Register, in

accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. San Joaquin Cogen, Inc.

[Docket No. QF86-971-000]

August 22, 1986.

On August 8, 1986, San Joaquin Cogen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in San Joaquin County, California. The facility will consist of one (1) combustion turbine-generator, one (1) heat recovery boiler and associated auxillaries. Approximately 32,000 pounds per hour of steam will be used in connection with a glass making operation. The net electric power production capacity of the facility will be 47,360 kilowatts. The primary energy source will be natural gas. Construction of the facility will begin January 1, 1987.

2. Cogen Technologies NJ Venture

[Docket No. QF86-972-000]

August 27, 1986.

On August 8, 1986, Cogen Technologies NJ Venture (Applicant), of 14614 Falling Creek Drive, Suite 212, Houston, Texas 77068 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bayonne, New Jersey. The facility will consist of three combustion turbine generators, three heat recovery steam generators (HRSG's) and an extraction steam turbine-generator. Thermal energy recovered from the HRSG's will be used in the storage and processing of petroleum products. The primary energy source for the facility will be natural gas or fuel oil. The maximum net electric power production capacity of the facility will be 165,935 kW. The installation of the facility will begin in October 1986.

3. Combustion Engineering, Inc., Jenner Township Facility, Somerset County, PA

[Docket No. QF86-987-000]

August 27, 1986.

On August 18, 1986, Combustion Engineering, Inc. (Applicant), of 1000 Prospect Hill Road, Windsor, Connecticut 06095, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the former site of the Marmon Coal Company, in or near Jenner Township, Somerset County, Pennsylvania. The facility will consist of a circulating fluidized bed combustion boiler, a steam turbine generator, and related auxiliary equipment. Applicant states that the primary energy source for the facility will be "waste" in the form of bituminous coal refuse. The net electric power production capacity of the facility will be 80 megawatts.

4. Pagnotti Enterprises, Inc., Spring Mountain Facility, McAdoo, PA

[Docket No. QF86-927-000]

August 27, 1986.

On August 1, 1986, Pagnotti Enterprises, Inc. (Applicant), of 800 Exeter Avenue, West Pittston, Pennsylvania 18643, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in McAdoo, Carbon County, Pennsylvania. The facility will consist of a circulating fluidized bed combustion boiler, an extraction/condensing steam turbine generator, and related auxiliary equipment. The primary energy source for the facility will be "waste" in the form of anthracite culm. The useful thermal energy output of the facility, which will be in the form of process steam, will be utilized by the Consolidated Cigar Corporation for cigar wrapper drying and for space heating. The net electric power production capacity of the facility will be 55 megawatts.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19771 Filed 9-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-663-000, et al.]

Consumers Power Co., et al., Electric Rate and Corporate Regulation Filings

August 27, 1986.

Take notice that the following filings have been made with the Commission:

1. Consumers Power Company

[Docket No. ER86-663-000]

Take notice that Consumers Power Company ("Consumers") on August 18, 1986, tendered for filing Consumers' (1) Supplemental Agreement No. 6 to the Coordinated Operating Agreement with the City of Holland, Michigan (2) May 29, 1986 Letter Agreement Modifying the Coordinated Operating Agreement with the Wolverine Power Supply Cooperative, Inc.; City of Grand Haven, Michigan; City of Traverse City, Michigan; and City of Zeeland, Michigan, all dated as of January 1, 1986.

Each of the agreements being filed extends the terms of Service Schedule F—Specific Capacity and Energy of its respective coordinated operating agreement. The three agreements being filed have no impact on rates being charged under their respective coordinating operating agreements.

Consumers states that copies of the filing were served on Wolverine Power Supply Cooperative, Inc., on the Cities of Holland, Lansing, Grand Haven, Traverse City and Zeeland (all in Michigan) and on the Michigan Public Service Commission.

Comment date: September 10, 1986, in accordance with standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Comapny and Appalachian Power Company

[Docket No. EC86-26-000]

Take notice that on August 20, 1986, Virginia Electric Company (Virginia Power) and Appalachian Power Company (APCO) (Collectively, the Applicants) filed a joint application pursuant to section 203 of the Federal Power Act with the Federal Energy Regulatory Commission for authorization to enter into a Facilities Purchase Agreement by which Virginia

Power will sell and APCO will purchase transmission line facilities located within Virginia Power's West Virginia retail service territory. The purchase price is approximately $700,000.

Virginia Power is incorporated under the laws of the Commonwealth of Virginia with its principal business office in Richmond, Virginia and is qualified to transact business in the states of Virginia, North Carolina and West Virginia. Virginia Power is engaged, among other things, in the business of generation, distribution and sale of electric energy in substantial portions of the Commonwealth of Virginia.

APCO is incorporated under the laws of the Commonwealth of Virginia with its principal business office in Roanoke, Virginia and is qualified to transact business in the states of Virginia, West Virginia, North Carolina and Tennessee. APCO is engaged, among other things, in the business of generation, distribution and sale of electric energy in Virginia and West Virginia.

The Applicants represent that the proposed sale of these facilities will facilitate the efficiency and economy of operation and service to the public. Virginia Power has entered into an agreement with UtiliCorp United Inc. (UtiliCorp) for the purchase by UtiliCorp of Virginia Power's West Virginia retail electric service territory. The proposed transaction between Virginia Power and APCO entails the transfer of ownership to APCO of the 138kV transmission line used to serve that service territory. UtiliCorp intends to purchase the wholesale electric power and energy necessary to serve the West Virginia retail electric service territory from APCO, which, in the foreseeable future, will be purchased at lesser cost from APCO than Virginia Power.

Comment date: September 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Indianapolis Power & Light Company

[Docket No. ES86-54-000]

Notice is hereby given that on August 18, 1986, Indianapolis Power & Light Company (Applicant) filed an application with the Commission seeking authority under section 204 of the Federal Power Act, to issue, from time to time, up to $100,000,000 principal amount of unsecured short-term promissory notes through December 31, 1988, none of which are to have a final maturity date later than December 31, 1988.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER86-658-000]

Take notice that Central Vermont Public Service Corporation (CVPS) on August 14, 1986 tendered for filing as a rate schedule an executed agreement dated as of July 1, 1986 between CVPS and Citizens' Utilities Company (CU). The proposed rate schedule provides for the sale of non-firm energy by CVPS to CU.

CVPS states that a copy of the filing was served on CU, as well as the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: September 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. The Connecticut Light and Power Company, et al.

[Docket No. ER86-657-000]

Take notice that on August 13, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated March 13, 1986 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Braintree Electric Light Department ("Braintree").

CL&P states that the Transmission Agreement provides for transmission services to Braintree for the wheeling of a maximum of 50 megawatts of CMEEC electric capacity and associated energy.

The transmission charge rate is a weekly (monthly) cost-of-service rate equal to one fifty-second (one-twelfth) of estimated annual average cost of transmission service on the Northeast Utilities system determined in accordance with Schedule A and Exhibits I, II, and III thereto of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-week (month)) and (ii) the maximum number of kilowatts Braintree purchases from CMEEC during an hourly period of such week (month). The transmission charge is reduce to give due recognition for payments made by Braintree to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective as March 13, 1986.

This rate schedule supercedes two prior rate schedules. One is for an agreement dated December 24, 1981 (Rate Schedule FERC Nos. CL&P 254, WMECO 201, HELCO 255). The other is for an agreement dated March 25, 1981 (Rate Schedule FERC Nos. CL&P 237, WMECO 185, and HELCO 237).

WMECO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and Braintree (East Braintree, MA).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: September 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. El Paso Electric Company

[Docket No. ER86-659-000]

Take notice that on August 18, 1986, El Paso Electric Company (EPE) tendered for filing an original and one conformed copy of "Notice of Cancellation" of FERC Schedule No. 40, Economy Energy and Short-Term Capacity Agreement between EPE and Colorado-UTE Electric Association, Inc. (Colorado-UTE). The Short-Term Capacity Agreement between Colorado-UTE and EPE has expired. EPE, because of the operation of Palo Verde Units 1 and 2, the abundance of hydroelectric energy, and the dramatic reduction in the prices of natural gas, is unable to continue purchase under the Pricing Provisions Agreement for economy energy services.

Comment date: September 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Interstate Power Company

[Docket No. ER86-661-000]

Take notice that Interstate Power Company (Company) tendered for filing on August 18, 1986, contract supplements to its FERC Rates Schedule Nos. 14 and 113. The supplements extend the contracts contained in the rate schedules until December 31, 1986, or until a replacement contract is executed, whichever event occurs first.

Comment date: September 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. The Montana Power Company

[Docket No. ER86-666-000]

Take notice that on August 18, 1986, The Montana Power Company (Montana) tendered for filing a revised Index of Purchasers, identified as Ninth Revised Sheet No. 10 under FERC Electric Tariff, 2nd Revised Volume No. 1, which has been revised to show the addition of Sacramento Municipal Utility District (January 16, 1986); City of Port Angeles (November 15, 1985); Municipal Energy Agency of Nebraska (November 15, 1984); Northern California Power Agency (August 15, 1984), and City of Anaheim (October 5,

1984). Also tendered for filing were summaries of sales made under the Company's FERC Electric Tariff, 2nd Revised Volume No. 1, during July 1985 through December 1985 with cost justifications for the rates charged.

Montana requests effective dates as indicated above for the service agreements between Montana and the above-listed purchases, and therefore requests waiver of the Commission's notice requirements.

Comment date: September 10, 1986, in accordance with Standard Paragraph E at the end of this document.

9. New England Power Pool

[Docket No. ER86-662-000]

Take notice that on August 18, 1986, New England Power Pool (NEPOOL) filed an Agreement Amending the New England Power Pool Agreement (Amendment), dated as of September 1, 1985, which modifies provisions of the NEPOOL Agreement, dated as of September 1, 1971, and amended by twenty amendments, the most recent of which was dated as of September 1, 1985.

The NEPOOL Executive Committee states the NEPOOL Participant utilities have entered into agreements covering the support and use of proposed new Phase II interconnection facilities between NEPOOL systems and Hydro-Quebec. The principal provisions of the Amendment modify various sections of the NEPOOL Agreement to provide for administration of funds resulting from transactions over the proposed Phase II interconnection, to provide for treatment of Phase II transactions for NEPOOL capability responsibility purposes, and to clarify NEPOOL Agreement provisions regarding transmission rights and payments related to the Phase II transactions. Other portions of the Amendment modify provisions added to the NEPOOL Agreement which were added to accommodate Phase I transactions.

NEPOOL proposes that the Amendment become effective as of October 1, 1986, and has requested waiver of the Commission's customary notice rules to permit the Amendment to become effective on less than sixty days' prior notice and more than one hundred and twenty days before service is first rendered over the planned interconnection facilities.

Comment date: September 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. San Diego Gas & Electric Company

[Docket No. ER86-664-000]

Take notice that on August 18, 1986 San Diego Gas & Electric Company (SDG&E) tendered for filing Service Schedule D of the Interconnection and Exchange Agreement between SDG&E and Imperial Irrigation District (IID).

The Service Schedule provides for the sale of energy, interruptible without notice, between the two parties to achieve economies of system operation.

Copies of this filing were served upon the Public Utilities Commission of the State of California and IID.

SDG&E requests Waiver of the Commission's prior notice requirements and an effective date of August 1, 1986, for these rate changes.

This Service Schedule revises and supersedes Service Schedule D to the Interconnection and Exchange Agreement between SDG&E and IDD.

Comment date: September 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. The Washington Water Power Company

[Docket No. ER86-670-001]

Take notice that on August 14, 1986, Idaho Power Company tendered for filing a change of transmission rates pursuant to the First Amendment to the Intercompany Pool Agreement (revised). Changes in transmission rates have been made pursuant to Part III, section 8.

Idaho requests that the requirements of prior notice be waived for an effective date as of August 15, 1986, for the filing parties, which include: Idaho Power Company, The Washington Water Power Company, The Montana Power company, Portland General Electric Company, Puget Sound Power & Light Company, Utah Power & Light Company and Sierra Pacific Power Company, adding that there would be no effect upon purchasers under other rate schedules. Idaho further requests that the effective date as to non-filing parties to the Intercompany Pool Agreement (Revised) be October 15, 1986.

Comment date: September 10, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19649 Filed 9-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES86-53-000 et al.]

Pennsylvania Power & Light Co. et al; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power & Light Company

[Docket No. ES86-53-000]

August 21, 1986.

Take notice that on August 14, 1986, Pennsylvania Power & Light Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act seeking authority to issue up to $400 million short-term unsecured promissory notes including commercial paper notes from time to time, prior to September 30, 1988 with a final maturity date which is less than one year from the date of issuance.

Comment date: September 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. EL86-51-000]

August 25, 1986.

Take notice that on August 14, 1986, Boston Edison Company (Boston Edison) filed a complaint alleging that certain purchasers of power from Boston Edison's Pilgrim Unit No. 1 had violated their contracts and their filed rates by refusing to make decommissioning payments to the Company. The customers cited in the complaint are:

Light Department	Rate Schedule No.
Boylston	77
Holyoke	79
Westfield	81
Hudson	83
Littleton	85
Marblehead	87
North Attleboro	89
Peabody	91
Shrewsbury	93
Templeton	95

Light Department	Rate Schedule No.
Wakefield	97
West Boylston	99
Middleborough	102

Boston Edison has asked the Commission to order the customers to pay their accrued decommissioning liability since June 15, 1983 and thereafter to make decommissioning payments to the Company on a monthly basis. Boston Edison states that the aggregate amount due to the Company from the 13 purchasers for the period June 15, 1983 through September 30, 1986 is $485,742 and the aggregate monthly amount due after that date is $18,168. Boston Edison states that the complaint has been served on the affected customers, each of whom is located in Massachusetts and on the Massachuetts Department of Public Utilities.

Comment date: September 24, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19850 Filed 9-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-680-000 et al.]

ANR Pipeline Co. et al.; Natural Gas Certificate Filings

August 27, 1986.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86-680-000]

Take notice that on August 18, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-680-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point to Community Natural Gas Company, Inc. (Community) at St. Henry, Indiana, under the certificate issued in Docket No. CP82-480-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the addition of the new delivery point will be made pursuant to § 157.212(a) of the Commission's Regulations, as amended. ANR states that its sales to Community are made pursuant to a service agreement dated May 11, 1983, effective November 1, 1982 (Docket Nos. RP81-61 and RP82-80). Community has requested the new delivery point to serve the commercial and residential natural gas requirements of the comunity of St. Henry, Indiana. ANR asserts that the maximum daily deliveries at the St. Henry delivery point will not exceed 100 dt equivalent and the deliveries will be within Community's currently existing peak day and annual entitlements from ANR. ANR states that the approximate cost of the design, construction and installation of the gas measurements facilities for the St. Henry, Indiana delivery point is $51,100.

Comment date: October 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources a division of Arkla, Inc., Complainant vs. International Paper Company, Respondent

[Docket No. CP86-651-000]

Take notice that on August 4, 1986, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed a complaint in Docket No. CP86-651-000 pursuant to Rule 206 and Rule 212 of the Commission's Rules of Practice and Procedure (18 CFR 385.206 and 385.12) requesting that the Commission find that certain proposed pipeline facilities to be constructed by International Paper Company (IPC) would be engaged in transportation in interstate commerce, all as more fully set forth in the complaint on file with the Commission and open to public inspection.

AER states that on June 19, 1986, IPC filed an application with the Arkansas Public Service Commission requesting permission to construct, operate and maintain two natural gas pipelines and related facilities. AER asserts that the facilities would be utilized to transport natural gas in interstate commerce and therefore requires certification by the Commission.

AER requests that the Commission (a) issue an order requiring IPC to show cause why its proposed facilities, when constructed, would not be engaged in the transportation of natural gas in interstate commerce, (a) consolidate this proceeding with the certificate application of Natural Gas Pipeline Company of America pending in Docket No. CP86-574-000, and (c) conduct a hearing on the matters raised in AER's complaint.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, IPC is to respond within 30 days from the date of this notice.

Comment date: September 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP86-682-000]

Take notice that on August 18, 1986, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP86-682-000, a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act for authorization to construct and operate a replacement town border station at London, Arkansas, and abandon certain facilities in connection with the relocation of the town border station, under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that AER proposes to relocate a town border delivery point on its Line B at London, Arkansas to deliver gas into Arkansas Louisiana Gas Company's London, Arkansas distribution system. It is estimated that about 18,000 Mcf per year would be delivered through the proposed facilities and about 120 Mcf of a peak day.

AER states that the gas would be delivered from its general system supply, which it is stated is adequate to provide the service. AER estimates that the new facilities would cost $28,980.

It is indicated that the location of the new city gate delivery point is on AER's Line B at station 3839+77. It is explained that the new town border station would replace an existing station located about 2,021 feet away at the end of a 2,021-foot lateral off Line B named Line BM-23. AER proposes to abandon Line BM-23 by transferring 685 feet of it

from transmission to distribution service and abandoning the remaining 1,336 feet in place.

Comment date: October 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP86-683-000]

Take notice that on August 18, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-683-000 an application pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon and remove ten small volume measuring stations in the states of Kansas, Minnesota, Iowa, Nebraska and Texas, under the blanket certificate authorization issued in Docket No. CP82-401-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it has been advised by Peoples Natural Gas Company and West Texas Gas Inc. that ten of their small volume measuring station customers no longer desire natural gas service and wish to have their meters removed.

Consequently, Northern states it is requesting permission and approval to abandon the ten small volume measuring stations. It is asserted that the estimated cost of removing such facilities is $980.

Comment date: October 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, filed pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19851 Filed 9-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-675-000 et al.]

Mississippi River Transmission Co. et al.; Natural Gas Certificate Filings

August 28, 1986.

Take notice that the followings filings have been made with the Commission:

1. Mississippi River Transmission Company

[Docket No. CP86-675-000]

Take notice that on August 15, 1986 Mississippi River Transmission (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP86-675-000 an application pursuant to section 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to increase the maximum allowable operating pressures (MAOP) along their mainline system, and in conjunction therewith, to construct and operate minor tap and pipeline facility modifications and retire about 2.5 miles of 22 inch diameter pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By its application, MRT proposes to uprate the MAOP for all or segments of its Main Line No. 1, Alton Line, Alton Loop West, St. Louis Line, Alton Loop East and Crossover lines A-41, A-33, A-32, A-62 and A-47. MRT also proposes to install a 22 inch diameter crossover from Alton Line between mile pole 4.5 to Alton Loop West and to retire 2.5 miles of 22 inch diameter Alton Line between Mile Pole 4.5 and Alton Line Gate 134. MRT states that the proposed upratings, construction, and retirement will not alter the maximum flowing capacity of its mainline system. MRT further states that the enhanced crossover capability and the pressure uprating of the pipeline facilities would provide greater operational flexibility and enhanced reliability of service to its customers. MRT estimates the total cost of the proposed changes would be $726,000.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Equitable Gas Company, a division of Equitable Resources, Inc. and Equitable Transmission Company

[Docket No. CP86-676-000]

Take notice that on August 15, 1986, Applicants, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable Gas) and Equitable Transmission Company (Equitable Transmission), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP86-676-000 an application pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the transfer of Equitable Gas' jurisdictional natural gas facilities to the newly-formed Equitable Transmission as part of a corporate restructure, all as more fully set forth in the application which is on file with Commission and open to public inspection.

Applicants state that Equitable Gas proposes to transfer, at the depreciated book cost, to Equitable Transmission all of its jurisdictional natural gas facilities related to the production, gathering, transmission, storage, wholesale sales facilities and appurtent equipment together with all gas supply contracts while retaining all non-jurisdictional

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facilities and properties pertaining to the distribution of natural gas. Equitable Transmission also seeks authority to adopt Equitable Gas' gas tariffs that are on file with the Commission.

Applicants propose that Equitable Gas' long term debt be apportioned between it and Equitable Transmission in the ratio of the net depreciated book value of the property transferred over the net depreciated book value of the total property of Equitable Gas immediately prior to the transfer, excluding long-term debt. In addition, Applicants propose that the amount of debt assumed by Equitable Transmission be in the form of notes payable to Equitable Gas and that the short-term debt incurred to finance any current inventory of gas stored underground be assigned to Equitable Transmission. Equitable Transmission, for rights and assets obtained, will issue to Kentucky West Virginia Gas Company (Kentucky West), a wholly owned subsidiary of Equitable Resources, Inc., shares representing 100 percent of its capital stock equal in value to the excess of the book value of the assets transferred to Equitable Transmission over the sum of the liabilities, including long term debt, assumed by Equitable Transmission.

Applicants allege that the proposed corporate restructuring will enable Equitable Transmission to better compete as a transporter of natural gas under Commission Order No. 436[1] and to more efficiently use the pipeline facilities to be transferred.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP86-665-000]

Take notice that on August 11, 1986, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP86-665-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon all gas sales and service to two of its wholesale customers, Mercer Gas Company (Mercer) and North East Heat and Light Company (North East), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National states that under a service agreement with Mercer, dated October 3, 1952, and under a service agreement with North East, dated April 23, 1928, it presently renders natural gas service to Mercer and North East under Rate Schedule RQ. National further stated that Mercer and North East have failed to pay amounts owed to National for past sales and deliveries of natural gas.

National proposes that the abandonment be effective until each company remits the full past due amount, plus all accrued interest.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP86-677-000]

Take notice that on August 15, 1986, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP86-677-000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of Canadian and natural gas supplies on a firm basis for Transco Gas Services, Inc. (Gas Services) and Tennessee Gas Pipeline Company (Tennessee) on behalf of Boundary Gas, Inc. (Boundary), and on an interruptible basis for these and other shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National proposes to construct and operate certain extensions and enhancements of its "Line X" pipeline system, which, when the project is completed, will link Tennessee's Niagara River crossing with the mainline facilities of Tennessee (at Ellisburg, PA) and Transcontinental Gas Pipe Line Corporation (Transco) (at Tamarack, PA) and provide incremental firm transportation capacity of 290,000 Mcf per day. The new facilities would include:

(a) Approximately 20 miles of new 24" pipeline extending from Tennessee's Niagara River crossing at the United States/Canada border to National's existing Nash Road Station located in Niagara County, New York.

(b) 12.5 miles of 24" pipeline between its Gunnville and Porterville stations located in Erie County, New York.

(c) Upgrading of National's line X between its Nash Road and Gunnville stations.

(d) A new 10,000 horsepower compressor at East Eden, Erie, County, New York.

(e) Upgrading of National's line X between East Aurora, New York and the New York/Pennsylvania State line.

(f) A new 10,000 horsepower compressor at National's existing station at Ellisburg, Pennsylvania.

(g) Approximately 37 miles of new 24" pipeline between Ellisburg, Pennsylvania and Tamarack, Pennsylvania.

National states that the proposed facilities are designed to provide sufficient capacity to perform the proposed transportation services while minimizing modifications to National's system, and therefore the project cost. National will use approximately 115 miles of its existing facilities to render this transportation service and, to the extent feasible, will use existing pipeline rights-of-way for the construction of the new facilities, it is stated.

Given the extensive use of existing facilities under its proposal, National believes that Commission approval of the proposed facility construction will not involve a major federal action significantly affecting the quality of the human environment. National states that a detailed environmental report will be submitted in the near future.

National states that the firm transportation service to be rendered for Gas Services would involve the receipt of up to 200,000 Mcf per day of natural gas by National at a new point of interconnection between the facilities of National and Tennessee located at Lewiston, New York (just across the Niagara River), and redelivery by National to Transco at a new point of interconnection to be located in Clinton County, Pennsylvania in the vicinity of the Leidy Storage field. It is further stated that these volumes would be transported by TransCanada, and carried across the Niagara River by Tennessee through its existing river crossing.

While in the possession of national, National states that title to the gas may be in the hands of Gas Services or any customer of Gas Service.

As set forth in the proposed service agreement, National proposes to charge Gas Services an initial monthly demand charge of $2.49 per Mcf and an initial commodity charge of 12.6¢ per Mcf. An annual minimum bill charge based on 50% of the maximum daily volume is included to permit partial recovery of National's capital expenditures while providing Gas Services with substantial flexibility in scheduling deliveries, it is stated.

National states that the firm transportation service to be rendered for Tennessee on behalf of Boundary would involve the receipt of up to 90,000 Mcf per day at the proposed point of interconnection between the facilities of

[1] Equitable Gas filed on June 6, 1986, in Docket No. CP86-553-000 for a blanket certificate as a nondiscriminatory transporter of natural gas pursuant to the Commission Order No. 436.

Tennessee and national at Lewiston described above, or at other mutually agreeable points of interconnection, and redelivery by National to Tennessee at an existing point of interconnection located at Ellisburg, Pennsylvania. The application states that these volumes are those covered by Phase II of the Boundary import project, less National's allocated portion of such volumes.

As set forth in the proposed service agreement, National requests authorization to charge Boundary an initial monthly demand charge of $2.68 per Mcf.

National states that its firm transportation service for Tennessee would supersede the interim transportation service National is providing Tennessee pursuant to its Rate Schedule EX-1 and the Commission's Order of February 2, 1984 in Docket No. CP84-51-000, and requests abandonment authorization in connection with the termination of such service.

In order to maximize utilization of the incremental capacity provided by the proposed facilities, National requests authorization to provide an interruptible transportation service for willing shippers with requisite import authorization. National states that pursuant to proposed Rate Schedule T-3, interruptible transportation of imported volumes would be provided at two different rates, depending upon the point of redelivery. Gas redelivered at Ellisburg, PA (either to Tennessee or to Penn-York Energy Corporation) would be subject to an initial rate of $0.0882 per Mcf, while an initial rate of $0.1826 per Mcf would apply to volumes redelivered to Transco at Tamarack, PA, under National's proposal.

The following applications pending before the Commission are related to National's proposed project:

1. Phase II of the Boundary Project, in Docket Nos. CP81-107 and CP81-108.

2. Docket Nos. CP86-251-000 and 001, in which Tennessee is seeking authorization to construct and operate facilities which will be used to render an interim natural gas sales service by Tennessee and to transport Boundary Phase II volumes.

3. Docket No. CP81-296-008, in which Tennessee previously sought authorization to transport Boundary Phase II volumes.

National states that other applications related to National's proposal will be filed in the near future:

a. An application by Tennessee seeking authorization to construct the facilities necessary to increase the firm import capacity of its Niagara Spur to approximately 292,500 Mcf per day, and authorization to transport 200,000 Mcf per day across the Niagara River on behalf of National in connection with National's transportation service for Gas Services.

b. A rate filing by Tennessee seeking Commission approval to pass through, on an as-billed basis, the cost of firm transportation provided by National.

c. An application by Gas Services seeking authorization to render transportation services.

d. An amendment to Transco's application in Docket No. CP82-385 seeking authorization to construct facilities which will provide Transco with the incremental capacity, downstream of Tamarack, Pa., necessary to transport the gas delivered by National on behalf of Gas Services, as well as the authorization to perform such transportation service.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP84-4-003; Docket No. CP86-664-000]

Take notice that on August 11, 1986, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP84-4-003 an application pursuant to section 7 of the Natural Gas Act to amend the order issuing a certificate of public convenience and necessity permitting the use of existing emergency facilities to effectuate the transportation of natural gas for Archer-Daniels-Midland Company (ADM), and any other end-users, and in Docket No. CP86-664-000 for authorization to transport up to a maximum of 10 billion Btu per day of natural gas on an interruptible basis for ADM, as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant requests authority to provide an interruptible transportation service for ADM for a period of two (2) years from the date of first delivery and month-to-month thereafter. Applicant will provide such service pursuant to the terms and conditions contained in transportation agreement between Applicant and ADM dated June 11, 1986, as amended.

Applicant proposes to transport natural gas on behalf of ADM, a high priority end-user. The proposed end use of the gas is grain drying in ADM's plant in Peoria, Illinois.

Applicant states that gas for ADM's account will be delivered to Applicant at existing points of interconnection between the facilities of Applicant and (1) Producer's Gas Company (Producer's) located in Section 23, Township 12 North, Range 16 West, Custer County, Oklahoma; (2) ONG Transmission Company (ONG) in Section 21, Township 13 North, Range 16 West, Custer County, Oklahoma; (3) Producer's in Section 7, Township 4 North, range 7 West, Grady County, Oklahoma; (4) Producer's in Section 18, Township 17 North, Range 17 West, Dewey County, Oklahoma; (5) M.V. Pipeline Company (M.V.) in Section 2, Township 5 North, Range 10 West, Caddo County, Oklahoma; and (6) MidVen Pipeline Company (MdiVen) in the Ignacio Sanchez Survey A-509, Nacogdoches County, Texas.[1]

Applicant proposes to redeliver volumes of gas for the account of ADM to Central Illinois Light Company (CILCO) at an existing interconnection near Princeton, in Bureau County, Illinois for redelivery by CILCO to ADM at ADM's plant in Peoria, Illinois. The interconnection was authorized in Docket No. CP84-4-000, as amended by Docket No. CP84-4-001, for "emergency only" use to deliver gas to CILCO. Applicant requests permission herein to also utilize the interconnection to transport gas on behalf of ADM and any other end-users.

In addition, Applicant will reduce the volumes it redelivers to ADM by certain percentages for fuel consumed and lost and gas unaccounted for gas or will charge ADM for fuel consumed and lost and gas unaccounted for gas as provided for in the agreement.

Applicant proposes to charge ADM the following transportation rates:

Point of receipt	Point of delivery	Transportation rate (/ MMBtu) (cents)
ONG-Custer Co., OK	Bureau Co., IL	30.7
Producer's-Custer Co., OK	do	30.9
Producer's-Grady Co., OK	do	33.7
Producer's-Dewey Co., OK	do	29.6
M.V.-Caddo Co., OK	do	33.1
MidVen-Nacog. Co., TX	do	30.7

Applicant also proposes to charge ADM the currently effective GRI surcharge as set forth on Tariff Sheet No. 5A of Applicant's Volume 1 Tariff.

No new facilities will be required for this service. Applicant requests authorization to add or delete additional receipt points in the future that may be necessary to support this service.

[1] The agreement originally included a proposed receipt point in Nueces County, Texas. Such receipt point was deleted by Amendment No. 1 dated May 28, 1986.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP86-678-000]

Take notice that on August 18, 1986, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP86-678-000 an application pursuant to section 7 of the Natural Gas Act for authorization to transport up to a maximum of 5.5 billion Btu equivalent of natural gas per day on an interruptible basis for FSC Paper Corporation (FSC Paper), as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant request authority to provide an interruptible transportation service for FSC Paper for a period of 5 years from the date of first delivery and month to month thereafter. Applicant will provide such service pursuant to the terms and conditions contained in a gas transportation agreement between Applicant and FSC Paper dated June 27, 1986.

Applicant proposes to tranport natural gas for the account of FSC Paper, an industrial end-user. The proposed end use of the gas is to generate steam in the production of paper at FSC Paper's Alsip plant located in Cook Country, Illinois.

Applicant proposes to receive natural gas for the account of FSC Paper at the following receipt points: (1) The existing point of interconnection between the facilities of Applicant and Transok, Inc. Located in Custer Country, Oklahoma; (2) the existing point of interconnection between the measurement facilities of Applicant and United Pipe Line Company located in Polk County, Texas; (3) the existing point of interconnection between the measure facilities of Applicant and Arco Oil and Gas Company located at West Cameron Block 212 "C" platform, offshore Louisiana; and (4) the existing point of interconnection between the measurement facilities of Applicant and Shell Offshore Inc. located at Vermilion Block 220, Offshore Louisiana.

Applicant proposes to transport on a fully interruptible basis and will redeliver volumes of gas for the account of FSC Paper to Northern Illinois Gas Company (NIGAS) at existing points of interconnection between the facilities of Applicant and the measurement facilities of NIGAS located in DuPage County, Illinois and in Livingston County, Illinois for redelivery by NIGAS to FSC Paper at its Alsip plant located in Cook County, Illinois.

Applicant proposes to charge FSC Paper the following transportation rates;

Point of receipt	Point of delivery	Transportation rate (/ MMBTu) (cents)
Custer County, OK	DuPage Co., IL	30.2
	Livingston Co., IL	30.2
Polk County, TX	do	33.8
		33.8
West Cameron block 212	do	48.1
Offshore LA		48.1
Vermilion block 220	do	48.1
Offshore LA		48.1

In addition, Applicant proposes to redeliver gas to FSC Paper less certain percentage reductions for fuel consumed and lost and unaccounted for gas or will charge FSC Paper for fuel consumed and lost and unaccounted for gas as provided for under the transportation agreement.

Applicant also proposes to charge FSC Paper the currently effective GRI surcharge as set forth on Tariff Sheet No. 5A of Applicant's Volume 1 Tariff.

No new facilities will be required for this service. Applicant requests authorization to add or delete additional receipt points in the future that may be necessary to support this service.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP86-671-000]

Take notice that on August 13, 1986, Panhandle Eastern Pipe Line Company (Applicant), P.O Box 1642, Houston, Texas 77251, filed in Docket No. CP86-671-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, and the regulations thereunder for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Carnation Company (Carnation), the addition and deletion of points of receipt, and the abandonment of the service when the contract terms expire, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to three transportation agreements dated June 16, 1986, Applicant advises that it has agreed to transport up to 5,200 Mcf of natural gas per day on behalf of Carnation. Applicant states that it would receive the gas for Carnation's account at an existing point of interconnection located in Section 15, Township 10 North, Range 21 West Beckham County, Oklahoma, pursuant to each of the three transportation agreements. Applicant further states that it would redeliver such gas, for Carnation's account, to three local distribution companies as designated by Carnation in the transportation agreements. It is stated that Carnation would pay Applicant a transportation charge of 43.37¢ per Mcf for this service, pursuant to Applicant's Rate Schedule PT. Finally, Applicant advises that the term of the proposed service would extend from the date that authorization herein requested is accepted to the earlier of June 16, 1988, or thirty days after applicant accepts certificate authority, under Subpart G of 18 CFR Part 284 of the Commission's Regulations.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Shell Gas Pipeline Company

[Docket No. CP86-642-000]

Take notice that on July 30, 1986, Shell Gas Pipeline Company (SGPC), P.O Box 2463, Houston, Texas 77001, filed in Docket No. CP86-642-000 an application, as supplemented August 19, 1986, pursuant to section 7 of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations for an optional expedited certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities, the transportation of natural gas through such facilities, and the abandonment of such transportation services. However, SGPC requests that the subject facilities be declared a non-jurisdictional gathering facility. Therefore, in the alternative, SGPC files a petition for an order declaring the facilities proposed to be constructed and operated in federal Outer Continental Shelf (OCS) waters exempt under section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

SGPC states that natural gas has been found by its affiliate, Shell Offshore Inc. (SOI), in Federal OCS waters, Ship Shoal (SS) Block Nos. 188, 189, 210 and 211, offshore Louisiana. It is stated that SOI is the operator for each of the SS blocks. It is further stated that 95.8% of the working interest in the SS blocks is owned by SOI and 4.2% is owned by OCFOGO. It is alleged that no gathering facilities or other means of transportation by which the gas can reach the market are available in the production area, SGPC proposes to construct 0.3 mile of 6-inch diameter pipeline and related facilities from SOI's

production platform in SS189 to an interconnection with Trunkline Gas Company's (Trunkline) 10-inch diameter Terrebonne System in SS189. It is indicated that Trunkline would then transport the gas to its 26-inch diameter pipeline in SS185 for further transmission onshore to Centerville, St. Mary Parish, Louisiana. From Centerville, it is stated, the gas would continue to be transported by Trunkline to Michigan or may be redelivered at some intermediate point off Trunkline's system or to another pipeline company yet to be designated. SGPC states that the proposed facilities would be owned by SGPC, but operated by Trunkline. It is also indicated that the proposed facilities would have sufficient capacity to transport 100 percent of the gas expected to be produced from SOI's production platform. It is explained that condensate would be removed at Trunkline's Patterson facilities in St. Mary Parish, Louisiana. It is presently anticipated that the gas would be processed at Shell Western E&P Inc's Calumet gas plant in St. Mary Parish, Louisiana.

It is stated that the estimated cost of the proposed facilities is $800,000 which would be financed through the sale of equity securities. First movement of gas from the producing area through the proposed facilities is planned for late 1986 or early 1987.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Southern Natural Gas Company

[Docket No. CP86-672-000]

Take notice that on August 13, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-672-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of Bunge Corporation-Soybean Processing Division (Bunge), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Bunge in accordance with the terms and conditions of a transportation agreement between Bunge and Southern dated July 25, 1986. Southern states that it has agreed to transport on an interruptible basis up to 1.425 billion Btu equivalent of gas per day purchased by Bunge from Consolidated Fuel Supply, Inc., subject to the receipt of all necessary governmental authorizations. Southern requests that the Commission issue a limited-term certificate for a term expiring one year from the date of the Commission's order issuing the requested authorization.

Southern states that the transportation agreement provides for Bunge to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in the Breton Sound Area, offshore Louisiana, and DeSoto and Jefferson Parishes, Louisiana. Southern states that it would redeliver to Bunge at the Bunge Corporation Meter Station, Warren County, Mississippi, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Bunge's pro-rata share of any gas delivered for Bunge's account which is lost or vented for any reason.

Southern states that Bunge has agreed to pay Southern each month a transportation rate of 34.8 cents for each million Btu equivalent of gas redelivered by Southern. Additionally, Southern states that it would collect from Bunge the GRI surcharge of 1.35 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern also requests flexible authority to provide transportation from additional delivery points in the event Bunge obtains alternative sources of supply of natural gas. Southern states that the additional transportation service would be to the same redelivery point, the same recipient and within the maximum daily transportation volume of gas stated in the application. Furthermore, Southern states that it would file a report providing information with regard to the addition of any delivery points.

Southern states that the transportation arrangement would enable Bunge to diversify its natural gas supply sources and to obtain gas at competitive prices. Southern states Bunge has the installed capability to utilize fuel oil and has advised Southern that unless it is able to obtain the transportation services requested herein by Southern, it would switch to fuel oil to the maximum extent possible. Southern additionally states it would obtain take-or-pay relief for all volumes transported pursuant to the subject agreement.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Standard Pacific Gas Line, Inc.

[Docket No. CP86-666-000]

Take notice that on August 12, 1986, Standard Pacific Gas Line, Incorporated (StanPac), Post Office Box 7442, San Francisco, California 94120, filed an application pursuant to section 1(c) of the Natural Gas Act (15 U.S.C. 717(c)) and Part 152 of the Commission's Regulations (18 CFR Part 152) for exemption from the provisions of the Natural Gas Act, all as more fully set forth in the application on file with this Commission and open to public inspection.

StanPac states that it owns a pipeline system extending from approximately 40 miles south of Los Banos, California to the San Francisco Bay area. StanPac states that it operates and transports gas on behalf of two customers, Pacific Gas and Electric Company and Chevron U.S.A., Inc., under a certificate of public convenience and necessity granted in Docket No. G-1823 (19 FPC 162 [1958]). StanPac states that all of its facilities are within the State of California, and that all the gas delivered to its customers are ultimately consumed within the State. StanPac states that on December 4, 1985, the Public Utilities Commission of the State of California issued Resolution L-234, asserting jurisdiction over StanPac's rates, services and facilities.

StanPac claims that each of the elements necessary for an exemption from the provisions of the Natural Gas Act exist, and requests that the Commission issue an exemption pursuant to section 1(c) of the Natural Gas Act.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19852 Filed 9-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9475-001]

Porthill Hydro Partners; Surrender of Preliminary Permit

August 28, 1986.

Take notice that Porthill Hydro Partners, permittee for the Long Canyon Hydropower Project No. 9475, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9475 was issued January 15, 1986, and would have expired December 31, 1988. The project would have been located on Long Canyon Creek in the Kaniksu National Forest near Porthill in Boundary County, Idaho.

The permittee filed the request on August 19, 1986, and the preliminary permit for Project No. 9475 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007; in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19853 Filed 9-2-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-3073-9]

Science Advisory Board, Integrated Environmental Management Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Science Advisory Board's Integrated Environmental Management Subcommittee on September 18-19, 1986 in Room #3, North Conference Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. on September 18 and will adjourn at approximately 3:00 p.m. on September 19, 1986.

The agenda for the meeting includes a briefing on the development plan for an integrated environmental management study of Denver; briefing on an internal EPA review of an integrated environmental management study of Baltimore; Subcommittee comments on integrated environmental management studies of Baltimore and the Santa Clara Valley; further discussion of a health scoring methodology; and any additional issues of interest to the Subcommittee.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW, Washington, DC 20460 or call (202) 382-4126 by close of business September 12, 1986.

August 29, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-19906 Filed 9-2-86; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Advisory Committee; Open Meeting

SUMMARY: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Friday, September 19, 1986 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of Eximbank's Financial Report, a Summary of Insurance, Guarantee and Loan Demand, a legislative update, the Foreign Content Report and the Trade Finance Task Force Report.

Public Participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue, NW, Washington, DC 20571, (202) 566-8871, not later than September 15, 1986. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to September 12, 1986 the Office of the Secretary, Room 935, 811 Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

FURTHER INFORMATION: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue, NW, Washington, DC 20571, (202) 566-8871.

Stephan G. Glazer,

Associate Counsel.

[FR Doc. 86-19929 Filed 9-2-86; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 26, 1986.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0166

Title: Part 42, Preservation of Records of Communication Common Carriers

Action: Revision

Respondents: Communication common carriers

Estimated Annual Burden: 68
Recordkeepers; 136 Hours

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86-19793 Filed 9-2-86; 8:45 am]
BILLING CODE 6712-01-M

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order No. 866]

Prior Approval of District Board Directors Special Assignments

AGENCY: Farm Credit Administration.
ACTION: Notice.

On August 6, 1986, the Chairman of the Farm Credit Administration issued Order No. 866 which provides district boards the flexibility to responsibly monitor and control the compensation of board members for activities outside regular board meetings. FCA prior approval is given for the payment of compensation to district board directors for days served in their official capacity beyond the 30-day limitation in section 5.5 of the Farm Credit Act of 1971, as amended, provided justification for such compensation is adequately documented on a monthly basis by the district board and available for review by FCA examiners. The text of the Order may be obtained by writing: Office of Congressional and Public Affairs, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Marvin Duncan,
Member, Farm Credit Administration Board.
[FR Doc. 86-19843 Filed 9-2-86; 8:45 am]
BILLING CODE 6705-01-M

FEDERAL ELECTION COMMISSION

[Notice 86-7]

Clearinghouse on Election Administration; Clearinghouse Advisory Panel; Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I) and Office of Management and Budget Circular A-63, as revised, the Federal Election Commission announces the following Advisory Panel meeting:

Name: Federal Election Commission Clearinghouse Advisory Panel.
Date: 22-23 September 1986.
Place: Dupont Plaza Hotel, 1500 New Hampshire Ave., NW., Washington, DC.
Time: 0900-1200; 1400-1700 on 22 September 1986; 0900-1200; 1400-1700 on 23 September 1986.
Proposed Agenda: Discussion sessions addressing Voting System Software Standards, Standards Implementation Plan, Federal and State Election Case Law, Election Legislation, Computer Security, Voter Registration and Election Management Systems, Management Guidelines, and Voting Accessibility for the Elderly and Handicapped Act.

Purpose of the Meeting: The Panel will discuss the agenda items, present their views on problems in the administration of Federal elections, and formulate recommendations to the Federal Election Commission Clearinghouse for its future program development.

The Advisory Panel meeting is open to the public, dependent on available space. Any member of the public may file a written statement with the Panel before, during, or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding this Advisory Panel should be addressed to Penelope Bonsall, Clearinghouse on Election Administration, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

Dated: August 28, 1986.
Joan D. Aikens,
Chairman, Federal Election Commission.
[FR Doc. 86-19842 Filed 9-2-86; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-008760-019
Title: West Coast United States and Canada/India, Pakistan, Bangladesh, Sri Lanka and Burma Rate Agreement.
Parties: Scindia Steam Navigation Co., Ltd.; Shipping Corporation of India, Ltd.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202-009247-014.
Title: India, Pakistan, Bangladesh, Sri Lanka and Burma/West Coast United States and Canada Rate Agreement.
Parties: Scindia Steam Navigation Co., Inc.; Shipping Corporation of India, Ltd.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202-010012-008.
Title: Australia-Pacific Coast Rate Agreement.
Parties: Pacific Australia Direct Line; Columbus Line.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations. The parties have requested a shortened review period.

Agreement No.: 202-010252-004.
Title: New Zealand-Pacific Coast Rate Agreement
Parties: Blue Star Line, Ltd.; Columbus Line
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Dated: August 28, 1986.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 86-19799 Filed 9-2-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Maryland Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 24, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank Maryland Corp.*, Towson, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Maryland, Towson, Maryland.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Suncoast Trust Bancshares, Inc.*, Atmore, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Atmore, Atmore, Alabama.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F&M Financial Services Corporation*, Menomonee Falls, Wisconsin; to acquire 100 percent of the voting shares of The Bank of Ashippun, Ashippun, Wisconsin.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National City Bancshares, Inc.*, Evansville, Indiana; to acquire 100 percent of the voting shares of Poole Deposit Bank, Poole, Kentucky.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Midlands Bancorp, Inc.*, Papillion, Nebraska; to become a bank holding company by acquiring 98 percent of the voting shares of Bank of the Midlands, Papillion, Nebraska.

Board of Governors of the Federal Reserve System, August 27, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-19795 Filed 9-2-86; 8:45 am]

BILLING CODE 6210-01-M

First Sunbelt Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 22, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Sunbelt Bankshares, Inc.*, Rome, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of the Georgia State Bank of Rome, Rome, Georgia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Warsaw Bancorp, Inc.*, Springfield, Illinois; to become a bank holding company by acquiring at least 95 percent of the voting shares of The Hill-Dodge Banking Company, Warsaw, Illinois.

2. *Western Iowa Consultants, Inc.*, Council Bluffs, Iowa; to become a bank holding company by acquiring at least 94 percent of the voting shares of Citizens Savings Bank, Avoca, Iowa. The comment period on this application ends September 24, 1986.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Minnesota Valley Bancshares, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Minnesota Valley Bank, the successor to Norwest Bank Redwood Falls, N.A., both of Redwood Falls, Minnesota; Tracy State Bank, the successor to Norwest Bank Tracy, both of Tracy, Minnesota; and Slayton State Bank, the successor to Norwest Bank Slayton, both of Slayton, Minnesota.

2. *Minnwest, Incorporated*, Minnetonka, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Minnwest Bank Dawson, the successor to Norwest Bank Dawson, both of Dawson, Minnesota; Minnwest Bank Luverne, the successor to Norwest Bank Luverne, both of Luverne, Minnesota; Minnwest Bank Montevideo, the successor to Norwest Bank Montevideo, both of Montevideo, Minnesota; and Minnwest Bank Ortonville, the successor to Norwest Bank Ortonville, both or Ortonville, Minnesota.

Board of Governors of the Federal Reserve System, August 27, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-19796 Filed 9-2-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Being Reviewed by the Office of Management and Budget: Multiple Award Schedule (MAS) Data Collections

AGENCY: Office of Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to approve information collections in use without a control number.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and to Rodney P. Lantier, GSA Clerance Officer, General Services Administration (CAID) Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward J. McAndrew, Office of Acquisition Policy (202) 566-1224.

SUPPLEMENTARY INFORMATION: a. *Background.* In March 1985, a request to approve an information collection was submitted to OMB with a proposed revision to the MAS policy statement that was published in the **Federal Register** for comment. In response, OMB

stated that certain material in the statement should be incorporated in the General Services Administration Acquisition Regulation (GSAR), specifically, the Discount Schedule and Marketing Data (DSMD), sheets, the Price Reductions clause, and the Economic Price Adjustment (EPA) clause. Thus, GSA has developed a change to the GSAR incorporating the DSMD sheets and the Price Reductions clause. Comments received in response to the December 10, 1985, **Federal Register** notice have been incorporated, when appropriate, in this GSAR. GSAR change 18 issued October 18, 1985, incorporated the EPA clause.

b. *Purpose.* The information collections submitted for approval require: (1) Prospective offerors responding to MAS solicitations to submit sales, discount, and marketing data to support pricing judgments in negotiated MAS contracts; (2) the reporting of price reductions to the customer(s) identified as the basis of the award in MAS contracts; and (3) the submitting of pricing data to support an MAS contractor's request for an economic price adjustment in Federal Supply Service MAS contracts.

c. *Annual reporting burden.* Estimated as follows: DSMD sheets, 6,740 respondents and 101,100 hours; Price Reductions clause, 1,830 respondents and 12,720 hours; Economic Price Adjustment clause, 2,914 respondents and 2,186 hours.

d. *Copies of proposal.* Copies of the proposals may be obtained from the Directives and Reports Management Branch (CAID), Room 3015 GS Building, Washington, DC 20405, or call (202) 566–0668.

Dated: August 25, 1986.

Rodney P. Lantier,

Acting Director, Information Management Division.

[FR Doc. 86–19777 Filed 9–2–86; 8:45 am]

BILLING CODE 0820–6–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N–0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators—Nitroglycerin Ointment; Drug Efficacy Study Implementation; Revocation of Exemption; Announcement of Marketing Conditions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemption for single-entity coronary vasodilator drug products containing nitroglycerin in topical ointment form. The exemption has permitted the products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. FDA also announces the conditions for marketing these products for the indications for which they are now regarded as effective.

DATES: The revocation of exemption is effective September 3, 1986; the deadline for full approval of conditionally approved new drug applications based on satisfactory bioavailability supplements is August 31, 1987; other supplements are due on or before November 3, 1986.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 77N–0240 (DESI 1786), directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to the conditionally approved abbreviated new drug applications (identify with ANDA number): Division of Generic Drugs (HFN–230), Center for Drugs and Biologics.

Original abbreviated new drug applications: Division of Generic Drugs (HFN–230), Center for Drugs and Biologics.

Requests for information on conducting bioavailability/bioequivalence tests: Division of Bioequivalence (HFN–250), Center for Drugs and Biologics.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Mary E. Catching, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice (DESI 1786) published in the **Federal Register** of February 25, 1972 (37 FR 4001), FDA announced its evaluation of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, on certain coronary vasodilator drugs. FDA classified controlled-released tablets of nitroglycerin as possibly effective for indications relating to the management, prophylaxis, or treatment of anginal attacks.

Notices published in the **Federal Register** of August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), amended earlier notices of December 14, 1972 (37 FR 26623) and July 11, 1973 (38 FR 18477) by temporary exempting nitroglycerin in topical ointment forms from the time limits established for completing certain phases of the Drug Efficacy Study Implementation (DESI) program. (The temporary exemption also applied to nitroglycerin in controlled release and conventional oral forms.) The amending notices established conditions for marketing these products, including requirements for both bioavailability and clinical studies. The availability of guides and methods for conducting bioavailability and clinical effectiveness studies and the specific conditions under which the products could be marketed were published in the August 26, 1977, notice. Conditions were established for marketing of identical, similar, or related products (21 CFR 310.6) whether or not they had been marketed or were the subjects of approved new drug applications (NDA's). An abbreviated NDA (ANDA) was required for marketing of products not the subject of an NDA; such products were to be conditionally approved, pending the results of ongoing studies.

In the September 15, 1978, notice FDA announced a change in the previously published conditions for testing and marketing single-entity coronary vasodilators. The change eliminated the requirement that each manufacturer conduct or participate in effectiveness studies and allowed a drug to remain on or enter the market even though its manufacturer was not conducting clinical studies of effectiveness, provided that some other manufacturer was conducting such studies on a product containing the same chemical entity in a similar dosage form. The notice also extended the dates for completing ongoing studies.

In response to the exempting notices, a number of firms submitted data and information to support effectiveness of the various exempt nitroglycerin dosage forms. Upon completing its evaluation of data on oral controlled-release tablets and capsules and controlled-release buccal tablets, the agency announced in the **Federal Register** of September 7, 1984 (49 FR 35428) and July 5, 1985 (50 FR 27688) that these dosage forms of nitroglycerin are effective antianginal agents.

The agency has completed its review of the data submitted for the ointment form of nitroglycerin and has found that

the data provide substantial evidence of effectiveness. This notice announces that conclusion and the conditions under which the products may be marketed.

Accordingly, the temporary exemption as it pertains to nitroglycerin in topical ointment form is hereby revoked.

Certain other nitroglycerin products remain exempt under Category I and will be the subject of future **Federal Register** notices.

Efficacy Review

Three firms—Kremers-Urban Co., Marion Laboratories, Inc., and Wharton Laboratories, Inc.—submitted data to support the effectiveness of nitroglycerin ointment. Six studies using exercise testing provided substantial evidence of effectiveness of this dosage form in angina pectoris. The studies were double-blind, randomized (except two studies), placebo-controlled crossover trials involving a total of 135 patients with angina pectoris. The data demonstrated significant improvement in exercise tolerance after a single dose of nitroglycerin ointment. Because of the length of time required for onset of effect, nitroglycerin ointment is not recommended for aborting an acute attack of angina pectoris. The following studies provide substantial evidence of effectiveness:

1. Reichek, N., et al., "Sustained Effects of Nitroglycerin Ointment in Patients with Angina Pectoris," *Circulation*, 50:348–352, 1974.
2. Karsh, D., et al., "Prolonged Benefit of Nitroglycerin Ointment on Exercise Tolerance in Patients with Angina Pectoris," *American Heart Journal*, 96:587–595, 1978.
3. Winsor, T., "A Study of the Effects of Nitro-Bid Ointment on the Exercise Tolerance of Patients with Angina Pectoris," (unpublished), submitted by Marion Laboratories, Inc.
4. Davidov, M., and W. Mroczek, "The Effect of Nitroglycerin Ointment on the Exercise Capacity in Patients with Angina Pectoris," *Angiology*, 27(4):205–211, 1976.
5. Nyberg, G., and V. Panfilov, "Effect of Nitroglycerin Ointment (Nitrong) on Exercise Tolerance and Several Circulatory Parameters in Patients with Angina Pectoris," *European Journal of Clinical Pharmacology*, 24(6):733–739, 1983.
6. Kala, R., et al., "Nitroglycerin Ointment Effective for Seven Hours in Severe Angina Pectoris," *Acta Medica Scandinavica*, 213:165–170, 1983.

List of ANDA's

The following ANDA's, conditionally approved on the basis of safety, but not effectiveness, are subject to the finding and conditions stated in this notice:

1. ANDA 86–134; Nitro-Bid Ointment containing 2% nitroglycerin; Marion Laboratories, Inc., 10236 Bunker Ridge Rd., Kansas City, MO 64137.
2. ANDA 86–137; Nitrong Ointment containing 2% nitroglycerin; Wharton Laboratories, Inc., Division U.S. Ethicals, Inc., 37–02 48th Ave., Long Island City, NY 11101.
3. ANDA 86–164; Nitro Ointment containing 2% nitroglycerin; Kremers-Urban Co., Box 2038, Milwaukee, WI 53201.
4. ANDA 87–355; Nitroglycerin Ointment containing 2% nitroglycerin; Byk Gulden, Inc., 80 Baylis Rd., Melville, NY 11747.
5. ANDA 87–468; Nitrostat Ointment containing 2% nitroglycerin; Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
6. ANDA 87–779; Nitro-Bid Ointment containing 2% nitroglycerin; Marion Laboratories.
7. ANDA 87–782; Nitro Ointment containing 2% nitroglycerin; Kremers-Urban Co.

New Drug Status

A drug product that contains nitroglycerin in topical ointment form is regarded as a new drug (21 U.S.C. 321(p)) and an approved NDA is required for marketing it. The NDA's listed above represent ANDA's conditionally approved under the temporary exemption that allowed these products to be marketed while effectiveness studies were conducted. None of these applications is approved on the basis of effectiveness of the drug product. Therefore, supplemental NDA's are now required to revise the labeling and to provide additional information necessary for full approval of the ANDA's on the basis of effectiveness, as well as safety.

In addition to the holders of the applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved NDA and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved NDA. It is the reponsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

Conditions for Approval and Marketing

FDA has reviewed all available evidence and concludes that single-entity nitroglycerin in topical ointment form is effective for the indications in the labeling conditions below. The agency is prepared to approve ANDA's for products containing nitroglycerin in this dosage form and supplements to conditionally approved ANDA's under the conditions described in this notice.

A. *Form of drug.* The drug is in ointment form suitable for topical administration.

B. *Labeling conditions.* 1. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

2. The drug is labeled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The general outline of the labeling is set forth below; the labeling should be considered a guideline, to be adjusted to reflect individual product differences:

Product Name (Nitroglycerin) Package Insert

Description

Nitroglycerin, an organic nitrate, is a vasodilator which has effects on both arteries and veins. The chemical name for nitroglycerin is 1,2,3-Propanetriol, trinitrate. The compound has a molecular weight of 227.09. The chemical structure is: (To be inserted by manufacturer or distributor)

[Product Name] ointment contains 2% nitroglycerin ointment and lactose in a lanolin and white petrolatum base. Each inch, as squeezed from the tube, contains approximately 15 mg nitroglycerin.

Clinical Pharmacology

The principal pharmacological action of nitroglycerin is relaxation of vascular smooth muscle, producing a vasodilator effect on both peripheral arteries and veins with more prominent effects on the latter. Dilation of the post-capillary vessels, including large veins, promotes peripheral pooling of blood and decreases venous return to the heart, thereby reducing left ventricular end-diastolic pressure (pre-load). Arteriolar relaxation reduces systemic vascular resistance and arterial pressure (after-load).

The mechanism by which nitroglycerin relieves angina pectoris is not fully understood. Myocardial oxygen consumption or demand (as measured by the pressure-rate product, tension-time index and stroke work index) for a given level of external exercise is decreased by both the arterial and venous effects of nitroglycerin and, presumably, a more favorable supply-demand ratio is achieved. While the large epicardial coronary arteries are also dilated by nitroglycerin, the extent to which this action contributes to relief of exertional angina is unclear.

Nitroglycerin is rapidly metabolized, principally by a liver reductase to form glycerol nitrate metabolites and inorganic nitrate. Two active major metabolites, the 1, 2 and 1, 3 dinitroglycerols, the products of hydrolysis, appear to be less potent than nitroglycerin as vasodilators but have longer plasma half-lives.

The dinitrates are further metabolized to mononitrates (biologically inactive with respect to cardiovascular effects) and ultimately glycerol and carbon dioxide. There is extensive first-pass deactivation by the

liver of nitroglycerin following gastrointestinal absorption.

Adequate studies defining the pharmacokinetics of [Product Name] have not been reported. The clinical relevance of nitroglycerin blood levels has not been established, since therapeutic levels of the drug and metabolites have not been defined. In general, it appears that blood levels are proportional to surface covered, but they are also related to location (chest placement gives higher levels than extremities) and to the thickness of the applied paste. Duration of effect would be expected to depend on the total amount of nitroglycerin (thickness of paste) per unit of surface area, but this has not been well studied.

Therapeutic doses of nitroglycerin have been shown to reduce systolic and mean arterial blood pressures, especially when the patient assumes upright posture, for as long as 7 hours after a single application. Nitroglycerin ointment reduces abnormally elevated left ventricular end-diastolic pressure (LVEDP), a hemodynamic concomitant of acute episodes of angina pectoris. The onset of hemodynamic effects of nitroglycerin ointment is not sufficiently rapid to be of use in aborting an acute episode of angina pectoris.

Indications and Usage

[Product Name] is indicated for the treatment and prevention of angina pectoris due to coronary artery disease. Controlled clinical trials have demonstrated that this form of nitroglycerin is effective in improving exercise tolerance in patients with exertional angina pectoris. Double-blind, placebo-controlled trials have shown significant improvement in exercise time until chest pain for up to 6 hours after single application of various doses of nitroglycerin ointment (mean doses ranged from 5 to 36 mg) to a 36 inches^2 area of trunk.

Contraindications

Nitroglycerin is contraindicated in patients who have shown purported hypersensitivity or idiosyncracy to it or other nitrates or nitrites.

Warnings

The benefits of nitroglycerin ointment during the early days of acute myocardial infarction have not been established. If one elects to use organic nitrates in early infarction, careful assessment and hemodynamic monitoring should be used because of the potential deleterious effects of hypotension.

Precautions

General

Severe hypotensive response, particularly with upright posture, may occur even with small doses of nitroglycerin. The drug therefore should be used with caution in patients who may have volume depletion from diuretic therapy or in patients who have low systolic blood pressure (e.g., below 90 mm Hg). Paradoxical bradycardia and increased angina pectoris may accompany nitroglycerin-induced hypotension.

Nitrate therapy may aggravate the angina caused by hypertrophic cardiomyopathy.

Tolerance to this drug and cross-tolerance to other nitrates and nitrites may occur. Tolerance to the vascular and antianginal effects of nitrates has been demonstrated in clincial trials, in experience through occupational exposure and in isolated tissue experiments. The importance of tolerance to the appropriate use of nitroglycerin ointment in the management of patients with angina pectoris has not been determined. In controlled clinical trials in angina pectoris patients, sustained therapy with some nitrate preparations has resulted in significantly less improvement and a shorter duration of improvement in exercise time than had been seen when therapy was initiated. Sustained improvement in exercise tolerance has been reported in patients with angina pectoris who applied nitroglycerin ointment three times daily for 8–12 weeks in open studies, but there have been no controlled clinical studies involving exercise testing that have examined the efficacy of repetitive doses of [Product Name] for the long-term treatment of angina pectoris.

In industrial workers continuously exposed to nitroglycerin tolerance clearly occurs. Moreover, physical dependence also occurs since chest pain, acute myocardial infarction and even sudden death have occured during temporary withdrawal of nitroglycerin from the workers. In clinical trials angina patients, there are reports of anginal attacks being more easily provoked and of rebound in the hemodynamic effects soon after nitrate withdrawal. The relative importance of these observations to the routine, clinical use of nitroglycerin is not known, but it seems prudent to gradually withdraw patients from nitroglycerin when the therapy is being terminated, rather than stopping the drug abruptly.

Drug Interactions

Alcohol may enhance sensitivity to the hypotensive effects of nitrates.

Nitroglycerin acts directly on vascular muscle. Therefore, any other agent that directly or indirectly acts on vascular smooth muscle may have decreased or increased effect depending upon the agent.

Market symptomatic orthostatic hypotension has been reported when calcium channel blockers and organic nitrates were used in combination. Dose adjustments of either class of agents may be necessary.

Carcinogenesis, Mutagenesis, Impairment of Fertility

No long-term studies in animals have been performed to evaluate carcinogenci potential of [Product Name]; neither has its mutagenic potential been studied. It is also not known whether nitroglycerin can affect reproduction capacity.

Pregnancy

Pregnancy Category C. Animal reproduction studies have not been conducted with [Product Name]. It is also not known whether nitroglycerin can cause fetal harm when administered to a pregnant woman. Nitroglycerin should be given to a pregnant woman only if clearly needed.

Nursing Mothers

It is not known whether nitroglycerin is excreted in human milk. Because many drugs are excreted in human milk, caution should be exercised when [Product Name] is administered to a nursing woman.

Pediatric Use

Safety and effectiveness in children have not been established.

Adverse Reactions

Adverse reactions to [Product Name], particularly headache and hypotension, are generally dose-related. In clinical trials at various doses of nitroglycerin, the following adverse effects have been observed.

Headache, which may be severe and persistent, is the most commonly reported side effect of nitroglycerin, with an incidence in the order of 50% in some studies. Cutaneous vasodilation with flushing may occur. Transient episodes of dizziness and weakness, as well as other signs of cerebral ischemia associated with postural hypotension may occasionally develop. An occasional individual may exhibit marked sensitivity to the hypotensive effects of nitrates and severe responses (nausea, vomiting, weakness, restlessness, pallor, perspiration and collapse) may occur even with therapeutic doses of nitrates. Drug rash and/or exfoliative dermatitis have been reported in patients receiving nitrate therapy. Nausea and vomiting can occur, but appear to be uncommon.

Overdosoge

Signs and Symptoms

Nitrate overdosage may result in: severe hypotension, persistent throbbing headache, vertigo, palpitation, visal disturbance, flushing and perspiring skin (later becoming cold and cyanotic), nausea and vomiting (possibly with colic and even bloody diarrhea), syncope (especially in the upright posture), methemoglobinemia with cyanosis and anorexia, initial hypernea, dyspnea and slow breathing, slow pulse (dicrotic and intermittent), heart block, increased intracranial pressure with cerebal symptoms of confusion and moderate fever, paralysis and coma followed by clonic convulsions and possibly death due to circulatory collapse.

Treatment of Overdosage

Keep the patient recumbent in a shock position and comfortably warm. Wipe the skin clean of the nitroglycerin ointment. Passive movement of the extremities may aid venous return. Administer oxygen and artificial ventilation if necessary. If methemoglobinemia is present, administration of methylene blue (1% solution), 1–2 mg/kg intravenously, may be required.

Methemoglobin

Case reports of clinically significant methemoglobinemia are rare at conventional doses of organic nitrates. The formation of methemoglobin is dose-related and in the case of genetic abnormalities of hemoglobin that favor methemoglobin formation, even conventional doses of organic nitrates could produce harmful concentrations of methemoglobin.

Warnings

Epinephrine is ineffective in reversing the severe hypotensive events associated with overdose. It and related compounds are contraindicated in this situation.

Dosage and Administration

When applying the ointment, place the dose determining applicator supplied with the package printed-side down and squeeze the necessary amount of ointment from the tube onto the applicator. Then place the applicator with the ointment-side down onto the desired area of skin, usually the chest or back. Several studies suggest that absorption of nitroglycerin through the skin varies with the site of application of the drug. Application of the drug to the skin of the chest is reported to give higher blood levels of nitroglycerin and greater hemodynamic effects than application to the extremities.

The amount of nitroglycerin entering the circulation varies directly with the size of skin area exposed to the drug and the amount of ointment applied. Although in major clinical trials the dose of nitroglycerin was often applied to a 6×6 inch (150×150 mm) area of skin, in clinical practice the dose is usually applied to a smaller area. The ointment should be applied in a thin uniform layer and the dose-to-area ratio kept reasonably constant. For example: 1 inch on a 2×3 inch area; 2 inches on a 3×4 inch area; 3 inches on a 4×5 inch area. When doubling the dose, the surface area over which the ointment is placed should also be doubled.

As with all nitrates, clinical studies suggest that clinical response is variable. A suggested starting dose for [Product Name] is ½ inch (7.5 mg) applied to a 1×3 inch area every 6 hours. Response to treatment should be assessed over the next several days. If angina occurs while the ointment is in place, the dose should be increased, for example to 1 inch on a 2×3 inch area. [Product Name] should be titrated upward until a dose effective in controlling angina is determined or until side effects limit the dose. If angina occurs after the ointment has been in place for several hours, the frequency of dosing should be increased (e.g. every 6 hours). Administer the smallest effective dose 3 to 4 times daily, unless clinical response suggests a different regimen. At initiation of therapy or change in dosage, blood pressure (patient standing) should be monitored. Controlled trials have been carried out for up to 7 hours after dosing, therefore, it is not known whether the drug is effective in prevention of exertional angina beyond 7 hours after dosing. The effectiveness of repetitive applications of nitroglycerin ointment for the chronic management of angina pectoris has not been established.

[Product name] is not intended for immediate relief of anginal attacks.

How Supplied

[To be inserted by manufacturer or distributor.]

C. *Marketing status.* 1. Marketing a drug product that is now the subject of a conditionally approved abbreviated new drug application may be continued provided that, on or before June 29, 1987, the holder of the application has submitted a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted (21 CFR 314.70(b)(3)).

2. In addition, to permit full approval on the basis of effectiveness, as well as safety, of the abbreviated applications that are now conditionally approved on the basis of safety only, the holder of each such application is required to supplement its application to provide acceptable in vitro dissolution tests and in vivo bioavailability/bioequivalence (measuring plasma or serum concentrations of parent compound and its principal metabolites) studies on the drug product in accord with item D below. To furnish adequate time for review, bioavailability data should be submitted on or before June 29, 1987. For any application not fully approved by August 31, 1987, the agency will begin proceedings to withdraw the previous approval based only on safety and to remove those products from the market.

3. Approval of an abbreviated new drug application (21 CFR 314.55) must be obtained before marketing such products. Such an abbreviated new drug application is required to contain evidence from in vivo bioavailability studies as described in item D below. Evidence from in vitro dissolution testing is also required. Marketing drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

D. *Bioavailability requirements.* 1. As stated in the **Federal Register** of August 23, 1977 (42 FR 42311), the provision of 21 CFR 320.22(c) waiving bioavailability data for certain drugs does not necessarily apply to drug products first announced as effective in DESI notices published after January 7, 1977. This is the first notice announcing that nitroglycerin topical ointment is effective, and the agency has determined that because of actual or potential bioequivalence problems, it should be added to the list of drugs for which bioavailability data are not waived.

2. Under the exempting notices, manufacturers were allowed to demonstrate bioavailability via an acceptable bio-screen, e.g., the digital plethysmography (DPG) method, and, as a condition for marketing, needed to show only that sufficient drug had been absorbed to elicit a positive measurable indication of pharmacologic activity. At that time, sensitive methodology for determination of blood levels of the various organic nitrate coronary vasodilators had not been fully developed. Suitable methodology is now available for assessing bioavailability and defining the pharmacokinetics of nitroglycerin through blood level determinations.

3. Studies are currently under way that are intended to establish the absolute and relative bioavailability of nitroglycerin ointment. The products used in these studies have been selected as standards because acceptable clinical efficacy data are available for them. Manufacturers who submit new applications or who hold previously approved or conditionally approved applications for other formulations will be required to match these standards by performing bioavailability/bioequivalence studies (blood level versus time for parent drug and major metabolites). Failure of a product to match the standards may require clinical dose-ranging studies as a condition for marketing. Requests for guidance on conducting dissolution tests and bioavailability/bioequivalence studies are to be addressed to the Division of Bioequivalency at the address given.

This notice is issued under the Federal Food, Drug, and Cosmetic Act.

(Secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82)

Dated: August 26, 1986.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 86–19797 Filed 9–2–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N–0583]

Low Back Referral Criteria Panel Meeting; Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the meeting of the Low Back Referral Criteria Panel scheduled for September 4 and 5. The meeting was announced by notice in the **Federal Register** of July 30, 1986 (51 FR 27256).

FOR FURTHER INFORMATION CONTACT: Jay A. Rachlin, Center for Devices and Radiological Health (HFZ–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4600.

Dated: August 28, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-19873 Filed 8-29-86; 10:19 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of Disapproval of a North Carolina State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces the rescheduling of an administrative hearing on September 19, 1986 in Washington, DC to reconsider our decision to disapprove North Carolina State Plan Amendment 85-5.

DATE: Closing date: Requests to participate in the hearing as a party must be received by the Docket Clerk by September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces the rescheduling of an administrative hearing to reconsider our decision to disapprove a North Carolina State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether North Carolina's proposed changes with respect to allowing medically needy individuals to become eligible on the day countable resources are reduced to the allowable resource amount violates the exception to section 1902(a)(10)(C) contained in section 1902(f) of the Social Security Act and implementing regulations at 42 CFR 435.121.

To quality for the exception to section 1902(a)(10)(C) under section 1902(f) of the Social Security Act and implementing regulations at 42 CFR 435.121, States must use Medicaid eligibility criteria for the aged, blind and disabled, which are no more restrictive than those contained in the State's January 1, 1972 Medicaid State plan, and no more liberal than the requirements of the Supplemental Security Income (SSI) or an optional State supplement program.

Under the SSI program an individual's resources are accounted for as of the first moment of the first day in a month (SSI Program Operations Manual System section SI 01150.005). If at that point the individual's countable resources are less than or equal to the allowable resource limit, the individual is resource eligible. If, however, the countable resources exceed the resource level, the individual is ineligible and remains so for the rest of the month, regardless of whether the resources are reduced below the resource level subsequently during the month.

Under SPA 85-5 North Carolina would permit medically needy aged, blind and disabled individuals with excess countable resources as of the first moment of the first day in the month to become eligible if, during the month, the resources are reduced to the resources limit. Therefore, HCFA hs determined North Carolina's proposal would apply a more liberal rule than permitted under section 1902(f) of the Social Security Act and implementing regulations at 42 CFR 435.121 to qualify for the exception to the requirements at section 1902(a)(10)(C).

The administrative hearing on North Carolina SPA 85-5 was originally scheduled to be held on February 19, 1986 in Atlanta, Georgia. The announcement of the February 19, 1986 hearing was published in the **Federal Register** of January 10, 1986, Vol. 51, No. 7 pages 1301-1302. The hearing has been rescheduled to September 19, 1986 in Washington, DC. Although we believe that republication of a rescheduled hearing is not legally required generally, we have decided to republish in this case due to the change in venue from Atlanta, Georgia to Washington, DC.

The notice to North Carolina announcing the rescheduling of the administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Phillip J. Kirk, Jr.,
Secretary, North Carolina Department of Human Resources, 325 North Salisbury Street, Roleigh, North Corolina 27611

Dear Mr. Kirk: This is to advise you that the hearing for reconsideration of the decision ot disapprove North Carolina State Plan Amendment 85-5 has been rescheduled.

You have requested a reconsideration of whether the plan amendment conforms to the requirements for approval under title XIX of the Social Security Act. The issue to be considered at a hearing on your request for reconsideration is: Whether the plan amendment violates the requirements for an exception to section 1902(a)(10)(C) under section 1902(f) of the Social Security Act and Federal regulations at 42 CFR 435.121 because it would permit medically needy aged blind and disabled individuals with excess countable resources as of the first moment of the first day in the month to become eligible if during the month the resources are reduced to the resources limit. The basis for the disapproval is, therefore, section 1902(a)(10)(C).

The hearing was originally scheduled to be held on February 19, 1986 in Atlanta, Georgia. This was announced in the **Federal Register** of Friday, January 10, 1986, Vol. 51, No. 7, pages 1301-1302.

I am rescheduling the hearing to be held on September 19, 1986 at 10 a.m., in Room 5167 North Building, 330 Independence Avenue, SW., Washington, DC. I understand that you have been advised of these arrangementsa and that they are agreeable to you.

Mr. Albert Miller has been designated as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: August 27, 1986.

William L. Roper,

Administrator, Health Core Finoncing Administration.

[FR Doc. 86-19836 Filed 9-2-86; 8:45am]

BILLING CODE 4120-03-M

VOL 51 ISS 170 SE 3 1986 UMI

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of C.I. Disperse Blue 1

The HHS' National Toxicology Program announces the availability of the Technical Report describing toxicology and carcinogenesis studies of C.I. Disperse Blue 1, a blue-black microcrystalline material used in semipermanent hair dyes.

Toxicology and carcinogenesis studies of C.I. Disperse Blue in male and female F344/N rats and male and female $B6C3F_1$ mice in single-administration gavage, 14-day, 13-week, and 104-week feed studies. Dietary concentrations used in the 2-year studies were 0, 1,250, 2,500, or 5,000 ppm.

Under the conditions of these feed studies of C.I. Disperse Blue 1, there was clear evidence of carcinogenicity [1] for male and female F344/N rats as shown by the increased occurrence of transitional cell papillomas and carcinomas, of leiomyomas and leiomyosarcomas, and of squamous cell papillomas and carcinomas of the urinary bladder. Urinary bladder calculi were observed in the groups of rats in which urinary bladder neoplasms were increased. A marginally increased occurrence of pancreatic islet cell adenomas or carcinomas (combined) were observed in male rats exposed to C.I. Disperse Blue 1. There was equivocal evidence of carcinogenicity of C.I. Disperse Blue 1 in male $B6C3F_1$ mice as shown by marginally increased incidences of hepatocellular adenomas or carcinomas (combined) in dosed male mice and a marginally increased occurrence of alveolar/bronchiolar adenomas or carcinomas (combined) in high dose male mice. There was no evidence of carcinogenicity of C.I. Disperse Blue 1 in female $B6C3F_1$ mice.

Copies of *Toxicology and Carcinogenesis Studies of C.I. Disperse Blue 1 in F344/N Rats and $B6C3F_1$ Mice (Feed Studies)* (TR 299) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, N.C. 27709. Telephone (919) 541-3991, FTS: 629-3991.

Dated: August 26, 1986.

David P. Rall,

Director.

[FR Doc. 86-19773 Filed 9-2-86; 8:45 am]

BILLING CODE 4140-01-M

[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Chlorinated Paraffins

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of chlorinated paraffins (C_{23}, 43% chlorine). Chlorinated paraffins are used as extreme-pressure lubricant additives; as flame retardants in rubber, plastics, and paints; and as secondary plasticizers, primarily in polyvinylchloride. Small amounts are also used in certain types of adhesives, plastics, caulks, and inks.

Toxicology and carcinogenesis studies of chlorinated paraffins (C_{23}, 43% chlorine) were conducted by administering the chemical in corn oil by gavage to groups of 50 F344/N rats and 50 $B6C3F_1$ mice of each sex, 5 days per week for 103 weeks.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenicity [1] of chlorinated paraffins (C_{23}, 43% chlorine) for male F344/N rats given 1,875 or 3,750 mg/kg per day. There was equivocal evidence of carcinogenicity of chlorinated paraffins (C_{23}, 43% chlorine) for female F344/N rats as shown by an increased incidence of adrenal gland medullary pheochromocytomas. There was clear evidence of carcinogenicity of chlorinated paraffins (C_{33}, 43% chlorine) for male $B6C3F_1$ mice as shown by an increase in the incidence of malignant lymphomas. There was equivocal evidence of carcinogenicity of chlorinated paraffins (C_{23}, 43% chlorine) for female $B6C3F_1$ mice as shown by a marginal increase in the incidence of hepatocellular neoplasms.

Copies of *Toxicology and Carcinogenesis Studies of Chlorinated Paraffins (C_{23}, 43% chlorine) in F344/N Rats and $B6C3F_1$ Mice (Gavage Studies)* (T.R. 305) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991. FTS: 629-3991.

Dated: August 26, 1986.

David P. Rall,

Director.

[FR Doc. 86-19774 Filed 9-2-86; 8:45 am]

BILLING CODE 4140-01-M

[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Announcement of Completed Short-Term Toxicology Studies on Three Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing of studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) will routinely announce in the **Federal Register** the list of chemicals for which short-term toxicology studies have been completed.

Short-term toxicology studies on the chemicals listed in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decision on whether additional studies including long-term toxicology and carcinogenicity studies are needed will soon be made by the NTP. If you have relevant information (such as current production, use pattern, exposure levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientist within 30 days of the appearance of this announcement by telephone or by mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP while determining which chemicals require additional studies and in designing these studies.

1. *1,3-Butadiene* (106-99-0): 90-day inhalation studies in Fischer 344 rats. Contact Person: Dr. Ronald Melnick, Telephone 919-541-4142.

2. *Tert-Butyl Alcohol* (75-65-0): 90-day drinking water studies in Fischer 344 rats and $B6C3F_1$ mice. Contact Person: Dr. Robert Maronpot, Telephone 919-541-4861.

3. *Hexachloro-1,3-butadiene* (87-68-3): 14-day and 90-day feed studies in $B6C3F_1$ mice. Contact Person: Dr. Raymond Yang, Telephone 919-541-2947.

Please submit all comments and suggestions on chemical(s) by telephone or by mail to the responsible scientist

(listed above) within 30 days of publication of this notice. Any submissions received after the above date will be accepted and utilized if possible.

Dated: August 26, 1986.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 86-19772 Filed 9-2-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Use of Penalty Mail To Distribute Information on Missing and Exploited Children: Departmentwide Implementation

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior is announcing participation in the missing and exploited children program under guidelines provided by the Office of Juvenile Justice and Delinquency Prevention, Department of Justice, which were published in the **Federal Register** on November 8, 1985 (50 FR 46622).

DATE: This notice is effective September 3, 1986, and will remain in effect until January 26, 1989, unless that date is amended by law.

FOR FURTHER INFORMATION CONTACT: Sally Brandt, Division of Directives and Regulatory Management, Office of Information Resources Management, Office of the Secretary, Department of the Interior, 18th and C Sts. NW., Room 7357, Washington, DC 20240, telephone (202) 343-6191.

SUPPLEMENTARY INFORMATION: The enactment of 39 U.S.C. 3220(a)(2) (Pub.L. 99-87, August 8, 1985) authorizes Government agencies to use penalty mail to distribute information concerning missing children. The Department of Justice issued preliminary guidelines to implement the program, and will be the sole source of information to be distributed.

A picture and biographical information on a missing child will be printed by the Department and distributed through bureau and office headquarters to field locations each month. The pictures will be posted in high visibility areas for maximum exposure. Posting pictures in 2,040 locations will make the information available to 67,000 employees, 6,000 volunteers, and 1.5 million members of the public that visit our facilities, at a total annual printing cost of $1,800. Pictures will be included in batched or pouched mail destined for each location, thereby eliminating additional expenditures for postage.

Upon notice from the Department of Justice, specific pictures and biographical information will be removed from display promptly by each office.

Bureaus and offices will limit their activities to those initiated by the Department. This will be the sole notice published by the Department of the Interior.

Dated: August 25, 1986.

Gerald R. Riso,

Assistant Secretary—Policy, Budget, and Administration.

[FR Doc. 86-19790 Filed 9-2-86; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[Group 878]

California; Filing of Plat of Survey

August 19, 1986.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, San Bernardino County

T. 25 S., R. 44 E.
T. 26 S., R. 44 E.
T. 27 S., R. 44 E.

2. These plats representing the following:

a. The dependent resurvey of a portion of the subdivisional lines, and Mineral Survey No. 5400 in sections 4 and 5, Township 25 South, Range 44 East, Mount Diablo Meridian.

b. The dependent resurvey of a portion of the subdivisional lines, Township 26 South, Range 44 East, Mount Diablo Meridian.

c. The dependent resurvey of a portion of the north boundary and the survey of a portion of the north boundary, the east and south boundaries, and a portion of the subdivisional lines, Township 27 South, Range 44 East, Mount Diablo Meridian, under group No. 878, California, was accepted July 22, 1986.

3. These plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and is available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-19782 Filed 9-2-86; 8:45 am]

BILLING CODE 4310-40-M

[C-9-86]

California; Filing of Plat of Survey

August 19, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Plumas County

T. 27 N., R 9 E.

2. This supplemental plat of the South East ¼ of Section 34, Township 27 North, Range 9 East, Mount Diablo Meridian, California, based upon the plat approved May 23, 1882, and the deed dated May 15, 1943, recorded in Volume 79, Deeds, at Page 276, in Plumas County Records, was accepted August 1, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management and the United States Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-19783 Filed 9-2-86; 8:45 am]

BILLING CODE 4310-40-M

[Group 878]

California; Filing of Plat of Survey

August 19, 1986.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, San Bernardino County

T. 27 S., R. 43 E.
T. 28 S., R. 43 E.

2. These plats representing the following:

a. The dependent resurvey of a portion of the east boundary of Township 27 South, Range 42 East, and the dependent resurvey of the North boundary, and the survey of the east boundary and a portion of the subdivisional lines, Township 27 South, Range 43 East, Mount Diablo Meridian.

b. The dependent resurvey of the seventh Standard Parallel South through a portion of Ranges 42, 43, and 44 East, and the East boundary of Township 28 South, Range 42 East, and the survey of the East and North boundaries, a portion of the subdivisional lines, and the subdivision of Section 4, Township 28 South, Range 43 East, Mount Diablo Meridian (plat in two (2) sheets), under Group No. 878, California, was accepted July 22, 1986.

3. These plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and is available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-19784 Filed 9-2-86; 8:45 am]

BILLING CODE 4310-40-M

[C-4-85]

California; Filing of Plat of Survey

August 19, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Nevada County

T. 16 N., R. 8 E.

2. This supplemental plat of the South 1/2 section 35, Township 16 North, Range 8 East, Mount Diablo Meridian, based upon the plat approved August 24, 1867, the diagrams dated March 12, 1874, March 2, 1876 (2), June 3, 1882, April 24, 1885, November 17, 1885, November 8, 1886, April 16, 1887, December 12, 1887, June 25, 1888, September 8, 1888, January 9, 1890, September 24, 1891, November 15, 1892, January 6, 1894, January 19, 1895, July 21, 1897, March 1, 1898, June 25, 1898, February 10, 1900, December 24, 1903, and the mineral survey records, was accepted July 21, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-19785 Filed 9-2-86; 8:45 am]

BILLING CODE 4310-40-M

[Group 856]

California; Filing of Plat of Survey

August 19, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Placer County

T. 14 N., R. 10 E.

2. This plat representing the dependent resurvey of a portion of the subdivisional lines and certain boundaries of mineral surveys, and the survey of the subdivision of sections 14 and 23, Township 14 North, Range 10 East, Mount Diablo Meridian, California (2 sheets), under Group No. 856, California, was accepted July 25, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-19786 Filed 9-2-86; 8:45 am]

BILLING CODE 4310-40-M

[OR-050-4410-10]

Oregon; Brothers/LaPine Resource Management Plan, Preliminary Issues and Tentative Management Alternatives and Public Meetings

August 26, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and availability of Brothers/LaPine Issues and Alternatives Brochure and notice of public meetings for participation in the Brothers/LaPine planning process.

SUMMARY: Pursuant to 43 CFR 1610.3 and 1610.4-5 of the regulations for resource management planning, the Department of the Interior, Bureau of Land Management, Prineville District Office, has developed preliminary issues and tentative management alternatives to facilitate the preparation of the Brothers/LaPine Resource Management Plan (RMP) and Environmental Impact Statement (EIS). Three public meetings have been scheduled to invite comments in person on the proposed plan.

SUPPLEMENTARY INFORMATION: The plan will result in land use allocations and resource management directions for approximately 1,117,000 acres of surface ownership in the Brothers/LaPine Planning Area. The planning area is located in Crook, Deschutes, Harney, Lake and Klamath Counties. Major resource management issues include land tenure and access, special management areas, wild horses, and recreation management in the entire planning area and forestry, livestock grazing and wildlife issues in the LaPine portion of the planning area.

The draft plan and EIS will be available for public review in the fall of 1987 and the final plan and EIS is scheduled to be completed in the spring of 1988. A record of decision and rangeland program summary will be completed in the fall of 1988.

Copies of the Brothers/LaPine Issues and Alternatives Brochure have been sent to the district's current mailing list. Copies are also available at:

BLM, Prineville District Office, 185 E. Fourth St., Prineville, OR 97754

BLM, Oregon State Office, 825 NE Multnomah St., Portland, OR 97208

The public is invited to submit written comments by October 15, 1986, on: (1) The elements which should be in the preferred alternative, (2) ideas on the formulation of other alternatives which should be addressed in the EIS, (3) ideas or issues which should be addressed in the EIS, and (4) criteria which should be used in the development or selection of

a preferred alternative plan. Comments or questions may also be presented in person at one of the scheduled public meetings in Prineville, on September 9, 1986 at 7:00 p.m. in the Catholic Parish Hall, in Bend on September 10, 1986 at 7:00 p.m. at the Riverhouse Motor Inn and in LaPine on September 11, 1986 at 7:00 p.m. at the Community Center.

Additional information may be obtained by contacting the Prineville BLM District Office.

DATE: Comments must be received by October 15, 1986.

ADDRESS: Written comments, requests for copies of the planning brochure or additional information should be directed to Brian Cunninghame, Bureau of Land Management, Prineville District, 185 East Fourth Street, Prineville, Oregon 97754, telephone (503) 447–4115.

Dated: August 26, 1986.

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 86–19788 Filed 9–02–86; 8:45 am]

BILLING CODE 4310–33–M

[AA–6978–A]

Alaska Native Claims Selection; Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Kootznoowoo Incorporated for approximately 25 acres. The lands involved are in the vicinity of the Tongass National Forest, Alaska.

Copper River Meridian, Alaska

T. 77 S., R. 87 E. (Unsurveyed),
Sec. 1, NW4.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 3, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Steven L. Willis,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–19781 Filed 9–2–86; 8:45 am]

BILLING CODE 4310–JA–M

[NM–010–06–4331–12; NM–010–0115]

New Mexico Off-Road Vehicle Designation; Designation Order NM–010–8601

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designation.

DECISION: Notice is hereby given relating to the limited use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Order 11644 and 11989, and regulations contained in 43 CFR 8340. The following described lands under administration of the Bureau of Land Management are designated as having limited off-road motorized vehicle use.

This order limits vehicular use on 840 acres of public land to protect and preserve significant Chacoan cultural resources known as Kin Nizhoni, Twin Angels and Casamero Community. The designations are a result of resource management decisions made in the 1979 San Juan Planning Unit Management Framework Plan, the 1980 Chacoan Community Cultural Resources Interim Management Plan, the 1981 Chaco Planning Unit Management Framework Plan, the 1985 Kin Nizhoni Community Cultural Resources Management Plan, 1985 Twin Angels Cultural Resources Management Plan and the 1984 Casamero Community Cultural Resources Management Plan. Both Kin Nizhoni and Twin Angels have been included in the Chaco Archeological Protection Site System. Section 506(c) of Pub. L. 96–550 stipulates that "No activity shall be permitted upon the upper surface of the archeological protection sites which shall endanger their cultural values." An open off-road vehicle designation is not compatible with Section 506(c) of Pub. L. 96–550.

The designation orders supersede interim off-road vehicle designations which were made prior to development of the 1979 and 1981 Management Framework Plans. These designations are published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

Limited Designation—840 Acres

The 640 acre parcel containing Kin Nizhoni is located approximately eight miles west of San Mateo, New Mexico. Motorized vehicle use in this area is limited only to authorized vehicle use to protect fragile remains of the Chacoan Anasazi culture. Vehicular use in this area is limited to designated trails which are identified with signs and on maps. The only authorized vehicle use will be vehicles entering Kin Nizhoni Community for maintenance of the cultural resources, and vehicles of the BLM and the adjacent land owner authorized to use the designated trails across the Community.

The 40 acre parcel containing the Twin Angels Archeological Protection Site is located 10 miles south of Bloomfield, New Mexico. Motorized vehicle use is limited in this area, only to authorized vehicles used in maintenance of the cultural resources and a water line, to protect fragile remains of the Chacoan Anasazi culture.

The 160 acre parcel containing the Casamero Community is located 4.3 miles north of Prewitt, New Mexico. Motorized vehicle use in this area is limited only to authorized vehicle use to protect fragile remains of the Chacoan Anasazi culture. The only authorized vehicle use will be vehicles entering the Casamero Community for maintenance of the cultural resources, vehicles used for the maintenance of the Gas Company of New Mexico pipeline, and vehicles of the BLM and the adjacent land owner authorized to use the primitive road across the Casamero Community south of the Community fence.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impact of this designation is available for inspection at the office listed below.

ADDRESS: For further information about these designations, contact the following Bureau of Land Management Official:

District Manager, Albuquerque District Office, 435 Montano Rd. NE., Albuquerque, NM 87107.

Area Manager, Farmington Resource Area, Caller Service 4104, Farmington, NM 87499.

L. Paul Applegate,

District Manager.

[FR Doc. 86–19789 Filed 9–2–86; 8:45 am]

BILLING CODE 4310–FB–M

VOL 51 ISS 170 SE 3 1986 UMI

Shoshone District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Wednesday, October 8, 1986 at 10:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, DM, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6578.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items (1) discuss the charter of the newly elected Board and responsibilities of the Board Members, (2) election of officers, (3) the role of the Board in the range management and range improvement programs in the Shoshone District, and (4) the current financial status of the past Board that was dissolved on December 31, 1985.

Operation and administration of the Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 10:00 a.m. and 11:00 a.m., or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by October 7, 1986. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Dennis Schulze,

Acting District Manager.

[FR Doc. 86–19812 Filed 9–2–86; 8:45 am]

BILLING CODE 4310–GG–M

Revision of Campground Use Fees Established; California Desert District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice. Establishment of Revised Campground Use Fees.

SUMMARY: This notice establishes the fee schedule at $4 for daily use at all developed campgrounds located on public lands managed by the California Desert District, Bureau of Land Management.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: David Mensing, Outdoor Recreation Planner, California Desert District, Bureau of Land Management, (714) 351–6402.

SUPPLEMENTARY INFORMATION: Administrative costs associated with recreation site management have risen dramatically over the past several years as have costs associated with providing and maintaining the services, facilities, and the natural resources associated with these sites. In order to continue with a viable recreation site management program and ensure the public a fair return for the use of these sites, a greater portion of the costs must be borne by those groups and/or individuals who derive the greatest direct benefits from that use. Therefore, beginning October 1, 1986 camprground use fes will be $4.00 per camping unit, per user day where the authorized officer determines that fees are required. For the purpose of this fee schedule, a "user day" is defined as any part of a calendar day.

Authority for this fee increase is contained in CFR Title 36, Chapter 1, Part 86.9.

Dated: August 25, 1986.

Gerald Hillier,

District Manager.

[FR Doc. 86–19813 Filed 9–2–86; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Reclamation

[INT–DES 86–37]

Municipal and Industrial System, Bonneville Unit Central Utah Protect; Notice of Availability and Public Hearings on the Draft Supplement to the Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a Draft Supplement to the Final Environmental Statement on the Municipal and Industrial (M&I) System, originally filed with the Environmental Protection Agency in October 1979 (INT FES 79–55). Comments on the Draft Supplement must be received by the Bureau of Reclamation by the date indicated on the cover of the document.

The M&I System will provide municipal and industrial and irrigation water for portions of central Utah. The system consists of the proposed Jordanelle Dam and Reservoir, to be located on the Provo River about 38 miles upstream from Utah Lake, which will store project water, and the Jordan and Alpine Aqueducts, which will convey M&I water to Utah and Salt Lake Counties. In addition, the system will provide M&I water to Wasatch County and supplemental irrigation water to the Heber-Francis area in Wasatch and Summit Counties. Operation of the project will also enhance water quality, stream fisheries, and recreation values.

The supplement evaluates the environmental impacts of proposed modifications to the M&I System plan and impacts not covered by the FES. Such items include relocating U.S. Highway 189 along an alignment different from that described in the FES; adding a new Wasatch County road; relocating the outlet works of Jordanelle Dam from the right to the left abutment; adjusting the reservoir management boundary and land for project features; modifying the fishery mitigation/recreation plan between the proposed Jordanelle Reservoir and the existing Deer Creek Reservoir by refining Provo River access requirements and eliminating boating and tubing on the river; modifying the wildlife mitigation plan; evaluating impacts to area wetlands (not covered in the FES); and consultations with the Fish and Wildlife Service under Section 7 of the Endangered Species Act for the June sucker, a recently listed endangered species.

Public hearings will be held on October 7, 1986, at 2 p.m. and 7 p.m. at the Heber Middle School, 200 East 800 South, Heber, Utah. These hearings are designed to obtain views and comments from interested individuals and organizations relating to the environmental impacts addressed in the supplement.

Oral statements at the hearings will be limited to 10 minutes each. Speakers may not trade their time to obtain a longer oral presentation; however, the person conducting the hearing may allow any speaker additional opportunity to comment after all scheduled speakers have been heard. Whenever possible, speakers will be scheduled according to the time preference requested. Speakers not present when called will lose their turn in the scheduled order, but will be given an opportunity to speak at the end of the scheduled presentations. Requests for scheduled presentations will be accepted until 4 p.m., October 6, 1986. Subsequent requests will be handled at the hearing on a first-come-first-served basis following the scheduled presentation. Oraganizations or

individuals desiring to present statements at the hearings should contact Jay Henrie, Team Leader, Bureau of Reclamation, Utah Projects Office, P.O. Box 1338, Provo, Utah 84603, telephone (801) 379–1172 by letter or telephone and announce their intention to participate.

Written comments from those unable to attend and from those wishing to supplement their oral presentations at the hearings should be sent to the Regional Director, Attention: US–730, in Salt Lake City, Utah by October 17, 1986, in order to be included in the hearing record. Copies of the supplement are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7425, Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343–4991

Division of Management Support; General Service, Library Section, Code 950, Engineering and Research Center, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 234–3019

Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, P.O. Box 11568, Salt Lake City, Utah 84147, Telephone: (801) 524–5580

Utah Projects Office, Bureau of Reclamation, 302 East 1860 South, P.O. Box 1338, Provo, Utah 84603, Telephone: (801) 379–1172

Single copies of the statement may be obtained on request from the Director, Office of Environmental Affairs, or the Regional Director at the above addresses. Copies also will be available for inspection in libraries in the project vicinity.

Dated: August 28, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86–19844 Filed 9–2–86; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–1 (Sub-No. 194X)]

Chicago and North Western Transportation Company—Abandonment Exemption—In Polk County, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Chicago and North Western Transportation Company of 1.6 miles of track in Polk County, IA, subject to standard labor protective conditions, a public use condition under 49 U.S.C. 10906, and a condition concerning the *National Register of Historic Places.*

DATES: This exemption will be effective on October 3, 1986. Petitions to stay must be filed by September 15, 1986, and petitions for reconsideration must be filed by September 23, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–1 (Sub-No. 194X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Myles L. Tobin, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 25, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–19808 Filed 9–2–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–57 (Sub-No. 15X)]

Soo Line Railroad Company—Abandonment Exemption—In Hennepin County, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Soo Line Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon a 0.58-mile line of railroad in Minneapolis, MN, subject to standard employee protective conditions.

DATES: This exemption will be effective September 8, 1986. Petitions to reopen must be filed by September 29, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–57 (Sub-No. 15X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Charles H. Clay, 2110 First Bank Place West, Minneapolis, MN 55402

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll-free (800) 424–5403.

Decided: August 21, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–19809 Filed 9–2–86; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before October 3, 1986.

ADDRESS: Send Comments to Mrs. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506 (202–786–0233) and Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Mrs. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506 (202–786–0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the

following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Classification of the Amount of Request for Payment on Letter of Credit
Form Number: OMB 3136-0056
Frequency of Collection: On Occasion
Respondents: National Endowment for the Humanities Grantees
Use: To Request Payment Through Letter of Credit (LOC-TFCS)
Estimated Number of Respondents: 65
Estimated Hours for Respondents to Provide Information: 319

D. Ray Gleason,

Acting Director of Administration.

[FR Doc. 86-19758 Filed 9-2-86; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Proposed New System of Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the National Labor Relations Board publishes the accompanying notice of its intention to establish a new system of records to be titled "NLRB-16, Investigative Services Case Files." This new system of records will be located in the offices of contractors of the Agency; it will consist of investigative reports on efforts to trace individuals, entities, and assets, and include copies of interview reports, public documents, and certain confidential data gathered. A complete listing of the National Labor Relations Board's "14 Notices of Systems of Records" was last published in 47 FR 42043 on 23 September 1982. A notice altering an existing system of records, "NLRB-7, Grievances, Appeals, and Complaints Records" to include related litigation records and some additional routine uses and to establish a new system of records to be titled "NLRB-15, Employee Counseling Services Program Records" was published in 51 FR 12947 on 16 April 1986.

All persons who desire to submit written comments, views, or arguments for consideration by the Board in connection with the proposed new system of records should file same, not later than 60 calendar days following the date of this publication, with the Executive Secretary, National Labor Relations Board, Washington, DC 20570. Copies of such communications will be available for examination by interested persons during normal business hours in the Office of the Executive Secretary, Room 701, 1717 Pennsylvania Avenue NW., Washington, D.C.

All persons are advised that in the absence of submitted comment, views, or argument considered by the Board as warranting modification of the notice as herewith to be published, it is the intention of the Board that the notice as herewith published shall be effective upon expiration of the comment period without further action by this Agency.

Copies of the new system of records report required by 5 U.S.C. 552a(o) were forwarded to Congress and to the Office of Management and Budget on August 25, 1986.

Dated: Washington, D.C., August 28, 1986.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

NLRB-16

SYSTEM NAME:

Investigative Services Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Offices of contractors of the Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals sought by the Agency for purposes of effecting compliance with the National Labor Relations Act and Board Orders and court decrees issued thereunder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of investigative reports on efforts to trace individuals, entities, and assets, and include copies of interview reports, public documents, and certain confidential data gathered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a(m)(1) and 29 U.S.C. 153(d) and 160.

PURPOSE:

These records are used to effect compliance with the National Labor Relations Act and Board Orders and court decrees issued thereunder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used in disclosing information to:

1. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

2. A court or other adjudicative body before which the Agency is authorized to appear, when either (a) the Agency, or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Agency has agreed to represent the employee, or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation.

3. The Department of Justice for use in litigation when either (a) the Agency, or any component thereof, (b) any employee of the Agency in his or her official capacity, (c) any employee of the Agency in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. The appropriate agency, whether Federal, state, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto or to any agency in connection with its oversight review responsibility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file folders in locked filing cabinets in offices of contractors of the Agency. Automated information storage and retrieval systems may also be used by individual contractors.

RETRIEVABILITY:

Records are maintained alphabetically by name, or may be retrieved by other personal identifier.

SAFEGUARDS:

Access to and use of the records is limited to authorized persons on a need-to-know basis.

RETENTION AND DISPOSAL:

The records are retained by the contractor for no nore than 3 years after the case is closed, and are destroyed upon notification from the Agency.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Contempt Litigation Branch, Division of Enforcement Litigation, National Labor Relations Board, Room 923, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(e).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(h).

RECORD SOURCE CATEGORIES:

Public records, state, and local law enforcement authorities, third party informants, and Agency personnel.

[FR Doc. 86-19824 Filed 9-2-86; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250-OLA-3 and 50-251-OLA-3]

Florida Power & Light Co.; Turkey Point Nuclear Generating Units 3 and 4; Assignment of Atomic Safety and Licensing Appeal Board; Increased Fuel Enrichment

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following Panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding:

Christine N. Kohl, Chairman
Dr. Reginald L. Gotchy
Howard A. Wilber

Dated: August 27, 1986.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 19832 Filed 9-2-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. LRP; ASLBP No. 86-519-02-SP]

Inquiry Into Three Mile Island Unit 2 Leak Rate Data Falsification; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Inquiry into Three Mile Island Unit 2 Leak Rate Data Falsification*, Docket No. LRP, is hereby reconstituted by appointing Administrative Judge James H. Carpenter in place of Administrative Judge Jerry R. Kline, who because of schedule conflict is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: James L. Kelley, Chairman, Glenn O. Bright, James H. Carpenter.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge James H. Carpenter, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 26th day of August, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-19831 Filed 9-2-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302; License No. DPR-72; EA 86-22]

Florida Power Corp.; Crystal River Unit 3; Order Imposing Civil Monetary Penalties

I

Florida Power Corporation (the licensee) is the holder of Operating License No. DPR-72 (the license) issued by the Nuclear Regulatory Commission (the Commission). The license authorizes the licensee to operate the Crystal River Unit 3 facility in accordance with conditions specified therein. The license was issued on December 3, 1976.

II

A special safeguard inspection of the licensee's activities under the license was conducted on January 2-3, 1986. The inspection determined that the licensee had not conducted its activities in full compliance with the conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated April 16, 1986. The Notice stated the nature of the violations, the requirements of the Commission that the licensee had violated, and the amount of the civil penalties proposed for the violations in the Notice. A response to the Notice of Violation and Proposed Imposition of Civil Penalties dated May 30, 1986 was received from the licensee. In the licensee's May 30, 1986 response it requested a meeting with the NRC which was held in Bethesda, Maryland on June 30, 1986. During this meeting the licensee provided further information concerning its assertions in response to the proposed violations.

Upon consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein and its further explanation of the response in the June 30, 1986 meeting, the Director, Office of Inspection and Enforcement has determined, as set forth in the Appendix to this Order, that Violations C and E should be withdrawn and that the penalties proposed for the violation in the Notice of Violation and Proposed Imposition of Civil Penalties should be reduced to Fifty Thousand Dollars ($50,000).

III

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 92-295), and 10 CFR 2.205, It Is Hereby Ordered That:

BEST COPY AVAILABLE

The licensee pay the civil penalties in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

IV

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed on the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address. If a hearing is requested, the Commission will issued an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings, and if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

V

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Items A, B and D in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 26th day of August 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director Office of Inspection and Enforcement.

[FR Doc. 86-19834 Filed 9-2-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-133-OLA (Decommissioning) ASLBP No. 86-536-07 LA]

Pacific Gas and Electric Co. (Humboldt, Bay Power Plant, Unit No. 3); Prehearing Conference

Before Administrative Judges: Robert M. Lazo, Chairman James H. Carpenter, Peter A. Morris

August 26, 1986.

Pacific Gas and Electric Company (Licensee) is licensed to possess but not operate Humboldt Bay Power Plant, Unit No. 3, a 65-MWe boiling water reactor located in the city of Eureka, Humboldt County, California. On July 3, 1986, pursuant to 10 CFR 2.104, the NRC published in the **Federal Register** a notice of consideration of the issuance of an amendment to the facility license and offered the opportunity for hearing on the amendment. 51 FR 24458. The amendment is related to decommissioning the facility and specifically would: (1) Delete license conditions related to seismic investigation, analysis and modification; (2) approve the Licensee's decommissioning plan for 30 years of onsite storage of residual radioactivity (SAFSTOR); (3) revise the technical specifications to reflect the permanent shutdown and "possess-but-not-operate" status of the facility and to reflect the SAFSTOR status; and (4) extend License Nol. DPR-7 for an additional 15 years from November 9, 2000 to November 9, 2015 to be consistent with the 30 years safe storage plan. The notice established August 4, 1986 as the deadline for filing a request for hearing and petition for leave to intervene.

Pursuant to that notice, the Redwood Alliance, an unincorporated organization; Wesley Chesbro, an elected member of the Humboldt County Board of Supervisors; Douglas H. Bosco, a United States Congressman representing California's First Congressional District; Barry Keene, a member of the California Legislature representing California's Second Senate District; and Daniel E. Hauser, a California State Assemblyman representing the Second Assembly District (Petitioners), filed a joint request for hearing and petition for leave to intervene on August 2, 1986 (Petition).

Please Take Notice that a prehearing conference in this proceeding will be held on *October 21, 1986* (and on October 22, 1986, if necessary) commencing at 9:30 a.m., local time in the Colonnade Room, Eureka Inn, 7th and F Streets, Eureka, California 95501.

The purposes of this special prehearing conference are to (1) permit identification of the key issues in the proceeding; (2) take any steps necessary for further identification of the issues; (3) consider the petition for intervention in the proceeding; and (4) establish, in consultation with all the parties and petitioners, schedules for completing the public hearing process.

Further, pursuant to 10 CFR 2.714(b), Petitioners shall file *on or before September 17, 1986,* a Supplement to their Petition for leave to intervene which must include a list of the contentions which Petitioners seek to have litigated in the matter and the bases for each contention set forth with reasonable specificity. A response addressing the admissibility of each contention set forth in the supplement to the Petition to intervene, shall be filed by the Licensee *on or before October 3, 1986,* and by the NRC Staff *on or before October 10, 1986.*

Members of the public may attend the prehearing conference.

It is so ordered.

Dated at Bethesda, Maryland, this 26th day of August, 1986.

For the Atomic Safety and Licensing Board:

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 86-19833 Filed 9-2-86; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued errata to Revision 1 of Regulatory Guide 4.16, "Monitoring and Reporting Radioactivity in Releases of Radioactive Materials in Liquid and Gaseous Effluents from Nuclear Fuel Processing and Fabrication Plants and Uranium Hexafluoride Production Plants," which was issued in December 1985. In the errata, a mathematical expression for the lower limit of detection (LLD) is being corrected, and a related reference is being added.

Everyone on the NRC's mailing list to receive Division 4 regulatory guides is being sent a copy of these errata. Others may request single copies of these errata by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 26th day of August 1986.

For the Nuclear Regulatory Commission.

Danwood F. Ross,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 86-19835 Filed 9-2-86; 8:45 am]

BILLING CODE 7590-01-M

BEST COPY AVAILABLE

POSTAL RATE COMMISSION

[Docket No. C86-2; Order No. 706]

Notice and Order on Filing of Complaint of the Sacramento Bee, the Des Moines Register, the Tennessean, and Nashville Banner

Issued: August 27, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

In the matter of complaint of The Sacramento Bee, The Des Moines Register, The Tennessean, and Nashville Banner.

On August 21, 1986, The Sacramento Bee, The Des Moines Register, The Tennessean and Nashville Banner (The Sacramento Bee, *et al.*) filed a complaint with the Commission pursuant to 39 U.S.C. 3662.[1] The complaint is based on the Postal Service's recent adoption of an amendment to § 425.226 of the Domestic Mail Manual. The amendment relates to the definition of an issue of a newspaper or other periodical. The complainants maintain, *inter alia,* that the amendment is invalid because it is a classification change to the Domestic Mail Classification Schedule (DMCS) that has been made without a prior Recommended Decision of the Postal Rate Commission. They state that as a result of the amendment they must pay rates not in conformance with the policies of the Postal Reorganization Act.

In support of their complaint, The Sacramento Bee, *et al.* say the Commission has jurisdiction to entertain their complaint pursuant to 39 U.S.C. 3662. They claim:

> The USPS regulation changes the eligibility standards for second-class mail contained in Section 200.012 of the Domestic Mail Classification Schedule (DMCS), specifically Section 200.0123 of the DMCS, adopted June 8, 1986.

Relief requested. Complainants ask the Commission to determine that the instant complaint is justified, to find that jurisdiction over the subject matter of the complaint lies with the Commission, and to institute proceedings in conformity with subpart E of the Commission's Rules of Practice and Procedure (39 CFR 3001.81–87). They also ask that at the conclusion of the complaint proceeding, the Commission issue a recommended decision which finds that the regulation in question contravenes the policies of title 39, constitutes an unauthorized act of reclassification by the Service in derogation of title 39 U.S.C. 3623, is null and void, and that the applicable pre-existing regulations apply until changed in accordance with section 3623.

Section 84 (39 CFR 3001.84) of our rules of practice provides for an answer from the Postal Service within 30 days after the filing of the complaint. We appoint Stephen A. Gold, Director of the Office of the Consumer Advocate, to represent the interests of the general public in this proceeding.

It is ordered:

(1) The Postal Service's answer is due Monday, September 22, 1986.

(2) Stephen A. Gold, Director of the Office of the Consumer Advocate, is appointed to represent the interests of the general public.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 86-19770 Filed 9-2-86; 8:45 am]

BILLING CODE 7715-01-M

[1] At the same time, the complainants filed another document captioned "Memorandum in Support of Complaint of The Sacramento Bee, *et al.*"

DEPARTMENT OF STATE

[Public Notice CM-8/992]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Stability, Load Lines, and on Safety of Fishing Vessels; Meeting

The Working Group on Stability, Load Lines and on Safety of Fishing Vessels of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on 16 Sept. 1986 in Room 3317 at 10:00 A.M. at Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593.

The purpose of the meeting is to discuss the national effort to prepare U.S. positions for Session 32 of the International Maritime Organization's subcommittee on Stability, Load Lines and on Safety of Fishing Vessels scheduled for September, 1987. Items of principal interest on the agenda for this session are:

- Subdivision of Dry Cargo Ships
- Intact Stability
- Stability for Ocean Barges
- Review of Stability for Mobile Drilling Units
- Future Revision of the Load Line Convention

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. W.A. Cleary, Jr., U.S. Coast Guard Headquarters (G-MTH-3), 2100 Second Street, SW., Washington, DC 20593, Telephone: (202) 267-2988.

Dated: August 25, 1986.

Richard C. Scissors,

Chairman Shipping Coordinating Committee.

[FR Doc. 86-19787 Filed 9-2-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Stark County, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Stark County, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin I. Espeland, Division Administrator, or Mr. Thomas M. Wahtola, District Engineer, Federal Highway Administration, 200 N. High Street, Columbus, Ohio 43215. Telephone (614) 469-6896 or 469-5148.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Ohio Department of Transportation, will prepare an environmental impact statement on the proposed construction of approximately 3.2 miles of four-lane and five-lane roadway in Stark County, Ohio. The proposed project would be a combination of a widening of existing State Route 297 (Whipple Avenue) for approximately 2.8 miles and a 0.4 mile extension of this street on new location to join an existing interchange with U.S. Route 30. The project would extend from Crestwood Street on the north to the U.S. Route 30 freeway on the south and be located on the western edge of the City of Canton for a portion of its length. Whipple Avenue (State Route 297) has already been widened to four and five lanes from Crestwood Street, the northerly terminus of the presently proposed project, to Portage Street in northwest Canton, a distance of approximately 3.8 miles.

There have been seven build alternatives developed for this project. The first five all include the construction of the four-lane 0.4 connection between Whipple Avenue SW. and U.S. Route 30 overpassing the Conrail tracks and Southway Street and a five-lane roadway for Whipple Avenue north to Crestwood Street. These five

alternatives are as follows: (1) Widening Whipple Avenue on the west side only; (2) widening equally on both sides; (3) widening on the east side only (4) relocating Whipple Avenue approximately 100 feet to the east; (5) relocating Whipple Avenue 100 feet west south of Tuscarawas Street and widening equally north of Tuscarawas Street. The remaining alternatives are (6) using a two-lane roadway to connect Whipple Avenue at 13th Street SW. to U.S. Route 30 and widening Whipple Avenue equally on both sides north of Tuscarawas Street only and (7) widening Whipple as in (1) (2) (3) or (4) north of Tuscarawas Street only, without any improvement or extension of Whipple Avenue south of it. The no-build alternative is also under consideration.

The proposed improvement would provide the Canton Area with an additional north-south arterial route, relieve traffic congestion on the now unwidened portion of the existing route, complete a facility under development since 1963, support local and regional planning, and offer better access to residential, commercial, and industrial areas.

A public hearing was held in 1973, which included the proposed project together with another portion of Whipple Avenue since completed. A public hearing on the present project only was held in 1985. There has been extensive publicity given this project in the local media and by local governments.

It is envisioned that involvement with the public and other agencies will continue throughout the development of the proposed project and, therefore, it is not anticipated that a formal scoping meeting will be held.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action should be addressed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Marvin I. Espeland,

Division Administrator, Columbus, Ohio.

[FR Doc. 86-19791 Filed 9-2-86; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Approval of Request for Removal, Without Disapproval from Roster of Approved Trustees; Colonial Bank

On August 15, 1986, there was published in the **Federal Register** (51 FR 29358), pursuant to 46 CFR 221.28, a Notice of Request for Removal, Without Disapproval, from Roster of Approved Trustees. This notice was based on the request of Colonial Bank, with offices at 81 West Main Street, Waterbury, Connecticut.

Therefore, pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30, Colonial Bank is removed from the Roster of Approved Trustees.

This notice shall become effective on date of publication.

Dated: August 28, 1986.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 86-19811 Filed 9-2-86; 8:45 am]

BILLING CODE 4910-81-M

Saint Lawrence Seaway Development Corporation

Advisory Group on Strategic Planning for the St. Lawrence Seaway; Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the Advisory Group on Strategic Planning for the St. Lawrence Seaway will be meeting on September 17, 1986.

The Group will meet at 9:30 a.m. in Room 2253, Rayburn House Office Building, Washington, DC. The purpose of the meeting will be to: (1) Outline the goal and objectives of the Group and (2) to organize the Group into three subcommittees. The subcommittees will meet following the Group meeting.

The meeting is open to the public; however, attendance by the public will be limited to space available. Interested persons may make, subject to the approval of the Corporation's Administrator, oral statements at the meeting, or file a written statement for the Group's consideration. Persons wishing to make oral statements are requested to contact Joan C. Hall at (202) 366-0118 prior to September 12, 1986 so adequate time can be included on the agenda.

For further information contact Joan C. Hall, Advisory Board Liaison, St. Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590.

Issued at Washington, DC on August 27, 1986.

Joan C. Hall,

Advisory Board Liaison.

[FR Doc. 86-19776 Filed 9-2-86; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: August 27, 1986.

The Department of the Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0091
Form Number: None
Type of Review: Extension
Title: Importers of Merchandise Subject to Actual Use Provisions
Clearance Officer: Vince Olive, (202) 566-9181, U.S. Customs Service, Room 6321, 1301 Constitution Avenue, NW, Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB Number: 1545-0773
Form Number: None
Type of Review: Extension
Title: Notice Required of Executor or Receiver
OMB Number: 1545-0782
Form Number: None
Type of Review: Extension
Title: Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands (LR-7 Final)
Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224
OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and

Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-19841 Filed 9-2-86; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Change of Location of Meeting

The meeting of the Advisory Committee on Former Prisoners of War scheduled for September 11 and 12, 1986 will not be conducted in Room 304 of the Veterans Administration Central Office as previously published. Instead, the meeting will be held on the 10th floor, Paralyzed Veterans of America, Inc., 801, 18th Street, NW, Washington, DC 20006, on the same dates. Sessions will convene at 9 a.m. both days and will be open to the public.

Dated: August 26, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-19826 Filed 9-2-86; 8:45 am]

BILLING CODE 8320-01-M

Career Development Committee; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101 will be held in the Lancaster Room of the Hotel Bedford, 761 Post Street, San Francisco, CA 94109, October 30 and 31, 1986 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202-389-2317) prior to October 15, 1986.

The meeting will be closed from 9 a.m. to 5 p.m. on October 30 and 31 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (Phone 202-389-2317).

Dated: August 22, 1986.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-19827 Filed 9-2-86; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice pursuant to Pub. L. 92-463 of the meetings of the following Merit Review Boards.

Merit Review Board	Date	Time	Location
Cardiovascular Studies	Oct. 1, 1986	8 a.m. to 5 p.m	Room 119, VA Central Office.[1]
Do	Oct. 2, 1986	do	Do.
Nephrology	Oct. 9, 1986	8 a.m. to 5 p.m	Room 119, VA Central Office.
Do	Oct. 10, 1986	do	Do.
Infectious Diseases	Oct. 14, 1986	6 p.m. to 10 p.m	Caucus Room, Holiday Inn.[2]
Do	Oct. 15, 1986	do	Do.
Endocrinology	Oct. 15, 1986	do	Presidential Room, Holiday Inn.
Do	Oct. 16, 1986	do	Do.
Hematology	Oct. 17, 1986	do	Presidential Room, Holiday Inn.
Respiration	Oct. 19, 1986	7 p.m. to 10 p.m	Vista International.[3]
Do	Oct. 20, 1986	8 a.m. to 5 p.m	Do.
Surgery	Oct. 23, 1986	do	Mardi Gras, A Room, New Orleans Marriott Hotel.[4]
Gastroenterology	Oct. 27, 1986	do	Room 119, VA Central Office.
Neurobiology	Oct. 27, 1986	do	Presidential Room, Holiday Inn.
Do	Oct. 28, 1986	do	Do.
Do	Oct. 29, 1986	do	Do.
Mental Health and Behavorial Sciences	Oct. 30, 1986	8 a.m. to 5 p.m	Presidential Room, Holiday Inn.
Do	Oct. 31, 1986	do	Do.
Do	Nov. 1, 1986	do	Do.
Basic Sciences	Nov. 4, 1986	do	Room 119, VA Central Office.
Do	Nov. 5, 1986	do	Do.
Oncology	Nov. 6, 1986	7 p.m. to 10 p.m	Presidential Room, Holiday Inn.
Do	Nov. 7, 1986	8 a.m. to 5 p.m	Do.
Immunology	Nov. 7, 1986	8 a.m. to 5 p.m	Caucus Room, Holiday Inn.
Alcoholism and Drug Dependence	Nov. 10, 1986	do	Room 119, VA Central Office.

[1] Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.
[2] Holiday Inn, 1501 Rhode Island Avenue, NW., Washington, DC 20005.
[3] Vista International Hotel, 1500 M Street, NW., Washington, DC 20005.
[4] New Orleans Marriott Hotel, Canal and Chartres Streets, New Orleans, LA 70140.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Mr. Howard M. Berman, Chief, Program Review Division, Medical Research Service, Veterans Administration, Washington, DC, (202) 389-5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: August 20, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-19828 File 9-2-86; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 170
Wednesday, September 3, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 4, 1986.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Asbestos: (1) Enforcement Policy; (2) Letter to EPA.

The Commission will consider a draft **Federal Register notice** on asbestos labeling enforcement policy. The Commission will also consider a draft letter of comment to the Environmental Protection Agency (EPA) on their proposed asbestos ban.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 3401 Westbard Ave., Bethesda, Md. 20207, 301—492–6800

Sheldon D. Butts,

Deputy Secretary.

August 28, 1986.

[FR Doc. 86–19854 Filed 8–28–86; 4:39 p.m.]

BILLING CODE 6355–01–M

federal register

Wednesday
September 3, 1986

Part II

Department of Health and Human Services

Office of Human Development Services

Native American Programs; Grant Applications

VOL 51 ISS 170 SE 3 1986 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement 13612-871]

Native American programs; Grant applications

AGENCY: Office of Human Development Services, DHHS.

ACTION: Program Announcement 13612-871.

SUMMARY: The Administration for Native Americans (ANA) announces that applications are being accepted for competitive financial assistance for American Indian and Native Hawaiian social and economic development projects. Regulations governing this program are published in the Code of Federal Regulations at 45 CFR Part 1336.

DATES: The closing dates for receipt of applications are November 12, 1986, February 27, 1987 and June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Applicants wanting additional information regarding this program announcement should contact: Lucille Dawson, (202) 245-7727, or Sharon McCully, (202) 245-7714, Administration for Native Americans, Office of Human Development Services, DHHS, Room 5300, 330 Independence Avenue SW., Washington, DC 20201, Attention: 13612-871.

SUPPLEMENTARY INFORMATION: The purpose of this program announcement is to announce the availability of financial assistance to promote self-sufficiency for Indian Tribes and Native American groups through support of local governance, as well as social and economic development projects. Funds will be awarded under section 803 of the Native American Programs Act of 1974, Pub. L. 93-644, 88 Stat. 2291, 2324, (current version 42 U.S.C. 2991(b)).

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

Program Purpose

The purpose of the financial assistance provided by the Administration for Native Americans (ANA) under the Native American Program Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaska Natives, and Native Hawaiians.

ANA believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governance, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.

Achievement of self-sufficiency is based on the community's ability to plan, organize, and direct resources in a comprehensive manner to achieve long-range community goals. ANA bases its program and policy initiatives on the following three program goals:

(1) Governance: To assist tribal governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) Economic Development: To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) Social Development: To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at achieving those goals; the unique mix of socio-economic, political, and cultural factors involved in each community makes such self-determination necessary; the local community is in the best position to apply its own cultural, political, and socio-economic values in deciding on long term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, the community's development efforts may be jeopardized. A basic premise is that expansion of social services, without providing opportunities for employment and economic development, may lead to greater dependency. Conversely, inadequate social services can seriously impede productivity and economic development.

The fundamental task which Native American communities face is developing enduring social and economic strategies in keeping with local goals, resources, and cultural values. ANA is interested in assisting local communities in the implementation of projects that are a part of long-range strategies to achieve social and economic self-sufficiency. ANA expects its applicants to have undertaken a long-range planning process that addresses the community's development and encourages social and economic growth for the community. Such long-range planning must consider the maximum use of available resources, directing those resources at opportunities and addressing issues that hinder progress. Planning and feasibility studies are acceptable strategies as long as they are part of a larger project which produces concrete, measurable results.

Governance. In the development toward self-sufficiency, ANA places the highest emphasis on increasing the effectiveness of the governance capability of Indian tribes and Native American groups. Effective governance is a necessary foundation for social and economic development and efforts to achieve effective governance include: (1) Strengthening the effectiveness of tribal governments; (2) Increasing the ability of tribes and Native Americans groups and organizations to plan, develop, and administer a comprehensive program supportive of community social and economic self-sufficiency; and (3) Increasing awareness of the legal rights and benefits to which Native Americans are entitled either by virtue of the federal trust relationship, legislative authority, or as citizens of the United States.

Under the governance goal, ANA strongly encourages tribal councils and other governing bodies to strengthen and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the day-to-day management of programs. By improving such capabilities, Indian Tribes and Native American groups can better define and achieve the goals of their people and promote greater efficiency and effectiveness in the use of available resources.

Building on the foundation of strong local governance, ANA expects tribal governments and other Native American organizations to move toward coordinated and balanced development

and implementation of social and economic development strategies. These interrelated strategies should coordinate and direct all resources (federal and non-federal) toward locally determined priorities, and impact the community and its members in ways that promote greater economic and social self-sufficiency. In addition, these strategies should provide an independent source of revenue to the community which will assist the applicant in decreasing its dependency on public funds.

Economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

Social Development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over the institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Program Priority

The ANA program priority is to fund projects that will make the greatest impact in promoting improved governance and increased social and economic self-sufficiency for Native Americans. The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community. ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

In the Part IV, Section A, Number 2, of the application package, *Resources Available to the Proposed Project*, the applicant must address any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant and any restrictions to those settlements. The applicant must justify the specific reasons it is seeking ANA funds, particularly if the applicant apparently has other resources to support the proposed project and chooses not to use them.

If a profit making venture is being proposed, revenue must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income and used in accordance with the deduction alternative. (See 45 CFR 74.42(c)). Grant funds may not be paid as profit to any grantee.

Eligible Applicants

The following organizations which are NOT current grantees of ANA are eligible to apply for a grant award under this announcement:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-federally recognized Tribes;
- Incorporated non-profit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Incorporated non-profit Native Hawaiian organizations;
- National or regional incorporated non-profit Native American organizations with Native American community-specific objectives.

With the exception of Alaska Native grantees, current grantees of ANA, whose project period terminates in Fiscal Year 1987 (October 1, 1986–September 30, 1987), are also eligible to apply. (The Project Period is noted in Block 7 of the "Notice of Financial Assistance Awarded".) This program announcement does not apply to applicants for continuation funding of second and third year budget periods of multi-year projects.

Alaska Native applicants are not eligible under this program announcement because a separate program announcement for Fiscal Year 1987 funding will be published specifically for Alaska Native applicants.

Available Funds

Approximately $15 million of financial assistance is available under this program announcement.

Each tribe or Native American organization is eligible to receive no more than one grant award under this announcement.

Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, one extending more than 12 months, affords applicants the opportunity to undertake prior long-range planning and continuing development, unlike what can be achieved readily in a single annual plan or project.

Applicants proposing multi-year projects must fully describe project objectives and activities, and provide an itemized budget of the federal and non-federal costs of the project, for each budget period. Applicants must justify the entire time-frame of the project and describe the results to be achieved by the end of the project period. The budget period for each multi-year project grant will be 12 months. Funding after the first twelve months of a multi-year project will be non-competitive and will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of federal funds, and compliance with applicable statutory and regulatory requirements. The applicant should specify the entire project period length on the Form 424, Block 16, not the length of the first budget period.

Multi-year projects, as well as single-year projects, must be complete, self-sustaining or supported with other than ANA funds at the end of the project period. ANA's funding of multi-year projects is not for a program in the applicant community which operates indefinitely and has need for ANA funding on an annual basis.

Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the federal share and the non-federal share. An itemized budget detailing the applicant's non-federal share and its source must be included in the application. A request for waiver of the non-federal share requirement may be submitted in accordance with § 1336.50(b)(3) of the Native American Program Regulations.

Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application requirements are approved under OMB Control No. 0980–0016. The application kits containing the necessary forms may be obtained from: Administration for Native Americans, Office of Human Development Services, DHHS, Room

5300 North Building, 330 Independence Avenue, SW., Washington, DC 20201, Attention: No. 13612–871, (202) 245–7727.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be hand delivered or mailed to: Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, Hubert H. Humphrey Building, Room 345F, 200 Independence Avenue, SW., Washington, DC 20201, Attention: ANA 13612–871.

The application shall be signed by an individual authorized to act for the applicant tribe or organization and to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process by an independent review panel against the published criteria. The results of this review will assist the Commissioner in making final funding decisions.
- The Commissioner's decision also takes into account the comments of the ANA staff, state and federal agencies having performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the limits of available funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 120 days of the closing date. Successful applicants are notified through an official Notice of Financial Assistance Awarded (NFAA). The NFAA will state the amount of federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-federal matching share requirement.

Review Process

Applications submitted in a timely manner under this program announcement will undergo a prereview to determine:

(1) That the applicant is eligible in accordance with the Eligible Applicant Section of the announcement;

(2) That the application proposes project objectives which are responsive to the Program Announcement; and

(3) That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the prereview will be evaluated and rated by an independent review panel on the basis of the following criteria:

(1) *Project Goals.* The application describes long-range community goals, within the context of a long range plan. (10 points)

(2) *Project Objectives and Activities.* The application proposes project objectives, and project activities which:

- Are realistic;
- Are based on a fully described and locally determined balanced social and economic development strategy;
- Clearly address a major problem within the community; and
- Are adequately addressed by supporting evidence, documentation or information from reports or studies. (25 points)

(3) *Project Outcomes.* The proposed project will result in measurable, concrete outcomes which will clearly contribute to the overall development of the community and its members. Where possible, baselines are provided against which the outcomes can be evaluated at year end. (Example: Unemployment will decrease by 2% on the reservation, from 13% to 11%.) (20 points)

(4) *Resource Committments.* The applicant has justified its need for ANA funds and has referenced other resources which will assist the project. The application demonstrates the coordinated use of specific non-federal and federal resources (other than from ANA) as part of its strategy. (15 points)

(5) *Budget and Work Plan.* The application presents a detailed budget and work plan, with the budget specifically related to the work plan. The budget and work plan contain complete explanations and justification of line items, including technical assistance. The budget is reasonable in terms of the outcome and benefits expected. (15 points)

(6) *Management and Administrative Capabilities.* The applicant demonstrates the management and administrative capabilities necessary to ensure accountability and to justify receipt of federal funds. The application identifies by position or role all proposed key personnel, consultants, and contractors, and indicates their qualifications by the inclusion of resumes or position descriptions. (15 points)

Guidance to Applicants

The following policies, pointers, and instructions are provided to assist applicants in developing a fully competitive application.

I. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

ANA seeks to fund projects that reflect self-determination at the local level; that cause measurable impact in the community at the end of the project period; that have a discernible completion date and do not require continued ANA support; and that incorporate a developed strategy for achieving social and economic self-sufficiency, a strategy that utilizes all resources in the community.

The following activities are inconsistent with the policies of ANA:

- Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes and Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or use for its members (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is encouraged;
- Plans, feasibility studies, or manuals that are not essential to achieving the long-range goals of the local community;
- On-going social service delivery, expansion or continuation of existing social service delivery programs, or direct services;
- Core administrative functions or major activities that essentially support the applicant's administrative office;
- Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development);
- Projects plans or strategies clearly not determined or developed at the local level;
- Proposals from consortia of tribes that are not specific in regard to support from and roles of member tribes;

• Projects which should be supported by other federal funding sources appropriate and available for the proposed activity;

• Lack of measurable, concrete outcomes or benefits to the community;

• Activities that will not be completed, not be self-sustaining or not be supported by other than ANA funds at the end of the project period;

• Lack of demonstrated coordination with non-ANA resources;

• Lack of a justification or explanation for requesting ANA funds, or a lack of discussion of other resources and revenues for use in the project;

• The purchase of real estate (see 45 CFR 1336.50 (e)) or construction with ANA funds (see HDS Grants Administration Manual 3–e);

• Investment in business development (capital venture);

• Projects reflecting heavy reliance on consultant use, especially where consultants have prepared the application and have written themselves a major role in the project.

ANA also will review very carefully and critically applications in which major capital expenditures, franchise or management fees, or the acquisition of major capital equipment, especially computers or word processing equipment, are a major component of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

II. Pointers on the Application Process Itself

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority for the applicant.

• ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria and score the application prior to its submission in order to gain a better sense of their application's quality and potential competitiveness.

• Applications involving special circumstances, i.e., business development, should include a description of the unique characteristics of the project. For example, applicants may wish to include ownership stipulations, market potential, financing aspects, cost of production (service or product), projected profit, and a 3–5 year pro forma financial statement. The more information given a review panel on a proposed business, the better able it is to evaluate the potential for success.

• There is no maximum or minimum amount of Federal funds that may be requested. The average amount of a Fiscal Year 1986 social and economic development (SEDS) grant was $126,000.

• A project abstract summarizing the proposed project must be included. Detailed instructions are included in the Application Kit.

• ANA does not fund on the basis of need. ANA funds those projects that have the greatest potential for positively affecting a community's local governance and social and economic development.

• For purposes of planning and developing an ANA application, the expected project start date for successful applicants will be 120 days after the closing date under which the application was submitted.

• ANA will not accept two identical applications from two different applicants to serve the same geographical or constituent area, nor will ANA fund similar projects serving the same constituency.

• ANA will accept only one application from any one applicant. If an applicant sends in two applications, the one with the earlier postmark will be accepted for review.

• An application from a Federally recognized tribe must be from the governing body.

Due Dates for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are November 12, 1986, February 27, 1987 and June 5, 1987.

Receipt of Application

Applications must be hand delivered or mailed.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are:

(1) Received on or before the deadline date at the address specified in the Application Submission Section, or

(2) Sent on or before the deadline date. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications. HDS shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. HDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: July 18, 1986.

William Lynn Engles,

Commissioner, Administration for Native Americans.

Approved: July 25, 1986.

Jean K. Elder,

Acting Assistant Secretary for Humon Development Services.

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Nerodia harteri paucimaculata (Concho Water Snake) To Be a Threatened Species; Final Rule

VOL 51 ISS 170 SE 3 1986 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Nerodia harteri paucimaculata (Concho Water Snake) to be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service has determined *Nerodia harteri paucimaculata* (Concho water snake) to be a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. A final decision on the determination of critical habitat for the Concho water snake will be published in a separate notice by January 1988. The Concho water snake is a nonpoisonous snake endemic to the Concho and Colorado Rivers in Runnels, Tom Green, Concho, McCulloch, Coleman, Brown, Mills, San Saba, Irion, Lampasas, and Coke Counties, Texas, but no longer occurs in Coke County. The known populations of this snake are currently vulnerable due to low numbers and the threat of further loss of habitat due to inundation and downstream effects from reservoir construction. This rule implements the full protection provided by the Endangered Species Act of 1973, as amended, for *Nerodia harteri paucimaculata*.

EFFECTIVE DATE: September 3, 1986.

ADDRESS: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Regional Office of Endangered Species, P.O. Box 1306, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud, Endangered Species Biologist, U.S. Fish and Wildlife Service (at the address above) (505–766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

The Concho water snake (*Nerodia harteri paucimaculata*), a nonpoisonous snake, is a member of the family Colubridae, and together with the Brazos water snake (*Nerodia harteri harteri*) constitutes the species *Nerodia harteri*, known as Harter's water snake. The Concho water snake is confined to the Colorado River drainage and the Brazos water snake is confined to the Brazos River drainage. These rivers drain separately to the Gulf of Mexico. The Brazos water snake was discovered in 1936 in the Brazos River of Texas by Phillip Harter and was described by H. Trapido (1941). The Concho water snake was discovered in 1944 by J. Marr and was described as a distinct subspecies by Tinkle and Conant in 1961. This subspecies is relatively small for *Nerodia*; adults rarely exceed 900 millimeters (3 feet) total length. There are 21–23 dorsal scale rows, four rows of dark brown blotches arranged in alternate fashion on the grayish dorsal surface, and distinct to obscure dark spots along either side of the pink to orange venter (Wright and Wright 1957). Concho water snakes, when compared to Brazos water snakes, have reduced ventral spotting (often totally absent), a more reddish venter, differences in average counts of certain scale groups, and often a reddish dorsal ground color.

Adult Concho water snakes live in either shallow or deep flowing water over a variety of substrates, as long as there are sufficient deep, secure hiding places near nursery grounds. Adults also use woody vegetation along the banks for basking. Juvenile Concho water snakes, however, have much more rigid habitat requirements, the two most important features of which are shallow, rocky-bottomed flowing water, and medium-large flat rocks on the shore that provide hiding places (Scott and Fitzgerald 1985). Under certain conditions (described below), the Brazos water snake can live in impounded waters, and it currently lives in two reservoirs. The gradual slope, shelving rock, and rocky shore of portions of these two reservoirs have created the shallow waters and associated hiding areas necessary for juvenile Brazos water snakes. However, extensive biological surveys have not found Concho water snakes in any of the reservoirs located on the Concho and Colorado Rivers, possibly because shallow water and sloping rocky shoreline habitat, necessary to support this subspecies, does not exist in these reservoirs. Other snakes associated with Concho water snakes include the blotched water snake (*Nerodia erythrogaster*), the diamondback water snake (*Nerodia rhombifera*), the ribbon snake (*Thamnophis proximus*), and the cottonmouth (*Agkistrodon piscivorus*), although only the ribbon snake is found regularly in the same type of microhabitat.

Historically, the Concho water snake occurred over about 276 river miles of the Colorado and Concho Rivers. Now, it is distributed discontinuously over a reduced range of about 199 miles in Runnels, Tom Green, Concho, McCulloch, Coleman, Brown, Mills, San Saba, Irion, and Lampasas Counties (Williams 1971, Flury and Maxwell 1981, Brnovak 1975, Scott and Fitzgerald 1985).

On December 30, 1982, the Service published a Vertebrate Notice of Review in the **Federal Register** (47 FR 58454). *Nerodia harteri* was included in category 1 of that notice. Category 1 includes those taxa for which the Service has substantial information on hand to support the biological appropriateness of proposing to list the species as endangered or threatened.

On February 14, 1984, the New Mexico Herpetological Society petitioned the Service to list Harter's water snake (including both subspecies) as threatened with critical habitat. The Service found that substantial information had been presented indicating that the petitioned action might be warranted. A notice of this finding was published on May 18, 1984 (49 FR 21089). A 1-year finding was reported on July 18, 1985 (50 FR 29238), that the petitioned action was warranted for the Concho water snake but that such action was precluded by work on other pending proposals, in accordance with section 4(b)(3)(B)(iii) of the Act. The 1-year finding for the Brazos water snake was reported concurrently and found that the petitioned action was not warranted for that subspecies. A proposed rule to list the Concho water snake was published on January 22, 1986 (51 FR 2923).

Summary of Comments and Recommendations

In the January 22, 1986, proposed rule (51 FR 2923) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The original comment period closed on March 24, 1986, but was reopened on April 3, 1986 (51 FR 9081), to accommodate a public hearing and remained open until May 2, 1986. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the San Angelo, Texas, *Standard-Times* on February 10, 1986. Eighty-one letters of comment were received, and are discussed below. Two requests for a public hearing were received, and a hearing was held in Ballinger, Texas on April 3, 1986. Interested parties were contacted and notified of that hearing, and notices of the hearing were published in the **Federal Register** on March 17, 1986; the

Abilene, Texas, *Reporter-News* on March 18, 1986; the Big Spring, Texas, *Herald* on March 19, 1986; the Midland, Texas, *Reporter-Telegram* on March 15, 1986; and the San Angelo, Texas, *Standard-Times* on March 20, 1986. Comments received in the hearing are also summarized below.

Because of the need for a prompt determination of threatened status for the Concho water snake, and because of the complexity of the economic analysis that must accompany the final rule designating critical habitat, the Service has decided to make final only the listing portion of this rule at this time. Section 4(b)(6)(C) of the Act allows the Service to postpone the designation of critical habitat for up to one additional year from the date of publication of the proposed rule. Under this provision the final decision on the designation of critical habitat for the Concho water snake will be made by January 22, 1988. Therefore, comments received regarding the proposed critical habitat designation will not be discussed here, but will be addressed in the final notice on critical habitat.

Thirty letters of comment were received in support of the proposal, 37 questioning or in opposition to the proposal, and an additional 14 which expressed neither support nor opposition to the listing portion of the proposal, or contained only economic information for use in analysis of the critical habitat designation. Nineteen letters were received after the close of the comment period, none of which provided further information that would have had a bearing on the proposed or final rule. These 19 letters were not considered in the decision on the proposal and will not be addressed below.

The public hearing held in Ballinger, Texas, was attended by about 350 people. Fifty-seven oral or written statements were given, 5 in support of the proposal, 46 questioning or in opposition, and 6 neither in support nor opposition. A transcript of this hearing is available for inspection (see **ADDRESSES**). Organizations represented at the hearing included: U.S. House of Representatives; Texas Governor's Office; U.S. Geological Survey; U.S. Army Corps of Engineers; Soil Conservation Service; Texas Parks and Wildlife Department; Texas Department of Highways; Texas General Land Office; Texas Water Development Board; Big Country Audubon Society; Sierra Club; National Audubon Society; Cities of Midland, San Angelo, Ballinger, Coleman, Odessa, Abilene, Paint Rock, and Winters; Counties of Concho, Runnels, Coleman, and Tom Green; five State legislative districts; six local and regional water boards; and several local governmental or business organizations.

All letters and written or oral statements received during the comment period and public hearing are combined in the following discussion. Many of the comments addressed concerns regarding specific water development projects and how they would affect or be affected by this proposal. Those comments will not be addressed here, unless they requested or resulted in specific changes to the proposal or the rule procedure, because the Endangered Species Act (ESA) provides that listing determinations be based solely on the best available scientific and commercial information. All comments are available for public inspection (see **ADDRESSES**).

Comments of support were received from Texas Parks and Wildlife Department; Texas General Land Office; National Audubon Society; Defenders of Wildlife; Sierra Club; Texas Chapter of the Wildlife Society; American Society of Ichthyologists and Herpetologists; New Mexico Herpetological Society; 15 private individuals; and biologists from Texas A&I University, New York Zoological Society, Midland College, Angelo State University, Dallas Zoo, Central Texas College, Texas A&M University, and Texas Tech University. Comments questioning or in opposition to the proposal were received from Congressman Charles Stenholm; Texas Water Development Board; Cities of Big Spring, Winters, Midland, San Angelo, Ballinger, Coleman, Odessa, Abilene, and Paint Rock; Counties of Brown, Concho, Runnels, and Coleman; six state legislators; Upper Colorado River Authority; Colorado River Municipal Water District; San Angelo Water Advisory Board; Central Colorado River Authority; West Central Texas Municipal Water District; 2 local organizations; and 301 private individuals (one letter contained 261 signatures). Nonsubstantive, economic, or critical habitat comments were received from Bureau of Reclamation, Federal Highway Administration, Soil Conservation Service, U.S. Army Corps of Engineers, Federal Emergency Management Agency, Texas Water Commission, Texas Governor's Office, and four private individuals.

Summaries of all substantive comments addressing the issue of listing the Concho water snake are covered in the following discussion. Comments of similar content are grouped in a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: Several commentators recommended that the Concho water snake be listed as endangered rather than threatened. They believed that the snake was much nearer to extinction than the proposal indicated and thus more accurately met the criteria for endangered status. Response—The Service believes that the present status of the Concho water snake falls short of the criteria needed to list this snake as endangered. It does not appear to face imminent extinction, but is likely to become an endangered species in the foreseeable future if the past trends continue. If any adverse change occurs to existing habitat conditions, including water flow, pollution, and substrate, or to population stability (or other presently unrecognized instabilities), this species would qualify for endangered status. If such a change occurs, the Service would then promptly reassess the status of the Concho water snake.

Issue 2: Several commentators asserted that the Concho water snake was proposed for listing as a means of stopping the construction of proposed Stacy Reservoir, and that without the proposed Stacy project, the snake does not meet the criteria for listing. Response—Although Stacy Reservoir is considered a major threat in the proposal to list the Concho water snake, it is neither the only threat nor the impetus for the listing. The Concho water snake has been under consideration for 9 years as part of a continuing program to identify and list endangered and threatened amphibians and reptiles. The listing proposal was instigated by a series of events, including the State of Texas listing the Concho water snake as endangered on its 1977 list of endangered species; because of concern for this snake's survival expressed by several herpetologists; because of a petition from the New Mexico Herpetological Society on February 14, 1984, requesting the Service to list the snake; and because of status reports that showed extensive loss of historic range and several factors that threatened this snake's existing habitat.

Issue 3: Several technical aspects of the biology and distribution of the Concho water snake in the proposal were questioned and these follow: (1) Several commentators, of whom none were biologists, indicated that they believe the Concho and Brazos water snakes are virtually identical and cannot be distinguished by a layperson. Some questioned whether the Concho

water snake is truly a valid subspecies, and one commenter asked if electrophoretic studies had been done to confirm the taxonomy. Response—The subspecific separation of the Brazos and Concho water snakes is completely accepted by the herpetological community. Although the Concho and Brazos water snakes are difficult for a layperson to distinguish, there are significant differences in coloration, pattern, and scale characteristics. These differences, plus the fact that the two snakes inhabit river systems that are totally separated and have been for hundreds of thousands of years, confirm that the two snakes are at least valid subspecies. The subspecies apparently occupy differing ecological niches within their respective ranges. Some members of the scientific community believe that the Concho and Brazos water snakes are separate species. This question is currently under investigation, including studies using electrophoretic and other genetic and biochemical techniques. The exact taxonomy of the Brazos and Concho water snakes is irrelevant to the proposed listing, because the Endangered Species Act requires the Service to consider subspecies, as well as populations of vertebrate species, for listing. Nevertheless, for purposes of this listing, the Service finds that, considering the best available scientific and commercial data, the Concho water snake is a valid subspecies. (2) Dr. Francis Rose, who conducted the Colorado River Municipal Water District (CRMWD, the sponsors of the Stacy project) study of the Concho water snake, believes that there are indications of population instability in the Concho water snake. During his CRMWD and independent studies of this snake, he observed only immature Concho water snakes downstream from the Stacy crossing on the Colorado River. Lengths of Concho water snakes collected in the last couple of years are considerably less than those collected around the time when the snake was first discovered. The percentage of large individuals is clearly reduced. Dr. Rose believes that smaller sized, female snakes have a lower reproductive capacity than larger snakes, and that these data may indicate lower population recruitment than in previous years. Response—These preliminary signs of population instability are important in the consideration of the status of the Concho water snake. The Service has considered this information in formulating the final rule, noting the preliminary nature of this finding and the limited data upon which it is based. (3) Several commentators pointed out that the distribution outlined in the proposed rule does not include Concho water snakes found by the CRMWD study (Rose 1985) on Spring Creek, a tributary of the Concho River located above Twin Buttes Reservoir. Some contended that the Concho water snake is plentiful in Spring Creek. However, one commenter indicated that the unusual circumstances surrounding the discovery of the two snakes in Spring Creek suggested that those snakes had been transported there from elsewhere. Response—The information regarding the Spring Creek snakes was not included in the proposed rule because that information was not available until autumn 1985. Because the discovery of two Spring Creek snakes was not a significant factor that would change the overall status of the Concho water snake, it was not deemed necessary to revise the proposed listing package which was already partially through the review process. Only two snakes (one of which was dead) have been found in Spring Creek during all studies, and the habitat there is extremely poor (Rose 1985), indicating that this population, if viable, is probably quite small, perhaps a lingering remnant of an earlier, more widespread distribution. Regarding the suggestion that the Concho water snakes found on Spring Creek were transported, the Service agrees that this may be possible, and that the presence of one live and one dead (in a minnow trap) Concho water snake in extremely poor habitat is puzzling. The lack of success of efforts to reverify Concho water snakes in Spring Creek compounds this question. However, because no documentation of transportation exists, the Service will assume that these snakes were resident there. The information regarding the discovery of Concho water snakes in Spring Creek has been incorporated into this rule. (4) Several commentators asserted that the Concho water snake is also found in the South Concho River near Christoval. Response—The Concho water snake was historically found in the South Concho River. However, it was not found there during any of the status surveys; the last record was in 1944 prior to the closure of the Twin Buttes Dam. (5) The CRMWD commented that the Service's population estimates for the Concho water snake are not valid, and challenged the methodology used to make these estimates and the results. Response—The only estimate of the Concho water snake population size was made by Flury and Maxwell (1981), at the request of the Service. However, the authors indicated that this estimate was not accurate, and the Service has never used it or accepted it as valid. The method used by Flury and Maxwell is not a census method. Their "time-constrained" method was designed to give relative abundance of snakes at different sites, but these relative abundances cannot be converted to estimate the total number of snakes. Secretive animals, such as Concho water snakes, cannot be censused by direct observation (i.e., by counting individuals seen). There are currently two general methods of estimating numbers of secretive animals: those estimates derived from removal procedures, and those from mark and recapture studies. The first type is not feasible because it is difficult to obtain a large enough sample size to estimate population size, and because the Concho water snake is a Texas protected species and removal of sufficient numbers to obtain an accurate estimate might be damaging to the species' survival. Mark and recapture methods are very time consuming and the accuracy depends on the ability to capture and mark a large proportion of the total population. Scott and Fitzgerald (1985) attempted mark and recapture censuses at several places in the Concho and Colorado Rivers, but could not capture a sufficiently large proportion of the population given the time available and the difficulty of locating hidden snakes. In any event, the Service does not believe that an absolutely accurate population estimate is necessary to make a decision regarding the listing of this snake. Because the Service made no reference to the estimate given by Flury and Maxwell, and because the case for listing is based on continuing decline of a naturally limited range and other habitat factors, comments regarding methodologies and results of population estimates do not support a withdrawal of the proposed listing of the Concho water snake. (6) One commentator was concerned with the lack of population trend and reproductive data in the proposed rule. Response—Little population trend and reproductive data are available for the Concho water snake because few herpetologists have worked on this snake, and because of a general lack of funding available to study native, non-game wildlife. However, using early location records and data from Tinkle and Conant (1961) and Williams (1971), the Service was able to determine a downward trend in the range of the Concho water snake; this information is outlined in the proposed and final rules. Although

reproductive data for the Concho water snake are not in the proposed rule, these types of data can be found in Williams (1971). Based on the large numbers of juvenile Concho water snakes found during all studies, the snake appears to be successfully reproducing in its remaining range. (7) More in-depth studies are needed on the life history, biology, and ecology of the Concho water snake. This commentator believed that although the existing data supported the proposed listing, additional data were needed for future decisions regarding protection of the Concho water snake. Response—The Service agrees that such data would be useful, and these types of studies will be recommended in the recovery plan for this snake.

Issue 4: Several commentators contended that status studies of the Concho water snake conducted by the Service were incomplete and inadequate, and these comments follow: (1) The studies were too brief and not enough time was spent in the field. Response—Although the three full and two partial seasons of field studies conducted by the Service did not allow for a study such as that required to determine accurate population numbers, the studies were more than adequate to define the basic status of the Concho water snake. Service data were also supplemented by the earlier study of Williams (1971), the 1985 CRMWD study (Rose 1985), and miscellaneous distribution records. There were no major differences in distribution or population status information between these studies. (2) The biologists who conducted the surveys did not check the "numerous creeks that have water on an annual basis." Response—Few streams that are tributaries of the Concho and Colorado Rivers within the range of the Concho water snake sustain a large enough flow for a sufficient time to support enough fish (the principal food of this snake) for the Concho water snake. In addition, a few of these tributaries may have sufficient flow in isolated stretches but are lacking appropriate habitat. Therefore, these tributaries were not sampled as intensively as areas with primary habitat. However, several tributaries of the Concho, Colorado, Llano, and San Saba Rivers were surveyed by Flury and Maxwell (1981) and Scott and Fitzgerald (1985), including Pecan Bayou; South, Middle, and North Forks of the Concho River; and Jim Ned, Beal's, Dove, Spring, Brady, Elm, Valley, Cherokee, Pecan, and Deadman Creeks. (3) Only 32 percent of the potential Concho water snake range (Colorado, Concho, Llano, and San Saba Rivers) was visited by biologists during surveys. Response—Although the Service does not know how the 32 percent of potential habitat figure was derived, it is incorrect (too low) since it apparently fails to consider the stream miles covered via boat. However, if it were possible to accurately calculate a correct percentage for only the areas intensively searched (includes areas where all rocks small enough to turn were turned, but excludes areas visually searched), the percentage of area searched may not be significantly greater than 32 percent. The assumption that 32 percent of the actual river mileage is an inadequate sample fails to consider that the Concho water snake is not evenly distributed along the Concho and Colorado Rivers, and ignores sampling theory. Concho water snakes are found primarily in areas with shallow riffles. Scott and Fitzgerald (1985) estimated that existing Concho water snake habitat has a median of 4 riffles in every 3 miles (5 km) of river. In addition, biological sampling rarely depends upon 100 percent search. Instead, appropriate patterns and methods are used to search selected sites, with areas of suitable habitat (e.g., shallow riffles) receiving the greatest effort and less suitable habitat (e.g., large pools) receiving proportionately smaller effort. Such samples are then extrapolated to represent the whole. Although the Service is uncertain how the commentators arrived at a 32 percent sampling effort, the Service's effort has given an accurate picture of the distribution, status, and relative abundance of the Concho water snake. (4) Only 23 percent of the "critical stream length" from Lake Spence to Leaday was searched by biologists who conducted the surveys. This "critical stream length" was defined by the commentator as the area where Williams (1971) found the largest number of Concho water snakes. Response—Williams (1971) did not survey the Colorado River from Lake Spence (Robert Lee Dam was under construction but the lake was not yet in existence) to Leaday. His study was on the population ecology of the Concho water snake along a small section of the Colorado River just below the site of Robert Lee Dam. That reach of the Colorado River has now partially been silted in and no longer supports water snakes. (5) Insufficient time was spent searching reservoirs to determine the presence or absence of Concho water snakes at these sites. Response—Scott and Fitzgerald (1985) spent 55 field hours intensively searching for Concho water snakes on 12 reservoirs in the Concho, Colorado, and San Saba drainages. In addition, Maxwell has searched Twin Buttes and Spence Reservoirs, and Lake Nasworthy has been subjected to extensive reptile searches by the Angelo State University vertebrate zoology classes for the past two decades. None of these searches has revealed the existence of Concho water snakes on reservoirs. (6) "Hundreds" of stock tanks in the area were not searched. Response—Stock tanks in the area were not searched because these tanks do not provide habitat suitable for Concho water snakes. (7) Studies were done at the wrong time of the year; therefore, the number and range of the Concho water snake were underestimated. This commentator cited the Service studies as being conducted from "May through September," and pointed out that Scott and Fitzgerald (1985) found that Concho water snakes were more numerous in the fall and early spring and were scarce in August. Response—Scott and Fitzgerald (1985) indicated that Concho water snakes were indeed difficult to locate in August due to their retreat from the heat into deep cracks and crevices. They also indicated that October, April, and May are the best months for surveys, because the snakes are more easily accessible. Flury and Maxwell (1981) included all of these months in their surveys, and Scott and Fitzgerald included April and May in theirs. Both studies also found large numbers of Concho water snakes in June and September. Surveys were not conducted after October or before April because most snakes hibernate during these periods. (8) Studies were conducted during the wrong years. Some commentators asserted that the Scott and Fitzgerald (1985) studies were conducted during a dry, hot period, when the Concho and Colorado Rivers were flowing infrequently. These commentators believed that such conditions would make it difficult to find Concho water snakes, as they would not be "laying out on the river banks."

Response—Although hot, dry conditions may have caused snakes to retreat into deeper hiding places, drought years also should have caused snakes to concentrate around smaller areas of water. The similarity of Scott and Fitzgerald's (1985) findings to those of Flury and Maxwell (1981), which were taken during a non-drought year, suggest that dry conditions did not adversely affect the relative ability of searchers to locate Concho water snakes. (9) The difference in the number

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of Concho water snakes reported in the stretch of the Colorado River from Maverick to Ballinger, as a percent of the total Concho water snakes found, was cited by several commentators as an indication that there were major conflicts in the data between the Flury and Maxwell (1981) and Scott and Fitzgerald (1985) studies. An additional comment by Dr. Francis Rose, who conducted the CRMWD study of the Concho water snake, disagreed with the proportion found in that stretch by Scott and Fitzgerald (1985). He believed, based on his own work, that the proportion found by Flury and Maxwell (1981) was more accurate. Response—The percentage of snakes found in that area by Scott and Fitzgerald (1985) was miscited in the proposed rule as 30 percent. The correct figure is 20 percent, with the additional 10 percent being located from Ballinger downstream to the confluence with the Concho River. The difference between studies (20 percent versus 3 percent) is not significant because Scott and Fitzgerald (1985) spent significantly more time surveying this portion of the river than did Flury and Maxwell (1981) and thus would be expected to have located more snakes. Both studies show the area to be occupied by a viable population of Concho water snakes. (10) The total distribution of the Concho water snake is not yet known. The snake may be found in areas outside of those already searched. Response—Because of previous surveys conducted on the Concho water snake, the range of this snake is perhaps better known than for any other American snake. Areas searched outside of the previously known historical range during the three recent distributional studies had no Concho water snakes; these snakes were found only within their known historical range. Therefore, although a few Concho water snakes may yet be found in isolated areas of the Concho and Colorado River basins, it is highly unlikely that any significant populations exist outside of the range reported in this rule.

Issue 5: Numerous commentators questioned the Service's analysis of threats to the Concho water snake, and several commentators recommended ways to reduce or avoid threats. These comments are as follows: (1) Numerous commentators asserted that the proposed Stacy Dam and Reservoir is not a threat to the survival of the Concho water snake, and that without this threat, the snake did not meet the criteria for threatened status. The reasoning behind this assertion is that the Brazos water snake is known to live in Possum Kingdom Reservoir and Lake Granbury in the Brazos River system. Because these two snakes are subspecies of the same species, these commentators believe this indicates that the Concho water snake will also live in reservoir habitat, including Stacy Reservoir if it is built. Some commentators stated that the Concho water snake itself is found in Possum Kingdom and Lake Granbury, and one commentator indicated that the Brazos water snake also existed in "Lake Graham" and "Lake Whitney." Other commentators stated that the habitat that will make up the shoreline of Stacy Reservoir will be similar to that found at Possum Kingdom and Lake Granbury thus providing suitable habitat for the Concho water snakes. Response—The Service believes that the Stacy Dam and Reservoir, as currently proposed, constitutes a major threat to the survival of the Concho water snake. The threats to the snake from the proposed Stacy Reservoir project are not confined to the inundation area. Threats to upstream and downstream populations of the snake are also important, and are discussed in factor A in the "Summary of Factors Affecting the Species" section. Stacy Reservoir is not, however, the only threat to the survival of the Concho water snake, although it is an important component when considering the snake's future status. The declining range of the Concho water snake, and threats such as pollution, declining water flows, other water developments, and siltation are other factors that have resulted in the proposed threatened status for this snake. The proposed Stacy project and its additional potential threats to a significant portion of the current range of the Concho water snake make the listing of this species more urgent. The Brazos water snake, not the Concho water snake, lives in Possum Kingdom Reservoir and Lake Granbury in the Brazos River system. The Concho water snake is found only in the Concho and Colorado River systems. No Lake Graham exists in either the Brazos or Colorado River systems, and no Brazos water snakes were found in Lake Whitney when that reservoir was surveyed by Scott and Fitzgerald in 1984. The fact that the Brazos water snake is living in two reservoirs does not mean that the Concho water snake lives in any existing reservoirs or that it could live in the proposed Stacy Reservoir. Although these two snakes are subspecies of the same species, and thus closely related, it is not unusual to find that two subspecies of the same species have significant differences in their habitat requirements. There are four major and several minor reservoirs in the range of the Concho water snake, and none of these are known to be inhabited by this subspecies. Extensive surveys on existing Concho-Colorado River reservoirs have failed to turn up any Concho water snakes. In addition, conditions at the proposed Stacy Reservoir will be quite different from those at the Possum Kingdom and Lake Granbury sites where Brazos water snakes have been found living. The Stacy location does not appear to offer shallow, gradually sloping, rocky reservoir shorelines like the Brazos reservoirs. The Brazos reservoirs also have only small fluctuations in water level compared to the expected 45 vertical feet of fluctuation at Stacy Reservoir. The Service is examining the possibility of modifying reservoir habitat that would allow for the existence of Concho water snakes in reservoirs, although such habitat modification has never been attempted for any snake (see the "Available Conservation Measures" section for discussion of potential habitat modifications). (2) Numerous commentators believed that because of the potential impact of this proposed listing on the proposed Stacy Reservoir project, the evidence showing the threat to the Concho water snake from the Stacy project should be indisputable. Response—Without precise knowledge of all the behavioral, physiological, and other factors that are key to the survival of the Concho water snake, plus an in depth review of the factors associated with the construction and operation of Stacy Reservoir, it is impossible to present "indisputable" evidence regarding the exact effects of Stacy Reservoir on this snake, nor does the ESA require this level of proof. However, the Service can make predictions based on existing documented evidence interpreted by highly qualified professionals. The general effects of dam and reservoir construction on the Concho water snake are well documented. Three studies of the Concho water snake, two conducted by the Service and one by CRMWD, have all concluded that Stacy Reservoir, as currently proposed, would adversely affect the Concho water snake. In addition, the Service's Region 2 Herpetological Recovery Team, composed of six of the Southwest's leading herpetologists, has examined all status reports and conducted field examinations of the proposed Stacy Reservoir site, Possum Kingdom Reservoir, and Lake Granbury. Based on these examinations, the team has

concluded that the Concho water snake would probably not survive and reproduce in Stacy Reservoir, as proposed. Additional studies and project review are needed to determine if reservoir and downstream habitats might be modified to allow maintenance or establishment of Concho water snake populations. (3) Several commentators questioned the extent to which the proposed Stacy Reservoir project would impact upstream and downstream populations of the Concho water snake. Some contended that the existence of the Concho water snake upstream from Lake Buchanan and possibly Twin Buttes Reservoir, indicates that snakes located upstream from the Stacy Reservoir would not be affected by the project. Other comments addressed downstream effects, asserting that the proposed reservoir would actually enhance Concho water snake habitat downstream from the dam because guaranteed minimum flow releases are required by the project's State water permit. One commenter pointed out that it appeared to be contradictory to state that minimum flows below the proposed Stacy Dam were necessary to sustain the Concho water snakes there, when the river already has recorded periods of no flow at that location. That commenter also believed that there were contradictions between Scott and Fitzgerald's (1985) conclusion that "Low water flows associated with dams or drought do not, by themselves, eliminate *N. harteri* from riparian habitats," and Flury and Maxwell's (1981) conclusion that "Dams and their impoundments pose a threat to the subspecies by inundation of upstream areas and by reduction of downstream water flow." In addition, it was pointed out that the Brazos water snake is thriving just downstream from the dam at Possum Kingdom Reservoir. Response—Regarding upstream effects of reservoirs on the Concho water snake, it is not just the reservoir itself that adversely affects the upstream populations. The population above Lake Buchanan is not genetically isolated from upstream populations, and appears to be doing well. The Spring Creek population found above Twin Buttes Reservoir is of unknown size and condition. The population in Spring Creek may be, at most, a lingering remnant of an earlier distribution, the decline of which may be due to the isolation of these upstream populations by Twin Buttes, Nasworthy, and O.C. Fisher Reservoirs. A primary effect of the proposed Stacy Reservoir on upstream populations of the Concho water snake is the separation of the Concho water snake into three physically isolated populations. These populations would represent the most peripheral portions of the presently existing distribution. The effects of this fragmentation are discussed under factor A in the "Summary of Factors Affecting the Species" section of this rule. Regarding the downstream effects of the proposed Stacy Reservoir on the Concho water snake, such effects are dependent upon the operation and flow release schedules that would be set up for the reservoir. However, it is unlikely that the Stacy Reservoir-induced changes (as proposed) in the amount, timing, chemistry, and temperature of the flow would enhance the habitat of the Concho water snake downstream from the dam, although certain flow release schedules might reduce the severity of downstream habitat modification. The Concho water snake does not require a constant minimum flow in the river. It can withstand periods of no flow, but it cannot withstand total cessation of flow such as has occurred in sections below E.V. Spence Reservoir. Scott and Fitzgerald's (1985) statement, that it is not the low flow or cessation of flow itself that eliminates the snakes, is true. The Concho water snake does not, as a fish would, die from not being in the water. Rather, the effects of the flow reduction on the snake's food (fish) and habitat are the immediate cause of the snake's elimination or decline. Flury and Maxwell's (1981) statement that dams and impoundments are a threat to the Concho water snake because they reduce the downstream flow, is also true. Low flow periods are stressful for the snake, and although the snake has evolved mechanisms for dealing with such stress, these mechanisms may become ineffective if such periods are significantly extended. However, the primary adverse effect of dam-induced flow alteration is the loss of the major flood flows, or the changes in the timing and intensity of such flows. River systems are dependent upon such flooding to flush out accumulated sediments and to maintain riffle areas. Without flooding, sediment accumulates and vegetation takes root in the channel covering the rocks, eliminating hiding places for the snake. Reduction of flows also results in adverse effects through changes in water temperatures and reduced ability to dilute pollutants. The Brazos water snake does live below the dam of Possum Kingdom Reservoir. However, the flow releases from that reservoir are for power generation purposes and are quite different in amount, timing, and intensity than those expected from the proposed Stacy project, whose purpose is water supply storage. (4) Several commentators referred to "mitigation" measures that they believed could or should be accomplished as a part of the Stacy Reservoir project. Some commentators stated that such mitigation should be used in lieu of listing, and if such mitigation occurred, the Concho water snake would no longer meet the criteria for threatened status. Response—As previously addressed under Issue 5 (1), the Concho water snake meets the criteria for threatened status even when not considering impacts associated with the proposed Stacy project. Therefore, mitigation of the impacts of the Stacy project would not remove the snake from a threatened status. Furthermore, future mitigation possibilities are not considered in determining a species to be threatened, as in this rule. (5) Several commentators suggested that the threats to the Concho water snake could be alleviated by relocating the snake outside of the inundation area of the proposed Stacy Reservoir, thereby removing the need to list this snake. Response—Several factors other than the Stacy project are involved in the decline of the Concho water snake, and these would not be alleviated by relocating snakes outside of the proposed Stacy Reservoir area; the snake's status would be threatened even without the Stacy project. Successful relocation of snakes from Stacy Reservoir to areas outside of the historic range of the Concho water snake is unlikely because many of these areas do not have suitable habitat, and the Concho water snake would likely not compete successfully with other snakes that occur naturally in these areas. Moving the Concho water snake into other areas inside its currently occupied range has also been examined and found unnecessary. Those areas that are already occupied by the Concho water snake are presumably at their carrying capacity. Addition of more Concho water snakes would merely result in increased deaths. The successful reintroduction of Concho water snakes into some areas of historic range that are presently unoccupied is unlikely because suitable habitat on these sites has been destroyed. The Service is examining the possibility of restoring suitable habitat within these presently unoccupied historic sites (see the "Available Conservation Measures" section for discussion). (6) Several commentators asserted that the Concho water snake is declining for natural reasons, will go extinct despite any human actions, and therefore does not qualify for listing. Response—The extent

to which natural causes might be contributing to the decline of the Concho water snake cannot be discerned because of the extensive man-caused perturbations within the historic range of this snake. However, because man-caused habitat perturbations are extensive within the historic range of the Concho water snake, it is unlikely that natural forces are the major reason for decline of this snake. Even if natural factors were the sole cause for the decline of this species, listing would still be appropriate (see section 4(a)(1)(E) of the Act). (7) Two commentators contended that the Concho water snake will thrive despite habitat loss and damage, because as a species becomes more scarce its reproductive rate increases, as evidenced by the "proven fact that the more coyotes are hunted and trapped, the larger the litters." The commentators also contended that "this is also true of rattlesnakes and other species." Response—It is known in certain mammals that the reproductive rate will decrease in reaction to extremely high population densities. When densities are reduced, these reproductive rates return to normal levels. This may appear as an increase, because of the previously depressed levels. It is not true that the reproductive rate increases as the species becomes more scarce; in fact, increasing scarcity is often a function of decreasing reproductive capacity and higher mortality. There is no evidence that this type of adaptation occurs in snakes or any other reptiles. (8) One commentator contended that the amount of range of the Concho water snake that has been lost is not significant because there were never large numbers of the snake in those areas. This conclusion is based on the assumption that the Concho water snake would not do well in the colder water of the upper Concho basin or the saltier water of the Colorado River above Robert Lee Dam. Response—Although no data exist on the numbers of Concho water snakes that were once found in the streams above San Angelo, there is excellent documentation of a large population that once existed in the area near Robert Lee. This was the population that Williams (1971) studied and which he estimated contained over 300 snakes. This population was eliminated following the closure of Robert Lee Dam.

Issue 6: Several commentators stated that the Service failed to identify or give adequate treatment to other potential threats. These comments are as follows: (1) One biological organization commented that the Service had not given enough consideration to the threat of habitat fragmentation on the survival of the Concho water snake, especially considering that a reservoir would be constructed in the center of this snake's existing range. Such fragmentation was cited as a major cause of recent species extinctions. Response—Information on the possible effects of habitat fragmentation have been added to the final rule and can be found in factor A of the "Summary of Factors Affecting the Species." (2) Dr. Norman Williams, who did an earlier (1971) study of the Concho water snake, suggested that the loss of riffle dwelling fish (the principal food of the Concho water snake) due to reduced water flows, siltation, and inundation, further threatens this snake. Response—This information has been added to the final rule. (3) Dr. Francis Rose, who conducted the CRMWD study of the Concho water snake, thinks that the pollution in the Concho River below San Angelo has significant adverse effects on the Concho water snake. He bases this conclusion on his studies of the snake, and he also stated that Concho water snakes he observed in the area below San Angelo were immature and sparsely distributed. Response—This information has been added to the final rule. (4) Dr. Francis Rose believes that the killing of Concho water snakes by recreationists has negatively affected populations of this snake. He cites his own experiences, including knowledge of one fisherman who killed 50 individual snakes at the Concho crossing in three days. Response—This information has been added to the final rule. (5) One commentator asserted that predation by fish is a major factor in the survival of young Concho water snakes, and that listing will not reduce this threat. Response—Although fish may prey upon young Concho water snakes, there are no data that suggest that fish, or predation in general, has been a major factor in the overall decline of the Concho water snake. Therefore, the Service has not included this as a major factor in this final rule. (6) One commentator suggested that the "abnormally cold" winter of 1983–84 may have caused the Concho water snake's decline, and asked if the Service noted a decrease in the population of snakes in 1984. Response—No major changes in the population of Concho water snakes were noted in 1984. Cold winters, such as that of 1983–84, may cause increased mortality of snakes during these periods, but they generally do not have long-lasting effects on snake populations. For a snake to persist in an area for thousands of centuries, it must be able to survive periodic cold winters. (7) One commentator said that the Service should have addressed the issue that listing of the Concho water snake would increase the monetary value of captive specimens, thereby increasing demand for collection of wild specimens for trade and thus threatening the species. Response—This issue was not considered in this rule because, as far as is known, there are few if any captive specimens of the Concho water snake, and no known trade exists in captive or wild specimens.

Issue 7: Several commentators were concerned with protection and management of Concho water snakes, as follows: (1) Two commentators requested that the Service seek guaranteed instream minimum flow rights and easements or fee title to critical riparian areas to provide for the perpetuation and expansion of the Concho water snake. Response—After this rule becomes final, the Service will initiate a recovery plan that will address protection and enhancement of habitat. Additionally, such measures may be evaluated through future section 7 consultations. (2) Two commentators recommended that the Service give top priority to the immediate development and implementation of a recovery plan for the Concho water snake. Response—The ESA requires that priority for development of recovery plans be given to listed species "most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other developmental projects or other forms of economic activity." The Concho water snake does conflict with construction activity and the Service expects to develop a recovery plan after this rule becomes final. (3) Several commentators believed that the Concho water snake should be maintained in a zoo or other captive situations in lieu of listing. Response—The Endangered Species Act requires the Service to protect and conserve listed species and the ecosystems upon which they depend. Maintaining captive populations of the Concho water snake would not fulfill this requirement.

Issue 8: One commentator contended that the Service failed to comply with the "Environmental Protection Act" (National Environmental Policy Act, NEPA), and that an Environmental Impact Statement should have been prepared to assess the impact of the proposed rule on the human environment. This commentator asked if the Service had consulted with the Environmental Protection Agency regarding this matter. Response—The Service's position on NEPA compliance for any regulations adopted pursuant to

Section (4)(a) of the Endangered Species Act (listing, critical habitat designation, reclassification, delisting) is set forth in the **Federal Register** of October 25, 1983 (48 FR 49244). This position was based in part on recommendations from the Council on Environmental Quality, and holds that section 4 listing actions are exempt from NEPA review "as a matter of law."

Issue 9: The Service failed to properly educate the public regarding the Concho water snake and the snake should not be listed until such efforts are made. Response—Extensive information regarding the Concho water snake has been disseminated through the proposed rule which was distributed to about 200 people and all subscribers to the **Federal Register**. Information was also provided through public notices published in local newspapers, through responses to news media requests, and through the extensive information provided at the public hearing. The Service has fulfilled all public information requirements regarding proposed listings.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Concho water snake should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Concho water snake *(Nerodia harteri paucimaculata)* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The remaining populations of Concho water snakes occur in 10 Texas Counties: Runnels, Tom Green, Concho, McCulloch, Coleman, Brown, Mills, San Saba, Irion, and Lampasas. This snake historically occurred along approximately 276 miles of the Concho and Colorado Rivers, but now has spotty distribution within only about 199 miles of these rivers. The snake has apparently lost 77 miles of its range along the upstream end of that range. The present range is located on the Concho River from near Veribest, Tom Green County, to the confluence with the Colorado River, and on the Colorado River from near Maverick, Runnels County, to the FM 45 bridge, Mills County, with two small disjunct populations; one is located below Bend, San Saba County, and a second is located on Spring Creek near Mertzon, Irion County (Rose 1985). However, 95 percent of the Concho water snakes located by the two studies conducted by the Service (Flury and Maxwell 1981, Scott and Fitzgerald 1985) were found in a 131 mile stretch extending downstream on the Concho River from near the town of Veribest, Tom Green County, to the confluence with the Colorado River; and on the Colorado River from near Maverick, Runnels County, downstream to just below its confluence with Salt Creek, northwest of the town of Doole, McCulloch County. This 131 mile stretch is only 66 percent of the existing range of the snake. The studies found only 5 percent of the Concho water snakes in the remaining 68 miles (33 percent) of this snake's range. The distributional status of this snake was confirmed by the two Service studies (Flury and Maxwell 1981, Scott and Fitzgerald 1985) and by a study done by the Colorado River Municipal Water District (CRMWD) in connection with the proposed Stacy Reservoir project (Rose 1985).

Habitat of the Concho water snake has been affected by four large mainstream reservoirs on the Concho and Colorado Rivers, plus several smaller impoundments on tributary streams. At least two separate aspects of impoundment result in losses of Concho water snake habitat. Above dams the rocky shoreline and riffle habitat are inundated. Below dams normal water flow is curtailed, and floodwater scouring is prevented. Without such flooding, the rocky streambed becomes covered with silt. This silt then provides an excellent substrate for growth of salt cedar and other vegetation, which eliminates the rocky-bottomed riffle areas required by juvenile Concho water snakes (Scott and Fitzgerald 1985). The closure of Robert Lee Dam on the Colorado River completely eliminated a large population of Concho water snakes and 28 miles of habitat. The dam reduced discharge immediately downstream by 98.9 percent, to an annual average of 124 days with discharge below 1 cubic foot per second (Flury and Maxwell 1981). In the Concho River, the closure of Twin Buttes Dam reduced immediate downstream discharge by 74.2 percent; however, discharge in the river remains well above 1 cubic foot per second below the dam (Flury and Maxwell 1981). To date, there have been no agreements for the management of flow releases from dams for the maintenance of the Concho water snake. The Service is evaluating the possibility of maintaining or reestablishing suitable Concho water snake habitats within the historic range of the snake using mechanical habitat construction maintained by regulated flow releases from existing or proposed dams.

In addition to flow reductions immediately downstream from the two major reservoirs mentioned above, there have been drastic overall declines in the flows of the Concho and Colorado Rivers resulting from cumulative impacts of water impoundments, and from agricultural and other diversions. These flow declines began very early in the history of European settlement of the area. Overall declines in the average annual discharge of the Concho River at Paint Rock and the Colorado River at Ballinger since 1935 are 61 and 65 percent, respectively. The loss of flow in these rivers has reduced suitable habitat for the Concho water snake and for the fish upon which it feeds, and has also aggravated other problems, such as pollution. Inflow of nutrients into the Concho River in the San Angelo area, along with reduced dilution capability associated with lower flows, has created large concentrations of algae in portions of the river. Buildup of algae in riffle areas reduces populations of both the Concho water snake and fish, this snake's primary food. Evidence of this excess nutrient load reaches as far downstream as Paint Rock in Concho County.

Stacy Reservoir, on the Colorado River, is an additional reservoir planned within the remaining range of the Concho water snake. This proposed water impoundment would be built on the Colorado River 14 miles below its confluence with the Concho River and would inundate 32 miles of the Colorado River and 14 miles of the Concho River. The proposed reservoir would inundate 35 percent of the proposed critical habitat for the species, and an extensive but unknown amount of habitat downstream from the dam could also be affected, depending on the amount and timing of water releases from the reservoir. The State water permit for this project stipulates maintenance of a flow of not less than 8.0 cubic feet per second (cfs) at the Winchell gauge (about 55 miles downstream from the dam site) from April through September, and a flow of not less than 2.5 cfs from October through March. However, under existing conditions, flows at the Winchell gauge exceed 8.0 cfs 90 percent of the time, and average low flow exceeds 50 cfs (U.S. Army Corps of Engineers 1986). This reduction in existing flows due to completion of the Stacy project could have significant

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adverse effects on Concho water snakes living downstream from Stacy Dam. Thirteen percent of the proposed critical habitat and 16 percent of the individual snakes that have been observed lie within the 55 miles from the dam site to Winchell. Thus, 48 percent of the proposed critical habitat and 76 percent of the individual snakes that have been located occur within the area expected to be primarily affected by the construction and operation of Stacy Reservoir, as proposed. In addition, Stacy Reservoir would divide the remaining Concho water snakes into three physically separated populations. Such habitat fragmentation has been cited as the primary cause of recent species extinctions (Wilcox and Murphy 1985). According to Wilcox and Murphy, fragmentation has several adverse impacts: (1) It dramatically reduces the amount of habitat available to the organism; (2) it removes most of the best habitat, leaving the more peripheral portions of the range, much of which usually consists of sub-optimal habitat; (3) it restricts genetic interchange and population influx between populations; and (4) it leaves the remaining populations much more vulnerable to environmental variations and natural catastrophes. The isolation of the Concho water snake populations above San Angelo was suggested as the cause of the disappearance of those populations. Lake Nasworthy impounded the South Concho River in 1930 and the Concho water snake was last found in this river in 1944. The Service is currently evaluating ways to minimize the effects of habitat fragmentation on the Concho water snake (see the "Available Conservation Measures" section for discussion).

Sites at which this snake is known to occur are largely bordered by privately owned lands. No discernable problems for the habitat of the Concho water snake have resulted from that ownership. The inaccessibility of the habitat on private lands may provide some degree of protection to Concho water snakes, shielding the animals and their habitat from disturbances.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Concho water snakes are sometimes captured or killed by recreationists. Presently, the effect of this activity on Concho water snake populations is believed to be minimal; however, instances have been reported of large numbers of water snakes being killed by fishermen (Dr. Francis Rose, Texas Tech University, pers. comm., March 11, 1986). Although recreational use of the Concho and Colorado Rivers is increasing, negative impacts on the subspecies, primarily from human-caused, direct mortality, are confined mostly to the vicinity of bridges and road crossings.

C. *Disease or predation.* No problems of disease or predation on Concho water snakes are presently known to exist.

D. *The inadequacy of existing regulatory mechanisms.* Harter's water snake (as *Natrix harteri*, including both the Concho and Brazos water snakes) is listed as endangered by the State of Texas (31 T.A.C. Sec. 57.131–136, July 11, 1984), but no management or monitoring program exists. The State prohibits the taking of State-listed species, except under a State-issued collecting permit. The State generally prohibits selling, offering or advertising for sale, possessing, or distributing such listed species or goods made from such species (Texas Parks and Wildlife Code § 68.015 (1975) as amended in 1981). However, State listing in Texas provides no protection for the habitat of listed species. Therefore, the Endangered Species Act of 1973, as amended, would provide additional protection for the Concho water snake and its habitat through section 7 (interagency cooperation), as well as through the prohibitions of sections 4(d) and 9(a)(1) and provisions for recovery planning.

E. *Other natural or manmade factors affecting its continued existence.* Its naturally restricted range and narrow habitat requirements make the Concho water snake quite vulnerable to further habitat loss. In addition to direct effects on the Concho water snake, declining flows, inundation, pollution, and other habitat threats discussed in item A above have adverse impacts on riffle-dwelling fish in the Concho and Colorado Rivers. Because riffle-dwelling fish are the principal food of the Concho water snake, any declines of these fish will also result in declines of the snake.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Concho water snake as threatened. Although the Concho water snake has experienced extensive habitat loss and presently faces imminent threats to a large portion of its remaining population, the Service is proposing threatened rather than endangered status because the subspecies presently occupies 199 miles of river and is common in localized areas. The reasons for postponing the designation of critical habitat are given in the following section. Designation of critical habitat will be addressed in a subsequent **Federal Register** notice.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required and the final decision on designation may be postponed for one additional year from the date of publication of the proposed rule, if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the species involved. The Service believes that a prompt determination of threatened status for the Concho water snake is essential. As a proposed species, the Concho water snake would be eligible only for the limited consideration given under the conference requirement of section 7(a)(4) of the Act, as amended. This does not require a limitation on the commitment of resources on the part of concerned Federal agencies or applicants for Federal permits. Therefore, to ensure that the full benefits of section 7 and other conservation measures under the Act will apply to the Concho water snake, prompt determination of threatened status is essential.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service is in the process of evaluating the information obtained during the comment period on the economic impacts of designating critical habitat. However, because of the complexities and extent of the activities being assessed, the Service has not completed the evaluation. The Service is currently performing the economic and other impact analyses required for a determination in the near future. The final decision on designation of critical habitat for the Concho water snake must be made by January 22, 1988, pursuant to section 4(b)(6)(C)(ii) of the Act, as amended.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State,

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and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and were recently revised at 51 FR 19926 (June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Concho water snakes are found only in rivers and adjacent riparian areas flowing through privately owned lands. Known Federal activities that may affect this subspecies are authorization of the proposed construction of Stacy Reservoir on the Concho and Colorado Rivers, and other possible future federally funded or authorized dam and reservoir construction, highway and bridge construction, or irrigation projects. Such activities, although on private lands, would be subject to section 7 consultation if Federal funding is involved, or if the activity requires Federal authorization. Stacy Dam and Reservoir require an authorizing permit from the U.S. Army Corps of Engineers, under section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403), as amended. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under Section 4. On May 5, 1986, the Service issued a Conference Report to the U.S. Army Corps of Engineers (U.S. Fish and Wildlife Service 1986). One of the conclusions of the report was if the Concho water snake were to be listed as threatened, the Service would issue a biological opinion finding that the proposed Stacy Reservoir project would jeopardize the snake's continued existence. Although the Conference Report analyzed and rejected as infeasible seven habitat modification and research alternatives that were considered in attempting to accommodate both the Stacy Reservoir project and the survival of the Concho water snake, the Service is now reevaluating the feasibility of those seven and possible other alternatives. Some alternatives presently being considered to help reduce impacts associated with the Stacy project include: (1) Manipulation of reservoir shoreline and water levels in Stacy Reservoir to create suitable habitat for Concho water snakes; (2) river channel manipulation for restoration of destroyed Concho water snake habitats; (3) release of suitable flows from Stacy and existing dams to maintain existing or restored downstream habitat suitable for all age classes of Concho water snakes (includes periodic releases that would scour out silt and vegetation); (4) capture and transfer of Concho water snakes to improved, restored, or newly created habitat; (5) construction of artificial channels with habitat suitable for Concho water snakes, to replace habitat lost to inundation and/or to provide for migration of snakes around reservoirs; (6) research to determine detailed life history information and habitat requirements for the Concho water snake and to apply that information to on-site management of these snakes and their existing, improved, or newly created habitat; and (7) possible other alternatives to be developed. To date, none of these alternatives has been used to reverse the declining range of the Concho water snake.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits involving threatened wildlife species are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

This final listing is effective upon publication in the Federal Register. Because the Stacy Dam and Reservoir project, as currently proposed, could pose significant threats to the Concho water snake, and because this proposed action is presently pending for permit approval by the Army Corps of Engineers, the Service believes that the protection available to the species under section 7(a)(2) of the Act should be implemented as soon as the public receives notice of the final listing decision. For these reasons, the Service finds that "good cause" exists to make the final rule listing the Concho water snake as a threatened species effective upon publication. 5 U.S.C. 553(d)(3); 50 CFR 424.18(b)(1).

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Author

This final rule was prepared by Sally Stefferud, Endangered Species Staff, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Reptiles," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*		
Snake, Concho water	*Nerodia harteri paucimaculata*	U.S.A. (TX)	Entire	T		NA	NA
*	*	*	*	*	*		

Dated: August 27, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–19823 Filed 9–2–86; 8:45 am]

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federal register

Wednesday
September 3, 1986

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 5, 7, 13, 16, 19, 24, 31, 47, 50 and 52

Federal Acquisition Regulation; Final Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 7, 13, 16, 19, 24, 31, 47, 50, and 52

[Federal Acquisition Circular 84-21]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-21 amends the Federal Acquisition Regulation (FAR) with respect to the following: Publicizing and Response Time, Certificate of Competency (COC) for Commercial Activities, Blanket Purchase Agreement (BPA) Purchases under Federal Supply Schedules, Letter Contract Approval, Small Business Size Standards, Utilization of Women-Owned Small Businesses, Freedom of Information Act, Employee Rebate and Purchase Discount Plans, Retroactive or Backdated Insurance, Evaluation—F.O.B. Origin Provision, Extraordinary Contractual Actions, Women-Owned Small Business, Interest Rate, Cost Accounting Standards Contracts, Maintenance of FAR Matrices and other Editorial Corrections.

EFFECTIVE DATE: August 29, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Public Comments

FAC 84-21, Items I through XIV (except Items VI, VIII, IX, XII, and XIII. Public comments have not been solicited with respect to these revisions in FAC 84-21 since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

FAC 84-21, Items VI, VIII, IX, XII, and XIII. Notices of proposed rules were published in the Federal Register on January 30, 1985 (50 FR 4241), October 9, 1985 (50 FR 41179), October 21, 1985 (509 FR 42657), March 22, 1985 (50 FR 11523), and October 28, 1985 (50 FR 43643). The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council have considered the public comments solicited.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

C. Regulatory Flexibility Act

FAC 84-21, Items I through XIV (except Items VI, VIII, IX, XII, and XIII). Analyses of these revisions indicate that they are not "significant revisions" as defined in FAR 1.501-1; i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on these revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (Pub. L. 96-354) does not apply.

FAC 84-21, Item VI, Utilization of Women-Owned Small Businesses. This revision will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the changes are merely minor revisions to incorporate controlling statutory or Code of Federal Regulations (CFR) language already implemented.

FAC 84-21, Item VIII, Employee Rebate and Purchase Discount Plans. This revision will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the practice at issue has involved large businesses only.

FAC 84-21, Item IX, Retroactive or Backdated Insurance. This revision will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because most supplies and services obtained from small entities are acquired on a competitive fixed-price basis and the cost principles do not apply. For the remainder of supplies and services that are obtained from small entities, the cost principles are primarily used to establish negotiation objectives. Also, no specific comments were received from small entities indicating any significant impact.

FAC 84-21, Item XII, Women-Owned Small Business. This revision will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the changes merely clarify CFR language already implemented.

FAC 84-21, Item XIII, Interest Rate, Cost Accounting Standards Contracts. This revision will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because contracts held by small businesses are not subject to the Cost Accounting Standards.

List of Subjects in 48 CFR Parts 5, 7, 13, 16, 19, 24, 31, 47, and 52

Government procurement.

Dated: August 29, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-21]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-21 is effective August 29, 1986.

Eleanor S. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,

Administrator, General Services Administration.

S.J. Evans,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

Federal Acquisition Circular (FAC) 84-21 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Publicizing and Response Time

FAR 5.203, Publicizing and Response Time, is revised in paragraph (f) to provide additional guidance to contracting officers on how to proceed with a contract action when the contracting officer learns that a synopsis has not been published within prescribed timeframes.

Item II—Certificate of Competency (COC) for Commercial Activities

FAR 7.306, Evaluation, is revised to delete in paragraph (b) the improper term "responsible" as a minor editorial revision.

Item III—Blanket Purchase Agreement (BPA) Purchases Under Federal Supply Schedules

FAR 13.204 is revised to state that the small purchase limitation (currently $25,000) does not apply to individual BPA purchases under Federal Supply Schedule contracts.

Item IV—Letter Contract Approval

FAR 16.603–3 is revised to clarify that only a written determination and not a formal determination and finding is needed to approve the use of a letter contract.

Item V—Small Business Size Standards

FAR 19.102, Size Standards, is revised in the table of industry size standards to reflect corrections made by the Small Business Administration and to insert standards inadvertently omitted from the table.

Item VI—Utilization of Women-Owned Small Businesses

FAR 52.219–13, Utilization of Women-Owned Small Businesses, and FAR 19.902, Contract clause, which prescribes the use of that clause, are both revised to reflect the increase in the small purchase dollar limitation from $10,000 to $25,000, and to correct the prescriptive language to require inclusion of the clause in solicitations, as well as contracts, under specified conditions.

Item VII—Freedom of Information Act

FAR Subpart 24.2, Freedom of Information Act, is revised to provide guidance to contracting personnel concerning the handling of requests for disclosure of contractor-supplied information, pursuant to the Freedom of Information Act (FOIA).

Item VIII—Employee Rebate and Purchase Discount Plans

FAR 31.205–6 is revised to make unallowable, employee rebates and purchase discounts on contractor-produced products or services. Authoritative accounting has not conclusively decided whether employee discounts and rebates are reductions to sales or increases to costs. Accepting these amounts as costs under Government contracts would create a potential for serious abuse (particularly on consumer products with a high fixed-cost content) and an unworkable administrative problem with regard to verification of the cost structure of products manufactured in cost centers which are not normally subject to surveillance by Government cost auditors. For these reasons, these costs will not be accepted as part of the cost of fringe benefits of workers performing on Government contracts.

Item IX—Retroactive or Backdated Insurance

FAR 31.205–19 is revised to add subparagraph (a)(5) to make explicitly unallowable, premiums for retroactive or backdated insurance which is written to provide coverage for losses that have already occurred and are known. Since premiums for retroactive or backdated insurance are in fact payments for actual and known losses, this new subparagraph is consistent with the intent of the cost principle which already makes actual losses unallowable.

Item X—Evaluation—F.O.B. Origin Provision

FAR 47.305–3(f)(2) and the preface to the related provision at 52.247–47 are revised to provide guidance to contracting personnel concerning use of the provision entitled "Evaluation—F.o.b. Origin" when methods of transportation other than land are involved.

Item XI—Extraordinary Contractual Actions

FAR 50.306 is revised by adding an instruction to contracting officers concerning documentation required for contracts awarded under the extraordinary emergency authority granted by Pub. L. 85–804, as amended. The revision also requires documentation when the dollar amount exceeds an auditor's or other independent reviewer's recommendation.

Item XII—Women-Owned Small Business

FAR 52.219–13, Utilization of Women-Owned Small Businesses, is revised to define "small business concern"; to expand the definition of "women-owned small businesses" to include the criterion that women-owned small businesses are small business concerns; and, to specify that the contractor, acting in good faith, may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

Item XIII—Interest Rate, Cost Accounting Standards Contracts.

The clauses at FAR 52.230–3, Cost Accounting Standards, and 52.230–5, Disclosure and Consistency of Cost Accounting Practices, are amended to delete the seven percent ceiling in interest assessments for increased costs paid by the Government on Cost Accounting Standards noncompliance issues. This change is required by section 934(b) of the Defense Authorization Act of 1986, which amends section 719 of the Defense Production Act by deleting the seven percent ceiling.

Item XIV—Maintenance of FAR Matrices

Replacement pages are provided for the looseleaf version of the FAR solicitation provision/contract clause matrices (Subpart 52.3) to effect changes made necessary by FAC's 84–1 through 84–13. A complete revision of all matrices, to effect changes made necessary by FAC's subsequent to FAC 84–13, and to include corrections proposed by FAR users, will be published in the looseleaf version of future FAC's. (The matrices are provided for guidance only; they are not regulatory and are not codified in 48 CFR.)

Therefore, 48 CFR Parts 5, 7, 13, 16, 19, 24, 31, 47, 50, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 5, 7, 13, 16, 19, 24, 31, 47, 50, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.203 is amended by adding 3 sentences at the end of paragraph (f) to read as follows:

5.203 Publicizing and response time.

* * * * *

(f) * * * This presumption is based on the CBD's confirmation that publication does occur within these timeframes. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the contract action under the authority of 5.202(a)(2).

PART 7—ACQUISITION PLANNING

7.306 [Amended]

3. Section 7.306 is amended by removing in the second sentence of paragraph (b) the word "responsible".

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

4. Section 13.204 is amended by revising paragraph (b) to read as follows:

* * * * *

13.204 Purchases under Blanket Purchase Agreements.

* * * * *

(b) Unless otherwise specified in agency regulations, individual purchases under BPA's, except those BPA's established in accordance with 13.203–1(f), shall not exceed the dollar limitation for small purchases (see 13.103).

* * * * *

PART 16—TYPES OF CONTRACTS

5. Section 16.603–3 is amended by revising the first sentence of the introductory text to read as follows:

16.603–3 Limitations.

A letter contract may be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable. * * *

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Section 19.102 is amended by removing the number "50" in the number of employees in Major Group 22 for SIC Code 2271 and inserting in its place the number "750" and by adding in numerical sequence in Major Group 35, following SIC Code 3549, six standard industry codes and corresponding information to read as follows:

19.102 Size standards.

* * * * *

SIC	Description—Size standards in number of employees or millions of dollars
*	*
3551	Food Products Machinery....500
3552	Textile Machinery....500
3553	Woodworking Machinery....500
3554	Paper Industries Machinery....500
3555	Printing Trades Machinery and Equipment....500
3559	Special Industry Machinery, N.E.C....500
*	*

* * * * *

7. Section 19.902 is revised to read as follows:

19.902 Contracting clause.

To encourage the use of women-owned small businesses in subcontracting, the contracting officer shall insert the clause at 52.219–13, Utilization of Women-Owned Small Businesses, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation, except—

(a) Contracts that, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; and

(b) Contracts for personal services.

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

8. Section 24.202 is amended by designating the existing text as paragraph (a), and by adding paragraph (b) to read as follows:

24.202 Policy.

* * * * *

(b) Contracting officers may receive requests for records that may be exempted from mandatory public disclosure. The exemptions most often applicable are those relating to classified information, to trade secrets and confidential commercial or financial informaiton, to interagency or intra-agency memoranda, or to personal and medical information pertaining to an individual. Since these requests often involve complex issues requiring an in-depth knowledge of a large and increasing body of court rulings and policy guidance, contracting officers are cautioned to comply with the implementing regulations of their agency and to obtain necessary guidance from the agency officials having Freedom of Information Act responsibility. If additional assistance is needed, authorized agency officials may contact the Department of Justice, Office of Information and Privacy.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

9. Section 31.205–6 is amended by adding paragraph (n) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(n) *Employee rebate and purchase discount plans.* Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.

10. Section 31.205–19 is amended by adding paragraph (a)(5) to read as follows:

31.205–19 Insurance and indemnification.

(a) * * *

(5) Premiums for retroactive or backdated insurance written to cover occurred and known losses are unallowable.

* * * * *

PART 47—TRANSPORTATION

11. Section 47.305–3 is amended by revising paragraph (f)(2) to read as follows:

47.305–3 F.o.b. origin solicitations.

* * * * *

(f) * * *

(2) The contracting officer shall insert the provision at 52.247–47, Evaluation—F.o.b. Origin, in solicitations that require prices f.o.b. origin for the purpose of establishing the basis on which offers will be evaluated.

* * * * *

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

12. Section 50.306 is amended by adding in paragraph (f) two sentences following the first sentence to read as follows:

50.306 Disposition.

* * * * *

(f) * * * The case files supporting this statement will show the derivation and rationale for the dollar amount of the award. When the dollar amount exceeds the amounts supported by audit or other independent reviews, the approving authority will further document the rationale for deviating the recommendation.

§ 50.307 [Amended]

13. Section 50.307 is amended by removing all references reading 52.222–6, 52.222–9, and 52.222–10.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 52.219–13 is amended by inserting a colon following the words "solicitations and contracts" and removing the remainder of the sentence; by removing from the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1986)"; by revising in paragraph (a) of the clause the definition "Women-owned businesses" and adding the definition "Small business concern"; by adding in the clause, paragraph (d); and by removing both derivation lines following "(End of clause)" as follows:

52.219–13 Utilization of Women-Owned Small Businesses.

* * * * *

(a) "Women-owned businesses," as used in this clause, means small business concerns that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

* * * * *

"Small business concern," as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

* * * * *

(d) The Contractor may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

52.230-3 [Amended]

15. Section 52.230-3 is amended by inserting in the introductory text a colon following the words "following clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1986)"; by removing in the second sentence of paragraph (a)(5) the words "or 7 percent per annum, whichever is less,"; and by removing all the derivation lines following "(End of clause)".

52.230-5 [Amended]

16. Section 52.230-5 is amended by inserting in the introductory text a colon following the words "following clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1986)"; and by removing in the second sentence in paragraph (a)(4) of the clause the words "or 7 percent per annum, whichever is less,"; and by removing the derivation line following "(End of clause)".

17. Section 52.247-47 is amended by revising the introductory text to read as follows:

52.247-47 Evaluation—F.o.b. Origin

As prescribed in 47.305-3(f)(2), insert the following provision. When it is appropriate to use methods other than land transportation in evaluating offers; e.g., air, pipeline, barge, or ocean tanker, the provision shall be modified accordingly.

* * * * *

[FR Doc. 86-19905 Filed 9-2-86; 8:45 am]

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Game Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for Waterfowl and Coot Hunting in the 1986-87 Hunting Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Game Bird Hunting: Zones In Which Lead Shot Will Be Prohibited for Waterfowl and Coot Hunting in the 1986–87 Hunting Season.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: When ingested by waterfowl and other migratory birds, spent lead shotgun pellets often have a toxic effect. To alleviate this problem, this rule describes areas in which lead shot will be prohibited for waterfowl and coot hunting in the 1986–87 hunting season. It describes the same areas that were proposed as nontoxic shot zones for waterfowl and coot hunting at 51 FR 409 with the following exceptions: (1) Minor technical changes and corrections were made to zones described for Kansas, Nevada, and New Mexico; (2) Parts of 69 counties in Arizona, Arkansas, California, Florida, Idaho, Illinois, Indiana, Minnesota, Missouri, New York, Oklahoma, Oregon, Texas, and Washington were added to the zones proposed for those States; (3) Ten counties in California, Missouri, Oregon, Texas, and Washington that were proposed for bald eagle protection were eliminated from consideration as nontoxic shot zones for 1986–87; and (4) Parts of 100 counties in Arizona, Arkansas, California, Idaho, Illinois, Maine, Minnesota, Missouri, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming that were proposed for bald eagle protection were eliminated from consideration as nontoxic shot zones for 1986–87. The reasons for the differences between zones designated in the proposed and final rules are discussed under the "**SUPPLEMENTARY INFORMATION**" section.

EFFECTIVE DATE: September 3, 1986.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755) authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

When ingested by waterfowl, bald eagles, and other birds, spent lead shotgun pellets often have a toxic effect. To alleviate lead poisoning problems, 50 CFR §§ 20.21(j) and 20.108 currently require nontoxic shot for waterfowl and coot hunting in certain designated zones; the only nontoxic shot presently available is steel shot. On January 6, 1986, at 51 FR 409, the U.S. Fish and Wildlife Service (Service) published a proposed rule to amend the list of zones in § 20.108 in which the use of nontoxic shot would be required for waterfowl and coot hunting in the 1986–87 hunting season. The comment period for the proposed rule was subsequently extended to February 19 (see 51 FR 3086), and then March 28, 1986 (see 51 FR 10415). This final rule addresses public comments on the proposed rule and amends § 20.108 as outlined below.

Since 1978, the Service has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the Service has been contained in the Interior Department's Appropriations Act each year since 1978 (Pub. L. 98–473, Sec. 305). As a consequence of this restriction, (called the Stevens amendment) the Service can only propose additions and deletions to the designated nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current Service guidelines and criteria indicate that such zones are necessary to protect migratory birds, the Service will not open the areas to waterfowl and coot hunting. This action is taken pursuant to the Service's responsibilities under the Migratory Bird Treaty Act and, in the case of zones proposed for bald eagle protection, the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884) and the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668–668d; 54 Stat. 250).

On July 30, 1985, at 50 FR 30849, the Service published final criteria that serve as guidelines in determining areas where waterfowl ingestion of lead shotgun pellets is considered to be a significant problem and where use of lead shot by waterfowl hunters should be prohibited. In 1984–85, the Service conducted a program to monitor the occurrence of lead poisoning on 24 selected national wildlife refuges (NWRs). Based on the results of this work, and using the criteria described in the July 30 **Federal Register**, the Service concluded that lead poisoning is a matter of concern to at least 11 of the 24 refuges monitored. Therefore, lead shot prohibitions were proposed for the following refuges: Cibola in Arizona and California; White River in Arkansas; Colusa, Delevan, Modoc, Sacramento and Sutter in California; Red Rock Lakes in Montana; Ruby Lake and Stillwater in Nevada (Stillwater was monitored in 1983–84 and, at the State's request, also in 1984–85); and Lewis and Clark in Oregon. Benton Lake NWR, which was not approved as a nontoxic shot zone by the State of Montana in 1985–86, was again proposed for the 1986–87 waterfowl hunting season.

The Service also proposed to prohibit the use of lead shot in certain areas in 26 States to minimize the threat of lead poisoning to bald eagles. Bald eagles are known to suffer lead poisoning when they ingest lead shot contained in the gastrointestinal tract, or imbedded in the tissues, of their waterfowl prey. The nontoxic shot zones proposed gave highest priorty to areas where bald eagles are concentrated in winter and are associated with large harvests of ducks and geese. The Service believes it is reasonable to assume that the highest risks to bald eagles occur on or near major harvest areas, where large numbers of unrecovered hunter-crippled or -killed waterfowl become available for eagles to feed upon. To locate such areas, the Service identified counties in the United States based on two criteria: (1) An average harvest of 5,000 or more ducks and geese annually between 1971 and 1980, using data from Carney et al. (1983. Distribution of waterfowl species harvested in States and counties during 1971–80 hunting seasons. U.S. Fish and Wildlife Service Special Scientific Report—Wildlife No. 254.), and (2) a winter count of at least 25 bald eagles in one or more years between 1978 and 1984, using data from the National Wildlife Federation Bald Eagle Survey (1980–82), National Audubon Society Christmas Bird Count (1978–83), or surveys done on individual national wildlife refuges (1984).

One hundred and twenty-three counties were identified by the process described above. In the course of identifying these counties, it was recognized that bald eagles react to geographical and ecological boundaries rather than political ones. Therefore, 50 additional counties whose geographical/ecological boundaries are contiguous with those of counties meeting the above criteria were added to the list. Thus, a total of 173 counties in 26 States

were proposed as bald eagle zones, as noted in Table 1. All or parts of approximately 78 of the counties listed in Table 1 were also identified for inclusion in § 20.108 on the basis of the waterfowl lead poisoning criteria and refuge monitoring studies mentioned above, or because individual States previously concurred with them or requested that additional nontoxic shot zones containing these counties be established in their States.

TABLE 1.—COUNTIES WHERE IT WAS PROPOSED (AT 51 FR 409) TO PROHIBIT THE USE OF LEAD SHOT TO MINIMIZE THE THREAT OF LEAD POISONING TO BALD EAGLES

State and county	Bald Eagle count	Waterfowl harvest
Arizona: Coconio	53	5,811
Arkansas:		
Arkansas	38	77,397
Desha [1]	7	35,160
Monroe [1]	1	38,598
Phillips [1]	1	13,736
Little River	38	14,813
Sevier	25	8,634
Yell	25	13,843
Pope [1]	30	3,123
California:		
Butte [4]	37	111,203
Lassen	57	42,948
Modoc	41	27,190
Plumas	31	9,921
San Luis Obispo [4]	29	5,800
Shasta	81	10,506
Siskiyou	441	77,309
Colorado:		
Montrose	38	5,716
Morgan	44	12,736
Weld	81	39,947
Florida:		
Brevard	32	36,634
Collier	29	9,556
Osceola	99	9,536
Polk	80	10,700
Volusia	72	7,154
Idaho:		
Bannock	49	16,799
Bingham	101	12,472
Boundary	100	7,597
Canyon	34	52,260
Jefferson	87	22,203
Kootenai	72	5,407
Bonner [1]	100	2,080
Owyhee	39	13,072
Malheur, OR [1]	15	17,279
Power	41	13,856
Illinois:		
Alexander	72	11,329
Scot, MO [1]	0	867
Bureau	26	8,503
Calhoun	205	6,431
Greene [1]	11	3,973
Jersey [1]	0	8,166
Carroll	39	12,507
Cass	35	9,404
Schuyler [1]	5	782
Fulton	75	7,109
Henderson	159	11,816
Des Moines, IA [1]	157	3,122
Lee, IA [1]	55	4,052
Jackson	26	10,646
Perry, MO [1]	0	3,477
Jo Daviess	31	5,077
Mason	111	12,427
Peoria	89	6,501
Tazewell [1]	3	3,909
Woodford [1]	22	8,689
Pike	37	8,569
Ralls, MO [1]	16	
Putnam	49	12,040
Rock Island	239	5,579
Muscatine, IA [1]	29	3,415
Scott, IA [1]	64	4,719
Union	67	11,361

TABLE 1.—COUNTIES WHERE IT WAS PROPOSED (AT 51 FR 409) TO PROHIBIT THE USE OF LEAD SHOT TO MINIMIZE THE THREAT OF LEAD POISONING TO BALD EAGLES—Continued

State and county	Bald Eagle count	Waterfowl harvest
Cape Girardeau, MO [1]	26	1,800
Whiteside	109	5,528
Williamson	37	22,910
Iowa: [3]		
Allamakee	See Crawford County, WI	
Clayton	See Grant County, WI	
Clinton	35	22,002
Des Moines	See Henderson County, IL	
Dubuque	See Grant County, WI	
Freemont	49	33,029
Harrison	72	10,005
Washington, NE [1]	22	2,334
Jackson	78	10,102
Lee	See Henderson County, IL	
Muscatine	See Rock Island County, IL	
Scott	See Rock Island County, IL	
Kansas:		
Barton	35	38,792
Coffey	48	7,296
Cowley	25	5,636
Doniphan	See Holt County, MO	
Ellsworth	34	8,347
Jefferson	45	10,744
Mitchell	38	7,909
Stafford	53	13,189
Kentucky: Ballard	49	13,817
Maine:		
Hancock	31	13,788
Washington	42	10,377
Maryland: Dorchester	38	34,744
Minnesota:		
Dakota	See Pierce County, WI	
Houston	See Vernon County, WI	
Wabasha	See Buffalo County, WI	
Winona	See Buffalo County, WI	
Missouri:		
Cape Girardeau [4]	See Union County, IL	
Charlton	185	48,044
Henry	53	18,609
Benton [1 4]	31	1,121
St. Clair [1]	53	2,884
Vernon [1]	23	16,804
Holt	184	24,993
Doniphan, KS [1]	0	1,580
Richardson, NE [1]	0	1,138
Lincoln	164	9,192
Linn	74	14,566
Perry [4]	See Union County, IL	
Pike	56	14,155
Ralls	See Pike County, IL	
Scott [4]	See Alexander County, IL	
St. Charles	60	19,378
Stoddard	35	16,204
Montana:		
Flathead	29	21,700
Lake	63	8,774
Lewis & Clark	39	8,496
Sanders	27	7,254
Yellowstone	64	6,728
Nebraska [3]		
Dawson	64	10,457
Garden	56	10,384
Harlan	83	5,250
Knox	26	7,315
Bon Homme, SD [1]	11	6,436
Lincoln	48	6,225
Richardson	See Holt County, MO	
Scotts Bluff	34	6,983
Washington	See Harrison County, IA	
New Mexico:		
Colfax	(2)	(2)
San Juan	80	5,367
Oklahoma:		
Bryan	31	6,219
Fannin, TX [1]	6	4,498
Haskell	32	6,059
McIntosh [1]	2	9,767
Pittsburg	2	3,579
Marshall	26	5,900
Muskogee	38	8,505
Osage	140	6,871

TABLE 1.—COUNTIES WHERE IT WAS PROPOSED (AT 51 FR 409) TO PROHIBIT THE USE OF LEAD SHOT TO MINIMIZE THE THREAT OF LEAD POISONING TO BALD EAGLES—Continued

State and county	Bald Eagle count	Waterfowl harvest
Kay [1]	33	1,914
Pawnee [1]	11	525
Sequoyah	77	10,565
Oregon:		
Columbia	26	42,670
Harney [4]	31	25,685
Klamath	295	59,232
Lake	91	31,522
Malheur	See Owyhee County, ID	
Morrow	See Benton County, WA	
Multnomah	27	37,737
South Dakota:		
Bon Homme	See Knox County, NE	
Charles Mix	112	9,739
Gregory [1]	5	3,309
Hughes	100	11,582
Stanley [1]	37	1,496
Tennessee:		
Lake	164	9,310
Obion	49	5,568
Texas:		
Deaf Smith [4]	35	8,259
Fannin	See Bryan County, OK	
Grayson	36	11,818
Henderson	41	6,596
Marion	52	5,886
Upshur [1]	1	1,739
Utah:		
Box Elder	87	94,065
Utah	41	9,664
Weber	45	54,029
Washington:		
Benton	47	13,654
Morrow, OR [1]	19	8,728
Clallam	154	30,991
Jefferson [1]	104	3,071
San Juan	318	667
Clark	27	16,592
Cowlitz [1]	18	2,542
Douglas	91	11,645
Chelan [1]	18	879
Okanogan [1]	87	4,264
Grant	194	135,435
Grays Harbor	79	17,821
King	34	14,226
Lincoln	28	17,847
Ferry [1 4]	22	354
Stevens [1 4]	27	2,418
Pierce	30	11,029
Skagit	414	49,580
Island [1]	34	3,429
Snohomish	101	24,559
Thurston	28	14,624
Whatcom	284	10,195
Wisconsin:		
Buffalo	33	24,838
Wabasha, MN [1]	10	9,998
Winona, MN [1]	4	8,481
Crawford	36	17,290
Allamakee, IA [1]	5	17,701
Grant	190	26,115
Clayton, IA [1]	7	7,860
Dubuque, IA [1]	5	373
Juneau	31	8,403
Pierce	36	7,841
Dakota, MN [1]	11	9,929
Vernon	40	6,600
Houston, MN [1]	0	14,161
Wyoming:		
Bighorn	50	5,050
Goshen	29	6,508

[1] County indicated was proposed because its geographic/ecological boundary is contiguous with that of the county listed directly above it, which was identified as a bald eagle zone using Service criteria described in the text.

[2] Colfax County, NM, was included because the Service's National Wildlife Health Center has confirmed four bald eagle deaths there in the last two years. Review of the situation indicates that the source of lead exposure is in this county.

[3] Listings for the States of Iowa and Nebraska are included in this table for completeness. However, these States currently require the use of nontoxic shot statewide.

[4] County indicated was removed from consideration as a nontoxic shot zone for bald eagle protection in 1986–87 for reasons outlined in this rule.

The nature of the data used in the above process necessitated identifying entire counties as nontoxic shot zones for protecting bald eagles. The Service sought additional information from parties reviewing the proposed rule that would allow the boundaries of the proposed zones to be refined while still affording adequate protection to eagles. Based on information brought to the Service's attention, the boundaries of 100 of the counties proposed to protect eagles in Arizona, Arkansas, California, Idaho, Illinois, Maine, Minnesota, Missouri, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming were refined. Ten of the proposed counties in the State of California, Missouri, Oregon, Texas, and Washington were eliminated from consideration as 1986–87 nontoxic shot zones for eagle protection. All or part of 60 counties in Arizona, Arkansas, California, Florida, Idaho, Illinois, Minnesota, Missouri, Oklahoma, Oregon, Texas and Washington were added for eagle protection to the counties listed in Table 1. The reasons for and consequences of these actions are detailed under the section entitled "Responses to Comments on Zones Proposed for Individual States."

The Service recently updated the 1976 Final Environmental Impact Statement on the use of steel shot for hunting waterfowl in the United States. A draft of the Supplemental Environmental Impact Statement (SEIS), entitled "Use of Lead Shot for Hunting Migratory Birds in the United States," was available for public review during the comment period of the proposed rule. The Final SEIS was completed in June 1986. The SEIS' preferred alternative is to promulgate regulations that will prohibit the use of lead shot for waterfowl and coot hunting in zones where waterfowl harvest occurs at specified densities, with the eventual prohibition of lead shot nationwide no later than 1991–92. This phase-out begins with the 1987–88 waterfowl hunting season. For the 1986–87 hunting season, the preferred alternative calls for restriction of lead shot use in certain counties based upon criteria that designate lead poisoning problem areas for waterfowl and bald eagles. This rule reflects the application of the preferred alternative's proposal for the 1986–87 season.

Summary of Comments on the Proposed Rule

The Service received approximately 63 letters supporting and 215 letters opposing all or portions of the January 6, 1986, proposed rule (51 FR 409). (These totals do not include comments from State wildlife agencies, which are discussed separately below.) More than five letters were received from citizens and organizations concerned with nontoxic shot zones proposed for each of the following States: California (1 letter supporting, 37 opposing), Colorado (3 supporting, 11 opposing), Maine (0 supporting, 6 opposing), Montana (19 supporting, 30 opposing), Oklahoma (0 supporting, 10 opposing), Oregon (0 supporting, 10 opposing), Texas (0 supporting, 24 opposing), Washington (6 supporting, 64 opposing), and Wyoming (2 supporting, 5 opposing). In addition to the above letters, petitions concerned with zones proposed for the following States were received: California (1 petition with 80 signatures opposing), Colorado (1 Petition with 13 signatures supporting), Florida (2 petitions with 14 signatures opposing), New Jersey (57 petitions with 833 signatures opposing), Texas (23 petitions with 481 signatures opposing), and Washington (1 petition with 8 signatures opposing). In addition to the general public, conservation and hunter organizations (National Rifle Assocaition (NRA), National Wildlife Federation (NWF), Wildlife Legislative Fund of America, Wildlife Management Institute, and local/State groups), ammunition manufacturers (Federal Cartridge Corporation, Nontoxic Components, Inc., Remington Arms Company, Inc., and Winchester Group of Olin Corporation), State wildlife agencies, and Indian Tribes and organizations commented on the proposal.

The substantive issues raised in each letter were noted and tallied. Comments offered at public meetings held by the Service on proposed nontoxic shot zones in Arizona, California, Colorado, Montana, and Oklahoma were also noted. Most of the Comments received addressed general aspects of the lead poisoning issue, the use of steel shot, and other concerns. These comments are responded to the following section. Comments relating to specific nontoxic shot zones proposed for particular States, and comments received from State wildlife agencies and Indian Tribes, are addressed in the section entitled "Responses to Comments on Zones Proposed for Individual States." A number of commentors opposed the nontoxic shot zones proposed for a particular State but were not specific as to the reason for their opposition. Such comments were tallied but could not be specifically addressed.

Responses to General Comments on the Proposed Rule

Issue 1: Nineteen commentors expressed doubt that lead poisoning of waterfowl or bald eagles is a significant problem, particular by in the proposed nontoxic shot zones, because they have not observed lead-poisoned birds or seen other documented evidence of avian mortality.

Response: The average time to death of waterfowl after lead shot ingestion is approximately three weeks. During much of this period, the mobility of the affected birds is severely restricted and they are easy prey for a variety of predators. Sick birds also seek isolation and protective cover, further reducing the visibility of sick birds and the remains of carcasses. Studies have shown that duck carcasses are usually scavenged in a matter of a few days, sometimes hours. Most lead poisoning die-offs in waterfowl occur after the hunting season, when birds can feed undisturbed on previously hunted sites where shot has recently been deposited. At these times, hunters are not in the field as frequently and are less likely to observe dead or dying birds. Finally, the effects of lead poisoning may be confused with losses from crippling or those thought to be a result of starvation or some other cause. For these reasons, the apparent lack of dead birds in an area does not necessarily indicate that no lead poisoning is occurring there. The Service believes there is abundant evidence (reviewed in the SEIS) that lead poisoning is a significant problem in waterfowl and bald eagles.

Issue 2: Fifteen commentors felt that the relationship between the use of lead shot and avian mortality has not been adequately demonstrated.

Response: Numerous studies in which gizzard contents have been examined have shown that waterfowl ingest spent lead shot while feeding in the wild. In waterfowl concentration areas, bald eagles have been observed to prey on hunter-killed and -crippled waterfowl (see also the response to Issue 8). Lead shot has been found in the stomachs of necropsied bald eagles and eagles have been diagnosed as dying from lead poisoning. Experimental dosing studies and chemical analyses of avian tissues have proven the toxicity of lead shot to birds. When considered together, these facts confirm that lead shot used causes avian mortality. This subject is discussed in more detail in the SEIS.

Issue 3: Thirteen commentors, including the NRA, NWF, and Wildlife Legislative Fund of America, felt that the Service's criteria for establishing nontoxic shot zones for waterfowl and/or bald eagle protection are arbitrary, not applicable to all situations, unscientific, and/or do not relate to

known instances of mortality from lead shot ingestion.

Response: The Service's criteria for establishing nontoxic shot zones for waterfowl protection consider waterfowl harvest levels, lead-induced mortality, the incidence of lead shot in gizzards, and lead concentrations in blood and liver as indicators of lead poisoning. These criteria were developed on the basis of experimental and clinical laboratory evidence, field studies, and considerable input from State agencies, conservation organizations, and the general public. Questions and criticisms about, and the rationale behind, the waterfowl criteria have been addressed extensively in the SEIS and in previous rulemakings (50 FR 19288, 50 FR 30849). The Service believes that its waterfowl criteria provide a scientifically sound and practical way to identify the initial nontoxic shot zones on a reasonably uniform basis nationwide.

Unlike the waterfowl criteria, the criteria for establishing nontoxic shot zones for bald eagle protection are not based on the presence of dead eagles, ingested lead shot, or lead concentrations in eagle tissues. The presence of dead eagles is not necessarily a good indicator of lead poisoning problems in a particular area because eagles are wide-ranging and can die considerable distances from the source of the lead shot they ingest (see 50 FR 6017). Conversely, the absence of dead eagles in an area may reflect the fact that carcasses were scavenged, overlooked, or not methodically searched for. Obviously, eagles cannot be sacrificed to examine their stomachs and tissues for lead. Consequently, the Service chose criteria that would indicate the potential for lead poisoning based on two facts: (1) bald eagles are known to suffer lead poisoning from ingesting lead shot in their waterfowl prey (see responses to Issues 2 and 8), and (2) lead-contaminated waterfowl eaten by eagles are more prevalent in areas where high harvest occurs.

The nontoxic shot zones proposed by the Service for bald eagle protection in 1986–87 thus gave highest priority to areas where eagles are concentrated during and after the hunting season and are associated with large harvests of ducks and geese. The Service believes it is reasonable to assume that such areas pose the greatest threat to bald eagles because they offer a readily available source of lead shot-containing prey. Additional counties that are contiguous with counties meeting the above criteria were also proposed as nontoxic shot zones if they are likely to contain waterfowl prey used by eagles in the criteria-triggered counties. As noted in the SEIS, imposition of the 1986–87 zones will offer expanded and immediate protection to bald eagles during the subsequent phase-out of lead shot use in waterfowl hunting.

Issue 4: The NWF felt that the Service's basis for modifying the boundaries of nontoxic shot zones proposed for bald eagle protection is vague and that such modifications should not occur.

Response: As stated in response to Issue 3, the proposed "eagle zones" initially encompassed the boundaries of entire counties due to the nature of the bald eagle survey and waterfowl harvest data used to identify these zones. However, if parties reviewing the proposed rule supplied evidence that the distribution of eagles in triggered counties does not overlap with waterfowl harvest areas in those counties, the boundaries of the proposed counties were refined accordingly. The Service feels that bald eagles will still receive adequate protection in the modified "eagle zones." These modifications, and the rationale for each, are discussed below.

Issue 5: Sixteen commentors, including the NRA, felt that the implementation of nontoxic shot zones should only occur in "hot spots", e.g., well-defined areas where there is scientific evidence that a lead shot poisoning problem exists.

Response: Most of the new nontoxic shot zones proposed by the Service for the 1986–87 hunting season were identified using the "hot spot" approach. Individual national wildlife refuges, for instance, were proposed for conversion to nontoxic shot after monitoring studies confirmed lead poisoning on those sites. Such studies can be costly and labor-intensive and may not be feasible over a large area. Zones proposed for bald eagle protection initially encompassed entire counties because the waterfowl harvest and eagle survey data used to identify the zones are compiled on a county basis. However, the Service refined the boundaries of the proposed areas when data on eagle distribution relative to waterfowl harvest within a county were available and justified such a refinement; this refinement process is, in the Service's view, a "hot spot" approach. "Hot spots" designated for eagle protection are generally larger than those designated for waterfowl protection because the source of lead pellets is more dispersed for eagles (crippled and dead waterfowl) than for waterfowl (mostly wetlands).

The Service believes that the problem of lead poisoning in waterfowl and bald eagles is well documented and widespread enough that the "hot spot" approach should be superseded and supplemented by an orderly transition to a nationwide conversion to nontoxic shot for waterfowl and coot hunting. As discussed in the SEIS, the Service intends to phase in such a conversion gradually by the 1991–92 hunting season.

Issue 6: Fifty-two commentors felt that the Service had no data or incorrect data on which to base the establishment of particular nontoxic shot zones proposed in the January 6 rule.

Response: The data used by the Service to determine whether nontoxic shot zones are necessary in a particular area are discussed in response to Issue 3. Except as noted under the section entitled "Response to Comments on Zones Proposed for Individual States," no commentors presented quantitative biological data that caused the Service to question the need to establish nontoxic shot zones in the proposed areas for the 1986–87 hunting season.

Issue 7: Thirty-two commentors felt that there would not be a problem with lead ingestion in certain of the proposed nontoxic shot zones because the areas included plowed fields, deep water, or water areas with soft bottoms or high sedimentation rates. In such areas, the commentors contended, spent lead shot is or rapidly becomes unavailable to feeding waterfowl.

Response: The Service agrees that in certain habitats, such as offshore islands surrounded by deep waters, or wetlands subject to a high degree of sedimentation, spent lead shot *may* become unavailable to some waterfowl. However, the Service feels that it is generally impractical to designate zones on the basis of these factors for several reasons. First, the factors are difficult to evaluate objectively. Second, sedimentation rates may vary from year to year with flow rates, weather, and other factors. Third, only parts of a particular area may be affected; this would create a patchwork of nontoxic shot zones that would be difficult to enforce. In fields, lead shot plowed under one year may be exposed in succeeding years by subsequent plowing or soil erosion.

Commentors raising this issue were largely concerned with nontoxic shot zones that were proposed for bald eagle protection. The basis for proposing such areas is that eagles there could ingest lead pellets primarily by consuming hunter-killed or -crippled waterfowl. Therefore, habitat conditions affecting the availability of spent lead shot to

feeding waterfowl are generally not relevant.

Issue 8: Fourteen commentors felt that eagles would not be likely to ingest lead shot because they do not prey on hunter-crippled or -killed waterfowl.

Response: The bald eagle is generally regarded as a fish-eater throughout most of its range. However, it is largely an opportunistic feeder, shifting to the most readily available food source, e.g., small mammals, reptiles, and carrion. Observations and food habits studies have confirmed that during and after the hunting season, dead ducks and geese containing lead shot in their tissues or gastrointestinal tracts are eaten by bald eagles. The Service believes that the likelihood of eagles consuming waterfowl containing lead shot is especially high in the counties identified in Table 1 because the waterfowl harvest and eagle use of these areas are relatively high. In commenting on the proposed rule, the Illinois Natural History Survey pointed out, and the Service agrees, that because of the sensitivity of bald eagles to lead poisoning (as few as 10 ingested lead shot pellets have been known to kill an eagle), lead-containing waterfowl can pose a threat even if they are not a *major* part of the diet of eagles.

Issue 9: Eleven commentors, including the NRA, pointed out that other mortality factors are of greater detriment than lead poisoning to bald eagles.

Response: As noted in the SEIS, analyses of records of bald eagles necropsied by the Service's National Wildlife Health Laboratory indicate that illegal shooting is the most prevalent cause of eagle mortality (accounting for 23 percent of all deaths investigated), followed by traumatic injuries (eagles hitting or being hit by an object such as a vehicle; 21 percent). Poisoning is the third most common cause of bald eagle deaths (11 percent) and lead poisoning accounted for about half of the poisonings diagnosed. The Service is empowered by the Endangered Species Act to address controllable eagle mortality factors. The Service believes that lead poisoning in bald eagles can be eliminated or significantly reduced by banning the use of lead shot for waterfowl hunting in certain areas and, by this rule, has taken the actions necessary to do so.

Issue 10: Thirty-six commentors, including the NRA, questioned the impact of lead poisoning on bald eagles, and the need to protect eagles from it, in light of increasing eagle populations in specific areas, particular States, and nationwide.

Response: Although overall numbers of bald eagles have increased during the last ten years, eagle breeding populations south of Canada are still well below historic levels and remain classified as endangered or threatened. Given this fact, the Service is continuing to rely in part on the nontoxic shot program to exercise its authority under the Endangered Species Act to promote the species' recovery. Consequently, the Service will not permit actions, such as the use of lead shot for waterfowl hunting in certain areas, which have a reasonable likelihood of harming bald eagles. The possibility of losing individual eagles to a controllable mortality factor such as lead poisoning takes on added significance in light of the expense and efforts being undertaken to reintroduce the species into areas from which it was extirpated.

Issue 11: Ten commentors, including the NRA, felt that at least some of the lead poisoning occurring in birds may be due to lead from sources other than lead shotshell pellets, such as naturally occurring inorganic lead, industrial waste, vehicle emissions, and smelting operations.

Response: This issue has been addressed in previous rulemakings (50 FR 19178, 50 FR 30849) and in the SEIS. As indicated in response to Issue 2, field and laboratory studies have confirmed that lead shot is ingested by and toxic to waterfowl and bald eagles. There is no scientific evidence to date indicating that biologically incorporated lead in the foods of waterfowl or eagles is toxic to these species. Lead from other sources, primarily auto exhaust, is widespread throughout the environment. The distribution of lead from this source does not follow the pattern of lead poisoning in waterfowl or in bald eagles. The pattern of lead poisoning in migratory birds is more clearly related to the hunting of waterfowl than to any other source of lead. No other source provides edible particles of lead in anything approaching the quantities provided by spent lead shot.

Issue 12: Eighty-eight commentors, including the Wildlife Legislative Fund of America, felt that steel shot is ballistically ineffective and will cripple more waterfowl than would die of lead poisoning if lead shot were not banned.

Response: Steel shot has different ballistic properties than lead shot because it is less dense than lead shot. These properties are discussed in the SEIS. Comparative tests assessing crippling losses from steel shot (also reviewed in the SEIS) are difficult to conduct experimentally and have produced variable results. The Service believes that when steel shot is used by knowledgeable and experienced hunters, it can be as effective as lead shot. For less skilled shooters, the Service feels that any additional crippling losses that may occur with steel shot are more than offset by reduced mortality from lead poisoning.

Issue 13: Thirty-two commentors felt that the use of steel shot damages guns.

Response: Older shotguns, with thin-walled barrels or barrels made of soft steel, should not be used for firing steel shot loads. However, modern shotguns should not experience any more damage from steel shot than they would from lead shot.

Issue 14: Thirty-four commentors objected to the use of steel shot because it costs more than lead shot.

Response: The cost difference for steel shot loads is more a reflection of retail mark-up than cost of production. Presumably, costs will go down as more steel shot loads are produced. The relative cost of shot shells is a minor portion of the total expense of waterfowl hunting.

Issue 15: Eight commentors objected to the use of steel shot because they felt it either could not be reloaded or was dangerous to reload.

Response: Reloading components are available for shot sizes T, BBB, BB, B, 1, 2, 3, 4, 5, and 6. The Service is unaware of any data on the safety of reloading shotshells with steel shot. Obviously, instructions accompanying reloading components and equipment should be followed to ensure safe and effective results. No components or procedures other than those specifically recommended by the manufacturers as suitable for steel-loaded shotshells should be used in handloading such shells.

Issue 16: Nine commentors, including the NRA and Wildlife Legislative Fund of America, felt that efforts should be made to develop a ballistically superior, nontoxic alternative to steel shot.

Response: A number of alternatives to lead shot have been tested, including coated lead, various lead alloys, disintegratable lead, nickel, copper, zinc, tin, iron, and uranium waste. These tests are reviewed in the SEIS. On a relative basis, none of the alternatives was as acceptable in terms of their toxicity, economics of production, *and* ballistics as steel (soft iron) shot. The Service agrees that continued research, development, and testing is necessary in this area, but views these activities as appropriate functions of the private sector. Proposed revisions to the regulations in 50 CFR 20.134 governing approval procedures for lead shot alternatives where proposed at 50 FR

VOL 51 ISS 170 SE 3 1986 UMI

29706 and will be finalized in the near future. The Service believes it must ensure that clear standards exist by which any new substitutes to lead shot are tested toxicologically and ballistically. With regard to ballistics, the Service will rely upon standards formulated with assistance from the shooting arms manufacturing industry and others as it has no special expertise in this area.

Issue 17: Thirty-eight commentors, including the Central Flyway Council, Federal Cartridge Corporation, Remington Arms Company, Wildlife Management Institute, and Winchester Group-Olin Corporation, were concerned about the potential economic consequences of implementing the 1986–87 nontoxic shot zones. These commentors felt that the 1986–87 zones would not be finalized in time to provide ammunition manufacturers, distributors, dealers, and hunters sufficient advance notice to deplete their current supplies of lead shot and acquire adequate supplies of steel shot ammunition and components. To avoid the possible adverse hardship this could cause, some of these commentors suggested a one-year delay in implementing the proposed zones. Federal Cartridge Corporation specifically requested that 14 months advance notice be provided before any nontoxic shot zones are established.

Response: In July 1985, the Service sent to all States for comment a draft proposed rule outlining nontoxic shot zones for the 1986–87 waterfowl hunting season. Following State input, the Service planned to proceed through the rulemaking process and publish the final zone descriptions well in advance of the 1986–87 season, to provide all parties affected adequate advance notice. However, an August 1985 Federal court ruling *(National Wildlife Federation v. Hodel et al.,* Civ. No. S–85–0837 (E.D. Cal., Aug. 26, 1985)) caused the Service to prohibit the use of lead shot in certain areas to protect bald eagles from ingesting lead shot when feeding on lead-contaminated waterfowl. In light of this court decision and the length of time since the original environmental impact statement (EIS) on the use of lead shot for migratory bird hunting had been completed, the Service felt a supplement to the EIS was necessary. The July draft proposed rule had to be modified to reflect the preferred alternative in the draft supplemental EIS, which gave specific consideration to bald eagles. This series of events delayed the publication of the proposed rule. Since the proposed rule was published, added delays have been caused by the inability of some States to approve their proposed nontoxic shot zones (as required by the Stevens amendment) until public hearings or wildlife commission meetings are held.

The Service agrees that it is desirable for all parties concerned that more adequate notice be given as to where nontoxic shot zones are to be established. The Service will continue to make every effort to do this in the future, as it has in the past. The Service is bound by its responsibilities under the Migratory Bird Treaty Act, Endangered Species Act, and Bald and Golden Eagle Protection Act to place protection of the migratory bird resource as its first priority. It should be noted that in all States but Iowa and Nebraska there are still many areas where hunters can use their existing supplies of lead shot for hunting waterfowl. Iowa and Nebraska were converted to Statewide use of nontoxic shot for waterfowl hunting in the 1985–86 season and, thus, are not in practice affected by this rulemaking.

Issue 18: Six commentors, including the Central Flyway Council, felt that for greatest hunter compliance with nontoxic shot use requirements, an intensive information and education program on lead poisoning and the use of steel shot is necessary in advance of the implementation of new nontoxic shot zones.

Response: The Service agrees that information and education programs are essential for a successful transition to the use of steel shot. The Service's National Wildlife Health Laboratory has produced and distributed to interested States and other parties a videotape presentation on lead poisoning in waterfowl and bald eagles. Service employees have conducted numerous public meetings on the lead poisoning/steel shot issue, particularly at national wildlife refuges where monitoring studies have indicated that conversion to nontoxic shot is necessary. The Service is aware of numerous information and education efforts by individual States and ammunition companies, and urges that these be expanded. The Service is proposing to expand its own information and education program on lead posioning/steel shot issues.

Issue 19: Twenty-four commentors, including the NWF, felt that the proposed prohibitions on the use of lead shot should be expanded to cover entire States or should be made effective nationwide. The Central Flyway Council favored nationwide conversion following a five-year, publicized phase-in period.

Response: The SEIS evaluated a number of alternatives, including those raised by the commentors, relating to the use of lead shot for waterfowl hunting. After considering public comments on the draft SEIS, the Service selected a preferred alternative that will phase in, by 1991, the conversion of areas to nontoxic shot zones with the eventual goal, of prohibiting the use of lead shot for waterfowl and coot hunting nationwide. The basis for choosing this alternative, and the impacts it will have, are addressed in detail in the SEIS and the Record of Decision published in the **Federal Register** on August 20, 1986 (51 FR 29673).

Issue 20: The NWF pointed out that the proposed rule appeared to implement the preferred alternative of the draft SEIS, which the NWF feels offers minimal protection for bald eagles and waterfowl from lead poisoning.

Response: The NWF's concerns on the SEIS are addressed in that document.

Issue 21: Ten commentors felt that public notification of the proposed rule was inadequate.

Response: The Service sent copies of the proposed rule to each affected State and Indian Tribe, the major conservation and hunter organizations, and ammunition manufacturers. In addition, approximately 7,000 news releases were distributed and public meetings were held on the proposed nontoxic shot zones and the SEIS. The large volume of comments and newspaper articles generated in response to the proposed rule and the SEIS suggest that adequate public notice was given.

Issue 22: The NRA felt that the Service's statement that it will not open the 1986–87 waterfowl hunting season in the areas proposed unless the States involved approve the areas as nontoxic shot zones violates the intent of the Stevens amendment to the Interior Department's Appropriation Act. The NWF felt the Service's statement was vague.

Response: The Stevens amendment requires that the Service obtain State approval before implementing and enforcing nontoxic shot zones. However, this does not alter the Service's management responsibilities under the Endangered Species Act, and Migratory Bird Treaty Act. The Federal court decision referred to in response to Issue 17 affirmed the Service's authority, notwithstanding the Congressional intent of the Stevens amendment, to require nontoxic shot in areas where a known or potential problem of bald eagle ingestion of lead shot exists. Consequently, if a State cannot or will not approve the zones proposed within its boundaries, and offers no acceptable

VOL 51 ISS 170 SE 3 1986 UMI

biological justification for its actions, the Service will not open the waterfowl hunting season in the zones under consideration.

Issue 23: The National Congress of American Indians (NCAI) agreed that there is a need to establish nontoxic shot zones for the protection of bald eagles and waterfowl and stated that many Indian Tribes have taken steps to ban the use of lead shot. However, the NCAI contended that the Service's approach has been inequitable because State consent would be sought before establishing nontoxic establishing nontoxic shot zones on lands under State control, whereas the Service would not seek consent of affected Indian Tribes before establishing such zones on their lands. The NCAI stressed that, in their view, implementation of nontoxic shot zones that affect Indian Tribes cannot occur without the consent and cooperation of Tribal governments.

Response: The Stevens amendment to the Interior Department's Appropriations Bill requires that the Service obtain State consent to implement and enforce nontoxic shot zones. However, as stated in response to Issue 22, the Service has authority, notwithstanding the Stevens amendment, to protect waterfowl and bald eagles from lead poisoning. Therefore, if States do not approve nontoxic shot zones that the Service believes are needed biologically, the Service will not open the waterfowl hunting season in those areas.

The Service recognizes the complexity of jurisdictional responsibility for migratory bird hunting regulations on Federal Indian Reservations, Indian Territory and ceded lands, and this was taken into account when interim guidelines were implemented on September 3, 1985, and special hunting regulations were established for certain Tribes for the 1985–86 hunting season (50 FR 35762). The Service believes that these guidelines provide appropriate flexibility for interested Indian Tribes to exercise their reserved hunting rights and wildlife management authority, while ensuring that the migratory bird resource receives the necessary protection mandated by the various Migratory Bird Treaties with other countries.

The Service believes that nontoxic shot should be used in the proposed zones as a necessary measure to conserve bald eagles and waterfowl, and urges Tribal officials to implement the use of nontoxic shot. As noted in the following section, in commenting on the proposed rule, several Indian Tribes recognized a need to convert to the use of nontoxic shot. If they desire, Tribes may also establish nontoxic shot zones on Reservation lands, independent of the Service's zone proposals, through tribal regulations. However, the Stevens amendment requires State approval before the Service can implement and enforce nontoxic shot zones anywhere in a State (including Indian lands). If such approval is not granted, nontoxic shot zones on Indian lands may still be established, but must be implemented and enforced through Tribal hunting regulations. Because requirements for use of nontoxic shot on Indian lands may be more stringent than those indicated in 50 CFR 20.108, hunters should consult Indian regulations. The Service is not aware of any Tribe that opposes the use of nontoxic shot on Indian lands within the proposed zones, and it is presumed that all affected Tribes will require nontoxic shot for the 1986–87 waterfowl hunting season.

Issue 24: The NCAI expressed doubt that the Service contacted all Indian Tribes affected by the proposed rule.

Response: The Service sent the proposed rule to all Indian Tribes that it believed would be affected by the rule, i.e., those that have jurisdiction over lands within the boundaries of the proposed nontoxic shot zones. As indicated in response to Issue 21, approximately 7,000 news releases were distributed and public meetings were held on the proposed nontoxic shot zones and the SEIS. The following Indian Tribal organizations responded to the proposed rule: Great Lakes Indian Fish and Wildlife Commission, Hopi Tribe, Mille Lacs Band of Chippewa Indians, Nisqually Tribe, Passamaquoddy Tribe, Penobscot Indian Nation, Ramah Navajo Chapter, Confederated Salish and Kootenai Tribes of the Flathead Reservation, and Shoshone-Bannock Tribes of the Fort Hall Indian Reservation.

Responses to Comments on Zones Proposed for Individual States

Wildlife agencies in 23 of the 44 States affected by the January 6 rule approved the nontoxic shot zones within their boundaries as proposed. States in which the proposed zones were modified are discussed below. Also addressed below are comments received from State agencies, Indian Tribes, and the public (including conservation and hunter organizations) that pertain to particular nontoxic shot zones proposed for individual States.

Arizona

The Arizona Game and Fish Department (AGFD) objected to the Service's proposal to make all of Coconino County a nontoxic shot zone for bald eagle protection. The AGFD pointed out that the areas within the county with the most concentrated waterfowl harvest and eagle use are already included in the zone described in the proposed rule that included Game Management Unit 5B, Upper Lake Mary, Lower Lake Mary, and Mormon Lake. The AGFD noted further that the one confirmed case of lead poisoning in a bald eagle occurred within this zone. Therefore, the AGFD requested, and the Service agrees, that the listing for Coconino County be deleted from the final rule because the other proposed zone, which the AGFD approved, affords eagles in Coconino County adequate protection.

The Palo Verde Rod & Gun Club (PVRGC) opposed the Service's proposal to impose nontoxic shot requirements at Cibola NWR. The PVRGC contends that no waterfowl mortality from lead poisoning has been observed at the refuge. The Club also questioned the statistical validity of proposing to require the use of nontoxic shot at Cibola NWR on the basis that 6.2 percent of 109 birds sampled at the refuge contained lead in their gizzards. The Service's justification for using indicators other than the presence of dead birds, and for using a 100-bird minimum sample, in deciding whether an area should be converted to nontoxic shot is contained in previous rulemakings (50 FR 19268, 50 FR 30849; see also the response to Issue 3). Based on rationale contained in those documents, the Service believes there is adequate reason for requiring the use of nontoxic shot for waterfowl and coot hunting at Cibola NWR. The AGFD and the Arizona Waterfowl Association concur with the Service's designation of Cibola NWR as a nontoxic shot zone.

The Hopi and Navajo Tribal Councils supported the proposed rule, particularly as it related to bald eagle protection from lead shot ingestion. The AGFD concurred, per the provisions of the Stevens Amendment (see response to Issue 23), that the Service can implement and enforce nontoxic shot zones that include the Hopi and Navajo Indian Reservations and these zones have been added to those listed for Arizona in this rule.

Arkansas

The Arkansas Game and Fish Commission (AGFC) objected to the Service's time schedule for implementation of the nontoxic shot zones proposed for bald eagle protection in Arkansas. The AGFC pointed out that the lack of advance notice of the 1986–87 nontoxic shot zones inhibits the State's

information and education program, which is working toward gaining hunter acceptance of nontoxic shot through a gradual and planned phase-in. (This will result in Statewide use of nontoxic shot for waterfowl hunting in Arkansas by the 1990–91 season). Despite its reservations about the timing of implementing the proposed nontoxic shot zones, the AGFC indicated its desire to work with the Service in refining the boundaries of the eight proposed Arkansas counties to delineate the areas within the counties where bald eagle concentrations occur in proximity to large waterfowl harvests. To this end, the AGFC identified the Millwood Lake and Lake Dardanelle Wildlife Management Areas (WMAs) and the White River NWR as the only areas within the eight proposed counties that should be designated as nontoxic shot zones to ensure eagle protection. The two WMAs also include portions of Hempstead, Howard, Johnson, and Logan Counties, which were not listed in the proposed rule. The Service concurs with the AGFC's recommended changes to the nontoxic shot zones proposed for Arkansas and believes that eagles in the proposed zones will receive adequate protection from lead shot ingestion. The AGFC also requested that a portion of the Bayou Meto WMA be added to the nontoxic shot zones listed for Arkansas. This has been done in this rulemaking.

California

The California Department of Fish and Game (CDFG) expressed reservations about the Service's criteria for establishing nontoxic shot zones for waterfowl and bald eagle protection. The CDFG does not believe that nationwide criteria should be applied without regard to local conditions. The CDFG also stated that the Service has never demonstrated a correlation between its waterfowl and eagle criteria and mortality in wild populations. Further, according to the CDFG, results of a dosing study in California showed that ingestion rates twice that of the Service's criteria caused no difference in pintail band recovery rates. For these reasons, the CDFG disagreed that the nontoxic shot zones proposed for Cibola, Colusa, Delevan, Modoc, Sacramento, and Sutter NWRs, and the Klamath Basin (including Clear Lake, Lower Klamath, and Tule Lake NWRs), are necessary. In previous rulemakings (50 FR 19268, 50 FR 30849) and in response to Issues 3 and 4 above, the Service has put forth the rationale underlying its criteria for establishing nontoxic shot zones to protect waterfowl and bald eagles. The Service feels its criteria are biologically sound. Data collected by the Service indicate a significant lead poisoning problem in waterfowl, as measured by Service, Pacific Flyway, and State criteria, at Colusa, Delevan, Lower Klamath, Sacramento, Sutter, and Tule Lake NWRs. Problems in waterfowl at Cibola and Modoc NWRs were confirmed by Service and Flyway criteria. Clear Lake, Lower Klamath, Modoc, and Tule Lake NWRs are also appropriate for conversion to nontoxic shot because they lie within zones designated for bald eagle protection.

The CDFG disagreed with the need to protect bald eagles from lead poisoning, pointing out that the eagle population in California is large and increasing, and that eagle mortality from lead poisoning is within the incidental take limit allowed by the Endangered Species Act. As detailed in response to Issue 10, the Service feels that even though the bald eagle may be abundant in particular areas, the Endangered Species Act mandates the species' protection from all controllable mortality factors, including lead poisoning, in those and other areas. The incidental take statement referred to by the CDFG was made in the context that the proposed zones or refinements of them would be implemented; therefore, the statement is only valid if the Service's criteria for waterfowl or bald eagle protection are applied to minimize incidental take. The incidental take statement is consistent with the Service's responsibilities under Section (7)(a)(1) of the Endangered Species Act to conserve all listed species, including the bald eagle. The CDFG also stated that, since only five bald eagles are known to have died from plumbism in California, and none since 1982, plumbism cannot be jeopardizing the bald eagle. The Service agrees that plumbism is not likely to jeopardize the bald eagle as a species. Nonetheless, it is likely to slow recovery. As noted above, a lack of dead birds cannot be used as a reliable indicator that plumbism is not occurring. The Service's proposal seeks to minimize probable risks of such poisoning.

The CDFG recommended that Butte and San Luis Obispo Counties be deleted from consideration as nontoxic shot zones for bald eagle protection. In Butte County, eagles are infrequently sighted in valley bottom waterfowl areas, and few waterfowl are harvested in eagle use areas, which are largely around foothill reservoirs. Bald eagles in San Luis Obispo County are concentrated in the northern part of the county and in neighboring Monterey County around Nacimiento and San Antonio Reservoirs, with small numbers also at other, smaller reservoirs. Most waterfowl harvesting in San Luis Obispo County occurs elsewhere (primarily in Morro Bay), where bald eagle occurrences are unusual. The Service agrees that the geographical separation of eagle use areas and waterfowl harvest areas in Butte and San Luis Obispo Counties warrants their exclusion as nontoxic shot zones for bald eagle protection in the 1986–87 waterfowl hunting season.

The CDFG suggested refinements to the boundaries of the remaining five California counties proposed as nontoxic shot zones for eagle protection. The Service considered these suggestions and examined additional information on the distribution of eagles and waterfowl harvest in and around the five counties. The Service subsequently revised the original zone descriptions in a manner it believes will still afford adequate eagle protection. Specifically, portions of Plumas, Shasta, and Siskiyou Counties were eliminated from consideration as nontoxic shot zones because of their low eagle use and/or low waterfowl harvest. Portions of Sierra and Tehama Counties were added to the nontoxic shot zones because they are adjacent to counties meeting the criteria for such protection and are likely to be used by eagles from those other counties. The CDFG approved the modified eagle protection zones and the other nontoxic shot zones proposed for California.

One public commentor from California pointed out that waterfowl mortality from lead poisoning at Sutter NWR was minor relative to deaths from avian cholera and avian botulism. The commentor felt that more emphasis should be placed on the latter two mortality factors. The Service believes that its monitoring study at Sutter NWR confirmed the need for banning the use of lead shot there; sampling detected a significant lead poisoning problem, as measured by lead-induced waterfowl mortality as well as gizzard and liver analyses. With regard to avian botulism and avian cholera, the Service has an active avian disease research program administered by the National Wildlife Health Center.

The California Waterfowl Association felt that the Service's criteria for determining that a lead poisoning problem exists in waterfowl were inappropriate for evaluating data collected at Colusa, Delevan, Sacramento, and Sutter NWRs and proposing these areas as nontoxic shot zones. The Association contended that while the criteria may be appropriate for

mallards on a high corn diet, they are invalid for pintails on a balanced diet of cereal grains, natural marsh foods and benthic invertebrates (as occurs in the Sacramento Valley). The effect of diet on reducing the toxicity of ingested lead in waterfowl has been discussed in detail in a previous rulemaking (50 FR 30849) and in the SEIS. While the Service agrees that diet can affect toxicity, it has been shown that even ducks fed a completely nutritional diet die of lead poisoning if they ingest a sufficient amount of lead.

Colorado

The Colorado Division of Wildlife (CDW) stated its support for implementation of the Service's guidelines (50 FR 30849) for establishing nontoxic shot zones to protect waterfowl. In addition to establishing a monitoring schedule to detect lead poisoning problems in waterfowl, the CDW has initiated a public information and education program on lead poisoning and the use of steel shot. The CDW felt that the alterations to their schedules for monitoring and education, caused by the Service's new proposals for nontoxic shot zones to protect bald eagles, would lead to a low level of compliance with any bans on lead shot. The CDW also contended that the establishment of nontoxic shot zones in Montrose, Morgan, and Weld Counties for the 1986–87 hunting season would not allow sufficient time for ammunition dealers and hunters to deplete their supplies of lead shot shells and reloading materials. For these reasons, the CDW requested that the proposed restriction on the use of lead shot in Montrose, Morgan, and Weld Counties be delayed until at least the 1987–88 hunting season. The Service informed the CDW that a one-year delay would not be possible in light of the Service's belief that eagles in the three Colorado counties could presently be subject to lead poisoning. The ammunition supply problem is addressed in response to Issue 17. The CDW subsequently approved the proposed nontoxic shot zones for Colorado.

Florida

The Florida Game and Fresh Water Fish Commission (FGFWFC) approved the Florida nontoxic shot zones described in the proposed rule. The NWF pointed out that although Citrus County, Florida, meets the Service's criteria for designation as a nontoxic shot zone for bald eagle protection, it was not listed in the proposed rule; Citrus County had an eagle count of 27 eagles in 1980 and an average of 14,120 waterfowl are harvested there annually. Therefore, the Service requested that the FGFWFC also approve Citrus County as a nontoxic shot zone. The FGFWFC endorsed the inclusion of Citrus County. The FGFWFC also requested that portions of Lake, Levy, Marion, Orange, Putnam, and Seminole Counties be added to the list of nontoxic shot zones for Florida. These areas have been added to this rule.

Idaho

The Idaho Department of Fish and Game (IDFG) expressed concern that the timeframe for implementing the nontoxic shot zones proposed for Idaho is insufficient. The IDFG feels a minimum of two years advance notice is needed to allow current supplies of lead shot to be depleted, to permit sufficient supplies of nontoxic shot to be distributed, and to allow the public to be informed of the lead poisoning problem and the proper use of steel shot. These points have been addressed in response to Issues 17 and 18.

The IDFG also pointed out the need to refine the boundaries of some of the proposed zones to include only the areas where eagles and waterfowl harvest overlap. The Service considered these suggestions and examined additional information on the distribution of eagles and waterfowl harvest in and around the nine Idaho counties originally proposed for bald eagle protection. The Service subsequently revised the original zone descriptions in a manner it believes will still afford adequate eagle protection. Specifically, portions of Bannock, Bingham, Canyon, Jefferson (including Camas National Wildlife Refuge), Owyhee, and Power Counties were eliminated from consideration as nontoxic shot zones because of their low eagle use and/or low waterfowl harvest. Portions of Ada, Bonneville, Caribou, Cassia, Elmore, Madison, and Payette Counties were added to the nontoxic shot zones because they are adjacent to counties meeting the criteria for eagle protection and are likely to be used by eagles in those counties. The IDFG approved the modified zones.

The Service notes that some of the nontoxic shot zones in Idaho include the Fort Hall Indian Reservation of the Shoshone-Bannock Tribes. Tribal officials have indicated support for nontoxic shot use on the Reservation.

One public commentor from Idaho pointed out that on January 8, 1986, he counted at least 96 bald eagles along the Snake River in Bannock, Bingham, Jefferson, and Power Counties. Most of these birds were eating ducks and geese, many of which were hunter-crippled individuals. This information, although casually collected, supports designation of these counties as requiring protection for bald eagles.

Illinois

The Illinois Department of Conservation (IDC) concurred with the Service's proposal to include 22 Illinois counties as nontoxic shot zones for waterfowl protection. However, the State requested, and the Service agreed to, refinements in the boundaries of 17 of the proposed counties (all but Alexander, Fulton, Jackson, Union, and Williamson Counties). The IDC submitted extensive evidence to indicate that the refined nontoxic shot zones will include the portions of the original proposed counties in which virtually all of the eagle use and waterfowl harvest occur. For counties embracing the Illinois and Mississippi Rivers, this includes wetlands (river channel, backwaters, sloughs, adjacent lakes, flooded timber, etc.) in the floodplains of those rivers. The IDC also added portions of counties not originally proposed by the Service as nontoxic shot zones, including Adams and Mercer Counties along the Mississippi River, Brown and Morgan Counties along the Illinois River, and Franklin and Jefferson Counties along Rend Lake. The IDC held public hearings concerning these modified nontoxic shot zones and, based upon input from those hearings, subsequently approved the modified zones.

The Service requested that the IDC consider two counties not listed in the proposed rule for inclusion as nontoxic shot zones for bald eagle protection. The first is Marshall County, which the Illinois Natural History Survey (INHS) and the NWF, in commenting on the proposed rule, pointed out meets the Service's criteria for conversion to nontoxic shot for eagle protection; 41 eagles were counted in Marshall County in 1980 and an average of 7,555 waterfowl are harvested there annually. The second addition is Hancock County, which the INHS requested be made a nontoxic shot zone because of its extraordinarily high use by wintering bald eagles (peak count of 454 birds in 1979) and its moderate annual waterfowl harvest (4,738 birds). The IDC approved the addition of the ecologically important portions of these counties (e.g., the portions along the Illinois and Mississippi Rivers) to the nontoxic shot zones listed herein.

The Migratory Waterfowl Hunters, Inc., requested that Calhoun, Greene, and Jersey Counties be removed from consideration as nontoxic shot zones for bald eagle protection. The group's

biological reasons for doing so are: (1) The primary diet of eagles in these areas is fish; (2) there have been no documented losses of waterfowl or bald eagles from lead shot poisoning in these areas: (3) eagle populations are increasing in these counties, in Illinois, and nationwide; and (4) lead shot sinks quickly into the soft silt of the river bottom backwater areas of these counties and out of reach of waterfowl. The last three points have been addressed in response to Issues 1, 10, and 7, respectively, and the Service believes its general responses to these issues also apply to the three Illinois counties listed above.

With regard to the first point, the commentors cited several references suggesting that fish are the primary food items of eagles in West-central Illinois. The Service agrees that eagles in these areas will consume fish, but none of the information supplied by the commentors evaluated quantitatively the degree to which eagles consume fish in Calhoun, Greene, and Jersey Counties. Harvest figures, literature sources, and observations by Service personnel document the availability of waterfowl to eagles along the Illinois and Mississippi Rivers. As stated in response to Issue 8, eagles are opportunistic feeders and the Service believes it likely that eagles in these areas could ingest lead shot by consuming crippled and dead waterfowl at certain times of the year. This is particularly likely when the rivers freeze, limiting areas where fish can be caught and causing waterfowl (especially sick and crippled individuals) to congregate at the remaining open water sites. Such concentrations of waterfowl are known to attract bald eagles. Therefore, the Service does not agree, on the basis of bald eagle food habits in Calhoun, Greene, and Jersey Counties, that these areas should be eliminated entirely from consideration as nontoxic shot zones. However, as noted above, the zones in these counties have been reduced to include only areas adjacent to the Illinois and Mississippi Rivers.

Indiana

The Indiana Department of Natural Resources (IDNR) approved the nontoxic shot zones proposed for Indiana. The IDNR also requested that the Minnehaha Fish and Wildlife Area in Sullivan County be added to the nontoxic shot zones described for Indiana. This addition has been made.

Iowa

The Iowa Conservation Commission (ICC) pointed out that the ecologically important portions of the 11 Iowa counties proposed as nontoxic shot zones for eagle protection were already included within the first zone listed under Iowa in the proposed rule. As stated in that zone description, the use of nontoxic shot is required on virtually all water areas in Iowa. The ICC believes, and the Service concurs, that this prohibition will eliminate lead poisoning problems for bald eagles in the 11 Iowa counties proposed as nontoxic shot zones.

Kansas

The Kansas Fish and Game Department (KFGD) requested that the proposed nontoxic shot zone that described the Cheyenne Bottoms, Texas Lake, Neosho, Marais des Cygnes, and Jamestown Wildlife Areas be deleted because these areas are already included in the zone that lists all State Wildlife Areas. The KFGD requested that the listing for all State Wildlife Areas be amended to include associated Bureau of Reclamation and Army Corps of Engineers reservoirs and lands, to more clearly define those nontoxic shot zones. The Bureau and Corps concurred with this action. These changes have been made in the final rule, and the KFGD approved the resulting nontoxic shot zones. The KFGD also expressed its opinion that an information and education program on lead poisoning and the use of steel shot is necessary to enhance hunter compliance in nontoxic shot zones. This point has been addressed in response to Issue 18.

Two public commentors pointed out that much of the waterfowl harvest near the Kirwin NWR, which was designated as nontoxic shot zone, occurs on the Kirwin Reservoir dam controlled by the Bureau of Reclamation. Crippled waterfowl and spent shot originating from Bureau land often fall into the refuge, where waterfowl and bald eagles congregate. Therefore, the commentors suggested that the Bureau of Reclamation lands associated with Kirwin Reservoir be added to the Kirwin NWR nontoxic shot zone to ensure adequate protection of waterfowl and eagles. The Service and the KFGD agree and the Kirwin zone description has been modified accordingly.

Maine

The Maine Department of Inland Fisheries and Wildlife (MDIFW) stated that it favors the concept of implementing nontoxic shot zones for waterfowl hunting on a flyway basis, with the Atlantic Flyway being converted in the 1987–88 hunting season. The MDIFW stated that unless and until this occurs, it opposes the designation of "hot spots" as nontoxic shot zones. Therefore, the MDIFW disagreed with the Service's proposal to require nontoxic shot in Hancock and Washington Counties to protect bald eagles. The MDIFW also opposed the action because it believes that the action would jeopardize ongoing recovery efforts for the eagle in Maine by creating an "anti-eagle reaction" in some people.

The MDIFW initially requested that the nontoxic shot zone boundaries in Hancock and Washington Counties be reduced to include only State Wildlife Management Unit (WMU) 6 along the coastal portions of the two counties. The Service evaluated this request and available data and believes that for adequate bald eagle protection from lead shot exposure in Hancock and Washington Counties, the use of nontoxic shot must be required in WMU 6 and an adjacent area along the St. Croix River in Washington County. The MDIFW subsequently concurred with these modified nontoxic shot zones.

Maryland

The Maryland Department of Natural Resources (DNR) initially informed the Service that it could not approve the Service's proposal to require the use of nontoxic shot in Dorchester County for bald eagle protection because Section 10–604(e) of the Annotated Code of Maryland restricted the Maryland DNR from promulgating any rule or regulation banning the use of lead shot for hunting waterfowl in Maryland. Subsequently, the DNR informed the Service that the Maryland General Assembly amended the regulation to give the DNR the authority to require the use of nontoxic shot for waterfowl hunting in those areas so classified by the Service. Consequently, the DNR approved the addition of Dorchester County to the zones listed in 50 CFR 20.108.

Michigan

The Michigan Department of Natural Resources approved the nontoxic shot zones proposed for Michigan. The Great Lakes Indian Fish and Wildlife Commission supported the proposed rule and formulated a Tribal resolution calling for a ban on the use of lead shot for waterfowl hunting in 1986–87 by Tribal members in the western portion of Michigan's Upper Peninsula. This resolution is contingent upon the approval of special regulation for the 1986–87 season for Tribal members hunting on ceded lands in Michigan.

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Minnesota

The Minnesota Department of Natural Resources (MDNR) pointed out that the ecologically important portions of the four Minnesota counties proposed as nontoxic shot zones for eagle protection were already included within the third zone listed under Minnesota in the proposed rule. The Service agrees that this zone will afford adequate protection for bald eagles in these counties. The MDNR concurred with the remainder of the proposed nontoxic shot zones for Minnesota.

The Mille Lacs Band of Chippewa Indians requested that nontoxic shot zones be established on their Reservation and Trust lands in Aitkin, Crow Wing, Mille Lacs, and Pine Counties. The MDNR concurred, per the provisions of the Stevens amendment, that the Service can implement and enforce these zones (see response to Issue 23) and the zones have been added to this rule.

Mississippi

The Mississippi Department of Wildlife Conservation (MDWC) approved the nontoxic shot zones proposed for Mississippi. The MDWC also informed the Service that the Mississippi Commission on Wildlife Conservation voted to support a Statewide ban on lead shot for waterfowl hunting beginning in the 1987–88 season.

Missouri

The Missouri Department of Conservation (MDC) stated its support for implementation of the Service's guidelines (50 FR 30849) on establishing nontoxic shot zones for waterfowl protection. However, the MDC objected to the fact that the Service's new bald eagle protection criteria necessitated altering the planned implementation schedule established under the waterfowl criteria.

The MDC pointed out that the ecologically important portions of seven of the 15 Missouri counties proposed as nontoxic shot zones for eagle protection (Chariton, Holt, Lincoln, Linn, Pike, Ralls, and St. Charles Counties) were already included within the first three zones listed under Missouri in the proposed rule. The Service agrees that these zones will afford adequate protection for bald eagles in these counties.

The MDC presented data opposing the designation of Benton, Cape Girardeau, Perry, or Scott Counties as nontoxic shot zones. These counties were proposed because they are adjacent to counties meeting the Service criteria for bald eagle protection. The MDC pointed out, and the Service agrees, that these areas consist largely of high bluffs or former wetland areas that have been drained. They offer little or no waterfowl habitat, as reflected by the relatively low waterfowl harvest occurring there. Therefore, these four counties have been deleted from the final rule.

The MDC requested that the four remaining counties proposed for eagle protection in Missouri—Henry, St. Clair, Stoddard, and Vernon—be made nontoxic shot zones in 1987 or 1988, according to the schedule established for implementing the Service's waterfowl criteria. The Service informed the MDC that this would not be acceptable in light of the Service's belief that bald eagles in these counties could presently be subject to lead poisoning. Subsequently, the Service and the MDC discussed refinements to the boundaries of these counties that would offer adequate eagle protection. The MDC approved a southwest Missouri nontoxic shot zone that includes the ecologically important portions of Henry, St. Clair, and Vernon Counties (along with portions of Bates, Cass, Cedar, and Johnson Counties, which were not listed in the proposed rule) and a southeast Missouri zone that includes all of Stoddard County (along with portions of Bollinger, Butler, Dunklin, and Wayne Counties, which were not proposed). These zones have been added to this rulemaking.

The MDC requested that nine State Wildlife Areas, which were established as nontoxic shot zones by State regulations in 1985, also be added to the final rule. These areas are the Ben Cash (Dunklin County), Bob Brown (Holt County), Coon Island (Butler County), Dark Cypress (Bollinger County), Four Rivers (Bates and Vernon Counties), Grand Pass (Saline County), Hornersville Swamp (Dunklin County), Seven Island (Mississippi County), and Ten Mile Pond (Mississippi County) Wildlife Areas. They have been added to the zone descriptions in this rule.

Clarence Cannon NWR was proposed as a nontoxic shot zone but has been deleted from this rule because the Missouri portion of the refuge will be closed to waterfowl hunting in the 1986–87 season. The other NWRs and State Wildlife Areas proposed as nontoxic shot zones for Missouri were approved by the MDC.

Montana

The Montana Fish and Game Commission approved the nontoxic shot zones proposed for Montana. The Montana Department of Fish, Wildlife and Parks (MDFWP) stated its support for the use of nontoxic shot for waterfowl hunting. The MDFWP favors a total conversion to nontoxic shot, rather than the "zone approach," and plans to require nontoxic shot Statewide in Montana by the 1988–89 hunting season. The MDFWP feels that to ensure maximum compliance in the use of nontoxic shot, a public information and education program is needed on the problem of lead poisoning and the effective use of steel shot. The Service has already held several informational meetings on the 1986–87 nontoxic shot zone proposals in Montana, and has agreed to assist the MDFWP with additional programs in the five counties to be converted to nontoxic shot zones for bald eagle protection.

Two public commentors felt that the conversion of Lake County to the use of nontoxic shot is unwarranted because hunting there is so dispersed that lead shot deposition is not concentrated and there are no large concentrations of dead and crippled waterfowl. These commentors also contended that spent shot falls into deep areas of the Flathead River and into fields, where it is unavailable to waterfowl. Finally, the commentors pointed out that salmon is the main food of eagles on Flathead Lake and that as the salmon migrate from the lake into McDonald Creek in Glacier National Park the eagles congregate in the Park. Two of the commentors' points are addressed in response to Issues 7 and 8. The matter that the Service must consider with respect to Lake County is whether there is a probability that bald eagles there could ingest lead shot in their prey. The arguments presented by the commentors do not provide sufficient quantitative evidence to convince the Service that eagles are not likely to ingest lead shot from eating crippled or dead waterfowl in Lake County during at least part of the time they are there.

Another commentor suggested that the nontoxic shot zone in Flathead County be refined to include only bodies of water that do not freeze (i.e., those that would concentrate waterfowl), including portions of Whitefish Lake, deep portions of Flathead Lake, and portions of Flathead River. The Service does not believe that it is practical to delineate boundaries of nontoxic shot zones on the basis of frozen vs. open water. Variable weather conditions will cause the distribution of frozen and open water to change within and among years. In addition, the presence of frozen vs. open water does not necessarily determine whether an eagle might ingest lead-contaminated waterfowl.

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The Five Valleys Audubon Society and two other commentors supported the Service's proposed nontoxic shot zones for Montana but felt that parts of Mineral, Missoula, Powell, and Ravalli Counties should also be included as nontoxic shot zones for bald eagle protection. These counties do not meet the Service's criteria and have not been proposed by the MDFWP. The Service feels that the areas will receive adequate protection under the State's planned conversion schedule.

The Montana Audubon Council, representing nine chapters, endorsed the Service's proposed nontoxic shot zones but reiterated the MDFWP's view that an adequate public information and education program is necessary before effective conversion to nontoxic shot can occur in Montana. As stated in response to Issue 18, the Service also agrees that information and education programs on lead poisoning and the use of steel shot are essential.

The Tribal Council of the Confederated Salish and Kootenai Indian Tribes of the Flathead Reservation passed a resolution supporting the use of nontoxic shot on lands under Tribal jurisdiction in Flathead, Lake, and Sanders Counties.

Nevada

The Nevada Department of Wildlife approved the nontoxic shot zones for Nevada. The Stillwater National Wildlife Refuge was incorrectly listed in the proposed rule; the Stillwater Wildlife Management Area should have been listed instead. This error has been corrected in the final rule.

New Hampshire

No nontoxic shot zones were proposed for New Hampshire. However, the Audubon Society of New Hampshire (ASNH) suggested that a nontoxic shot zone be established that would include the Great Bay estuary. The ASNH pointed out that the estuary is the most heavily hunted waterfowl area and the most important bald eagle wintering area in New Hampshire. The Service agrees with this statement, but neither the estuary as a whole nor the counties comprising it (Rockingham and Strafford) have a sufficient combination of bald eagle use and waterfowl harvest to meet the Service's criteria for eagle protection. The New Hampshire Fish and Game Department informed the Service that it does not support designation of the Great Bay estuary as a nontoxic shot zone at this time. Therefore, this area was not added to the nontoxic shot zones described in this rulemaking.

New Jersey

The New Jersey Department of Environmental Protection approved the nontoxic shot zones proposed for New Jersey. The Service received 57 pre-printed petitions, containing a total of approximately 833 signatures, from members of the Water Fowlers of Bergen County, NJ, Inc. These petitions objected to the New Jersey Fish and Game Council's decision to require nontoxic shot in the proposed zones. The Water Fowlers' objection was based on their belief that the use of steel shot will cripple more birds than would die of lead poisoning. This point is responded to under Issue 12. The Service believes that the State of New Jersey's decision to require nontoxic shot in the zones listed in this rule is based on sound biological information and concurs with the decision.

New Mexico

The New Mexico Department of Game and Fish approved the nontoxic shot zones proposed for New Mexico contingent upon several technical changes, which the service has made in the final rule. First, the listings for the Artesia and Karr Farm State Game Refuges have been deleted. These refuges were consolidated into the Artesia State Waterfowl Management Area, which is now listed in the rule. Second, the listings for Jackson Lake and Miller Mesa State Game Refuges have been deleted because these areas are within San Juan County, which is a nontoxic shot zone. Third, the listing for San Juan County was moved from the Central Flyway to the Pacific Flyway.

New York

The New York Department of Environmental Conservation (NYDEC) approved the nontoxic shot zones proposed for New York. The NYDEC also pointed out that the Bashakill Wildife Management Area in Sullivan and Orange Counties was inadvertently omitted from the proposed rule and it has been added to this rule. In addition, the NYDEC requested a technical modification that will expand the Hudson River nontoxic shot zone. This change has also been made in this rule.

Oklahoma

The Oklahoma Department of Wildlife Conservation (ODWC) requested a one-year extension for implementation of the proposed nontoxic shot zones in Oklahoma, to allow sportsmen an opportunity to have their interests heard. The Service could not grant this time extension in light of the Service's belief that waterfowl and bald eagle mortality could potentially occur in the areas proposed if lead shot were allowed to be used there during the 1986–87 hunting season. In addition, the service feels that the comment period for the proposed rule allowed adequate time for the public to voice opinions on the issue (see response to Issue 21).

Upon further consideration, the ODWC proposed refinement of the boundaries of the proposed nontoxic zones to exclude areas where waterfowl hunting and/or eagle use are minimal or nonexistent. In place of the ten counties originally proposed for eagle protection in Oklahoma, the Oklahoma Wildlife Conservation Commission submitted data supporting three zones. These zones include the ecologically important portions of the ten original counties plus portions of Noble, Lattimer, LeFlore, and Johnston Counties. The Service agrees with these revised nontoxic shot zones for Oklahoma.

Oregon

The Oregon Department of Fish and Wildlife (ODFW) stated its support for implementation of the Service's guidelines (50 FR 30849) for establishing nontoxic shot zones to protect waterfowl. The ODFW began monitoring certain counties in 1985–86, for possible conversion to nontoxic shot in 1987–88, according to the schedule outlined in the guidelines. The ODFW objected to the fact that the Service's new proposal for nontoxic shot zones to protect bald eagles would eliminate the need for the monitoring the ODFW had already done in four counties in 1985–86. The ODFW feels that eagles will receive adequate protection as areas are converted to nontoxic shot for waterfowl protection. The Service believes the threat of lead poisoning in bald eagles in the counties monitored is of sufficient magnitude that it would be unacceptable to delay their conversion to nontoxic shot until 1987–88 or beyond. For eagle protection, the boundaries of these counties may be refined to include only areas having high eagle use and waterfowl harvest. Thus, the data collected by the ODFW could be used later to designate additional nontoxic shot zones for waterfowl protection in the portions of the counties not converted for eagle protection.

The ODFW questioned the need for the establishment of nontoxic shot zones to protect bald eagles in light of the fact that eagles are increasing in number despite various mortality factors, including lead poisoning. This point has been responded to under Issue 10.

The ODFW approved at an earlier date the implementation of nontoxic

shot zones at Sauvie Island Wildlife Management Area, and Ankeny, Baskett Slough, Lewis and Clark, and William L. Finley National Wildlife Refuges for the 1986–87 waterfowl hunting season. The Service discussed with the ODFW the other zones listed in the January 6 rule, which included seven counties proposed for bald eagle protection, and examined additional information on the distribution of eagles and waterfowl harvest in and around the seven counties. The Service subsequently revised the original zone descriptions in a manner it believes will still afford adequate eagle protection. Specifically, portions of Columbia, Lake (including Hart Mountain National Wildlife Refuge), Malheur, Morrow, and Multnomah Counties were eliminated from consideration as nontoxic shot zones because of their low eagle use and/or low waterfowl harvest. Portions of Clatsop, Gilliam, and Umatilla Counties were added to the nontoxic shot zones because they are adjacent to counties meeting the criteria for eagle protection and are likely to be used by eagles in those counties. Lower Klamath National Wildlife Refuge, located in Klamath County, was inadvertently omitted from the proposed rule and has been added to the zones described in this rule.

Several commentors requested that Harney County be deleted from consideration as a nontoxic shot zone for bald eagle protection. They pointed out that eagles migrate through the county in February and March, whereas waterfowl hunting occurs in November and December. The Service also noted, in examining additional information, that most eagle use in Harney County occurs north of waterfowl harvest areas, and that the major eagle food source there is rabbits and carrion (deer and cattle). For these reasons, Harney County (and Malheur NWR within the county) has been excluded as a nontoxic zone for bald eagle protection in the 1986–87 waterfowl hunting season.

The ODFW subsequently approved the modified eagle protection zones.

South Dakota

The South Dakota Department of Game, Fish and Parks (SDDGFP) pointed out that the ecologically important portions of the five South Dakota counties proposed as nontoxic shot zones for eagle protection (Bon Homme, Charles Mix, Gregory, Hughes, and Stanley) were already included within the first three zones listed under South Dakota in the proposed rule. The Service agreed that these zones would afford adequate bald eagle protection in these counties.

The SDDGFP subsequently notified the Service that the South Dakota Game, Fish and Parks Commission (SDGFPC) voted to retain a provision that currently exempts certain hunters from complying with nontoxic shot use requirements in South Dakota. Specifically, hunters under 16 years of age using 16 or 28 gauge or .410 caliber shotguns and hunters using muzzle-loading shotguns are not required to use nontoxic shot for waterfowl hunting. The Service informed the SDDGFP that it feels these exemptions create the potential for eagles in the five counties mentioned above to be exposed to lead shot and the SDGFPC subsequently removed the exemptions in those areas. The remaining zones proposed for South Dakota were ones added to 50 CFR 20.108 at State request in the 1985–86 season. Since the Service has no data indicating that lead shot is necessarily causing migratory bird mortality in these areas, they have been included in this rule with the provision exempting certain hunters from using nontoxic shot within these zones.

Tennessee

The Tennessee Wildlife Resources Agency (TWRA) requested a one-year delay in implementation of the two Tennessee counties proposed as nontoxic shot zones for bald eagle protection. The TWRA pointed out that this time schedule would be consistent with the one outlined for these counties under the Service's guidelines for implementing nontoxic shot zones to prevent lead poisoning in waterfowl (50 FR 30849). The Service informed the TWRA that a one-year delay would not be possible in light of the Service's belief that eagles in Lake and Obion Counties could presently be subject to lead poisoning. The TWRA subsequently approved these nontoxic shot zones.

Texas

The Texas Parks and Wildlife Department (TPWD) felt the Service's criteria for designating nontoxic shot zones to protect bald eagles were arbitrary and capricious. The TPWD further stated its opinion that the proposed zones should be deferred until the 1987–88 hunting season to allow the TPWD, sportsmen, and ammunition retailers to adjust to the expansion of the nontoxic shot zones. The Service disagrees with these two comments for reasons outlined in response to Issues 3 and 17, respectively.

The TPWD requested that the proposal to require nontoxic shot in Deaf Smith County be reconsidered because the county does not meet the Service's criteria for designating areas to protect bald eagles. The conversion of Deaf Smith County was also opposed in 20 letters, and 22 petitions containing approximately 445 signatures, from the public, including members of the Texas Waterfowlers Association, Inc. The Service reexamined the National Audubon Society Christmas Bird Count data base used to determine the eagle population in Deaf Smith County and discovered that eagles counted in adjacent Randall County were erroneously attributed to Deaf Smith County. Therefore, the Service agrees that it is inappropriate to designate Deaf Smith County as a nontoxic shot zone for the 1986–87 waterfowl hunting season on the basis of the Service's criteria for protecting bald eagles.

The TPWD felt that the inclusion of Fannin County as a nontoxic shot zone was inappropriate because it was proposed on the basis of eagle numbers in Bryan County, Oklahoma. The Service delineated a portion of Fannin County that it feels should be included as a nontoxic shot zone because waterfowl crippled or killed in this area may be preyed upon by eagles from Lake Texoma in nearby Bryan and Marshall Counties, Oklahoma. In addition, there is some eagle use of the Red River below Lake Texoma in the portion of Fannin County delineated by the Service. The TPWD subsequently concurred with this boundary adjustment.

The TPWD proposed refinements to the boundaries of Grayson, Henderson, Marion, and Upshur Counties to more accurately reflect the actual distribution of bald eagles and waterfowl harvest in those counties. The Service agrees with these refinements and believes that bald eagles will receive adequate protection from lead shot ingestion in the revised nontoxic shot zones. In delineating the revised zone boundaries, the TPWD added portions of Anderson, Cass, Cook, Harrison, Kaufman, and Morris Counties to the final nontoxic shot zones for Texas. These counties were not listed in the proposed rule.

The TPWD recommended that the portion of Caddo Lake lying within Caddo Parish, Louisiana, be included as a nontoxic shot zone for eagle protection since the remainder of the lake, which lies within Marion County, Texas, was designated as a zone in the TPWD's refinement of Marion County. The Service, in examining available eagle survey data for Caddo Lake, noted that only three eagles were counted on the Marion County portion of Caddo Lake in 1982; the majority of eagles occuring in Marion County used Lake O' the Pines.

In 1981, no eagles were detected at Caddo Lake, and between 1978 and 1983 the maximum count for all of Caddo Parish was only 11 eagles. Therefore, the Service feels there is sufficient evidence to warrant placing all or part of Caddo Parish, Louisiana, in a nontoxic shot zone for eagle protection in 1986–87. The TPWD wished to keep the portion of Caddo Lake in Marion County in a nontoxic shot zone.

Utah

The Utah Division of Wildlife Resources (UDWR) stated its support for implementation of the Service's guidelines (50 FR 30849) for establishing nontoxic shot zones for waterfowl protection. However, the UDWR objected to the fact that the Service's new eagle protection criteria necessitated altering the planned implementation schedule established under the waterfowl criteria. The UDWR feels that the stable or increasing status of eagle populations under current lead shot use indicates that additional protection for eagles, beyond conversion to nontoxic shot under the waterfowl criteria, is unwarranted. The Service disagrees for reasons outlined in response to Issue 10.

The UDWR requested that Box Elder, Utah, and Weber Counties, which were proposed for conversion to nontoxic shot to protect bald eagles, be exempted from the 1986–87 zones. The primary justification for requesting the exemption was based on analyses and observations of bald eagle food habits by UDWR personnel. These studies purported to show that eagles in Utah prey largely on mammals and fish and, therefore, are not likely to be exposed to lead shot in waterfowl tissue. The Service reviewed the data submitted by the UDWR, and other available information, and concluded that the UDWR data were applicable to the arid portions of Utah but not to the portions of the three counties in question that are adjacent to and within the Great Salt Lake (Box Elder and Weber Counties) and Utah Lake (Utah County). Harvest figures suggest that crippled and dead waterfowl are available to eagles in these areas and since eagles are opportunistic feeders (see response to Issue 8), the Service feels there is a likelihood that eagles in these areas could ingest lead shot by consuming such waterfowl. Therefore, the Service could not grant the UDWR's requested exemption.

Subsequently, the UDWR concurred with the designation of all of Utah and Weber Counties, and the portion of Box Elder County on and around the Great Salt Lake, as nontoxic shot zones. The Service agrees that the designated portion of Box Elder County will afford adequate protection to bald eagles.

Washington

The Washington Department of Game (WDG) stated its opinion that the Service's criteria for establishing nontoxic shot zones to protect bald eagles are arbitrary and unscientific because they have not shown to correlate with lead poisoning in eagles. The WDG feels that until research is done to provide such a correlation, the only valid criteria for establishing zones to protect eagles should be the occurrence of eagle mortality from lead poisoning in particular areas. The Service addressed the basis for its eagle protection criteria under Issue 3. With the exception of Ferry and Stevens Counties (see below), the Service believes it is unacceptable to delay implementation of the nontoxic shot zones proposed for eagle protection in Washington.

The WDG pointed out that lead poisoning is a relatively minor mortality factor to eagles and waterfowl populations. This point has been responded to under Issue 9 and in the SEIS.

The WDG favors application of the Pacific Flyway criteria for determining lead poisoning problems in waterfowl. The Service disagrees, for reasons outlined in previous rulemakings that dealt with establishment of waterfowl criteria (50 FR 19268, 50 FR 30849).

The WDG approved at an earlier date the implementation of a nontoxic shot zone at Ridgefield National Wildlife Refuge for the 1986–87 waterfowl hunting season. The WDG recommended several alternate nontoxic shot zones in parts of Pierce, Skagit, Snohomish, and Thurston Counties. The Service discussed these zones with the WDG and examined additional information on the distribution of bald eagles and waterfowl harvest in and around the 21 counties (and associated refuges) proposed for eagle protection. The Service subsequently revised the original zone descriptions in a manner it believes will still afford adequate eagle protection. Specifically, portions of all 21 proposed counties except Douglas, Ferry, Island, San Juan, and Stevens Counties were eliminated from consideration as nontoxic shot zones because of their low eagle use and/or waterfowl harvest. Portions of Adams, Franklin (including McNary National Wildlife Refuge), Kittitas, Kitsap, Klickitat, Mason, Pacific (including Columbian White-tailed Deer and Willapa National Wildlife Refuges), Skamania, Wahkiakum, Walla Walla, and Yakima Counties were added to the nontoxic shot zones because they are adjacent to counties meeting the criteria for eagle protection and are likely to be used by eagles in those counties.

Upon examining additional information on eagle distribution in relation to waterfowl harvest, the Service concluded that Ferry and Stevens Counties should be deleted entirely from consideration as nontoxic shot zones for bald eagle protection. These counties were originally proposed because they are adjacent to Lincoln County, which meets the Service's criteria for bald eagle protection. However, Ferry and Stevens have very low waterfowl harvests and eagles within the counties do not use areas near the waterfowl harvests. For these reasons, Ferry and Stevens Counties have been excluded as nontoxic shot zones for bald eagle protection in the 1986–87 waterfowl hunting season.

The WDG subsequently approved the modified eagle protection zones.

The Nisqually Indian Tribe agreed with the Service's proposal to establish nontoxic shot zones for bald eagle protection, and stated its intention to modify its hunting ordinance to conform.

Wisconsin

The Wisconsin Department of Natural Resources (WDNR) pointed out that the ecologically important portions of five of the six Wisconsin counties proposed as nontoxic shot zones for eagle protection were already included within the first zone listed under Wisconsin in the proposed rule. These include Buffalo, Crawford, Grant, Pierce, and Vernon Counties. The Service agrees that this zone will afford adequate protection for bald eagles in these counties. The WDNR requested that the sixth county proposed for eagle protection—Juneau County—not be converted to a nontoxic shot zone until the 1987–88 hunting season, when nontoxic shot will be required for waterfowl hunting statewide in Wisconsin. The Service informed the WDNR that this would not be possible in light of the Service's belief that eagles in this county could presently be subject to lead poisoning. The WDNR subsequently approved the designation of Juneau County as a nontoxic shot zone. The WDNR also concurred with the remainder of the proposed nontoxic shot zones for Wisconsin.

The Great Lakes Indian Fish and Wildlife Commission supported the proposed rule and formulated a Tribal resolution calling for a ban on the use of lead shot for waterfowl hunting in 1986–

87 by Tribal members on off-reservation ceded lands in northern Wisconsin. The resolution is subject to ratification and/or modification by each of the eight Chippewa bands participating in the off-reservation waterfowl hunts.

Wyoming

The Wyoming Game and Fish Department (WGFD) initially informed the Service that it could not approve the Service's proposal to require the use of nontoxic shot in Big Horn and Goshen Counties for bald eagle protection because Wyoming State law (Senate File No. 0145) prohibited the Wyoming Game and Fish Commission from banning the use of lead shot unless it could be documented that a density of shotgun pellets in excess of 20,000 pellets per acre was present. Subsequently, the WGFD informed the Service that the Wyoming legislature amended the law to allow the approval of nontoxic shot zones proposed by the Service. The WGFD requested that the boundaries of the proposed zones be refined to exclude areas where waterfowl hunting and/or eagle use are minimal or nonexistent. Refinements were based on WGFD and Bureau of Land Managment mid-winter bald eagle surveys conducted from 1979 to 1985. The Service agrees with these refinements for Wyoming.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact anlayses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant affect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic affect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a Supplemental Enviromental Impact Statement to the FES was completed in June 1986. Pursuant to the Endangered Species Act, a Section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles.

Regulations Promulgation

This rule could not be promulgated until the Record of Decision for the SEIS mentioned above had been signed. Because that action could not occur until mid-August 1986, and because certain waterfowl hunting seasons begin on September 1, this rule will become effective on September 1, 1986. The Service finds that "good cause" exists for taking this action, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedures Act. The Service believes that the public had ample notice of this rule; the comment period for the proposed rule for the 1986–87 nontoxic shot zones was nearly three months long and a preliminary version of this final rule was published as Appendix O to the Final SEIS (FES 86–16) over one month ago. The imminent approach of the hunting seasons requires a partial waiver of the period set forth in 5 U.S.C. 553(d)(3).

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the *Code of Federal Regulations* is amended as set forth below:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712), unless otherwise noted.

2. Section 20.108 is revised to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for waterfowl and coot hunting.

Atlantic Flyway

Connecticut

1. That portion of New Haven and Fairfield Counties bounded by a line beginning at the north end of the breakwater at Milford Point extending south to Stratford Point, north along Prospect Drive and Route 113 to Interstate 95, easterly along I–95 to Naugatuck Avenue, southerly along Naugatuck Avenue and Milford Point Road and continuing along a line extending from the end of Milford Point Road to the north end of the breakwater at Milford Point.

2. That portion of New Haven County along the Quinnipiac River known as the Quinnipiac Meadows beginning at the intersection of Sackett Point Road and I–91, extending south along I–91 to Route 5, northerly along Route 5 to Sackett Point Road, and easterly along Sackett Point Road to I–91.

Delaware

All State and Federally owned property within the following areas:

1. Assawoman State Wildlife Area.
2. Augustine State Wildlife Area.
3. Cedar Swamp State Wildlife Area.
4. Chesapeake and Delaware Canal State Wildlife Area.
5. Gordon's Pond State Wildlife Area.
6. Little Creek State Wildlife Area.
7. Prime Hook State Wildlife Area.
8. Ted Harvey State Wildlife Area.
9. Woodland Beach State Wildlife Area.
10. Cape Henlopen State Park.
11. Delaware Seashores State Park.
12. Bombay Hook National Wildlife Refuge.
13. Prime Hook National Wildlife Refuge.

Florida

1. Brevard, Osceola, Broward, Polk, Dade, Citrus, Collier and Volusia Counties; Leon County (exclusive of Lake Talquin and the Ochlockonee River); Lake Miccosukee in Leon and Jefferson Counties; Orange Lake and Lochlooss Lake in Alachua County; the area lying lakeward of and bounded by the Lake Okeechobee levee, by the State

Road 78, Kissimmee River bridge, and by State Road 78 from its intersection with the Lake Okeechobee levee at points near Lakeport and the Old Sportsman's Village site; Occidental Wildlife Management Area as well as all of the Occidental Chemical Company phosphate pits east of US Highway 41, south of State Road 6, west of State Road 135 and north of White Springs, all in Township 1 north, Ranges 15 and 16 east in Hamilton County comprising approximately 35,000 acres; Lake Ponte Vedra in St. Johns County (all waters north Guana Dam); M–K Ranch public waterfowl area in Gulf County; that portion of Everglades Conservation Area 2 in Palm Beach County; that portion of Lake George lying in Putnam County; that portion of the St. Johns River floodplain lying in Lake, Seminole, and Orange Counties; and that portion of Lake Rousseau lying in Levy and Marion Counties.

2. Chassahowitzka National Wildlife Refuge.

3. Lower Suwannee National Wildlife Refuge.

4. Loxahatchee National Wildlife Refuge.

5. Merritt Island National Wildlife Refuge.

Georgia

1. Eufaula National Wildlife Refuge.

2. Savannah National Wildlife Refuge.

Maine

1. The portions of State Wildlife Management Unit 6 located in Hancock and Washington Counties.

2. The following portion of Washington County: commencing at the junction of State Highway 6 and the Canadian Border at Vanceboro, continuing west on State Highway 6 to the junction of U.S. Highway 1 at Topsfield, thence south on U.S. Highway 1 to where it enters State Wildlife Management Unit 6 at the Baileyville-Baring town lines.

Maryland

1. Dorchester County.

Massachusetts

1. Plum Island.

2. Parker River National Wildlife Refuge.

New Jersey

1. That portion of the State bounded on the north by the Shark River, on the west by the Garden State Parkway, on the south by the Cape May Canal, and on the east by the Atlantic Ocean. This zone includes Edwin B. Forsythe National Wildlife Refuge.

New York

All waters (including bays, lakes, ponds, marshes, swamps, rivers, streams, and ocean waters but not including temporary or sheet water) and all land areas within 150 yards of all waters of the following portions of New York:

1. That part of upstate New York west of I–81 that is north of I–90, and within a 150-yard zone of land adjacent to the margins of said waters in those areas, but not to include drainage ditches and temporary sheet waters outside the 150-yard zone of land adjacent to the margins of aforesaid waters, nor the waters of the Niagara River north of the Peace Bridge and the waters of Lake Ontario, outside the barrier beach, from the mouth of the Niagara River in Niagara County to Tibbets Point in Jefferson County but not to include the Henderson Bay-Black River Bay area east of a line running from Snowshoe Point on Henderson Harbor to Pillar Point on the southward portion of Pillar Point Peninsula. This zone includes Iroquois and Montezuma National Wildlife Refuges.

2. That part of Nassau County south of Route 27 that is west of Wantagh Parkway and its southerly extension to the Atlantic Ocean.

3. Oneida Lake and adjacent areas bounded on the north by Route 49, on the east by Route 13, on the south by Route 31 and on the west by I–81.

4. Bashakill Wildlife Management Area in Sullivan and Orange Counties.

5. Upper and Lower Lakes Wildlife Management Area in St. Lawrence County.

6. Wilson Hill Wildlife Management area in St. Lawrence County.

7. That area including and adjacent to the Hudson River south of an imaginary line extending perpendicular from the east and west shores and passing through the fixed marker number 13 in the river near Lampman Hill in the Town of Coxsackie, and north of an imaginary line extending perpendicular from the east and west shores and passing through buoy number 28 in the river near Tyler Point in the Town of Ulster.

North Carolina

1. Cedar Island National Wildlife Refuge.

2. Mattamuskeet National Wildlife Refuge.

3. Swanquarter National Wildlife Refuge.

4. Cape Hatteras National Seashore Recreation Area.

Pennsylvania

1. Crawford County, Middle Creek Wildlife Management Area in Lancaster and Lebanon Counties, and the waters of the Susquehanna River beginning at the confluence of the North and West branches at Northumberland and continuing southward to the Maryland-Pennsylvania State boundary and including a 25-yard zone of land adjacent to the waters of the Susquehanna River that are described above. This zone includes Erie National Wildlife Refuge.

Rhode Island

1. That portion of Washington County lying south and east of U.S. Route 1 but excluding Block Island and the waters of Block Island Sound and Narragansett Bay.

2. The Great Swamp Dike and Waterfowl Impoundment within the Great Swamp Management Area in South Kingstown.

South Carolina

1. Savannah National Wildlife Refuge.

Vermont

1. Missisquoi National Wildlife Refuge.

Mississippi Flyway

Alabama

1. Eufaula National Wildlife Refuge.

Arkansas

1. The Halowell Reservoir portion of Bayou Meto Wildlife Management Area.

2. Lake Dardanelle Wildlife Management Area.

3. Millwood Lake Wildlife Management Area.

4. White River National Wildlife Refuge.

Illinois

1. Mississippi River—

A. That portion of the Mississippi River and adjacent areas as bordered on the north by the Wisconsin State line and bordered on the east and south by IL–35 from the Wisconsin State line southwest to East Dubuque, US–20 from East Dubuque southeast to IL–84, IL–84 south to IL–136 near Fulton, Federal-Aid Secondary Route 1193 (Chase Road and Sand Road) south to IL–5, IL–5 southwest to I–80, I–80 south to I–280 west to IL–92, and IL–92 west to the bridge over the Mississippi River.

B. That portion of the Mississippi River and adjacent areas as bordered on the north by the railroad bridge at Keithsburg and bordered on the east and south by Federal-Aid Secondary

VOL 51 ISS 170 SE 3 1986 UMI

Route 216 from Keithsburg south to IL–164, IL–164 west to Oquawka and south to US–34, US–34 southwest to Federal Aid Secondary Route 418, Federal Aid Secondary Route 418 south through Carman to Lomax, IL–96 from Lomax southwest to Niota then southward through Nauvoo and Hamilton to Lima, Federal-Aid Secondary Route 2597 from Lima west to County Highway 7, County Highway 7 south to County Highway 8 and County Highway 8 west to Meyer at Lock and Dam 20.

C. The Bear Creek Unit of Mark Twain National Wildlife Refuge in Adams County.

D. That portion of the Mississippi River and adjacent areas as bordered on the north by US–36 and bordered on the east (or inland) by IL–96 from US–36 south to Mozier, Federal-Aid Secondary Route 755 from Mozier south through Hamburg, Gilead, Batchtown, and Beechville to Federal-Aid Secondary Route 764 approximately 1 mile west of Golden Eagle, Federal-Aid Secondary Route 764 east to Golden Eagle and north to Federal-Aid Secondary Route 754 (County Highway 1), Federal-Aid Secondary Route 754 east to the Brussels Ferry on the Illinois River, and IL–100 from the Brussels Ferry east to Grafton.

E. Upper Mississippi River Wild Life and Fish Refuge.

2. Illinois River—

A. That portion of the Illinois River and adjacent areas as bordered on the north and west by IL–29 from Spring Valley west to DePue and south to Peoria, US–24 from Peoria southwest to Fulton County, all of Fulton County, IL–100 from Fulton County southwest to US–67, IL–103 from US–67 west to Sugar grove, Federal-Aid Secondary Route 582 from Sugar Grove south through LaGrange to IL–99, and IL–99 southeast to Meredosia, and bordered on the east and south by IL–89 from Spring Valley south to IL–71, IL–71 west to IL–26, IL–26 south to East Peoria, IL–29 from East Peoria south to Powerton, Federal-Aid Secondary Route 461 from Powerton west and south through Manito and Forest City to US–136, US–136 west to Havana, IL–78 from Havana south to Chandlerville, Federal-Aid Secondary Route 577 from Chandlerville west to Beardstown, IL–100 from Beardstown south to IL–104, and IL–104 west to Meredosia.

B. That portion of the Illinois River and adjacent areas as bordered on the west by IL–100 from the ferry at Kampsville south to Hardin, Federal-Aid Secondary Route 754 (County Highway 1) from Hardin south to Brussels and east to the Brussels Ferry, and bordered on the north and east by IL–100 from the ferry at Kampsville east to Eldred, Federal-Aid Primary Route 155 from Eldred south to IL–100, and IL–100 south to the Brussels Ferry.

3. Southern Illinois Quota Zone—

All waters and lands in Alexander, Union, Jackson, and Williamson Counties, including Crab Orchard National Wildlife Refuge.

4. Rend Lake—

Rend Lake and related subimpoundments, and all adjacent lands managed by the U.S. Army Corps of Engineers and the Illinois Department of Conservation.

Indiana

1. On all waters of Lake, Porter (except that area south of U.S. 30 and north of S.R. 8), LaPorte, Newton (north of S.R. 114), Jasper (north of S.R. 114), Starke, Elkhart, Kosciusko, LaGrange, and Steuben Counties and within 150-yard zone of land in these counties adjacent to the margins of these waters. This includes lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Excluded from these provisions are the waters of Lake Michigan and drainage ditches and temporary sheet waters that are more than 150 yards from the waters described above.

2. All waters and within a 150-yard zone of land adjacent to the margins of these waters on the Jasper-Pulaski, Tri-County, and Glendale Fish and Wildlife Areas.

3. Within the boundaries of the following State-owned or State-operated properties: Hovey Lake Fish and Wildlife Area in Posey County, Mallard Roost Wetland Conservation Area in Noble County, Monroe Reservoir in Monroe and Brown Counties, Patoka Reservoir in Dubois, Crawford and Orange Counties, Turtle Creek State Fish and Wildlife Area in Sullivan County, and Minnehaha Fish and Wildlife Area in Sullivan County.

4. Within the proposed boundaries of the Menominee Wetlands Conservation Area in Marshall County.

Iowa

1. On all lands and waters under the jurisdiction of the State Conservation Commission, the United States Government, or any county conservation board. Also on all waters and a 150-yard zone of land adjacent to these waters, including reservoirs, lakes, ponds, marshes, bayous, swamps, rivers, streams, and seasonally flooded areas of all types, except that temporary sheet water, farm ponds smaller than two surface acres in size, and streams with the water less than 25 feet in average width at the site where the hunting is occurring shall be excluded from the steel shot requirement, provided they are at least 150 yards from the water areas described above. Included in this zone are DeSoto, Mark Twain, and Union Slough National Wildlife Refuges and Upper Mississippi River Wild Life and Fish Refuge.

Kentucky

1. Western Zone—That area west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, and running northeast along the Purchase Parkway to Interstate 24, east to U.S. Highway 641, north to U.S. Highway 60, north to U.S. Highway 41, then north to the Kentucky-Indiana border near Henderson, Kentucky.

Louisiana

1. Lacassine National Wildlife Refuge.
2. Sabine National Wildlife Refuge.

Michigan

1. Eastern Upper Peninsula—

A. That area of Chippewa County within the following described boundary: Starting at the SW corner of Sec. 33, T44N, R1E on a line extending north 4 miles along the west side of Secs. 33, 29, 21, and 16 to the NW corner of Sec. 16, T44N, R1E; then east 1½ miles to the S quarter corner of Sec. 10, T44N, R1E; then north 1 mile to the N quarter corner of Sec. 10, T44N, R1E; then east ½ mile to the SE corner of Sec. 2, T44N, R1E; then north 1 mile to the NW corner of Sec. 2, T44N, R1E; then east along the north section lines of Secs. 1 and 2, T44N, R1E and Secs. 4, 5, and 6, T44N, R2E, to the NE meander corner of Sec. 4, T44N, R2E; then on a line southerly across Munuscong Lake to the NE meander corner of Sec. 28, T44N, R2E; then south on the E section lines of Secs. 28 and 33, T44N, R2E to the SE corner of Sec. 33, T44N, R2E; then west 7 miles along the south section line of Sec. 33, 32, and 31, T44N, R2E, and Secs. 36, 35, 34, and 33, T44N, R1E, to the point of beginning—the area the same as that named the "Munuscong Bay Goose Management Area."

B. The waters of Potagannissing Wildlife Flooding on Drummond Island.

2. Houghton Lake—

A. That area of water and land encompassing Houghton Lake, Roscommon County, described by road boundaries as follows: south of Meads Landing Road, County 300 and County 100; west of M–18; north of M–55; and east of US–27.

3. Saginaw Bay—

A. That area of Arenac, Bay, Tuscola, and Huron Counties south of US–23; east of M–13; north of M–25; south of

Cresent Beach Road (Caseville Township, Huron County); southwest of a line from the tip of Sand Point (Section 11, T17N R9E, Huron County) to Point Lookout (Section 13, T19N R7E, Arenac County); and Shore Road (Sims Township, Arenac County).

B. On all lands and waters within the posted boundaries of the following State or Federal management areas: Crow Island State Game Area (Bay and Saginaw Counties), Shiawassee River State Game Area (Saginaw County), and Shiawassee National Wildlife Refuge (Saginaw County).

4. Central Michigan—

A. That area of land and water encompassing the controlled water level impoundments (wetlands wildlife management units) of the Maple River State Game Area adjacent to US–27 in Gratiot County, as posted.

5. Southeastern Michigan——

A. That area of Jackson County (north of I–95 and east of M–106); Ingham County (east of M–106/M–52 and south of M–36); Livingston County (south of M–36, east of M–155, and south of M–59); Oakland County (south of M–59, west of US–24 [Telegraph Road], north of I–96, and west of I–275); Wayne County (west of I–275 and north of M–14); Washtenaw County (north of M–14 and I–94); and St. Clair, Macomb, Wayne and Monroe Counties east of I–94 and I–75 including the U.S. waters of the St. Clair River, Lake St. Clair, the Detroit River, and Lake Erie.

B. On all lands and waters within the posted boundaries of the U.S. Fish and Wildlife Service Schlee Waterfowl Production Area located in Section 6, T3S R2E of Grass Lake Township, Jackson County.

6. Southwestern Michigan—

A. That area of water and land encompassing Muskegon, Ottawa, and Kalamazoo Counties, and Allegan County west of US–131, including the waters of Lake Michigan lakeward for one-half mile from the shore. All county boundary waters and lakes partially within the steel shot zone are totally included.

Minnesota

1. All State Wildlife Management Areas and all Federal Waterfowl Production Areas.

2. On the waters of Swan and Middle Lakes in Nicollet County, North and South Heron Lakes in Jackson County, Pelican Lake in Wright County, Bear Lake in Freeborn County, and Christina Lake in Douglas and Grant Counties, and within a 150-yard zone of land adjacent to the margins of the above lakes.

3. Beginning at the intersection of the midline of the Mississippi River and U.S. Highway 61 at Hastings, thence southerly along U.S. Highway 61 to State Trunk Highway 16 at LaCrescent, thence southerly along State Trunk Highway 16 to State Trunk Highway 26, thence southerly along State Trunk Highway 26 to the southern boundary of the State, thence along the southern and eastern boundaries of the State to the confluence of the St. Croix and Mississippi Rivers, thence along the midline of the Mississippi River to the point of beginning. This zone includes the Upper Mississippi River Wild Life and Fish Refuge.

4. Lac qui Parle Zone: Beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27, Lac qui Parle County; thence along CSAH 27 to CSAH 20, Lac qui Parle County; thence along CSAH 20 to State Trunk Highway (STH) 40; thence along STH 40 to STH 119; thence along STH 119 to CSAH 34, Lac qui Parle County; thence along CSAH 34 to CSAH 19, Lac qui Parle County; thence along CSAH 19 to CSAH 36, Lac qui Parle County; thence along CSAH 36 to U.S. Highway 75; thence along U.S. Highway 75 to STH 7; thence along STH 7 to CSAH 6, Swift County; thence along CSAH 6 to County Road 65, Swift County; thence along County Road 65 to County Road 34, Chippewa County; thence along County Road 34 to CSAH 12, Chippewa County; thence along CSAH 12, to CSAH 9, Chippewa County; thence along CSAH 9 to STH 7; thence along STH 7 to Montevideo; thence along the municipal boundary of Montevideo to U.S. Highway 212; thence along U.S. Highway 212 to the point of the beginning.

5. Minnesota Valley National Wildlife Refuge.

6. Sherburne National Wildlife Refuge.

7. Tamarac National Wildlife Refuge.

8. Chippewa Indian lands on the Mille Lacs Reservation in Aitkin, Crow Wing, Mille Lacs, and Pine Counties.

Mississippi

1. Hillside National Wildlife Refuge.

2. Mathews Brake National Wildlife Refuge.

3. Morgan Brake National Wildlife Refuge.

4. Noxubee National Wildlife Refuge.

5. Panther Swamp National Wildlife Refuge.

Missouri

1. The northwest Missouri area, west of Interstate Highway 29 from St. Joseph to the Iowa State line.

2. The Swan Lake zone, bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri Highway 240 and U.S. Highway 65 on the south, and U.S. Highway 65 on the west. This zone includes Swan Lake National Wildlife Refuge.

3. The northeast Missouri area, north of the Missouri River from its confluence with the Mississippi River west to U.S. Highway 61, then east of U.S. Highway 61 to Hannibal. This zone includes Mark Twain National Wildlife Refuge.

4. The southwest Missouri area, bounded by Missouri Highway 2 on the north, Missouri Highway 13 on the east, U.S. Highway 54 on the south, and U.S. Highway 71 on the west.

5. The southeast Missouri area, bounded by Missouri Highway 34 on the north, Missouri Highways 51, 91 and 25 on the east, U.S. Highway 62 on the south, and U.S. Highway 67 and Missouri Highway 53 on the west. This zone includes Mingo National Wildlife Refuge.

6. The following State Wildlife Management Areas: Ben Cash, Bob Brown, Coon Island, Dark Cypress, Duck Creek, Fountain Grove, Four Rivers, Grand Pass, Hornersville Swamp, Marais Temps Clair, Montrose, Otter Slough, Schell-Osage, Seven Island, Ted Shanks, and Ten Mile Pond. (Note: These areas may lie within the zones described under numbers 1–5 above.)

Ohio

1. On the Maumee River in Wood County, and on all waters of Erie, Ottawa, Sandusky, Cuyahoga, Wayne, Holmes, and Lucas Counties and within a 150-yard zone of land adjacent to the margins of these waters. These waters include lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Drainage ditches and temporary sheet water more than 150 yards from the water areas described are excluded from the nontoxic shot requirements. This zone includes Ottawa National Wildlife Refuge.

Tennessee

1. Lake and Obion Counties.

2. Cross Creeks National Wildlife Refuge.

3. Hatchie National Wildlife Refuge.

4. Lower Hatchie National Wildlife Refuge.

Wisconsin

1. That portion of the State lying west of the Burlington Northern Railway in Pierce, Pepin, Buffalo, Trempealeau, La Crosse, Vernon, Crawford and Grant Counties and all signed Federal lands lying east of such railway in these same counties. This zone includes Trempealeau National Wildlife Refuge

VOL 51 ISS 170 SE 3 1986 UMI

and Upper Mississippi River Wildlife and Fish Refuge.

2. All waters in the Counties of Calumet, Columbia, Dodge, Fond du Lac, Green, Jefferson, Kenosha, Lake, Manitowoc, Marquette, Milwaukee, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Waukesha, Winnebago, Washington, Waupaca and those portions of Oconto and Marinette Counties east of U.S. Highway 41, Waushara County east of Highway 49 and that portion of Brown County lying northwest of the Fox River and east of U.S. Highway 141, and the Brown County islands in Green Bay and including the west 1,000 feet of Green Bay waters, and within a 150-yard zone of land adjacent to the margins of these waters, except that in the Horicon and Central goose management zones. The waters referred to above include lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Drainage ditches and temporary sheet water more than 150 yards from the water areas described above and the open water of Lake Michigan and Green Bay are excluded from the nontoxic shot requirements. All county boundary waters and lakes partially within a nontoxic shot zone are totally included.

3. On any State Wildlife Area within the zones described above, nontoxic shot is required for hunting waterfowl anywhere on State-owned lands or waters within the boundaries of said Wildlife Area and on the following State-owned Wildlife Areas which are not within the zones described: Mead Wildlife Area in Marathon, Wood, and Portage Counties; Wood County Wildlife Area and Sandhill Wildlife Area in Wood County; and Meadow Valley Wildlife Area in Juneau and Monroe Counties.

4. Juneau County.

5. Horicon National Wildlife Refuge.

6. Necedah National Wildlife Refuge.

Central Flyway

Colorado

1. Weld and Morgan Counties.

Kansas

1. Barton, Coffey, Cowley, Doniphan, Ellswotth, Jefferson, Mitchell, and Stafford Counties.

2. All areas administered by the Kansas Fish and Game Commission, U.S. Army Corps of Engineers, and U.S. Bureau of Reclamation, including those within the boundaries of the above counties.

3. Flint Hills National Wildlife Refuge.

4. Kirwin National Wildlife Refuge, Kirwin Reservoir, and all U.S. Bureau of Reclamation lands adjacent to Kirwin Reservoir.

5. Quivira National Wildlife Refuge.

Montana

1. Yellowstone County.

Nebraska

1. Statewide, including Valentine National Wildlife Refuge.

New Mexico

1. That area bounded by a line beginning at the northeast corner of the Bosque del Apache National Wildlife Refuge (BNWR) boundary and running east to the road joining the White Sands Missile Range Military Reservation Extension Co-Use (WSMRMREC) boundary from the northwest, thence southeast along the road to its junction with the WSMRMREC boundary, thence north, east, and west along the WSMRMREC boundary to its junction with the Sevilleta National Wildlife Refuge (SNWR), thence north and east along the boundary of the SNWR to its intersection with U.S. Highway 60, thence west along U.S. Highway 60 to its junction with State Highway 47, thence north along State Highway 47 to its intersection with the Isleta Indian Reservation, thence west and south along the southern boundary of the Isleta Indian Reservation to its intersection with Interstate Highway 25, thence south along Interstate Highway 25 to its junction with the SNWR boundary, thence following the SNWR boundary west, north, then south and east to Interstate Highway 25, thence south along Interstate Highway 25 to its junction with BNWR boundary and following the BNWR boundary west, southwest, southeast, east, and northeast to the northeast corner of BNWR. This zone includes Belen, Bernardo, and La Joya State Game Refuges.

2. That area bounded by a line starting at the junction of State Highway 3 and State Highway 21 and running northeast along State Highway 21 to its junction with Coyote Creek; thence southeast along Coyote Creek to its junction with the Mora River; thence westerly along the Mora River to its junction with State Highway 161; thence north and west along State Highway 161 to its intersection with State Highway 3 and north on State Highway 3 to its junction with State Highway 21.

3. Colfax County.

4. The designated portions of Bitter Lake and Las Vegas National Wildlife Refuges, and the Santa Fe Spillway Basin Marsh.

5. Artesia State Waterfowl Management Area.

6. McAllister State Game Refuge.

7. Salt Lake State Game Refuge.

Oklahoma

1. U.S. Highway 77 from the Kansas border south to U.S. Highway 177, U.S. Highway 177 south to State Highway 15, State Highway 15 east to State Highway 18, State Highway 18 south to U.S. Highway 64, U.S. Highway 64 east to State Highway 99, State Highway 99 south to State Highway 51, State Highway 51 east to State Highway 97, State Highway 97 north to its junction with unnamed county roadway, northwestwardly on the county roadway to its junction with State Highway 20, State Highway 20 west to State Highway 18, State Highway 18 north to the Kansas border.

2. Interstate 40 from the Arkansas border west to State Highway 82, State Highway 82 north to State Highway 100, State Highway 100 west to State Highway 10A, State Highway 10A west to State Highway 10, State Highway 10 north to State Highway 80, State Highway 80 north to State Highway 251A, State Highway 251A southwest to Muskogee Turnpike, Muskogee Turnpike south to Interstate 40, Interstate 40 west to U.S. Highway 69, U.S. Highway 69 north to U.S. Highway 266, U.S. Highway 266 west to U.S. Highway 62, U.S. Highway 62 south to Indian Nation Turnpike, Indian Nation Turnpike south to U.S. Highway 270, U.S. Highway 270 east to State Highway 2, State Highway 2 north to State Highway 31, State Highway 31 west to State Highway 71, State Highway 71 north to State Highway 9, State Highway 9 to State Highway 9A, and State Highway 9A north and east to the Arkansas border. This zone includes Sequoyah National Wildlife Refuge.

3. State Highway 78 from the Texas border north and west to U.S. Highway 75, U.S. Highway 75 north to State Highway 78, State Highway 78 west to State Highway 22, State Highway 22 north and west to its junction with State Highway 12 at Ravia, south and west on State Highway 12 to State Highway 199 to State Highway 99C near Oakland, south and west on State Highway 99C and State Highway 32 to the junction of Interstate Highway 35 near Marietta, south down Interstate Highway 35 to the Texas border. This zone includes Tishomingo National Wildlife Refuge.

4. Washita National Wildlife Refuge.

South Dakota

1. In the following areas, nontoxic shot must be used by all hunters:

A. That portion of Hughes County lying west and north of U.S. Highway 83 and lying south of U.S. Highway 14.

B. That portion of Stanley County lying east and north of the Lower Brule-Antelope Creek Road from the Lyman-Stanley County line to Fort Pierre and that portion of Stanley County lying north of State Highway 34 for approximately five miles west of Fort Pierre and east of Stanley County Federal Aid Secondary Highway 6193 and State Highway 1806 to Minneconjou Bay.

C. On or within 100 yards of the water's edge of Lake Andes in Charles Mix County.

D. Those portions of Bon Homme, Charles Mix, and Gregory Counties lying on or within 100 yards of the water's edge of the Missouri River, from Fort Randall Dam downstream to the Bon Homme—Yankton County line.

2. In the following areas, nontoxic shot must be used by all hunters except those under 16 years of age using 16 gauge, 28 gauge, or .410 caliber shotguns, and those using muzzle-loading shotguns:

A. Those portions of Potter and Sully Counties lying west of U.S. Highway 83; that portion of Hyde County lying south of U.S. Highway 14 and west of Hyde County Federal Aid Secondary Highway 6547 (commonly called the Holabird Grade) and that portion of Hyde County lying south of U.S. Highway 34 and west of State Highway 47; that portion of Buffalo County lying west of State Highway 47; that portion of Lyman County lying east and north of the Lower Brule-Antelope Creek Road from State Highway 47 to the Lyman-Stanley County line.

B. Those portions of Clay, Union, and Yankton Counties lying on or within 100 yards of the water's edge of the Missouri River, from the Bon Homme-Yankton County line downstream to the Iowa border, including Lake Yankton and all islands and bars.

C. On or within 100 yards of Grupe Slough State Game Bird Refuge in Marshall County.

Texas

1. That area lying within boundaries beginning at the Louisiana State line, thence westward along IH 10 to the junction of U.S. Highway 90 and IH 10 in Beaumont, thence westward along U.S. 90 to its junction with IH 610 in Houston, thence north and west along IH 610 to its junction with U.S. Highway 290 in Houston, thence westward along U.S. Highway 290 to its junction with State Highway 159 in Hempstead, thence southwestward along State Highway 159 to its junction with State Highway 36 in Bellville, thence eastward along State Highway 36 to its junction with FM 2429, thence southward along FM 2429 to its junction with FM 949, thence southwestward along FM 949 to its junction with IH 10, thence westward along IH 10 to its junction with U.S. Highway 77 at Schulenburg, thence southward along U.S. Highway 77 to its junction with the U.S.-Mexico international boundary at Brownsville, thence eastward along the U.S.-Mexico international boundary to the Gulf of Mexico, thence east and seaward to the three marine league limit, thence northeastward along the three marine league limit to the Louisiana State line, thence northward along the Texas-Louisiana State line to its junction with IH 10. This zone includes Anahuac, Big Boggy, Brazoria, Matagorda Island, McFaddin, San Bernard, and Texas Point National Wildlife Refuges.

2. The portions of Grayson, Fannin and Cooke Counties lying within boundaries beginning at the Oklahoma State line, thence southward along I–35 to its junction with U.S. Highway 82 at Gainesville, thence eastward along U.S. Highway 82 to its junction with State Highway 78 at Bonham, thence northward along State Highway 78 to its junction with the Oklahoma State line, thence westward along the Oklahoma-Texas State line to its junction with I–35.

3. The portions of Upshur, Cass, Harrison, Morris, and Marion Counties lying within boundaries beginning at the Louisiana State line, thence westward along State Highway 49 to its junction with U.S. Highway 259 at Daingerfield, thence southward along U.S. Highway 259 to its junction with State Highway 450 at Ore City, thence eastward on State Highway 450 to its junction with State Highway 154 at Harleton, thence southeastward along State Highway 154 to its junction with U.S. Highway 80 at Marshall, thence eastward along U.S. Highway 80 to its junction with State Highway 43, thence northeastward along State Highway 43 to its junction with Farm-to-Market Road (FM) 2682 at Karnack, thence eastward along FM 2682 to its junction with FM 134, thence southward along FM 134 to its junction with FM 1999 at Leigh, thence eastward along FM 1999 to its junction with the Louisiana State line, thence northward along the Louisiana-Texas border to its junction with State Highway 49.

4. The portions of Henderson, Kaufman, and Anderson Counties lying within boundaries beginning at the junction of State Highway 31 and FM 2661, thence westwardly along State Highway 31 to its junction with U.S. Highway 175 at Athens, thence northwestward along U.S. Highway 175 to its junction with FM 90, thence northward along FM 90 to its junction with FM 1391, thence westward along FM 1391 to its junction with U.S. Highway 175 at Kemp, thence southward along U.S. Highway 175 to its junction with State Highway 274, thence south along State Highway 274 to its junction with State Highway 31 at Trinidad, thence eastward along State Highway 31 to its junction with FM 3441 at Malakoff, thence southward along FM 3441 to its junction with FM 59 at Cross Roads, thence southward along FM 59 to its junction with U.S. Highway 287 at Cayuga, thence southeastward along U.S. Highway 287 to its junction with FM 860, thence northward along FM 860 to its junction with FM 837, thence northeastward along FM 837 to its junction with U.S. Highway 175 at Frankston, then eastward along U.S. Highway 175 to its junction with FM 855, thence northward along FM 855 to its junction with FM 346, thence northward along FM 346 to its junction with FM 344, thence northward along FM 344 to its junction with FM 2661, thence northward along FM 2661 to its junction with State Highway 31.

Wyoming

1. Big Horn County: Along and within one mile either side of the water line of the Big Horn River, Yellowtail Reservoir, Shoshone River, Nowood River, and portions of Medicine Lodge Creek and Paintrock Creek where they flow into the Nowood River, beginning from their confluence to where they flow from the mountains.

2. Goshen County:

A. North Platte River/Laramie River—Beginning where U.S. Highway 26 crosses the Wyoming-Nebraska State line; south along said State line to Goshen County Road No. 7–108; west along said road to Wyoming Highway 92; west, then northerly along said highway to U.S. Highway 85; northerly along said highway to Wyoming Highway 156; westerly and northerly along said highway to Goshen County Road No. 7–62; westerly along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road No. 7–48; southwesterly along said road to the Goshen-Platte County line; north along said line to U.S. Highway 26; southeast along said highway to the point of beginning.

B. Table Mountain—Beginning where Wyoming Highway 92 intersects Wyoming Highway 158; south along said highway to Goshen County Road No. 7–171; west along said road to the Fort Laramie Canal Road; northwesterly along said road to Goshen County Road

VOL 51 ISS 170 SE 3 1986 UMI

No. 7–160; east along said road to Goshen County Road No. 7–166; north along said road to Goshen County Road No. 7–114; east along said road to Wyoming Highway 92; east along said highway to the point of beginning.

C. Hawk Springs—Beginning where Goshen County Road No. 7–184 intersects Goshen County Road No. 7–187; south along said road to Goshen County Road No. 7–188; west, then south along said road to Horse Creek; northwesterly along said creek to Goshen County Road No. 7–184; southeasterly along said road to the point of beginning.

D. Springer—Beginning where Wyoming Highway 154 intersects U.S. Highway 85; south along said highway to Goshen County Road No. 7–138; west along said road to Goshen County Road No. 7–129; north along said road to Wyoming Highway 154; east along said highway to the point of beginning.

Pacific Flyway

Arizona

1. Game Management Unit 5B, Upper Lake Mary, Lower Lake Mary, and Mormon Lake.
2. Cibola National Wildlife Refuge.
3. Hopi Indian Reservation lands in Coconino and Navajo Counties.
4. Navajo Indian Reservation lands in Apache, Coconino and Navajo Counties.

California

1. Sacramento Refuge Complex Zone. Sacramento National Wildlife Refuge in Glenn and Colusa Counties, Delevan National Wildlife Refuge in Colusa County, Colusa National Wildlife Refuge in Colusa County, and Sutter National Wildlife Refuge in Sutter County.
2. Northeastern Zone. Those portions of Siskiyou, Shasta, Sierra, Tehama, and Plumas Counties, and all of Lassen and Modoc Counties, bounded by the following line: Beginning at I–5 at the Oregon border, southerly on I–5 to State Highway, 89, thence southeasterly on State Highway 89 to State Highway 70, thence easterly on State Highway 70 to US 395, thence southerly on US 395 to the Nevada border. This zone includes Lower Klamath, Tule Lake, Modoc, and Clear Lake National Wildlife Refuges.
3. Cibola National Wildlife Refuge Zone. Those portions of Cibola National Wildlife Refuge in Imperial County.
4. Grizzly Island Wildlife Management Area Zone. Grizzly Island Wildlife Management Area in Solano County.

Colorado

1. Montrose County.

Idaho

1. Southeastern Zone.

Those portions of Cassia, Power, Bannock, Bonneville, Bingham, Madison, Jefferson, and Caribou Counties bounded by the following line: Beginning at Sage Junction (I–15 and State Highway 33), thence southerly on I–15 to State Highway 39, thence southwesterly along State Highway 39 to American Falls Dam and the Union Pacific Railroad track, thence westerly along the Union Pacific track to the Power-Blaine County line, thence southerly along said line and continuing due south through Cassia County to I–86 (approximately at the Raft River Junction), thence easterly along I–86 to the west boundary of the Fort Hall Indian Reservation, thence following the Reservation boundary to include all lands and waters within the Reservation lying south and east of I–86 and US–91 (including all waters of the Blackfoot River bordering the Reservation), thence commencing northeasterly on US 91 at the northern boundary of the Reservation to Idaho Falls, thence northerly on US 20 to Rexburg, thence westerly on State Highway 33 to point of origin. This zone includes portions of Minidoka National Wildlife Refuge and all lands and waters within the Fort Hall Indian Reservation.

2. Southwestern Zone.

Those portions of Elmore, Ada, Canyon, Payette, and Owyhee Counties bounded by the following line: Beginning at the intersection of State Highway 78 and I–84 near Hammett, thence northwesterly along I–84 to the Idaho-Oregon State line, thence southerly along the Idaho-Oregon State line to State Highway 19, thence easterly along State Highway 19 to US–95, thence southerly on US–95 to State Highway 55, thence easterly on State Highway 55 to State Highway 78, thence southeasterly on State Highway 78 to the point of beginning. This zone includes Deer Flat National Wildlife Refuge.

3. Northern Zone.

All of Boundary, Bonner, and Kootenai Counties, including Kootenai National Wildlife Refuge.

Montana

1. Flathead, Lake, Lewis and Clark, and Sanders Counties, including Swan River National Wildlife Refuge and Confederated Salish and Kootenai Indian Tribal lands on the Flathead Reservation.
2. Benton Lake National Wildlife Refuge.
3. Red Rock Lakes National Wildlife Refuge.

Nevada

1. Ruby Lake National Wildlife Refuge.
2. Stillwater Wildlife Management Area.

New Mexico

1. San Juan County.

Oregon

1. Southcentral Zone.

All of Klamath County, excluding Davis Lake, and that portion of Lake County lying west of Highway 395. This zone includes Lower Klamath, Upper Klamath and Klamath Forest National Wildlife Refuges.

2. Lower Columbia River Zone.

Those portions of Multnomah, Columbia, and Clatsop Counties bounded by the following line: Beginning at the Bonneville Dam, westerly on Highway I–84 to Portland, thence northwesterly on US 30 to the Astoria bridge, thence partially across Astoria bridge to the Oregon-Washington State line, thence upriver on the Washington-Oregon State line to point of origin. This zone includes Lewis and Clark National Wildlife Refuge and Sauvie Island Wildlife Management Area.

3. Malheur County Zone.

That portion of Malheur County bounded by a line beginning at I–84 at the Oregon-Idaho State line, thence northwesterly on I–84 to State Highway 201, thence southerly on State Highway 201 to State Highway 19, thence easterly on State Highway 19 to the Oregon-Idaho State line, thence along the Oregon-Idaho State line to the point of beginning. This zone includes the Snake River Unit of Deer Flat National Wildlife Refuge.

4. Willamette Valley Zone.

Baskett Slough National Wildlife Refuge in Polk County, Ankeny National Wildlife Refuge in Marion County, and William L. Finley National Wildlife Refuge in Benton County.

5. Columbia Basin Zone.

Those portions of Gilliam, Morrow, and Umatilla Counties bounded by the following line: Beginning at the town of Arlington on I–84, thence easterly on I–84 to US–730, thence northeasterly on US–730 to the Oregon-Washington State border, thence westerly along the Columbia River, Oregon-Washington border to point of origin. This zone includes Umatilla National Wildlife Refuge.

Utah

1. Utah and Weber Counties.
2. That portion of Box Elder County lying east of a line extending from 80N at the Utah-Idaho border, thence southeast on 80N to the junction of the Snowville-Locomotive Springs Road, thence southwest on the Snowville-

Locomotive Springs Road to the junction of the Kelton Road, thence west on Kelton Road to the town of Kelton, thence south to the north shore of the Great Salt Lake, thence south along the west shore of the Great Salt Lake to the Box Elder County line. This zone includes Bear River Migratory Bird Refuge.

Washington

1. Southwestern Zone.

Those portions of Skamania, Clark, Cowlitz, Wahkiakum, Grays Harbor, and Pacific Counties south and west of the following line: Beginning at the Bonneville Dam, westerly on State Highway 14 to Vancouver, thence northerly on I–5 to Kelso, thence westerly on State Highway 4 to US 101, thence northerly on US 101 to Aberdeen, thence westerly on State Highway 109 to Ocean City, thence due west to the Pacific Ocean. This zone includes Ridgefield, Willapa, and Columbian Whitetailed Deer National Wildlife Refuges.

2. Puget Sound Zone.

Those portions of Whatcom, Skagit, San Juan, Island, Clallam, Jefferson, Kitsap, Mason, Thurston, Pierce, King, and Snohomish Counties bounded by the following line: Beginning at I–5 on the Washington-British Columbia, Canada border, thence west, southerly and westerly along said border to a point due north of Neah Bay, thence due south to Neah Bay, thence easterly on State Highway 112 to US–101, thence easterly and southerly on US–101 to I–5, thence northerly on I–5 to State Highway 538 near Mt. Vernon, thence easterly on State Highway 538 to State Highway 9, thence northerly on State Highway 9 to State Highway 20, thence westerly on State Highway 20 to I–5, thence northerly on I–5 to point of origin.

3. Columbia Basin Zone.

Those portions of Benton, Klickitat, Franklin, Adams, Grant, Yakima, Chelan, Kittitas, Douglas, Lincoln, Okanogan, and Walla Walla Counties bounded by the following line: Beginning at the Washington-Oregon State border on the Celilo Bridge on US–97, thence northerly on US–97 to State Highway 14, thence easterly on State Highway 14 to US–395/I–82, thence northerly on US–395/I–82 (formerly a continuation of State Highway 14) to Kennewick, thence westerly on State Highway 240, thence northerly on State Highway 240 to State Highway 24, thence westerly on State Highway 24 to US–97, thence northerly on US–97 to State Highway 155 at Omak, thence easterly and southerly on State Highway 155 to State Highway 174 at Grand Coulee, thence southeasterly on State Highway 174 to US–2, thence westerly on US–2 to State Highway 17, thence southerly on State Highway 17 to US–395, thence southerly on US–395 to US–12, thence southerly on US–12 and US–730 to the Oregon border (including the entire McNary National Wildlife Refuge), thence westerly along the Columbia River and the Washington-Oregon border to the point of origin. This zone includes Umatilla, Columbia, and McNary National Wildlife Refuges.

Dated: August 26, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

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VOL
51
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Part VI

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1987 Rates; Final Rule

VOL 51 ISS 170 SE 3 1986 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-353-F]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1987 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are amending the Medicare regulations governing the inpatient hospital prospective payment system to implement necessary changes arising from legislation and our continuing experience with the system.

In addition, we are describing changes in the methods, amounts, and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. In general, these changes are applicable to discharges occurring on or after October 1, 1986. We are also setting forth the update factor for determining the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

EFFECTIVE DATE: This final rule is effective on October 1, 1986. We refer the reader to section VI.A. of this preamble for a discussion of specific provisions that apply to specific periods.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the Implementation of the Prospective Payment System

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98–21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs).

We published an interim final rule in the **Federal Register** (48 FR 39752) on September 1, 1983 to implement the prospective payment system effective with hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections for that rule were issued on October 19, 1983 (48 FR 48467).

On January 3, 1984, we issued a final rule (49 FR 234) to make changes resulting from our consideration of public comments that were received in response to the interim final rule. Technical corrections for that rule were issued on June 1, 1984 (49 FR 23010).

As a result of our first year of experience with the prospective payment system and to accommodate changes resulting from the enactment of the Deficit Reduction Act of 1984 (Pub. L. 98–369) on July 18, 1984, we published a final rule on August 31, 1984 (49 FR 34726) that further revised the prospective payment regulations. In addition, we made changes in the methods, amounts, and factors necessary to implement the second year of the transition period. Technical corrections for that final rule were issued on October 15, 1984 (49 FR 40167).

On March 29, 1985, we published a final rule (50 FR 12740) that redesignated the prospective payment regulations under a new 42 CFR Part 412. These regulations were previously located in 42 CFR 405.470 through 405.477.

Taking into consideration the recommendations made by the Prospective Payment Assessment Commission (PROPAC) under the authority of section 1886(d)(4)(D) of the Act, we published a final rule on September 3, 1985 (50 FR 35646) to implement the third year of the transition period. Technical corrections for that final rule were issued on October 28, 1985 (50 FR 43570). However, beginning on September 30, 1985, Congress enacted a series of statutory extensions of the hospital payment rates that were in effect on September 30, 1985. The effect was to delay implementation of the September 3, 1985 final rule with the result that the revised payment rates for hospitals covered by the prospective payment system and the rate-of-increase limits for hospitals excluded from that system, which were originally scheduled to be effective on October 1, 1985, were postponed through April 30, 1986. We notified the public about these extensions (50 FR 46651 and 49930, and 51 FR 4166) and, after the President signed the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) into law on April 7, 1986, we issued an interim final rule with comment period on May 6, 1986 (51 FR 16772). That rule implemented new Federal fiscal year (FY) 1986 hospital payment rates effective for discharges occurring on or after May 1, 1986 for prospective payment hospitals and for cost reporting periods beginning on or after October 1, 1985 for hospitals excluded from the prospective payment system.

The comment period for the interim final rule ended on June 5, 1986. We are responding to the comments received on that rule in section II of this preamble. Certain clarifying changes to the regulations, in response to the comments received on the interim final rule, are set forth in this document.

B. Summary of June 3, 1986 Proposed Rule

On June 3, 1986, we published a notice of proposed rulemaking (NPRM or proposed rule) in the **Federal Register** (51 FR 19970) to further amend the prospective payment system. We proposed to make the following changes:

- Under section 1886(a)(4) of the Act, we proposed to incorporate capital-related costs into the prospective payment system effective with cost reporting periods beginning in FY 1987. However, on July 2, 1986, Pub. L. 99–349 was enacted and included a provision (section 206) that amended section 1886(a)(4) of the Act to extend the period (through cost reporting periods beginning prior to October 1, 1987) during which capital-related costs must be treated separately from other inpatient hospital operating costs. Therefore, we are not incorporating capital-related costs into the prospective payment system in this final rule. Accordingly, we are not addressing in this final rule the comments we received concerning that proposal. However, we will consider the comments as we deliberate this matter further.
- We proposed to recompute the hospital market basket using data from a more recent base year (that is, "rebasing" the market basket) and to recalculate the weights of each of the components of the hospital market basket (that is, "reweighting" the market basket cost categories).
- We discussed several decisions and current provisions of the regulations in 42 CFR Parts 405 and 412, and set forth proposed changes concerning—

—Establishment of a base period for hospitals newly subject to the rate-of-increase ceiling;

—Extension of the exclusion for excluded alcohol/drug hospitals and units from the prospective payment system;

—Hospitals in redesignated rural counties which are surrounded on all sides by urban counties;

—Changes to referral center criteria; and

—Changes to the DRG classification system.

In addition, we explained why we decided to retain the existing transfer policy.

• We also proposed to eliminate periodic interim payments for hospitals. However, we dealt with this subject in a separate final rule, published on August 15, 1986 (51 FR 29386) and responded to the comments received on the proposal. Therefore, we are not discussing those provisions in this final rule.

• In the addendum to the proposed rule, we set forth proposed changes to the methods, amounts, and factors for determining the FY 1987 prospective payment rates. We also proposed new target rate percentages for determining the rate-of-increase limits for FY 1987 for hospitals excluded from the prospective payment system.

In addition, the proposed rule discussed in detail the April 1, 1986 recommendations made by the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classification and weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary.

ProPAC is also directed, by the provisions of sections 1886 (e)(2) and (e)(3) of the Act, to make recommendations to the Secretary each year on the appropriate factor to be used in updating the average standardized amounts. These recommendations are due to the Secretary no later than the April 1 preceding each Federal fiscal year. The statute requires that ProPAC, in making its recommendations, take into account changes in the hospital market basket, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services. As required under section 1886(e)(5) of the Act, we published the report of the recommendations from ProPAC as Appendix C to the proposed rule (51 FR 20123).

C. Number and Types of Public Comments

A total of 570 letters containing comments on the proposed regulations were received timely. Among the many issues addressed in the proposed rule, the following subjects received the majority of comments:

• Inclusion of capital into the prospective payment system.

• Elimination of periodic interim payments.

• Rate of increase in the prospective payment rates.

The contents of the proposed rule, the public comments, and our responses to the comments are discussed throughout this document in the appropriate sections. However, we are responding to a general comment here rather than in one of the more issue-specific areas below. As noted above, comments concerning the capital and periodic interim payment proposals are not being addressed in this final rule.

Comment: Several commenters objected that the 30-day comment period afforded them in the proposed rule was too short. They believe that this amount of time was inadequate to allow the hospital industry to evaluate thoroughly the complex issues included in that proposed rule. Several commenters suggested that the normal 60-day comment period be provided in order to give the public sufficient time to review the issues and provide meaningful comments. One commenter, representing a west coast State hospital association, claimed that mail delays, reproduction time, and distribution to membership consume more than half of the available comment period.

Response: In the September 3, 1985 final rule, we responded to similar comments objecting to a 30-day comment period (50 FR 35647). Although we recognize the importance of affording the public the fullest opportunity to evaluate the many issues raised in the NPRM, section 1886(e)(5) of the Act requires us to consider ProPAC recommendations and to publish proposed rates by June 1 and final ones by September 1 preceding the federal fiscal year to which the rates apply. This means that publication of rates for FY 1987 (which begins on October 1, 1986), as well as of any necessary amendments to the regulations, is required by September 1, 1986. We had only two months from the end of the comment period (July 3, 1986) to publication of the final rule to review and respond to comments, perform additional analyses, and evaluate the feasibility and impact of adopting recommended changes. Had we provided a 60-day comment period, we would have had to publish the NPRM by May 2, 1986 in order to have adequate time to develop the final rule. This in turn would not have allowed us adequate time to review ProPAC's April 1, 1986 report and recommendations, replicate their analyses and evaluate their recommended changes. Therefore, there was insufficient time available for a public comment period of more than 30 days between the publication of the proposed rule and the required date of publication of the final rule. In addition, the process for publishing the FY 1987 final rates was complicated by the passage of Pub. L. 99-272, which affected the FY 1987 prospective payment rates. Under these circumstances, we had no choice but to limit the comment period on the proposed rule to 30 days and to proceed with publication of the final regulations and rates for FY 1987 by September 1, 1986, as required by law.

It is and has been our policy to afford the public a comment period of sufficient length to evaluate and respond to proposed regulations. Normally, the comment period is for 60 days unless there is a substantial reason for providing a shorter period. As we stated above, the statutory mandate to publish final prospective payment rates and regulations by September 1, 1986, in conjunction with our need to fully assess and respond to ProPAC's April 1, 1986 recommendations, has necessitated our use in this case of a 30-day comment period.

II. Comments and Responses to the May 6, 1986 Interim Final Rule

On May 6, 1986, we published an interim final rule with comment period in the **Federal Register** (51 FR 16772) to implement sections 9101 through 9105 and 9112 of Pub. L. 99-272. The provisions of that interim final rule are as follows:

• For prospective payment hospitals, a one-half of one percent increase is provided in the adjusted standardized amounts effective for discharges occurring on or after May 1, 1986. The hospital-specific rates are also increased by one-half of one percent after the first seven months of a hospital's cost reporting period beginning in FY 1986.

• For excluded hospitals, the hospital's target amount for its cost reporting period beginning in FY 1985 is increased by five-twenty-fourths of one percent.

• For FY 1987 and thereafter, the update percentage for all hospitals will be determined by the Secretary except that the update for FY 1987 and FY 1988 is limited by the percent change in the market basket index.

• Except for hospitals located in Oregon, the three-year transition to a fully national prospective payment system is extended by one year. Oregon hospitals will continue to follow the three-year transition.

• The revised hospital wage index published in the September 3, 1985 final rule, further adjusted to correct data errors, is effective for discharges occurring on or after May 1, 1986.

VOL 51 ISS 170 SE 3 1986 UMI

• The factor used to determine the indirect medical education payment is reduced from 11.59 to approximately 8.1 percent for discharges occurring on or after May 1, 1986 and before October 1, 1988 and then changed to approximately 8.7 percent for discharges occurring on or after October 1, 1988. These revised percentages are approximations because the adjustment factor is applied on a curvilinear or variable basis (that is, the additional payment percentage declines as the intern and resident-to-bed ratio increases) rather than on a linear basis as it was prior to the Pub. L. 99–272 amendments.

• The changes we made in the September 3, 1985 final rule that would have excluded interns and residents assigned to outpatient departments or furnishing outpatient services in ancillary departments from the count used to determine a hospital's payment for indirect medical education activities were deleted from the regulations.

• A payment adjustment of up to 15 percent is made to the total DRG revenue of a hospital that serves a disproportionate share of low-income patients as defined in the statute. The payment adjustment is effective for discharges occurring on or after May 1, 1986 and before October 1, 1988.

• Effective with cost reporting periods beginning on or after January 1, 1986, the indirect medical education payment for hospitals that have a waiver under section 602(k) of Pub. L. 98–21 is to be computed as if the hospital were receiving under Medicare Part A all the payments that are made under Medicare Part B because of the waiver.

• Entities that are furnishing services to hospital inpatients under a section 602(k) waiver that permits the entities to bill under Part B for services that normally would now be furnished and paid for under Part A must accept the Medicare payment as payment in full for services furnished on or after April 17, 1986. These entities are paid at 100 percent of the Medicare reasonable charge.

We received 11 timely items of correspondence in response to our May 6, 1986 interim final rule. The commenters included six hospital associations, three hospitals, a fiscal intermediary, and a county health agency. The comments and our responses are discussed below.

A. Revised Wage Index

Comment: One commenter requested a more detailed explanation of the changes in the area wage index values that occurred between the tables published in the September 3, 1985 final rule (50 FR 35715) and the tables published in the May 6, 1986 interim final rule (51 FR 16778). The commenter was particularly concerned about these changes in view of our statement in the September 3, 1985 final rule that we did not plan to make any further corrections. The commenter also implied that the standardized amounts should have been restandardized to take into account the effect of the revised wage index.

Response: Between publication of the September 3, 1985 final rule and the May 6, 1986 interim final rule, we became aware of a number of data errors that needed to be corrected. For example, some hospitals were not placed in the correct county in our wage index data base, and one institution that was not a prospective payment hospital was improperly included in the data base. Making these corrections resulted in a change in the national average hourly wage from $8.0253 per hour to $8.0264 per hour.

Since the national average wage increased slightly as a result of our corrections, individual wage index values, which are determined by dividing each area's average hourly wage by the national average hourly wage, decreased slightly in a number of areas. Because the change in the national average hourly wage was so small, the impact on the vast majority of hospitals is minimal. If we had not made these corrections, however, the payment rate for hospitals in the affected areas would not have been correct.

With respect to restandardization, we note that revised and corrected wage indexes have been used to restandardize the standardized amounts that are effective for discharges occurring on or after October 1, 1986. We did not restandardize the rates applicable to discharges occurring on or after May 1, 1986 because, given the relatively short amount of time we had for preparing and publishing regulations to implement the various provisions of Pub. L. 99–272 (which was enacted on April 7, 1986), we were concerned with accomplishing what was most immediately necessary to implement those provisions of the law that were effective on May 1, 1986.

In addition, with respect to additional payments to disproportionate share hospitals and the revised indirect medical education adjustment factor, section 9105 of Pub. L. 99–272 enacted a new section 1886(d)(5)(F) of the Act that specified that the standardized amounts would be restandardized to reflect these changes effective with discharges occurring on or after October 1, 1986, even though the payment adjustments were effective for discharges on or after May 1, 1986. In view of these provisions, we decided to accomplish the restandardization process for all variables, including the revised wage index, with the standardized amounts that will become effective for discharges occurring on or after October 1, 1986, as announced in this final rule.

Comment: One State hospital association also noted the changes that were made in the wage index that was published on May 6, 1986, and requested that we publish the methodology used in calculating these wage index values.

Response: The methodology used in calculating the wage index published in the May 6, 1986 interim final rule is the same methodology described in the September 3, 1985 final rule (50 FR 35661 and 35662). An average hourly wage is calculated for each metropolitan statistical area (MSA) or New England County metropolitan area (NECMA), and for each non-MSA/non-NECMA area in each State. The average hourly wage figures for all areas are then summed, and the result divided by the number of areas to arrive at a national average hourly wage. Each area's average hourly wage is then divided by the national average hourly wage to derive the wage index for that area. As discussed in the response to the previous comment, the differences in the wage index published in the May 6, 1986 interim final rule from the wage index published in the September 3, 1985 final rule are due solely to the corrections made to the data and the resulting revision in the national average hourly wage.

Comment: We received one comment that indicated that wages for a psychiatric hospital (that is, a type of hospital excluded from the prospective payment system) were inappropriately included in the calculation of the average hourly wage used to compute the wage index value for the area in which that hospital is located. The commenter requested that we correct this error and recalculate the area's wage index value.

Response: We have reviewed this matter and have determined that only short-term prospective payment hospitals were included in the wage data for the area in question. The provider number mentioned in the comment was in fact included in the wage data; however, contrary to the commenter's assertion, this number is assigned to a prospective payment hospital and not to a psychiatric hospital. The psychiatric hospital that is located in the area in question was not included in the wage index data base.

Therefore, no correction of that area's wage index value is necessary.

B. Indirect Medical Education Costs

Comment: Several commenters expressed concern with the manner in which the indirect adjustment formula was presented in the May 6, 1986 **Federal Register** (51 FR 16776). The commenters referred to a transposition error of the digits comprising the exponent and also to the inappropriate positioning of the exponent in the formula.

Response: We regret any confusion that resulted from the manner in which the indirect medical education formula was presented in the interim final rule. The transposition of the figures (the exponent was presented as .045 instead of the correct .405) in the May 6, 1986 interim final rule was an inadvertent error and was noted in the June 3, 1986 proposed rule (51 FR 20014). However, in that proposed rule, the decimal point was omitted from the exponent. In addition, we believe that the positioning of the exponent within the formula could have been made clearer. Therefore, we would like to reiterate the formula to eliminate any confusion. To determine the indirect medical education factor for a particular hospital for discharges occurring on or after May 1, 1986 and before October 1, 1988, add 1.0 to the ratio of interns and residents in approved programs to beds, raise that sum to the 0.405 *power*, and subtract 1.0. The result is then doubled to produce a hospital's indirect medical education adjustment factor.

Comment: One commenter suggested that the formulas set forth in the interim final rule for the indirect medical education factor are incorrect and that we should review our calculations and policies related to the development of an appropriate curvilinear relationship. That commenter also presented revised formulas that the commenter believes are more appropriate for use in determining the indirect medical education factor.

Response: The formulas set forth in the interim final rule that are used to calculate a hospital's indirect medical education factor were specifically mandated by section 1886(d)(5)(B) of the Act as amended by section 9104 of Pub. L. 99–272. As such, we have no authority to adjust the formula as the commenter suggested.

Comment: Two commenters requested that in the final rule we include a table of indirect medical education adjustment factors similar to the table that was published in the **Federal Register** (51 FR 6750) on February 26, 1986 in the preamble to a proposed rule on indirect medical education. The commenters believe that inclusion of this type of table will give the public a better idea of how the new formulas are used.

Response: We agree with the commenters that a table may help clarify the effect of the new provisions. Set forth below are some examples of adjustment factors that will result from application of the revised formulas.

Ratio of interns and residents to beds	Adjustment factor	
	Discharges occurring on or after May 1, 1986 and before October 1, 1988	Discharges occurring on or after October 1, 1988
.0100	.0081	.0087
.1000	.0787	.0852
.2000	.1533	.1672
.3000	.2242	.2463
.4000	.2920	.3229
.5000	.3569	.3973
.6000	.4193	.4696
.7000	.4795	.5400
.8000	.5376	.6087
.9000	.5937	.6759
1.0000	.6482	.7415

It should be noted that, given the curvilinear application of the formula, the exact factor listed in the table would apply only in a hospital that has precisely the intern and resident-to-bed ratio listed. The example below illustrates this point.

Example: A 100-bed hospital has 26 interns and residents in approved programs. Therefore, its intern and resident-to-bed ratio is .26. The hospital's adjustment factor for discharges occurring on or after May 1, 1986 and before October 1, 1988 is computed as follows:

$2\times[(1+.26)^{.405}-1]=$
$2\times[1.0981-1]=$
$2\times[.0981]=.1962$

The hospital's indirect medical education adjustment factor is .1962.

Comment: One commenter stated that because of the requirement of section 1886(d)(5)(B)(iv) as amended by section 9104(a) of Pub. L. 99–272 that interns and residents assigned to outpatient departments of a hospital continue to be counted in determining the indirect medical education adjustment, § 412.116(g) should be modified to make it clear that interns and residents assigned to the outpatient department are counted.

Response: We agree with the commenter. In addition to the changes suggested, we are further modifying § 412.116(g) to clarify that a freestanding family practice center is only one example of a setting in which interns' and residents' assignments may not be counted for purposes of determining the indirect medical education adjustment.

C. Payment for Hospitals That Serve a Disproportionate Share of Low-Income Patients

Comment: One commenter was concerned about the lack of discussion in the interim final rule about how a hospital can apply for a disproportionate share adjustment. In particular, the commenter wants to know the means by which an adjustment is sought, the relative roles between HCFA and the fiscal intermediary, the time requirement for an application, and the criteria against which the application will be judged.

Response: It is not necessary for hospitals serving a disproportionate number of low income patients as defined under § 412.106(b)(1) to formally apply for a disproportionate share adjustment. The Medicare fiscal intermediaries have been given instructions to make a determination concerning each hospital's eligibility for an adjustment under § 412.106(b)(1) based on Medicaid data from the hospital's latest available cost report and the Supplemental Security Income (SSI)/Medicare percentages that have been supplied by HCFA central office. The intermediaries have reviewed the disproportionate share statistical data for each hospital they service and have begun making interim payments (subject to year-end settlement) for those hospitals that they have identified as disproportionate share hospitals.

As we stated in the interim final rule (51 FR 16777), hospitals may submit additional Medicaid and total patient day data to their fiscal intermediaries if they believe that their latest cost report does not accurately reflect these data. However, additional data supplied are subject to intermediary review and verification.

We are evaluating the need to publish regulations to outline procedures and requirements for hospitals to follow in applying for a disproportionate share adjustment based on the patient revenue criteria under section 1886(d)(5)(F)(i)(II) of the Act, as set forth in regulations at § 412.106(b)(2).

Comment: One commenter expressed concern that hospitals that have been identified as disproportionate share hospitals under section 1886(d)(5)(F)(i)(I) of the Act (§ 412.106(b)(1)) and are currently receiving payments under this provision, but that could also qualify for a larger adjustment under the provision on revenue from State and local governments for indigent care in section 1886(d)(5)(F)(i)(II) of the Act (§ 412.106(b)(2)), might be denied the higher adjustment simply because of a

timing difference of a hospital's qualification under the two separate provisions.

Response: Hospitals that have been identified by the intermediaries as serving a disproportionate share of low income patients are currently receiving disproportionate share payments on an interim basis. Final determination of a hospital's eligibility for a disproportionate share adjustment will be made at the end of its cost reporting period. At that time, hospitals will also have the opportunity to apply for an adjustment under the provision on revenue from State and local governments for indigent care. Hospitals that qualify for a disproportionate share adjustment under both criteria will receive the larger amount. The adjustment under the provision on revenue from State and local governments is 15 percent (section 1886(d)(5)(F)(iii) of the Act).

Comment: One commenter objected to the exclusion of beds assigned to newborns, custodial care, and excluded distinct part units from the calculation of a hospital's bed size category for purposes of determining the hospital's eligibility for a disproportionate share adjustment.

Response: We believe that the method for determining bed size for the disproportionate share adjustment should be consistent with the methods used for other Medicare purposes. Therefore, we are using the same method of determination that is currently used in calculating the indirect medical education adjustment, which is based on the standard bed size definition used by the Medicare program in connection with the prospective payment system (that is, the bed count excludes beds used for newborns, custodial care, and excluded distinct part units). This is also essentially consistent with the method of bed size determination that was used in the past to classify hospitals into the cost limit categories before the implementation of the prospective payment system. In addition, all statistical analyses performed on Medicare data in which bed size is a factor use this standard method of determining bed size. Our approach permits us to treat all hospitals the same with respect to their Medicare involvement. Thus, a hospital without beds assigned to newborns, custodial care, or excluded distinct parts is treated the same as a hospital with these non-Medicare beds.

Comment: We received comments stating that the criterion for identifying patient care revenues from State and local government sources is too restrictive in requiring that these funds be specifically earmarked for indigent patient care in order to be considered in determining whether a hospital qualifies for a disproportionate share adjustment under the provision on revenue from State and local governments for indigent care in section 1886(d)(5)(F)(i)(II) of the Act. The commenters pointed out that, in many cases, local government budgets will contain funds to support operating costs of their hospitals to cover both operating deficits and indigent care without specifically earmarking amounts for indigent care. The commenters believe that all funds from State and local government sources should be considered in determining whether a hospital qualifies for a disproportionate share adjustment under the provision on revenue from State and local governments for indigent care.

Response: Section 1886(d)(5)(F)(i)(II) of the Act provides that a hospital can qualify for a disproportionate share adjustment if it "can demonstrate" that more than 30 percent of its net patient revenue is provided by State and local government sources "for indigent care" furnished to patients not covered by Medicare or Medicaid. The law very clearly specifies that these government revenues must be for the care of indigent patients and that these indigent patients must not be covered by Medicare or Medicaid. We believe that the language of the law clearly indicates congressional intent that the 30 percent revenue criterion apply only to indigent patient care revenues. Therefore, we do not believe that it would be appropriate to include revenues that may be provided by State and local governments to finance operating deficits. Since the law also requires the hospital to demonstrate that it meets the 30 percent revenue criterion, we believe it is incumbent upon the hospital to provide adequate documentation indicating what portion of the State or local government funds were in fact used for indigent patient care.

Comment: Two commenters stated that the disproportionate share adjustment should be applied to a broader base to help cover the costs of uninsured individuals. These commenters believe that since Medicare shares in the benefit of a competitive health care market, it should also share in the cost of providing care to the uninsured.

Response: The disproportionate share adjustment, including the base on which the adjustment is calculated, follows the formula in section 1886(d)(5)(F)(vi) of the Act, which we cannot change administratively. Congress intended that this provision help ensure the financial viability of those hospitals that serve a disproportionate share of low-income patients. Moreover, the Congress established the particular definition of low-income patients recognizing that it is a proxy and that not all low-income patients would be included in the percentage. It is reasonable to assume that hospitals that serve a disproportionate share of low-income patients as defined also serve a disproportionate share of other low-income patients (that is, those not eligible for Medicaid or dually entitled to SSI and Medicare). Recognizing that there are certain instances in which hospitals furnish relatively little care to the Medicaid and SSI/Medicare patients included in the definition because they treat a large charitable care patient load, Congress also provided the disproportionate share adjustment to those urban hospitals of 100 or more beds that could demonstrate that at least 30 percent of their inpatient care revenues are from State and local governments for the care of indigent patients not covered by Medicare or Medicaid.

In addition, under the prospective payment system, hospitals are paid a predetermined amount for each Medicare patient. Therefore, to the extent that a hospital is able to maintain costs below its Medicare payments these additional funds can be used by the hospital for any purpose it deems appropriate. The Medicare program does not preclude a hospital from using profits it earns under the prospective payment system to help cover the cost of furnishing uncompensated care.

Comment: Two commenters suggested that an appeals mechanism be established for hospitals that are denied a disproportionate share adjustment.

Response: Since the disproportionate share adjustment is based on a hospital's cost reporting period, final determination of a hospital's eligibility for, and amount of, any disproportionate share adjustment will be made by the fiscal intermediary at the time of the year-end settlement of its cost report. Upon receipt of the Notice of Program Reimbursement, all hospitals have the right to appeal the fiscal intermediary's determination in accordance with the regulations set forth in 42 CFR Part 405, Subpart R, Provider Reimbursement Determination and Appeals (§§ 405.1801 through 405.1890). Since hospitals can appeal the denial of eligibility for the disproportionate share adjustment or the amount of the adjustment they receive under this general appeals mechanism, which is already in place, we do not believe an appeals

VOL 51 ISS 170 SE 3 1986 UMI

mechanism specific to the disproportionate share provision is necessary.

Comment: One commenter concurred with the need for a disproportionate share adjustment, but suggested that the adjustment be applied retroactively to the beginning of the prospective payment system (cost reporting periods beginning on or after October 1, 1983).

Response: Section 1886(d)(5)(F)(i) of the Act specifically provides that the disproportionate share adjustment is applicable to discharges occurring on or after May 1, 1986 and before October 1, 1988. The law is very specific concerning the time period to which the adjustment is to be applied. In any case, because of the prospective nature of the system, we believe it would not be appropriate to make retroactive adjustments.

Comment: We received several comments objecting to the fact that we are requiring hospitals to bear the expense of having their SSI/Medicare percentage recomputed for their own cost reporting period. These commenters pointed out that the law requires us to make the disproportionate patient percentage determination on a cost reporting period basis and therefore, that HCFA, not the hospital, should bear the cost if the hospital wishes to have its SSI/Medicare percentage recomputed based on its own cost reporting period.

Response: We recognize that the law specifies that the SSI/Medicare percentage be determined for each hospital on a cost reporting period basis. However, in the interim final rule we proposed matching SSI eligibility records to the Medicare bills on a Federal fiscal year basis because we believe this is the most efficient approach.

The data sources for computation of the SSI/Medicare percentage include the Medicare inpatient discharge file which is compiled on a Federal fiscal year basis and includes approximately 11 million billing records (this compilation is done about three or four months after the close of the Federal fiscal year and is then updated periodically as additional discharge data are received) and the SSI file that lists all SSI recipients for a 3-year period and denotes the months during that period in which the recipient was eligible for SSI benefits. (The SSI file includes over 5 million records.) In order to compute the SSI/Medicare percentage, the 11 million records from the discharge file must be individually matched by beneficiary number and month of hospitalization, with the SSI recipient records. On a Federal fiscal year basis, this match would be performed on a yearly basis. If done on a cost reporting period basis the match would have to be done on a flow basis. Because of the volatility of the SSI enrollment/disenrollment process and the billing lags, it would be necessary to set up an extensive, expensive on-going system that would require monthly submissions of eligibility records from the Social Security Administration to be used to annotate the Health Insurance Master File or a new SSI master file. This master file would have to contain individual periods of entitlement, since SSI eligibles may be enrolled and disenrolled on a month by month basis. These files would have to be matched to every inpatient billing record (approximately 1 million a month) and that billing record annotated by the number of covered days associated with a period of entitlement. Because the covered days in a hospital stay may span a period of 150 days, and there may be a series of enrollments and disenrollments within a particular hospital stay, it would be necessary to enlarge the billing record to accommodate these periods, resulting in an increase in processing times and costs.

Also, since the Medicare billing data does not indicate a hospital's cost reporting period, another match with the latest cost report file would be required to determine a hospital's cost reporting period. However, since cost reporting periods are subject to change, and HCFA Central Office does not know whether a hospital has changed cost reporting periods until its cost report is received through HCRIS, we could not assure the accuracy of this determination. Another reporting system would have to be established to ensure that we are computing the SSI/Medicare percentage for the appropriate period. Given the extensive amount of processing involved in computing the SSI/Medicare percentage by cost reporting period as well as the fact that we cannot guarantee timeliness and accuracy, we believe we are justified in making this determination on a Federal fiscal year basis.

Recognizing the difficulty hospitals would have identifying their Medicare patients who are also SSI recipients, we have undertaken the task (and expense) of determining for each hospital the number of patient days of those dually entitled to Medicare Part A and SSI and have removed this burden from hospitals. Therefore, we believe that if a hospital wishes to have its SSI/Medicare percentage recomputed based on its own cost reporting period, it is reasonable to require hospitals, at their own expense, to submit the appropriate billing data. We will, however, forego requiring hospitals to bear the cost of processing these data (that is, matching Medicare beneficiary data to the SSI file and computing the SSI/Medicare percentage) provided that the hospital submits its data in machine-readable tape format that contains all the necessary data for both verifying the beneficiary patient days and for matching the beneficiaries to the SSI file. We have revised § 412.106(a)(2) to specify that the data must be submitted in the appropriate machine-readable tape format and to eliminate the requirement that the hospital pay the processing costs. We will issue instructions shortly to outline the specific data format required. We should point out, however, that if a hospital has its SSI/Medicare percentage recomputed based on its own cost reporting period, this percentage will be used for purposes of its disproportionate share adjustment whether the result is higher or lower than the percentage computed based on the Federal fiscal year.

As stated in the interim final rule, we believe that the SSI/Medicare percentage for a hospital's own experience during the Federal fiscal year should be reasonably close to the percentage specific to the hospital's cost reporting period. In order to test this hypothesis, we computed the SSI/Medicare percentage for each hospital based on Federal FY 1984 and based on its own cost reporting period beginning in Federal FY 1984. This is the latest hospital cost reporting year for which we have reasonably complete data.

We tested the correlation of these two percentages for all hospitals combined and for each of the three disproportionate share hospital categories (that is, urban hospitals with 100 or more beds; urban hospitals with less than 100 beds; and rural hospitals).

We have found that the ratio of SSI days to Medicare covered days, (that is, the SSI/Medicare percentage) is generally similar when calculated by Federal fiscal year and by hospital cost reporting period. The degree of this relationship is reflected in the rather high correlation coefficients between hospital SSI ratios computed for Federal FY 1984 and for cost reporting periods beginning in Federal FY 1984, as shown below.

Disproportionate share group	Correlation coefficient	Number of hospitals [1]
Urban-100 or more beds	.99	1,650
Urban less than 100 beds	.97	469
Rural	.98	1,793
Overall	.98	3,912

[1] Excludes hospitals whose cost reporting period coincides with the Federal fiscal year.

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These results indicate a high degree of correlation between SSI/Medicare percentages computed based on the Federal fiscal year and those computed by hospital cost reporting period. (A coefficient of 1.0 equals a perfect correlation.)

In addition, we also point out that for a significant proportion of hospitals within each of these groups, the SSI/Medicare ratio computed for Federal FY 1984 was within 2.3 percentage points (approximately one standard deviation of the mean difference) of the actual value derived from the hospital's own cost reporting period that began in Federal FY 1984, as shown below:

Disproportionate share groups	Percentage [1]
Urban—100 or more beds	95.5
Urban—less than 100 beds	81.4
Rural	80.5
Overall	86.9

[1] Percentage of hospitals whose SSI/Medicare ratio for Federal fiscal year 1984 is within .023 of the SSI/Medicare ratio for its cost reporting period beginning in Federal fiscal year 1984.

While the variability in the percentages is somewhat higher for the small urban hospital and rural hospital groups, generally only those hospitals in these two groups with overall disproportionate patient percentages that fall short by a small margin of meeting the necessary thresholds to qualify for an adjustment (that is, 40 percent and 45 percent, respectively) could be impacted. This is because the amount of the disproportionate share adjustment for qualifying hospitals in these two groups is not dependent on the amount of their disproportionate patient percentages.

We do not believe Congress intended to impose such a cumbersome and costly administrative burden as that described above in implementing this provision. The Secretary has general rulemaking authority under section 1102 and 1871 of the Act to deal with problems of implementing and administering the Act in an efficient manner. Based on the above discussion, we believe that using the Federal fiscal year instead of a hospital's own cost reporting period is the most feasible approach to implementing this provision in terms of accuracy, timeliness and cost efficiency. In addition, we believe we have complied with the law by affording hospitals the option of having their SSI/Medicare percentage computed based on its own cost reporting period.

Comment: Several commenters objected to our definition of Medicaid patient days for purposes of computing a hospital's disproportionate patient percentage. These commenters stated that all inpatient days associated with a Medicaid recipient should be counted whether or not the patient was actually covered by Medicaid for those days. These commenters focused on the term "patients who . . . were eligible for medical assistance . . ." in section 1886(d)(5)(F)(vi)(II) of the Act and argued that, since a patient would still be "eligible" for Medicaid benefits even though part or all of the patient's care may not be covered by Medicaid for a certain day, all patient days for which care was actually provided to a Medicaid eligible individual should be counted.

Response: We believe that the parenthetical phrase "for such days" in section 1886(d)(5)(F)(vi)(II) of the Act was intended to modify the phrase "eligible for medical assistance" and that Congress intended to include only such patient days for which the Medicaid patient was eligible to have his or her care paid for by the Medicaid program. We believe evidence of Congressional intent in this regard may be found in the legislative history of section 1886(d)(5)(F)(vi) of the Act.

The Conference Report described the House bill on section 9105 of Pub. L. 99-272 as defining low income patients as follows:

> The proxy measure for low income would be the percentage of a hospital's total inpatient days attributable to medicaid patients (including medicaid-eligible medicare beneficiaries—medicare/medicaid crossovers).

(See H.R. Rep. No. 99–453, 99th Cong., 1st Sess. 459 (1985).) The phrase "inpatient days attributable to medicaid patients" supports the commenters' interpretation that all days that are attributable to Medicaid patients (that is, for which the patient is Medicaid-eligible) must be included in the numerator of the definition. However, the House bill's definition was not ultimately accepted by the Conference Committee. The Conference Report states that:

> The percentage of low income patients will be defined as the total number of inpatient days attributable to Federal Supplemental Security Income beneficiaries divided by the total number of medicare patient days, plus the number of *medicaid patient days* divided by total patient days. (Emphasis added.)

(See H.R. Rep. No. 99–453, 99th Cong., 1st Sess. 461 (1985).) The substitution of the term "number of medicaid patient days" in the Conference agreement for the previous term "attributable to medicaid patients" suggests that Congress intended to adopt the definition as we currently understand it (that is, only hospital days covered by Medicaid should be included in the numerator.) We believe that Congress consciously changed the focus of the Medicaid definition from the number of days that may be attributable to individuals eligible for Medicaid to the actual "number of Medicaid patient days" (that is, days that were paid for by the State's Medicaid program).

We believe this interpretation, that only Medicaid covered days should be counted, is not inconsistent with the atatutory scheme as a whole, since the formula in section 1886(d)(5)(F)(vi) of the Act does not purport to identify all indigent patients. Rather, it refers to certain Medicare and Medicaid patients as an easily and objectively determined proxy for the indigent. Thus, under any reading of the statute, not all indigent patients are included in the formula. A Medicaid eligible recipient who has exhausted his or her benefits is thus situated similarly to the indigent patient who is not eligible for Medicaid at all, and so it is logical to treat them the same for purposes of determining the disproportionate patient percentage.

In addition, given the relatively short timeframe for implementing section 1886(d)(5)(F)(vi) of the Act, we believe it is reasonable to assume that Congress anticipated that the Medicare cost report would serve as the primary source for Medicaid patient day statistics. Our definition of Medicaid patient days is consistent with the way we require Medicaid days to be reported on the Medicare cost report. On that form, a day of care is designated a Medicaid patient day only if the Medicaid program is the primary payor. There is no provision on the form for a patient day being counted as more than one type for payment purposes. We do not believe that Congress intended that an additional reporting mechanism, possibly tied to State eligibility records, be developed to obtain Medicaid statistics on noncovered patient days.

Therefore, since Congress clearly intended that the disproportionate share adjustment be implemented promptly with the data currently available, we believe the definition of Medicaid patient days published in the interim final rule is the one that Congress intended that we adopt.

We should also point out that our interpretation that the Medicaid portion of the definition of the disproportionate share percentage under section 1886(d)(5)(F)(vi)(II) of the Act refers only to Medicaid covered days is consistent with our interpretation of the Medicare portion under section 1886(d)(5)(F)(vi)(I) of the Act, (which uses similar language)

VOL 51 ISS 170 SE 3 1986 UMI

to refer only to Medicare covered days. In the preamble to the interim final rule, we indicated that we would count "covered" Medicare days in determining the Medicare portion of a hospital's disproportionate patient percentage. However, we received no comments on this issue.

D. Other Comments

Comment: One commenter believes that a 30-day comment period does not provide enough time for the public to comment on rule changes to a program as important as the prospective payment system. The commenter would prefer a 60-day comment period. In addition, the commenter is concerned that comments are considered only if they are received by HCFA by the end of the indicated comment period. Since commenters have no control over the date a comment is received, HCFA should consider all comments postmarked by the end of the comment period.

Response: It was important that we move quickly to inform the public as soon as possible about the provisions of Pub. L. 99–272 that affected implementation of the prospective payment system during FY 1986. Congress authorized issuance of an interim final rule (section 9115(b) of Pub. L. 99–272), and mandated the effective date of the provisions dealt with in the interim final rule. In addition, under section 1886(e)(5)(B) of the Act, we were required to issue the proposed update for the prospective payment system for FY 1987 by June 1, 1986 and the final rule by September 1, 1986.

As indicated in section I of this preamble, this leaves no time for a comment period of longer than 30 days on the proposed updates. Therefore, in order to deal with the comments on the Pub. L. 99–272 interim final rule and the proposed FY 1987 update in an organized sequential manner, we established the 30-day comment period for the interim final rule. A 60-day comment period would have meant that the comment periods for both the interim final rule and the proposed FY 1987 update would have ended virtually simultaneously. This in turn would have meant that we would have been required to address comments on both documents at the same time, thereby complicating the process of meeting the September 1, 1986 statutory deadline for publication of the FY 1987 final rule.

As discussed above, we normally provide a 60-day comment period if circumstances permit it. However, given the need to issue regulations to implement Pub. L. 99–272 quickly combined with the imminent publication of the FY 1987 prospective payment proposal, we determined that a 30-day comment period was necessary. We also point out that, for the most part, those provisions in Pub. L. 99–272 affecting the prospective payment system in FY 1986 were ones about which we had little administrative discretion concerning their substance or implementation. Therefore, a longer public comment period for those provisions would have been unnecessary. In addition, although there is no specified minimum time for the length of a public comment period, the courts have consistently held that a 30-day comment period is sufficient.

With regard to how the comment period date is applied, we consider to be timely only those comments that are received by the last day of the comment period rather than those postmarked by the last day of the comment period because postmarks are not always a reliable indicator of when a comment was sent. In many cases, the postmark is illegible and thus cannot be used to prove when a comment was sent. Also, for those commenters who use a postal meter outside the post office, a meter may be changed to reflect a date other than the one on which the comment was actually sent, or a predated envelope may be used to send a late comment. Expedited mail services are available from the post office and from private carriers to help ensure that comments are delivered timely. We believe that our policy is not only reliable but equitable since it imposes the same constraints on all commenters.

Comment: One commenter requested that in all future documents concerning the prospective payment system that are published in the **Federal Register**, we should present a table of outlier criteria and thresholds that includes the labor portion percentage, national ratio of cost to charges, the fixed dollar minimum, and the minimum multiple of the Federal DRG rate.

Response: The outlier criteria and thresholds are routinely published in the **Federal Register** as a part of the proposed and final rules concerning the annual update to the prospective payment rates. This information was not published in the May 6, 1986 interim final rule implementing sections 9101 through 9105 and 9112 of Pub. L. 99–272 since the outlier criteria and thresholds for FY 1986 published in the **Federal Register** on September 3, 1985, were not changed as a result of this legislation. We did not see the necessity of republishing this information since we believe it was clearly understood that absent any specific changes made by Pub. L. 99–272, the changes to the prospective payment system that were published in the **Federal Register** on September 3, 1985 would become effective May 1, 1986.

III. Rebasing and Reweighting of the Hospital Market Basket

A. Background

For cost reporting periods beginning on or after July 1, 1979, we developed and adopted a hospital input price index (that is, the hospital "market basket") for use in establishing the limits on hospitals' routine operating costs (44 FR 31802). The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. Traditionally, we used the market basket to adjust hospitals' cost limits by an amount that reflects the average increase in the prices of the goods and services used to furnish inpatient care. This approach linked the increase in the cost limits to the efficient utilization of resources.

With the inception of the prospective payment system on October 1, 1983, we continued to use the market basket to update each hospital's 1981 inpatient operating cost per discharge used in establishing the standardized payment amounts. In addition, the projected change in the market basket is one of the integral components of the update factor by which the prospective payment rates were updated for FY 1985. An explanation of the market basket used to develop the prospective payment rates was published in the **Federal Register** on September 1, 1983 (48 FR 39764). For additional background information on the market basket index, we refer the reader to the article by Freeland, Anderson, and Schendler, "National Hospital Input Price Index," *Health Care Financing Review*, Summer 1979, pp. 37–61.

The market basket is a Laspeyres or fixed-weight price index constructed in two steps. First, a base period is selected and the proportion of total expenditures accounted for by designated spending categories is calculated. These proportions are called cost or expenditure weights. In the second step, a rate of increase for each spending category is multiplied by the expenditure weight for that category. The sum of these products for all cost categories yields the percentage change in the market basket, an estimate of price change for a fixed quantity of purchased goods and services.

The market basket is described as a fixed-weight index because it answers the question of how much more or less it would cost at a later time to purchase the same mix of goods and services that

VOL 51 ISS 170 SE 3 1986 UMI

was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are not considered. For example, shifts in the furnishing of a certain type of inpatient care to an outpatient setting might affect the volume of inpatient goods and services purchased by the hospital but would not be factored into the percentage change in the market basket.

The market basket that is currently in effect reflects base-year data from 1977 in the construction of the cost weights. In its April 1, 1985 report to the Secretary (described in Appendix C of our June 10, 1985 proposed FY 1986 prospective payment update (50 FR 24446)), ProPAC suggested that the market basket cost weights should be recalculated or "rebased" at least every five years or more frequently if significant changes in the weights occur.

We agree that it is desirable to rebase the market basket periodically in order that the cost weights reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) in furnishing inpatient care. The five-year interval that ProPAC recommended coincides with the frequency of a survey conducted by the Department of Commerce, Bureau of Economic Analysis, on industry input consumption. This survey, most recently described in the report, "The Detailed Input-Output Structure of the U.S. Economy, 1977," contains a detailed source of information on hospital input expenditures. In the September 3, 1985 final rule (50 FR 35684), we stated that we were in the process of developing rebased market basket cost weights that would reflect later data. We also stated that we would consider revising the market basket cost weights if additional costs, such as capital-related costs, were incorporated into the prospective payment system. Rebasing the market basket is also the means of exercising our statutory obligation to adjust, from time to time, the proportion of costs considered labor-related and subject to the wage index adjustment.

B. Rebasing and Reweighting the Market Basket Index

In this rule we are revising the market basket in developing the FY 1987 update factor of the prospective payment rates. The new market basket is revised as follows:

- We are rebasing to reflect 1982, rather than 1977, cost data.
- We are expanding the number of market basket cost categories from 18 to 28.
- We are modifying certain variables used as the price proxies for some of the cost categories.

In developing the revised market basket, we reviewed hospital expenditures for the market basket cost categories. Preliminary data on hospital expenditures for the seven major operating expense categories (wages and salaries, employee benefits, professional fees and contracted nurses, depreciation, interest, utilities, and a residual "all other" category) were collected using 1982 data on Medicare participating hospitals from the AHA's Annual Survey for 1983. The AHA data include capital-related expenditures. No adjustments were made for hospitals with missing or AHA-imputed values. We then determined, for each category, the proportion it represents of total inpatient cost. These proportions represent the revised market basket weights. This approach is consistent with the way those values were calculated in 1979 using 1977 data. AHA's Hospital Administrative Survey provided the weight for malpractice insurance premiums that, although a median value, approximates the average derived from an analysis of malpractice premium cost data using preliminary Medicare cost report data. Weights for the sub-categories within the residual category, exclusive of malpractice, and for capital-related items other than interest and depreciation (which are directly reported in the AHA cost data), and for sub-categories within utilities were derived by projecting forward the U.S. Department of Commerce, Bureau of Economic Analysis' 1977 Hospital input and output data to 1982 using appropriate price proxies.

As described in the NPRM, this work resulted in the identification of 32 separate cost categories (four of which were related to capital) in the rebased market basket. Because we are not incorporating capital-related costs into the prospective payment system in this final rule, there are 28 separate cost categories in the rebased market basket. The differences between these categories and the ones used for the current 1977 based categories are summarized in the table below, and are as follows:

- Motor gasoline was disaggregated under utilities.
- Photographic supplies, paper products, minor machinery and equipment, miscellaneous equipment, computer data processing services, telephone, blood services, postage, and all other labor-intensive services and nonlabor-intensive services were made explicit under "all other products and services." A more detailed description of each category and its respective price proxy is provided in Appendix A of this document.

Table A.—Comparison of 1977 and 1982 Rebased Weights and Cost Categories

Expense categories	1977 market basket weights	Rebased market basket weights
1. Wages and Salaries [1]	57.24	55.83
2. Employee Benefits	8.22	9.80
3. Other Professional Fees	0.59	0.76
4. Capital		
a. Depreciation		
(1) Fixed Equipment		
(2) Moveable Equipment		
b. Interest		
c. Other		
5. Energy and Utilities	2.76	3.16
a. Fuel Oil, Coal, and Other Fuel	1.07	1.15
b. Electricity	0.77	1.09
c. Natural Gas	0.57	0.47
d. Motor Gasoline		[2] 0.42
e. Water and Sewage	0.35	0.03
6. Malpractice Insurance	1.96	0.66
7. All Other	29.23	29.79
All Other Products		21.05
a. Pharmaceuticals	2.82	4.10
b. Food	3.56	3.56
(1) Direct Purchase	1.78	2.27
(2) Contract Service	1.78	1.29
c. Chemicals and Cleaning Products	2.15	3.13
d. Surgical and Medical Instruments	2.03	2.38
e. Photographic Supplies		[3] 2.26
f. Rubber and Plastics	1.84	2.16
g. Paper Products		[3] 1.19
h. Apparel	1.65	1.08
i. Minor Machinery Equipment and		[3] 0.43
j. Miscellaneous Products		[3] 0.76
All Other Services		8.74
a. Business Services	4.70	3.02
b. Computer and Data Processing		[4] 1.40
c. Transportation and Shipping	1.72	1.08
d. Telephone		[4] 0.76
e. Blood Services		[3] 0.54
f. Postage		[3] 0.32
g. All Other Services: Labor Intensive		[4] 0.97
h. All Other Services: Nonlabor Intensive		[3] 0.65
All Other Miscellaneous	8.76	

[1] In the rebased market basket, wages and salaries are composed of nine subcategories that cor-

respond to the Employment Cost Index categories (Professionals and technicians, Managers, Sales, Clerical workers, Craft and kindred, Operatives except transport, Transport equipment operatives, Nonfarm laborers, and Service workers).

[2] This category was formerly incorporated into the original category—Fuel Oil, Coal, and Other Fuel.

[3] These categories were formerly incorporated into the original residual category, "All Other Miscellaneous."

[4] These categories were formerly incorporated into the original Business Services Category.

As shown in the table, the weights for a number of cost categories (current categories) declined from their 1977 level; namely, those weights for wages and salaries, malpractice insurance premiums, food at later stages of distribution, natural gas, water and sewerage, business services, transportation and shipping, and apparel. Weights for all the other categories increased.

The market basket weights published on September 1, 1983 (48 FR 39845) incorporate 1977 base-year cost-weights that were combined with differences in the rate of price proxy movements through 1981 to reflect their "relative importance" as a result of price changes in each variable. We have similarly adjusted the 1982 market basket cost weights shown above to reflect forecasted inflation through calendar year 1986. The 1986 relative importance weights for the rebased market basket cost categories are shown in Table 2 of section IV of the addendum.

In the September 1, 1983 interim final rule, for purposes of determining the labor-related portion of the standardized amounts, we summed the percentages of the labor-related items (that is, wages and salaries, employee benefits, professional fees, business services, and miscellaneous items) in the market basket (48 FR 39765). This summation resulted in a labor-related portion of the market basket of 79.15 percent and a nonlabor-related portion of 20.85 percent.

Sections 1886 (d)(2)(H) and (d)(3)(E) of the Act require that, in making payments under the prospective payment system, the Secretary adjust the proportion (as estimated by the Secretary from time to time) of payments that are wage-related. Since the inception of the prospective payment system, we have considered 79.15 percent of costs to be labor-related.

In connection with the rebasing and reweighting of the hospital market basket we have, under the authority of the applicable section of the statute cited above, re-estimated the labor-related share of the standardized amounts. Based on the relative weights described in Table 2 of section IV of the addendum, the labor-related portion that is subject to the hospital wage index adjustments (based on wages and salaries, employee benefits, professional fees, business services, computer and data processing, blood services, postage, and all other labor-intensive services) is 74.39 percent and the nonlabor-related portion is 25.61 percent. (In the June 3, 1986 NPRM, the proposed labor-related portion was 75.04 percent and the nonlabor-related portion was 24.96 percent.) To implement this change, effective with discharges occurring on or after October 1, 1986, we recomputed the labor-related and nonlabor-related shares of each hospital's base year costs used to establish the prospective payment rates, and then followed the procedures discussed in the September 1, 1983 interim final rule in order to obtain revised labor-related and nonlabor-related standardized amounts (see 48 FR 39765-39768).

The restandardized amounts in Table 1 of section IV of the addendum reflect the revised labor-related and nonlabor-related portions. It should be noted that, because of the revision of the labor and nonlabor proportions, the labor portions of the rates published in Table 1 of this final rule have decreased from those published in the May 6, 1986 interim final rule (51 FR 16776), even though they have been updated for FY 1987. Similarly, the nonlabor portions in Table 1 have increased by more than the update factor because they now are based on a nonlabor proportion that is greater than the nonlabor proportion reflected in the rates published on May 6, 1986.

Comment: One commenter maintained that many rural hospitals would benefit from the reduction in the portion of the adjusted standardized amounts that is considered labor-related because less of the rate is multiplied by a wage index that is usually less than 1.0000. This reduction of the labor-related portion occurs because of the restandardization of the adjusted standardized amounts to reflect the revised labor-related and nonlabor-related portions of the rebased and reweighted hospital market basket. However, the commenter questioned the validity of the difference in the adjusted standardized amounts between urban and rural hospitals, an outcome that was considered to be undesirable.

Response: The original urban and rural adjusted standardized amounts effective on October 1, 1983 were developed from actual cost data as reported by hospitals on their Medicare cost reports for fiscal years ending in calendar year 1981. The methodology was described at great length in both the September 1, 1983 interim final rule (48 FR 39752) and the January 3, 1984 final rule (49 FR 234). The differences in the regional/national rates between urban and rural hospitals reflect the actual hospital cost experience used to derive the initial adjusted standardized amounts, a difference that continues to exist in subsequent updates of the prospective payment system.

Comment: Several commenters objected to the reduction in the labor-related portion of the adjusted standardized amounts caused by the rebasing and reweighting of the hospital market basket. One commenter maintained that he did not understand how the labor-related share could be reduced since labor costs were increasing, while another commenter pointed out that the hospital that he represents would be disadvantaged by this change because of its rural location in a State with a low wage index.

Response: These comments reflect a misunderstanding of the revisions to the hospital market basket and the impact of changing the labor-related and nonlabor-related portions of the adjusted standardized amounts. While labor costs on a per unit basis (per employee, per hour worked, etc.) may be increasing due to inflation, a shortage of skilled workers, or for other reasons, the price of labor has increased less rapidly than the price of nonlabor inputs. Furthermore, hospitals have also altered the mix of labor-related and nonlabor-related expenditures necessary to furnish inpatient care since the market basket was initially adopted. The result has been that labor-related costs, as a proportion of total inpatient expenditures, have declined as described in Table 2 of section IV of the addendum.

This fact and the disaggregation of the original market basket to yield more precise expenditure categories account for the decline (from 79.15 percent to 74.39 percent) in the proportion of inpatient operating costs that is considered labor-related for purposes of developing the adjusted standardized amounts.

We note that the commenter's assertion that a rural hospital in a State with a comparatively low wage index would be disadvantaged by this change is incorrect. All other things being equal, reducing the labor-related portion of the standardized amounts in such a situation would result in an increase in prospective payment rates because a smaller proportion of the rates is subject to adjustment by the wage index, as the following simplified example demonstrates:

INPATIENT OPERATING COST

	Labor-related	Nonlabor-related	Total
Rate A	2,560	640	3,200
Rate B	2,400	800	3,200

Rate A reflects a prospective payment rate based on labor-related and nonlabor-related costs of 80 percent and 20 percent, respectively. In Rate B the proportion of labor-related and nonlabor-related costs has been revised to represent 75 percent/25 percent portions. Under the 80/20 apportionment, a hospital with a wage index of .8000 and a case-mix index of 1.000 would receive an average prospective payment rate for inpatient operating costs equal to (2560×.8000)×640 or $2688 per discharge. The average prospective payment rate under the 75/25 labor-related and nonlabor-related apportionment would equal (2400x.8000)+800 or $2720 per discharge. Reducing the labor-related portion of the adjusted standardized amounts results in an increase in the nonlabor-related portion. As long as a hospital has a wage index of less than 1.0000, reductions in the labor-related portion and increases in the nonlabor-related portion benefit hospitals.

Comment: Many commenters questioned how the 1982 rebased hospital market basket weight for the cost of malpractice insurance could be so much lower than the 1977 market basket weight when the cost of malpractice insurance has been going up at such fast rates. Others questioned whether the relative importance weight for malpractice insurance cost in the proposed market basket for 1986 is too low. Still others questioned the rates of increase in the proxy used to represent the change in malpractice insurance rates. Some speculated that part of the perceived deficiencies may be due to the fact that no data on self-insurers or insurance sold by foreign-based carriers are incorporated into the malpractice insurance cost weights or proxy.

Response: We use American Hospital Association (AHA) Annual Survey data on hospital costs to determine the cost shares for the various categories in the hospital market basket. The annual survey provides seven cost items. We then use other sources of information to develop the more detailed categories in the market basket. Malpractice insurance costs are part of the "other cost" category in the AHA data. We use data from another AHA source, the Hospital Administrative Services Monitrend data (HAS/Monitrend), to break out malpractice insurance costs. Those data indicate that the cost share for hospital malpractice insurance in 1982 is 0.66 percent of total costs.

Because HAS/Monitrend data were not available for use in the 1977-based hospital market basket, we, in conjunction with staff at AHA and elsewhere, had developed an estimate of the cost share for malpractice insurance for 1977 of 1.98 percent. However, recent reinvestigation has revealed that at least one important source of information used in those estimates was actually an estimate *of the total insurance costs of hospitals,* not just malpractice insurance costs. In addition, a Health Insurance Association of America study made for the AHA shows 1980 hospital malpractice insurance costs, as a percentage of total hospital costs, to be 0.65 percent, much lower than the 1.96 percent used in the previous market basket. For both of these reasons, we have determined that the weight in the previous market basket was inappropriately high rather than that the new weight is too low. This finding was corroborated by information derived from Medicare's Hospital Cost Report Information System (HCRIS), which indicates that malpractice insurance cost as a percentage of total hospital costs in 1982 is 0.59 percent. We decided to use the 0.66 percent figure from the HAS/Monitrend data because it is more beneficial to the hospital industry.

Some commenters asserted that if HCFA would use more recent data, 1984 data for example, the malpractice insurance cost weight would be significantly higher. First, we cannot use data for one component of the market basket that are from a period two years later than the data for the other components. In addition, we found that the data do not support this assertion. The 1984 weight from HAS/Monitrend is 0.56 percent, which, although lower, is not significantly different from the 1982 weight of 0.66.

Some confusion surrounds the meaning of the "relative importance weight" for malpractice insurance costs as well as for the other components of the market basket. The cost shares for the base period in the market basket do not change. For each year's estimate, the base weight is applied to the change in that year's price proxy. However, because the price proxies grow at varying rates, the relative importance of each category does change over time. If a number of cost categories have identical weights in the base year, the relative contribution to the overall hospital input price index growth by categories whose price proxies are growing more rapidly is greater than the contribution by categories whose price proxies are growing more slowly. When some commenters suggested changing the weight for malpractice insurance costs for 1986, they are speaking of changing the relative importance weight. That outcome cannot be effected by changing the category weight in any year except for the base year. As has already been explained, we believe that the newly revised base weight is correct.

The only other way to change the relative importance of a category is to change either its price proxy growth or the growth of other price proxies. To increase the relative importance of malpractice insurance costs, some combination of increases to the malpractice price proxy or decreases to some or all of the other price proxies must be made.

Based on recently updated industry data, we are revising the price proxy for hospital malpractice insurance costs from 17.7 percent to 26.5 percent in 1985. In addition, we are increasing the malpractice insurance cost proxy from 17.7 percent to 29.9 percent in 1986, and from 9.8 percent to 30.0 percent in 1987. The 1986 and 1987 proxy values are based on our best judgment after consultation with industry representatives. We hope to develop actual data as soon as possible.

Since 1981, our price proxy for malpractice insurance costs has been based on actuarial information supplied by the Insurance Service Organization (ISO), which is an industry-wide rating bureau whose rates are used by many small insurers. Although ISO data include neither foreign-based insurance carriers nor self-insured hospitals, they are the best data available. We do not know of any reliable data on self-insured hospitals because self-insurance by hospitals is a relatively recent phenomenon, having become more prevalent since the mid-1970s. (Some commenters suggested that self-insured and foreign-based insurer rates have increased more rapidly than other hospital malpractice insurance rates, but they presented no data to substantiate their assertion.)

As suggested by ProPAC, use of the ISO data may have led to an understatement of the hospital malpractice insurance price proxy for the years after 1984. HCFA has forecasted the years for 1986 and beyond on the basis of trend analysis. Thus, if factors affecting malpractice premium rates have changed, the historical trend model will not pick up these changes. However, we estimate the market basket every quarter and

will continue to update it with the best available data.

The effect of the malpractice price proxy revisions, in combination with the latest DRI forecasts for all other price proxies, is to raise the relative importance weight for malpractice insurance in 1986 from 1.00, as proposed in the NPRM, to 1.19. The revision in the malpractice insurance price changes results in a 0.1 percent increase in the overall forecast for 1986. In 1987 the relative importance weight is forecasted to change from 1.05, as proposed in the NPRM, to 1.49 as a result of these changes. Our purpose for indicating the 1987 relative importance weight is to illustrate that, although, as noted above, we have made significant changes in the malpractice price proxy, they do not have an immediate impact on the overall market basket or on the malpractice insurance costs component of the market basket.

Some commenters included analysis and suggestions concerning a Government Accounting Office (GAO) study on malpractice rates. The study, which appears to have been conducted by AHA for GAO, covers the years 1983 through 1984. A rate of increase in premiums of 47 percent in 1984 is cited by the commenters. However, the rate of increase is expressed in terms of hospital days, rather than in terms of the change in premium rate alone. Because total hospital days are declining, their use in this context overstates premium changes. The GAO study shows a premium rate change of about 39 percent in 1984, the latest available year. However, the GAO study seems to be based on a choice of the most expensive specialities. Also, some of the data are only for New York and Florida. Nationwide ISO data for the same year indicate rate changes of approximately 25 percent. While both values differ from our price proxy, the variance between them is also great. Therefore, we intend to proceed cautiously before making further changes to the malpractice price proxy.

Comment: Many commenters questioned why we are rebasing the hospital market basket input price index. Others questioned the choice of 1982 as the new base year when later data, 1984 for example, are available.

Response: The hospital market basket is based on a set of cost weights that are fixed in a base year. The initial market basket was based in the year 1977. The cost weights reflect the combination of the quantity of goods and services purchased in the base year and the price associated with those purchases. Because we are interested in measuring the effects of price change alone, the set of goods and services purchased must be held constant, and the index moved forward by the weighted sum of the changes in the various price proxies. This is the nature of a Laspeyres price index. However, it is also true that the combination of goods and services required by hospitals to furnish care changes over time. For example, new procedures may require more equipment and less labor. Therefore, the base period cost weights may no longer accurately reflect the set of goods and services purchased by hospitals. To correct for this phenomenon, the base period is periodically updated by recalculating the cost weights.

The original base year was chosen by us for two reasons. It was the year for which the most recent cost report data were available from AHA. Second, 1977 coincided with an economic census year. The Bureau of Economic Analysis Input/Output estimates are used to break out the detailed cost categories in the market basket, and the Input/Output structure is based on economic census data. An economic census is conducted every five years. Though it is considered to be an ambitious undertaking, we intend to rebase the hospital market basket every five years following the economic census schedule.

To rebase more frequently than every five years causes two problems. First, rebasing is a considerable task and consumes large amounts of resources. More importantly, to rebase more frequently effectively converts the index from a Laspeyres price index to a Paasche, current weight index that indistinguishably reflects changes in both prices and quantities. We account for quantity changes elsewhere in the update framework.

It is possible to rebase the hospital market basket using 1984 data, and we have examined the effects of such an index. Preliminary indications are that such a change would result in very little difference in the overall index, no more than one or two tenths of a percentage point in any forecast. In addition, using 1984 cost data would have very little effect on such controversial cost categories as malpractice insurance where the 1982 weight is .66 percent and the 1984 weight is lower at .56 percent based on HAS Monitrend data.

Comment: Many commenters argued that the wage proxy changes are arbitrary and undocumented. Other commenters suggested that external proxies should be used only if they closely parallel the internal wage measures.

Response: We believe that the external wage measure we use is the most appropriate wage proxy available at this time. The internal proxy, hospital worker average hourly earnings, formerly used to monitor wage price changes is not a true price proxy. It is developed by dividing total earnings by hours worked. Thus, it reflects changes in wage rates and changes in the composition of labor employed. The employment cost indexes, the external price proxies, measure changes in the wage rate only.

The employment cost index (ECI) is not without problems, however. It reflects the change in wages for several categories of workers, but the proportion of the amounts of the various types of workers used by hospitals had to be developed from a separate source. We derived this occupational mix from the 1980 Census of Population, Occupation by Industry reports. Another problem recognized by both ProPAC and us is that hospitals may, to some extent, employ a unique set of employees, especially in the technical and professional area. To allow for this possibility ProPAC recommended, and we adopted, a blend of the ECI external measures for the wage change for technical and professional workers averaged with the change indicated by the internal price proxy, average hourly earnings of hospital workers.

While we recognize that this is not the most desirable solution, it is the best currently available. A point to consider is that the movements in any of the various indexes that we examined were all reasonably similar over time. We do not agree with the suggestion by one commenter that an external index should be used only if it parallels the internal index. Our investigation has been aimed at developing the most appropriate hospital market basket. Because the market basket is based on change over time, not levels, to use a parallel index is in effect to use the same index.

The Bureau of Labor Statistics plans to make available in the near future an ECI specifically for hospitals. We will examine the new index and, if appropriate, propose to incorporate it into the market basket as soon as possible.

Comment: A few commenters suggested alternative price proxies for monitoring the rate of increase for several of the market basket expenditure categories. Most of these commenters recommended the selection of price proxies that they believe are better indicators of price inflation in the goods and services purchased by hospitals.

Response: We have carefully assessed the technical recommendations we

VOL 51 ISS 170 SE 3 1986 UMI

received for revising some of the price proxies used to measure historical and forecasted price increases in the hospital market basket. At this time we are able to accept a number of the recommendations whereas others warrant further investigation. For example, one commenter endorsed the use of the special index for processed foods that appears in Table 8 of the Producer Price Index detailed reports for monitoring increases in direct purchases of hospital food. The commenter believes this proxy to be superior to the Producer Price Index for processed foods and feeds that we proposed to continue to use.

We recognize the merit of the commenter's recommendation, but need to further evaluate such a change. However, based on our internal evaluation, we are revising the price proxies for the following market basket categories:

- Fuel Oil.
- Electricity.
- Pharmaceuticals.
- Paper Products.
- Apparel.

These changes represent refinements in the level of disaggregation of the price proxies, that is, the changes reflect a finer breakdown of the price measures used to approximate more closely price outlays. The more precise forecasts of these price proxies were not available at the time the NPRM was published. We note that the revised price proxy measures for those categories, and rationale for their use appears in Appendix A of this final rule.

Comment: One commenter noted that our statement in the NPRM, that is, that the market basket cost weights currently in effect reflected 1977 base-year data, was incorrect. The commenter stated that in implementing the prospective payment system in the September 1, 1983 interim final rule we had published revised market basket expenditure weights based on the estimated proportion of total inpatient operating costs, including malpractice insurance costs, attributable to each category.

Response: We do not agree with the commenter. The market basket cost weights implemented in connection with the FY 1984 prospective payment rates were based on 1977 data, inflated through calendar year 1981 to reflect their relative importance in accordance with historical price changes for each expenditure category (48 FR 39784). Prior to the establishment of the prospective payment system, malpractice insurance costs were excluded from the definition of the inpatient hospital operating costs. Under the prospective payment system, this exclusion was eliminated, that is, malpractice insurance costs were considered inpatient operating costs. Therefore, we added an expenditure category for malpractice insurance costs in the September 1, 1983 interim final rule and reweighted all other market basket cost categories. We note, however, that 1977 base year data have been used in developing all Medicare hospital market baskets to date.

The market basket provisions in the June 3, 1986 NPRM reflect the first rebasing of the hospital input price index since its introduction in connection with the hospital routine cost limits that were effective on July 1, 1979.

Comment: Several commenters objected to the reweighting and rebasing of the hospital market basket during the transition period from partially regional rates to fully national rates.

Response: We do not believe it is appropriate to delay the adoption of a revised and updated market basket until the transition period is over (October 1, 1987). ProPAC and we agree that it is desirable to periodically rebase the market basket such that the weights reflect changes in the mix of goods and services that hospitals purchase. Because of the questionable propriety of continuing to use 1977 base year data in establishing the FY 1987 prospective payment rates when 1982 cost data are available, we are implementing a revised market basket to reflect later data, more refined cost categories, and more appropriate price proxies.

Comment: One commenter noted correctly that linear regression analysis of hospital cost differences implies that a one percent difference in the area wage index is associated with a one percent difference in hospitals' cost per case. The commenter argues that this result implies that the proportion of the cost per case that is subject to adjustment by the area wage index should be increased, possibly to as much as 100 percent of the standardized payment amount.

Response: We currently adjust approximately 79 percent of the standardized payment amount by the wage index, and in FY 1987, we are reducing that proportion to approximately 74 percent. These proportions are derived from the labor-related share of total costs in the hospital market basket. We use the hospital market basket because it provides a more direct measure of the labor-related share than does the regression analysis. The wage index variable in the regression analysis may capture the effects of other variables that are correlated with, but not directly related to, input price differences.

C. Selection of Price Proxies

After the 1982 cost weights for the rebased market basket were computed, it was necessary to select appropriate wage and price proxies to monitor the rate of increase for each expenditure category. Most of the indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following four BLS categories:

- *Producer price indexes*—Producer price indexes are used to measure price changes for goods sold in other than retail markets. They are the preferable proxies for goods that hospitals purchase as inputs as part of the process in producing their outputs. These indexes, which are fixed-weight, measure "price" change at the producer or intermediate stage of production.
- *Consumer price indexes*—Consumer price indexes measure change in the prices of final goods and services bought by the typical consumer. Similar to the producer price indexes, they are fixed-weight. Because they do not represent the price faced by the producers, the consumer price indexes were used if no appropriate producer price index was available, or if the expenditure was more similar to that of retail consumers in general, rather than a purchase at the wholesale level.
- *Employment cost indexes*—Employment cost indexes measure the rate of change in employee wage rates per hour worked. These indexes are fixed-weight indexes and thus measure strictly the change in wage rates and are not affected by shifts in employment mix.
- *Average hourly earnings indexes*—Average hourly earnings indexes are used to weight the hourly earnings for various occupations within a given industry and, therefore, reflect a weighted employment mix for a particular industry. The average hourly earnings index series is calculated by dividing gross payrolls by total hours, and measures actual earnings rather than wage rates. It is a current-weight rather than a fixed-weight index, and thus reflects shifts in employment mix.

Our price proxies for the rebased prospective payment system market basket are summarized in Table 2 of section IV of the addendum. For a more detailed explanation of each of the price proxies, we refer the reader to Appendix A in this final rule. However, because we are revising the price proxy substantially for the wages and salaries category (the highest-weighted category) of the market basket based on a model developed by HCFA, we are providing a separate discussion of the new price

proxy for the wages and salaries portion of the rebased market basket. For purposes of this discussion, we refer to the revised wages and salaries price proxy as the HCFA hospital occupational index.

D. The HCFA Hospital Occupational Index

Wages and salaries represent the largest single component of the hospital market basket, accounting for 56 percent of overall inpatient costs. Currently, the market basket increases in hospital wages and salaries are measured by using the average hourly earnings index for the hospital industry (Standard Industrial Classification 806), a data series collected by BLS.

In its April 1, 1985 report to the Secretary, ProPAC observed (in Recommendations Nos. 4 through 6) that the average hourly earnings series do not separate changes in inflation from changes in the mix of hospital workers over time. That is, rapid increases in average hourly wages could reflect changes in skill mix instead of in wage rates. ProPAC also expressed concern that HCFA's use of a price change measure specific to the hospital industry for the wages and salaries category allows hospital behavior to unduly influence changes in the market basket. For example, if the average hourly earnings series rises at a relatively high rate (as it did under the cost-based reimbursement system prior to the prospective payment system), exclusive use of a hospital industry series would permit hospitals to increase wages at a faster rate than other industries, even when unwarranted. Conversely, if growth in hospital wages and salaries is slower compared to other industries (such as in response to the prospective payment system or other incentives for cost containment), the market basket would reflect this behavior, and could provide an incentive for restricting wage increases for hospital employees.

To address these concerns, ProPAC recommended that separate wage and salary categories for occupational groups should be created to take into account the broad changes in skill mix among managers, professionals, and other hospital workers. ProPAC suggested that changes in wages for these categories should be measured using a combination of internal and external proxies as follows:

- Managers and Administrators—Employment cost index.
- Professionals and Technicians—A 50–50 blend of the average hourly earnings for the hospital industry and the employment cost index for professionals and technicians.
- Other Hospital Workers—A 50–50 blend of the average hourly earnings for the hospital industry and the employment cost index for all private industries.

The issue of whether to use only an internal wage proxy (that is, one based exclusively on hospital wage and salary data), or a combination of internal and external (hospital and nonhospital) wage proxies, has been debated for some time. It is generally accepted that prices for most nonlabor hospital inputs are nondiscretionary or beyond the control of the hospital industry. To monitor price changes in these expenditure categories, external prices are used. Hospital wages and salaries, however, should not be considered totally beyond industry control since there are employee categories for which hospitals are the principal employer (for example, registered nurses).

The market basket is intended to measure prices actually faced by the hospital industry. Thus, for labor we wish to measure only changes in wage rates, not changes in the composition of the labor used by hospitals. In reference to rebasing the market basket, we are using an external measure, in addition to an internal measure, because the external measure (the employment cost index) reflects changes in the price of wages only, not changes in price and wages as reflected by the internal measure (Average Hourly Earnings). When an employment cost index specific to hospital workers becomes available, we will consider using it explicitly rather than the current blend of internal and external measures.

By classifying hospital wages and salaries into specific broad-based occupational categories, it is possible to group wages and salaries into two groups, those for which an internal proxy is more appropriate, and those for which an external proxy is more appropriate. We believe we are refining ProPAC's recommendation by further disaggregating the mix of hospital workers into specific categories, and applying a combination of internal and external price proxies in the HCFA hospital occupational index.

HCFA's hospital occupational index groups hospital occupations into nine broad categories. For eight of these occupational groupings, we believe that hospitals compete for labor generally with employers outside the health sector. Accordingly, use of an employment cost index as an external price proxy for each occupation seems most appropriate. In the case of nurses' wages, especially those of registered nurses, as well as certain other health care technicians and professionals, the hospital market predominates. However, there is no appropriate internal or external measure available at this time for professionals and technicians. As better measures become available, such as an employment cost index for hospital professionals and technicians, we will consider making further changes. Because hospitals also compete with other industries to obtain certain other skilled professional and technical staff (for example, computer programmers), we believe a price proxy for professional and technical workers that reflects a 50–50 blend of internal and external wage increases is appropriate. The proxy for the wages and salaries component of the prospective payment system market basket reflects internal and external measures of price changes as follows:

HCFA Hospital Occupational Index

Wages/salaries component 1982 market basket index	Wages/ salaries percent- age	Wage proxy
1. Professionals and technicians	57.24	50–50 blend of: Average Hourly Earnings (Standard Industrial Classification (SIC) code 806) for nonsupervisory hospital workers; and employment cost index, wages and salaries, for professionals and technicians.
2. Managers	7.25	Employment cost index, wages and salaries, for managers and administrators.
3. Sales	.34	Employment cost index, wages and salaries, for sales workers.
4. Clerical Workers	12.54	Employment cost index, wages and salaries, for clerical workers.
5. Craft and Kindred	2.46	Employment cost index, wages and salaries, for craft and kindred workers.
6. Operatives Except Transport	.99	Employment cost index, wages and salaries, for operatives except transport.

HCFA Hospital Occupational Index—Continued

Wages/salaries component 1982 market basket index	Wages/ salaries percentage	Wage proxy
7. Transport Equipment Operatives	.26	Employment cost index, wages and salaries, for transport equipment operatives.
8. Nonfarm Laborers	.20	Employment cost index, wages and salaries, for nonfarm laborers.
9. Service Workers	18.72	Employment cost index, wages and salaries, for service workers.
10. Total Wages	100.00	Total weight for wages is 55.83.

We believe that the HCFA hospital occupational index provides a more accurate and equitable basis for monitoring increases in the wages and salaries portion of the market basket, and that it responds to ProPAC's concern that the market basket should reflect labor market forces that are both internal and external to the hospital industry.

Comment: Several commenters expressed concern that the HCFA Hospital Occupational Index does not reflect labor pressures that are specific to the hospital industry.

For example, one commenter maintained that in response to declining admissions, hospitals have reduced staff, typically by laying off those workers with least seniority. This results in an increase in hospitals' average wage rates, an increase that is reflected in price proxies internal to the hospital industry, but not in external proxies. Another commenter pointed out that due to a sharp decline in nursing school enrollments, hospitals were likely to face a shortage of registered nurses, resulting in increases in hospital wages that could not be appropriately measured by nonhospital wage proxies.

Response: In constructing the HCFA Hospital Occupational Index, we grouped hospital occupations into nine broad categories for which employment cost indexes are available to forecast the estimated rate of increase in hospital wages. For eight of these groupings, we believe that hospitals compete for labor generally with employers outside the health sector. Accordingly, use of an external employment cost index, which measures the rate of change in wage rates per hour worked for a fixed group of employees, is appropriate for these categories. However, for those occupations for which hospitals are the major employer, such as registered nurses, we believe that an internal measure of wage increases is preferable. That is the basis for using a hospital-specific price proxy for 50 percent of the professionals and technicians component. To the extent that a nursing shortage places upward pressure on the rate of increase in nursing salaries, the professionals and technicians component will reflect such a change.

We also point out that use of external price proxies to project the rate of increase in the wages and salaries portion of the market basket represents a more objective measure of actual labor market forces for those employee categories in which hospitals compete with other industries. To the extent that providers may have unduly restrained wage increases in response to the prospective payment system, external price proxies avoid wage forecasts that are biased downward.

With respect to the suggestion that the HCFA Hospital Occupational Index fails to reflect the more costly mix of hospital workers remaining after less senior workers have been laid off, we believe the comment concerns shifts in hospital employment mix in response to the incentives of the prospective payment system. Pending the development of employment cost indexes for specific hospital worker categories, we cannot control for this potential source of distortion in the index. We note, however, that the Bureau of Labor Statistics is developing employment cost indexes for hospital worker categories. Once these indexes become available, we will consider revising the price proxy for the wages and salaries portion of the hospital market basket.

IV. Other Decisions and Changes to the Regulations

A. Establishing a Base Period for Purposes of Determining the Rate-of-Increase Ceiling for Hospitals Excluded from the Prospective Payment System (§ 405.463)

Hospitals that are excluded from the prospective payment system and, under certain conditions, cancer hospitals, are paid on a reasonable cost basis subject to the rate-of-increase ceilings under section 1886(b) of the Act and implementing regulations at § 405.463.

Section 405.463(b)(1) provides that each hospital's initial rate-of-increase ceiling will be based on allowable inpatient operating costs per case incurred—

- In the 12-month cost reporting period immediately preceding the first cost reporting period subject to the ceiling; or
- For short reporting periods (fewer than 12 months), the first 12-month period ending after October 1, 1982.

Concern was expressed as to the determination of the base period for hospitals excluded from the prospective payment system in States in which a demonstration project (section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972) was terminating. We are revising § 405.463(b)(1), as we had proposed in the NPRM (51 FR 19990), to provide that each hospital's initial base period subject to the rate-of-increase ceiling is—

- The 12-month cost reporting period immediately preceding the first cost reporting period subject to the ceiling (for example, the base period would be the cost reporting period beginning on or after January 1, 1985 and before January 1, 1986 for a hospital paid under a demonstration project which terminates December 31, 1985); or
- Where the immediately preceding reporting period is a short cost reporting period (that is, less than 12 months), the base period will be the 12-month cost reporting period beginning on or after the date the hospital's exemption from the ceiling ends (for example, the base period would be the 12-month period beginning on or after January 1, 1986 for a hospital paid under a demonstration project which terminates December 31, 1985, if that hospital's cost reporting period beginning on or after January 1, 1985 and before January 1, 1986 is a short period).

We note that this revision applies to both hospitals in a State with a demonstration project that is terminating (and for which the hospitals would continue to be excluded from the prospective payment system), and to hospitals that are no longer exempt from the ceiling as new providers (§ 405.463(f)(1)).

We received no specific comments concerning these changes.

B. Extension of the Exclusion of Alcohol/Drug Hospitals and Units (§§ 412.23 and 412.32)

In the January 3, 1984 final rule, we established criteria for the exclusion of

hospitals and distinct part units that specialize in alcohol/drug dependency treatment (49 FR 241). In the September 3, 1985 final rule, we extended the exclusion (for hospitals and units already excluded) until the end of the hospital's cost reporting period beginning before October 1, 1986 (40 FR 35669). We did this because we redesigned and greatly improved the alcohol and drug treatment DRGs in major diagnostic category (MDC) 20 (Alcohol/Drug Abuse and Alcohol/Drug Induced Mental Disorders) but desired to gather additional data before terminating the exclusion. Our analysis of medical records did not proceed as quickly as we had hoped, however, and in the June 3, 1986 proposed rule we announced our intention to extend the exclusion for an additional year so that excluded hospitals and units could remain under the exclusion for an additional period of time.

All the organizations commenting on this provision supported it.

Comment: Two commenters requested that the regulations be further revised to permit hospitals and units not excluded during the cost reporting period beginning in Federal fiscal year 1985 to qualify for the exclusion.

Response: We noted in the preamble to the September 3, 1985 final rule that we did not permit new alcohol and drug hospitals and units to qualify for the exclusion because we believe that the revised DRGs are an appropriate expression of the clinical groupings of individuals who suffer from alcohol and drug abuse and who are in the Medicare age group. Our preliminary data indicate that the revised DRGs for these cases have greatly improved payment for the care; therefore, we have not made the exclusion to new providers. However, because delays in gathering complete data to evaluate these changes have led us to extend the existing exclusion for another year, we are continuing to consider extending the exclusion to new alcohol/drug hospitals and units. If we believe a change is necessary we will address the issue in a separate rulemaking document.

We would note that we are proceeding as quickly as possible to finish collecting information about these DRGs to enable us to make any needed changes so that they can be used as a basis for payment for these services in facilities and units that are now excluded. We are hopeful that we will be able to complete these changes and implement the revised DRGs in less than one year. Any changes we make, of course, would be accomplished through rulemaking.

Comment: One commenter also proposed that the exclusion be linked to the one granted to psychiatric hospitals and units and not be terminated until those hospitals and units are brought under the prospective payment system.

Response: We do not believe that the exclusion for alcohol and drug hospitals and units should be linked to the exclusion that relates to psychiatric hospitals and units. The exclusion of psychiatric hospitals and units is a statutory one (section 1886(d)(1)(B) of the Act)) and will continue unless Congress rescinds it. The exclusion of alcohol and drug hospitals and units was established by regulation as a temporary measure and was intended to last only until the DRGs for alcohol and drug abuse patients were revised. As we have noted, we believe that our revisions to these DRGs have already improved payment for the care in general hospitals and are confident that the analysis described above will enable us to make any further refinements that may be required so that further extensions of the exclusion will not be necessary.

C. Hospitals in Redesignated Rural Counties That Are Surrounded on All Sides by Urban Counties (§ 412.63)

Using our authority under section 1886(d)(5)(C)(iii) of the Act, to "provide by regulation for such other exceptions and adjustments" as are deemed appropriate, we proposed in the June 3, 1986 NPRM (51 FR 19990) to expand on the above provisions by recognizing the circumstances of a hospital located in a county that is reclassified from urban to rural, and that is surrounded on all sides by urban counties. Given the unique situation of such a hospital, we believe special consideration is warranted in order to ensure equitable treatment under the prospective payment system.

Therefore, effective with discharges occurring on or after October 1, 1986, we proposed to consider a hospital as urban, for prospective payment purposes, if it met all of the following criteria:

- The rural county in which the hospital is located must be surrounded on all sides by urban counties.
- The county in which the hospital is located was reclassified from an urban area to a rural area after April 20, 1983 (the date of enactment of Pub. L. 98–21).
- Based on the latest census data, at least 15 percent of employed workers in the county in which the hospital is located commute to the central county or counties of one of the adjacent areas. The term "central county," as defined by the Executive Office of Management and Budget (EOMB), is based on commuting patterns of employed workers.

Under the NPRM, hospitals that meet these criteria would be deemed urban for purposes of computing prospective payments, and, for purposes of assigning an appropriate wage index value, would be reclassified into the MSA or NECMA in which it had been previously designated prior to the EOMB redesignation. We proposed to revise § 412.63(b) to implement this provision.

Except for a minor modification, as described in the first comment and response, below, we are adopting the criteria we proposed on this revision in this final rule, and therefore, revising § 412.63(b) accordingly.

Comment: We received two comments, one of which was from the hospital located in Shiawassee County, indicating that although Shiawassee County, Michigan is virtually surrounded on all sides by urban areas, there is approximately a one-mile-long portion of its northwestern boundary that borders on a rural area.

Response: Based on the information provided by these commenters, it appears that Shiawassee County does not meet the proposed criterion under § 412.63(b)(3)(i) that would have required the county to be surrounded on "all sides" by urban areas in order to qualify for urban status. We believe the fact that one mile of Shiawassee County's border adjoins a rural county does not alter the premise of this provision, which is to recognize the unique circumstances of hospitals located in redesignated rural counties surrounded by urban areas. Therefore, we are revising the criterion proposed in § 412.63(b)(3)(i) to specify that at least 95 percent of the perimeter of the rural county must be contiguous with urban counties. We are considering Shiawassee County as an urban area in computing both the wage index and the standardized amounts.

Comment: Many commenters suggested alternative criteria for designating rural counties as urban. Most commenters believe that the proposed criteria in § 412.63(b)(3) are too restrictive and should be broadened in order to recognize counties adjacent to two or more MSAs. Specifically, the majority of commenters recommended that the EOMB standards for designating outlying counties of MSAs be modified for prospective payment purposes using the Secretary's general exceptions authority under section 1886(d)(5)(C)(iii) of the Act to consider total commuting rates to the central counties of all adjacent MSAs. These commenters argued that since their

counties have economic interaction with more than one urban area, it is appropriate to consider total commuting to central counties of all MSAs in determining whether a county should be designated urban under the prospective payment system.

Response: Given the volume of comments we received suggesting that we consider total commuting patterns to two or more MSAs in determining whether a county qualifies for urban status, we decided to investigate the feasibility of adopting the commenters' suggestions. Intuitively, the approach suggested by the commenters has merit and thus warranted our consideration.

We worked with staff of EOMB's Office of Information and Regulatory Affairs, which has responsibility for implementing the MSA classification system, to determine which counties would qualify as outlying counties of MSAs if commuting to the central county(ies) of more than one MSA was considered, and all other EOMB criteria were met. EOMB identified 28 counties (with 51 hospitals) that would qualify under this approach. (Nine other counties would also qualify; however, no Medicare-participating hospitals are currently located in them.)

Once we had identified the 28 affected counties, we compared the average hospital wage level in each county with the average hospital wage level for the MSA to which it has the highest commuting rate and with the State rural average hospital wage. We found that while the characteristics of the hospitals in the 28 qualifying counties vary widely, the hospital wage data on these counties suggest that the hospitals are essentially rural.

Specifically, our review of hospital wage levels in the 28 qualifying counties revealed the following:

- None of the qualifying counties has average hospital wages that exceed average hospital wages for the MSA to which they would be appended.
- Only eight counties have average hospital wages that are at least 90 percent of the urban average hospital wages.
- All other counties' wages are less than 90 percent of urban wages; six counties' wages are less than 80 percent of urban wages.
- Only six counties exceed the rural average wage by five percent or more.
- Fourteen counties are within five percent of the rural average wage.
- Thirteen counties have wages that are less than the rural average; three counties have wages that are 80 percent or less of the rural average.

We believe that the results above indicate that these counties generally are not competing with adjacent MSAs for the same labor pool. In addition, our analysis of the impact on other hospitals nationwide, if these 28 counties were reclassified from rural to urban, indicates that both the urban and rural national standardized rates would decrease. While the absolute dollar decrease in the urban standardized rate would be greater than the decrease in the rural standardized rate, the estimated reduction in total Medicare payments would be greater for rural hospitals.

Therefore, given the essentially rural characteristics of the 28 affected counties, we do not believe that it would be appropriate to adopt the recommendations of these commenters, which would benefit a small number of hospitals at the expense of all other hospitals nationwide.

We have acknowledged in previous **Federal Register** prospective payment rules that the current MSA/non-MSA definitions may not adequately recognize varying hospital labor market conditions, especially among rural counties. We are looking into possible alternative classification systems as part of our research on the feasibility of phasing-out the urban/rural distinction in the standardized payment rates. However, we believe extensive research and evaluation will be required before an alternative system can be adopted. As with any classification system in which boundaries are established, it is impossible to designate boundaries that are completely satisfactory to all concerned. We believe that the MSA definitions established by EOMB represent the only widely accepted statistical standard currently available for use in a national payment system. At this point, based on our analysis of the 28 qualifying counties, we do not believe it would be appropriate to modify the current MSA standards for prospective payment purposes.

Comment: One commenter suggested that the exception provision under proposed § 412.63(b)(3) should be expanded to provide a mechanism whereby a hospital itself (as opposed to the entire county) could be deemed urban if the hospital was surrounded by urbanized areas.

Response: Because the urban designations are defined by EOMB based on county areas, we believe that any criteria we establish for an exception in which an area would be deemed urban should also be based on county areas. In addition, we believe it would be virtually impossible to develop appropriate standards that could be applied uniformly on the basis of specific areas within a county.

Comment: We received several comments related to the differential between the urban and rural standardized payment rates. One commenter stated that the urban and rural categories for the payment rates should be eliminated. The commenters suggested that an analysis of later cost data would reveal that the current cost differential between urban and rural hospitals is no longer as great, and that most of the urban/rural variation in costs could be accounted for through the area wage index.

Response: In early 1983, when the Secretary proposed a prospective payment system for Medicare, it was recommended that all hospitals, whether urban or rural, be paid based on the same formula. However, in enacting the initial prospective payment system legislation (Pub. L. 98–21), Congress specified that standardized payment amounts be established separately for rural and urban hospitals. Nevertheless, Congress recognized that there might be certain imperfections that would require further study. Accordingly, under section 603 of Pub. L. 98–21 and section 2311 of Pub. L. 98–369, we will report to Congress on the results of an extensive study that focuses on the feasibility and impact of eliminating or phasing-out the urban/rural differential in the standardized payment rates. In addition, this report will address a number of rural hospital issues of particular concern to Congress as well as other issues that affect rural hospitals. We believe that this report will enable us to determine the extent to which the changes in the urban/rural classification system are necessary and appropriate.

D. Referral Centers (§ 412.96)

In the August 31, 1984 final rule, we added an alternative set of criteria to § 412.96 (then § 405.476(g)) that expanded the definition of referral centers to encompass more rural hospitals. We also added a new paragraph to that section that provides for a triennial review of referral centers to deterine if they continue to meet the criteria for a referral center. (See 49 FR 34740 for a detailed discussion of those revisions.) Under those alternative criteria, in order to qualify as a referral center, a hospital must meet two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (specialty composition of medical staff, source of inpatients, or volume of referrals), in addition to being located in a rural area.

1. *Number of Discharges*

In the NPRM, we proposed to update the number of discharges criteria effective with cost reporting periods beginning on or after October 1, 1986. The proposed values were updated using the most current data then available. In addition, we proposed to revise § 412.96 so that, rather than state the actual criteria, it would describe the process we would use to calculate the number of discharge values and will provide that we will publish the updated discharge values in the annual notices of prospective payment rates. These discharge criteria would be used during HCFA's triennial review to evaluate hospitals that are currently granted referral center status and in evaluating hospitals initially applying for referral center status.

Therefore, in addition to meeting other criteria, we proposed that for purposes of the triennial review to retain rural referral center status or to qualify as a referral center, for cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987, a hospital's number of discharges for its most recently completed cost reporting period would have to be at least—

- 5,517; or
- Equal to the median number of discharges for urban hospitals calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region	Median urban discharges
1	6,866
2	7,909
3	7,158
4	8,560
5	7,659
6	7,830
7	5,414
8	9,129
9	5,116

For both the national and regional discharge values, we reduced the 1981 standards as noted in the September 3, 1985 final rule (50 FR 35675–76) by 8.05 percent to reflect the national percentage change in the number of discharges from the year ending in September 1981 through the year ending in September 1985. The percentage was calculated from AHA panel survey data, which showed an 8.05 percent decrease in admissions to community hospitals between 1981 and 1985. Thus, the proposed national number of discharges criterion was computed by multiplying the 1981 discharge standard by .9195 (1.00−.0805=.9195), as follows: 6,000 times .9195=5,517.

The same method (and percentage value of 8.05) was used to reduce each 1981 regional median urban discharge value.

In addition, section 9106 of Pub. L. 99–272 amended section 1886(d)(5)(C)(i) of the Act to permit rural osteopathic hospitals to qualify for the rural referral center adjustment if they meet the case-mix index standard, one of the optional criteria, and if they have at least 3,000 discharges annually. This provision applies to cost reporting periods beginning on or after January 1, 1986. Accordingly, we proposed to revise §412.96(c)(2) to implement the statutory provision.

Comment: A number of commenters supported our lowering the number of discharges criteria to reflect the national decline in inpatient hospital services, while several commenters urged that we continue to reflect such changes annually. In addition, one commenter supported our proposed changes for osteopathic hospitals. However, several commenters stated that the proposed number of discharges criterion is still too high. Moreover, one commenter noted that we used AHA data based on hospital admissions rather than discharges, and that we did not identify the year ending date for the AHA data. Several commenters objected to our applying the number of discharges criteria prospectively, while other commenters believe that these criteria should be applied retrospectively to reflect actual utilization more accurately.

Response: At the time the proposed notice was published, AHA data were the most current data available to us that captured recent trends in total hospital admissions. The AHA collects data based on admissions only, not on discharges. Therefore, we used admission rather than discharge data, since they were the only data available at the time. We believe the percentage change in admissions over time is a reasonable proxy for the percentage change in discharges over the same period.

HCFA now has Medicare cost report data reflecting total discharges from hospitals for their first cost reporting period subject to the prospective payment system, that is, cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984. Based on these data compared to data from cost reporting periods ending in 1981, we estimate that total discharges from rural hospitals declined by 10.51 percent from their 1981 level, a greater percentage of decline than that of urban hospitals. Therefore, in recognition of the fact that the decline in discharges has been greater for rural hospitals than for urban hospitals, we are using this figure in lieu of the AHA data and are lowering the 1981 national and regional number of discharges standards by 10.51 percent, computed as follows:
(1.00−.1051=.8949) 6,000 times .8949=5,369.

The same method and percentage value of 10.51 percent were used to reduce each 1981 regional median urban discharge value. Thus, in addition to meeting other criteria, we are requiring that for purposes of the triennial review to retain rural referral center status, or to qualify as a referral center for cost reporting periods beginning on or after October 1, 1986, a hospital's number of discharges for its most recently completed cost reporting period would have to be at least—

- 5,369; or
- Equal to the number of discharges calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region	Discharges
1	6,682
2	7,697
3	6,967
4	8,331
5	7,455
6	7,620
7	5,269
8	8,885
9	4,979

In addition, in recognition of the fact that the Medicare cost report data on which we have based the percentage decline in discharges from rural hospitals reflect an historical trend, we are also revising the period to which these revised standards would apply for retention purposes to be more consistent with the period from which the discharge data are derived. Currently, in evaluating hospitals' initial applications for rural referral center status, there is a lag of several months between the period for which they are seeking rural referral center status and the period to which we apply the discharge criteria, as we apply the standard to a hospital's discharges in its last completed cost reporting period. That is, a hospital seeking rural referral center status effective for its cost reporting period January 1–December 31, 1987, must apply in the immediately preceding calendar quarter (October–December 1986). At the time of application, the most recently completed cost reporting period for that hospital ran from January 1–December 31, 1985.

Since that is the period to which the discharge standard would apply for hospitals initially seeking referral center

VOL 51 ISS 170 SE 3 1986 UMI

status, that is also the period to which we would apply the discharge standard for currently-qualified rural referral centers seeking to retain rural referral center status. Specifically, the 5,369 national discharge standard and the regional urban discharge standards in the preceding table would apply to hospitals' cost reporting periods beginning in Federal FY 1985 (that is, cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985), regardless of whether the hospital is seeking to qualify initially as a rural referral center or to meet the retention criteria.

In making this revision, we avoid applying the number of discharges standards to different periods for hospitals seeking initial status versus those seeking retention as a rural referral center. In addition, for retention purposes, this approach eliminates the need to estimate discharges for a hospital's third cost reporting period as a rural referral center (that is, the year of its triennial review). In order to make this revision, however, it is also necessary to apply the 6,000 national discharge standard (or the applicable regional median discharge standards) for retention published in the September 3, 1985 final rule (50 FR 35675) to an earlier time period, that is, to cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984 (instead of to cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985). We believe that these changes will reduce the number of rural referral centers that will be adversely affected by the number of discharges criterion.

In the interest of clarification of the revised discharge criterion, we are providing the chart below to reiterate the number of discharges standards that must be met to qualify as a rural referral center.

Application Criteria

For rural referral center status effective with a hospital's cost reporting period beginning during—	Number of discharges standards
Federal FY 1985 (that is, 10/1/84–9/30/85).	(a) 6,000 for 1981; (b) 6,000 for the hospital's cost reporting period beginning during Federal FY 1983 (10/1/82-9/30/83); or (c) For 1981 or the cost reporting period beginning in Federal FY 1983, the applicable regional standard published in the August 31, 1984 final rule.
Federal FY 1986 (that is, 10/1/85–9/30/86).	For the hospital's cost reporting period beginning during Federal FY 1984 (10/1/83–9/30/84), (a) 6,000; or (b) The applicable regional standard published in the September 30, 1985 final rule.
Federal FY 1987 (that is, 10/1/86–9/30/87).	For the hospital's cost reporting period beginning during Federal FY 1985 (10/1/84–9/30/85), (a) 5,369; or (b) The applicable regional standard published in this final rule.
Federal FY 1988 (that is, 10/1/87–9/30/88).	For the hospital's cost reporting period beginning during Federal FY 1986 (10/1/85–9/30/86), (a) The national discharges standard; or (b) The applicable regional standard To be published in the FY 1988 update notice.

As stated above, we have decided to revise the periods of time to which these discharge standards for retention apply to more closely coincide with the periods of time from which the data are collected. Therefore, for retention purposes, the discharge standards published in this update apply to hospital cost reporting periods beginning in Federal FY 1985 (October 1, 1984–September 30, 1985). The chart below should help clarify the requirements as they pertain to the retention criteria.

Retention Criteria

To meet the retention criteria for the hospital's cost reporting period beginning during—	Number of discharges standards
Federal FY 1985 (that is, 10/1/84–9/30/85).	For the hospital's cost reporting period beginning during Federal FY 1984 (10/1/83–9/30/84): (a) 6000; or (b) The applicable regional standard published in the September 3, 1985 final rule.
Federal FY 1986 (that is, 10/1/85–9/30/86).	For the hospital's cost reporting period beginning during Federal FY 1985 (10/1/84–9/30/85): (a) 5369; or (b) The applicable regional urban standard published in this final rule.
Federal FY 1987 (that is, 10/1/86–9/30/87).	For the hospital's cost reporting period beginning during Federal FY 1986 (10/1/85–9/30/86): (a) The national discharges standard; or (b) The applicable regional median urban standard To be published in the FY 1988 update notice.

Comment: A number of commenters believe that we should eliminate the number of discharges criterion because the case-mix index criteria and the one of three optional criteria are sufficient to determine rural referral center status. They believe that failure to meet or sustain a specified number of discharges should not be a reason to deny or lose referral center status. Also, one commenter believes that we should substitute scope of services provided for the number of discharges criterion while another commenter believes that we should develop a standard that identifies variance in cost per case based on the typical urban hospital in the State or region. Another commenter suggested that the current regional criteria for discharges are unfair in that a hospital may meet the minimum standard in one region, but not in his own region. The commenter suggested that we establish a minimum number of discharges standard using the lowest standard of the nine regions. One commenter suggested that the number of discharges standard should be lowered to the 3,000 level that applies only to osteopathic hospitals.

Response: We continue to believe that the number of discharges criterion is an appropriate measure for determining and retaining rural referral center status. Congressional intent clearly indicates that the referral center adjustment be limited to larger than average hospitals. We believe that use of the number of discharges criterion is one measure of distinguishing larger hospitals. Moreover, the notion that a hospital must serve as a center for referrals loses any meaning when the discharge criterion is eliminated because there are a substantial number of hospitals that have high case-mix indexes not necessarily because they are referral

centers but because the relatively few Medicare beneficiaries they treat fall predominantly into high-weighted DRGs.

In reference to the commenter's suggeation that we substitute other criteria (such as scope of services or cost per case comparisons to typical urban hospitals) for the number of discharges criteria, we are continuing to investigate and evaluate other methods to identify and monitor rural referral centers. However, at this time, we do not believe that either of the suggested alternatives is viable. If we interpret scope of services to mean that a hospital has the capacity to furnish a wide range of disgnostic and therapeutic services, it does not necessarily follow that such a hospital is treating the sickest patients or most complex cases. For example, the AHA's listing of facility codes, which some commenters have suggested as the basis for a scope of services criterion, captures services that we would expect to be relatively sophisticated and resource-intensive (such as open heart surgery facilities, megavoltage radiation therapy, burn care unit, neonatal intensive care unit) as well as services that we would expect to be relatively less resource intensive (such as dental services or health promotion) and services that are common among virtually all hospitals (such as emergency department, organized outpatient department, pharmacy, and volunteer services department).

Because a large number of these facility codes describe services that are or may be furnished on other than an inpatient basis, the fact that a hospital offers a broad scope of services thus defined does not necessarily mean that its inpatient hospital services are comparable to the inpatient hospital services of a typical urban hospital.

Moreover, we believe that the number of dischargers criterion is a proxy, albeit an imperfect one, for scope of services. In general, larger hospitals (as measured by bed size) have historically had higher costs per case than smaller ones, all other things being equal. Since economic theory would predict the opposite (that is, that larger hospitals would have lower average costs per case than smaller hospitals because they can benefit from economies of scale), we believe that bed size may be related to scope of services. To the extent that this relationship exists, the number of discharges, which is a function of bed size, may already implicitly reflect scope of services. Neither do we believe that cost per case should be used to evaluate rural referral center status. The prospective payment system was specifically designed to move reimbursement away from recognition of reasonable costs. Thus, we are not persuaded that differentiating among hospitals on the basis of their costs is appropriate or that cost differences among hospitals capture the nature of a hospital as a referral center. Cost variation could also capture variations in practice patterns, organizational structure, operating inefficiency, and other characteristics not necessarily reflective of a referral center.

Section 1886(d)(5)(C)(i) of the Act requires that rural referral center status should be determined for a rural hospital (in part) "by reason of certain of its operating characteristics being similar to those of a typical urban hospital located *in the same region.*" [italics added] Therefore, we are not permitted to establish a minimum number of discharges standard based on the lowest median urban regional level.

We do not agree with the commenter's suggestion that all rural referral centers be evaluated using the 3,000 level for the number of discharges standard that applies to osteopathic hospitals. We believe that Congress established this lower standard for osteopathic hospitals because, as specialty hospitals, they are generally smaller and admit fewer patients. Because section 1886(d)(5)(C)(i) of the Act specifically limits this qualification to osteopathic hospitals, we do not believe that this standard should apply to all hospitals. As proposed, we are revising §412.96(c)(2) to provide that the 3,000 level for number of discharges applies to osteopathic hospitals.

Comment: One commenter asked whether we used different criteria in counting discharges for the purpose of rural referral center status in FYs 1985 and 1986; that is, in FY 1985, we excluded discharges from excluded distinct part units whereas in FY 1986, we excluded discharges from excluded distinct part units and newborn units.

Response: The mention of newborn units in both the June 10, 1985 NPRM and in the September 3, 1985 final rule was not a change of policy, but represented a clarification of established policy. Discharges from newborn nursery units are not included in the count of total discharges for any Medicare purposes. Therefore, we did not believe it was necessary to mention newborn units in our original regulations. However, because questions about such discharges were asked in several instances; we decided to clarify in the preamble to the FY 1986 prospective payment regulations that such discharges cannot be counted toward meeting the discharge criterion.

2. *Case Mix Index*

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining referral center status.

On the basis of hospital bills received in HCFA through March 1986, we determined in the NPRM that the national average case-mix index had increased by 15.4 percent since 1981. Using these data, we proposed to update the national case-mix criterion as follows:

$$\frac{1.03 \times 1.154}{1.0105} = 1.1763$$

in which:

- 1.03 represented the 1981 case-mix index benchmark for complexity of cases treated in a facility;
- 1.154 represented the increase (15.4 percent) in the national average case mix since 1981, for discharges through the midpoint of the current Federal fiscal year; and
- 1.0105 represented the reduction in the DRG relative weights for discharges occurring on or after October 1, 1984. (See the August 31, 1984 final rule (49 FR 34770).)

The same method (and percentage value of 15.4) was used to increase each 1981 regional median urban case-mix value.

Therefore, in addition to meeting other criteria, we proposed in the NPRM that to qualify as a referral center for cost reporting periods beginning on or after October 1, 1986, or for purposes of the triennial review for retention of referral center status, a hospital's case-mix index for the Federal fiscal year ending September 30, 1986 would have to be at least—

- 1.1763; or
- Equal to the adjusted median case-mix index for urban areas calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region	Adjusted urban median case-mix
1	1.2048
2	1.2230
3	1.1820
4	1.1945
5	1.1534
6	1.1671
7	1.1100
8	1.2060
9	1.2254

Comment: Several commenters stated that the proposed case-mix index criteria represented a fair measure of referral center status. However, a number of other commenters believe that the increase in the case-mix index standards was too high because they believe that the case mix of rural hospitals has increased at a slower rate than that of urban hospitals. One commenter noted that rural hospitals are unable to shift patients in lower-weighted DRGs to other hospitals because the rural hospital is frequently the only hospital located in an area. Another commenter urged that we eliminate case mix as a criterion for determining referral center status.

Response: We continue to believe that case mix is a valid and fair measure of referral center status. The case-mix index measures both the complexity of cases and the sophistication of care provided, a criterion we believe satisfies congressional intent (August 31, 1984 final rule (49 FR 34746)). We assume that rural referral centers treat the sickest patients and most complicated cases from other rural community hospitals that have neither the staff nor the equipment to care for them.

If a hospital is truly serving as a referral center and receiving the most complex cases, we do not believe the number of discharges in lower-weighted DRGs would be sufficient to affect its case-mix index seriously. Moreover, there is no evidence that rural hospitals have less opportunity than urban hospitals to shift certain types of cases to outpatient settings. In fact, many rural referral centers have complained that our failure to modify the number of discharges standard in the September 3, 1985 final rule disadvantaged them precisely because they had responded to the prospective payment system by moving certain cases from inpatient to outpatient settings.

However, based on the many comments received regarding the high case-mix index standards that must be met to qualify for and to retain rural referral center status, we are revising both the methodology for establishing the standards and the period of time to which the standards apply. To meet the application criteria for cost reporting periods beginning during Federal FY 1987 (October 1, 1986 through September 30, 1987) and to meet the retention criteria for cost reporting periods beginning in Federal FY 1986, the hospital must have a case-mix index based on its discharges subject to prospective payment occurring *during Federal FY 1985* equal to or exceeding either the national or the applicable regional value shown below.

National	1.1275
Region	
1	1.0923
2	1.0982
3	1.1272
4	1.1224
5	1.0988
6	1.1642
7	1.0658
8	1.1904
9	1.1710

Rather than updating the national benchmark of 1.03 and the regional urban median values by the overall percentage increase in the Medicare case mix, we have established these standards by determining the actual median Medicare case-mix indexes of urban hospitals nationally and by census region for discharges occurring in Federal FY 1985. However, because the actual median urban case-mix index (1.1165) for Region 7 for Federal FY 1985 exceeded the benchmark that we published in the September 3, 1985 final rule (which at that time applied to discharges in Federal FY 1985), and because we are publishing these standards in this final rule without opportunity for prior public comment, we have used the lower case-mix index value published September 3, 1985 so as not to disadvantage hospitals in this region.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index compares to the criteria, we have published FY 1985 case-mix indexes in Table 3c of section IV of the addendum. In keeping with our policy on discharges, we have computed these case-mix indexes based on all Medicare discharges subject to DRG-based payment (that is, excluding Medicare patient discharges from excluded prospective payment system units). The resulting case-mix indexes are based on bills received in HCFA through June 1986.

We note that these case-mix indexes differ from those in the NPRM for the following reasons. These indexes are based on bills received in HCFA through June 1986 for discharges in Federal FY 1985, whereas those in the NPRM were based on bills received through March 1986 for discharges in Federal FY 1985. In addition, because the case-mix indexes in the NPRM were to be used in standardizing capital-related costs per case, they were calculated using the most current DRG classifications and weighting factors (that is, those in the September 3, 1985 final rule) in order to be as comparable as possible to the DRG classifications and weighting factors that would have been used to adjust the capital-related prospective payment rates. The case-mix indexes in Table 3c of section IV of the addendum are based on DRG classifications and weighting factors actually in effect during Federal FY 1985 (that is, those published in the August 31, 1984 final rule). In addition, the title of Table 3c in the NPRM inadvertently indicated that the case-mix indexes were computed on the basis of hospitals' cost reporting periods beginning in Federal FY 1985 rather than on the basis of discharges occurring in Federal FY 1985.

We are providing the chart below to clarify the application criteria.

Application Criteria

For rural referral center status effective with a hospital's cost reporting period begining during—	Case-Mix Index Standards
Federal FY 1985 (that is, 10/1/84–9/30/85).	(a) 1.03 for 1981; (b) 1.1053 for the hospital's first prospective payment cost reporting year; or (c) The applicable regional median urban case-mix index published in the August 31, 1984 final rule.
Federal FY 1986 (that is, 10/1/85–9/30/86).	For discharges occurring during Federal FY 1984 (10/1/83–9/30/84): (a) 1.1294; or (b) The applicable regional median urban case-mix index published in the September 3, 1985 final rule.
Federal FY 1987 (that is, 10/1/86–9/30/87).	For discharges occurring during Federal FY 1985 (10/1/84–9/30/85): (a) 1.1275; or (b) The applicable regional median urban case-mix index published in this final rule.
Federal FY 1988 (that is, 10/1/87–9/30/88).	For discharges occurring during Federal FY 1986 (10/1/85–9/30/86): (a) The national median urban case-mix index; or (b) The applicable regional median urban case-mix index To be published in the FY 1988 update notice.

The following chart elaborates on the case-mix index standards applicable to hospitals seeking to meet the retention criteria.

Retention Criteria

To meet the retention criteria for the hospital's cost reporting period beginning during—	Case-mix index standards
Federal FY 1985 (that is, 10/1/84–9/30/85).	For discharges occurring during Federal FY 1984 (10/1/83–9/30/84): (a) 1.1053; or (b) The applicable regional median urban case-mix index published in the August 31, 1984 final rule
Federal FY 1986 (that is, 10/1/85–9/30/86).	For discharges occurring during Federal FY 1985 (10/1/84–9/30/85): (a) 1.1275; or (b) The applicable regional median urban case-mix index published in thia final rule.
Federal FY 1987 (that is, 10/1/86–9/30/87).	For discharges occurring during Federal FY 1986 (10/1/85–9/30/86): (a) The national median urban case-mix index; or (b) The applicable regional median urban case-mix index to be published in the FY 1988 update notice.

Comment: A number of commenters believe that it is unfair to include teaching hospitals in the calculation of both the national and the regional case-mix indexes. They stated that the case-mix indexes of rural referral centers should be compared to the case-mix indexes of typical full service community hospitals. Because teaching hospitals often have high case-mix indexes, they believe that those hospitals unfairly distort the national and regional levels.

Response: We do not agree with the commenters' suggestions for a number of reasons. First, inclusion of teaching hospitals in the case-mix index calculations is not a change as one commenter stated. The case-mix indexes of all urban hospitals, teaching and nonteaching, were included in establishing the base year regional median urban case-mix index standards, and all hospitals were considered in establishing the base year national case-mix index standard. Second, the case-mix index benchmarks for application of rural referral center status were established each year based on the percentage of change from our base year standards in 1981. Thus, although teaching hospitals in general have higher than average case-mix indexes, they also had higher than average case-mix indexes in 1981 as well. That does not necessarily mean that teaching hospitals have contributed disproportionately to the increase in the Medicare case mix.

Furthermore, of the approximately 5800 Medicare-participating hospitals under the prospective payment system, about 1000, or more than 17 percent, are considered teaching hospitals. Since our data show that a similar proportion (15 percent) of rural referral centers are also teaching hospitals, we do not believe that it would be reasonable to discount the case-mix index values of teaching hospitals in establishing the case-mix index standards.

Finally, to the extent that the greater proportion of Medicare cases from urban hospitals contributes disproportionately to the percentage increase in the Medicare case mix, we believe that using the actual median urban case-mix indexes instead of updating the 1981 case-mix index standards by a percentage change overcomes that shortcoming.

Comment: Several commenters were confused as to the specific period to which the case-mix index standards applied.

Response: We want to reiterate that the case-mix index is computed based on the Federal fiscal year, not on the basis of the hospital's own cost reporting period. The Federal fiscal year runs from October 1 of each year until September 30 of the following year. Thus, Federal FY 1985 ran from October 1, 1984 through September 30, 1985. Federal FY 1986 runs from October 1, 1985 through September 1, 1986, etc. The chart on retention criteria shown above should help to clarify the periods of time to which each year's criteria apply.

Comment: One commenter suggested that we establish a minimum case-mix index equal to the lowest case-mix index benchmark in any of the nine regions.

Response: We cannot accept the commenter's suggestion. Section 1886(d)(5)(C)(i) of the Act requires a rural hospital to be classified as a rural referral center "by reason of certain of its operating characteristics being similar to those of a typical urban hospital located in the same region." Thus, we believe the statute requires that rural hospitals be evaluated for referral center status on the basis of their comparability to urban hospitals in the same census region.

Comment: One commenter suggested that the case-mix index standard be established based on the median case-mix index level of urban hospitals that have fewer than 100 beds.

Response: We disagree with the commenter's suggestion because we do not believe it would represent a valid measure of referral center status and it does not follow congressional intent. In establishing referral centers under Pub. L. 98–21, Congress described referral centers as "large" facilities that treat "patients who require an intensity of resources beyond the capabilities of general community hospitals," and "large technologically sophisticated hospitals." (129 *Cong. Rec.* S3224 (daily ed., March 17, 1983).) Section 2311(a) of Pub. L. 98–369 expanded section 1886(d)(5)(C)(i) of the Act to provide that a rural hospital may be classified as a rural referral center by demonstrating its similarity to a typical urban hospital in the same census region. As to the commenter's note that there are approximately 500 urban hospitals with fewer than 100 beds, we note that that number of urban hospitals, if correct, represents a small percentage of Medicare-participating hospitals under the prospective payment system. The commenter has not provided ample documentation to suggest that urban hospitals smaller than 100 beds typify urban hospitals, and therefore, we do not believe that revising the case-mix criteria as suggested would be appropriate.

Comment: One commenter believes that the urban and rural designations discriminate against rural hospitals and suggests that the distinction be eliminated. If this action is not feasible, the commenter urged that all hospitals located in rural counties adjacent to MSAs be designated as referral centers if their number of discharges equals the national or regional median number of discharges values. The commenter also suggested that all rural hospitals located in the same city or county as a Veterans' Administration Hospital be granted referral center status because they have to pay higher wages to their employees, regardless of whether the referral center criteria in § 412.96 are met.

Response: As we noted in the September 3, 1985 final rule (50 FR 35675) in response to a similar comment regarding urban and rural designations, Congress enacted provisions to pay hospitals as rural and urban, and we have no authority to eliminate these distinctions.

Section 1886(d)(5)(C)(i) of the Act further states that a rural referral center should demonstrate that its characteristics are "similar to those of a typical urban hospital located in the same census region." We believe that both case-mix index and volume of discharges are appropriate criteria for determining rural referral center status and represent the intent of Congress in enacting section 1886(d)(5)(C)(i) of the

Act. To apply the number of discharges criteria without applying the case-mix index criteria for hospitals located in counties adjacent to MSAs could result in some hospitals with low case-mix indexes being granted referral center status inappropriately. Likewise, to grant referral center status to all rural hospitals located in the same city or county as a Veterans' Administration Hospital would preclude application of criteria that we believe are appropriate for determining referral center status, without demonstrating that the affected hospitals are similar to typical urban hospitals in the region. We believe that the criteria we have established in § 412.96 represent a fair measure for identifying which hospitals serve as referral centers.

Comment: One commenter noted that one of its competitor hospitals, although comparable in all other ways except for a slightly higher case-mix index, receives the advantage of the rural referral center adjustment while his hospital does not. The commenter argues that the competing hospital, because of this advantage, is able to subsidize non-Medicare patients and questions why we pay higher rates to that other hospital when his hospital is providing the same care and treatment at lower rates.

Response: We recognize that such a situation does occur occasionally because one hospital narrowly misses one or more of the criteria to be a rural referral center, whereas a nearby hospital narrowly succeeds in meeting them. As we have stated previously, whenever numeric standards are established, this situation could arise. If we were to allow exceptions to these criteria, they would have to be limited to certain tolerances that, again, some hospitals could meet or fail to meet by a small margin.

In the instance cited by the commenter, because its competitor meets the case-mix criteria, as well as the other referral center criteria, we believe that the competing hospital is treating more complex cases, which sets it apart from the average rural community hospital. By meeting these criteria, the hospital is entitled to receive the referral center adjustment under section 1886(d)(5)(C)(i) of the Act.

In addition, in previous prospective payment rules (August 31, 1984 final rule (49 FR 34746), June 10, 1985 proposed rule (50 FR 24380), and September 3, 1985 final rule (50 FR 35678)), we discussed the retention criteria, and the fact that a hospital must meet the retention criteria in two out of three years in order to qualify for rural referral center status for three more years. Due to oversight, § 412.96(f) does not describe the two-out-of-three-year requirement. Therefore, we are making a technical conforming change to § 412.96(f) to provide this requirement.

The number of comments we received on rural referral centers indicates continuing and widespread concern over the referral center criteria. We wish to indicate that we are sensitive to the concerns on rural referral center issues and will continue in the future to evaluate the appropriateness of the criteria for qualifying for and retaining referral center status. In this process, we will be examining alternatives and studying the impact of various alternative criteria.

E. Changes to DRG Classifications and Weighting Factors

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case (comprised, during the transition period which ends October 1, 1987, of a hospital-specific portion and an urban or rural Federal portion adjusted for area wages) and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average resources consumed per case by the average hospital. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. In addition, Congress provided the Secretary with authority to reclassify services and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments are made to reflect changes in resource consumption, treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress was that we would make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology. The DRG reclassifications for discharges occurring on or after October 1, 1986 are set forth below.

The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. The intermediary enters medical and other information contained in each patient's bill into its claims system and subjects it to a series of automated screens called the Medicare Code Editor. These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the Medicare Code Editor and any further development of the claims, cases are classified by GROUPER into the appropriate DRG. The GROUPER software program was developed as a means of classifying each case into the appropriate DRG on the basis of the diagnoses and procedure codes and demographic information, that is, age, sex, and discharge status. It is used both to classify past cases in order to establish the DRG weights and to classify current cases for payment.

During the initial operating period of the prospective payment system, we learned that the use of the DRG method of classification posed some operational challenges that we needed to address further. We issued a notice on March 13, 1986 (51 FR 8762) to propose a number of improvements to the DRG classification system and finalized the proposal in a June 3, 1986 final notice (51 FR 20192). We are reflecting those changes in a revised GROUPER program to be effective with discharges occurring on or after October 1, 1986. A summary of the revisions to the GROUPER program is provided in Table 6 of section IV of the addendum. A detailed description of the DRG classification system and definitions of each DRG may be obtained by writing to—

Health Systems International, 100 Broadway, New Haven, Connecticut 06511.

Although we originally intended to limit modifications of the DRG classification system to a single annual notice, we have found that, at least for this year, such a practice is not appropriate. In response to the public's request, we proposed DRG changes early in the calendar year (March 13, 1986). However, ProPAC has made several recommendations concerning additional DRG classification changes. These recommendations were not presented until after publication of our proposed changes. Some of ProPAC's

recommendations have merit and represent analysis of data that were not available to us or problems that were not raised to us. We do not believe it is appropriate to delay recognition of ProPAC's suggested changes on DRG classification issues until our next annual publication of classification changes simply because its report was made subsequent to our proposed changes. To do so would unnecessarily delay implementation of improvements to the system. Consequently, we are revising the reference to an annual notice in § 412.10(a), and are publishing a second notice of DRG classification changes that are included in this document.

We continue to believe it would be most beneficial to the industry to strive toward a single annual notice of DRG changes. We also believe it is appropriate to propose such changes prior to the proposed rule on prospective payment system changes required each June. We will attempt to work with ProPAC more closely in the future with a goal of better coordinating our efforts in this area so that we may eventually achieve a single annual notice of DRG classification changes.

Comment: One commenter expressed disappointment that the NPRM made no provisions for adjusting the prospective payments to account for severity of illness. The commenter encouraged the development of a severity measure for DRGs that explicity addresses variation in the nursing component of hospital care.

Response: We are continuing to study and evaluate the issue of refining DRGs to account for severity of illness. We point out that this is an extremely complex and involved issue that cannot be implemented without careful assessment. In this regard, we note that the implementation of any severity measure is likely to redistribute substantial amounts of program funds from small less sophisticated hospitals to larger teaching facilities. Consequently, the evaluation of such a mechanism must be considered in conjunction with all aspects of the prospective payment system, especially payments for indirect medical education costs.

Comment: Several commenters recommended that an additional payment be made to hospitals treating end stage renal disease (ESRD) patients requiring dialysis services. The commenters believe such payment should equal 80 percent of the outpatient dialysis rate.

Response: We note that § 412.104(b) provides for an additional payment to hospitals with a high percentage of ESRD discharges. We believe this provision adequately accounts for the additional costs incurred by these facilities.

Comment: One commenter objected to the classification of cases involving retransplant of kidneys to DRG 468. The commenter also noted that if a biopsy of the donated kidney was performed, which is common practice in the facility where she is employed, the case was then classified into DRG 442 or 443 which even further reduced payment.

Response: As was pointed out in previous **Federal Register** documents concerning this issue, the classification of retransplant cases is related to a deficiency in ICD–9–CM diagnosis coding. We have referred this issue to the ICD–9–CM Coordination and Maintenance Committee for consideration. Additional comments encouraging the adoption of refinements to the complications of transplanted organ code (996.8) should be forwarded to Ms. Sue Meads, Co-chairperson of the ICD–9–CM Coordination and Maintenance Committee, National Center for Health Statistics, Room 2–19 Center Building, 3700 East-West Highway, Hyattsville, Maryland, 20782.

With regard to the coding of a biopsy on the donor kidney, we note that any procedures performed on an organ donated for transplant should not be coded on the Medicare claim of the beneficiary. Only procedures performed on the beneficiary are to be reported on the claim form. Appropriate coding of such cases will result in assignment to DRG 468 as intended. A separate payment is made with respect to the costs of services to the donor (see §§ 409.18 and 412.100).

1. *DRG Logic Issues—DRG 385*

We have been advised that it is common practice in hospitals to report the discharge status of a newborn discharged to foster care as "transfer-other". The GROUPER program assigns all newborns to a distinct DRG (DRG 385) if the discharge status is reported as "died or transferred," regardless of the type of transfer cited.

The intent of DRG 385 is to establish a unique classification for acutely ill newborns. We do not believe it is appropriate to use this classification for normal newborns simply because they are discharged to foster care. Consequently, we are revising the GROUPER logic for DRG 385 so that only cases with reported discharge status of died or transferred to an acute care hospital will be classified to this DRG, as was originally intended. All other discharges for newborns are classified into the appropriate DRGs (DRGs 386–391) within MDC 15 based on their diagnosis and procedure codes. Since this is a low volume procedure for Medicare purposes, this classification change will not result in a change in the DRG weighting factor, but would only affect future classification of cases to this DRG.

Comment: One commenter objected to our proposal to limit DRG 385 to newborns who died or were transferred to an acute care hospital. The commenter believes that DRG 385 should be assigned when the newborn is transferred to a skilled nursing or intermediate care facility, home health care or foster care as such cases are likely to consume additional resources.

Response: DRG 385 is intended to include only those cases in which a newborn is so acutely ill that the infant either cannot be treated in a community hospital setting or does not survive. Newborns who are discharged alive, whether to a lower level of care facility, home health care, home, or to foster care, are appropriately classified to other DRGs within MDC 15. We point out that it is very rare for a newborn to be transferred to a skilled nursing facility (SNF). However, regardless of the age of the beneficiary, transfer to SNFs are considered as discharges for prospective payment purposes. We note that in most cases newborns that require skilled nursing care after discharge are not classified as normal newborns. Further, such infants are not currently classified into DRG 385 as these cases are considered discharges rather than transfers.

As the commenter pointed out, the UB–82 discharge status code of "transfer—other" is not intended to include foster care. Nonetheless, we have been advised that this code is frequently used in these situations. We believe it is appropriate to revise the DRG classification system to eliminate this unintended misclassification of such cases.

Comment: One commenter questioned the appropriateness of having all newborn transfers classified into the same DRG, citing the differences in resources associated with transfers of acutely ill infants to a referral center and transfers from a referral center to a community hospital just to gain weight.

Response: We agree that there may be significant differences in resources between the two types of transfers cited. However, we do not believe it is administratively feasible to alter the DRG configurations to address this issue as the Medicare billing form does not differentiate among transfers by reason

of transfer or type of hospital receiving the transfer. Further, we do not believe the transfer of an infant to a community hospital for purposes of gaining weight occurs frequently enough to warrant such a distinction. Therefore, we believe it is appropriate to group together into one DRG all cases of newborns who died or were transferred to another acute-care hospital.

2. *Burns*

Throughout the past year we have received numerous letters advising us of problems with the classification of burn cases. ProPAC also has studied this issue, although it did not make a formal recommendation on this matter. (See Technical Appendixes to ProPAC's April 1, 1986 Report to the Secretary, pages 124–133.)

There appear to be numerous factors contributing to the high heterogeneity of the burn DRGs, and we agree with ProPAC that additional evaluation of MDC 22 (Burns) is necessary. However, we have found that significant improvement in the homogeneity of DRG 457, Extensive burns, can be achieved by further classifying extensive burn cases based on operating room procedures. Consequently, we proposed establishing a new DRG for MDC 22. We are creating DRG 472, Extensive burns with burn-related operating room (O.R.) procedure, that would include cases with a principal or secondary diagnosis of extensive burns (those currently classified in DRG 457) and any of the operating room procedures currently classified in DRGs 458, Non-extensive burns with skin grafts, and 459, Non-extensive burns with wound debridement and other operating room procedure. DRG 457 is modified to specify that this classification includes extensive burns without these operating room procedures.

Comment: Two commenters expressed support for our proposed reclassification of extensive burn patients. These commenters encouraged similar treatment of other unspecified like areas in the future.

Response: We appreciate support on our reclassification of extensive burn patients. We point out, however, that each reclassification request is evaluated individually and in conjunction with its impact on the entire DRG structure. Commenters noting other areas potentially in need of reclassification must provide specific information as to the issues in question.

Comment: Two other commenters approved of the reclassification of extensive burn cases but did not believe the revision adequately addressed the problems in MDC 22. Both commenters noted the continued heterogeneity of the DRGs and the alleged inadequacy of outlier payments. They recommended that burn centers be paid in a different fashion from other acute care hospitals treating burn patients.

Response: We acknowledge that further refinements may be necessary in MDC 22. We will continue to study this issue and welcome specific suggestions in this regard. However, we do not believe it is appropriate to establish a separate payment mechanism for burn centers at this time. Such a recommendation requires detailed consideration of numerous aspects, such as criteria for qualification, operational modifications, and impact on the DRG structure, which cannot be made swiftly. If we find further changes in this MDC are necessary, they will be proposed in a future DRG classification notice.

Comment: Two other commenters recommended that procedure code 8699 (other operations on skin and subcutaneous tissue, not otherwise specified) be considered as an operating room procedure in DRGs 458, 459 and 472.

Response: We have previously responded to the issue of including this procedure as an operating room procedure in both the March 13, 1986 proposed notice (51 FR 8774) and June 3, 1986 final notice (51 FR 20199). As we noted in those documents, there is a wide variety of procedures coded as 8699, many of which do not require an operating room. We are currently considering a mechanism that would permit more precise identification of procedures coded under a single ICD–9–CM rubric. Development of such a mechanism may permit future classification changes to address this concern.

3. *Surgical Hierarchy*

Review of claims data and DRG relative weighting factors for DRGs has led us to conclude that revision of the surgical hierarchy of several MDCs is necessary. For the most part, the present hierarchy is based on clinical judgment and aged resource data. We have found that in some cases, the present hierarchy results in classification of cases with multiple surgical procedures to lower weighted DRGs because a less resource-intensive procedure is higher up in the hierarchy than another more resource-intensive procedure. Changes in practice patterns and technology have occurred since the surgical hierarchy was developed. The recalibration of the DRGs using FY 1984 claims data indicates current resource utilization for certain classes of surgical procedures is somewhat different from what was common when the surgical hierarchy was developed.

We believe that cases showing multiple surgical procedures should be classified into the DRG that coincides with the most resource intensive procedure performed. Therefore, we proposed reordering the surgical hierarchy for MDCs 2, 3, 5, 6, 7, and 21 as set forth below:

MDC 2—Extraocular Procedures Except Orbit are placed above Primary Iris Procedures.

MDC 3—Cleft Lip and Palate Repair, and Sinus and Mastoid Procedures (in that order) are placed above Salivary Gland Procedures Except Sialoadenectomy.

MDC 5—Permanent Cardiac Pacemaker Implantation is placed above Vascular Procedures.

MDC 6—Mouth procedures are placed above Anal and Stomal Procedures.

MDC 7—Diagnostic Procedures are placed above Biliary Tract.

MDC 21—Wound Debridements are placed above Skin Grafts.

The reclassifications affect the weights of the DRGs from which and to which cases are being moved. In the NPRM we estimated the revised weights wherever possible and reflected those estimated weights in that document.

However, because changes in the surgical hierarchy alter the order in which the GROUPER searches for surgical procedures upon which to base DRG assignments, the effects of the surgical hierarchy changes could not be estimated, as the GROUPER must be entirely reprogrammed to incorporate the hierarchy changes. Since we proposed the hierarchy changes based on the fact that the current relative weights for DRGs in certain sections of the hierarchy are greater than the relative weights for DRGs higher up in the surgical hierarchy, we anticipated that the surgical hierarchy changes should yield more homogeneous DRGs where multiple procedures are involved. The following table lists the DRGs whose weights are affected by the surgical hierarchy changes in each MDC:

MDC 2—DRGs 38, 40 and 41
MDC 3—DRGs 51, 52, 53 and 54
MDC 5—DRGs 108, 110, 111, 112, 113, 114, 115 and 116
MDC 6—DRGs 157, 158, 168 and 169
MDC 7—DRGs 193, 194, 195, 196, 197, 198, 199 and 200
MDC 21—DRGs 439 and 440

The revised GROUPER permits us to re-group Medicare cases from the FY 1984 Part A Tape Bill (PATBILL) file in accordance with the manner in which they would be grouped for payment

purposes beginning October 1, 1986. Once we revised the GROUPER program, we were able to evaluate the impact of our proposed changes. In nearly every instance, we found that the revisions produced results consistent with our expectations. That is, there was minimal movement of cases with only slight adjustments to the weighting factors. However, in proposing the change in the surgical hierarchy for MDC 7, we had not anticipated the significant number of cases involving both diagnostic and therapeutic biliary tract procedures. The proposed revision of the surgical hierarchy for MDC 7 would have resulted in an increase of over 43,000 cases being assigned to DRG 200 from the biliary tract procedure DRGs resulting in significant differences in the weighting factors for all DRGs affected.

The movement of this large volume of cases, in and of itself, would not be sufficient reason to curtail our proposed revision of the surgical hierarchy. However, upon analysis of the data in question, we became aware that the proposed change to MDC 7 resulted in DRGs which, when weighted for frequency, were less homogenous than the current DRG configurations. Further, the movement of a large volume of less costly cases involving both therapeutic and diagnostic procedures into DRGs 199 and 200 reduced the average charge for these DRGs. Thus, the proposed revision would result in the anomalous situation of assigning such multiple procedures to lower-weighted DRGs for diagnostic procedures. Consequently, we are not implementing our proposed revision of the surgical hierarchy change in MDC 7. That is, for FY 1987, biliary tract procedures will remain ordered above diagnostic procedures in the surgical hierarchy for MDC 7, as they are in the current GROUPER.

As mentioned above, all other proposed surgical hierarchy changes result in more appropriate DRG assignments of cases involving multiple procedures than does the current GROUPER. Accordingly, we are reweighting the DRGs in the final rule so as to ensure that the reclassifications adopted result in neither increases nor decreases in aggregate Medicare payments. Reweighting is distinguished from recalibration in that it involves use of the same data base as was used for the weights currently in place, whereas recalibration entails the use of a different, more recent data base. Because reweighting is otherwise identical to recalibration, we noted that the weights for DRGs in which no reclassification is made may be affected slightly.

Additional information pertaining to these changes may be obtained by writing to the following address:

HCFA, GROUPER CHANGES
P.O. Box 26681
Baltimore, Maryland 21207

Comment: One commenter questioned why the surgical hierarchy changes were not included with the hierarchy changes adopted in the September 3, 1985 final rule for FY 1986.

Response: We had proposed to alter the surgical hierarchy in MDCs 2, 3, 5, 6, 7, and 21 after reviewing the FY 1986 recalibrated weights and noted that some procedure groups that were ordered lower in the surgical hierarchy were more resource intensive than other procedure groups that were ordered higher in the hierarchy.

Failure to propose these changes at the time of proposing recalibration was due to the limited amount of time available between having the recalibration results available and publication of the June 10, 1985 proposed rule, as well as uncertainty of recalibration results published in the proposed rule. (The FY 1984 data base was incomplete at the time of publishing the proposed rules for FY 1986.) We do not believe this oversight in adjusting the surgical hierarchy at the time of recalibration in any way negates the necessity of making these changes once we have final recalibration results and sufficient time to evaluate the relative resource intensity of procedure groups using current data.

We point out that only claims showing multiple procedures from different parts of the surgical hierarchy in the same MDC are affected by the surgical hierarchy changes. Since such situations occur relatively infrequently, we expect only minimal changes in DRG weighting factors as a result of the change. However, we believe it is only equitable to allow claims involving multiple procedures to be classified to the higher weighted DRG.

Comment: One commenter questioned how the revised surgical hierarchy for MDC 5 affects DRG 108.

Response: The revision of the surgical hierarchy for MDC 5 would generally order implantation of permanent cardiac pacemaker systems above vascular procedures and amputations. DRG 108 includes both cardiovascular procedures and cardiothoracic procedures involving extracorporeal circulation. We believe that the use of extracorporeal circulation is more influential as an indication of resource intensity in these cases than the individual procedure performed. Consequently, we are not altering the surgical hierarchy of vascular procedures involving extracorporeal circulation. Only the vascular procedure DRGs performed without a heart pump (DRGs 110, 111, and 112) and amputations (DRGs 113 and 114) are affected by this revision of the hierarchy.

We are revising the titles of DRGs 108 and 109 slightly to clarify the composition of these DRGs. DRG 108 will now be titled "Other Cardiothoracic or Vascular Procedure with Pump." DRG 109 will be titled "Other Cardiothoracic Procedures without Pump." We believe this change more accurately describes the composition of these DRGs.

Comment: One commenter noted that changes in the surgical hierarchy had not been made to MDC 8. Given the classification changes proposed for this MDC, he believes surgical hierarchy changes are necessary to group cases with multiple procedures appropriately.

Response: We agree that changes in the surgical hierarchy of MDC 8 are necessary. Upon review of the weighting factors of the DRGs in this MDC, including the revisions to the upper extremity and hand DRGs (DRGs 223, 224, 228, and 229), we are revising the surgical hierarchy as follows:

- Bilateral or multiple major joint procedures of the lower extremity.
- Major joint and limb reattachment procedures of the lower extremity.
- Hip and femur procedures except major joint.
- Wound debridement and skin graft except hand.
- Amputations.
- Back and neck procedures.
- Biopsies.
- Lower extremity and humerus procedures except hip, foot and femur.
- Upper extremity procedures except humerus and hand.
- Local excision and removal of internal fixation devices.
- Knee procedures.
- Soft tissue procedures.
- Hand procedures.
- Arthroscopy.
- Foot procedures.
- Other musculoskeletal system and connective tissue O.R. procedures.

This revision is consistent with the hierarchy revisions proposed for other MDCs in that the GROUPER will assign cases involving multiple procedures to the DRG involving the most resource-intensive procedure. For example, a case involving both a foot procedure and a soft tissue procedure would be grouped to DRG 226 or 227, involving soft tissue procedures, instead of to DRG 225 (foot procedures), as is currently the case.

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Based on FY 1984 PATBILL data, soft tissue procedures are more resource-intensive than foot procedures.

4. *ProPAC Recommendations and Our Responses on DRG Classifications and Weighting Factors*

a. Improving the Measurement of Hospital Case Mix (Recommendation No. 20)

Recommendation—ProPAC believes that the DRG system is currently the most appropriate of the available measures of hospital case mix for the Medicare prospective payment system and should be retained in principle as the system upon which to base Medicare payments to hospitals. Resource use varies considerably, however, within some DRGs. Therefore, ProPAC intends to continue its analysis of individual DRGs and to undertake a systematic evaluation of the entire system. The goal is to identify potential problems in DRG construction and classification and recommend changes that will improve the homogeneity within DRGs and the equity of payment across hospitals.

Response in the NPRM—We indicated our agreement with ProPAC's assessment of the DRG system and support its evaluation efforts. We anticipate the evaluation of the DRG system to be an ongoing process. To improve DRG assignment criteria and refine the grouping methodology in order to obtain more clinically homogeneous categories with less variance in inpatient resource consumption, we modified the DRG classifications in the September 3, 1985 final rule (50 FR 35647) and made further modifications in the June 3, 1986 final notice (51 FR 20192).

We received no comments on this provision.

b. Process for Maintaining and Updating the ICD–9–CM (Recommendation No. 21)

Recommendation—ProPAC recommended that the Secretary should establish a mechanism for maintaining and updating ICD–9–CM diagnosis and procedure codes in a timely and effective manner. This process should include adequate educational support for all users.

Response in the NPRM—We noted that the ICD–9–CM Coordination and Maintenance Committee had already been established for the purpose of maintaining and updating the ICD–9–CM codes. The Committee is comprised entirely of representatives of Federal agencies with an interest in ICD–9–CM coding and its modification, updating, and use for Federal programs. The Committee is co-chaired by staff from HCFA and the National Center for Health Statistics.

As was previously stated in the March 13, 1986 proposed notice (51 FR 8776) concerning DRG classification changes, new ICD–9–CM codes adopted by July 1 of each year by this Committee would be accommodated by the GROUPER program, without DRG classification changes, at the beginning of the next Federal fiscal year. When the NPRM was issued, the ICD–9–CM Coordination and Maintenance Committee, had approved new procedure codes in nine areas. The Committee held its spring meeting on May 21 and 22, 1986. New ICD–9–CM codes were being considered to identify the following:

Parenteral and Enteral Nutrition
HTLV–3/LAV Infections
Pacemaker Technology
Gastric Endoscopic Balloon Procedures
Percutaneous Balloon Valvoplasty
Lasers
Ureterscopy and Pyeloscopy
Percutaneous Angioscopy
Endoscopic and Percutaneous Procedures on the Biliary Tract
Percutaneous Embolization
Rectosigmoid Resection

The June 3, 1986 final notice of changes to the DRG classification system (51 FR 20201) contained a listing of new ICD–9–CM codes that had been approved by that date. The rubric assigned to implantation of artificial urinary sphincter in that publication contained a typographical error. The correct rubric is 58.93.

Subsequent to publication of the June 3, 1986 final notice, the following new procedure codes have been approved for use effective October 1, 1986.

Parenteral and enteral nutrition

96.6 Enteral infusion of concentrated nutritional substances
99.15 Parenteral infusion of concentrated nutritional substances

Percutaneous valvuloplasty

35.96 Percutaneous valvuloplasty

Percutaneous angioscopy

38.22 Percutaneous angioscopy

Gastric procedures

44.21 Dilation of pylorus by incision
44.22 Endoscopic dilation of pylorus
44.29 Other pyloroplasty
44.93 Insertion of gastric bubble
44.94 Removal of gastric bubble

Biliary tract procedures

51.97 Therapeutic Endoscopic procedures on biliary tract, oral route
51.98 Other percutaneous procedures on the biliary tract

Debridement of nail

86.27 Debridement of nail

In addition, the following new diagnosis codes have been approved for use effective October 1, 1986.

042.0 HTLV–111/LAV infection with specified infections
042.1 HTLV–111/LAV infection causing other specified infections
042.2 HTLV–111/LAV infection with specified malignant neoplasms
042.9 Acquired immunodeficiency syndrome with or without other conditions
043.0 HTLV–111/LAV infection causing lymphadenopathy
043.1 HTLV–111/LAV infection causing specified diseases of the central nervous system
043.2 HTLV–111/LAV infection causing other disorders involving the immune mechanism
043.3 HTLV–111/LAV infection causing other specified conditions
043.9 Acquired immunodeficiency syndrome-related complex with or without other conditions
044.0 HTLV–111/LAV infection with specified acute infections
044.9 HTLV–111/LAV infection not otherwise specified
795.8 Positive serological or viral culture findings for HTLV–111/LAV

Errata and other coding documentation (excludes notes, includes notes) will be published separately.

Comment: Many commenters objected to the fact that the American Hospital Association (AHA) and the American Medical Record Association (AMRA) are not members of the ICD–9–CM Coordination and Maintenance Committee. Numerous other organizations, such as the American Medical Association and the Health Insurance Association of America, were mentioned as organizations that should be included for membership in the Committee.

Response: The ICD–9–CM currently in use has not been updated since March, 1980. Medical technologies are rapidly evolving, but the ICD–9–CM procedure codes have not been revised to adequately capture this technology. Given the urgent need to update the ICD–9–CM codes, it was necessary to establish a mechanism to fulfill this requirement quickly.

In order to set into place quickly the necessary mechanism to update the ICD–9–CM coding system, we decided to establish a committee comprised of Federal members only. However, based

on comments, we are reconsidering our position concerning public members on the Committee. Currently, the Department of Defense and the Veterans Administration have nonvoting members on the Committee. We anticipate that public members would be included in the same capacity. In the meantime, the opinions of the public will continue to be solicited mainly through their participation in the Committee's open meetings, and carefully considered by the Committee in formulating decisions related to its mission.

Comment: Several commenters questioned the educational background of the members of the Committee, noting that it is essential that they have formal coding training.

Response: When the ICD–9–CM Coordination and Maintenance Committee was initially established, each participating agency designated personnel to be members. Some agencies believed it was important to designate management personnel to the Committee to assure the involvement of high level staff as the decision makers. Once it became clear that the work of the Committee is technical in nature, these nontechnical staff were replaced. Current members of the Committee are predominantly registered record administrators and accredited record technicians who are members of the AMRA. (Recommendations on the Committee must be approved by the Administrator of HCFA and the Director of the National Center for Health Statistics.)

Comment: One commenter questioned how coding errata material would be disseminated to hospital coders.

Response: Coding actions recommended by the Committee and approved by the co-chair agency heads by July 1 of each year will become effective October 1 of that year. During this 3-month period, members of the Committee and agency support staff will be preparing material for appropriate dissemination of the decisions. Hospital medical record departments may purchase the annual publication of the coding decisions through the Government Printing Office. This year's publication may be obtained by writing to Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, requesting New/Modified ICD–9–CM Procedure Codes and Alphabetic Index.

We have made arrangements for both the AHA *Coding Clinic for ICD–9–CM* and the September issue of the *Journal of the American Medical Record Association* to provide information on the coding decisions. We have also used the HCFA instructional issuance system to notify our contractors, PROs, and participating hospitals of the coding decisions. Finally, we have published a notice of new codes (August 29, 1986) as well as including new codes in the prospective payment notices. We believe that these avenues of dissemination should assure the ready availability of appropriate coding and instructional material to hospital coding personnel.

Comment: One commenter believes that the ICD–9–CM Coordination and Maintenance Committee cannot be an effective mechanism to address coding issues because the Committee is not adequately staffed, it meets only three times a year, and it is slow to respond to changing technology.

Response: We believe that the creation of the ICD–9–CM Coordination and Maintenance Committee was a significant advance in the improvement of the classification system. Although it has been only in effect since September 1985, the Committee has made major revisions to both the procedure and diagnosis sections. These revisions were incorporated into the FY 1987 GROUPER program. Using both government and industry channels, we were able to disseminate this information on a widespread basis. We believe that the Committee has been and continues to be very responsive to the issues identified by the public. In addition, we welcome suggestions for future revisions to the procedures and diagnosis sections at our upcoming meetings.

Although the commenter suggested that the Committee is slow to respond to changing technology, it should be noted that the Committee accomplished the first major revision of the ICD–9–CM since its publication in 1979, and that this revision was completed within its first year of existence.

The Committee includes representatives from member agencies who lead discussions on topics at the public meetings. However, much additional staff work is involved in preparation for the Committee meetings and in translating coding revisions into tabular and indexing modifications. We obtained the assistance of AMRA and AHA in developing the final tabular and indexing modifications to ensure that they would be useful and easily understood by coders.

One of the goals of the Committee is to eliminate inconsistently applied codes by issuing clear and precise instructions as to how new technologies should be coded. Previously, various hospitals chose different codes that they believed most clearly described a technology. The Committee provides a recognized means for consistently coding new technology.

We believe that the significant amount of staff work involved in meeting preparation and completion of coding revisions precludes the Committee from meeting more than three times per year. However, we will evaluate the need for the Committee to meet more frequently.

As one of the co-chairs of the Committee, HCFA is striving to improve the functioning of the Committee and to respond more rapidly to the needs of the coding community. In this regard, the public is encouraged to advise the Committee of potential problems and issues to be addressed. Agenda items should be submitted to Ms. Patricia Brooks, RRA, Health Care Financing Administration, Bureau of Data Management and Strategy, Room G–A–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Submittals must include sufficient background information to show the need for Committee action, as well as a proposed solution (specific proposed modification of the ICD–9–CM tabular and index). The cooperation of the public in expeditiously advising the Committee of potential problems will significantly increase the Committee's ability to respond to coding needs.

Comment: Numerous commenters requested clarification of the specific procedures and processes that the Committee follows.

Response: The ICD–9–CM Coordination and Maintenance Committee was chartered in the summer of 1985 and held its first meeting in September, 1985. This initial meeting served as an organizational meeting designed to advise attendees of the need, function and process of the Committee.

In accordance with its charter, the function of the Committee is to—

—Develop errata and/or addenda of the ICD–9–CM to reflect new procedures and technologies, and newly identified diseases and to resolve coding problems; and

—Promote the use of Federal and non-Federal educational programs and other communications aimed toward standardizing coding applications and upgrading the quality of coded medical data.

Although membership of the Committee is currently limited to representatives from Federal agencies who actively use the ICD–9–CM in their programs (the Public Health Service, HCFA, the Veterans Administration and the Department of Defense), meetings of the

Committee are open to the public and the public is invited to participate in the process through submission of agenda items and active participation in the public meetings. We have requested that agenda items be submitted for consideration at least two months prior to the scheduled meeting. At least one month prior to each meeting, an announcement of the meeting date, time, and place is made in the **Federal Register**. In addition, a mailing list of interested parties is maintained so that copies of the meeting announcements may be individually forwarded.

Each agenda item is fully discussed at the public meetings where all attendees are encouraged to share their knowledge and opinions. The Committee formulates recommendations after considering the public discussions. However, the Committee's role is advisory. Final decisions are jointly made by the Director of the National Center for Health Statistics and the Administrator of HCFA. Once a decision is made, coding materials, such as appropriate "includes" and "excludes" notes for the ICD–9–CM tabular listings and indexing revisions, are prepared and published for use with a common effective date. In order to accommodate new codes into the DRG classification system, these new codes will generally become effective October 1 of the year in which the final decision is made.

Comment: Several commenters requested clarification of the relationship between the ICD–9–CM Coordination and Maintenance Committee and the AHA Central Office concerning ICD–9–CM.

Response: There is no formal relationship between the AHA Central Office on ICD–9–CM and the Committee. On an informal basis, representatives of the AHA have actively participated in the Committee's public meetings and in the preparation of materials disseminated by the Committee. The experience and expertise shared by the AHA in these efforts are valued and appreciated by the Committee. However, AHA remains a private organization and operates independently of the ICD–9–CM Coordination and Maintenance Committee.

c. Process for Interpretation and Assignment of Existing Codes (Recommendation No. 22)

Recommendation—The Secretary should ensure that interpretation and assignment of existing ICD–9–CM diagnosis and procedure codes for payment purposes strictly adhere to coding rules and guidelines. In order to maintain the integrity and uniformity of the coding system while allowing flexibility for payment purposes, the process for interpretation and assignment of existing ICD–9–CM codes should be assigned to one authorized group.

Response in the NPRM—We referred to ProPAC's acknowledgment that there are a number of organizations currently disseminating conflicting coding advice. We consider the ICD–9–CM Coordination and Maintenance Committee as the single group officially authorized to interpret, clarify, and update the ICD–9–CM system. This is performed by evaluating on a continuing basis the need to assign new codes to more fully describe new technologies. It also involves modifying the alphabetical index so that coders are able to apply more consistently codes for diagnoses and procedures. The Committee will also be involved with educational activities to ensure consistent and correct coding.

Coding guidelines are clarified through unanimous agreement by the cooperating members of the ICD–9–CM Coding Clinic (HCFA, National Center for Health Statistics, AMRA, and AHA). We recognize the importance of the input from the coding industry for clearly stating coding guidelines. The industry input frequently generates the need for modifying the ICD–9–CM, which, in turn, the IDC–9–CM Coordination and Maintenance Committee considers and makes changes, as appropriate, to the ICD–9–CM procedure and diagnosis codes.

Like ProPAC, we recognize the necessity of curtailing the dissemination of inaccurate and conflicting coding advice. Under contract to HCFA, the PROs are responsible for verifying the accuracy of ICD–9–CM codes reported on Medicare bills. The PROs continue to review a sample of claims, correct coding errors, and make educational contacts with appropriate hospital staff when problems are identified. We have established a procedure whereby PROs can direct coding questions to HCFA staff members of the ICD–9–CM Coordination and Maintenance Committee. In addition, we stated in the NPRM that we now require PROs to have a trained coding person on staff and that we intend to increase coding instructional material disseminated to the PROs from HCFA. We reiterate here that we believe we are taking the action necessary to encourage consistent application of ICD–9–CM, but that there is little we can do about the dissemination of inaccurate or inconsistent instructions from private sources.

Comment: One commenter inquired as to who is the appropriate source for coding advice when encountering unusual or unfamiliar medical terminology.

Response: We recommend that hospital medical record personnel contact their PRO for coding advice, particularly with regard to coding of Medicare claims. Under contract to HCFA, the PROs are responsible for verifying the accuracy of ICD–9–CM codes on reported Medicare bills. Furthermore, we have established a process for PROs to direct their coding questions to staff members of the ICD–9–CM Coordination and Maintenance Committee.

There are other generally recognized sources of coding advice available to the coding community, such as through the AMRA and AHA. However, if the issue in question has not previously been addressed by the cooperating parties to the Coding Clinic for ICD–9–CM Advisory Board or the ICD–9–CM Coordination and Maintenance Committee, PROs may reach a different conclusion from other private sources upon review of a Medicare claim. Therefore, hospitals may want to verify with their PRO coding information for Medicare claims obtained from an outside source.

d. Interim Mechanism for Coding Problems (Recommendation No. 23)

Recommendation—The Secretary should establish an interim mechanism to allow early identification of new technologies, procedures and diagnoses and more appropriate DRG assignment when ICD–9–CM codes cannot be updated in a timely manner.

Response in the NPRM—We support ProPAC's recommendation for a refinement to the ICD–9–CM codes to permit more rapid identification of new technologies and are currently considering alternatives for implementing such a mechanism. In the NPRM, we particularly solicited comments and suggestions on how best to adapt the Medicare claims processing system to assure more rapid availability of data on new and changing technologies. There were no comments received on this recommendation and our response.

e. Reclassification of Pacemaker Cases Based on Type of Device (Recommendation No. 25)

Recommendation—Prior to recalibration, the DRGs involving implantation of cardiac pacemakers (currently DRGs 115 through 118) should each be restructured into two DRGs, one

for cases involving dual-chamber or functionally similar pacemakers, and one for cases receiving other single-chamber pacemakers. New ICD–9–CM procedure codes should be created to distinguish between these types of cases. A mechanism should be established to evaluate the appropriateness of all implants involving dual-chamber or functionally similar pacemakers. In the initial year of this new classification, the weights for all pacemaker DRGs should be calculated using charge data from the Part A tape bills (PATBILL) file and data on cost differences between pacemaker types.

Response in the NPRM—We gave our reasons for disagreeing with this recommendation. First, DRGs 115 through 118 cover a wide spectrum of pacemaker procedures ranging from the initial implantation of a pacemaker system where there is acute myocardial infarction, heart failure or shock, through the replacement of an electrode. We do not believe that restructuring all of these DRGs into two classifications based on the type of pacemaker implanted would be appropriate. Cases involving implantation of a permanent pacemaker system, whether the initial implantation or a replacement, should be grouped into either DRG 115 or 116. These are the only DRGs that should reflect any differences due to the distinction in the cost of the two devices. If we propose changes on this basis in pacemaker cases at a future date, our changes would be limited to DRGs 115 and 116. At this time, however, there is no method available on our records for distinguishing between the two types of devices, and therefore, we do not have a method of establishing different DRGs for single and dual-chamber pacemakers.

As the coverage guidelines below indicate, if the use of a dual chamber pacemaker is not appropriate, we do not cover it. With respect to ProPAC's concerns on the appropriate use of dual-chamber pacemakers, we noted that we issued revised guidelines, effective on May 9, 1985, which clarify our coverage policies on dual-chamber pacemakers (Section 65–6 of the Coverage Issues Manual (HCFA–Pub. 6), formerly the Coverage Issues Appendix of the Part A Intermediary Manual). We believe these policies respond to ProPAC's concerns.

A change in ICD–9–CM coding would be the first step in any evaluation of pacemaker reclassification. This would allow for the collection of data for evaluation purposes and to propose changes, as appropriate.

f. Reclassification of Pacemaker Replacement Cases (Recommendation No. 26)

Recommendation—Prior to recalibration, the cases involving replacement of a permanent cardiac pacemaker, except those with myocardial infarction, congestive heart failure or shock, should be reassigned to DRGs that include only pacemaker replacements.

Response in the NPRM—We disagreed with ProPAC's recommendation because we believe the inconsistencies of DRG assignment for cases involving pacemaker replacement, as identified by ProPAC, are a result of inappropriate use of the ICD–9–CM codes rather than the DRG classification system. The ICD–9–CM coding system, if properly used, provides for the grouping of cases that involve replacement or removal of electrodes (and other changes to the system) to DRG 117. Likewise, because replacement of a pulse generator only is more resource intensive than the replacement or removal of electrodes, it would properly be assigned to DRG 118.

The replacement of a permanent pacemaker in its entirety is even more resource intensive than the pacemaker procedures in DRGs 117 and 118. If properly coded, that is, using operating room procedure codes 3770 (Insertion of cardiac pacemaker, not otherwise specified), 3773 (Insertion of permanent pacemaker into atrium, transvenous route), 3774 (Insertion of permanent pacemaker into ventricle, transvenous route), 3775 (Insertion of permanent cardiac pacemaker into unspecified site, transvenous route), 3776 (Insertion of permanent pacemaker into epicardium), and 3777 (Insertion of permanent cardiac pacemaker, unspecified approach), the replacement of a permanent pacemaker would be assigned to either DRG 115 or 116, depending upon the presence or absence of acute myocardial infarction, heart failure, or shock.

We expect that careful and consistent use of the surgical codes for pacemaker-related procedures would alleviate the difficulties identified by ProPAC. We are not, therefore, reassigning cases involving replacement of a permanent cardiac pacemaker.

Comment: Two commenters supported our response to ProPAC's recommendation concerning separate DRG classification for pacemaker replacements.

Response: Given that unpublished studies have indicated that coding of pacemaker replacements vary across hospitals, it is not clear that the cases identified as replacements by ProPAC in this analysis were indeed replacements. Nonetheless, ProPAC identified only three percent of the cases classified into DRGs 115 and 116 as replacement procedures. Charges for such replacement procedures do not vary significantly from the mean charges of these DRGs, thus indicating that it is not necessary, based on current Medicare data, to differentiate initial implantation of cardiac pacemaker systems from replacements of such total systems. Further, given that the number of such replacement systems is so small (less than 200 cases in DRG 115), we question the necessity of establishing separate DRGs for replacement procedures.

We emphasize that separate DRGs currently exist for replacement of component parts of pacemaker systems. DRG 117 is defined so that only those cases involving replacement, removal, or revision of pacemaker leads are assigned to this DRG. On the other hand, cases involving replacement of pulse generators only (without lead replacement) are assigned to DRG 118. Any hospital that has been coding both pulse generator replacement and lead replacement to indicate replacement of an entire pacemaker system should discontinue that practice.

Nonetheless, we recognize that there are some cases (approximately 750 in the FY 1984 recalibration file) grouped into DRGs 117 that contain procedure codes for both pulse generator replacements and lead replacements. Further, despite our efforts to educate hospitals as to the appropriate coding of simultaneous replacement of both pacemaker leads and pulse generators, some hospitals no doubt will continue to use two replacement codes to indicate such procedures. Consequently, we are revising the GROUPER logic so that such multiple procedure codes will be classified into the more resource-intensive DRG 118. We are also changing the title of DRGs 117 and 118 by removing the word "only" in each title to clarify the composition of cases assigned to these DRGs.

Comment: A number of commenters wrote to express support for ProPAC's recommendation to reclassify pacemaker cases based on type of device. The commenters noted the significant price difference between rate responsive devices and fixed rate devices. They believe that continuing to classify all types of devices into a single DRG would act as a disincentive to implant the most appropriate device in Medicare beneficiaries.

Response: ProPAC made two recommendations with regard to DRG

VOL 51 ISS 170 SE 3 1986 UMI

classification of pacemaker cases. The first recommendation related to separating pacemaker DRGs by type of device required that a method be available currently to distinguish between such devices. Current ICD–9–CM codes do not permit identification of such devices as rate-responsive and fixed-rate devices are currently coded using the same procedure code.

However, even if we were able to distinguish between these devices, Medicare billing data indicate there is little reason to believe such reclassification is necessary at this time. Review of the PATBILL data indicate that, in comparison to other DRGs, there is little variation in standardized charges for the pacemaker DRGs. For example, the coefficient of variation for DRG 116 is 40 percent, which is the third lowest coefficient of variation of all the DRGs. Further, the coefficient of variation for each of the four pacemaker DRGs is significantly lower than average. Thus, based on the distribution of charges around the means for these four DRGs, there is reason to believe that splitting the pacemaker DRGs would result in pairs of DRGs with the same weight.

One commenter suggested that dual-chamber and rate-responsive pacemakers could be identified in the PATBILL data by searching for cases showing two implantation of lead codes. We would note that there are not discrete codes to identify implantation of a pacemaker lead. We understand, though, that some hospitals have used, for their own data retrieval purposes, two different codes for implantation of a permanent pacemaker system to identify dual chamber pacemakers. This practice is not universal, however, because there has not been a formal coding guideline issued on coding to differentiate between single-chamber and dual-chamber pacemakers. Moreover, while searching out Medicare cases showing two pacemaker system implant codes might identify some dual-chamber pacemakers, it would not identify single-chamber rate-responsive devices. In addition, the Medicare billing system allows for identification of only three procedure codes. Consequently, the procedure code information available in many cases is incomplete. Given this limitation and the absence of formal coding instructions or guidelines to use two codes for implantation of a permanent pacemaker system, it is unlikely that very many dual-chamber pacemakers could be identified in this manner. Hence, many dual-chamber or rate-responsive devices would still be grouped with the single-chamber fixed-rates devices. We are, however, planning to issue billing instructions that would establish Medicare-specific coding requirements for each claim for implantation of rate-responsive pacemakers. Once we accumulate sufficient data in accordance with these rules, we can assess the appropriateness of splitting the pacemaker DRGs and report our findings in the FY 1988 prospective payment rule or in the notice of DRG classification changes.

In our response to ProPAC's recommendation published in the NPRM, we mistakenly stated that we believed only DRGs 115 and 116 should be considered for differentiation by type of pacemaker device. We recognize that DRG 118, Cardiac Pacemaker Pulse Generator Replacement Only, also reflects procedures that involve pacemaker devices. Thus, we will be evaluating this DRG as we study differentiation of pacemaker DRGs by type of device.

Comment: Several commenters supported revision of the ICD–9–CM procedure codes to identify pacemaker procedures.

Response: It is very clear that there are wide discrepancies among hospitals in the coding of pacemaker system implants, both initial and replacements, as well as in the coding of replacing or revising leads or pulse generators only. This variance has contributed to the difficulty in evaluating Medicare payment for pacemaker cases and has limited analysis of proposed reclassification. Revision of the pacemaker procedure codes was discussed at length at the May 1986 meeting of the ICD–9–CM Coordination and Maintenance Committee. While there was universal agreement that the current codes needed revising, there was no concensus on a single approach for the new codes. The Committee concluded that it was not able to recommend revision of the codes without further study of the alternatives and evaluation of their impact upon ICD–9–CM users. Written comments were solicited from the general public. We are now evaluating the comments that were submitted. We will be working with the Committee to assure this issue is resolved expeditiously.

g. Implantable Defibrillator (Recommendation No. 27

Recommendation—Implantable defibrillator cases should be assigned to a unique DRG. The labor portion and nonlabor portion of the standardized amounts should be redefined for this new DRG to reflect the labor-related and nonlabor-related shares of costs for these cases.

Response in the NPRM—We stated our belief that there are not sufficient data available currently to accept or reject this recommendation. At the time coverage was extended to the Automatic Implantable Cardioverter Defibrillators, we recognized that a separate DRG was a consideration but that additional cost and charge data were needed before this decision could be made. We believe that the best approach when insufficient data are available is the one we took in the final notice of DRG classification changes published in the June 3, 1986 Federal Register (51 FR 20192). This approach is to—

- Establish a unique ICD–9–CM code as soon as possible;
- Make payment based on an existing DRG; and
- Collect data to evaluate the appropriateness of DRG assignment.

As we stated in the NPRM, when cost and charge data are available, a decision can be made as to the appropriate placement of this new procedure within the system.

Comment: One commenter objected to the classification of automatic implantable cardioverter defibrillators (AICD) to DRG 104. The commenter believes this classification violates one of the central tenets of the DRG construction in that such a classification is not clinically meaningful. The commenter urged that a separate DRG be established for classification of AICD cases.

Responses: We share the commenters concern that classification of AICD cases with cardiac valve procedures strains the clinical consistency framework of this DRG. However, we emphasize that this classification is an interim measure for classification while we gather the necessary data to thoroughly evaluate the classification issue. Since Medicare coverage has been extended to AICD, we have received only one Medicare claim. Thus, we do not have adequate data from which to structure a weighting factor for a unique DRG for this procedure. When we have sufficient data on this procedure, we will reevaluate the appropriate DRG classification for the future.

h. Penile Prostheses (Recommendation No. 28)

Recommendation—Prior to recalibration, ProPAC recommended that cases involving the implantation of a penile prosthesis should be removed from DRG 341 and reassigned to a unique DRG. The labor portion and nonlabor portion of the standardized amounts should be redefined for this

new DRG to reflect the labor-related and nonlabor-related shares of costs for these cases. ProPAC contended that the difference between charges for penile prosthesis cases and charges for other cases within this DRG, estimated from the 1984 PATBILL data at about 35 percent, was due largely to the cost of the prosthesis.

Response in the NPRM—We stated that, after analyzing the FY 1984 PATBILL data for DRG 341, we found little reason to believe that reclassification of cases involving penile prosthesis procedures was necessary or appropriate.

Our analysis indicates that—

- DRG 341 shows very little variation in charges in comparison to the other DRGs. (The coefficient of variation equals .55.);
- Forty-three percent of the penile prosthesis cases showed standardized charges at or below the average standardized charge for the DRG;
- The most frequently reported standardized charge range (mode) for these cases was approximately 28 percent lower than the average standardized charge for DRG 341;
- The median standardized charge and the mean standardized charge for penile prosthesis cases were only slightly higher (9 percent and 17 percent, respectively) than the average standardized charge for DRG 341; and
- Distributional analysis indicates that the same hospitals performing penile prosthesis procedures are also performing lower cost penis procedures. Nationally, only one hospital furnished more than 30 penile prostheses to Medicare beneficiaries during FY 1984. Thus, it appears that penile prosthesis cases are concentrated in such a manner that the low resource-intensive procedures balance out the high resource-intensive procedures.

We noted that there are some differences between ProPAC's analysis and our own. This was primarily due to the fact that ProPAC used unadjusted charges while we analyzed standardized charges. We believe it is more appropriate to evaluate standardized charges as such charges eliminate much of the individual variation in hospital charge structures attributable to wages and teaching status. Moreover, standardized charges serve as the basis for the DRG weighting factors. We noted that ProPAC used standardized charges in much of its analysis related to other DRG classification changes. In reviewing ProPAC's analysis, we also noted that removal of penile prosthesis procedures from DRG 341 results in an increased coefficient of variation for the remaining penis procedures. Despite ProPAC's conclusion that removal of penile prosthesis is appropriate, the data indicate that penis procedures are more homogeneous in resource-intensity when grouped with penile prosthesis than when prosthesis procedures are removed. That is, although penile prosthesis cases may be more resource intensive on average than many minor penis procedures, their resource intensity is about the same as or less than several other penis procedures cases, such as reconstruction of penis. Thus, ProPAC's own data demonstrate that the homogeneity of DRG 341 is superior without reclassification.

In addition, we stated that we do not believe it is appropriate to establish single procedure DRGs under most circumstances. The basic concept of the DRG system is to group a number of clinically similar diagnoses and procedures that are similar in resource use. The establishment of single-procedure DRGs runs counter to the grouping concept and would establish a precedent to classify and develop weighting factors separately for all individual procedures and diagnoses. Under such a precedent, the number of DRGs could grow dramatically, rapidly resulting in an unmanageable system. In addition, establishing DRGs along these lines would represent a major step away from the prospective payment system as currently established, and a major step back toward a cost-based reimbursement system, in which payment to a hospital is closely tied to the actual costs incurred in furnishing individual services.

We concluded that procedure-specific DRGs should be utilized only in those situations in which the data indicate that the procedure is neither clinically coherent nor homogeneous with respect to resource use with any other procedures in the major diagnostic category. As we indicated above, our analysis of the data on penile prostheses does not indicate that this is the situation.

Comment: Several commenters urged that we reconsider our decision not to create a separate DRG for penile prosthesis cases. The commenters noted the significant difference in the average charge for penile prosthesis cases and other penis procedures as evidence of the need for reclassification.

Response: In evaluating proposals for reclassification of DRGs, we consider the impact of the proposal upon other inpatient hospital cases and the consistency of the proposal within the basic classification framework. We acknowledge that penile prosthesis cases, on average, are more resource intensive than several other penis procedures. However, in every surgical DRG, there are some procedures that are more resource intensive than the average of all others in the group. This fact is inevitable in a classification system based on groups of diagnoses or procedures. Consequently, the fact that a given procedure is more resource intensive than average, in and of itself, is not sufficient reason to make classification changes. Rather, in considering classification proposals we must assess the aggregate payment scheme and its impact upon hospitals and beneficiary access.

As we pointed out in the NPRM, we found little reason to believe reclassification of penile prosthesis cases is necessary. The fact that nearly 4000 penile implants were furnished to Medicare beneficiaries indicates that the current payment structure has not acted as a barrier to access for this service.

Analysis of data by provider indicates that the procedure is performed in nearly 1000 hospitals nationwide, with the majority of facilities furnishing fewer than five procedures on Medicare beneficiaries per year. Thus, there is ample opportunity to recover losses, if they occur on penile prosthesis cases, from the excess payments on low cost cases. More importantly, the PATBILL data show that numerous facilities are receiving payments in excess of the average standardized charge for penile prosthesis procedures under the current classification.

Finally, we considered the impact of the proposed reclassification upon other procedures currently classified in DRG 341. Removal of penile prosthesis cases from the DRG would result in decreased payment for the remaining procedures. However, there are several very resource intensive procedures currently assigned to this DRG, such as construction and reconstruction of the penis. The proposed reclassification would likely result in severe underpayments for these procedures.

i. Extracorporeal Shock Wave Lithotripsy (Recommendation No. 30)

Recommendation—Prior to recalibration, cases in which extracorporeal shock wave lithotripsy (ESWL) is the principal procedure should temporarily be removed from DRG 324 and reassigned to DRG 323. The payments and costs for all cases in this DRG should be monitored to determine the appropriateness of prospective payments for operating costs. A unique procedure code should be identified for this procedure.

Response in the NPRM—ProPAC's analysis found that payment under DRG 324 substantially understated the cost of ESWL. In the NPRM, we referred to the June 3, 1986 final notice of changes to the DRG classification system (51 FR 20201), and stated that a unique procedure code had been approved for ESWL (59.96). Consequently, we accepted ProPAC's recommendation. That is, we are classifying all cases involving a principal diagnosis of urinary stones treated by ESWL to DRG 323, regardless of age or absence of complications or comorbidities.

Comment: One commenter, who had submitted a report of a study on ESWL in response to our March 13, 1986 proposed notice of DRG classification changes, objected to our response to his comments in the June 3, 1986 final notice (51 FR 20197). The commenter believes his study is superior to ProPAC's analysis and urged that a separate DRG be established for ESWL.

Response: We did not intend to discredit the study carried out by the National Health Services and Practice Pattern Survey. We believe the study was very complete and well documented and represents one of the best collections of data on financing of ESWL as it existed at the time. However, as the commenter also pointed out, ESWL is a rapidly diffusing technology. For example, at the time of the study only 22 hospitals offered ESWL services, while the number of hospitals using this technology today totals more than 60.

Given the dynamic nature of this service, we believe it would be premature to take steps to establish a separate DRG for ESWL. It is a well accepted fact that the cost per treatment of ESWL is strongly related to the number of treatments furnished. We believe the most appropriate analysis of costs of this service can only be made once the technology has stabilized and hospitals gain experience with operation of the service.

In addition, as we have pointed out previously, we are generally opposed to the creation of single-procedure DRGs. Since this concept does not comport with the underlying principle of grouping that is inherent in the DRG classification structure, we believe this avenue should be employed only if there is substantial evidence of inequity through classification in any of the existing clinically consistent groupings.

A new ICD–9–CM code to identify ESWL has been approved for use effective October 1, 1986. We intend to monitor ESWL closely as Medicare data become available. If it becomes apparent that reclassification is necessary in the future, we will consider the alternative of developing a specific DRG for ESWL among the options for reclassification. In the meantime, we believe ProPAC's recommendation to assign all ESWL cases into DRG 323 offers a satisfactory mechanism for classification of ESWL.

j. Lymphomas and Leukemias (Recommendation No. 31)

Recommendation—Prior to recalibration, cases currently assigned to DRGs involving lymphoma, leukemia, and other related diagnoses (DRGs 400–404) should be reclassified into one of five newly defined DRGs:

DRG 400 Lymphoma/leukemia with major operating room procedure;

DRG 401 Acute leukemia without major operating room procedure;

DRG 402 Lymphoma/non-acute leukemia with other operating room procedure and complication/comorbidity;

DRG 403 Lymphoma/non-acute leukemia with other operating room procedure or complication/comorbidity; and

DRG 404 Lymphoma/non-acute leukemia without operating room procedure or complication/comorbidity.

ProPAC recommended that the new classification provide a unique DRG for acute leukemia cases not involving a major operative procedure (as distinct from non-acute leukemias and lymphomas), eliminate age as a criterion for DRG assignment, and modify present classification based on operative procedure, complications and comorbidity. Other ways of further improving these DRGs should continue to be explored.

Response in the NPRM—We agreed with ProPAC that DRGs 401 through 404 are more heterogeneous than most DRGs and, consequently, may indicate that reclassification of cases within these DRGs is appropriate. However, we noted concern with ProPAC's proposed reconfiguration of DRG 403, which combines about 7,000 surgical cases of lymphoma and non-acute leukemia with some 28,000 non-surgical cases of lymphoma and non-acute leukemia with complications or comorbidities. Our analyses indicate that the latter group of cases are about 25 percent more resource intensive than the surgical cases without complications or comorbidities. Moreover, the basic logic of the GROUPER program is structured so as to establish DRGs that are either medical or surgical. Each medical DRG is assigned based on a specific set of principal diagnoses, whereas a surgical DRG may not entail looking at a specific diagnosis within a major diagnostic category but only at procedures. The predominant exception to this logic occurs in cases where a principal diagnosis alone explains resource use, without regard to whether or not a surgical procedure is performed. This generally occurs when cases with a specific principal diagnosis virtually always entail surgical treatment or virtually never entail surgical treatment. We have found the latter to be the case with acute leukemias in that fewer than four percent of the cases in our data base involved surgical treatment.

We stated in the NPRM that, in light of our analysis and the foregoing discussion, we believe similar improvements in the homogeneity of these DRGs may be achieved without disrupting the logic inherent in the current classification structure. Therefore, we accepted the basic premises of ProPAC's recommendation. That is, we accepted ProPAC's suggestion that acute leukemia cases without major operating room procedure be classified into a single DRG. We added acute leukemia not otherwise specified (code 2080) to the other acute leukemia codes included in ProPAC's recommendation. In addition, we accepted ProPAC's suggestion that age considerations be eliminated from the criteria for classification of lymphoma and non-acute leukemia cases. We did not eliminate age as a criterion for classification of acute leukemia cases without an operating room procedure, however. Because DRG 405 already encompassed lymphoma and leukemia cases without an operating room procedure for patients under age 18 and because most pediatric leukemia cases are acute leukemias, we stated that it was appropriate to maintain the age split within the acute leukemia cases.

We are establishing the following classifications for lymphoma/leukemia patients:

DRG 400: Lymphoma/leukemia with major operating room procedure [no change].

DRG 401: Lymphoma/non-acute leukemia with other operating room procedure with complications or comorbidities.

DRG 402: Lymphoma/non-acute leukemia with other operating room procedure without complications or comorbidities.

DRG 403: Lymphoma/non-acute leukemia without operating room procedure with complications or comorbidities.

DRG 404: Lymphoma/non-acute leukemia without operating room procedure without complications or comorbidities.

DRG 405: Acute leukemia without major operating room procedure, age 0–17.

DRG 473: Acute leukemia without major operating room procedure, age greater than 17.

Acute leukemia is defined as patients with a principal diagnosis of—

- Acute lymphoid leukemia (code 2040);
- Acute myeloid leukemia (code 2050);
- Acute monocytic leukemia (code 2060);
- Acute erythemia (code 2070); and
- Acute leukemia, not otherwise specified (code 2080).

Although this reclassification we proposed is somewhat different from that recommended by ProPAC, we have found similar improvements in homogeneity. We believe it is appropriate to create an additional DRG for acute leukemia cases without major operating room procedure and to maintain the distinction between surgical and medical lymphoma and non-acute leukemia cases.

We received no comments on this provision.

k. Upper Extremity Procedures (Recommendation No. 32)

Recommendation—Prior to recalibration, cases involving procedures of the upper extremity that are currently classified in DRGs 223, 224, 228, and 229 should be reassigned based on anatomical location and the presence of systemic collagen vascular disease or implantation of joint prostheses or complications and/or comorbidities. Nonsurgical hip fracture cases currently being assigned to DRGs 223, 224, 225, 228, and 229 should be reassigned to the appropriate medical DRG.

Response in the NPRM—ProPAC's analysis in this regard includes two pairs of DRGs. DRGs 223 and 224 include upper extremity procedures except humerus and hand; DRGs 228 and 229 include humerus and hand procedures. With regard to DRGs 223 and 224, ProPAC found that age groups explained very little of the variation in charges between the DRGs. Rather, ProPAC found complications and comorbidities and joint replacement procedures showed a significant difference in resources from all other cases in these DRGs.

Similarly, in DRGs 228 and 229, which are currently distinguished based on ganglion and cyst diagnoses, ProPAC found rheumatoid diagnoses, complications and comorbidities and joint replacement procedures more appropriate indicators of resource utilization.

We stated that we also had been studying these four DRGs throughout the year and had reached similar conclusions with regard to complications or comorbidities and joint procedures. We disagreed, however, with ProPAC's recommendation with regard to collagen vascular diseases in the hand. We note that in ProPAC's analysis of DRGs 228 and 229, the addition of collagen vascular diseases decreased the amount of explained variation by 16 percent. We believe the comingling of uncomplicated rheumatoid cases with complicated cases and expensive joint replacement procedures would detract from the homogeneity of the revised DRGs. We should point out that ProPAC did not recommend classification of rheumatoid cases into the more resource-intensive DRG in upper extremity procedures except humerus and hand, where inclusion of these diagnoses similarly reduced the amount of explained variation by almost ten percent. Moreover, as part of our analysis we have found that other major joint procedures, such as arthrodesis and arthrotomy, are similar, both clinically and in terms of resource utilization, to joint procedures involving prosthesis. Consequently, we are expanding upon ProPAC's recommendation to include major joint procedures with the joint prosthesis procedures included in the more resource-intensive classification. We are establishing the following classifications in MDC 8:

DRG 223: Major shoulder or elbow procedures, or other shoulder, elbow or forearm procedures with complications or comorbidities.

DRG 224: Shoulder, elbow or forearm procedures, except major joint procedures, without complications or comorbidities.

DRG 228: Major thumb or joint procedures, or other hand or wrist procedures with complications or comorbidities.

DRG 229: Hand or wrist procedures, except major joint procedures, without complications or comorbidities.

Major elbow and shoulder procedures include the following procedure codes:

8011 Other arthrotomy of shoulder
8012 Other arthrotomy of elbow
8123 Arthrodesis of shoulder
8124 Arthrodesis of elbow
8181 Shoulder arthroplasty with prosthesis
8183 Shoulder arthroplasty, not elsewhere classified
8184 Elbow arthroplasty with prosthesis
8185 Elbow arthroplasty, not elsewhere classified

These procedures are eliminated from DRG 224. All other procedures currently in DRGs 223 and 224 result in assignment to DRG 223 only if a complication or comorbidity is also present.

Major wrist, thumb and hand procedures include the following procedure codes:

8013 Other arthrotomy of wrist
8014 Other arthrotomy of hand/finger
8171 Hand arthroplasty with prosthesis
8179 Hand arthroplasty, not elsewhere classified
8186 Carpal arthroplasty with synthetic prosthesis
8187 Wrist arthroplasty, not elsewhere classified
8261 Pollicization operation
8269 Other reconstruction of thumb

These procedures are eliminated from DRG 229. All other procedures currently in DRGs 228 and 229 result in assignment to DRG 228 only if a complication or comorbidity is also present.

In addition, we noted that procedure code 8421, thumb reattachment, had inadvertently been omitted from the procedures classified in MDC 8. Therefore, we are adding this procedure to DRGs 228 and 229.

Finally, ProPAC included in this recommendation a suggestion that cases involving both a surgical foot or upper extremity procedure and a nonsurgical hip diagnosis be classified on the basis of the more resource-intensive hip diagnosis.

We believe this situation is one example of the generic problem that could occur in any of the MDCs that contain a medical DRG with a higher weight than the least resource-intensive surgical DRG. Although we recognize that this issue may appear problematic, the situation occurs very infrequently. For example, ProPAC found only 125 cases related to this hip fracture issue. We believe this problem needs to be studied in a broad spectrum with detailed analysis of the frequency of occurrence, cost impact and impact on the DRG logic system before any piecemeal changes are implemented. Therefore, we deferred any action on this recommendation at the present time.

Comment: Several commenters supported the revised classification of upper extremity procedures. However, the commenters expressed concern that the estimated revised weighting factors continue to understate the costs of some resource-intensive procedures.

Response: It is not the intent of the prospective payment system to meet the

VOL 51 ISS 170 SE 3 1986 UMI

costs of care for every case in every hospital. Rather, the DRG weighting factors are based on the average resources consumed for procedures in a given DRG relative to the average case at the average hospital. In developing the DRG weighting factors published in this final rule, we regrouped the cases in the FY 1984 PATBILL file using the revised classification scheme. We then calculated weighting factors for upper extremity procedures in an identical fashion to that used in promulgating the weights for DRGs as set forth in the September 3, 1985 final rule.

In dealing with a system of averages, there will always be some cases both above and below the mean. Hospitals are expected to use the excess payment on low cost cases to offset the excess costs of other cases. The revised classification scheme for upper extremity procedures presents a more homogeneous grouping of cases and increases the amount of payment on major joint procedures. However, the fact that some hospitals will continue to receive payments below costs for some procedures is inevitable under a system that is based on averages.

Comment: One commenter objected to our response to ProPAC's recommendation concerning assignment of non-surgical hip procedures to a lower weighted DRG based on the presence of a less resource-intensive unrelated surgical procedure during the same admission.

Response: As we pointed out in the proposed rule, this ProPAC recommendation is but one example of a more generic problem. The remedy for this situation would require a fundamental restructuring of the DRG logic. The current system generally divides cases into surgical and medical groups by first determining whether any surgical procedures were performed and than assigning cases to the DRGs involving those procedures, from the most resource-intensive to the least, with cases in which all surgical procedures are unrelated to the principal diagnosis going to DRG 468, and then assigning the remaining (nonsurgical cases) to medical DRGs that are differentiated by nature of the diagnoses within each group, as well as by patient characteristics (that is, age, presence or absence of complications or comorbidities, discharge status). In order to accommodate the ProPAC recommendation, the list of surgical procedures would have to be modified (whereas it is presently a uniform list used in all MDCs to determine whether a case is surgical or medical) to eliminate consideration of certain surgical procedures in the DRG assignment of only those cases involving a principal diagnosis of hip fracture, thus ensuring assignment to a medical DRG (or to DRG 468). Moreover, it is not clear why ProPAC recommended removing hip fracture cases exclusively from DRGs 223, 224, 225, 228 and 229. Since the weight for nonsurgical hip fractures (DRG 236) is greater than the weights for DRGs 221, 222, 226, 227, 230, 231, and 232, it is not clear why ProPAC did not recommend removing nonsurgical hip fractures from these DRGs as well. While ProPAC may not have found any such cases in these DRGs in the FY 1984 data used for their analysis, such cases could occur in the future.

In addition, if ProPAC's assessment that the medical DRG is more appropriate is based on the relative weight for medical hip fractures being higher than the weights for surgical DRGs involving the upper extremities, hands, and feet, it is not readily apparent as to why ProPAC limited its recommendation to hip fracture diagnoses. The medical DRGs involving fractures of the femur, osteomyelitis, and septic arthritis (DRGs 235, 238, and 242, respectively) have even higher weights than the medical hip fractures (DRG 236).

In light of our questions about why ProPAC selected only certain diagnoses that would, in effect, override consideration of some, but not all, surgical procedures in making DRG assignment, we do not believe it is appropriate at this time to modify a fundamental building block in the GROUPER logic, that is, the split between medical and surgical cases in this and other MDCs, in order to develop an *ad hoc* solution to a problem of quite narrow dimensions (ProPAC found only 125 cases).

While it may be relatively simple in looking at billing data to group together cases that display comparable resource use, it is also necessary to define a general logic that sorts out criteria other than resource use but still assigns cases to the same groups as resources alone would do. Moreover, virtually every time cases are reclassified from one DRG to another, the weights for the redefined DRGs change. Therefore, it is possible to redefine groups, then to find it necessary to modify the surgical hierarchy, and once the revised hierarchy is used, discover that the redefined groups are less homogeneous than had been expected as occurred with our proposed modification of the MDC 7 hierarchy, discussed above). Thus, for all these reasons, we are not adopting this recommendation.

5. New Coverage

a. Cochlear Implants

Medicare coverage will soon be extended to implantation of cochlear prosthetic devices under certain circumstances. A cochlear implant device is an electronic instrument, part of which is implanted surgically to stimulate auditory nerve fibers, and part of which is worn like a pocket-type hearing aid on the body to capture and amplify sound. The purpose of implanting the device is to provide an awareness and identification of sounds to facilitate communication for persons who are profoundly hearing impaired.

The Office of Health Technology Assessment has only recently completed its analysis of the safety and efficacy of this procedure and HCFA is currently in the process of issuing a coverage instruction relating to it. (Consequently, we did not address the DRG classification of the procedure in the NPRM.) Even though the change in coverage has not yet been published, we believe it is appropriate under § 412.10(c) to make interim DRG assignment of this procedure without prior public comment in order to assure that Medicare claims for the procedure may be appropriately handled by the GROUPER program.

As stated above, appropriate usage of a cochlear prosthetic device requires both an internal device and an external device. Although an integral and inseparable component of the prosthesis, the external transmitting device is generally provided approximately three weeks after the surgical implant. Since neither device is useful without the other, we believe it is appropriate to consider both portions of the device as an inpatient hospital service (if the surgery is performed on an inpatient basis) subject to the rebundling provisions of section 1862(a)(14) of the Act and to make payment for the two portions, of what is essentially a single prosthesis, together. We note that some manufacturers package and supply both portions of the device at a single charge. Consequently, we are making payment for the entire device, including the external component in our payment for the inpatient admission (and discharge). Carriers will not recognize outpatient charges for the external device.

Based on data supplied by several hospitals participating in clinical trial testing of implantation of cochlear prosthetic devices, we believe that

appropriate interim assignment for this procedure is DRG 49, Major Head and Neck Procedures. As pointed out in the June 3, 1986 final notice, three new ICD–9–CM codes have been approved for this procedure (51 FR 20201). Procedure codes 20.96, 20.97, and 20.98 will be assigned to DRG 49. We have shared our findings on cochlear implants and our proposed classification scheme with ProPAC. However, to date we have not received a formal response on this issue. Once Medicare data are available for this procedure, we will reevaluate the DRG assignment.

b. Heart Transplants

On June 27, 1986, the Secretary announced that Medicare plans to begin covering payment for heart transplants in selected facilities across the country. Accordingly, we will issue a proposed notice in the **Federal Register** to describe the conditions and limitations applicable to such services and the criteria under which facilities may qualify to be paid for covered heart transplants. After a final notice is published, and Medicare begins paying for heart transplant services, payment will be made under DRG 103 (Heart Transplant). The DRG weight and the methodology for deriving it will be described in the coverage notice.

We note that the changes to the DRG classification and weighting factors, discussed throughout this section (IV.E. of the preamble), are summarized in Table 6 of Section IV of the addendum.

F. Aortic Aneurysm Repair

Over the past several months, we have been investigating the issue of appropriate classification of complex aortic aneurysm repairs. Specifically, we have been attempting to evaluate the classification of aortic aneurysm repairs that involve both the thoracic and abdominal portions of the aorta. Heretofore, there has not been a mechanism within the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) classification system to clearly differentiate these procedures. Consequently, our ability to secure usable data for this evaluation has been significantly hampered.

We have recently identified a number of cases involving this complex procedure and have conducted preliminary analysis of the data. In addition, new ICD–9–CM codes have been approved that will allow more precise identification of the procedure in the future. In the NPRM, we stated that we would continue to study the available data in determining whether an additional DRG classification change would be appropriate.

Comment: One commenter encouraged the reclassification of thoracoabdominal aortic aneurysm repair procedures to DRGs 104 and 105.

Response: Thoracoabdominal aortic aneurysm repair procedures are, in general, currently assigned to DRGs 110 and 111, Major Reconstructive Vascular Procedures without pump, with current weighting factors of 3.3215 and 2.4581, (as published in the September 3, 1985 final rule), respectively. Based on the data we have reviewed to date, we believe that it is more appropriate to classify these procedures into DRGs 108 and 109, Other Cardiothoracic Procedures, with revised weighting factors of 4.7810 (with pump) and 4.3597 (without pump). This reclassification will significantly increase Medicare payment for such procedures. In order for thoracoabdominal aortic aneurysm repair procedures to be appropriately classified into these DRGs, it is necessary that the cases be coded using the revised ICD–9–CM procedure codes that become effective October 1, 1986. That is, hospitals must report both abdominal aorta resection with replacement (3844) and thoracic vessel resection with replacement (3845).

Based on the data we have reviewed, we do not believe thoracoabdominal aortic aneurysm repair is appropriately classified into DRG 104 or 105 unless a cardiac valve procedure is also performed. The procedure does not appear to be clinically consistent with valve procedures, nor similar in resource intensity. However, we will continue to study this issue as Medicare data become available through use of the refined ICD–9–CM codes.

G. Transfer policy (§ 412.4)

Our current policy concerning transfers between prospective payment hospitals provides for transferring hospitals to receive payment on a per diem basis. The discharging hospital receives the full DRG payment. Transferring hospitals may also receive an additional payment for extraordinarily high-cost cases that meet the cost outlier criteria in §§ 412.80 and 412.84; they are not eligible for day outlier payments. However, the prospective payment system is intended to provide full payment, less applicable deductibles and coinsurance, for all inpatient services associated with the treatment of a particular diagnosis in an acute-care hospital. Since the discharge is the basis of payment, it became necessary to distinguish between discharges in which a patient has received complete treatment and discharges in which the patient is transferred to another acute-care hospital for related care. If a full DRG payment were made to each hospital involved in a transfer situation, we would pay at least twice as much under the prospective payment system for the transfer episode as would have been paid to a single hospital for identical care. We concluded that this would have provided a strong incentive to increase transfers and thereby potentially unnecessarily endanger patients by needlessly increasing their exposure to risks of infection in different hospital settings or by the need to travel to a distant hospital.

We anticipated that the per diem payment method combined with the required medical review of all transfers would discourage medically unnecessary transfers between prospective payment system hospitals while still providing sufficient payment to all hospitals incurring costs for the care of appropriately transferred patients. On several occasions we stated that our goal was to find a way to make one payment for all the hospitals involved in caring for transfer cases. However, we stated in the proposed rule that a single transfer payment policy would not represent an improvement over the current system.

We were able to use the 1984 PATBILL file to list the transfers included in the nearly 11 million 1984 bills received through April 28, 1985. About 60 percent of these bills were paid under the reasonable cost reimbursement system (subject to the ceiling on the rate-of-increase limits), and not under the prospective payment system. Rather than eliminate pre-prospective payment system discharges from consideration, we decided to assume, for purposes of this analysis, that a transfer occurred in all cases in which the date of discharge from one hospital was the same as the date of admission to another hospital, where both hospitals were or would be subject to the prospective payment system. The contiguous hospital stays were considered as episodes of treatment, involving one or more transfers. Considering all 1984 discharges, whether pre- or post-prospective payment system, we were able to identify over 188,000 of these episodes. The majority of these episodes (174,657 episodes, or 92.90 percent) represented treatment in only two hospitals. These two-hospital, or single-transfer, episodes formed the basic file for our analysis.

After a thorough review of the PATBILL data we determined that at this time, it is not possible to develop a

VOL 51 ISS 170 SE 3 1986 UMI

single payment policy that would be equitable or administratively feasible. Since these data included bills from hospitals subject to the reasonable cost reimbursement system, we will continue to study and evaluate the transfer policy based on more recent data from prospective payment system hospitals to determine whether modifications may be necessary in the future.

In general, the commenters were in favor of the retention of the per diem transfer payment policy, as provided under §412.4, in light of our continued study and evaluation of its effect on hospitals subject to the prospective payment system. Only two commenters elaborated on the transfer policy provisions.

Comment: One commenter requested continued study of the transfer policy, especially with respect to referral or tertiary care centers.

Response: We agree that the decision to continue the per diem payment to transfer hospitals should be retained until completion of the analysis of more recent bill data from hospitals subject to the prospective payment system. The relationship between tertiary care hospitals receiving transfers and transferring hospitals could be affected by the per diem payment to the transferring hospital. These hospitals will of course be included in our review of the impact of the transfer policy on the hospital industry.

Comment: One commenter, while agreeing that a single transfer payment policy would not be an improvement and that the existing transfer policy should be maintained, requested that full payment be made to each provider because, in most cases in which a transfer occurs, the patient has received substantial treatment at the transferring hospital prior to the transfer. The commenter suggests that such costs may not be covered under the current per diem computation. In addition, in no case should either the transferring hospital or the discharging hospital be placed at risk for services furnished outside their respective facilities.

Response: We do not agree that full payment should be made to the transferring hospital under the prospective payment system. This would result in the Medicare program making two or more DRG payments for services that would be classified and paid under a single DRG if provided in a single hospital stay. The increased payment could create an incentive for inappropriate transfers. We believe that the per diem payment to transferring hospitals is a disincentive to inappropriate transfers between acute-care hospitals subject to the prospective payment system, while still providing adequate payment in relation to the services provided. Those transferring hospitals that keep the patient for a period equal to the geometric mean length of stay for the DRG will receive the full DRG payment plus cost outlier payments for those cases in which the total charges meet the appropriate threshold amount. (See §412.4.)

Since about 60 percent of the bills in the 1984 PATBILL file were paid under the reasonable cost reimbursement system, we cannot assume that the data represent the impact of the per diem payment on transfer patterns between prospective payment hospitals. We will continue to evaluate the prospective payment system billing history to assess the impact of the per diem transfer payment policy on all prospective payment hospitals.

V. Other ProPAC Recommendations

As required by law, we reviewed the April 1, 1986 report submitted by ProPAC and gave its recommendations careful consideration in conjunction with the formulation of the proposals set forth in the NPRM. We received many comments on our treatment of the ProPAC recommendations. We have addressed these comments in our discussion of the issues to which they relate as they are set forth throughout the preamble and addendum to this final rule. Set forth below are the remaining ProPAC recommendations, our responses to the recommendations as we addressed them in the NPRM, and our responses to comments from the public concerning the recommendations.

A. Adjustments to the Payment Formula

1. Disproportionate Share Hospitals (Recommendation No. 9)

Recommendation—ProPAC recommended that an adjustment to the prospective payment rates for hospitals serving a disproportionate share of low-income patients should be implemented as soon as possible. This adjustment should specifically incorporate a definition and methodology in keeping with the character of the adjustments already being considered in Congress. This adjustment should not change the total aggregate dollar amount paid to all hospitals.

Response in the NPRM—Section 9105(a) of Pub. L. 99-272 added a new section 1886(d)(5)(F) to the Act to require that we make an additional payment for hospitals that serve a disproportionate share of low-income patients effective with discharges occurring on or after May 1, 1986. We implemented the payment provisions for disproportionate share hospitals in the May 6, 1986 interim final rule (51 FR 16788).

Section 9105(b) of Pub. L. 99-272 amended section 1886(d)(2)(C) of the Act to require that the standardized amounts be restandardized to reflect the disproportionate share adjustment provided in section 1886(d)(5)(F) of the Act. The methodology for this restandardization was described for comment in the NPRM and is set forth in section II.A. of the addendum.

We are responding to the comments received on the disproportionate share adjustment in section II of the preamble.

2. Improving the Definition of Hospital Labor-Market Areas (Recommendation No. 10)

Recommendation—The Secretary should improve the definition of hospital labor-market areas for FY 1987, if possible, and no later than FY 1988. For urban areas, the improved definitions should account for a greater amount of the wage variation between inner-city and suburban hospitals. For rural areas, the improved definitions should account for a greater amount of the wage variation between different rural areas within each State and between States. The implementation of improved definitions should not result in any change in aggregate hospital payments.

Response in the NPRM—We stated in the NPRM that we addressed a similar recommendation from ProPAC in the September 3, 1985 final rule (50 FR 35663-35664 and 35684-35685). In that final rule, we acknowledged that the current MSAs/non-MSAs may not adequately recognize widely varying hospital labor market conditions, especially among counties classified as rural. We have been looking into possible alternative classification systems that would better define hospital labor markets. However, we believe that further research and study are required before alternative labor market definitions are specified.

Also, as we have noted before, section 1886(d)(2) of the Act defines an urban area as an area within an MSA as designated by EOMB or within a similar area, as recognized under the regulations (§ 405.460) establishing limits on total inpatient operating costs under section 1886(a) of the Act. The designation of a county as urban or rural is based on whether or not a particular location qualifies as an MSA or NECMA. MSAs and NECMAs were the only urban designations recognized under § 405.460 with respect to hospital cost limits. The criteria for MSA or NECMA status are not within our

control. EOMB determines which areas qualify as MSAs or NECMAs and the effective date of their qualification is based on standards prepared by the Federal Committee on MSAs, which advises EOMB on metropolitan area definitions. (As discussed earlier in the preamble, the law provides the Secretary with a general exceptions and adjustments authority. We have not in the past used this authority to grant exceptions to the urban/rural criteria because we have no national, objective system of urban/rural designations other than the EOMB MSA designations. However, we proposed to use this authority to grant urban status to a particular rural county effective October 1, 1986.)

We received no comments on this provision.

3. Rural Hospitals (Recommendation No. 11)

Recommendation—In the original prospective payment legislation of 1983 (Pub. L. 98–21) and the Deficit Reduction Act of 1984 (Pub. L. 98–369), Congress required the Secretary to study and report on a number of rural hospital issues. To date, none of these studies has been submitted to Congress. Preliminary studies by ProPAC suggested that there are potential problems in the way rural hospitals are treated under the prospective payment system. ProPAC urged the Secretary to complete and publish the congressionally mandated studies as soon as possible. If the results of the Secretary's studies indicate that changes in payment policies affecting rural hospitals are warranted, appropriate modifications to current policy, including legislative change, if necessary, should be implemented as soon as possible.

Response in the NPRM—We stated that we share ProPAC's concern about the relative vulnerability of rural hospitals under the prospective payment system, and have developed substantial information to describe the short run impact of the prospective payment system on rural hospitals. Our information, which is preliminary, would permit us to complete the congressionally mandated studies in section 603 of Pub. L. 98–21 and section 2311 of pub. L. 98–369. We will include this information in the 1985 annual report to Congress (due out this year) on the impact of the prospective payment system on classes of hospitals, beneficiaries, other payers for inpatient hospital services, and other providers.

We received no comments on this provision.

B. Data Availability and Research

1. Earlier Availability of Medicare Cost Data (Recommendation No. 12)

Recommendation—ProPAC recommended that making cost data available as soon as possible be an ongoing effort, since these data are vital both to assess the relationship between prospective payments and hospital costs and to analyze the costs of individual DRGs. As part of this ongoing effort, alternative strategies for sampling hospital cost data should be considered. The necessary additional resources should be allocated for timely processing of these data.

Response in the NPRM—We agree with ProPAC's recommendation that Medicare cost report data should be made available as soon as possible for prospective payment system evaluation purposes. We noted in the NPRM that it has been a longstanding policy of HCFA to respond promptly to all requests for information and data (including cost reports), subject to the requirements of the Privacy Act (5 U.S.C. 552a), and to assist interested parties in conducting research or special analyses. Public access to disclosable records maintained by the Federal government is guaranteed under the Freedom of Information Act (5 U.S.C. 552).

As we stated in the NPRM, we expect that the implementation of HCFA's Hospital Cost Report Information System (HCRIS) will do much to speed up the availability of cost report data in various stages of audit for assessing the prospective payment system. However, because of recent statutory changes that necessitated modifying the cost report, the availability of cost report data has slowed down.

We received no comments on this provision.

2. Maintaining a Commitment to Data Development and Research on the Prospective Payment System (Recommendation No. 33)

Recommendation—The Secretary should continue to devote substantial resources to data development and research for monitoring and improving the prospective payment system and understanding its effects on the health care system. Studies mandated by Congress already due should be completed and made public as soon as possible, and new studies that analyze more recent data should be designed and implemented as soon as possible. While ProPAC and other organizations will participate in this process, the major commitment to prospective payment system data development and research must reside with the Department.

Response in the NPRM—We stated in the NPRM that as available resources permit, we will devote our efforts to improving data bases for analysis and to conducting necessary research into alternative approaches and refining the prospective payment system.

We received no comments on this provision.

C. Beneficiary Concerns

1. Beneficiary and Provider Information (Recommendation No. 15)

Recommendation—The Secretary should take immediate action to provide more and better written information about the Medicare prospective payment system to beneficiaries and providers of care. The Department should work with providers, beneficiaries, and associations of these groups to produce and disseminate this information. Associations of providers and beneficiaries should also increase their own efforts to educate and inform their members better about the Medicare prospective payment system.

Response in the NPRM—We stated that we agree with ProPAC that Medicare beneficiaries should be provided with clear and precise information about the prospective payment system. To that effect, we stated that we are preparing a new pamphlet on the prospective payment system. We hope that this pamphlet, which incorporates suggestions from ProPAC and other interested parties, will provide Medicare beneficiaries a better understanding of the prospective payment system. Copies of the pamphlet will be made available to Medicare beneficiaries not only through the local Social Security district offices, but also through other distribution channels, such as the Administration on Aging Network and other beneficiary representative organizations.

Comment: One commenter stated support for our proposed actions to better inform beneficiaries and providers about their rights and obligations under the prospective payment system.

Response: We have prepared a pamphlet tentatively titled, "Your Hospital Stay Under Medicare's Prospective Payment System." This pamphlet will provide beneficiaries and the general public with a clear and concise explanation of the prospective payment system.

2. Notice to Beneficiaries of Rights (Recommendation No. 16)

Recommendation—Beneficiaries should be made aware of the process of reconsideration and appeal of a denial of coverage for continued inpatient hospital care. Notification should be through a written notice or information bulletin. It should explain beneficiary rights in a clear, helpful and understandable manner. In addition to a clear statement of rights, the bulletin should inform beneficiaries that they should not accept any oral communication to the effect that they must leave the hospital because their "coverage" has "run out" or because there is a limit on the number of days "allowed" by Medicare for a DRG. The bulletin should be distributed at the time of admission or as soon thereafter as is appropriate based on the patient's clinical condition. However, additional avenues of distribution should also be developed.

Response in the NPRM—On February 24, 1986 we released a notice for Medicare beneficiaries to be distributed to them upon admission to a hospital. The notice explains to beneficiaries their rights under the prospective payment system and informs them of how to appeal a decision if they believe they are being discharged prematurely. In addition, we are developing a new pamphlet ("Your Appeal Rights Under Medicare") to discuss in greater detail Medicare beneficiary appeal rights. The new pamphlet will combine the current physician appeals and hospital appeals pamphlets and add new information for beneficiaries on appeal rights under the prospective payment system.

We understand that the geometric mean lengths of stay used in determining the outlier thresholds may have been misperceived as "maximum" lengths of stay, thereby fostering the misunderstanding, among hospitals, doctors and the public generally, that Medicare does not cover inpatient services for days beyond the average lengths of stay. In the September 3, 1985 final rule (50 FR 35710), we reiterated our policy that there are *no* requirements under the prospective payment system that Medicare patients classified within a given DRG be discharged after a specific number of days as indicated by the geometric mean length of stay for that DRG, *nor* will hospitals be paid for only a certain number of days of care for each discharge within a given DRG. (As stated in the September 3, 1985 final rule (50 FR 35710), the geometric mean lengths of stay are used for determining day outlier cutoffs and per diem payments for transfer cases.) To assist the reader in understanding the difference between the arithmetic and geometric mean lengths of stay, we published the arithmetic mean lengths of stay in Table 5 of the September 3, 1985 final rule (50 FR 35722).

To further dispel any misunderstanding about lengths of stay by DRG, we published in the NPRM, as Table 7 of the Addendum (51 FR 20080), the range of lengths of stay for each DRG in terms of selected percentiles. Each percentile threshold represents the proportion of Medicare discharges in each DRG with lengths of stay less than or equal to the indicated value.

Comment: One commenter believes that our notice, "An Important Message From Medicare," released on February 24, 1986, is negative in tone and injects an adversarial aspect into the patient/provider relationship.

Response: The present language in that notice is the result of consultations with, and contributions from, representatives of a wide range of organizations, associations, and other governmental entities, including the AHA, the American Association of Retired Persons, the Federation of American Health Systems, the House Select Committee on Aging, the National Council of Senior Citizens, the American Medical Peer Review Association, and the Senate Special Committee on Aging. We believe the tone and content of the notice, based on a consenus understanding reached with the outside interest groups, is appropriate, and that the notice is useful to beneficiaries while not adversely affecting the patient/provider relationship.

3. PRO Episode of Care Review (Recommendation No. 17)

Recommendation—ProPAC recommended that the focus of PRO quality of care review should be, to the extent possible, on the entire episode of care. The PRO's review should include, in addition to the period of hospitalization, the quality of care (and outcome) related to the overall episode of illness, including, if appropriate, skilled nursing or home health care.

Response in the NPRM—As we stated in the NPRM, during the 1986–1988 contract period, PROs will substantially intensify the quality of care aspects of inpatient hospital medical review, including discharge planning. We recognize the importance of PRO review of a patient's condition at the time of discharge. Therefore, every case under PRO review will be subject to—

- Discharge review criteria to detect premature discharges; and
- Review of discharge planning, to determine that the availability of needed post-discharge care was considered.

In addition, six PROs are currently involved in a pilot study to determine a patient's health status at the time of hospital discharge. We believe that the results from this study will provide insight into the extent of premature discharges from hospitals under the prospective payment system. In addition, we hope to identify the most effective method of review for identifying and dealing with premature discharges. We also noted in the NPRM that HCFA is exploring the possibility of developing a survey-type study on post-hospital care received by Medicare beneficiaries. This study would focus on both covered and non-covered services in an attempt to assess the post-hospital needs of beneficiaries and how the Medicare program addresses those needs.

We received a favorable comment on our use of pilot studies that move toward episode of care review.

4. PRO Review of Outpatient Surgery (Recommendation No. 18)

Recommendation—ProPAC was concerned that efforts to shift surgical services from the inpatient to the outpatient setting could have an adverse impact on quality of care for certain Medicare beneficiaries. The PROs should be required to review and monitor the quality of care (and outcome) of outpatient surgery for selected patients and procedures. As a starting point, the PROs should be required to review outpatient surgery cases for those procedures that have been identified for preadmission review, including in particular a sample of those cases for which the PRO has denied admission on preadmission review.

Response in the NPRM—Section 9401 of Pub. L. 99–272 requires 100 percent PRO review for certain surgical procedures, including second opinion for those cases in which the PRO believes such an opinion is necessary. We are in the process of developing a list of surgical procedures for which PRO review would be required. We are also considering changes in medical review for outpatient surgery for certain procedures.

Also, under section 9307 of Pub. L. 99–272, PRO review is required on a preprocedural basis for assistants at surgery for certain cataract operations, whether the services are performed on an inpatient or outpatient basis. On a

retrospective basis, these cases will also be reviewed from a number of perspectives, including quality of care. The Secretary, after consultation with the Physician Payment Review Commission, is responsible for developing recommendations and guidelines with respect to other surgical procedures for which an assistant at surgery is generally not medically necessary, and the circumstances under which the use of an assistant at surgery is generally appropriate but should be subject to prior approval of an appropriate entity.

The quality of care provided to a beneficiary is considered by the PRO when it performs preprocedure review. If the patient cannot safely and effectively be treated in an outpatient setting, the PRO would approve admission to a hospital.

We stated in the NPRM that we believe this level of activity to be sufficient to deal with potential quality problems in the outpatient setting. We reiterate that, if further experience reveals additional problems or issues, we would, of course, re-examine this position.

Comment: One commenter requested that we initiate a pilot project requiring PRO review of outpatient surgery for those procedures that have been identified for preadmission review.

Response: At this time, given the heavy demands on PRO resources, we are not contemplating expanding PRO review activities as the commenter requested. We believe that the activities discussed above in our response in the NPRM are sufficient.

5. Recalculating the Inpatient Hospital Deductible (Recommendation No. 19)

Recommendation—The Secretary should seek a legislative change in the formula for computing the inpatient hospital deductible so that the annual increase in the deductible is more consistent with the annual per-case increase in Medicare payments to hospitals. The proportion of the costs of inpatient hospital care borne by Medicare beneficiaries has inappropriately increased as a result of significant declines in length of stay experienced since the inception of the prospective payment system. This proportion should be lowered to its calendar year 1983 level.

Savings from shorter lengths of stay have benefited both hospitals and the Federal government, and ProPAC believes that Medicare beneficiaries should share in these gains as well. Hospitals have gained from the decline in length of stay because they keep the difference between the prospective payment and their costs for treating Medicare beneficiaries. The Federal government has gained as well, since the decline in the length of stay has been one of the factors considered in limiting increases in prospective payment rates.

Response in the NPRM—Section 1813(b)(2) of the Act specifies the manner in which the hospital inpatient deductible is computed. (The deductible represents the amount of beneficiary cost-sharing before the Medicare program assumes any liability for the additional costs of covered inpatient services.) The Secretary is required to determine the deductible amount each year according to the formula contained in the law.

For calendar year 1985, the amount of the deductible was $400. For calendar year 1986, the deductible increased 23 percent to $492. The dramatic increase in the inpatient deductible was largely caused by the significant decrease in inpatient hospital utilization evident since the inception of the prospective payment system. As hospitals have responded to the financial incentives of the system, Medicare length of stay and admission rates have decreased substantially. Because payments for inpatient services are now being spread over fewer days, the per diem formula for calculating the inpatient deductible described in section 1813(b)(2) of the Act has resulted in a substantial increase in the amount of the inpatient deductible, an increase that far exceeds the amount of inflation in the cost of furnishing hospital care.

To avoid future increases of this magnitude, ProPAC recommended that the deductible reflect a per discharge rather than a per diem payment formula, an approach consistent with the prospective payment system. The basis for ProPAC's recommendation is an anticipation of further significant declines in the days of care per admission furnished to Medicare inpatients.

We stated in the NPRM that we are currently examining this issue and possible alternatives for calculating the inpatient hospital deductible. Under section 9128 of Pub. L. 99–272, the Senate Finance Committee is expected to report legislation to reform the calculation of the annual increase in the deductible to relate it to annual increases in Medicare payments to hospitals.

We received no comments on this provision.

D. DRG Classifications and Weighting Factors

1. Adjustment of the Labor Portion of the Standardized Amounts for Some DRGs Involving Expensive Devices (Recommendation No. 24)

Recommendation—The labor portion and nonlabor portion of the standardized amounts should be redefined for DRGs 39 (lens procedures with or without vitrectomy), 104 and 105 (cardiac valve procedures with pump, with and without cardiac catheterization, respectively), 209 (major joint and limb reattachment procedures), 471 (bilateral or multiple major joint procedures of the lower extremity), and the newly defined DRGs for pacemaker implantation and replacement (Recommendations 25 and 26), implantable defibrillators (Recommendation 27), and penile prostheses (Recommendation 28). The new portions should more closely reflect the labor-related and nonlabor-related shares of costs for cases in each of these DRGs. These recalculations should be made so that total hospital payments remain unchanged. The correct labor and nonlabor portions of the standardized amounts should be calculated from data currently being generated in HCFA's study of the labor portion of costs by DRG. If this information proves to be incomplete, the portions should be calculated from available cost and charge data for these DRGs. The Secretary should study the need for adjustments to the labor and nonlabor portions of the standardized amounts in all DRGs.

Response in the NPRM—As we stated in the NPRM, we are continuing our studies to identify DRGs with high nonlabor-related cost shares. Our analyses of FY 1984 PATBILL charge patterns confirm ProPAC's finding that the following DRGs have charges for supplies that average approximately 20 percent or more of total inpatient charges:

- DRG 39 (lens procedures).
- DRGs 115 through 118 (cardiac pacemakers).
- DRG 209 (joint and limb procedures).
- DRG 341 (penis procedures).

However, the ratio of average charges for supplies to total inpatient charges for DRGs 104 and 105 (cardiac valve procedures), which represent the highest average charges of the nine DRGs under study, are lower than 20 percent.

Our review confirms ProPAC's conclusion that rural and urban hospital charges for cases in the selected DRGs are more similar than those for other

DRGs because both types of hospitals must buy devices from the same national markets. But the fact that some DRGs have supply charges that account for a much higher share of a bill than the average supply charge of eight percent does not justify an automatic adjustment to the labor and nonlabor portions of the standardized amounts.

We believe that increasing the nonlabor share for these DRGs would minimally redistribute funds from urban to rural hospitals. Our reimbursement simulations, which assume no changes in the classes of hospitals performing the identified DRGs, indicate that for each ten percent reduction in the labor-related portion of the standardized amounts for *all* DRGs, rural hospitals would gain up to four-tenths of one percent, while urban hospitals would lose about one-tenth of one percent. Thus, lowering the labor-related portion for only the identified DRGs would result in a much smaller effect. In 1984, these DRGs represented nearly seven percent of urban hospital cases and over eight percent of urban hospital revenues, but only less than four percent of rural hospital cases and about six percent of rural hospital revenues.

Moreover, lowering the labor-related portion of the standardized amounts for some DRGs logically implies increasing that portion for other DRGs. This could imply that ultimately the standardized amounts would be differentiated for each DRG. We believe to do so would unduly complicate the administration of the prospective payment system and may distort hospital incentives. While the ProPAC analysis and our preliminary analyses suggest that rural hospitals are relatively disadvantaged on certain types of cases, namely, those in which the nonlabor portion is higher than the national average, they are, by the same token, advantaged on those types of cases in which the nonlabor-related share is less than the national average. Accordingly, we believe that it is preferable to use national averages for all cases since there is no evidence to suggest that a class of hospitals is systematically disadvantaged in their entire Medicare business by our use of national average labor-related and nonlabor-related shares. Therefore, we are not accepting ProPAC's recommendation to adjust the labor and nonlabor portions of the standardized amounts for certain DRGs.

2. Additional Payment for Magnetic Resonance Imaging (Recommendation No. 29)

Recommendation—ProPAC recommended that, for a period of three years, Medicare should pay hospitals an additional amount for each covered inpatient magnetic resonance imaging (MRI) scan performed on a Medicare beneficiary in a prospective payment system hospital. Under existing capital payment policy (that is, payment of capital on a reasonable cost basis), the add-on for FY 1987 should be $124 for each scan performed on beneficiaries in institutions in which Medicare pays for the capital costs of an MRI scanner and $282 for each scan performed on a beneficiary in a hospital other than the hospital in which the beneficiary is currently an inpatient. In FY 1988 and FY 1989 the add-on amounts for all hospitals should be recalculated to reflect any change in the average cost of an efficiently produced scan and changes in capital payment policy.

Response in the NPRM—We stated that the allowance for technology and scientific advances, under section 1886(e)(4) of the Act already provides for an adjustment for new technology, such as MRI. Further, we believe that providing an explicit additional payment for the use of a particular technology would establish a precedent that runs counter to one of the principles of the prospective payment system, that is, the establishment of a single payment rate for all cases classified within a DRG regardless of the specific resources used in a particular case.

Comment: A number of commenters urged us to reconsider our position with regard to ProPAC's recommendation for additional payments for MRI. The commenters rejected our response pertaining to substitution of other imaging techniques, noting that ProPAC's analysis included a 30 percent reduction for substitution costs. They also rejected our position that recalibration would provide appropriate recognition of MRI costs, noting that only a small number of hospitals provide MRI and that the costs of the technology are diffused among numerous DRGs. They believe our position will act as a disincentive to the widespread adoption of a helpful medical diagnostic tool.

Response: The issue of how the prospective payment system might best respond to innovative medical technologies is complex. Currently, there are numerous mechanisms, such as the technology adjustment to the update factor, recalibration, and DRG reclassification, that have been used to respond to changing technology. Heretofore, we have not been able to identify MRI in our data base in order to appropriately evaluate the adequacy of Medicare payment for these services. In the absence of complaints and data from individual hospitals furnishing MRI citing inadequate payments, we conclude that the existing mechanisms in place have somewhat responded to hospitals' needs.

We appreciate the careful analysis and data gathering carried out by ProPAC. However, we emphasize that ProPAC itself noted that, "accurate cost and utilization data are not readily available" for MRI. Much of ProPAC's data is based on estimates from a panel of experts, such as MRI manufacturers, who have a proprietary interest in seeking additional payments for MRI.

New ICD–9–CM codes have been approved to identify MRI scans effective October 1, 1986. Medicare data relating to this service will be available in the near future. We intend to monitor payments for cases involving this service once data become available and will consider appropriate refinements if the data indicate an adjustment is necessary.

With respect to the expectation that MRI services may be furnished by only a small number of hospitals, we note that the DRG-based payment system was never intended or designed to compensate for differences in the "style of practice" across hospitals by paying for individual items and services furnished. The intent of the prospective payment system is to establish fixed all-inclusive payment rate for all Medicare patient stays that are similarly classified, regardless of the specific range of services furnished to each individual patient. A hospital is then free to decide what type of services, such as CT scan, MRI, or both, it chooses to furnish in diagnosing or treating a patient. Providing an incentive for hospitals to choose a particular style of practice does not comport with the basic DRG framework.

Comment: One commenter requested that we reconsider ProPAC's recommendation that Medicare should pay an additional amount for the costs of MRI performed on beneficiaries in hospitals under the prospective payment system. The commenter pointed out that although we have provided an explicit add-on for the cost of new technologies and scientific advances in our development of the policy target adjustment factor used in determining the annual prospective payment update factor, this adjustment is eliminated once the net effect of all the variables that determine the annual update factor are considered.

Response: Sections 1886(e)(2) and (e)(4) of the Act do not mandate that hospitals be given a specific add-on for the cost of new technologies and

VOL 51 ISS 170 SE 3 1986 UMI

scientific advances *exclusive* of other factors that affect the cost of care. Rather, we believe the intent of the law is to provide for an appropriate overall allowance that recognizes each of the statutorily prescribed variables and their net impact. Therefore, we believe it is appropriate, despite an explicit allowance of 1.5 percent in FY 1986 (September 3, 1985 final rule (50 FR 35708)) and 0.7 percent in FY 1987 (section II of the addendum to this final rule) for the cost of new technology and scientific advances, to promulgate an update factor that is based on the interactive effects of the—

—Forecasted market basket increase;

—Correction for case-mix change for FY 1986; and

—Composite policy target adjustment factor.

We continue to believe, as we stated in the NPRM (51 FR 20003), that providing special add-ons for specific technologies runs counter to one of the basic objectives of the prospective payment system, that is, the establishment of a single payment rate for cases similarly classified. It would also provide artificial incentives for the adoption of certain technologies rather than permit hospitals to choose which advances are appropriate for the care they furnish. We believe that the prospective payment system already provides sufficient means for the recognition of both the capital and operating costs of new technology through the variables used to determine the annual update factor. Therefore, we are not adopting the commenter's suggestion.

Comment: One commenter stated that since we had not proposed to recalibrate the DRGs it was inappropriate for us to say that the costs of new technology (such as MRI) that affect relative resource consumption across DRGs will be taken care of through recalibration.

Response: The latest available data that could be used for recalibration of the DRGs are FY 1985 data, whereas MRI was not a covered Medicare service until November 22, 1985. When we recalibrate the DRGs in FY 1988, as discussed in section II.C. of the addendum, the impact of MRI on the DRG relative weights should be reflected in that recalibration.

VI. Other Required Information

A. Effective Dates

The effective date of this final rule (including the addendum and appendix) is October 1, 1986. Specific provisions apply to specific periods as follows:

- § 412.96(c)(2)(ii)—Osteopathic hospitals as referral centers. The criteria apply to cost reporting periods beginning on or after January 1, 1986.
- §§ 412.23 and 412.32—Exclusion of alcohol/drug hospitals and unit. The exclusion is continued through cost reporting periods beginning before October 1, 1987.

The following changes are applicable beginning with cost reporting periods beginning on or after October 1, 1986:

- § 405.463—Base period for hospitals subject to the ceiling on rate of hospital increases.
- § 412.96(c)(2)(i) and (h)—Referral centers.

B. Paperwork Reduction Act

These provisions do not impose information collection requirements; consequently, they need not be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

C. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Health facilities, Medicare.

D. Regulatory Impact Statement

The appendix to this final rule, which is printed immediately following the addendum to this final rule, sets forth our analyses of the projected impact and effect on small businesses of the changes that are set forth in this document.

42 CFR Chapter IV is amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Programs

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart D is amended as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services By Hospital-Based Physicians

1. The authority citation for Subpart D is revised to read as follows:

Authority: Secs. 1102, 1122(d), 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1(d), 1395f(b), 1395(g), 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. Section 405.401 is amended by revising paragraph (d)(2) to read as follows:

§ 405.401 Introduction.

* * * * *

(d) *Payment for inpatient hospital services.*

* * * * *

(2) For cost reporting periods beginning on or after October 1, 1983, payment to short-term general hospitals located in the 50 States and the District of Columbia for the operating costs of inpatient hospital services is determined prospectively on a per discharge basis under Part 412 of this chapter except as follows:

(i) Payment for capital-related, medical education, and kidney acquisition costs, and the costs of certain anesthesia services, is described in § 412.113 of this chapter.

(ii) Payment to children's, psychiatric, rehabilitation and long-term hospitals (as well as separate psychiatric and rehabilitation units (distinct parts) of short-term general hospitals), which are excluded from the prospective payment system under Subpart B of Part 412 of this chapter, and to hospitals outside the 50 States and the District of Columbia is on a reasonable cost basis, subject to the provisions of § 405.463.

(iii) Payment to hospitals subject to a State reimbursement control system is described in paragraph (e) of this section.

* * * * *

3. Section 405.463 is amended by revising paragraph (b)(1) to read as follows:

§ 405.463 Ceiling on rate of hospital cost increases.

* * * * *

(b) *Cost-reporting periods subject to the rate of increase ceiling*—(1) *Base period.* Each hospital's initial ceiling will be based on allowable inpatient operating costs per case incurred in the 12-month cost reporting period immediately preceding the first cost reporting period subject to ceilings established under this section, except that, when the immediately preceding cost reporting period is a short reporting period (fewer than 12 months) the first 12-month period beginning on or after the date the hospital's exemption from the ceiling ends will be the base period.

* * * * *

II. Part 412 is amended as follows:

PART 412—PROPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 is revised to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww).

B. In Subpart A, § 412.10 is amended by revising paragraph (a) to read as follows:

Subpart A—General Provisions

§ 412.10 Changes in the DRG classification system.

(a) *General rule.* HCFA issues changes in the DRG classification system in a Federal Register notice at least annually. Except as specified in paragraphs (c) and (d) of this section, the DRG changes will be effective prospectively with discharges occurring on or after the same date the payment rates are effective.

* * * * *

Suppart B is amended as follows:

C. Supbart B—Hospital Services Subject to and Excluded from the Prospective Payment System

1. In § 412.23, the introductory text in paragraph (c) is revised to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(c) *Alcohol/drug hospitals.* If an alcohol/drug hospital meets the following requirements, it is excluded from the prospective payment system for its cost reporting periods beginning before October 1, 1987, but no hospital is excluded for its cost reporting periods beginning during Federal fiscal years 1986 and 1987 unless it was excluded for its cost reporting period beginning during Federal fiscal year 1985:

* * * * *

2. In § 412.32, the introductory text is revised to read as follows:

§ 412.32 Distinct part alcohol/drug units: Additional requirements.

If a distinct part alcohol/drug unit meets the following requirements, it is excluded from the prospective payment system for its cost reporting periods beginning before October 1, 1987, but no unit is excluded for its cost reporting periods beginning during Federal fiscal years 1986 and 1987 unless it was excluded for its cost reporting period beginning in Federal fiscal year 1985:

* * * * *

D. In Subpart D, § 412.63 is amended by adding paragraphs (b)(3), (c)(4), and (c)(5) to read as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

* * * * *

(b) *Geographic classificatians.* * * *

(3) For discharges occurring on or after October 1, 1986, a hospital classified as rural, as described in § 412.62(f), is deemed to be urban and receives the urban Federal payment amount if the county in which it is located meets the following criteria:

(i) At least 95 percent of the perimeter of the rural county is contiguous with urban counties.

(ii) The county was reclassified from an urban area to a rural area after April 20, 1983, as described in § 412.62(f)(1)(iv).

(iii) At least 15 percent of employed workers in the county commute to the central county of one of the adjacent MSAs or NECMAs.

(c) *Updating previous standardized amounts.*

* * * * *

(4) For fiscal years 1987 and 1988, HCFA standardizes the average standardized amounts by excluding an estimate of the payments for hospitals that serve a disproportionate share of low-income patients.

(5) For fiscal year 1987 onward, HCFA restandardizes the average standardized amounts by excluding an estimate of indirect medical education payments.

* * * * *

E. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.80, paragraph (c) is revised to read as follows:

§ 412.80 General provisions

* * * * *

(c) *Relation to indirect medical education costs and hospitals that serve a disproportionate share of low-income patients.* The outlier payment amounts are included in total DRG revenue for purposes of determining payments for indirect medical education costs under § 412.118(b) and to hospitals that serve a disproportionate share of low-income patients under § 412.106.

2. In § 412.84, paragraph (g) is revised as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(g) The intermediary bases the cost of the discharge on 66 percent of the billed charges for covered inpatient services. The cost is adjusted further to exclude an estimate of indirect medical education costs, and payments for hospitals that serve a disproportionate share of low-income patients, and to include the reasonable charges for nonphysician services billed by an outside supplier in accordance with § 489.23(c)(3) of this chapter.

* * * * *

F. Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

1. In § 412.92, the introductory text of paragraphs (a) and (a)(2) are republished and paragraph (a)(2)(ii) is revised to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

(a) *Criteria for classification as a sole community hospital.* HCFA classifies a hospital as a sole community hospital if it is located in a rural area (as defined in § 412.62(f)), and meets one of the following conditions:

* * * * *

(2) The hospital is located between 25 and 50 miles from other like hospitals ane meets one of the following criteria:

* * * * *

(ii) The hospital has fewer than 50 beds and the intermediary certifies that the hospital would have met the criteria in paragraph (a)(2)(i) of this section were it not for the fact that some beneficiaries or residents were forced to seek care outside the service area due to the unavailability of necessary specialty services at the community hospital; or

* * * * *

2. In § 412.96, the introductory text of paragraph (c) is republished; paragraphs (c)(1), (c)(2), (f) and (g) are revised, and a new paragraph (h) is added to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(c) *Alternative criteria for cost reporting periods beginning on or after October 1, 1985.* For cost reporting periods beginning on or after October 1, 1985, a hospital that does not meet the criteria of paragraph (b) of this section is classified as a referral center if it is located in a rural area (as defined in § 412.62(f)) and meets the criteria specified in paragraphs (c)(1) and (c)(2) of this section and at least one of the three criteria specified in paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(1) *Case-mix index.* The hospital's case-mix index for discharges (not including discharges from distinct part units excluded from the prospective payment system under Subpart B of this Part) during the Federal fiscal year that ended one year prior to the beginning of the cost reporting period for which the hospital is seeking referral center status must be at least equal to the national or regional casemix index value set forth in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology HCFA uses to calculate these criteria is described in paragraph (g) of this section.

(2) *Number of discharges.*

(i) Except as provided in paragraph (c)(2)(ii) of this section for an osteopathic hospital, for the hospital's most recently completed cost reporting period, its number of discharges (not including discharges from distinct part units excluded from the prospective payment system under Subpart B of this Part or from newborn units) is at least equal to the number of discharges under either the national or regional criterion set forth in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology HCFA uses to calculate these criteria is described in paragraph (h) of this section.

(ii) For cost reporting periods beginning on or after January 1, 1986, an osteopathic hospital, recognized by the American Osteopathic Hospital Association, that is located in a rural area must have at least 3,000 discharges during its most recently completed cost reporting period to meet the number of discharges criterion. The 3,000 discharges benchmark is also used in evaluating an osteopathic hospital for purposes of the triennial review.

* * * * *

(f) *HCFA review of referral center status.* The status of each hospital that is receiving a referral center adjustment will be reviewed by the HCFA regional office every three years to determine if the hospital continues to meet applicable criteria. To retain referral center status, a hospital must meet the applicable criteria in at least two of the three years. If the determination is to the effect that the hospital no longer qualifies for a referral center adjustment, HCFA will discontinue the adjustment beginning on the first day of the hospital's next cost reporting period.

(g) *Methodology for calculating case-mix index criteria.* HCFA calculates the national and regional case-mix index value criteria as described in paragraph (g)(1) through (g)(4) of this section.

(1) *Updating process.* HCFA updates the national and regional case-mix index standards using the latest available data from hospitals subject to the prospective payment system for the Federal fiscal year.

(2) *Source of data.* In making the calculations described in paragraph (g)(1) of this section, HCFA uses all inpatient hospital bills received for discharges subject to prospective payment during the Federal fiscal year being monitored.

(3) *Effective date.* HCFA sets forth the national and regional criteria in the annual notice of prospective payment rates published under § 412.8(b). These criteria are used to determine if a hospital qualifies for referral center status for cost reporting periods beginning on or after October 1 of the Federal fiscal year to which the notice applies.

(4) *Applicability of criteria to HCFA review of referral center status.* For purposes of the triennial HCFA review of a referral center's status as described in paragraph (f) of this section, the referral center's case-mix index value for a Federal fiscal year is evaluated using the appropriate case-mix value criteria published in the annual notice of prospective payment rates.

(h) *Methodology for calculating number of discharges criteria.* For purposes of determining compliance with the national or regional number of discharges criterion under paragraph (c)(2) of this section, HCFA calculates the criteria as follows:

(1) *Updating process.* HCFA updates the national and regional number of discharges using the latest available data for levels of admissions or discharges or both.

(2) *Source of data.* In making the calculations described in paragraphs (h)(1) and (h)(2) of this section, HCFA uses the most recent hospital admissions or discharge data available.

(3) *Annual notice.* HCFA sets forth the national and regional criteria in the annual notice of prospective payment rates published under § 412.8(b). These criteria are compared to an applying hospital's number of discharges for its most recently completed cost reporting period in determining if the hospital qualifies for referral center status for cost reporting periods beginning on or after October 1 of the Federal fiscal year to which the notice applies.

(4) *Applicability of criteria to HCFA review of referral center status.* For purposes of the triennial review of a referral center's status as described in paragraph (f) of this section, the referral center's number of discharges for its most recently completed cost reporting period is evaluated using the appropriate discharge criteria published in the annual notice of prospective payment rates.

3. Section 412.106 is amended by revising paragraph (a)(2) to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

(a) * * *

(2) For purposes of making the calculation in paragraph (a)(1)(i) of this section, a hospital may elect to have the count of the number of patient days made on the basis of its cost reporting period, rather than by Federal fiscal year, if the hospital furnishes to its intermediary, in machine-readable tape format as prescribed by HCFA, data on its Medicare Part A patients for its cost reporting period.

* * * * *

G. Subpart H is amended as follows:

Subpart H—Payments to Hospitals under the Prospective Payment System

1. Section 412.113 is amended by adding a new paragraph (d) to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

* * * * *

(d) *Kidney acquisition costs incurred by hospitals with approved renal transplantation center.* Payments for kidney acquisition costs incurred by hospitals with approved renal transplantation centers, are described in § 412.100, is made on a reasonable cost basis.

2. In § 412.118, paragraph (g)(1) is revised to read as follows:

§ 412.118 Determination of indirect medical education costs.

* * * * *

(g) *Limits on count of interns and residents.* (1) Interns and residents who are assigned, to a setting other than the inpatient or outpatient department of the hospital (such as a freestanding family practice center or an excluded distinct part hospital unit) on the day that the count of interns and residents (as described in paragraph (f)(2)(i) of this section) is made are not counted as full-time equivalents. Only the percentage of time that these interns and residents spend in the portion of the hospital subject to the prospective payment system or in the outpatient department of the hospital on the day the count is

made is used to determine the indirect medical education adjustment.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance Program)

Dated: August 26, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 26, 1986.

Don M. Newman,

Acting Secretary.

Addendum—Schedule of Standardized Amounts Effective With Discharges on or After October 1, 1986, and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning on or After October 1, 1986

I. Summary and Background

In this addendum to the final rule, we are making changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services during the fourth and final year of the transition period of the prospective payment system. In addition, the addendum sets forth new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

For hospital cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987, each hospital's payment per discharge under the prospective payment system will be the sum of 75 percent of the Federal rate and 25 percent of the hospital-specific rate (section 1886(d)(1)(C) of the Act as amended by section 9102 of Pub. L. 99–272). Sole community hospitals will continue to be paid on the basis of a rate per discharge composed of 75 percent of the hospital-specific rate and 25 percent of the applicable Federal regional rate. For hospitals located in the State of Oregon that are subject to the prospective payment system, the provisions in section 9102(c) of Pub. L. 99–272 (that amended section 1886(d)(1)(D) of the Act), regarding the extension of the transition period do not apply. Rather, the transition period provisions in effect prior to Pub. L. 99–272 continue to apply. Therefore, for hospitals in the State of Oregon, each hospital's payment per discharge will be based solely on the Federal national rate (section 9102(d)(4) of Pub. L. 99–272).

We note that, while the changes to the hospital-specific portion of the prospective payment rate are determined on the basis of cost reporting periods, the changes to the Federal portion are determined on the basis of the Federal fiscal year (FY).

During FY 1987, except for the policy on hospitals located in the State of Oregon as described above and for sole community hospitals, the Federal rates will be comprised of a blend of 50 percent of the national rate and 50 percent of the appropriate regional rate as required by section 1886(d)(1)(D) of the Act (as amended by section 9102 of Pub. L. 99–272). (Sole community hospitals also receive special treatment for the Federal rates, that is, their Federal portion is based solely on the regional rate.) During the first year of the transition period (that is, FY 1984), the Federal rates were comprised solely of the regional rate. During the second and third years, FYs 1985 and 1986, the Federal rates were comprised of a blend of 25 percent of the national rate and 75 percent of the regional rate.

As discussed below in section II, we are making changes (proposed on June 3, 1986 (51 FR 20012)) in the determination of the prospective payment rates. The basic method for determining these rates was described in more detail in the final rules listed at the beginning of the preamble of this final rule. The changes, to be applied prospectively, affect the amounts of both the Federal rates (adjusted standardized amounts) and the hospital-specific rates that are used to determine transition period prospective payment rates.

Section III, below, sets forth our proposed changes in determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer throughout the preamble to the final rule are presented in section IV of this addendum.

We are also including in the discussion below a summary of the comments we received on the adddendum of the June 3, 1986 notice of proposed rulemaking (NPRM or proposed rule) and our responses to the comments.

II. Changes to Prospective Payment Rates and DRG Weighting Factors for FY 1987

The basic methodology for determining Federal national prospective payment rates is set forth at § 412.63, and for hospital-specific rates is set forth in § 412.73. Below, we discuss the manner in which we are making changes to some of the factors and methodology used for determining the prospective payment rates. The Federal rate changes, the updated wage index, and the DRG weights, revised to reflect reclassifications of certain DRGs and modifications to the surgical hierarchy, will be effective with discharges occurring on or after October 1, 1986. Updated hospital-specific rates will be effective with hospital cost reporting periods beginning on or after October 1, 1986.

In summary, we are establishing the FY 1987 national and regional rates (that is, the standardized amounts set forth in Table 1 of section IV of this addendum) by—

- Restandardizing the hospital costs used to establish the rates to reflect the indirect costs of medical education as measured by the revised indirect medical education adjustment factor and to reflect payment adjustments to disproportionate share hospitals, as required by section 1886(d)(2)(C) of the Act, as amended by sections 9104(b)(1) and 9105(b) of Pub. L. 99–272, and to reflect technical corrections to the wage index;
- Grouping the adjusted operating costs per case for each hospital (labor-related and nonlabor-related, separately) to compute urban and rural, national and regional average standardized amounts;
- Reducing for the value of outlier payments;
- Updating the standardized amounts by 0.5 percent; and
- Making a further adjustment to the standardized amounts to reflect the savings from the change in the indirect medical education adjustment factor as required under section 1886(d)(3)(C)(ii) of the Act, as amended by section 9104(b)(2) of Pub. L. 99–272.

The new wage indexes (revised to reflect changes resulting from placing Shiawassee County, Michigan in the Flint, Michigan MSA, as we had proposed, and from reclassifying Merced County, California as an MSA, per EOMB's recently announced designation change) are provided in Tables 4a and 4b of section IV of the addendum. The new DRG weights and outlier criteria are provided in Table 5 of section IV of this addendum.

A. Calculation of Adjusted Standardized Amounts

1. Standardization and Restandardization of Base-Year Costs

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per inpatient hospital discharge for each hospital in order to set the payment rates for FY 1984. The preamble to the interim final rule, published September 1, 1983 (48 FR 39763), contained a detailed explanation of how base-year cost data were

VOL 51 ISS 170 SE 3 1986 UMI

established and how they were used in computing the Federal rates.

Section 1886(d)(2)(C) of the Act required that the updated base-year per discharge costs be standardized for the FY 1984 rates in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments, and indirect medical education costs. Under other statutory authority, we are restandardizing the base-year costs to reflect changes resulting from Pub. L. 99–272, as discussed below.

In the following sections we discuss how we are restandardizing (or not restandardizing) the base-year costs for the following variables:

- Hospital wage levels.
- Case mix.
- Indirect medical education costs.
- Cost of living for Alaska and Hawaii.
- Payments to hospitals that serve a disproportionate share of low-income patients.

a. Adjustments for Variation in Hospital Wage Levels

Section 1886(d)(2)(C)(ii) of the Act requires that for each inpatient hospital discharge in FY 1984 we standardize the average cost per case of each hospital used to develop the separate urban and rural standardized amounts for differences in area wage levels. Section 1886(d)(2)(H) of the Act requires that the FY 1984 standardized urban and rural amounts be adjusted for hospital area wage levels by a factor (established by the Secretary) as part of the methodology for determining prospective payments to hospitals. To fulfill both requirements, we constructed a wage index to eliminate variations in the average cost per case.

In accordance with section III of the preamble, we are using the rebased market basket as a basis for revising the labor and nonlabor portions. Thus, for each hospital, instead of 79.15 percent, we are using 74.39 percent as the labor portion when standardizing for area wage variations.

Following the June 10, 1985 proposed rule, we adopted the HCFA gross wage index in developing the FY 1986 prospective payment rates as published in the September 3, 1985 final rule. However, as a result of congressional action, we postponed application of several provisions of the September 3, 1985 final rule until May 1, 1986, as we discussed in the preamble of this final rule.

As a result of section 9103 of Pub. L. 99–272, the HCFA wage index, which was published in the September 3, 1985 final rule and modified subsequently for corrections to the data, became effective with discharges occurring on or after May 1, 1986. We published the wage indexes in the May 6, 1986 interim final rule (51 FR 16778) that implements section 9103 of Pub. L. 99–272. The HCFA wage index is the latest available measure of relative hospital wage levels that also addresses the part-time employment deficiency inherent in the BLS data. Therefore, we are using this measure of hospital wage levels to calculate the FY 1987 prospective payment rates. Except for changes resulting from the EOMB designation of Merced County, California as an MSA, as described in the addendum, and the deeming of Shiawassee County, Michigan as urban, as described in the preamble, for Medicare prospective payment system purposes, also described elsewhere in this document, the HCFA wage index values that appear in this final rule are based on the same data used to develop the wage indexes published in the May 6, 1986 interim final rule (51 FR 16778).

Comment: One commenter suggested that the data used to develop the wage index are four years old and do not include fringe benefits or recognize differences in the labor cost per case.

Response: The 1982 data base used to derive the current wage index is the latest data available that takes into account part-time employment experienced by many hospitals. However, we are currently evaluating possible alternatives for updating the wage index data. As part of this effort, we are currently collecting data as part of the audit of cost reports for the first year of the prospective payment system, which will enable us to recompute the present wage index. In addition, for hospital cost reports filed during calendar year 1986, we will be collecting average hourly wage data on the HCFA Form-339, which is filed with the cost report.

Although the 1982 wage index survey solicited hospital employee health and welfare expenses (fringe benefit costs), we did not compute wage indexes using the reported figures. We were concerned that the wide variability in the amount and scope of employee health and welfare expenses, in conjunction with the generally poor quality of the data reported, would have introduced a source of error in the development of the new hospital wage index. Therefore, as we discussed in the wage index report submitted to Congress on March 29, 1985, we did not use the fringe benefit data collected on the survey in developing either the adjusted or gross wage indexes.

With respect to our adoption of the gross wage index, rather than the adjusted wage index discussed in the wage index report, we refer the reader to the June 10, 1985 NPRM (50 FR 24375) and the September 3, 1985 final rule (50 FR 35661).

Comment: One commenter stated that the current wage index measures only the difference in hourly wage rates, and not the difference in labor cost per case. Since the DRG system is a per case payment system, the commenter suggested that the wage index formula be modified to measure the difference in labor costs per case.

Response: We believe the commenter may be referring to the situation addressed by ProPAC in its Recommendation No. 24. ProPAC recommended that the labor and nonlabor portions of the standardized amounts should be redefined for certain DRGs to more closely reflect the labor-related and nonlabor-related shares of costs for cases in each of these DRGs. In addition, ProPAC recommended that the Secretary study the need for adjustments to the labor and nonlabor portions of the standardized amounts in all DRGs. ProPAC's rationale for their recommendation is that, since the labor-related nonlabor-related shares are currently fixed across all DRGs and all hospitals, hospitals in high wage index areas are overcompensated and hospitals in low wage index areas are underpaid for those DRGs in which nonlabor-related costs constitute greater than the overall fixed nonlabor-related share of costs due to the use of expensive medical devices in those DRGs. As we stated in the June 3, 1986 NPRM in response to ProPac's recommendation (51 FR 20001), we believe it is preferable to use national averages for all cases since there is no evidence to suggest that a class of hospitals is systematically disadvantaged in their entire Medicare business by our use of national average labor-related and nonlabor-related shares, and therefore, we did not accept ProPAC's recommendation.

Comment: One commenter supported the continued use of the gross wage index, but pointed out that the revised measure does not account for differences in wage levels between inner-city and suburban hospitals. Because the wage index uses MSAs, which, in turn, are based on counties, as the basis for urban/rural distinctions, the problem of improving the definition of hospital labor market areas, as ProPAC recommended, is not addressed.

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Response: The basis for the commenter's criticism is that the wage index fails to recognize the generally higher labor costs associated with hospitals in inner city areas as opposed to surrounding suburban areas. As we noted in the NPRM in response to ProPAC's recommendation No. 10, we recognize that although the current MSA definition may not adequately address widely varying hospital labor market conditions, we believe that further research and study are necessary before alternative labor market conditions are specified.

We agree that establishing urban distinctions for inner-city and suburban hospitals would permit more precise urban wage indexes, but note that in practice, it is impossible to designate boundaries that will be completely satisfactory to all hospitals. As discussed elsewhere in the preamble to this document, we are using the Secretary's general exceptions and adjustment authority under section 1886(d)(5)(C)(iii) of the Act to treat certain rural counties that meet specified criteria as urban counties. However, extensive research is still required before we could propose to make distinctions between inner-city and suburban hospitals. In this regard, we note that currently we are able to aggregate data only at the county level. We have no method available that permits ready and accurate identification of inner city and suburban boundaries, which often are not contiguous with county boundaries.

Section 9103(b) of Pub. L. 99–272 requires that we work with ProPAC to improve the definition of urban hospital labor-market areas. We are required to submit a report to Congress on this matter by May 1, 1987.

b. Variations in Case Mix Among Hospitals

Section 1886(d)(2)(C)(iii) of the Act requires that the updated FY 1984 amounts be standardized to adjust for variations in case mix among hospitals. The methodology used for determining the appropriate adjustment factor (that is, the case mix index) is explained in the September 1, 1983 interim final rule (48 FR 39768–39771). A case mix index has been calculated for each hospital based on 1981 cost and billing data.

Standardization, necessary to neutralize inpatient operating costs for the effects of variations in case mix, is accomplished by dividing the hospital's average cost per Medicare discharge by that hospital's case mix index. Tables 3a and 3b in the addendum to the September 1, 1983 interim final rule (48 FR 39847–39871) contain the case mix index values used for this purpose. The case mix indexes in Tables 3a and 3b of the September 1, 1983 interim final rule (48 FR 39847) continue to apply for purposes of standardizing the operating costs per case. Because each hospital's operating costs per case have already been standardized for case-mix differences, no restandardization is necessary.

c. Indirect Medical Education Costs

Section 1886(d)(2)(C)(i) of the Act requires that the updated FY 1984 amounts be standardized for indirect medical education costs. Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals receive an additional payment for the indirect costs of medical education. Section 9104(a) of Pub. L. 99–272 revised section 1886(d)(5)(B) of the Act to reduce the indirect medical education factor from 11.59 percent to approximately 8.1 percent for discharges occurring on or after May 1, 1986 and before October 1, 1988. For discharges occurring on or after October 1, 1988, the adjustment factor is equal to approximately 8.7 percent. These factors are approximations because, in addition to being reduced, the adjustment factor is no longer applied on a linear basis, but rather on a curvilinear or variable basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship; that is, each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs. Therefore, the adjustment factors are only approximately 8.1 percent and 8.7 percent.

The factor that was used (prior to May 1, 1986) in the formula to make indirect medical education payments was converted from a percentage of 5.795 which, when doubled (to 11.59 percent), is applied on a linear basis (that is, applied uniformly) to the adjusted intern and resident-to-bed ratio. The revised factor is expressed as an exponent, which has the effect of applying a variable percentage, specifically, one that declines as the intern and resident-to-bed ratio increases. This variable percentage is derived from a formula using an exponent of .405 and is doubled for discharges occurring on or after May 1, 1986 and before October 1, 1988. For discharges occurring on or after October 1, 1988, the exponent is .5795 and the resulting variable percentage is increased by 50 percent.

In the interim final rule of May 6, 1986 (51 FR 16788), we revised § 412.118 to conform to section 1886(d)(5)(B) of the Act. That section provides that for discharges occurring on or after May 1, 1986 and before October 1, 1988, the indirect medical education factor equals the following:

$$2\times\left(\frac{1+\text{interns and residents}}{\text{beds}}\right)^{.405}-1$$

For discharges occurring on or after October 1, 1988, the indirect medical education factor equals the following:

$$1.5\times\left(\frac{1+\text{interns and residents}}{\text{beds}}\right)^{.5795}-1$$

Section 9104(b) of Pub. L. 99–272 amended section 1886(d)(2)(C)(i) of the Act and provides that the standardized amounts be restandardized to reflect the changes made to the indirect medical education factor under section 9104(a) of Pub. L. 99–272 (that is, under section 1886(d)(5)(B) of the Act). Although section 1886(d)(2)(C) specifically refers to standardizing the base-year (1981) cost data used in developing FY 1984 prospective payment rates, it also states that this standardization applies to discharges occurring after September 30, 1986, that is, in FY 1987. We believe that the amended section 1886(d)(2)(C)(i)

VOL 51 ISS 170 SE 3 1986 UMI

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was intended to require that the 1981 costs per case for each hospital, which were standardized for indirect medical education payments based on an 11.59 percent linear adjustment factor, be restandardized based on section 1886(d)(5)(B) of the Act, as amended by section 9104(a) of Pub. L. 99–272, before being used to establish the FY 1987 rates. Therefore, in establishing the standardized amounts used to determine the FY 1987 prospective payment rates, after adjusting each hospital's inpatient operating cost per discharge for inflation, differences in area wage levels, and case mix, we divide each teaching hospital's cost per discharge by 1.0 plus the individual hospital's indirect medical education adjustment factor, as computed using the formula described above, which section 1886(d)(5)(B)(ii)(I) of the Act requires be used for discharges on or after May 1, 1986 and before October 1, 1988.

We are responding to comments received on these provisions in section II of the preamble to this final rule.

d. Cost-of-Living Factor for Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes the Secretary to provide for such adjustments to the payment amounts as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

Generally, these two States have higher levels of cost in comparison to other States in the nation. The high cost of labor is accounted for in the wage index adjustments discussed above. However, the high cost of living in these States also affects the cost of nonlabor items (for example, supplies and equipment). Therefore, in order to remove the effects of the higher nonlabor costs from the overall cost data (that is, for standardization purposes), the nonlabor portion of the average cost per Medicare discharge in hospitals located in Alaska and Hawaii is divided by an appropriate cost-of-living adjustment factor. Because the nonlabor portion has already been standardized for this adjustment, no restandardization is necessary.

e. Costs for Hospitals that Serve a Disproportionate Share of Low-Income Patients

Section 9105(b) of Pub. L. 99–272 amended section 1886(d)(2)(C) of the Act by adding a new section 1886(d)(2)(C)(iv) to provide that effective with discharges occurring on or after October 1, 1986 and before October 1, 1988, the updated amounts be standardized for the estimated additional payments made to hospitals that serve a disproportionate share of low-income patients. That is, we believe that although section 9105(b) of Pub. L. 99–272 amended section 1886(d)(2)(C) of the Act (which relates to FY 1984 prospective payment rates), this provision was intended to require us to standardize the 1981 costs per case for each hospital qualifying for disproportionate share payment adjustments, before using such costs in establishing the FY 1987 rates. For discharges occurring on or after October 1, 1988, we would eliminate the effects of this standardization of base-year costs per case for the estimated payments made to disproportionate share hospitals, since section 1886(d)(5)(F) of the Act does not authorize such payments for discharges after September 30, 1988.

Section 9105(a) of Pub. L. 99–272 added a new section 1886(d)(5)(F) to the Act to require that we make an additional payment for hospitals that serve a disproportionate share of low-income patients. In the interim final rule of May 6, 1986 (51 FR 16788), we added a new §412.106 to implement this provision.

Section 1886(d)(5)(F)(i) of the Act provides that for discharges occurring on or after May 1, 1986 and before October 1, 1988, an additional payment must be made for each prospective payment hospital that meets one of the following criteria:

- During the hospital's cost reporting period, the hospital has a disproportionate patient percentage that is at least equal to—
  - —15 percent, if the hospital is located in an urban area and has 100 or more beds;
  - —40 percent, if the hospital is located in an urban area and has fewer than 100 beds; or
  - —45 percent, if the hospital is located in a rural area.
- The hospital is located in an urban area, has 100 or more beds, and can demonstrate that during its cost reporting period, more than 30 percent of its total inpatient care revenue is derived from State and local government payments for care furnished to indigent patients not covered by Medicare or Medicaid.

Under section 1886(d)(5)(F) (iii) and (iv) of the Act, the additional payment adjustments for hospitals that meet the criteria of hospitals that serve disproportionate shares of low-income patients are determined as follows:

- For urban hospitals with 100 or more beds, the hospital's total DRG revenue is increased by 2.5 percent plus one-half the difference between the hospital's percentage of low-income patients and 15 percent, up to a maximum of 15 percent; that is, the disproportionate share adjustment factor is the lesser of 15 percent or (P−.15)(.5)+.025, where P equals the hospital's disproportionate patient percentage expressed as a decimal.
- For urban hospitals with fewer than 100 beds, the hospital's total DRG revenue is increased by five percent.
- For rural hospitals, the hospital's total DRG revenue is increased by four percent.
- For hospitals that qualify for disproportionate share adjustments based on the fact that at least 30 percent of their inpatient care revenue comes from State and local sources for indigent care, the hospital's total DRG revenue is increased by 15 percent.

Therefore, in establishing the standardized amounts for FY 1987, we are adjusting the inpatient operating cost per discharge of each hospital identified as meeting the above criteria by adding 1.0 to the applicable disproportionate share payment factor, and dividing the hospital's cost per discharge by that number.

In determining the disproportionate share adjustment factors for purposes of standardizing the standardized amounts, we used available data on the percentage of total days represented by Medicaid patient days from Medicare cost reports for cost reporting periods beginning in Federal FY 1984 and the percentage of total Medicare days for FY 1985 attributable to patients dually entitled to Medicare and Supplemental Security Income (SSI) derived from matching FY 1985 SSI eligibility files to Medicare FY 1985 PATBILL records.

We were unable to obtain either Medicaid or SSI data (primarily Medicaid data) for 118 hospitals out of the 5,501 hospitals in the 1981 data base used to compute the Federal standardized amounts. In order that these amounts be as accurate as possible, and that we comply with the requirements of the law that the rates be standardized to take into account the effect of payments to disproportionate share hospitals, we imputed values for these 118 hospitals by using the Statewide urban or rural mean Medicaid or SSI percentage, as applicable. Based on the imputed values, we estimated that 45 hospitals out of the 118 would qualify for disproportionate share payments. We believe that our use of this methodology is fully in compliance with section 1886(d)(2)(C)(iv) of the Act, which requires that we exclude, in computing rates for discharges on or after October 1, 1986, and before

October 1, 1988, ". . . an *estimate* of the additional payments to certain hospitals to be made under paragraph (5)(F)." [emphasis added]

In accomplishing such standardization for this final rule, we have not taken into account any payments to hospitals that qualify for disproportionate share payments based on the percentage of their revenue from State and local government sources for indigent care. This is because these hospitals must demonstrate on a hospital-by-hospital basis that they meet the criteria for a payment adjustment. Since the disproportionate share hospital provision has been in effect only since May 1, 1986, we do not know at this time how many or which hospitals will ultimately qualify under this provision. While we expect that the number of such hospitals is likely to be small, and therefore may not have a significant effect on the standardized rates, we will monitor this situation closely and, to the extent possible, will standardize the costs per case for such hospitals in establishing the FY 1988 rates. Section 1886(d)(2)(C)(iv) of the Act provides that the computation should exclude *an estimate* of the additional payments made to disproportionate share hospitals. We have made this estimate based on the best data available at this time. We doubt that this estimate would have been significantly different had data on hospitals qualifying under the alternative provision been available.

2. Grouping of Urban/Rural Averages Within Geographic Areas

Under section 1886(d)(2)(D) of the Act, the average standardized amounts must be determined for hospitals located in urban and rural areas of the nine census divisions and the nation. For FY 1987, except for sole community hospitals and hospitals in Oregon, the Federal rate used in computing each hospital's DRG payment per discharge will be comprised of 50 percent of the national rate and 50 percent of the appropriate regional rate (section 1886(d)(1)(D) of the Act). Therefore, Table 1 contains 40 standardized amounts (20 urban amounts of which 10 are labor-related and 10 are nonlabor-related, and 20 rural amounts of which 10 are labor-related and 10 are nonlabor-related). The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts, except that the national urban and national rural rates are based on the average standardized costs of hospitals from all urban and all rural geographic areas, respectively.

On June 13, 1986, EOMB designated a new MSA, effective June 30, 1986. The new MSA is comprised of Merced County, California. As stated in the January 3, 1984 final rule (49 FR 253), and in subsequent prospective payment final rules, such changes in designation will be recognized in the prospective payment rates at the beginning of the Federal fiscal year following the announced changes. The revised wage index (as well as the standardized amounts) included in this final rule incorporate this change (as well as the change for Shiawassee County, as indicated in section IV of the preamble) which will be effective October 1, 1986 for prospective payment purposes. Note that such changes account for modest changes in the standardized amounts.

Comment: One commenter pointed out that the nine census divisions for which urban and rural adjusted standardized amounts were developed represent administrative rather than economic areas. The commenter believes that greater accuracy in computing the adjusted standardized amounts could be achieved by developing and applying the amounts using hospital data from each of the 50 States. This would, in effect, result in 50 regional amounts rather than the nine that are presently recognized.

Response: Section 1886(d)(2)(D) of the Act provides that the regional standardized amounts must be developed with data from States that define each of the nine census divisions as established by the Bureau of the Census. Accordingly, the regional basis for deriving and applying the average standardized amounts is stipulated by law, and we have no discretion to do otherwise.

Comment: One commenter stated that the rural prospective payment rates are too low (by three to five percent) because we used a uniform budget neutrality factor.

Response: In determining the prospective payment rates, section 1886(d)(2)(D) requires that we compute urban and rural average standardized amounts for each of the nine census regions and the nation. Because the costs of rural hospitals generally are lower than the costs of urban hospitals, the average standardized amounts were lower. We note the commenter's concern that a uniform budget neutrality adjustment factor unduly disadvantages rural hospitals. Implicit in the commenter's concern is a belief that the percentage difference between payment to rural hospitals subject to the rate-of-increase limits and payment to those same hospitals if they were subject to the prospective payment system would have been less than the percentage difference between the rate of increase payments and prospective payments for urban hospitals. Without making a judgment on the commenter's statement, we note that sections 1886(e)(1) (A) and (B) of the Act, which govern budget neutrality, refer to adjustments that will ensure that "the aggregate payment amounts" under the prospective payment system will not be greater or less than the payments that would have been made under the rate-of-increase limits. Since the statute refers to "aggregate" payments, while distinguishing between the Federal rates and the hospital-specific rates, we developed separate budget neutrality factors based on aggregate estimates for the Federal rates and the hospital-specific rates.

We also note that section 1886(e)(1)(A) of the Act, in setting forth the requirements for budget neutrality of the hospital-specific rates, states in part ". . . the Secretary shall provide for such proportional adjustment in the applicable percentage increase (otherwise applicable to the periods under subsection (b)(3)(B)). . . ." Since there is a single update factor for the hospital-specific rates, and the statute requires an "adjustment" to that factor (that is, to the "applicable percentage increase"), we developed a single factor regardless of urban or rural location. Similarly, since under the statute the same update factor applies to the Federal rates and the hospital-specific rates, we also adjust this single factor, with respect to the Federal rates, by a single budget neutrality factor.

3. Updating the Average Standardized Amounts

a. Statutory Requirements

The basic requirements governing the method by which the average standardized amounts are updated are set forth at section 1886(d)(3)(A) of the Act, as follows:

(A) UPDATING PREVIOUS STANDARDIZED AMOUNTS.—The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for each of fiscal years 1985 and 1986 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under

subsection (e)(4), and adjusted to reflect the most recent case mix data available.

In accordance with section 1886(d)(3)(A) of the Act, we are adjusting the urban and rural average standardized amounts for FY 1987, using the applicable percentage as determined by the Secretary in accordance with section 1886(e)(4) of the Act. That section reads as follows:

(4) Taking into consideration the recommendations of the Commission [that is, the Prospective Payment Assessment Commission, or ProPAC], the Secretary shall determine for each fiscal year [beginning with fiscal year 1987] the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

As prescribed by section 1886(e)(2) of the Act, the Commission, in making its recommendations to the Secretary:

shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

Section 1886(b) of the Act sets forth the requirements under which a rate-of-increase limit (target amount) is established for the inpatient operating costs of hospitals excluded from the prospective payment system. Under that section, a target amount is determined annually for each hospital cost reporting period, based on each hospital's base year cost per case, updated by an "applicable percentage increase."

For FYs 1987 and 1988, as required under 1886(b)(3)(B)(i)(II) of the Act, the "applicable percentage increase" is determined by the Secretary pursuant to section 1886(e)(4) of the Act and may not exceed the "market basket percentage increase" defined in section 1886(b)(3)(B)(ii) as:

with respect to cost reporting periods and discharges occurring in a fiscal year, the percentage, estimated by the Secretary before the beginning of the period or fiscal year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for the period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

We have used the hospital market basket as the means to measure the change in the cost of goods and services for both prospective payment rates and the target amounts applicable to hospitals and units excluded from the prospective payment system. Under section 1886(b)(3)(B) of the Act as amended by section 9101(b) of Pub. L. 99-272, for FY 1987 the percentage determined by the Secretary under section 1886(e)(4) will be applied to both the prospective payment rates and the target amounts (rate-of-increase limits) applicable to hospitals and units excluded from the prospective payment system.

Comment: One commenter believes that it is inappropriate to develop the FY 1987 adjusted standardized amounts by essentially trending forward the FY 1986 amounts. This commenter maintains that the FY 1986 adjusted standardized amounts do not reflect the experience of New York and Massachusetts hospitals, an exclusion that the commenter estimates has reduced the adjusted standardized amounts by approximately four percent from what they otherwise should be.

Response: We disagree with the commenter's suggestion. In accordance with section 1886(d)(2) of the Act, we constructed the original adjusted standardized amounts (Federal portion of the prospective payment rates) using standardized costs from all available hospitals (not otherwise excluded from the prospective payment system under section 1886(d)(1)(B) of the Act). We included data from hospitals located in the States under a Medicare waiver at that time (New York, Massachusetts, New Jersey, and Maryland). We did not believe it would have been desirable to exclude data from waiver State hospitals to develop the adjusted standardized amounts in view of the significant impact such an exclusion would have had on the determination of certain regional rates. For example, excluding New York and New Jersey hospitals would have meant that the adjusted standardized amounts for the Middle Atlantic region would have been based entirely on data from hospitals in Pennsylvania. Because the list of Medicare waiver States can and has changed over time, we believe that the adjusted standardized amounts should reflect all available data from hospitals not otherwise excluded from the prospective payment system under section 1886(d)(1)(B) of the Act in order to avoid the potential for regional bias in those rates.

In addition, the exclusion of waiver States in developing the prospective payment rates would be inappropriate for the purpose of estimating what waiver State hospitals would have been paid had they been subject to the prospective payment system in accordance with the requirements of section 1886(c) of the Act. We believe that the waiver State hospitals should be included in the calculation of prospective payment rates that would have otherwise been paid so as not to skew the results of such comparisons.

Moreover, it appears that this commenter's analysis is flawed. Massachusetts and New York account for about one-eighth of inpatient reimbursement. An adjustment of three to four percent would imply that the inpatient costs of these States would be 24 to 32 percent higher than the national average, after considering the effects of case mix, area wage differences, and the indirect teaching adjustment. Since this is inconsistent with actual results, we are not accepting the commenter's suggestion.

Therefore, because data from the waiver States were used to develop the original adjusted standardized amounts implemented in FY 1984, the adjusted standardized amounts for FYs 1986 and 1987 similarly reflect the historical cost experience of New York and Massachusetts hospitals.

b. Factors Considered in Determining the FY 1987 Update

Based on the legal requirements for establishing the FY 1987 update (sections 1886(b)(3)(B) and (e)(4) of the Act), we had to consider at least the following factors in addition to the hospital market basket index:

- Hospital productivity.
- Cost-effective technologies.
- Improvements in practice patterns.

We believe that it is necessary, each year, to review the appropriateness of the level of the previous year's prospective payment rates for providing reasonable payment for inpatient hospital services furnished to beneficiaries. This review must include an assessment of whether the previous year's prospective payment rates have established adequate incentives for the efficient and effective delivery of needed care. In this way, we avoid carrying forward inaccuracies in the previous year's rates into the future and, thus, avoid overpaying or underpaying hospitals as a result of those inaccuracies.

Therefore, we believe that the FY 1987 standardized amounts should be established by a methodology that takes

into account the prior year's experience (whether understated or overstated). To this end, we have measured the observed change in case mix (both improved coding and real) to be 2.6 percent. (Note that in the NPRM the observed change in case mix was 2.7 percent. Our more recent data, through July 1986, indicate the change to be 2.6 percent.) We estimate that 0.6 percent of the observed change is for real increases in case mix, and thus 2.0 percent is for improved coding practices for FY 1986 as discussed in section II.A.3.c., below.

In response to public comments, we are also making an adjustment (0.0 percent) for *actual* market basket error in FY 1985 rather than *forecast* market basket error in FY 1986 as we had proposed. The discussion of this adjustment is in section II.A.3.d., below.

In addition, we have developed factors representing allowances or offsets for productivity, technological advances, and improvements in practice patterns that are necessary to ensure the cost-effective delivery of care. Each of these factors interacts with the others, to some extent, and has an impact on the quality of care. Taking into consideration ProPAC's recommendations on the policy target adjustment factor, we have determined an appropriate percent value for each of these factors, making conservative assumptions with regard to their potential effects on quality, and have combined these values into a composite policy target adjustment factor, as discussed in section II.A.3.f., below. For FY 1987, the factor equals −2.3 percent.

The forecast hospital market basket increase for FY 1987 is +3.7 percent. With the offsets for net case mix change from FY 1986 (−2.0 percent), and the composite policy target adjustment factor (−2.3 percent), and the adjustment for actual market basket error in FY 1985 (0.0 percent), we believe there is justification for a 0.6 percent decrease in the FY 1987 standardized amounts, as compared to those for FY 1986.

c. Nominal Case Mix Change for FY 1986.

We believe it is necessary to update the standardized amounts to take into consideration the overstatement in case mix as a result of improved coding practices. Through such an adjustment we would ensure that we are providing the amounts necessary for the efficient and effective delivery of medically needed health care. Not taking such overstatement into account would result in overpayments to hospitals, since the increased case mix would not be related to actual increases in resource use.

As part of our prospective payment monitoring system, we have been generating monthly case mix index values for each hospital under the prospective payment system. In the proposed rule, based on hospital bills received through April 1986, which included about 2.7 million discharges in FY 1986 for prospective payment system hospitals in States which did not have waivers in FY 1985, we observed that hospital case mix index values had increased an average of 2.7 percent over the comparable period in FY 1985.

We now have data through July 1986, which show that the hospital case mix index values have increased an average of 2.6 percent over the comparable period in FY 1985. This revised figure is incorporated into our offset for nominal, or coding-related, case-mix change.

Comment: Several commenters stated that in adjusting the prospective payment update factors for diagnostic coding improvements, we should pay for "real" case mix increases.

Response: We agree. This is what we proposed to do in the NPRM, and we are, in fact, allowing for "real" case mix changes in our analysis of an appropriate update factor, while at the same time incorporating an adjustment for coding improvements.

Comment: Some commenters stated that the data we used for case mix analysis are inadequate and that we used a sample of discharges for case mix analysis. They stated that we are in disagreement with ProPAC on measured increases in case mix.

Response: For bills received through July 1986, we now have 5.0 million discharges (excluding those from hospitals on State payment waivers in FY 1985). This includes data for each of the first ten months of FY 1986. This is the best data available to measure FY 1986 case-mix increases. ProPAC has different measurement results because it used data in its recommendations that predate FY 1986.

Comment: Some commenters argue that coding improvements are no longer occurring, or that coding improvements can only occur over a limited period of time.

Response: These comments certainly make intuitive sense. In fact, there are indications that coding improvements may finally be slowing down. Nevertheless, the data indicate that case mix coding increases are still occurring in FY 1986 and that these coding increases require that an adjustment be made to the FY 1987 rates. Moreover, DRG reclassifications and recalibration of the relative weights may both continue to create incentives for hospitals to modify their coding practices from time to time. To the extent that such changes in coding practices result in cases moving, in general, into higher-weighted DRGs from lower-weighted ones, such coding is reflected in increased case-mix indexes attributable solely to coding improvements.

Comment: We received several comments that the adjustments for coding improvements should not be retroactive.

Response: We have never made retroactive adjustments for coding improvements. If we had made retroactive adjustments, we would have had to recover payments already made, which would not be consistent with the concept of a prospective payment system. Since FY 1986 is the basis on which FY 1987 payments will be determined, we must adjust the FY 1987 update factor for the effects of coding improvements in FY 1986 so that the overpayments are not carried forward into FY 1987. We have assumed that once coding improvements occur, they stay in the system for future years. Experience to date bears this out.

Comment: Many commenters claim that recalibration of the DRG weights will fix the coding problem, or that we should change the relative weights of the DRGs associated with coding improvements. One commenter suggested that the average case mix should average 1.0 so that the concept of relative weights does not lose meaning. This commenter did state, however, that actual payments would not change if the average case mix was normalized to a number other than 1.0.

Response: If lower cost cases are coded into higher relative weight DRGs, recalibration will lower the relative weights of these same DRGs, but only if all other factors are held constant. Similarly, if higher cost cases (that is, cases that are higher relative to the DRG they should be classified in) are coded into a higher-weighted DRG, the cost of the upcoded case is higher relative to the average for that DRG, but again, only if all other factors are held constant. The important point to note here is that all other factors are not constant. Increases or decreases in weighting factors are dependent upon a number of variables, such as the total number of cases in affected DRGs, and the number of cases that are being upcoded. Therefore, it is not necessarily the case that recalibration will correct or otherwise address the coding problem. In addition, even assuming that recalibration by itself would address the coding problem, it would not solve the problem of excessive payments due to

coding improvements, because we normalize the new relative weights resulting from recalibration to the same average case weight values as the old relative weights. We do this so that aggregate payments will not be affected.

Hence, we must adjust the standardized amounts for coding improvements. We disagree that normalizing the relative weights to 1.0 would lead to a greater understanding of the DRG relative weights. The distribution of cases used to establish the initial set of DRG relative weights did not have an average case weight of 1.0, and we are unaware that the prospective payment system was more difficult to understand because of this fact. Further, as the mixture of DRGs changes, the average weight would change (which is what actually occurred). To avoid an impact on aggregate payments, the weights were then normalized to the same average case weight value as the old relative weights. We do agree with this commenter that the normalization level does not have to equal 1.0 in order for there to be no effect on aggregate payments to hospitals, provided that the weights are normalized after recalibration to the same average case weight as existed prior to recalibration.

Comment: Several commenters requested that we recode the base year from which changes are calculated.

Response: We disagree. We cannot recode 1981 DRGs because we do not have the medical records information to do it. Moreover, the medical records themselves would be different (much improved) if those hospital stays had been paid under the prospective payment system. For the FY 1987 rates, our base year for computing case mix changes is FY 1985 since we are now computing year-to-year changes in case mix. Since payments to hospitals were actually based on the 1985 DRGs, it would be unnecessary and inappropriate to recode the 1981 discharges (even if it were possible) for purposes of measuring case mix changes.

Comment: Several commenters stated that the PROs should review and make changes for diagnostic coding improvements.

Response: The PROs have changed DRGs on some of the cases they reviewed as a result of modifying the coding of a particular case. Because much of the increase in case mix is due to improvements rather than to errors in medical coding, however, PROs cannot change the DRG result from improved medical coding, even though we are paying more for these cases than we did previously. It is important to recognize that prior to the implementation of the prospective payment system, Medicare payment for hospital care did not depend on the particular diagnoses and procedures involved in treating each patient, so long as the care was medically necessary and reasonable. Accordingly, we requested and received coded bills for only a 20 percent sample of Medicare beneficiaries. Moreover, that coding was limited to the principal diagnosis, an indicator as to the presence or absence of secondary diagnoses, and one surgical procedure. Under the prospective payment system, up to four secondary diagnoses and three surgical procedures can be reported. Since the GROUPER logic is structured to provide that each secondary diagnosis or surgical procedure can move a case from a less resource-intensive to a more resource-intensive, and thus higher-weighted, DRG, we have found that coding of Medicare bills under the prospective payment system is, in general, far more complete than it was prior to the prospective payment system.

Comment: A commenter stated that within a certain State, the new GROUPER reduced the case mix for its Medicaid admissions by 0.2 percent.

Response: We normalized the new DRG relative weights so as to hold constant the average case weight before and after recalibration of the weights for FY 1986 and thus yield the same overall Medicare payments for the 10.8 million cases in our recalibration file. It is expected, despite such normalization, that the Medicare case-mix indexes for individual hospitals would be different. The potential effects of DRG classification changes and recalibration of the weights on measurement of non-Medicare case-mix indexes was not considered. We have repeatedly noted that the relative weights that we publish for the DRGs, except for those identified as low volume, are based exclusively on Medicare inpatient hospital cases and, as such, are valid and reliable as a measure of relative resource intensity only for the Medicare beneficiary population. While the DRG classification system establishes categories that are exhaustive and mutually exclusive, such that any case, including non-Medicare cases, can be classified into one and only one of the DRGs, the weights are derived from Medicare patients alone, and a published weight of 1.0000 corresponds to a particular Medicare payment level. To the extent that other payors, including State Medicaid programs, adopt a DRG-based payment methodology, we urge them to consider the development of their own relative weights. Use of the published prospective payment system relative weights for other patient populations could be inappropriate and may result in systematic overpayments or underpayments of some cases.

Comment: Several commenters stated that we did not consider real case mix increases in the 1983 to 1984 period, and that we finally are considering real case mix increases for the first time.

Response: FY 1984 and FY 1985 were years subject to the requirements for budget neutrality. As required under section 1886(e)(1) of the Act, payments under the prospective payment system were to be equal to what would have been paid under rate-of-increase and peer group limits on reasonable costs under prior law (section 1886(b) of the Act) as if the prospective payment system had never been implemented. Under the rate-of-increase limits and peer group limits, as long as a hospital's cost was lower than that hospital's limits, we paid that cost, regardless of whether real case mix increased or decreased, and regardless of the effect of actual case mix on the cost level for that hospital. (For example, a hospital's real case mix could have declined and its cost per discharge increased because of operating inefficiency, or other factors, but we paid that cost as long as the actual cost was lower than the target amount.) Increases in real case mix were built into the cost per case increase assumptions we used to model the rate-of-increase limits. These assumptions took into account estimates of the impact of the rate-of-increase limits and the peer group limits. Consequently, we considered increases in real case mix in FYs 1984 and 1985. Moreover, even these assumed increases in cost per case proved to be overstated as we received more recent data against which to evaluate our estimates. To have passed through updated prospective payment case-mix increases for FY 1984 and FY 1985 would have been improper because they would increase program payments over the level that would have been paid under the section 1886(b) limits. As stated above, we have already built case-mix increases into the cost-per-case assumptions used in deriving budget neutral prospective payment rates for FY 1984 and FY 1985.

Now that there is no further requirement for budget neutrality, we agree that real case-mix increases should be explicitly recognized. In fact, to the extent that case mix continues to increase, hospitals realize the benefit of such increase in increased payments for the current year. This is because we do

VOL 51 ISS 170 SE 3 1986 UMI

not recoup payments already made, but only adjust the rates to avoid compounding such overpayments in the future. Thus, FY 1986 prospective payment rates were based on FY 1985 rates, corrected to eliminate all increases in case mix through FY 1985 (since FY 1985 was a budget neutral year). However, we now have data that indicate that case mix has increased an additional 2.6 percent. Hospitals have been realizing the benefit of that increase through increased payments. Our update factor will be adjusted so as to not pass through in the FY 1987 rates 2.0 percentage points of the increase in case mix. However, the 0.6 percentage points that we estimate to reflect a real increase in case mix will be added to the update factor for FY 1987.

Comment: Several commenters suggested that coding improvements are not uniform among hospitals.

Response: We agree that coding improvements are not uniform among hospitals. Implicit in this comment is the suggestion that somehow through the prospective payment system we should make allowances for inter-hospital difference in coding improvements. However, as indicated in another response, we expect the phenomenon of coding increases to eventually taper off. We question the necessity of refining the computation and application of a measure that both we and the industry agree is essentially a temporary phenomenon brought about in large measure by the introduction and implementation of the prospective payment system. Coding increases should level off as the system continues in effect, and because the opportunities for coding improvements eventually will become constrained by the natural limitations of the system. For example, while it may be possible to assign a case to a higher-weighted DRG by being more precise on the bill about the presence of complicating conditions, more precise coding cannot change a diagnosis of appendicitis to one of severe burns.

However, if future review indicates that adjustments continue to be needed to take account of coding increases, we will evaluate the commenter's implicit suggestion further.

Comment: One commenter pointed out that we incorrectly recommended a 2.7 percent decrease for coding improvements in the NPRM.

Response: The 2.7 percent decrease (now revised to 2.6 percent) was for total case mix change, but it was offset by 0.6 percent increase corresponding to our estimate of real case mix increases, as discussed previously.

Comment: One commenter alleged that we did not consider seasonality in measuring the case mix increases.

Response: Our measurement methodology as described in the NPRM (51 FR 20016) does indeed adjust for seasonality. We compute the case mix increase using all patient bills we have received under the prospective payment system at the time of the determination. To determine the degree of difference, we compute a separate case mix index for each hospital for each month in FY 1986 for which we have bills by multiplying the number of discharges for each DRG by the relative weight for that DRG, summing the products, and then dividing that sum by the number of total discharges for that month and hospital. We weight all the monthly hospital case mix indexes by the number of discharges for each hospital for each month in FY 1986, and then sum the weights, to determine the FY 1986 average case mix.

We then compute a comparable average case mix for FY 1985. This is done by computing a case mix index for each hospital for each month in FY 1985 using FY 1985 DRGs and discharges. We weight all the FY 1985 monthly hospital case mixes by the number of FY 1986 discharges by month (the same number of discharges used for the FY 1986 calculation) to determine the comparable FY 1985 average case mix. The case mix increase for FY 1986 is computed by dividing the FY 1986 case mix index by the FY 1985 case mix index.

This methodology automatically excludes data for those months in FY 1986 for which we have no bills. It also compensates for any biases that could have been due to seasonal variations and the timeliness of submitting bills. Hospitals in States with Medicare waivers in 1985 (New York, Massachusetts, Maryland, and New Jersey) were excluded from this analysis so that the case mix increase was measured only for hospitals under the prospective payment system for both FY 1985 and FY 1986.

Comment: One commenter questioned the statistical validity of the study completed by the Rand Corporation for us which supported a full reduction in the FY 1986 prospective payment rates for nominal case-mix increase.

Response: The RAND study on case-mix index increase represents a statistically reliable and valid study on Medicare case-mix index increases. During the study a number of independent variables reflecting volume changes were added to the model. The results indicated that while volume declines tended to increase the case-mix index, the magnitude of this effect was quite small. In addition, the Rand Corporation noted that the inconsistencies between 1981 MEDPAR and 1984 PATBILL data bases represented a component of case-mix increase that was distinct from the effects of coding practices on the part of hospitals.

The commenter also reported a Durbin-Watson statistic that is in the range indicating the presence of autocorrelation. We note that one of the standard assumptions in the regression model is that the residuals, that is, the difference between the actual and predicted values of the dependent variable, are uncorrelated. Correlation in the residuals suggests that there is additional explanatory information in the data that is not reflected in the regression equation. If the observations have a natural sequential order, the correlation is referred to as autocorrelation.[1]

Autocorrelation can cause an overstatement of the statistical significance of a regression coefficient, though it does not lead to an inconsistent estimate of the regression coefficient itself. We are not concerned about autocorrelation in this analysis. First, the statistical significance of the variable ONPPS (that is, the discrete variable of whether a hospital was or was not on the prospective payment system) is so high that overstatement is unlikely to be a problem. The t-statistic is 4.8. Second, we estimated another specification of the model that would be much less likely to have autocorrelation (the dependent variable was the change from the year-ago quarter), and the results were similar.

d. Correction for Forecasted Market Basket Error for FY 1986.

The forecasted hospital market basket increase factors used to calculate the FY 1986 standardized amounts were 4.8 percent for 1985 and 4.1 percent for 1986. Based on these calendar year factors, we projected a hospital market basket increase factor for FY 1986 of 4.27 percent. Our latest hospital market basket factors, as of July 25, 1986 reflect more actual experience than those available at the time the FY 1986 rates were published. The market basket factors are not rebased or reweighted, as described in section III of the preamble. The most recent factors are

[1] For further information on autocorrelation, we refer the reader to *Regression Analysis By Exomple*, Samprit Chatterjee and Bertram Price, John Wiley and Sons, New York, 1977, pp. 123-142.

4.9 percent for 1985 and 3.9 percent for 1986.

Forecasted Market Basket (MB) Percent Increase for FY 1986 Rates and our More Recent FY 1986 Data

Calendar year	Forecasted MB percentage	Updated MB percentage
1985	4.8	4.9
1986	4.1	3.9

Based on these calendar year factors, we project that the hospital market basket increase for FY 1986 is 4.15 percent, calculated as follows:

Calendar year	No. of months	Portion of year	Inflation rate (percent)
1985	3	3/12=.25	4.9
1986	9	9/12=.75	3.9

FY 1986 forecasted market basket inflation=$(1.049)^{.25}$ $(1.039)^{.75}-1=4.15\%$.

Using the latest market basket factors for correction of the standardized amounts, we could reduce them by 0.1 percent (4.27 percent minus 4.15 percent equals 0.12 percent), but we are not going to reduce them. Instead, we are establishing an adjustment for actual market basket error (rather than forecast) as discussed below.

Comment: Several commenters stated that a correction for a market basket change "never received" was inappropriate. Some suggested that we were inconsistent by making this correction in view of the fact that we had previously rejected making retroactive adjustments to payment rates to correct for market basket forecast errors. Others suggested that the 1986 market basket change is still a forecast, and that a final correction is not possible until actual measurements have been completed.

Response: The argument that the hospital industry did not receive the market basket change is incorrect. Had the market basket change not been taken into consideration, the technical factors for last year's update would have been 4.27 percentage points lower. Furthermore, the forecast correction does not affect the prospectivity of the system. Hospitals continue to be paid prospectively. The correction is to the base amount used to compute the DRG payment. If the market basket forecast was too low and was left uncorrected, not only would the payment for that year be too low, but, all other things being equal, so would the payment for all following years.

We have not contradicted ourselves by making a market basket forecast error correction. In the January 3, 1984 final rule, we rejected a recommendation to make retroactive payments for market basket forecast error because to do so would be contrary to the principles of a prospective system (49 FR 252). Furthermore, in the September 3, 1985 final rule, we specifically addressed the issue of forecast error corrections (51 FR 35699). In that response we noted that, "though this adjustment, in the sense of looking back, may have been retrospective, it certainly was not retroactive.'

ProPAC has made several compelling arguments in favor of such a forecast error correction. ProPAC pointed out that forecast errors are built into the base or standardized amount. Thus, an uncorrected forecast error for the current fiscal year would affect payments in all future periods. If the forecast errors are systematically in one direction, the compound effect of the errors could become quite significant.

We believe that the logic of making corrections for forecast errors is well founded, even if the correction is for a year not yet completed. Such a correction in any event, even though still technically a forecast, would be based on the most recent, and therefore presumably the best data available. In addition, to the extent that a more recent forecast supports the need for a correction, it may be more appropriate to reflect that correction sooner rather than to risk making a larger correction later. However, we also agree that the argument that corrections should not be made based on later forecasts, but only after the period to which the forecast applies has elapsed, has some merit. Therefore, we are not making a correction for FY 1986 in determining the FY 1987 update rate. This correction will be made when actual data are available for 1986 and will be incorporated in the FY 1988 update determination. We wish to emphasize, however, that during the process of making the FY 1988 determinations, we will evaluate at that time whether it is appropriate to make any necessary corrections to the market basket forecast for FY 1987.

Actual data are now available for FY 1985 and, according to the logic presented above, we should make a forecast error correction. However, we have already made a correction for the FY 1985 market basket in the update of the FY 1986 rates (September 3, 1985 final rule). The amount of that correction was −1.2 percent based on an original market basket forecast increase of +6.3 percent for FY 1985 and last year's revised forecast of +5.0 percent. (Note that a +0.1 percent adjustment was made to the correction factor due to budget neutrality.) Our current estimate of the FY 1985 market basket increase is also +5.0 percent; therefore, no further adjustment is warranted.

To date, the forecast errors have favored the hospital industry. That is, the forecasts upon which payments have been based were too high. It is easy to speculate why this is happening given an economy in which inflation is slowing down. In addition, forecasts quite frequently lag behind in recognizing economic turning points and trends due in part to forecasters making conservative estimates. One should anticipate the same lags to occur during upswings in the economy.

e. Forecasted Market Basket Increase

We considered forecasted market basket increases in determining the percentage increase for both prospective payment rates and rate-of-increase limits (target amounts) for FY 1987. However, the percentage change determined under section 1886(e)(4) of the Act does not have to equal the market basket. Rather, the percentage change, or update factor, may not exceed the increase in the market basket. The table below shows the most current market basket forecasts.

FORECAST MARKET BASKET (MB) PERCENTAGE INCREASE

	MB Percentage
Calendar year:	
1986	3.0
1987	3.9
1988	5.0

Based on these calendar year factors, we project a hospital market basket increase factor for FY 1987 (that is, October 1, 1986 through September 30, 1987) of 3.7 percent, calculated as follows:

Calendar year	No. of months	Portion of year	Inflation rate (percent)
1986	3	3/12=.25	3.0
1987	9	9/12=.75	3.9

FY 1986 market basket inflation=$(1.03)^{.25}$ $(1.039)^{.75}$ $-1=3.67\%$ or 3.7%.

Data Resources, Inc. (DRI) provides HCFA the historical and forecasted rates of increase in the market basket cost categories. Anyone interested in obtaining additional information on these forecasts may contact Data Resources, Inc., 1750 K Street, NW., 9th

VOL 51 ISS 170 SE 3 1986 UMI

Floor, Washington, DC, 20006. Upon request DRI will provide in writing a description of the general methodology as well as all of the variables used in the market basket forecast model.

Comment: One commenter pointed out that we had stated in the NPRM that general information on the market basket forecasts is available from DRI upon request (51 FR 20017). Upon contacting DRI, the commenter was unable to obtain any information, and therefore, was assertedly deprived of evaluating the market basket forecast information during the comment period.

Response: We contacted DRI to determine the basis for this comment. DRI advised us that it had received a request from the AHA for general information and also for certain detailed information on the forecast equations that it used to project the hospital market basket rates of increase. Contrary to our statement in the preamble to the NPRM, DRI had not yet prepared the written general information and therefore was unable to furnish it to the requester. As to certain detailed information that was also requested, DRI maintained that the request involved the release of proprietary information that, if released, could jeopardize its competitive position as a firm offering economic forecasting and consulting services. As well, DRI informed the commenter that HCFA provides much of the specific information (which we do upon request) that the commenter had requested. Nonetheless, DRI advised us that in response to requests for general information, it furnishes a general oral description of the forecast methodology and the variables used in its model. In addition, DRI stated that the information we said would be available to interested parties is also contained in its subscription publication, *Health Care Costs*.

We regret any difficulties that the commenter may have had in obtaining the general information on the hospital market basket forecasts. To prevent future misunderstandings, we are taking action to ensure the availability of a standard information package for all interested parties in connection with future market basket forecasts to be used in developing the prospective payment update factor. In this case, we believe that public analysis was not impaired since the only requester, AHA, had used the DRI forecasting information in the past and has access to its own economic forecasting consultant. We also believe that complete knowledge of the proprietary equations in DRI's forecasting model is unnecessary to allow informed comment on the market basket increase factor since the ultimate forecasts in each cost category can be adequately reviewed, and, if appropriate, challenged with other information without detailed knowledge of the forecasting equations.

For the benefit of the reader, we are providing, below, the DRI Cost Forecasting Service Price and Wage Forecasting Methodology.

Underlying Economic Assumptions

The current forecasts of the HCFA market basket index for hospital inpatient services are based on the third quarter 1986 base-case long-term Cost Forecasting Service (CFS) forecast of prices and wages in the U.S. economy. Assumptions about future economic activity are provided by the Data Resources U.S. Economic Service. Several key assumptions are summarized below.

- Real GNP is projected to rise 2.4 percent this year and 2.8 percent in 1987.
- Even though Federal spending is cut significantly, the Federal budget deficit on a unified basis totals $198 billion in 1986. It declines to $149 billion in 1987.
- Real exports of goods and services are projected to rise an average of 7.9 percent annually from 1985 to 1987, outpacing average import growth of 3.9 percent.
- Natural gas surpluses, plus strong gains in nuclear power and coal, should hold down oil demand through 1987. Crude oil supplies, however, will continue to expand. As a result, the refiner's acquisition price for foreign oil is projected to drop from about $27 in 1985 to $18 in 1986 and just under $16 in 1987.
- Adequate production capacity, low food and energy prices, and wage restraints are moderating factors in the overall inflation outlook. The GNP deflator is projected to rise 2.6 percent in 1986 and 2.5 percent in 1987.
- The average unemployment rate for civilian workers drops from 7.2 percent in 1985 to 7.1 percent in 1986 and 6.8 percent in 1987.
- Following a 4.3 percent gain in 1985, employment costs, as measured by the employment cost index for all private industry workers, rise 3.3 percent in 1986 and 4.0 percent in 1987.
- Average hourly earnings for hospital workers, which rose 5.1 percent in 1985, are projected to rise 4.1 percent in 1986 and 4.6 percent in 1987.

Price Models

Producer Price Indexes are modelled as a function of both production costs (the cost of labor, materials, and energy) and market strength, where cost escalation is assumed to exert the dominant influence on price escalation over time. With a base path for product price escalation formed from escalation in production costs, the role of the market demand variables becomes one of accounting for deviations from the base path—that is, changing profit margins. For example, with strong demand pressures (i.e., excess demand) a producer may often be expected to increase the profit margin on a given commodity by raising price above the base path. In a weak market situation, a similar effect on the downward side may be expected. The producer price models capture the effects of differing degrees of market strength on price escalation.

Producer price index escalation often exhibits a seasonal pattern. Seasonality, by definition, affects price escalation patterns within a year, but has a zero net effect on annual price escalation. The seasonal term is included in the producer price index models to capture seasonal fluctuations within the year.

Consumer price indexes are modelled as a function of corresponding producer price indexes, labor costs, consumer activity, and seasonal variables.

All price forecasting models are estimated with quarterly data and are specified in percent change form.

Wage Models

Three sets of factors important to the forecasting of wages include those which influence labor's demand for wages, the demand for labor itself, and various institutional or structural phenomena peculiar to the sector being examined. The first of these, labor's demand for wages, is usually determined by both the cost of living and a measure of labor's opportunity costs. Costs of living are generally captured by a broad inflation index such as the consumer price index for wage earners or the personal consumption deflator for the gross national product (GNP). The significance of the influence of cost of living tends to increase as the level of unionization in a particular sector increases. Opportunity costs are captured by wage escalation for workers with similar skills or in similar industries (a demonstration wage).

The demand for labor in an industry is to a great extent a function of the demand for the industry's output and the cost (and productivity) of labor relative to other inputs. Relatively higher levels of production activity tend to exert upward pressure on wages for given contributions of capital and materials to the production process.

Wage escalation rates are also a function of various structural-institutional factors. Often wages are bargained for collectively (i.e., unions). This can have a limiting influence on the market forces that might otherwise determine prevailing wage rates. Factors such as labor strikes have only "one-time" impacts on wage escalation patterns. The DRI methodology for forecasting wage escalation recognizes and attempts to quantify each of these factors on wages historically and in the future.

Finally, wage escalation generally exhibits a seasonal pattern. Seasonality by definition affects wage patterns within a year, but has a zero net effect on annual wage escalation. A seasonal term is usually included in the forecasting models.

Escalation in the employment index for an occupation is determined primarily by wage escalation in those industries hiring workers in that occupation. The NATIONAL INDUSTRY-OCCUPATION EMPLOYMENT MATRIX, published by the Bureau of the Census of the Department of Commerce, provides data on the proportion of workers in each of twelve major occupation groups that work in industries classified under standard industrial classification (SIC) codes. Industry wage escalation is measured by production or nonsupervisory worker average hourly earnings (AHE) data. The AHE data corresponding to the industries are combined to form a weighted average based on the Census information. This weighted average forms a composite explanatory variable term for each of the occupation-based ECIs.

The AHE series in the composite term account for factors that affect the demand for wages (cost-of-living and opportunity costs of employees) and factors that affect the supply of wages (demand for labor as dictated by changes in industrial production). Therefore, supply and demand factors for labor are indirectly accounted for in the ECI models by including AHEs.

However, changes in industrial activity may affect occupation-based wages in a different manner than industry-average production worker wages (i.e., the AHE data). AHE series pertain to production workers only and include all production occupations (i.e., exclude supervisory personnel) in that industry; the ECIs measure occupations across all industries and include supervisory labor. Therefore, market demand terms are often included in the ECI models to account for unique effects of demand for labor on occupational employment cost index escalation. Seasonal terms are also included in the models to capture the effects of seasonality on employment cost index escalation.

Description of Price and Wage Indexes

The primary data source for the price and wage indexes forecasted by the Cost Forecasting Service is the Bureau of Labor Statistics of the U.S. Department of Labor. Most of the indexes fall into one of four categories: 1) Employment Cost Indexes (ECIs), 2) Producer Price Indexes (PPIs), 3) Consumer Price Indexes (CPIs), and 4) Average Hourly Earnings Indexes (AHEs).

Most labor rate data are collected either by occupation or industry. The average hourly earnings (AHE) data are collected via monthly surveys of over 150,000 reporting units. The earnings series are based on reports of gross payroll and corresponding paid hours for production or non-supervisory workers in a given industry. Occupationally based indexes, like the ECIs, on the other hand, represent wage changes for workers across all industries whose jobs are considered similar in terms of their classification. For example, the ECI for professional and technical occupations includes engineers, lawyers, physicians, nurses, and economists across all industries which employ these types of workers. The ECIs are constructed from a sample of establishment data that is weighted to accurately represent the universe of employment establishments. The employment weights by occupation and the occupational classification system are based on the 1980 Census of Population. The ECIs are representative of, and track the compensation of, almost 88 million civilian nonfarm workers.

Producer Price Indexes are used to measure price changes for goods sold in other than retail markets. The prices used by BLS to construct the indexes generally represent the first significant commercial transactions for commodities in the United States. The indexes are fixed-weight (Laspeyres) price indexes, which are intended to measure "pure" price change, and not influenced by changes in quality, quantity, product mix, etc.

Consumer Price Indexes measure changes in the prices of goods and services bought by the typical consumer. Like the producer price indexes, they are 'fixed-weight," or market basket indexes.

Comment: Several commenters noted that only one firm, Data Resources Incorporated, currently prepares the forecasts of the rate of change in the hospital market basket. Because the rate of price change in the market basket is a significant component in developing the overall FY 1987 prospective payment update factor, the commenters suggested that several forecasts be used to estimate ranges of hospital market basket inflation in projecting the increase applicable to the prospective payment rates.

Response: The basis for the commenters' recommendation is that several estimates would increase the precision of the market basket forecasts used to develop the prospective payment rates. However, as we stated previously in response to a similar comment in the August 31, 1984 final rule (49 FR 34767), we have no reason to believe that the use of several economic forecasting firms would yield superior or more accurate estimates of the rate of increase in the market basket than those currently provided by one contractor. There is no evidence that the forecasts provided to us to date have been biased. In addition, using more than one service raises several issues. The first is the cost of obtaining more than one service in a period of diminishing Federal budgets. On technical grounds there is the question of how differing forecasts would be reconciled. Should the forecast be averaged, should parts of one forecast be merged with parts of other forecasts, should the service with the best recent track record be used? These are all questions that would need to be resolved.

We point out that all economic forecasting firms had an equal opportunity to bid competitively for the contract under which the estimates of the rate of change in the hospital input price index are provided according to prescribed criteria. Many of the recognized leaders in macro-economic forecasting business bid on the contract. The contractor selected is widely recognized and used by both the public and private sector, including the American Hospital Association.

f. Composite Policy Target Adjustment Factor

(1) General Considerations

In analyzing the prospective payment system, we must consider the effects of the rates we set on outcome measures such as quality and access to care, and the financial viability of the hospital industry insofar as it relates to beneficiary access to high quality care.

(a) Quality of and Access to Care

As we stated in the NPRM, we have not found any evidence of compromise or deterioration in the quality of, or

VOL 51 ISS 170 SE 3 1986 UMI

access to, inpatient hospital care for Medicare beneficiaries since the inception of the prospective payment system. In conjunction with our own studies on quality and access, we have monitored ProPAC's activity on quality and access assessments. Available data and study findings on subjects such as mortality trends and readmission rates do not indicate any negative findings regarding a deterioration in quality or access under the prospective payment system. Furthermore, we believe our commitment to high quality care and access are evident in the monitoring functions of the PROs and the implementation of procedures to ensure that beneficiary rights are maintained so that beneficiaries are protected against premature discharges as discussed in section V of the preamble.

Despite these efforts, some critics of the prospective payment system have expressed concern about the system's effect on quality and access, particularly in rural areas. As discussed below, we are increasing the payment rates above the level proposed in the NPRM in order to address these concerns.

(b) Financial Viability of the Hospital Industry

Profitability measures of the hospital industry have received much attention recently. We believe that it is *not* our responsibility to determine specific levels of appropriate hospital profit margins. We presented a review of financial information in the proposed rule in order to determine how well the hospital industry had done before and after the inception of the prospective payment system.

ProPAC has conducted a number of studies on the financial condition of hospitals in 1984 (see "Medicare Prospective Payment and the American Health Care System," Chapter 4, page 47, Report to Congress, February 1986). According to hospital industry financial data, operating margins increased significantly. These findings also showed that both teaching and nonteaching hospitals experienced large gains in operating margin ratios.

In addition, the Department's Office of the Inspector General has released an audit report titled, "Financial Impact of the Prospective Payment System on Medicare Participating Hospitals—1984" (ACN: 09-62021), which confirms ProPAC's findings.

Comment: Several commenters raised questions related to the evaluation of outcome measures that are reviewed in conjunction with updating the prospective payment rates. Many commenters stated that the update analyses provided in the NPRM were driven by budget deficit concerns, rather than by appropriate technical evaluations. Some questioned the analysis of the financial viability of the hospital industry and stated that the hospital "profit" margin analysis was primarily used to criticize the industry. One commenter stated that such profits may have resulted from payments by non-Medicare payors, as opposed to "excess" profits derived from the Medicare program. A number of comments were provided regarding independent studies containing analyses of the financial viability of the industry in current and future years.

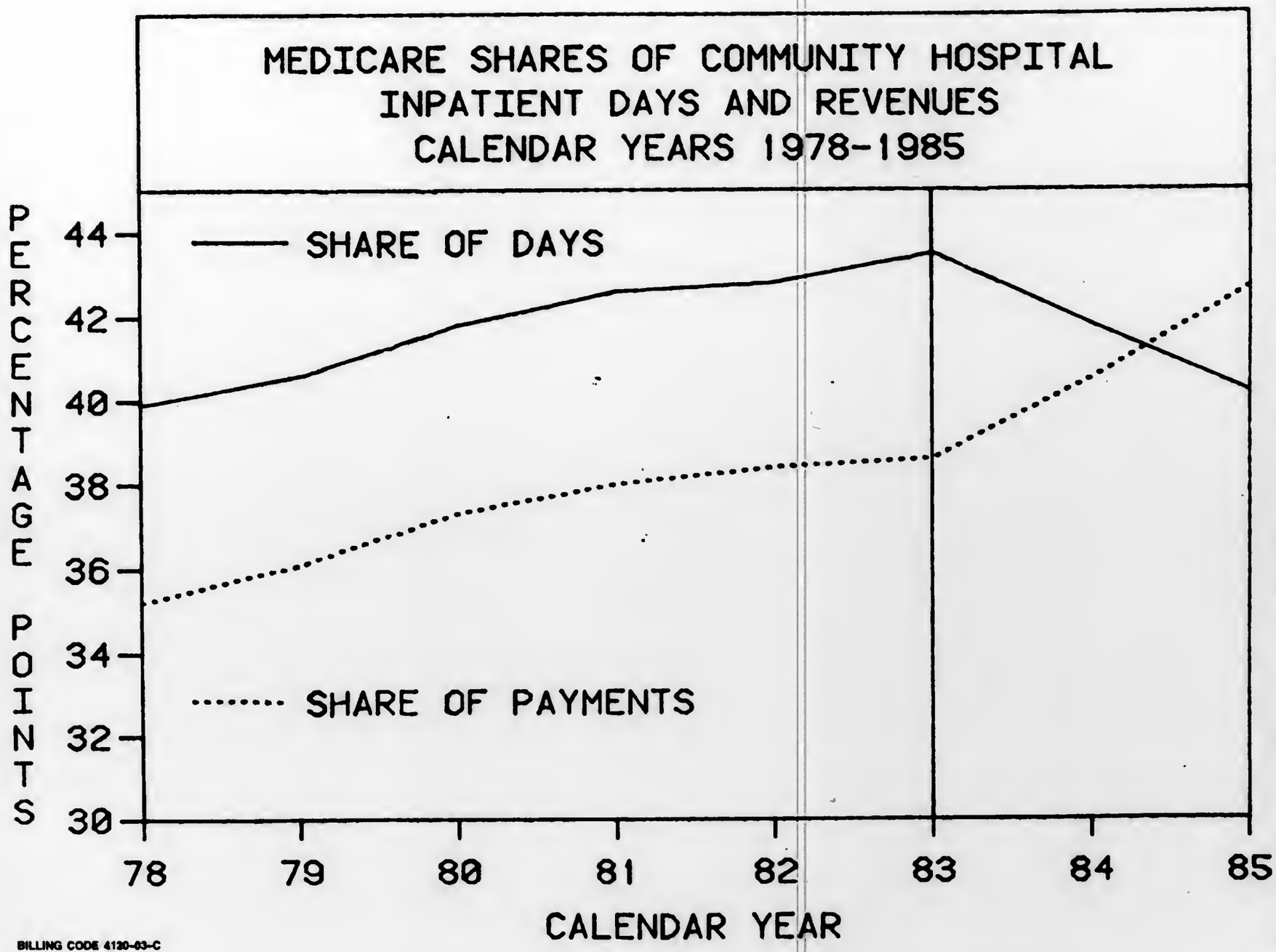
Response: As described in the NPRM, in determining the update level of the FY 1987 prospective payment rates, we evaluated certain outcome measures, including quality of and access to care and the financial viability of the hospital industry insofar as it relates to beneficiary access to high quality care. These outcome evaluations were made to measure current and prospective effects on beneficiaries, taxpayers, and the industry. We believe that Congressional intent, as reflected in statutory requirements, is that the Secretary evaluate the appropriateness of the current payment levels for meeting the "amounts necessary for the efficient and effective" delivery of medically needed health care, rather than merely update the rates mechanically. One commenter astutely recognized this responsibility by stating that ". . . in the most simple terms the policy directions chosen for the Medicare program need to balance the often times competing interests of its beneficiaries, the taxpayers, and those participating health care organizations and private practitioners who provide health care services." We note that we believe that concern over budget deficits is not an appropriate outcome measure that should be included in our technical evaluations of appropriate update levels for prospective payment rates. Thus, this concern was purposely excluded from the technical analyses of outcome measures.

As stated in the NPRM, we believe it is not our responsibility to determine specific levels of appropriate hospital profit margins (51 FR 20017). However, we note that since Medicare payments represent a large share of community hospital inpatient revenues, Medicare should be a prudent purchaser of services furnished under the prospective payment system. One indication of how prudent we have been is the impact of our payments on hospital margins. If we have paid too little, all other things being equal, hospital margins will be down. If we have paid too much, margins will be be up, again, all things being equal. Thus, we included in the NPRM a number of tables on operating margins, Medicare shares of total revenues and days, and ratios of Medicare payments to charges, to illustrate how hospitals have fared under prospective payment. Because some commenters expressed confusion in understanding and interpreting the tables and the data included in them, we are providing additional information that we believe will be helpful in evaluating Medicare payments prior to, and after, implementation of the prospective payment system. The data are provided to evaluate whether or not Medicare payments have been adequate to provide high quality care to beneficiaries and to determine if Medicare pays a fair share of hospital costs.

Chart 1 graphically displays incurred Medicare shares of community hospital revenue and days of care for the most current yearly data available. Medicare is funding an increasingly larger share of hospital revenues while representing a smaller share of hospital days.

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CHART 1



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VOL 51 ISS 170 SE 3 1986 UMI

Table 1 contains data on yearly growth rates in the average Medicare payments for short-stay inpatient hospital care per day and per admission. The average rate of growth in Medicare program payments and beneficiary liabilities per day of care was 46 percent higher in the first two calendar years of prospective payment (20.7 percent annually) than in the five preceding years, 1979–1983 (14.2 percent annually). In real terms, that is, factoring out price inflation for inputs that hospitals were required to purchase, growth rates in the first two years of prospective payment were even more dramatic, averaging 15.8 percent per year during 1984 and 1985, which is over three times as high as the 5.1 percent per year during the 1979 through 1983 period.

Medicare payments per admission indicate that average growth rates in real terms were twice as high in the first two years of prospective payment (8.4 percent annual average) than in the previous five years (3.2 percent annual average). The increase in Medicare payments per case substantially exceeds the update factor. For example, in 1985 the update factor was 3.2 percent and the increase in payment per case was 9.3 percent.

TABLE 1.—AVERAGE MEDICARE PAYMENTS PER DAY AND PER ADMISSION

Calendar year expense incurred	Medicare payments per day				Medicare payments per admission			
	Nominal amount	Percent change	Real amount	Percent change in real	Nominal amount	Percent change	Real amount	Percent change in real
1978	$182		$262		$1,964		$2,834	
1979	204	12.5	271	3.3	2,116	7.7	2,807	−1.1%
1980	232	13.4	275	1.5	2,459	16.2	2,917	3.9%
1981	269	15.8	289	5.2	2,808	14.2	3,026	3.8%
1982	314	16.9	314	8.6	3,227	14.9	3,227	6.7%
1983	353	12.5	335	6.7	3,497	8.4	3,315	2.8%
1984	441	25.0	399	19.2	3,931	12.4	3,551	7.2%
1985	514	16.5	447	12.4	4,297	9.3	3,740	5.5
Average rate of growth per year								
79–83 (Pre-PPS)		14.2	5.1		12.3	3.2		
84–85 (Post-PPS)		20.7	15.8		10.9	6.4		

Notes:
1. Medicare payments include program benefit payments and beneficiary liabilities.
2. The "Real" column represents the payment per day or per admission deflated by HCFA's Hospital Input Price Index to remove the effects of price inflation.

Source: HCFA, Office of the Actuary. Data derived from calculations done in preparation of the Trustee's Report.

Table 2 contains data on the average Medicare payments for short-stay inpatient hospital care per day, average Medicare charges per day, and the average non-Medicare community hospital inpatient revenue per day for each year, 1978–1985. Table 3 presents annual growth rates in these averages, including growth in real terms.

TABLE 2.—COMPARISON OF MEDICARE PAYMENTS, CHARGES, AND NON-MEDICARE REVENUE PER DAY OF CARE

Calendar year expense incurred	Average Medicare payment/day	Average Medicare charge/day	Average non-Medicare revenue/day	Ratio of Medicare payments to non-Medicare revenues
1978	$182	227	214	0.85
1979	204	256	239	0.85
1980	232	295	274	0.85
1981	269	351	323	0.83
1982	314	418	377	0.83
1983	353	487	427	0.83
1984	441	551	459	0.96
1985	514	622	491	1.05

Notes:
1. Medicare payments include program benefit payments and beneficiary liabilities.
2. Non-Medicare revenues represent the difference between AHA inpatient revenues and Medicare payments.

Sources: Medicare Payment Data—HCFA, Office of the Actuary. Medicare Charge Data—Medicare Statistical System. Non-Medicare Revenue—AHA Panel Survey for Community Hospitals (See Note 2).

TABLE 3.—COMPARISON OF GROWTH RATES OF MEDICARE PAYMENTS, CHARGES, AND NON-MEDICARE REVENUE PER DAY OF CARE

Calendar year expense incurred	Average Medicare payment per day		Average Medicare charge per day		Average non-Medicare revenue per day	
	Percent change	Percent change in real	Percent change	Percent change in real	Percent change	Percent change in real
1979	12.5	3.3	12.8	3.5	11.6	2.4
1980	13.4	1.5	15.2	3.1	14.5	2.5
1981	15.8	5.2	19.0	8.1	17.7	6.9
1982	16.9	8.6	19.1	10.6	17.0	8.7
1983	12.5	6.7	16.5	10.5	13.0	7.2
1984	25.0	19.2	13.1	7.9	7.5	2.8
1985	16.5	12.4	12.9	8.9	7.0	3.2
Average annual rate of growth						
79–83 (pre-PPS)	14.2	5.1	16.5	7.2	14.8	5.5
84–85 (post-PPS)	20.7	15.8	13.0	8.4	7.3	2.9

Notes:
1. Medicare payments include program benefit payments and beneficiary liabilities.
2. Non-Medicare revenues represent the difference between AHA inpatient revenues and Medicare payments.
3. The "Real" column represents the payment per day or per admission deflated by HCFA's Hospital Input Price Index to remove the effects of price inflation.

Sources: Medicare Payment Data—HCFA, Office of the Actuary. Medicare Charge Data—Medicare Statistical System. Non-Medicare Revenue—AHA Panel Survey for Community Hospitals. (See Note 2).

Increases in Medicare payments per day under prospective payment are significantly in excess of those for private patients, and are even significantly in excess of increases in per diem charges by hospitals. In real terms (removing effects of hospital price inflation), average increases in Medicare charges per day were slightly higher in the first two years of prospective payment (averaging 8.4 percent annually) than in the preceding five years (averaging 7.2 percent annually). However, it should be noted that this 8.4 percent average increase in charges was small relative to the large average increase in Medicare payments per day (averaging 15.8 percent annually). This is inconsistent with the commenters' contention that Medicare payments have not kept pace with increasing costs. A further interesting observation is that the non-Medicare revenue per day shows very little real annual growth during 1984 and 1985, averaging 2.9 percent. In 1985, for the first time, Medicare payments per day were higher (five percent) than non-Medicare revenues per day. In the six years shown prior to prospective payment, the ratio of average Medicare payments to non-Medicare revenue per day was relatively constant between 0.83 and 0.85. These findings are inconsistent with the commenter's suggestion that increases in hospital profit margins have resulted from cost shifting to non-Medicare payors. Charts 2 and 3 graphically present the data contained in Tables 2 and 3.

Independent studies on the recent financial condition of hospitals appear to confirm the findings indicated by the data shown above. Both ProPAC and the Office of the Inspector General studies are referenced in the NPRM (51 FR 20017). Although a number of commenters questioned the statistical reliability of the latter study, we are not aware of any data or analytical techniques contained in these study findings that contradict our data and conclusions. Simulations prepared for the hospital industry by their own

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CHART 2

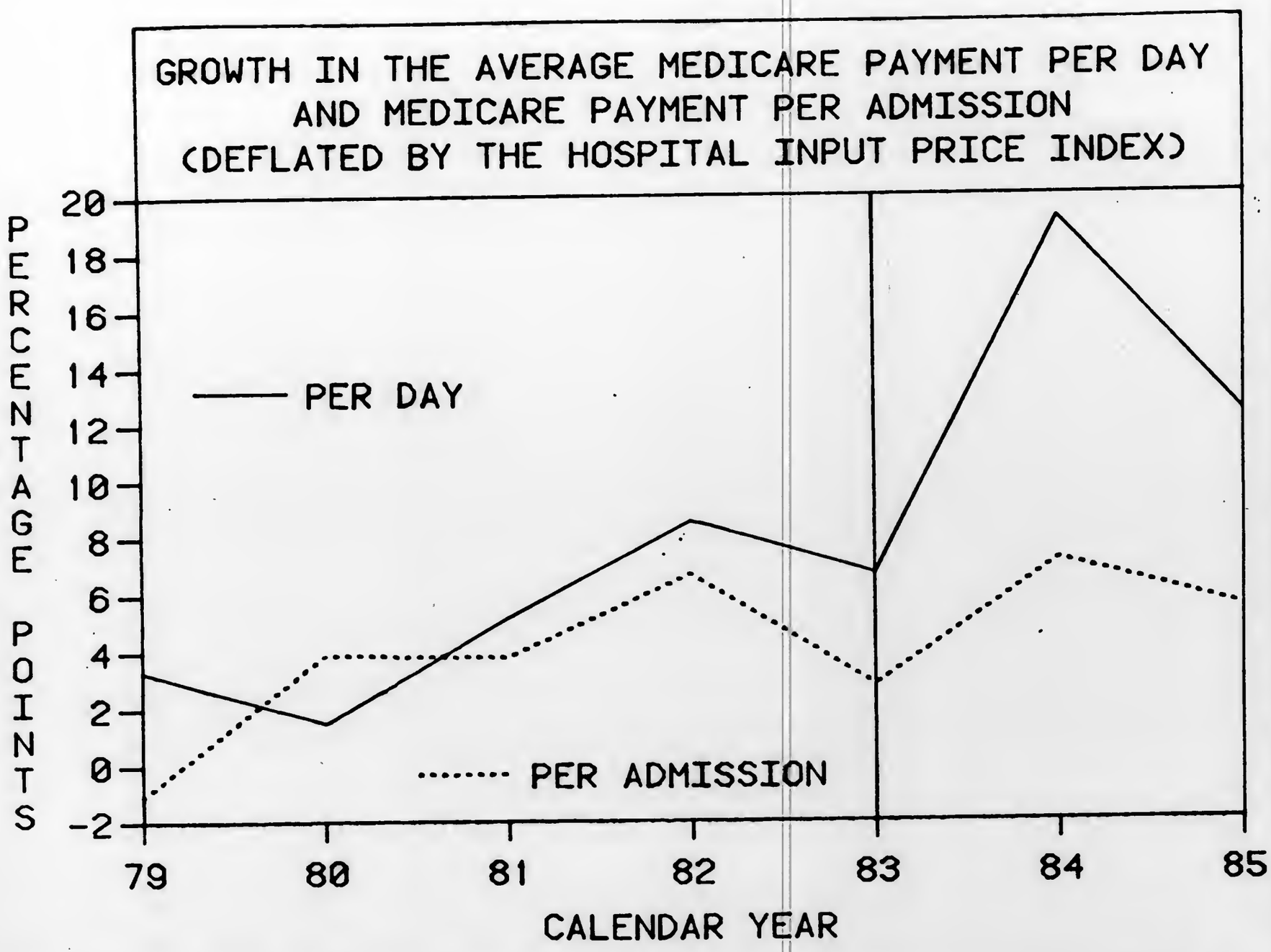
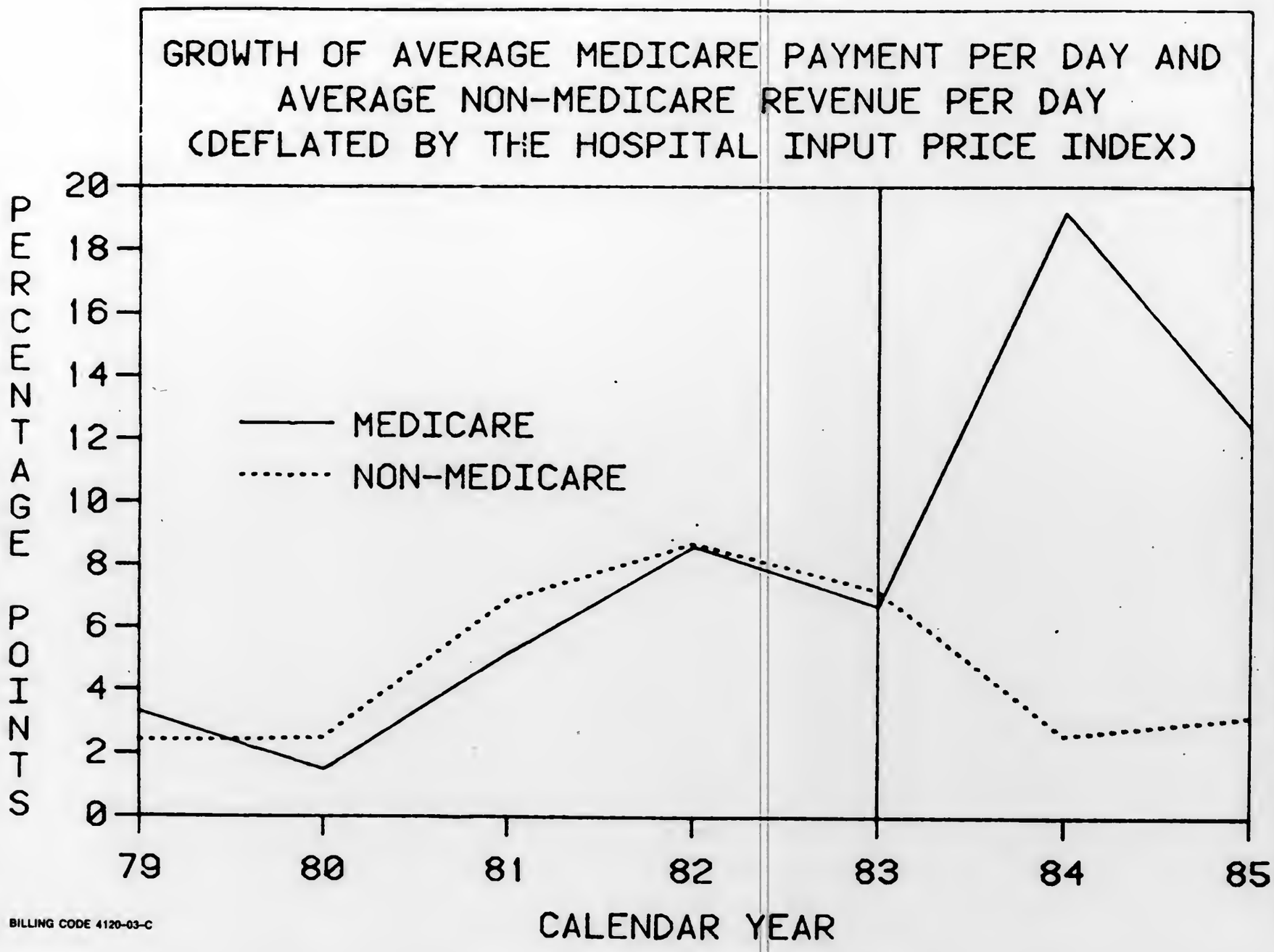

GROWTH IN THE AVERAGE MEDICARE PAYMENT PER DAY
AND MEDICARE PAYMENT PER ADMISSION
(DEFLATED BY THE HOSPITAL INPUT PRICE INDEX)
PERCENTAGE POINTS
20
18
16
14
12
10
8
6
4
2
0
-2
PER DAY
PER ADMISSION
79
80
81
82
83
84
85
CALENDAR YEAR

CHART 3



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consultants project that the hospital industry will continue to prosper under the prospective payment system in future years. For example, an analysis prepared earlier this year by ICF, Incorporated for the Federation of American Hospitals (now Federation of American Health Systems) shared with the Department, indicates that between 1984 and 1988, the number of hospitals showing a profit will increase by over 27 percent, the number of hospitals showing a profit exceeding five percent will increase by over 71 percent, and the number of hospitals showing profits in excess of ten percent will increase by over 121 percent. Moreover, even these projections are not as optimistic as our own, since a comparison of ICF's 1984 assumptions with actual results showed that ICF has understated profit margins in 1984 by substantial amounts. Moreover, ICF has projected that it will only require an average annual increase of less than two percent in aggregate Medicare inpatient payments to achieve the foregoing results. Our actuarial estimates indicate that increases in Medicare inpatient hospital payments in 1985 and 1986 *alone* (even if there are no further increases in 1987 and 1988), are *more* than sufficient to achieve the results projected by ICF.

In summary, we believe that the experience under the prospective payment system on outcome measures yields ample evidence that current Medicare payments for inpatient hospital care are more than adequate to cover hospital costs. We believe that the previous calculations showing that prospective payment rates should have been decreased by 4.42 percent in FY 1986, as described in the September 3, 1985 final rule (current calculations indicate about 6 percent), and the conservatively derived calculation that FY 1987 rates should be decreased by 0.6 percent, are technically consistent with our outcome measures evaluation described above and are not inconsistent with other independent studies. We believe that, since the actual update rates are being increased by a positive update factor for FY 1987, this refutes the contention that the update levels have been driven by budgetary concerns.

Comment: One commenter pointed out that the Mid-Atlantic region (New York, New Jersey, and Pennsylvania) had the lowest revenue margins of the regions. The commenter stated that this was because two of the three States in the region (New York and New Jersey) had Medicare waivers and controlled payments to hospitals from all payors, which resulted in lower revenue margins. This commenter stated that the proposed 0.5 percent increase is unfair to to the remaining Mid-Atlantic waiver State, especially since the State is a "low" cost State, and that hospitals in this State cannot shift costs to other payors.

Response: Hospitals under State waiver systems do not necessarily receive the same payment increase as other hospitals under the prospective payment system. If hospital costs in a waiver State are as low as the commenter alleges, it would be advantageous for the hospitals in the State to encourage the State to terminate its waiver as prospective payments to these hospitals would be much higher. Cost shifting to other payors would not occur since these hospitals would receive the higher payments under the prospective payment system. Moreover, in the NPRM we demonstrated that assertions of such cost shifting are incorrect (51 FR 20021).

(c) Summary

In determining the update level for the FY 1987 prospective payment rates, the above evaluation of outcome measures attempts to measure current and prospective effects on taxpayers, beneficiaries, and the industry.

- *Beneficiary Perspective*—There is no evidence of a deterioration in quality of, or access to, inpatient hospital care.
- *Industry Perspective*—Experience under the prospective payment system shows evidence that current Medicare payments for inpatient hospital care are more than adequate to cover hospital costs.
- *Prior Year's Experience*—Despite our calculation showing that the prospective payment rates should have been decreased by 4.42 percent in FY 1986 (as described in the September 3, 1985 final rule (50 FR 35693)) we provided a zero percent increase, and subsequently Congress provided a 0.5 percent increase in the rates.

The annual prospective payment percentage update factor should be set so that it provides incentives for desired outcomes under the prospective payment system. To achieve incentives for the desired outcome, we must ensure that the annual prospective payment update factor takes proper account of variables affecting the cost, efficiency, effectiveness and quality of hospital inpatient care. Our objective is to translate the intent of the statutory requirements for updating the prospective payment rates into a methodology for making adjustments to the current update factor that would enable us to express our consideration of these variables as policy targets.

To this end, we identified three factors that correspond to matters that must be considered under sections 1886 (e)(2) and (e)(4) of the Act. For FY 1987, we are incorporating into the prospective payment update factor a composite policy target adjustment factor that takes account of productivity, cost-effective technologies, and improvements in practice patterns. Although, as we discuss below, we have changed the descriptive title of the third factor (from "elimination of cost-ineffective practice patterns" to "improvements in practice patterns"), the three factors are the same as those we identified in the September 3, 1985 final rule (50 FR 35705). While, for the purposes of analysis and discussion, we have developed separate values for each of these three factors, we are combining them into a composite policy target adjustment factor, which is considered in determining the FY 1987 prospective payment update factor.

(2) Productivity

As was the case last year, there does not exist an aggregate hospital industry productivity measure that can be used to interpret the intent of sections 1886 (e)(2) and (e)(4) of the Act. The Bureau of Labor Statistics (BLS) is currently constructing a hospital productivity measure adjusted for case-mix. The BLS index measures adjusted admissions per employee in non-Federal, short-stay hospitals, however, and, as such, is not an overall operating input productivity index.

In setting the FY 1986 policy target adjustment factor, we considered productivity in terms of the ratio of real inputs to hospital outputs, where outputs are defined as the various tests, procedures, and services provided by the hospital. (In contrast, ProPAC defines output in a more inclusive fashion, so as to include changes in practice patterns.) We pointed out that national productivity increases over the economy as a whole had averaged three percent per year in 1983 and 1984, and

VOL 51 ISS 170 SE 3 1986 UMI

that after years of cost-based reimbursement, hospitals should be able to achieve a reduction in inputs of at least that amount. The argument was that hospitals ought to be able to equal the national average for productivity increases in the future because, with fixed and known payment rates, they could adjust their inputs to eliminate unnecessary costs. The FY 1986 productivity factor was set at one percent. This target was set conservatively because of uncertainty with regard to achievable productivity gains.

A primary objective of the prospective payment system is to encourage the efficient provision of hospital care by changing economic incentives under the payment system. It is reasonable to assume that hospitals have (or should have) made substantial productivity gains during the first three years of the prospective payment system. The only adjustment that we have made to DRG prices for any such productivity gains was the one percent offset used in updating the FY 1986 rates. We believe that productivity gains can and should continue. Although ProPAC recommends a 1.5 percent productivity offset, we are incorporating a 1.0 percent productivity offset in the FY 1987 policy target adjustment factor. We expect that a two percent or more annual increase in productivity would not be unreasonable; however, consistent with our approach in the September 3, 1985 final rule (50 FR 35707), we believe that a conservative offset (1.0 percent) is appropriate.

(3) Cost Effective Technologies

This add-on is a policy target rate of increase to allow for growth in cost-increasing, health-enhancing new technologies and scientific advances.

As with productivity, there is limited historical data to set a prospective target empirically, and there are substantial definitional problems in determining what measures would accurately reflect the intent of the law. Further, some technologies or scientific advances eventually have cost-decreasing effects.

ProPAC is conducting a number of studies to analyze this factor. Our assessment appears to be consistent with ProPAC evaluations. A major difference is that ProPAC is conducting analyses of the use of individual technologies for potentially making changes to the prospective payment rates. Of particular interest is the ProPAC finding that new medical devices and diagnostic procedure costs may have only a small impact on overall increases in Medicare payments and that major increases in costs during the 1970s were the result of changes in practice patterns (see p. 11 of the Technical Appendixes of ProPAC's April 1, 1986 Report). ProPAC has recommended a much lower target value (0.7 percent) for cost-effective technologies in FY 1987 than the 1.5 to 2.0 percent they recommended last year, although they are also including (Recommendation 29) a specific add-on amount for magnetic resonance imaging technology.

We are setting the policy target adjustment factor for cost-effective technologies and associated labor and nonlabor inputs at 0.7 percent. In the NPRM, we deliberately proposed to set this factor at a more generous level than that recommended by ProPAC because we were proposing to incorporate capital-related costs into the prospective payment system. However, based on section 206 of Pub. L. 99-349, we are not incorporating capital-related costs into the prospective payment system during FY 1987. Our intention is to encourage hospitals to use health-enhancing new technologies and scientific advances through setting this factor at a level that would promote such usage.

Comment: One commenter was concerned that the technology adjustment would not increase the payments to hospitals and that hospitals would not spend the technology adjustment on new technology.

Response: The upward technology adjustment increases payments to hospitals in excess of the payment that would have occurred if there was no technology adjustment. The concept of the prospective payment system is that we pay hospitals a predetermined amount for each admission. The hospitals may spend the payments as they choose as long as they provide appropriate care to Medicare patients.

(4) Improvements in Practice Patterns

We are changing the descriptive title of this output measure used in the analytical framework for updating the FY 1986 rates from the "elimination of ineffective practice patterns" to "improvements in practice patterns." However, the essence of this measure remains unchanged. It reflects the relationship between efficacious and cost-effective outputs (services) and discharges. We refer the reader to Appendix B of the June 10, 1985 proposed rule (50 FR 24440) for a more indepth discussion of the framework for analyzing the policy target adjustment factors. Also, see Arnett, Cocotas, Freeland, and Kowalczyk, "Framework for Analysis of the Prospective Payment System Rate—Increase Factors," *Health Care Financing Review*, Summer 1985 (Vol. 6 No. 4). Substantial savings result from improving practice patterns through cost effective use of resources. Improvements in practice patterns include shifts in the use of certain inpatient services for hospitalized patients to more appropriate lower cost settings and the elimination of services that do not give value for money expended; that is, reduced outputs associated with improvements in practice patterns.

In the first two years of the prospective payment system, the average length of stay of Medicare beneficiaries in prospective payment system hospitals decreased by 18 percent, despite a 12.4 percent increase in reported case mix.

For purposes of determining day outlier cases, we assume the marginal cost of an additional day of care to be equal to 60 percent of the average per diem for the applicable DRG, excluding payment for pass-through costs. ProPAC references studies that indicate that marginal costs associated with a patient day range between 20–80 percent. Assuming an average marginal cost rate of 50 percent, the 18 percent reduction in length of stay in the first two years of the prospective payment system translates into a nine percent reduction in costs. Since two percent were already offset for improved practice patterns in determining the FY 1986 prospective payment system update, a seven percent reduction in costs remains. Considering incentives inherent under prospective payment, together with the intent to be gradual and conservative, we are incorporating a two percent offset for improved practice patterns in the FY 1987 policy target adjustment factor.

(5) Composite Policy Target Adjustment Factor

For FY 1987, we are adjusting the average standardized amounts by a percentage composite policy target adjustment factor, as authorized under section 1886(e)(4) of the Act. For FY 1987, this composite policy target adjustment factor is a composite of the offsets and add-ons for productivity, cost-effective technologies, and improvements in practice patterns, as follows:

	Percent
Productivity	−1.0
Cost-effective technologies	+0.7
Improved practice patterns	−2.0
Total	−2.3

Comment: Many commenters questioned our adjustments for the

policy target adjustment factor. Several commenters recommended using only the forecasted market basket increase and an add-on for technology. In particular, many questioned the validity and accuracy of the productivity and practice pattern improvement offsets, suggesting that the two offset factors double count, that is, the same information is used, to some extent, in determining the offsets.

Response: The components of the policy target adjustment factor represent our interpretation of section 1886(e)(4) of the Act in determining the applicable percentage increase in the prospective payment rates. Likewise, ProPAC, under section 1886(e)(2) of the Act considers similar factors in making its recommendations to the Secretary. We developed and published an analytical framework used to assess the policy target adjustment factors (see Appendix B of the June 10, 1985 NPRM (50 FR 24440). Also, see the article, "Framework for Analysis of the Prospective Payment System Rate—Increase Factors," referred to above. We believe the framework is logically consistent and guards against inconsistent analysis from one year to the next. Because the factors are essentially required by statute, we must consider them in determining update levels. We do not have the legal authority to base the update solely upon the market basket and an add-on for technology.

As several comments were made about each component of the policy target adjustment factor, we will consider each component separately. We acknowledged in the NPRM that no satisfactory measure of overall hospital productivity is currently available. We also do not claim that such a measure, if it existed, would be appropriate as such an offset. The productivity offset is set prospectively as a policy target, rather than being measured. This is not to say that a hospital productivity measure would not be useful as a gauge of how effective the productivity policy target has been.

A primary purpose of the prospective payment system is to promote more efficient delivery of health care. A measure of productivity would tell us how hospitals had performed in the past, but it would not necessarily provide an incentive to improve. Hence, we set the productivity offset as a prospective standard. The standard used for hospitals is that of general, long-run, economy-wide productivity changes. Gains in excess of that standard accrue to hospitals. Hospitals failing to equal the standard for efficiency bear the cost, just as they profit when productivity improves beyond the standard.

The new science and technology factor is also set prospectively as a standard. Many industry analysts have indicated that the cost to hospitals of new science is quite small. (See, for example, ProPAC's Technical Appendixes to their April 1, 1986 *Report and Recommendations to the Secretary,* at p.11.) Even the effect on operating costs may be relatively small because, to some extent, new technologies supplant old ones. In addition, many new technologies, such as Percutaneous Transluminal Coronary Angioplasty, allow much less intensive and expensive treatment.

Prior to the proposal to incorporate capital into the standardized amounts, we considered setting this factor at +0.5 percent. In the NPRM, based on the inclusion of capital, a level of +1.0 percent was proposed. Because capital is not included in the FY 1987 update factor, we are accepting ProPAC's recommendation that this factor be set at 0.7 percent.

Under normal circumstances, hospitals should need no add-on for adoption of new science and technology because it is in their interest, for competitive reasons, to take advantage of these advances. Their use helps hospitals attract both patients and physicians. However, we recognize that the still recent implementation of the prospective payment system does not constitute normal circumstances. Therefore, we have attempted to be quite liberal when setting the level of this factor. After the transition period, this factor should be evaluated in terms of outcome measures including factors such as the financial viability of the hospital industry. When hospital operating margins are high, normal competitive demands should provide the incentive to employ new science and technology. In periods when margins are down, hospital resources may need to be supplemented in order to enable hospitals to continue to provide high quality care to Medicare beneficiaries through use of emerging new technologies.

Practice pattern improvements are not set as a standard, but rather by observing changes made by practitioners. No judgment is made about the "standard level" of practice. The improvements are modeled on cumulative changes in average length of stay for Medicare patients. This change reflects changes in site of care for some services and elimination of other services altogether. Pre-admission testing, reductions in intensive care unit time, and elimination of some in-hospital recovery days are examples often cited as practice pattern improvements.

The practice pattern offset is an adjustment to the standardized amounts for changes that have already occurred. Some have suggested that since these changes were a one-time-only phenomenon, no corrections in addition to those already made are needed. If we had taken the full amount of this correction in the first two years, this statement would be appropriate. However, cumulative average length of stay has declined 18 percent. In an attempt to avoid being disruptive and because length of stay may rise somewhat, we have only offset four percent of this reduction over the last two update periods.

No double counting occurs between the offsets for productivity and practice pattern improvements. As mentioned, the productivity adjustment is a prospective standard. The practice pattern adjustment is an indirect measurement used to make adjustments to the payment base. The practice pattern offset is a reflection of the changes in services per discharge. Productivity is a standard for changes in inputs per service. If services have been eliminated, that is, there have been changes in practice patterns, the inputs required for those services must also be eliminated. However, since such a one for one reduction (in input per outputs) yields a productivity change of zero, the productivity standard requires that efficiency improvements must be such that inputs are reduced relative to outputs in excess of the amounts needed to adjust for practice pattern changes. Given the differences in what is being accounted for, and the timing differences, we believe these two factors do not double count.

(6) Other ProPAC Recommendations on the Policy Target Adjustment Factors

ProPAC recommended (Recommendation 3) that an allowance should be made in the overall update factor to reflect real changes in case mix that are due to changes associated with the characteristics of patients. The allowance should reflect both shifts in patients among the DRG categories, as measured by changes in the average case-mix index (DRG case-mix change), and changes in the mix of patients within DRG categories (patient complexity change). ProPAC recommended an allowance in the FY 1987 Federal rates of 0.9 percent, representing a 0.2 percent adjustment for

DRG case-mix change and a 0.7 percent adjustment for patient complexity change.

This recommendation was previously reflected in ProPAC's recommendations No. 1 and No. 11 issued April 1, 1985. (See the June 10, 1985 proposed rule (50 FR 24446).) We agree, in principle, that the prospective payment rates should reflect real increases in case-mix.

ProPAC also recommended that the DRG weights should be adjusted to remove any increase in reported case mix during FY 1986. This would include nominal increases net of real increases.

Of the 0.9 percent add-on for real case mix that ProPAC recommended, 0.7 percent is for "patient complexity," which ProPAC defined as changes in the mix of patients within DRGs. We have funded extensive research on measuring severity of illness. However, we do not recognize changes in the mix of patients *within* DRGs (that is, severity of illness) because the methods for measuring severity of illness are not sufficiently developed at this time for use under a national prospective payment system.

Our estimates indicate that case mix has increased by 2.6 percent in FY 1986. Using ProPAC's estimate of a 0.9 percent add-on for real case mix, the net case-mix change adjustment would be −1.7 percent. As discussed above, only 0.2 percent of ProPAC's add-on is for real case mix. However, our preliminary estimate in the NPRM was that real case mix has increased 0.6 percent. This estimate was based on long-term trend estimates of real case-mix increases of 0.4 percent and an additional adjustment of 0.2 percent for further shifts of cases, including cases in DRG 39 (lens procedures with or without vitrectomy), to outpatient settings. Thus, our adjustment for net case-mix change is −2.0 percent, that is, −2.6 percent for total case-mix change plus 0.6 percent for real case-mix increases.

ProPAC recommended (Recommendation 13) that the standardized amounts be recalculated using cost data that reflect hospital behavior under the prospective payment system. The results of such a recalculation, with appropriate modifications, could be used in determining the update factor or in rebasing the standardized amounts.

The initial standardized amounts were established by using data from available 1981 cost reports for all hospitals subject to the prospective payment system and updating that data to FY 1984 by an inflation adjustment. Section 1886(d)(3)(A) of the Act specifically provides that the average standardized amounts for any given year beginning with FY 1985 are to equal the respective standardized amounts for the previous year, adjusted by an update factor. We believe, therefore, that there is no statutory requirement to recalculate (or rebase) the standardized amounts by repeating the original process with later data, such as cost data accumulated under the prospective payment system. Moreover, we believe that the framework for the update methodology affords us ample latitude to adjust the rates in light of more recent experience.

Comment: Several commenters suggested that the proposed FY 1987 prospective payment rates should provide an adjustment to account for severity of illness. One commenter recommended that any severity of illness refinement to the prospective payment rates should address variations in the intensity of nursing care among DRGs. The commenters endorse the use of an explicit severity of illness measure so that the DRGs would more accurately account for differences in resource utilization.

Response: We recognize that there may be wide differences in cost among cases classified by DRG reflecting variations in the severity of illness for cases with otherwise similar diagnostic characteristics. The feasibility of incorporating an explicit severity of illness measure into the prospective payment system has been the focus of ongoing investigation both within and outside of HCFA for quite some time. We have funded extensive research devoted to measuring severity of illness in order to improve hospital definitions of case-mix.

However, to quantify severity of illness in an objective manner for use under a national prospective payment system is a difficult problem. That is, those conditions or factors that make for a more severe case in one disease may not do so in another disease. Thus, comparability of severity indicators across diseases is problematic at best in addition to being not readily objective and measurable. For example, a patient with diverticular disease and nonmassive gastrointestinal bleeding is generally considered less severely ill than a diverticular patient with an obstruction or fistula. However, establishing objective criteria under which severity distinctions among otherwise clinically distinct patient types can be measured has proven to be elusive. The difficulty is further compounded if one considers severity discriminations across diseases because severity of illness usually refers to a disease-specific clinical condition. A patient with an uncomplicated acute myocardial infarction, for example, may or may not be considered less severely ill than a patient with diverticular disease complicated by a fistula. The issue is further complicated when one considers that more severely ill patients are not necessarily the more costly patients to treat. While a terminally ill cancer patient may require more hospital resources initially, resource consumption may decline as the disease progresses to a point at which further treatment has little effect.

Finally, a severity of illness index would presumably only redistribute payments from hospitals treating less severe case mixes to hospitals treating more severe case mixes. Therefore, while several severity of illness refinements are possible in the future, potential prospective payment adjustments incorporating severity of illness distinctions into the DRG classifications are not imminent and must await the outcome of further research.

Comment: One commenter pointed out the apparent inconsistency between our stated policy of not recognizing changes in the mix of patients within DRGs (that is, not providing an adjustment for increasing severity of illness) and our proposed 0.2 percent increase for a "sicker" (more resource intensive) group of patients within DRG 39 (51 FR 20026). The commenter stated that the same logic that was used to propose a 0.2 percent increase for the movement of lens procedure cases to outpatient settings resulting in a more complex, sicker profile of cases remaining in DRG 39 could also be extended to other DRGs, and thereby warrants a further increase in the proposed overall 0.6 percent allowance for real case-mix change.

Response: The comment regarding the 0.2 percent for sicker patients in DRG 39 is incorrect. We allowed 0.2 percent of the case mix increase to remain because many DRG 39 cases (which have a low relative weight) were moved to outpatient settings which would have resulted, had such a shift occurred in the base year (1981) used to set the Federal rates, in an increase of 0.2 percent in the average cost of the average case across hospitals for the remaining inpatient cases. Because DRG 39 used to represent a much larger percentage of Medicare inpatient cases in FY 1985 than it did in FY 1986, it contributed much more heavily in the past toward the average cost of an average case in a hospital. If DRG 39 had represented as small a percentage of total cases in the base year as it does currently, presumably the average cost of the average case would be higher. It is that

shift, the declining weight of DRG 39 cases in the measurement of average case mix, that this adjustment is intended to recognize. The inpatient cases remaining in DRG 39 may be more or less complex, on average, than the cases assigned to DRG 39 in the base year. Even though we expect almost no additional case-mix increase due to DRG 39, we are allowing a 0.2 percent increase for the further movement to outpatient settings for FY 1986.

We agree that the intensity of service input within a DRG can change over time. (Some DRGs may become more resource-intensive while other DRGs can become less resource-intensive.) That is one of the reasons why the statute requires periodic recalibration of the DRG relative weights. It is possible that intensity of service inputs in DRGs can change between recalibrations.

However, it is improper to conclude from this adjustment that the remaining cases in DRG 39 are somehow more resource-intensive, and thus more severe. Average case mix increases merely because there are fewer cases, relatively speaking, with lower weights.

g. Summary

The combined effect of the forecasted increase in the hospital market basket, the correction of case-mix change for FY 1986, and the composite policy target adjustment factors is as follows:

	Percent
Forecasted market basket increase	+3.7
Correction for case-mix change for FY 1986	−2.0
Correction for forecasted market basket error in FY 1985	0.0
Composite policy target adjustment factor	−2.3
Total	−0.6

Such a negative update factor would result in a modest decrease in the standardized amounts for FY 1987, compared to those for FY 1986. However, although we have substantial technical and legal justification for issuing FY 1987 standardized amounts that would be lower, on average, than FY 1986 standardized amounts, all other things being equal, we are not promulgating a negative update factor. Instead, we are increasing the standardized amounts by 0.5 percent.

The prospective payment system was intended, from its inception, to produce significant changes in the behavior of the hospital industry by changing the financial incentives facing hospitals. However, we do not want to cause these changes to take place too rapidly, because that may result in disruptions and unintended consequences that would adversely affect the industry, its patients, and the Medicare program. Neither do we want to encourage changes that would compromise access to the high quality inpatient hospital care historically enjoyed by Medicare beneficiaries.

Our objective is to set the FY 1987 update factor at a percentage that takes into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality, in accordance with section 1886(e)(4) of the Act, and we believe that the payment rates should be set to ensure that this statutory standard is met.

Promulgating a negative update factor, as derived through our technical anlysis, could have adverse effects, not only relative to the expectations of affected hospitals but also on the development and acceptance of the prospective payment system. Therefore, it would be inappropriate to set the FY 1987 Federal rates at a level that would appear to adversely affect the hospital industry.

While we have a responsibility to protect the integrity of the Medicare trust funds, we realize that reducing the prospective payment rates could lead to concern that we would be economically disadvantaging hospitals. Therefore, we believe that it is in the best interest of all parties, that is, the public, the hospital industry, and the government, to increase the rates for FY 1987.

Accordingly, we have determined that the Federal rates be increased by 0.5 percent for discharges occurring on or after October 1, 1986, and that the hospital-specific rates be increased by 0.5 percent for cost reporting periods beginning on or after October 1, 1986. In addition, the rate of increase used to compute the target amounts for hospitals excluded from the prospective payment system is also 0.5 percent for cost reporting periods beginning on or after October 1, 1986.

For the reasons given above, we believe that the resulting payments will take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. However, we wish to emphasize that our incorporating this increase does not lessen our confidence in the analysis that shows that a decrease in the rates would be appropriate. In making the determination to implement the 0.5 percent increase in the standardized amounts as we proposed, we carefully considered ProPAC's comments in response to the NPRM, which recommended a 1.9 percent increase (assuming capital is not included in the prospective payment rates), and legislation under consideration by the Congress.

In addition to restandardizing the base-year costs for technical corrections to the wage index and adjusting the labor-related share (subject to wage index adjustment) on the basis of the revised market basket weights for labor-related and nonlabor-related cost categories, we are also restandardizing the base-year costs for a revised indirect medical education factor as specified in section 9104 of Pub. L. 99-272, standardizing the base-year costs to exclude an estimate of disproportionate share hospital payment adjustments as required by section 9105 of Pub. L. 99-272 and adjusting the national and regional standardized amounts in accordance with the provisions of section 9104 of Pub. L. 99-272 regarding the payment equality adjustment for indirect medical education costs. For these reasons, the FY 1987 standardized amounts are different from what they would be if the rates published in the May 6, 1986 interim final rule (51 FR 16778) were merely increased by the update factor.

In particular, after the current rates are recalculated to reflect the revised labor-related and nonlabor-related shares, the cumulative effects of the statutorily mandated restandardization for the revised indirect medical education factor, standardization for the disproportionate share hospital adjustment and the indirect medical education payment equality adjustment reduce the national urban standardized rates by 1.6 percent and the national rural standardized rates by 0.3 percent before the update factor is applied. These modifications were enacted in order to ensure budget neutrality of aggregate hospital prospective payments after the reduction in the indirect medical education factor and the incorporation of adjustments for hospitals serving a disproportionate share of low-income patients. In addition, we note that further adjustments are made to the standardized amounts for Region 2 for the special adjustment for teaching hospitals in States formerly under a waiver using the Secretary's general exceptions and adjustments authority under section 1886(d)(5)(C)(iii) of the Act.

For the benefit of the reader, we are displaying actual and projected increases in payment per admission under the prospective payment system.

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RATE OF INCREASE IN PER CASE PAYMENTS UNDER THE PROSPECTIVE PAYMENT SYSTEM

	National average total payment per case [1]	Rate of increase
Fiscal year:		
1983 [2]	$3,168	
1984	3,485	10.0
1985	3,870	11.0
1986	4,134	6.8
1987	4,339	5.0

[1] These numbers represent total payment per admission, inclusive of payments for capital-related costs and other pass-throughs.
[2] The prospective payment system was implemented at the beginning of FY 1984.

Comment: Numerous commenters expressed concern over the proposed 0.5 percent increase in the FY 1987 prospective payment rates. They consider the amount of the increase to be completely inadequate and otherwise unacceptable with respect to the ability of hospitals to continue furnishing quality care to Medicare beneficiaries, given the rate of increase in the cost of goods and services that hospitals purchase. Other commenters claimed that we intend to use all available means at our disposal, including revising the wage index, rebasing and reweighting the hospital market basket, adjusting for nominal increases in case mix, and so forth, in order to preclude hospitals from receiving an increase in their FY 1987 prospective payment rates at least equal to hospital inflation. The commenters further claimed that financial considerations exclusively appeared to be driving the prospective payment system insofar as establishing a "meaningful" update factor is concerned, such that industry support for the prospective payment system will be undermined.

Response: In setting the level of the prospective payment rates each year, sections 1886(e)(2) and (e)(4) of the Act require us to consider not only the rate of market basket inflation in the cost of goods and services that hospitals purchase but also changes in productivity, the costs of new technology, long-term cost effectiveness in the provision of inpatient services, as well as ProPAC's recommendations. This review includes the latest available estimates of inflation in the hospital market basket as well as changes in hospital practice patterns and an assessment of the degree to which the prior year's payment rates provided adequate incentives for the efficient and effective delivery of medically appropriate and necessary care of high quality as required under section 1886(e)(4) of the Act.

To meet these legal requirements, we assess all of these factors within the context of an analytical framework that is described in the June 10, 1985 NPRM (50 FR 24440). Also, see the article, "Framework for Analysis of the Prospective Payment System Rate-Increase Factors," referred to above. Our detailed analysis of all of these factors reveals that a 0.6 percent *reduction* in the rates is, in fact, supportable.

While we have a responsibility to protect the integrity of the Medicare trust funds, we realize that to decrease the rates could lead to concern that we are subjecting hospitals to undue financial stress. Rather than reduce the rates through application of a negative update factor, we are increasing the rates by 0.5 percent. However, we also reiterate that setting the update factor at 0.5 percent in no way detracts from our analysis indicating that a 0.6 percent reduction in the prospective payment rates could be justified.

With respect to the commenters' assertion that financial considerations drive the prospective payment system, we point out that the changes we made in the FY 1986 prospective payment rates and proposed FY 1987 rates reflect statutory changes (such as the adoption of the gross wage index or the restandardization of the standardized amounts for the revised indirect medical education formula and for payments to disproportionate share hospitals), or continuing refinements to the prospective payment system resulting from the availability of later data, the development of more precise methodologies, or other technical improvements (such as the revised market basket). While each of these changes affects the level of the prospective payment rates (either by redistributing payments among hospitals or by changing the absolute level of payment for all hospitals), they are evaluated on the basis of their own merits, and not from the standpoint of whether their adoption would yield increased savings.

For example, we first recommended adoption of the gross wage index to resolve the inability of the previous Bureau of Labor Statistics measure to account for local variations in part-time hospital employment. Its implementation resulted in both increases and decreases in the FY 1986 regional and national prospective payment rates and the proposed FY 1987 rates solely due to the effects of restandardization of the standardized amounts. Likewise, we are revising the hospital market basket because we agree with ProPAC's recommendation in its April 1, 1985 Report to the Secretary that the expenditure categories that comprise the hospital input price index should be recalculated or rebased at least every five years to reflect changes in the mix of goods and services purchased. We support these revisions because they represent technical improvements to the prospective payment system.

Comment: Many commenters objected to the fact that the proposed prospective payment update factor is lower than the hospital market basket. The thrust of the comments seems to be that, if the market basket measures the increase in the cost of inputs, an update increase lower than market basket does not cover hospital costs.

Response: The hospital market basket input price index measures the change in prices faced by hospitals. Changes in hospital costs are determined by both the change in input prices they face and changes in the quantity of inputs they purchase. Thus, the prices of inputs can go up and the total cost (price x quantity) can remain unchanged or even decline depending on the quantity of goods and services purchased. Because hospital utilization, in terms of admissions and days, is declining, it is reasonable to assume that the quantity of inputs is, or should be, going down, even in the face of some possible increases in intensity of services.

The following is an example of a situation in which prices are increasing at a rate greater than total costs. The example demonstrates that prices can increase at a rate greater than aggregate costs if the quantity of goods and services purchased is reduced. We do not believe that some reduction in costs is unreasonable, given that under the prospective payment system, hospital days have declined a cumulative 23 percent, admissions have declined over seven percent, and occupancy rates average in the low 60 percent range. Even with some increased intensity, a three percent reduction in inputs is not inordinate. (Efficient operation would perhaps require much larger reductions.)

	Year 1	Year 2	Change (percent)
Price (Market Basket)	$100.00	$103.60	+3.6
Quantity (Inputs)	500	485	−3.0
Cost	50,000	50,246	+0.5

The point of the example is not that we have such measures for FY 1986, nor that we are predicting these effects for FY 1987. The example demonstrates that prices can increase at a greater rate than aggregate costs if the quantity of goods and services is reduced.

Another point to consider is that the proposed update factor does not reflect the total payments to hospitals in paying their costs. Total payments, including payments for items such as pass-throughs (capital-related and direct medical education costs, for example), coding improvements and other factors are estimated to increase the FY 1987 payment per case by at least five percent over the FY 1986 payment per case. That this can happen is illustrated by the FY 1986 experience in which payments have increased by an estimated 6.8 percent over the FY 1985 level even though the effective annual update rate was +0.2 percent. For all of these reasons, we believe that an update factor lower than the forecasted market basket increase is entirely appropriate and reasonable in FY 1987.

Comment: Several commenters noted that the proposed FY 1987 increase of 0.5 percent would not be an increase at all for many hospitals because of the amount of the reduction in the adjusted standardized amounts. The commenters maintained that we were only interested in reducing the Federal deficit and recomputed the adjusted standardized amounts with that goal in mind.

Response: Changes in the level of regional/national adjusted standardized amounts to which the proposed 0.5 percent increase was applied have occurred generally because of adjustments required by law. We note that the following adjustments to the standardized amounts are required by Pub. L. 99-272 and were not adopted with a view toward reducing the deficit but because they reflect either technical improvements in the prospective payment system or specific goals of Congress in reallocating the distribution of prospective payments:

- Revised formula for calculating indirect medical education costs.
- Disproportionate share adjustment.
- Indirect medical education payment equality factor.
- Treatment of States formerly under a Medicare waiver with respect to the allocation order of administrative and general costs.

4. Other Adjustments to the Average Standardized Amounts

a. *Part B Costs.* Section 1862(a)(14) of the Act prohibits payments for nonphysician services furnished to hospital inpatients unless the services are furnished either directly by the hospital, or by an entity under arrangements made by the hospital under which Medicare's payment to the hospital discharges the beneficiary's liability to pay for the services furnished.

In the September 3, 1985 final rule, we increased the average standardized amounts by 0.13 percent so that they represent costs previously billed under Part B (50 FR 35708). We are making no further adjustments for this factor in FY 1987, or in the future, because the appropriate adjustment has been built into the FY 1986 base. We received no comments on this provision.

b. *FICA Taxes.* Section 1886(b)(6) of the Act requires that adjustments be made in the base period costs in recognition that certain hospitals were required to enter the Social Security system and begin paying FICA taxes as of January 1, 1984. In the September 3, 1985 final rule, we increased the average standardized amounts by 0.18 percent to account for additional costs of payroll taxes for hospital entering the Social Security system (50 FR 35708). We are making no further adjustments for this factor in FY 1986, or in the future, because the appropriate adjustment has also been built into FY 1986 base. We received no comments on this provision.

c. *Nonphysician Anesthetist Costs.* Section 1886(d)(5)(D) of the Act provides that hospital costs for the services of nonphysician anesthetists are paid in full as a reasonable cost pass-through. Under section 2312(c) of Pub. L. 98-369, this pass-through is effective for cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987. In the September 3, 1985 final rule, we noted that to the extent an adjustment was warranted in the prospective payment rates for FY 1985, it was incorporated in the overall budget neutrality adjustment (50 FR 35708). Therefore, because this adjustment has already been built into the FY 1985 base from which the FY 1986 and subseqnently FY 1987 rates are derived, we are not making further adjustments to the average standardized amounts for FY 1987.

Comment: One commenter inquired as to how a hospital would be paid if it employed a certified registered nurse anesthetist (CRNA) in a cost reporting period beginning on or after October 1, 1987.

Response: Section 2312 of Pub L. 98-369 established a pass-through payment for the reasonable costs incurred by hospitals for nonphysician anesthetist services, including CRNA services. The pass-through provision is effective with hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987. Under section 2312(d) of Pub. L. 98-369, the Secretary is required to conduct a study (currently in progress) and report to Congress on the possible methods of Medicare reimbursement that would not discourage the use of CRNAs by hospitals. If Congress were to take no further action, the prospective payment rates would have to be adjusted to include payment for the services of CRNAs. For cost reporting periods beginning on or after October 1, 1987, hospitals would be compensated for CRNA services through the appropriate DRG payment under the prospective payment system.

d. Indirect Medical Education Payment Equality Factor. Section 9104(b) of Pub. L. 99-272 added section 1886(d)(3)(C)(ii) to the Act to provide that, effective for discharges occurring on or after October 1, 1986, the average standardized amounts be further reduced, taking into consideration the effects of the standardization for indirect medical education costs as described in section II.A.1.c. of this addendum. Specifically, for each geographic area (regional and national, urban and rural), total payments, including indirect medical education and disproportionate share hospital adjustments, based on payment rates standardized for an 8.1 percent curvilinear indirect medical education factor and disproportionate share, shall be neither more nor less than the estimated total of payments, including indirect medical education payments, that would have been made based on rates standardized for an 11.59 percent linear indirect medical education factor and paid out at 8.7 percent on a curvilinear basis. The adjustment is accomplished on a regional basis in order to reflect Congressional intent that the necessary resulting savings do not redistribute payments among the regions. Through this adjustment, Congress is ensuring that, within each region, total prospective payments, taking into consideration the restandardization of rates for disproportionate share payments and for a revised indirect medical education payment factor of approximately 8.1 percent on a curvilinear basis, will equal the aggregate payments that would have resulted if Congress had enacted no other change except to reduce the indirect medical education factor to 8.7 percent curvilinear in the payment formula only. That is, had rates standardized by the linear indirect medical education factor of 11.59 percent been used to compute payments in which the indirect medical education adjustment factor was approximately 8.7 percent curvilinear, a certain level of savings would have resulted, all other things being equal. Section 9104(b)(2) of Pub. L. 99-272 provides that that level of savings is to be preserved, and that the

payments based on rates standardized for a revised 8.1 percent curvilinear indirect teaching factor and disproportionate share adjustment are to be neither greater nor less than payments based on rates not restandardized but paid based on a curvilinear 8.7 percent indirect teaching formula. For discharges on or after October 1, 1988 (that is, after that part of the law requiring disproportionate share payments expires), the adjustment must be such as to ensure that the system savings resulting from the reductions in the indirect medical education factor are preserved.

We recognize that the statute discusses this adjustment in terms of a "reduction" in the average standardized amounts. However, we note that, as stated in sections 1886(d)(2)(C)(ii) (I) and (II), the purpose of this "reduction" is to attain equality of payments. As can be seen from the table below, attaining such equality in certain regions requires a slight increase in the rates. This result, along with the discussion in the conference committee report that stresses the equality of payments (H.R. Rep. No. 453, 99th Cong., 1st Sess. 457 (1985)), supports our interpretation that the standardized amounts are not necessarily to be reduced, but are in fact to be adjusted (upward or downward) in order to attain payment equality.

Therefore, under section 1886(d)(3)(C)(ii) of the Act, for FY 1987 we are adjusting the urban and rural regional and national standardized amounts to ensure payment equality.

The indirect medical education payment equality factors are as follows:

Region	Urban	Rural
1. New England (CT, ME, MA, NH, RI, VT)	.98711	.99975
2. Middle Atlantic (PA, NJ, NY)	.97961	.99738
3. South Atlantic (DE, DC, FL, GA,MD, NC, SC, VA, WV)	.99354	.99945
4. East North Central (IL, IN, MI,OH, WI)	1.00077	.99880
5. East South Central (AL, KY, MS, TN)	.98918	1.00357
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	.99440	.99958
7. West South Central (AR, LA, OK, TX)	.99655	.99974
8. Mountain	.99148 (AZ, CO, ID, MT, NV, NM, UT, WY)	.99996
9. Pacific	.99243 (AK, CA, HI, OR, WA)	1.00068
10. National	.99239	.99979

We received no comments on this provision.

e. *Special Treatment of States Formerly Under a Waiver From Medicare's Hospital Reimbursement System.* Section 9202(j) of Pub. L. 99–272 provides for special treatment of States formerly under a waiver. The provision provides for special treatment of hospitals in a State whose waiver under section 1886(c) of the Act has been terminated effective with cost reporting periods beginning on or after January 1, 1986, whereby—

- The hospital shall be permitted to change the order in which it allocates administrative and general costs to the other cost centers, particularly the direct medical education cost centers, to conform with the order specified in the Medicare cost report;
- The hospital's hospital-specific portion of the prospective payment rate shall be adjusted for any hospital that actually chooses to use the order for step-down specified in the Medicare cost report; and
- The regional adjusted DRG prospective payment rate for the region in which the State is located may be appropriately adjusted based on the assumption that all teaching hospitals in the State allocate administrative and general costs in accordance with the order specified in the Medicare cost report. All such adjustments are to be based on the best data available.

Of the States in which hospitals were reimbursed under a waiver, Massachusetts and New York have terminated their waivers. However, hospitals in those States had been reimbursed for services pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972, not under section 1886(c) of the Act. Under remaining waivers still in effect, Maryland hospitals are paid for services pursuant to a State reimbursement system under section 1814(b)(3) of the Act and New Jersey hospitals are paid for services pursuant to a State reimbursement system under section 1886(c) of the Act.

Even though section 9202(j) of Pub. L. 99–272 cites waivers under section 1886(c) of the Act, the conference committee report does not express any such restriction. The conference committee report (H.R. Rep. No. 453, 99th Cong., 1st Sess. 486 (1985)) expressing the Committee's expectation states,

"Certain hospital reimbursement systems that received waivers from Medicare have used methods of allocating administrative and general costs that are different from those required by the Medicare hospital cost reporting forms. The conferees are concerned that, where these alternative allocation methods are in use, the base year direct GME [graduate medical education] costs used to determine the approved FTE [full-time equivalency] resident amounts established by other provisions of this legislation, may be understated.

The conferees direct the Secretary to permit changes in these alternative allocation methods. The conferees further direct the Secretary to adjust the regional standardized payment amounts and the hospital-specific amounts to account for the overstatement of these amounts due to the method of allocation of overhead used by teaching hospitals in the base period."

In order to meet the expectations of the committee, we believe we should treat hospitals in States under a previous waiver that were not paid pursuant to section 1886(c) of the Act in accordance with such expectations. However, since there is no authority to treat hospitals in States formerly under waivers other than section 1886(c) waivers under the provisions of section 9202(j) of Pub. L. 99–272, we believe the expectations of the conference committee may be carried out under the general exception and adjustment authority under section 1886(d)(5)(C)(iii) of the Act.

Of the two States that terminated their waiver, New York is the only State affected by this provision. Most hospitals in New York, including hospitals with medical education costs, allocate administrative and general costs in a manner that differs from the recommended order prescribed in the Medicare cost report. Many of these hospitals use an order of allocation in which the administrative and general cost center *follows*, rather than precedes, the medical education cost centers. As a result of this methodology, none of the hospital's administrative and general costs were allocated to the medical education cost centers. This had the effect of increasing the Medicare inpatient operating costs for teaching hospitals in New York and reducing the amount of medical education costs. The results are the same as the expressed concerns of the conference committee as stated above.

Under the authority of section 1886(d)(5)(C)(ii), in order to achieve what we believe was congressional intent in enacting section 9202(j) of Pub. L. 99–272, we are providing that effective for cost reporting periods beginning on or after January 1, 1986, hospitals in New York with medical education costs will be permitted to change the order in which they allocate administrative and general costs to the order specified in the Medicare cost report. Also, the base-year costs used in the development of the hospital-specific portion of the prospective payment rate will be adjusted for any such hospital that revises the order in which it allocates

administrative and general costs to conform with that prescribed in the Medicare cost report. The revised hospital-specific rate will be effective with cost reporting periods beginning on or after January 1, 1986.

With respect to adjusting the regional standardized payment amounts, the Middle Atlantic census division will be affected by such an adjustment. The Middle Atlantic census division consists of the States of New York, New Jersey, and Pennsylvania, and hospitals in these States will be affected by any change. For purposes of this final rule, we determined the impact on the regional standardized payment amounts using cost reports from New York hospitals that allocate the administrative and general cost center after the direct medical education cost center. The adjusted regional standardized payment amounts are effective for discharges occurring on or after October 1, 1986.

In adjusting the regional standardized payment amounts for the Middle Atlantic census division, we recalculated the FY 1982 (base year for determining the hospital-specific rate) cost reports from New York hospitals with direct medical education centers to change the method by which administrative and general costs were allocated to the method specified in the Medicare cost report. The allowable Medicare inpatient cost reports for each hospital were used in determining a revised hospital-specific rate. The revised hospital-specific rate was compared to the hospital rate derived from the original method by which administrative and general costs were allocated. A percentage change in the hospital-specific rates was developed for each hospital. The percentage change was then applied to the base-year cost data, representing allowable costs per Medicare discharge, for each hospital included in the data base used to construct the standardized amounts. The average percentage change for the hospitals was applied for each of the remaining New York hospitals with direct medical education cost centers that were not included. After the costs per case of the New York teaching hospitals were thus adjusted, the regional standardized payment amounts were recomputed in accordance with the past methodologies used to calculate such rates. The regional standardized payment amounts are calculated showing the full effect of the actual change for all hospitals in New York with medical education cost centers.

We received one favorable comment on this provision.

f. *Outliers.* Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(2)(E) of the Act correspondingly requires that the standardized amounts be reduced by a proportion that is estimated to reflect outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act further directs that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year. In FY 1984 we estimated outlier payments as six percent of total payments (including both standard prospective payment system payments and outlier payments). We made the maximum estimate permitted under the law in order to ensure that we would provide an adequate margin for outlier payments.

For both FY 1985 and FY 1986, we reduced the size of the reserve for outliers from six percent of total payments to five percent of total payments in order to provide proportionately greater payment for typical cases. We believe that it was in the greater interest of hospitals and the Medicare program to eliminate some of the reserve for outliers and correspondingly increase the amount in the standardized amounts, thereby providing hospitals with somewhat larger Federal rates for typical cases. We note that this has had the effect of increasing the predictability of total payments for hospitals in that less of the total is attributable to those cases that meet particular qualifications. Therefore, we are continuing to set the size of the outlier reserve at approximately the five percent level for FY 1987. As indicated in the previous rules on prospective payment, we will pay for any outlier that meets the criteria in §412.80, even if aggregate payments for outlier cases exceed five percent of total payments.

We are not revising the day outlier and cost outlier criteria. For FY 1986, we set the day outlier threshold at the lesser of 17 days or 1.94 standard deviations. We refer the reader to Table 5 in section IV of this addendum for the FY 1987 DRG day outlier thresholds. The specific thresholds have been recalculated for those DRGs affected by reclassifications, based on the length of stay distribution of the cases that would be in those DRGs in FY 1987. For FY 1986, we set the cost outlier thresholds at the greater of two times the Federal rate for the DRG, or $13,500. We are retaining these thresholds for FY 1987.

We indicated in the NPRM that we were proposing to revise the national ratio of cost to charges used to compute a hospital's cost outlier payments from .72 to .71 (51 FR 20029). The proposed revised factor of .71 reflected the inclusion of capital-related costs and the exclusion of interest income on funded depreciation, and was developed from FY 1984 cost and charge data.

Because we are not incorporating capital-related costs into the prospective payment system in this final rule, the revised factor, which reflects FY 1984 cost and charge data (rather than 1981 cost and charge data) is .66. This factor, which is computed using average per discharge values for both cost and charges, is based on data from 5,573 hospitals and was calculated as follows: Average Cost per discharge = $3,091.43, Average Charge per discharge = $4,701.51, National ratio of cost to charges = $3,091.43 divided by $4,701.51 = .6575, rounded to 66 percent.

We note that this change in the national ratio of cost to charges is estimated not to affect the overall outlier reserve (of approximately five percent), and therefore, we are not revising the criteria for establishing day outlier and cost outlier thresholds. (We do note that DRG reclassifications have resulted in revised geometric means and outlier thresholds for the affected DRGs. These specific changes are reflected in Table 5 of section IV of the addendum.)

Because of the extent of the changes incorporated in this final rule, we are providing two examples below (one for day outliers and one for cost outliers). The day outlier example and the cost outlier example are applicable to hospitals with cost reporting periods that occur on the same basis as the Federal fiscal year (that is, October 1, 1986). (Note that the two examples pertain to all prospective payment system hospitals effective with discharges occurring on or after October 1, 1986, except that the Federal and hospital-specific blends would vary depending on when a hospital's cost reporting period begins on or after October 1, 1986.) The prior outlier examples in the September 1, 1983 interim final rule (48 FR 39777) did not show the full computation of the indirect medical education factor (or, of course, the recent changes to that factor) and did not include disproportionate share hospital adjustments.

The following is an example of how the additional payment would be determined for a day outlier in FY 1987: Hospital X is a small central city teaching hospital located in the San Francisco MSA. Hospital X has a ratio of interns and residents to beds of .1 and is eligible for a disproportionate share adjustment factor of 5 percent. Mrs.

Smith is admitted to hospital X on October 3, 1986 and is discharged October 31, 1986. Mrs. Smith's stay is classified in DRG 31. Because Mrs. Smith's 28 day stay exceeds the 20 day length-of-stay outlier threshold for DRG 31, hospital X is eligible for payment for 8 outlier days in addition to the otherwise applicable prospective payment. The amount of hospital X's total DRG revenue for this case, including outlier payments is calculated as follows:

Step 1—Computation of Federal rate (excludes payments for capital, indirect medical education costs and disproportionate share hospital adjustment):

Pacific Census Division Urban Standardized Amounts:	
Labor-related	$2043.41
Non labor-related	$899.94
National Urban Standardized Amounts:	
Labor-related	$2156.69
Non labor-related	$810.77
San Francisco MSA Wage Index	1.6387
DRG 31 Relative Weight	.5381

Federal rate = .5381 [.50 ($2043.41 × 1.6387 + $899.94] + .50 ($2156.69 × 1.6387 + $810.77)] = .5381 ($2124.24 + $2172.47) = $2312.06.

Federal portion of prospective payment rate = 75 percent, Federal payment = .75 ($2312.06) = $1734.05

Step 2—Computation of Day Outlier Payments:

Outlier days	28 − 20 = 8
DRG 31 geometric mean length of stay	3.9 days
Marginal cost factor	.60

Outlier payment (excludes adjustments for disproportionate share hospital payments and indirect medical education costs) = Number of outlier days × (Total Federal prospective payment ÷ Geometric mean length of stay for DRG) × Marginal cost factor = (8)($1734.05 ÷ 3.9)(.60) = $2134.22.

Total Day Outlier Payments = $2134.22.

Step 3—Computation of Federal DRG Revenue (Excludes Hospital-Specific Portion of Transition Period Rate):

Regular Federal payment	$1,734.05
Day outlier payment	2,134.22
Total Federal DRG revenue	3,868.27

Step 4—Computation of Indirect Medical Education Adjustment:

Intern and resident/bed ratio	.1

Indirect medical education adjustment factor $2[(1+.1)^{.405}-1] = .07871$ or 7.871%

Indirect medical education adjustment = Total Federal DRG revenue × Indirect medical education adjustment factor = ($3,868.27)(.07871) = $304.47.

Step 5—Computation of Disproportionate Share Payment:

Disproportionate share adjustment factor = 5% or .05, Disproportionate share payment = Total Federal DRG revenue × Disproportionate share adjustment factor = ($3,868.27)(.05) = $193.41.

Step 6—Computation of Total Federal DRG Payments:

Total Federal DRG revenue (including outlier payments)	$3,868.27
Indirect medical education adjustment	304.47
Disproportionate share payment	193.41
Total Federal DRG payment	4,366.15

The following is an example of how the additional payment would be determined for a high cost outlier in FY 1987:

Same facts as in the day outlier example with the exception that Mrs. Smith's length of stay was 16 days and she incurred total billed charges of $100,000.

Step 1—Computation of Hospital X's Standardized Cost

Billed Charges	$100,000.00
National ratio of cost to charges	.66
Indirect medical education adjustment factor	.07871
Disproportionate share hospital adjustment factor	.05

Hospital X's Standardized Cost =

$$\frac{\$100,000.00}{1+(.07871+.05)} \times .66 = \$58,473.83$$

Step 2—Determination of Cost Outlier Thresholds:

Computation 1 (Based on Federal Rate)

DRG 31 Federal rate $2,312.06

Federal rate, doubled
2 × $2312.06 = $4624.12.

Computation 2 (Based on Wage Index Adjusted Standard Cost Outlier Threshold

Standard Cost Outlier Threshold	$13,500
Labor-related share [1] (percent)	74.39
Nonlabor-related share [1] (percent)	25.61

[1] These market basket proportions reflect the labor-related and non-labor components as described in Table 2 of section tV of the addendum.

Wage index adjusted cost outlier threshold, including capital
($13,500 × .7439 × 1.6387) + ($13,500 × .2561) = $19,914.24

Computation 1 result	$4,624.12
Computation 2 result	19,914.24
Applicable cost outlier threshold (Higher of computation 1 or computation 2)	19,914.24

Step 3—Calculation of Cost Outlier Payment:

Outlier cost = Hospital X's standardized cost minus applicable Outlier Threshold = $58,473.83 − $19,914.24 = $38,559.59.

Federal portion of prospective payment rate 75%.

Federal portion of outlier cost .75 × $38,559.59 = $28,919.69.

Marginal cost factor .60.

Cost outlier payment $28,919.69 × .60 = $17,351.81.

Step 4—Computation of Federal DRG Revenue (Excludes Hospital-Specific Portion of Transition Period Rate

Regular Federal payment	$1,734.05
Cost outlier payment	17,351.81
Total Federal DRG revenue	19,085.86

Step 5—Computation of Indirect Medical Education Adjustment:

Indirect medical education adjustment = Total Federal DRG revenue × Indirect medical education adjustment factor = ($19,085.86)(.07871) = $1,502.25.

Step 6—Computation of Disproportionate Share Payment:

Disproportionate share payment = Total Federal DRG revenue × Disproportionate share adjustment factor = ($19,085.86)(.05) = $954.29.

Step 7—Computation of Total Federal DRG Payments:

Total Federal DRG revenue (including outlier payments)	$19,085.86
Indirect medical education adjustment	1,502.25
Disproportionate share payment	954.29
Total Federal DRG payment	21,542.40

For purposes of this rule, we are not revising the 60 percent marginal cost

factor used to compute outlier payments. To date, the 60 percent factor represents our best estimate of the ratio of marginal cost (that is, the incremental change in the actual cost of care per unit of output) to average cost.

Comment: Several commenters pointed out that outlier payments have fallen well short of the statutorily prescribed targets and requested either more liberal thresholds to increase the number of outlier cases or application of a higher marginal cost factor. Other commenters advocated retroactive adjustments for the amount of outlier underpayments incurred in prior prospective payment periods.

Response: Section 1886(d)(5)(A)(iv) of the Act provides that total outlier payments under the prospective payment system may not be less than five percent nor more than six percent of total estimated prospective payments in a given fiscal year. The FY 1984 prospective payment rates reflected a six percent statutory estimated target while payments for FYs 1985 and 1986 reflected a five percent estimated target. Although the law provides that outlier payments fall between five and six percent of total estimated prospective payments, the actual target amounts are less than this due to the changing blends between the Federal and hospital-specific portions of the prospective payment rates during the transition period to fully national rates.

The Federal portions of the prospective payment rates in FY 1984 and FY 1985 were 25 percent and 50 percent, respectively, while the hospital-specific portions were 75 percent and 50 percent, respectively. (FY 1985 is the most recent year for which reasonably complete outlier payment data are available.) Outlier payments, however, are made only for the Federal portion of each outlier discharge. Outlier payments are not appropriate for the hospital-specific portion of the prospective payments since each hospital's historical experience with outlier cases is reflected in the base period costs used to develop the hospital-specific portion. Therefore, in FY 1984 estimated outlier payments represented 1.5 percent of total prospective payments (based on a 25 percent Federal portion), and in FY 1985 estimated outlier payments represented 2.5 percent of total prospective payments (based on a 50 percent Federal portion).

FY 1984 data on outlier payments were included in the Secretary's 1984 Annual Report to Congress on the impact of the prospective payment system. This report, which shows outlier payment data based on bills processed through November 1984, revealed that outlier payments accounted for about 0.8 percent of total prospective payments in FY 1984. Revised FY 1984 data, updated to reflect bills processed through April 1985, reveal that actual outlier payments were 1.2 percent of total prospective payments in FY 1984, close to the 1.5 percent target. Outlier payment data for FYs 1985 and 1986 are not yet available.

Although FY 1984 and FY 1985 outlier payments have fallen short of the target amounts, as the actual FY 1984 data and the preliminary FY 1985 data show, we believe that we have met the statutory requirement that projected outlier payments equal between five and six percent of *estimated* prospective payments in a given fiscal year. Therefore, retroactive adjustment of the amount of any aggregate outlier underpayments would not be appropriate. Moreover, had we exceeded the outlier targets, we would not have recouped outlier payments in excess of the targets. We note that the difference between the actual and target outlier payments was primarily due to the unanticipated magnitude of the decline in Medicare length of stay since the inception of the prospective payment system, resulting in fewer overall outlier days. Because the decline in length of stay appears to be stabilizing, we expect that future outlier payments will approach more closely the targeted levels.

In addition, we point out that the thresholds that a discharge is required to meet in order to qualify as an outlier are reevaluated each year based on our experience under the prospective payment system. For example, the FY 1986 prospective payment rates in the September 3, 1985 final rule reflected a reduction in the DRG length of stay outlier thresholds in recognition of the decline in overall Medicare length of stay (50 FR 35708). However, a series of congressional postponements, as discussed in the preamble, delayed implementation of the FY 1986 payment rates and revised outlier criteria through April 30, 1986.

We believe that maintaining the same outlier criteria will significantly reduce the likelihood of future aggregate outlier payments significantly below estimates. We will reexamine this policy if our monitoring of outlier payments reveals a significant persistent deviation from the statutorily prescribed targets.

Comment: One commenter requested that we use DRG-specific marginal cost ratios in computing outlier payments rather than the 60 percent marginal cost factor. The commenter believes that any uniform increase in the marginal cost factor, while at the same time limiting outlier payments to five percent of total prospective payments, would increase the current day and cost outlier thresholds perpetuating inadequate outlier payments.

Response: We disagree with the commenter that uniformly increasing the .60 outlier marginal cost factor would only make it more difficult for a particular case to qualify as an outlier because of an accompanying increase in the day and cost outlier thresholds. The marginal cost factor does not affect whether a case qualifies as an outlier, but rather how it is paid once it qualifies as an outlier.

We agree with the commenter that it is likely that marginal cost varies across DRGs. For example, cases that require an unusual level of nursing care intensity throughout the stay, such as extensive burn cases, probably have marginal cost factors that, at least on a per diem basis, exceed the presently used 60 percent. However, determining the appropriate level of DRG-specific marginal cost ratios would entail an extremely comprehensive and detailed research project. While we encourage research that would contribute to a better understanding of marginal cost variation across DRGs, another approach would be to vary the marginal cost factor regardless of the particular DRG involved once resource consumption exceeds prescribed outlier thresholds. This approach would recognize that as the cost of care for outlier cases rises, the more likely it is that the associated marginal cost of care exceeds the national average of 60 percent for all DRGs. It would avoid the need to establish empirically-based DRG-specific marginal cost factors while at the same time provide a reasonable way to compensate hospitals for unusually expensive outlier cases. We will continue investigating the feasibility of this alternative as well as others in response to the commenter's request.

Comment: One commenter questioned the propriety of using a national ratio of cost to charges in computing cost outlier payments. He suggested that each hospital's outlier costs and payments be computed using the facility's prior year ratio of cost to charges. If a hospital's own ratio were not available, the hospital could be required to use the average cost-to-charge ratio for hospitals in the same State.

Response: We previously responded to a similar comment in the January 3, 1984 final rule (49 FR 265). The basis of the commenter's concern at that time was the variability in hospital cost-to-charge ratios due to location, payor mix, and degree of cross-subsidization among

hospital service departments. The commenter pointed out that providers with actual cost-to-charge ratios less than 72 percent could receive windfalls under the current policy while hospitals with ratios greater than the national average would be penalized.

Both the length of stay and cost outlier criteria were developed from national data. Therefore, use of a national cost-to-charge ratio to compute outlier payments is not inappropriate. Ease of administration was also a factor in our decision to apply an overall national ratio to each hospital's billed charges to determine outlier payments.

The use of hospital-specific cost-to-charge ratios to compute outlier payments would require that they be frequently revised to account for changes in the mix and scope of services provided. Application of a national ratio derived from data aggregated from all available hospitals substantially reduces the need for periodic revisions in view of the decreased likelihood of overall change. In addition, there is much diversity in the structure of ancillary service departments among hospitals. For example, a large teaching hospital may have multiple radiology cost centers, each with its own ratio of costs to charges, while a small nonteaching hospital may have only one radiology department. Adopting the commenter's suggestion would require recognition of either—

—Each hospital's service department structure in the PRICER program so that cost-to-charge ratios could be applied to each covered charge from numerous, sometimes unique departments; or

—Only specific ancillary departments within each hospital.

Either approach would greatly increase the complexity of the cost outlier computations.

The commenter may also be suggesting that we should use an overall hospital-wide cost-to-charge ratio (rather than cost center-specific ratios). While such an approach would avoid the problems discussed above, we believe that its adoption could introduce a new source of inaccuracy. This is because, with the reduced scope of audit activity for prospective payment hospitals' cost reports (since they are no longer paid for inpatient services on a cost basis), the cost data for use in the cost-to-charge ratios may not be accurate. The effect of inaccuracies on a hospital-by-hospital basis is likely mitigated by the use of an overall aggregated cost-to-charge ratio.

An additional source of inaccuracy could arise from the fact that the hospital-specific cost-to-charge ratios would presumably be from completed cost reports, which means that they would lag behind the current period for which they would be used in computing outlier payments.

We note that these two reasons (discussed above) for not adopting the commenter's suggestion as it relates to hospital-wide cost-to-charge ratios are also applicable to the suggested use of department-by-department cost-to-charge ratios in each hospital.

Comment: Several commenters expressed concern that the outlier thresholds are set so that approximately 85 percent of outlier cases are paid as day outliers and 15 percent are paid as cost outliers. The commenters maintained that the precedence of day outliers over cost outliers tends to disadvantage hospitals since in most cases payment as a cost outlier would have been greater than day outlier payment.

Response: As we stated in the September 1, 1983 interim final rule (48 FR 39776), the outlier criteria selected result in substantially more cases being identified as day outliers than as cost outliers. Because the application of the outlier criteria is sequential (except for transferring hospitals, a discharge cannot be considered a cost outlier if it meets the applicable day outlier criteria), the day outlier criteria would have to be set very high and the cost outlier criteria would have to be set very low in order to obtain an even allocation of payments between types of outliers. A low threshold for cost outliers could result in outlier payments simply because a hospital has higher than average costs or charges and not as a direct consequence of extraordinary services provided an individual patient.

We also stated in the January 3, 1984 final rule (49 FR 265) that our simulations of alternative outlier policies suggest that changing the shares of day and cost outlier payments to 75 percent and 25 percent, respectively, would not substantially alter the distribution of outlier payments across regions or across types of hospitals.

g. *Costs of Malpractice Insurance.* On April 1, 1986, we published an interim final rule in the **Federal Register** on payment for the cost of malpractice insurance (51 FR 11142). In that rule, we adopted an apportionment methodology for determining reasonable cost reimbursement for hospital malpractice insurance costs. The new apportionment policy for hospitals (§ 405.457), which generally will result in reimbursement of a larger proportion of malpractice costs than previous policy, divides total malpractice insurance premium cost into two components. The "administrative component" is included in the Administrative and General (A & G) cost center and is apportioned on the basis of the individual hospital's Medicare utilization rate. The "risk component" is apportioned on the basis of a formula that takes into account the individual hospital's utilization as well as the national Medicare patient utilization rate and the national Medicare malpractice loss ratio.

For purposes of updating the standardized amounts, the Federal rates already include sufficient costs to account for any changes made as a result of the April 1, 1986 interim final rule. The Federal rates are based on unaudited hospital cost reports from cost reporting periods that ended in 1981. Based on our review of the cost reports, it appears that a large number of hospitals, in order to preserve their rights to appeal the prior malpractice regulation (§ 405.452(a)(1)(ii) (the "1979 rule")), which provided for separate apportionment of malpractice costs, included such costs in the A & G cost center (that is, in accordance with the Medicare reimbursement principles in effect prior to the 1979 rule). The effect of this action on the part of hospitals is that the Federal rates reflect an amount for malpractice costs that is in excess of the amount that would have been recognized had hospitals, in completing their Medicare cost reports, generally adhered to the 1979 rule's provision for separate apportionment of Medicare malpractice costs.

We have included no adjustment in the update factor for increased malpractice insurance costs as a result of the interim final rule. Those hospitals that request adjustments to their base year costs will have their hospital-specific rates adjusted under the April 1, 1986 regulation. We are not making any adjustment to the Federal rates for malpractice, and we note that if such an adjustment were made, it would reduce the rates. This is because the Federal rates are based upon 1981 unaudited cost reports, and about half the hospitals submitted those cost reports under the regulations in effect prior to the 1979 rule, which provided for greater malpractice payments than provided for by the April 1, 1986 regulation. No downward adjustment was ever made to the 1981 base-year cost data or to the resulting Federal rates to correct for this practice in reporting malpractice costs. Also, we believe that the hospitals that submitted cost reports in accordance with the 1979 regulation are primarily those whose malpractice payments were either increased under the 1979 rule or were minimally reducad by the 1979 regulation. Thus, there is no reason to

believe that the malpractice insurance costs reported in the 1981 cost reports understated Medicare's share of those costs, and many hospitals clearly and deliberately reported costs so as to overstate Medicare's proper share of the costs.

In addition, as we stated in the September 3, 1985 final rule (50 FR 35703), our analyses indicate that the Federal rates are generally overstated for a number of other reasons. Furthermore, both the General Accounting Office and the Department's Office of the Inspector General have conducted studies showing that the Federal rates are overstated. In light of these findings, we believe that it is inappropriate to increase the rates further to reflect a modification in policy concerning reimbursement of malpractice insurance costs.

We are responding to the malpractice insurance comments, which were generally in regards to the market basket weight, in section III of the preamble.

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining individual hospitals' prospective payments as described in section D below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1 contains the actual labor-related and nonlabor-related shares that would be used to calculate the prospective payment rates.

1. Adjustment for Area Wage Levels

Section 1886(d)(2)(H) of the Act requires that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. The revised wage index, which incorporates minor modifications (for hospitals in redesignated rural counties that are deemed to be urban, and for the recently announced EOMB MSA designation) to the wage index published in the May 6, 1986 interim final rule, is set forth in Tables 4a and 4b of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States were included in the adjustment for area wages above. For FY 1987, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii will be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. (We note that the adjustment factors are different from those in effect in FY 1986.)

Table of Cost-of-Living Adjustment Factors, Alaska and Hawaii Hospitals

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

(The above factors are based on information obtained from the U.S. Office of Personnel Management.)

C. DRG Weighting Factors

All inpatient hospital discharges are categorized according to a DRG as discussed in the September 1, 1983 interim final rule (48 FR 39760) and the September 3, 1985 final rule (50 FR 35647).

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in medical technology and treatment patterns that may affect the cost of providing inpatient care. Accordingly, section 1886(d)(4)(C) of the Act provides that, effective for discharges occurring in FY 1986, and no less often than once every four years thereafter, the Secretary "shall adjust the classifications and weighting factors . . . to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources."

In compliance with the law, we published in the September 3, 1985 final rule (50 FR 35722) revised DRG weights that were recalibrated to reflect changes in resource consumption that had occurred subsequent to 1981 (the base-year data used to derive the initial DRG weights). Unlike the FY 1984 (48 FR 39878) and FY 1985 (49 FR 34780) series of DRG weights, which were largely developed from 1981 Medicare cost report data and billing records from a 20 percent sample of Medicare beneficiaries, the DRG weights in the September 3, 1985 final rule were constructed from the FY 1984 Part A Tape Bill (PATBILL) file, which is comprised of the universe of available inpatient hospital bills for Medicare patients. The most recent DRG weights were based exclusively on hospital charges for nearly 11 million patient stays or some 95 percent of the discharges in FY 1984. For a detailed explanation of the development of these charge-based DRG relative weights, we refer the reader to the discussion in the June 10, 1985 proposed rule (50 FR 24372) and the September 3, 1985 final rule (50 FR 35652).

As a result of a series of Congressional postponements as described earlier, the prospective payment changes published in the September 3, 1985 final rule, including the revised DRG relative weights, which were to be effective for discharges occurring on or after October 1, 1985, were postponed through April 30, 1986. We implemented the revised DRG relative weights published in the September 3, 1985 final rule effective with discharges occurring on or after May 1, 1986 (51 FR 16772).

We considered recalibrating the DRG weights using a later PATBILL data set (subsequent to FY 1984) as recommended by ProPAC, but decided against this course of action for FY 1987.

Comment: Several commenters requested that we recalibrate the DRG weights on an annual basis to assure that DRG prices keep current with changing technologies, medical management, and case mix complexity within and among DRGs.

Responses: As we stated in the NPRM, because of a series of congressional postponements, the revised DRG weights published in the September 3, 1985 final rule did not become effective until May 1, 1986. We believe it is appropriate to leave those weights in place for at least one year because they were developed based on a new methodology (charges). Although we are confident of the weights, we wish to have an opportunity to further evaluate them and to compare them to weights derived using other methodologies. This evaluation can take place now that FY 1984 prospective payment system cost data files are relatively complete. Therefore, we are not recalibrating the DRG weights in FY

1987. However, in order to be responsive to changing technologies and shifts in the consumption of hospital resources among DRGs, we will recalibrate the DRG weights in FY 1988 and we intend to recalibrate annually in the future.

We note that in the June 3, 1986 final notice we made changes to the DRG classification system. In order to reflect those classification changes as well as the classification changes discussed elsewhere in the preamble to this final rule, we have reweighted the DRGs using the DRG classifications and GROUPER software that will be effective for discharges occurring on or after October 1, 1986. Because reweighting differs from recalibration only in that reweighting uses the same data base as was used to calibrate the weights, this process can affect the relative weights of those DRGs not affected by reclassification. The revised weights and outlier thresholds appear in Table 5 of section IV of the addendum.

D. Calculation of Prospective Payment Rates for FY 1987 General Formula for Calculation of Prospective Payment Rates for Cost Reporting Periods Beginning on or after October 1, 1986 and Before October 1, 1987

Prospective Payment Rate = Hospital-Specific Portion + Federal Portion

1. Hospital-Specific Portion

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience. For the first cost reporting period under prospective payment, a hospital-specific rate was calculated for each hospital, derived generally from the following formula:

$$\frac{\text{Base year costs per discharge}}{\text{1981 case-mix index}} \times \text{Updating factor} = \text{Hospital-specific rate}$$

For the first prospective payment cost reporting period, the hospital-specific portion of the total prospective payment equaled 75 percent of the hospital-specific rate. For each subsequent transition period cost reporting period, the hospital-specific portion is derived as follows:

Previous Period's Hospital-Specific Rate × Updating Factor × Blending Percentage × DRG Weight.

The blending percentage determines the portion of the total prospective payment that is based on the hospital-specific rate. (The balance is based on the Federal rate.)

Except for sole community hospitals (75 percent hospital-specific portion) and hospitals in the State of Oregon (zero percent hospital-specific portion), the blending percentage for hospital cost reporting periods beginning in FY 1987 is 25 percent. For a more detailed discussion of the hospital-specific portion, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772).

a. Updating the Hospital-Specific Rates for FY 1987 Cost Reporting Periods

We are increasing the hospital-specific rates by 0.5 percent for cost reporting periods beginning on or after October 1, 1986. As required by section 1886(e)(4) of the Act in conjunction with section 1886(b)(3)(B) of the Act, this is the same percentage increase (0.5 percent) by which we are increasing the Federal rates for discharges occurring in FY 1987.

b. Calculation of Hospital-Specific Portion

For hospital cost reporting periods beginning on or after October 1, 1986, the hospital-specific portion of a hospital's payment for a given discharge would be calculated by:

Step 1—Multiplying the previous cost reporting period's hospital-specific rate, as described in the May 6, 1986 interim final rule, by the applicable update factor (1.005);

Step 2—Multiplying the result obtained in Step 1 by 25 percent; and

Step 3—Multiplying the amount resulting from Step 2 by the specific DRG weighting factor applicable to the discharge. The result is the hospital-specific portion of the FY 1987 prospective payment for a given discharge.

c. New Providers

Hospitals that did not complete a 12-month cost reporting period under Medicare prior to September 30, 1983 (either under current or previous ownership) and meet the criteria in § 412.74 are considered new providers for purposes of the prospective payment system. Their prospective payment rates are computed solely on the basis of the Federal rates. Thus, new providers are paid a blend of 50 percent of the appropriate Federal regional rate and 50 percent of the Federal national rate for discharges occurring on or after October 1, 1986 and before October 1, 1987.

2. Federal Portion. Except for sole community hospitals (25 percent Federal portion comprised of 100 percent of the appropriate Federal regional rate) and hospitals in the State of Oregon (100 percent Federal portion comprised of 100 percent of the Federal national rate), for cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987, the Federal portion of the hospital's payment will be 75 percent of the hospital's Federal rate. Beginning with discharges occurring on or after October 1, 1986, the Federal rate is comprised of a blend of the appropriate Federal regional rate (50 percent) and the Federal national rate (50 percent). The Federal rates are determined as follows:

Step 1—Selecting the appropriate regional and national adjusted standardized amounts considering the location and urban and rural designation of the hospital (see Table 1, section IV of the addendum);

Step 2—Multiplying the labor-related portions of the regional and national standardized amounts by the appropriate wage index;

Step 3—For hospitals in Alaska and Hawaii, multiplying the nonlabor-related portions of the regional and national standardized amounts by the appropriate cost-of-living adjustment factor;

Step 4—Summing the amounts from step 2 and the nonlabor portion of the standardized amount (adjusted if appropriate under step 3);

Step 5—Multiplying both the regional and national rate results from step 4 by 50 percent;

Step 6—Summing the resulting regional and national labor-related and nonlabor-related amounts from step 5; and

Step 7—Multiplying the final amount from step 6 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section IV of the addendum).

III. Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Background

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 405.463 of the regulations. Under these limits, an annual target amount (stated as inpatient operating cost per discharge) is set for each hospital, based on the hospital's own cost experience. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs per discharge in excess of its

target amount would be paid no more than that amount. However, a hospital that has inpatient operating costs less than its target amount would be paid its costs plus the lower of (1) 50 percent of the difference between the inpatient operating cost per discharge and the target amount, or (2) five percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period, prorated, if necessary, based on calendar year target rate percentages. For cost reporting periods beginning in FY 1983 and FY 1984, the applicable target rate percentage was the estimated hospital market basket increase factor plus one percentage point. For cost reporting periods beginning in FY 1985, the applicable target rate percentage was the estimated hospital market basket increase factor plus one-quarter of one percentage point, as prescribed by section 1886(b)(3)(B) of the Act. Under section 9101 of Pub. L. 99–272, the applicable target rate percentage increase for cost reporting periods beginning on or after October 1, 1985 through September 30, 1986 is 5/24 of one percent. Section 9101 of Pub. L. 99–272 provides that for purposes of updating the target rate for FY 1987, the FY 1986 increase will be deemed to have been one-half of one percent. However, for cost reporting periods beginning in FY 1987, and thereafter, the target rate percentage is adjusted by an update factor determined by the Secretary under section 1886(e)(4) of the Act considering the recommendations of ProPAC under section 1886(e)(2) of the Act and may not exceed the market basket percentage as determined under section 1886(b)(3)(B) of the Act.

B. Target Amounts for Cost Reporting Periods Beginning in FY 1987

For cost reporting periods beginning in FY 1987, we are increasing each hospital's previous year's target amount by 0.5 percent. Under section 1886(b)(3)(B) of the Act, as amended by section 9101(b) of Pub. L. 99–272, the applicable percentage increase, for FYs 1987 and 1988, is determined pursuant to section 1886(e)(4) of the Act, and may not exceed the market basket increase. The same percentage increase, therefore, applies to the target rate amounts for hospitals and units excluded from the prospective payment system as applies to the prospective payment rates for hospitals subject to that system.

ProPAC recommended that for FY 1987, the target rate of increase limits for hospitals and units excluded from the prospective payment system be—

- Updated to reflect the projected increase in the hospital market basket (4.6–4.8 percent);
- Corrected for forecast errors in FY 1986 (−0.3 percent); and
- Adjusted for the policy target adjustment factor (−0.8 percent).

Comment: A number of commenters maintained that our proposal to adjust the target rate of increase by 0.5 percent for hospitals and distinct part units excluded from the prospective payment system was inequitable, inconsistent with the two percent increase contained in the President's proposed FY 1987 budget, and deviated significantly from ProPAC's recommendation of a 3.7 percent adjustment for such facilities. They pointed out that several of the adjustments reflected in the update factor applicable to prospective payment hospitals, such as the offset for nominal changes in case mix, the rate of inflation in the hospital market basket, and the offset for improved practice patterns due to a decline in length of stay as manifested by prospective payment hospitals, are inappropriate to hospitals and units excluded from the prospective payment system. Many commenters recommended that a separate update factor, which is more in line with ProPAC's recommendation but not less than two percent, be applied to hospitals and units excluded from the prospective payment system.

Response: The two percent increase contained in the President's proposed FY 1987 budget represented a placeholder estimate used exclusively for budgeting purposes. It did not represent the Administration's estimate of the minimum update factor used to develop the target rate of increase for hospitals and units excluded from the prospective payment system.

As we stated in the NPRM, section 9101(b) of Pub. L. 99–272 amended section 1886(b)(3)(B) of the Act to provide that the applicable percentage increase (that is, the update factor) for FYs 1987 and 1988 is determined pursuant to section 1886(e)(4) of the Act, and may not exceed the market basket increase. Therefore, the same percentage increase applies to the target rate amounts for hospitals and units excluded from the prospective payment system as applies to the prospective payment rates for hospitals subject to that system.

We addressed similar comments in the September 3, 1985 final rule (50 FR 35714) in regard to the appropriateness of setting the same update factor for prospective payment hospitals and excluded hospitals and units. Also, as we stated in the September 3, 1985 final rule, while excluded hospitals and units have not had the opportunity to increase their reimbursement through coding changes, we note that an excluded hospital may qualify for an exception to the rate of increase limit based on a change in case mix as a result of an addition or discontinuation of services that results in a distortion in the rate of cost increase (§ 405.463(g)).

We interpret the language in section 1886(b)(3)(B) of the Act as requiring the application of a single market basket index in developing the update factor mandated under section 1886(e)(4) of the Act. We also point out that the market basket which we use was constructed using data from non-Federal hospitals, including both facilities subject to and those excluded from the prospective payment system. Therefore, we believe it is appropriate to apply the same update factor to all hospitals.

IV. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this addendum. For purposes of this final rule and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1, 2, 3c, 4a, 4b, 5, and 6 are presented below. The tables are as follows:

Table 1—Adjusted Standardized Amounts, Labor/Nonlabor
Table 2—Hospital Market Basket
Table 3c—Hospital Case-Mix Indexes for Discharges Occurring in Federal FY 1985
Table 4a—Wage Index for Urban Areas
Table 4b—Wage Index for Rural Areas
Table 5—Diagnosis-Related Groups
Table 6—Grouper Changes

TABLE 1.—ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Urban		Rural	
	Labor related	Nonlabor related	Labor related	Nonlabor related
1. New England (CT, ME, MA, NH, RI, VT)	2237.40	828.29	2026.11	629.40
2. Middle Atlantic (PA, NJ, NY)	2061.85	802.70	2069.77	637.52
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2196.87	746.61	1881.59	527.81
4. East North Central (IL, IN, MI, OH, WI)	2287.78	873.57	1916.34	593.87
5. East South Central (AL, KY, MS, TN)	2067.42	658.07	1862.95	491.99
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2133.24	780.47	1743.75	509.51
7. West South Central (AR, LA, OK, TX)	2147.80	729.56	1753.06	492.20
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2082.50	783.25	1726.21	552.31
9. Pacific (AK, CA, HI, OR, WA)	2043.41	899.94	1731.82	642.28
10. National	2156.69	810.77	1826.25	541.54

TABLE 2.—HOSPITAL MARKET BASKET

[1986 Relative Importance Weights] [1]

Expense categories	
1. Wages and Salaries [2]	57.29
2. Employee Benefits [2]	10.05
3. Professional Fees [2]	.78
4. Energy and Utilities	2.25
a. Fuel, Oil, Coal, and Other Petroleum	.60
b. Electricity	1.06
c. Natural Gas	.35
d. Motor Gasoline	.21
e. Water and Sewage	.03
5. Malpractice Insurance	1.19
6. All Other	28.44
All Other Products	19.77
a. Pharmaceuticals	4.92
b. Food	3.29
(1) Contract Service	1.28
(2) Direct Purchase	2.01
c. Chemicals and Cleaning Products	2.42
d. Surgical and Medical Instruments	2.13
e. Photographic Supplies	2.08
f. Rubber and Plastics	1.86
g. Paper Products	1.09
h. Apparel	.92
i. Minor Machinery Equipment	.39
j. Miscellaneous Products	.67
All Other Services	8.67
a. Business Services [2]	3.00
b. Computer and Data Processing Services [2]	1.53
c. Transportation and Shipping	.97
d. Telephone	.81
e. Blood Services [2]	.47
f. Postage [2]	.30
g. All Other Services Labor Intensive [2]	.97
h. All Other Services: Nonlabor Intensive	.62
Total	100.00

[1] These weights are used to develop the revised labor-related/nonlabor-related components of the standardized rates in Table 1.

[2] Considered labor-related.

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VOL 51 ISS 170 SE 3 1986 UMI

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
010001	1.1024	010058	1.1264	010119	1.0942	030001	1.1717	030067	1.0169
010004	1.0282	010059	0.9266	010120	0.9545	030002	1.4107	030068	0.9844
010005	1.1377	010060	0.9552	010121	1.0221	030003	1.1585	030069	1.1609
010006	1.1480	010061	0.9860	010122	0.9526	030004	0.9174	030071	0.9320
010007	0.9535	010062	0.9255	010123	1.1099	030006	1.3581	030072	0.9717
010008	1.0243	010064	1.3693	010124	1.0365	030007	1.1026	030073	1.0839
010009	1.0071	010065	1.0569	010125	0.9294	030008	1.2185	030074	0.9253
010010	1.0023	010066	0.8983	010126	0.9946	030009	1.1896	030076	0.9900
010011	1.1433	010067	0.8826	010127	1.0672	030010	1.2779	030077	0.9452
010012	1.1111	010068	1.1027	010128	1.0297	030011	1.1499	030078	1.1060
010015	1.0615	010069	1.1144	010129	1.0327	030012	1.0828	030079	0.9496
010016	1.1437	010070	1.2192	010130	1.0462	030013	1.2378	030080	1.2542
010017	1.0457	010072	1.0869	010131	1.0475	030014	1.2031	030081	0.9395
010018	0.7274	010073	0.9766	010133	1.0087	030016	1.0943	030082	0.8180
010019	1.0370	010074	0.9083	010134	0.9457	030017	1.1874	030083	1.1693
010020	1.0068	010075	1.0161	010136	1.0382	030018	1.2358	030084	1.0452
010021	1.0395	010078	1.1871	010137	1.1636	030019	1.1036	030085	1.0319
010022	1.0167	010079	1.0294	010138	0.9584	030020	1.2646	030086	1.0532
010023	1.0888	010080	0.9763	010139	1.3786	030022	1.2275	030087	1.1434
010024	1.1055	010081	1.3784	010142	0.8871	030023	1.2242	030088	1.1272
010025	1.0822	010083	0.9786	010143	1.0692	030024	1.3832	040001	1.0423
010026	0.9470	010084	1.1304	010144	1.0861	030025	1.0532	040002	0.9749
010027	0.9476	010085	1.1145	010145	1.1111	030026	0.8484	040003	1.0145
010028	0.9894	010086	0.9719	010146	1.0539	030027	1.0062	040004	1.1381
010029	1.1426	010087	1.2493	010148	0.9644	030030	1.2457	040005	0.9873
010030	0.9725	010089	1.0194	010149	1.1631	030033	1.0745	040006	0.9990
010031	1.0770	010090	1.1760	010150	0.9741	030034	1.0708	040007	1.2425
010032	0.9526	010091	1.0338	010152	1.1237	030035	1.1344	040008	1.0202
010033	1.6512	010092	1.2953	020001	1.3094	030036	1.1458	040009	0.9897
010034	1.0023	010094	0.9770	020002	0.9971	030037	1.6823	040010	1.1031
010035	1.0453	010095	0.9953	020004	1.0853	030038	1.2876	040011	0.9361
010036	1.0230	010096	0.9793	020005	1.0305	030040	1.0452	040013	1.0129
010038	0.9922	010097	0.9624	020006	1.0525	030041	0.9702	040014	1.1006
010039	1.3513	010098	1.0418	020007	0.8774	030043	1.0950	040015	0.9938
010040	1.1409	010099	1.0275	020008	1.0184	030044	1.0219	040016	1.2135
010041	0.8861	010100	1.1608	020009	0.8947	030046	1.0657	040017	1.1023
010043	0.9538	010101	1.0013	020010	0.9171	030047	0.9368	040018	1.0614
010044	0.8897	010102	0.9159	020011	0.9390	030048	1.0012	040019	0.9913
010045	0.9688	010103	1.3053	020012	1.0727	030049	0.9978	040020	1.1503
010046	1.1216	010104	1.3503	020013	0.9472	030051	1.0730	040021	1.0611
010047	0.9996	010108	1.0189	020014	0.9949	030054	0.9207	040022	1.1470
010049	1.0067	010109	1.0913	020016	1.0447	030055	1.0285	040024	0.9428
010050	0.9506	010110	0.8909	020017	1.0795	030057	1.1574	040025	0.9310
010051	0.8735	010111	0.9022	020018	0.9611	030059	1.1831	040026	1.1924
010052	0.9883	010112	1.0629	020020	0.9610	030060	1.2206	040027	1.0948
010053	1.0717	010113	1.3167	020021	0.9971	030061	1.2388	040028	1.0011
010054	1.1010	010114	1.0911	020024	0.9531	030062	1.0265	040029	1.0059
010055	1.0973	010115	0.9975	020025	0.9330	030063	1.0008	040030	0.9391
010056	1.1778	010117	0.9508	020026	1.2041	030064	1.4287	040031	1.0006
010057	0.9746	010118	1.1112	020027	0.9043	030065	1.3205	040032	0.9979

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSFITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
040033	0.9070	040107	0.9794	050049	1.1057	050108	1.2404	050168	1.4039
040035	0.9517	040108	0.8891	050051	1.0354	050109	1.7928	050169	1.2834
040036	1.0910	040109	1.0429	050052	1.0700	050110	1.0840	050170	1.1954
040037	1.0429	040113	0.9455	050053	1.2000	050111	1.2513	050172	1.1365
040039	0.9546	040114	1.4253	050054	1.1421	050112	1.3004	050173	1.1987
040040	0.9918	040115	0.9930	050055	1.1652	050113	1.1026	050174	1.4668
040041	1.0906	040116	1.1151	050056	1.1381	050114	1.2456	050175	1.1304
040042	1.1692	040118	1.0174	050057	1.1926	050115	1.2428	050177	1.2425
040043	0.9882	040119	1.0614	050058	1.2114	050116	1.3276	050179	1.1193
040044	0.9425	040122	0.9638	050060	1.2474	050117	1.1767	050180	1.2494
040045	0.9157	040123	0.9839	050061	1.1650	050118	1.1504	050181	1.1338
040047	1.0660	040124	0.9931	050063	1.2395	050119	0.8879	050183	1.0977
040048	1.0745	040126	0.9410	050065	1.2904	050121	1.0853	050186	1.1801
040050	1.0054	040127	0.8771	050066	1.1890	050122	1.1727	050187	1.0858
040051	0.9255	050002	1.1373	050067	1.1542	050124	1.2200	050188	1.2066
040053	0.9858	050004	1.1243	050068	1.0962	050125	1.2117	050189	0.9966
040054	0.9892	050006	1.2237	050069	1.3910	050126	1.2420	050190	1.1446
040055	1.1997	050007	1.3439	050070	1.1867	050127	1.1710	050191	1.2616
040058	0.9559	050008	1.2164	050071	1.1760	050128	1.2555	050192	1.0510
040060	0.9913	050009	1.2745	050072	1.2280	050129	1.4438	050193	1.1899
040062	1.1860	050010	0.9901	050073	1.1476	050131	1.1965	050194	1.1249
040063	1.1992	050011	1.0698	050074	0.9415	050132	1.1571	050195	1.1758
040064	0.9697	050013	1.6610	050075	1.2288	050133	1.1193	050196	1.1942
040066	0.9511	050014	1.1412	050076	1.4650	050134	1.1135	050197	1.5333
040067	0.9791	050015	1.2410	050077	1.3674	050135	1.1953	050199	1.1290
040068	1.0135	050016	1.0838	050078	1.1755	050136	1.1556	050200	1.1669
040069	1.0393	050017	1.5572	050079	1.2321	050137	1.1482	050201	1.0744
040070	0.9161	050018	1.1104	050080	1.1775	050138	1.3973	050202	1.1792
040071	1.1583	050019	0.9259	050081	1.3582	050139	1.1620	050204	1.2620
040072	1.0193	050021	1.1655	050082	1.2162	050140	1.1385	050205	1.1690
040074	1.0260	050022	1.2094	050084	1.3671	050141	1.1023	050207	1.1739
040075	1.0185	050024	1.1053	050086	1.1008	050143	1.1148	050208	1.1743
040076	0.9711	050025	1.4072	050087	1.2346	050144	1.3149	050210	0.9805
040077	0.9103	050026	1.2458	050088	1.1012	050145	1.2030	050211	1.2192
040078	1.1645	050028	1.1828	050089	1.1371	050147	0.9776	050212	1.0978
040080	0.9853	050029	1.1660	050090	1.1195	050148	1.0159	050213	1.2314
040081	0.8847	050030	1.1294	050091	1.1700	050149	1.1551	050214	1.2015
040082	1.0717	050032	1.0639	050092	1.0703	050150	1.2230	050215	1.3303
040084	1.0250	050033	1.3034	050093	1.3708	050151	1.1965	050217	1.1662
040085	0.9478	050034	1.2429	050095	1.0345	050152	1.1841	050219	1.2355
040087	0.9744	050036	1.1885	050096	1.1092	050153	1.4082	050220	1.0915
040088	1.0915	050038	1.2265	050097	1.1976	050154	1.1510	050221	1.1839
040090	0.9626	050039	1.4284	050098	1.1170	050155	1.0821	050222	1.1650
040091	0.9788	050040	1.1270	050099	1.2118	050156	1.1478	050224	1.1918
040093	0.9827	050041	1.0877	050100	1.7463	050158	1.4626	050225	1.1440
040095	0.9788	050042	1.1404	050101	1.2194	050159	1.1521	050226	1.4721
040098	1.1037	050043	1.4677	050102	1.2249	050161	1.1187	050228	1.2175
040100	1.1290	050045	1.0916	050103	1.3323	050164	1.2119	050229	1.1740
040105	1.0232	050046	1.1311	050104	1.2702	050166	1.2662	050230	1.1940
040106	0.9896	050047	1.4252	050107	1.1452	050167	1.2471	050231	1.1846

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050232	1.5308	050301	1.1521	050377	1.0802	050442	1.1627	050527	1.0953
050233	1.1126	050302	1.2235	050378	1.0904	050443	0.9872	050528	1.0704
050234	1.1736	050303	1.0703	050379	1.0200	050444	1.1378	050530	1.1639
050235	1.3011	050305	1.2008	050380	1.5251	050446	0.9368	050531	1.1734
050236	1.1502	050307	1.2114	050381	0.9096	050447	1.2469	050534	1.1987
050238	1.1824	050308	1.3711	050382	1.1362	050448	0.9861	050535	1.1184
050239	1.2348	050309	1.1651	050383	1.1149	050449	1.1188	050537	1.1789
050240	1.1765	050310	1.1370	050385	1.2013	050450	0.8765	050539	1.1511
050241	1.1710	050312	1.3124	050387	1.0287	050451	0.9397	050541	1.3238
050242	1.2702	050313	1.0633	050388	0.9708	050454	1.5989	050542	1.0139
050243	1.1910	050315	1.1710	050390	1.2172	050455	1.4051	050543	1.1026
050245	1.3507	050317	1.1172	050391	1.1444	050456	1.2839	050544	1.1051
050248	1.0744	050318	0.9119	050392	0.9771	050457	1.3847	050545	0.8224
050251	1.0112	050319	1.1876	050393	1.2369	050458	0.9375	050546	0.8836
050253	1.0909	050320	1.1191	050394	1.2982	050459	1.2156	050547	0.9290
050254	1.1536	050324	1.4330	050395	1.0471	050464	1.5913	050549	1.4121
050256	1.4114	050325	1.1323	050396	1.3957	050467	1.1388	050550	1.2444
050257	1.1563	050326	1.1538	050397	0.9826	050468	1.2064	050551	1.2487
050258	1.2473	050327	1.4375	050401	1.2205	050469	1.0132	050552	1.1457
050260	1.0519	050328	1.0762	050403	1.1203	050470	1.0737	050557	1.1714
050261	1.1405	050329	1.1648	050404	1.0265	050471	1.2481	050559	1.1885
050262	1.3894	050331	1.1391	050405	1.1061	050473	1.1905	050560	1.1632
050263	1.1505	050333	0.9853	050406	0.9550	050476	1.0771	050561	1.0961
050264	1.1905	050334	1.1798	050407	1.1286	050477	1.0617	050562	1.1059
050267	1.3890	050335	1.0593	050410	1.0262	050478	1.2176	050564	1.1817
050268	1.2325	050336	1.1700	050411	1.1610	050481	1.1430	050565	1.1038
050269	1.1276	050337	1.1420	050413	1.1952	050482	1.0395	050566	0.9845
050270	1.1902	050342	1.1977	050414	1.1084	050483	1.1700	050567	1.1802
050272	1.2216	050343	1.1044	050415	0.8380	050485	1.3249	050568	1.1897
050273	0.9758	050345	1.2270	050417	1.0918	050486	1.2185	050569	1.1696
050274	0.9103	050348	1.2737	050418	1.1018	050487	1.1647	050570	1.4789
050276	1.0784	050349	1.0246	050419	1.1660	050488	1.1938	050571	1.1744
050277	1.1725	050350	1.2379	050420	1.1481	050489	1.1583	050573	1.3364
050278	1.1761	050351	1.3526	050421	1.1850	050491	1.1671	050575	1.0782
050279	1.1546	050352	1.1450	050423	1.0324	050492	1.1011	050576	1.1880
050280	1.1727	050353	1.4741	050424	1.2437	050494	1.0734	050577	1.1833
050281	1.2485	050355	1.0178	050425	1.1863	050496	1.5179	050578	1.1246
050282	1.1512	050357	1.3887	050426	1.1551	050497	0.9842	050579	1.0911
050283	1.1840	050359	1.0805	050427	0.9302	050498	1.1397	050580	1.1680
050286	1.0824	050360	1.1961	050428	0.9141	050502	1.6870	050581	1.2221
050289	1.5378	050361	1.0265	050430	0.9491	050503	1.2498	050583	1.7015
050290	1.2233	050362	1.1503	050431	1.0867	050506	1.1946	050584	1.1698
050291	1.1514	050363	1.1077	050432	1.3523	050510	1.1646	050585	1.2234
050292	1.1723	050366	1.0982	050433	1.0016	050512	1.1689	050586	1.1432
050293	0.8505	050367	1.1575	050434	1.1326	050515	1.2075	050587	1.1321
050295	1.1551	050369	1.1523	050435	1.1792	050516	1.2172	050588	1.1633
050296	1.1018	050371	1.1047	050436	1.0390	050517	1.1324	050589	1.1907
050298	1.0622	050372	1.1079	050438	1.3686	050522	1.1373	050590	1.1994
050299	1.2689	050373	1.0768	050440	1.1986	050523	1.1191	050591	1.1837
050300	1.1405	050376	1.1927	050441	1.5076	050526	1.1383	050592	1.1539

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050593	1.1308	060013	1.1813	060068	1.0793	070034	1.1647	100031	1.0667
050594	2.0031	060014	1.2718	060070	1.0644	070035	1.2201	100032	1.2298
050597	1.1360	060015	1.2248	060071	1.2104	070036	1.2389	100033	1.1342
050598	1.1413	060016	1.1731	060072	1.0689	080001	1.2088	100034	1.2680
050599	1.2484	060017	1.2183	060073	0.9919	080002	1.0964	100035	1.1598
050601	1.1653	060018	1.0967	060074	0.9147	080003	1.1763	100036	1.1119
050603	1.2463	060019	1.1769	060075	1.2109	080004	1.2024	100038	1.2553
050604	1.2770	060020	1.2386	060076	1.1248	080005	1.0885	100039	1.2071
050605	0.8997	060022	1.4634	060077	0.9495	080006	1.0714	100040	1.3190
050607	1.1573	060023	1.2372	060085	0.9606	080007	1.1027	100042	1.0159
050608	1.1168	060024	1.3940	060087	1.0911	090001	1.2647	100043	1.2118
050609	1.2191	060025	0.9763	060088	1.0834	090002	1.0943	100044	1.1514
050613	1.0005	060026	1.2271	060090	0.9878	090003	1.3023	100045	1.1692
050615	1.1629	060027	1.1909	060092	0.8552	090004	1.4861	100046	1.1244
050616	1.0928	060028	1.2824	060093	0.7725	090005	1.1690	100047	1.1158
050618	1.0098	060029	1.0157	060096	1.0850	090006	1.1882	100048	0.9140
050619	1.1942	060030	1.1449	060097	0.8855	090007	1.1135	100049	1.1341
050622	1.1096	060031	1.2396	060098	1.1562	090008	1.1677	100050	1.0544
050623	1.1024	060032	1.2704	070001	1.3652	090009	1.1387	100051	1.0385
050624	1.1649	060033	1.1728	070002	1.4056	090010	1.0187	100052	1.1844
050625	1.3172	060034	1.1732	070003	1.0943	090011	1.4646	100053	1.1346
050630	1.0904	060035	1.1253	070004	1.0626	100001	1.1767	100054	1.0785
050633	1.1659	060036	1.1765	070005	1.1512	100002	1.1829	100055	1.0911
050635	1.1871	060037	0.9720	070006	1.1499	100004	0.9236	100056	1.1234
050636	1.1936	060038	1.0073	070007	1.1284	100005	1.0590	100057	1.0710
050637	1.0766	060039	1.0871	070008	1.0602	100006	1.2503	100059	1.2228
050638	1.0993	060041	1.0093	070009	1.0458	100007	1.5134	100060	1.3857
050641	1.1119	060042	1.0540	070010	1.2892	100008	1.2253	100061	1.1824
050643	0.8978	060043	1.0820	070011	1.0498	100009	1.2459	100062	1.1739
050644	1.1336	060044	1.1179	070012	1.1375	100010	1.1698	100063	1.1210
050649	1.0525	060045	1.0763	070013	1.2157	100011	1.0059	100065	1.0925
050650	1.0874	060046	1.1665	070014	1.0662	100012	1.2154	100067	1.1700
050651	1.1373	060047	0.9866	070015	1.0417	100013	0.9369	100068	1.1549
050657	1.0587	060049	1.2352	070016	1.1289	100014	1.1272	100069	1.1242
050661	1.1773	060050	1.1616	070017	1.1550	100015	1.1156	100070	1.1923
050662	1.7264	060051	1.1747	070018	1.1031	100016	1.0019	100071	1.0941
050663	1.0799	060052	0.9360	070019	1.0585	100017	1.1909	100072	1.0863
050667	1.0817	060053	0.8993	070020	1.1294	100018	1.1416	100073	1.3309
050669	0.8433	060054	1.1589	070021	1.0911	100019	1.1343	100074	1.1127
060001	1.1954	060055	0.9484	070022	1.3350	100020	1.1390	100075	1.3484
060003	1.1387	060056	0.9556	070023	1.0704	100021	1.1073	100076	1.1209
060004	1.0858	060057	1.0682	070024	1.0583	100022	1.3239	100077	1.1233
060005	1.2316	060058	0.9660	070025	1.3862	100023	1.0629	100078	0.9954
060006	1.2368	060060	1.0192	070026	1.0792	100024	1.1434	100079	1.0672
060007	1.1266	060062	0.9788	070027	1.1790	100025	1.3449	100080	1.1513
060008	1.0679	060063	1.1679	070028	1.1759	100026	1.2518	100081	0.9341
060009	1.2209	060064	1.2458	070029	1.0995	100027	0.9235	100082	1.1761
060010	1.3131	060065	1.0930	070030	1.0670	100028	1.1294	100083	1.1138
060011	1.1248	060066	0.9813	070031	1.1702	100029	1.1295	100084	1.0516
060012	1.2696	060067	1.0235	070033	1.1314	100030	1.0332	100085	1.0343

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
100086	1.1279	100151	1.3817	100218	1.0461	110014	0.9124	110073	0.9339
100087	1.3578	100152	1.0833	100219	1.1614	110015	0.9975	110074	1.1608
100088	1.3331	100153	0.8424	100220	1.2570	110016	1.1552	110075	1.0730
100089	1.1266	100154	1.3418	100221	1.4848	110017	0.9786	110076	1.2180
100090	1.1392	100156	1.0485	100222	1.0763	110018	1.0682	110077	0.9158
100092	1.1020	100157	1.2503	100223	1.0981	110020	1.0515	110078	1.3433
100093	1.1579	100159	0.9366	100224	1.1137	110023	1.0787	110079	1.0973
100098	0.9635	100160	1.0659	100225	1.1015	110024	1.1584	110080	1.1210
100099	1.1035	100161	1.1587	100226	1.0833	110025	1.1213	110081	1.0103
100100	1.0669	100162	1.1514	100227	0.8942	110026	0.9756	110082	1.6505
100102	1.0544	100164	0.9840	100228	1.0901	110027	0.9783	110083	1.1405
100103	0.9109	100165	1.0668	100229	1.1157	110028	1.3048	110085	1.0981
100105	1.1082	100166	1.1306	100230	1.0866	110029	1.1084	110086	1.0960
100106	1.0103	100167	1.1468	100231	1.3808	110030	1.0354	110087	1.0558
100107	1.0837	100168	1.1300	100232	1.0640	110031	1.1122	110088	0.9113
100108	0.9434	100169	1.4309	100234	1.1768	110032	1.0557	110089	1.0407
100109	1.0589	100170	1.1293	100235	1.1896	110033	1.0156	110091	1.1841
100110	1.1441	100172	1.0236	100236	1.1523	110034	1.1764	110092	1.0025
100112	1.0031	100173	1.1127	100237	1.5263	110035	1.1162	110093	1.0117
100113	1.4431	100174	1.2305	100238	1.1274	110036	1.3806	110094	0.8992
100114	1.1264	100175	0.9779	100239	1.2490	110037	0.9087	110095	1.1300
100115	1.0846	100176	1.3507	100240	0.6797	110038	1.1463	110096	1.0100
100117	1.0947	100177	1.1407	100241	0.9502	110039	1.1071	110097	0.8986
100118	1.0762	100179	1.3570	100242	1.1412	110040	0.9640	110098	0.9583
100120	0.9782	100180	1.2188	100243	1.1120	110041	1.0526	110099	0.8943
100121	1.0543	100181	1.0661	100244	1.0985	110042	0.9986	110100	0.9996
100122	1.0122	100183	1.0543	100246	1.1797	110043	1.2200	110101	0.9324
100124	1.0607	100185	1.0935	100248	1.3521	110044	1.1116	110103	0.9675
100125	1.1156	100186	1.1882	100249	1.0605	110045	1.0322	110104	1.0532
100126	1.2032	100187	1.1280	100252	1.0469	110046	0.9992	110105	1.0814
100127	1.1989	100189	1.1316	100253	1.1540	110047	0.9001	110107	1.3281
100128	1.9405	100191	1.1536	100254	1.1315	110048	1.0098	110108	0.9086
100129	1.1154	100193	0.8323	100255	1.1323	110049	0.9092	110109	0.9609
100130	1.1240	100194	1.0940	100256	1.1332	110050	0.9858	110111	0.9260
100131	1.0917	100195	1.1114	100258	1.0909	110051	0.9254	110112	0.9075
100132	1.1459	100196	1.1752	100259	1.0992	110052	0.9094	110113	0.9632
100134	0.8890	100199	1.1238	100260	1.1312	110054	1.1576	110114	1.0130
100135	1.2821	100200	1.1243	100262	1.1338	110055	0.9059	110115	1.3150
100137	1.0561	100203	1.1497	110001	1.0068	110056	0.9618	110117	0.9176
100138	0.9523	100204	1.2961	110002	1.0595	110059	1.0161	110118	1.0244
100139	1.0458	100206	1.1292	110003	1.0641	110061	0.8931	110120	0.9714
100140	1.0342	100207	1.1227	110004	1.0646	110062	0.9544	110121	0.9426
100142	0.9945	100208	1.1089	110005	1.0293	110063	1.0130	110122	1.1750
100143	1.0225	100209	1.2015	110006	1.1466	110064	1.1724	110123	1.0323
100144	0.9977	100210	1.3070	110007	1.2395	110065	0.9073	110124	0.9991
100145	1.1288	100211	1.1299	110008	1.0615	110066	1.2137	110125	1.0689
100146	0.9721	100212	1.1051	110009	0.9737	110069	1.0822	110127	0.9511
100147	1.0179	100213	1.1882	110010	1.6980	110070	0.9170	110128	1.0819
100149	1.1282	100214	1.0841	110011	1.0502	110071	0.9528	110129	1.2844
100150	1.0504	100217	1.0446	110013	0.9720	110072	0.9369	110130	0.9132

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
110131	0.9274	110193	1.0503	130031	0.9906	140038	1.0423	140099	1.0593
110132	0.9643	110194	0.9504	130032	0.9625	140039	1.0582	140100	1.0067
110133	0.9242	110195	1.0644	130034	0.9276	140040	1.0567	140101	1.0555
110134	0.9133	110198	1.1916	130035	1.0456	140041	0.9911	140102	0.9417
110135	0.9296	120001	1.3628	130036	1.1537	140042	0.9553	140103	1.1184
110136	0.9711	120002	1.1145	130037	1.0167	140043	1.0996	140104	0.9896
110140	0.9255	120003	0.9954	130038	0.9410	140045	0.9713	140105	1.1827
110141	0.9273	120004	1.1365	130039	1.1325	140046	1.0781	140107	0.9467
110142	0.8679	120005	1.1239	130040	0.9499	140047	1.0263	140108	1.0617
110143	1.0949	120006	1.0974	130041	0.9456	140048	1.1046	140109	1.0145
110144	1.0942	120007	1.2849	130043	1.0039	140049	1.1471	140110	1.0983
110146	0.9191	120008	0.9549	130044	0.8676	140051	1.1123	140111	1.0463
110149	0.9737	120009	0.9577	130045	0.9427	140052	1.1117	140112	1.0093
110150	1.0782	120010	1.3824	130048	1.0143	140053	1.3897	140113	1.2351
110151	1.0194	120011	1.2699	130049	1.0919	140054	1.1368	140114	1.0700
110152	0.9789	120012	0.9707	130051	0.9292	140055	0.9434	140115	0.9792
110153	0.9420	120014	1.0977	130053	0.9008	140058	1.0167	140116	1.1704
110154	0.9102	120015	0.8540	130054	0.8466	140059	0.9819	140117	1.1100
110155	1.0060	120016	1.0361	140001	1.0243	140061	1.0205	140118	1.3129
110156	0.9217	120018	0.8467	140002	1.1562	140062	1.0924	140119	1.3542
110157	1.0136	120019	1.0473	140003	0.9361	140063	1.0940	140120	1.0480
110158	0.9653	120021	0.9394	140004	1.0480	140064	1.1054	140121	0.9338
110161	1.2191	120022	1.3690	140005	0.9010	140065	1.1511	140122	1.1462
110162	0.9753	130001	1.0413	140007	1.1284	140066	1.0211	140123	1.0956
110163	1.1683	130002	1.2005	140008	1.1601	140067	1.2757	140124	1.0212
110164	1.1827	130003	1.1210	140009	0.9776	140068	1.0375	140125	1.0883
110165	1.1465	130005	1.1561	140010	1.1874	140069	1.1052	140126	1.3012
110166	1.1496	130006	1.5077	140011	1.0502	140070	1.1051	140127	1.1134
110168	1.1471	130007	1.2495	140012	1.1430	140072	1.1197	140128	1.0485
110169	0.6024	130008	0.9439	140013	1.1048	140074	1.0364	140129	1.0410
110170	0.8356	130009	0.9557	140014	1.0074	140075	1.2059	140130	1.0808
110171	1.1975	130010	0.8808	140015	1.1192	140077	1.0090	140131	1.0815
110172	1.0900	130011	1.0983	140016	1.0319	140079	1.1000	140132	1.2259
110174	0.9217	130012	0.9188	140017	1.0840	140080	1.5065	140133	1.1465
110175	1.0459	130013	1.0881	140018	1.2142	140081	1.0408	140134	1.1814
110176	1.0827	130014	1.1582	140019	0.9442	140082	1.1252	140135	1.0650
110177	1.1111	130015	0.9988	140023	0.9998	140083	1.0531	140136	0.9960
110178	0.6929	130016	0.9482	140024	0.9811	140084	1.1262	140137	0.9957
110179	1.1582	130017	0.9331	140025	1.0883	140085	1.1075	140138	0.9841
110181	0.9782	130018	1.1806	140026	1.0840	140086	1.0083	140139	1.0410
110183	1.0825	130019	1.0647	140027	1.0337	140087	1.0939	140140	1.0359
110184	1.1016	130021	0.9553	140029	1.1571	140088	1.3294	140141	1.0093
110185	0.9303	130022	1.0404	140030	1.1961	140089	1.0362	140142	1.0540
110186	1.0161	130024	1.0898	140031	1.0767	140090	1.1950	140143	1.0461
110187	0.9821	130025	1.0458	140032	1.0339	140091	1.2075	140144	1.0146
110188	1.0910	130026	1.0448	140033	1.0833	140093	1.0322	140145	1.0927
110189	0.9291	130027	0.9303	140034	0.9957	140094	1.0704	140146	0.9215
110190	1.0134	130028	1.1184	140035	1.0734	140095	1.1584	140147	1.0106
110191	1.1024	130029	1.0556	140036	0.9912	140097	1.0484	140148	1.2840
110192	1.0988	130030	0.8855	140037	0.9950	140098	1.1075	140150	1.1867

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
140151	1.0090	140209	1.2358	140291	1.1008	150049	1.0454	150104	1.1130
140152	0.9982	140210	1.0197	140292	1.1337	150050	1.0883	150105	1.0543
140153	1.1572	140211	1.0258	140293	1.0783	150051	1.1259	150106	1.0084
140154	1.0991	140212	0.9946	140294	0.9566	150052	0.9309	150109	1.1918
140155	1.0355	140213	1.0777	140295	1.0253	150053	1.0055	150110	0.9605
140156	1.1432	140215	1.0259	140298	1.1063	150054	1.0138	150111	1.0730
140157	0.9515	140216	0.9159	150001	1.0805	150056	1.3719	150112	1.1283
140158	1.1560	140217	1.1107	150002	1.1133	150057	0.9393	150113	1.0765
140159	1.0342	140218	1.0739	150003	1.2961	150058	1.3086	150114	0.9709
140160	1.1169	140219	1.0430	150004	1.1881	150059	1.0718	150115	1.1768
140161	1.0330	140220	1.0521	150005	1.1197	150060	1.0340	150122	1.0273
140162	1.0363	140223	1.2546	150006	1.1405	150061	1.1118	150123	0.9756
140163	0.9569	140224	1.1088	150007	1.0321	150062	0.9738	150124	1.0672
140164	1.1181	140226	0.9726	150008	1.3086	150063	1.0780	150125	1.1230
140165	0.8932	140228	1.3086	150009	1.0984	150064	1.0482	150126	1.5509
140166	1.0503	140229	1.0003	150010	1.0526	150065	1.1063	150127	1.0718
140167	1.0251	140230	0.9951	150011	1.1251	150066	1.0147	150128	1.1117
140168	1.0783	140231	1.1673	150012	1.2425	150067	1.0275	150129	1.1104
140170	1.0305	140232	0.9831	150013	1.0163	150069	1.1002	150130	1.0651
140171	0.9516	140233	1.3281	150014	1.1914	150070	1.0518	150132	1.2468
140172	1.1938	140234	1.0045	150015	1.1123	150071	1.0942	150133	1.0770
140173	1.0249	140235	0.9691	150017	1.3964	150072	1.1546	150134	1.0526
140174	1.1627	140236	1.0433	150018	1.1619	150073	1.0560	150135	0.8946
140176	1.0706	140239	1.2674	150019	1.0442	150074	1.2656	160001	1.1312
140177	1.0346	140240	1.1741	150020	1.0716	150075	1.1598	160002	1.2320
140178	0.9625	140241	0.9299	150021	1.3893	150076	1.0732	160003	1.0513
140179	1.1420	140242	1.1857	150022	1.0684	150077	1.0859	160004	1.1107
140180	1.2333	140243	1.1212	150023	1.1564	150078	1.0440	160005	1.1869
140181	1.1125	140245	1.0488	150024	1.1592	150079	1.0213	160007	1.0130
140182	1.1252	140246	1.0129	150025	1.1822	150081	1.0314	160008	1.1150
140184	0.9736	140247	1.0438	150026	1.1426	150082	1.3173	160009	1.1039
140185	1.1512	140248	1.1489	150027	1.0227	150083	1.1289	160012	1.1148
140186	1.0316	140249	0.8021	150029	1.1504	150084	1.6180	160013	1.2037
140187	1.1455	140250	1.0864	150030	1.1051	150085	0.9290	160014	0.9816
140188	0.9606	140251	1.0531	150031	0.9580	150086	1.0892	160016	1.2118
140189	1.0724	140252	1.1399	150032	1.5634	150088	1.0758	160018	1.0136
140190	1.0008	140253	1.1152	150033	1.1726	150089	1.1835	160020	1.0027
140191	1.1010	140258	1.2156	150034	1.0739	150090	1.1473	160021	1.1051
140192	1.0784	140261	1.0280	150035	1.1227	150091	1.0961	160023	1.0648
140193	1.0012	140271	0.9394	150036	0.9735	150092	1.0230	160024	1.2023
140197	1.1046	140273	0.9683	150037	1.1224	150094	1.0176	160025	1.5781
140199	0.9972	140275	1.0656	150038	1.1156	150095	1.0422	160026	1.0995
140200	1.2112	140276	1.7378	150039	1.0102	150096	1.0160	160027	1.1584
140202	1.1019	140280	1.1313	150042	1.1354	150097	1.0085	160028	1.1161
140203	1.0205	140281	1.2619	150043	1.0680	150098	0.9509	160029	1.1977
140204	1.2128	140285	1.0561	150044	1.0852	150099	1.1424	160030	1.2292
140205	1.0733	140286	1.1594	150045	1.0847	150100	1.2015	160031	1.0525
140206	0.9819	140288	1.2024	150046	1.1450	150101	1.0548	160032	1.0623
140207	1.1152	140289	1.1722	150047	1.3233	150102	1.1189	160033	1.1977
140208	1.2399	140290	1.1273	150048	1.1483	150103	0.9548	160034	0.9945

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
160035	0.8992	160089	1.1392	160151	1.1001	170053	0.9721	170110	0.9694
160036	1.1777	160090	1.0424	160152	0.9772	170054	0.9783	170112	1.0503
160037	1.1762	160091	1.0688	160153	1.4232	170055	0.9968	170113	1.0131
160038	1.1318	160092	1.0374	170001	1.1234	170056	0.9616	170114	1.0332
160039	1.0259	160093	0.9348	170002	1.1345	170057	0.9684	170115	0.9944
160040	1.1378	160094	1.0698	170003	1.1146	170058	1.0346	170116	1.0630
160041	1.0288	160095	0.9991	170004	0.9707	170060	1.0135	170117	1.0184
160043	1.1083	160097	1.1335	170005	0.9251	170061	1.0354	170119	0.9118
160044	1.1329	160098	1.0722	170006	1.0889	170062	1.0032	170120	1.0741
160045	1.3337	160099	1.0017	170007	1.0795	170063	1.0209	170121	0.8796
160046	1.1343	160101	1.1128	170008	0.9568	170064	1.0055	170122	1.5856
160047	1.2460	160102	1.2194	170009	1.0565	170066	0.9963	170123	1.2427
160048	1.0743	160103	0.9360	170010	1.0430	170067	0.9960	170124	1.0112
160049	1.0120	160104	1.1057	170011	1.1276	170068	1.1127	170125	0.9253
160050	1.0526	160106	1.1193	170012	1.2602	170069	1.0387	170126	0.9136
160051	1.1174	160107	1.1273	170013	1.0935	170070	0.9813	170128	0.9603
160052	1.0955	160108	1.1348	170014	1.0211	170072	0.9692	170130	1.0657
160053	1.1501	160109	1.0660	170015	1.0467	170073	1.1016	170131	1.0761
160054	1.0710	160110	1.3364	170016	1.3488	170074	1.0562	170133	1.0884
160055	1.0427	160111	1.1189	170017	1.0636	170075	1.0071	170134	0.9829
160056	1.0207	160112	1.1823	170018	1.0731	170076	1.1264	170137	1.1505
160057	1.1649	160113	1.0534	170019	1.1510	170077	0.9384	170138	1.0727
160058	1.4024	160114	0.9736	170020	1.1530	170079	0.8656	170139	0.9633
160059	1.2200	160115	1.1096	170021	0.9481	170080	0.9510	170140	1.0120
160060	1.0540	160116	1.0478	170022	1.1002	170081	1.1038	170142	1.0823
160061	1.0376	160117	1.2311	170023	1.2138	170082	0.9762	170143	1.0671
160062	1.0246	160118	1.1017	170024	0.9997	170084	0.9488	170144	1.2550
160063	1.0686	160119	0.9677	170025	1.1779	170085	0.9477	170145	1.0624
160064	1.1875	160120	0.9665	170026	1.0755	170086	1.3061	170146	1.2220
160065	1.0983	160122	1.1067	170027	1.0712	170087	1.1740	170147	1.1276
160066	1.0796	160123	1.0951	170030	0.9681	170088	0.9893	170148	1.1792
160067	1.1289	160124	1.0834	170031	0.9955	170089	0.9106	170150	1.0494
160068	1.1116	160126	1.0913	170032	0.9875	170090	0.9663	170151	1.0426
160069	1.2567	160129	1.0902	170033	1.0590	170091	0.9363	170152	0.9264
160070	1.0701	160130	1.1254	170034	0.9735	170092	1.0599	170159	1.0291
160071	1.0819	160131	1.0904	170035	0.9686	170093	0.9929	170160	0.9400
160072	1.0981	160132	1.0809	170036	0.9862	170094	1.0236	170164	1.0564
160073	0.9721	160133	1.0702	170037	1.1262	170095	1.0300	170166	0.9825
160074	0.9781	160134	0.9757	170038	1.0091	170097	1.0201	170168	0.9154
160075	1.0039	160135	1.0136	170039	1.0230	170098	1.0030	170170	1.0766
160076	1.0147	160136	1.0710	170040	1.2773	170099	1.0337	170171	1.0517
160077	1.0821	160138	1.0970	170041	1.0031	170100	0.9002	170172	1.0226
160079	1.2286	160139	0.8523	170043	1.0043	170101	0.9542	170173	0.9458
160080	1.1216	160140	1.0164	170044	0.9968	170102	1.0113	170174	0.9326
160081	1.1462	160141	0.9915	170045	0.9548	170103	1.1096	170175	1.0599
160082	1.4316	160142	1.1244	170046	0.9857	170104	1.2498	170176	1.2067
160083	1.3946	160143	1.0885	170049	1.1700	170105	1.1166	170177	0.9442
160085	1.1619	160145	1.0658	170050	0.9866	170106	0.9498	180001	1.0827
160086	0.9762	160146	1.2245	170051	0.9603	170108	0.9659	180002	0.9906
160088	1.0706	160147	1.1327	170052	0.9663	170109	0.9860	180004	1.0205

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
180005	1.0102	180060	0.8651	180136	1.0865	190067	1.0188	190142	0.9341
180006	0.8897	180062	0.9275	180137	1.2293	190071	0.9178	190144	1.0345
180007	1.0988	180063	0.9331	190001	0.9787	190073	0.9369	190145	1.0456
180009	1.1004	180064	1.0298	190002	1.3013	190075	1.0997	190146	1.2839
180010	1.3834	180065	0.9314	190003	1.0817	190077	0.9570	190147	0.9815
180011	0.9862	180066	1.0380	190004	1.0494	190078	1.0489	190148	0.9446
180012	1.0795	180067	1.3745	190005	1.1081	190079	1.1407	190149	0.9725
180013	1.1390	180069	0.9768	190006	1.0845	190081	0.8899	190151	1.0414
180014	1.3621	180070	0.9625	190007	0.9589	190083	0.9665	190152	1.0814
180015	1.0166	180072	1.0336	190008	1.1553	190086	1.1154	190155	1.0111
180016	1.0934	180075	0.9295	190009	1.0714	190088	0.9714	190156	0.9382
180017	1.1001	180078	0.9466	190010	1.0386	190089	0.9747	190157	0.9669
180018	1.0869	180079	0.9905	190011	1.0346	190090	0.9755	190158	1.0748
180019	1.0324	180080	1.0045	190012	0.9155	190092	1.1568	190160	0.9823
180020	0.9733	180081	1.1056	190013	1.0706	190095	0.9274	190161	1.0255
180021	0.9436	180085	1.1301	190014	0.9333	190098	1.2627	190162	1.1419
180023	0.8921	180087	1.0393	190015	1.0423	190099	1.0014	190163	0.9302
180024	1.0016	180088	1.3171	190016	1.0392	190101	0.9265	190164	1.0341
180025	1.0760	180092	1.0607	190017	1.1272	190102	1.2291	190165	1.0093
180026	1.0402	180093	1.1520	190018	1.0701	190103	0.8812	190166	0.9995
180027	0.9988	180094	0.9558	190019	1.3139	190106	1.0164	190167	0.9670
180028	0.8990	180095	1.0498	190020	1.0304	190109	1.0841	190169	0.9296
180029	1.0218	180099	0.9153	190023	0.9234	190110	0.9939	190170	0.9577
180030	0.9540	180100	1.1247	190025	1.0710	190111	1.2455	190173	1.1415
180031	0.9945	180101	1.0419	190026	1.1861	190112	1.1352	190175	1.0777
180032	0.9485	180102	1.1445	190027	1.1942	190113	1.0701	190176	1.3316
180033	1.0236	180103	1.3271	190029	1.0975	190114	0.9129	190177	0.9848
180034	1.0130	180104	1.1773	190033	0.9536	190115	1.1108	190178	0.9404
180035	1.1255	180105	0.8918	190034	1.0392	190116	1.0229	190179	0.9887
180036	1.0398	180106	0.8765	190035	1.1990	190117	1.0071	190180	1.0626
180037	1.1496	180108	0.8778	190036	1.4087	190118	0.9969	190182	0.8975
180038	1.1034	180114	0.8913	190037	0.9103	190119	0.9285	190183	1.0394
180040	1.3294	180115	1.0226	190039	1.2362	190120	0.9659	190184	0.9226
180041	0.9914	180116	1.0685	190040	1.0901	190122	1.1548	190185	1.0967
180042	1.0351	180117	0.9166	190041	1.2584	190124	1.2077	190186	0.8997
180043	0.9971	180118	1.0114	190043	1.0345	190125	1.1687	190187	1.2212
180044	0.9873	180120	0.9489	190044	1.0195	190127	1.0599	190188	0.9532
180045	1.1018	180121	1.0016	190045	1.0469	190128	0.8697	190190	0.9086
180046	1.0336	180122	0.9078	190046	1.2394	190130	0.9389	190191	1.0950
180047	1.0282	180123	1.1359	190047	0.9944	190131	1.0000	190193	1.1156
180048	1.1003	180124	1.0776	190048	1.0380	190132	1.0794	190194	1.0024
180049	1.1034	180125	0.9200	190049	1.0068	190133	0.9830	190195	0.9566
180050	1.0077	180126	0.9212	190050	0.9807	190134	0.8690	190197	1.2389
180051	1.1344	180127	1.0583	190053	1.0174	190135	1.2898	190198	1.0635
180053	0.9446	180128	1.0186	190054	1.0856	190136	0.9463	200001	1.2212
180054	1.1146	180129	0.9813	190058	1.0010	190137	0.9284	200002	0.9640
180055	1.0430	180130	1.1397	190059	1.0673	190138	0.5597	200003	1.0539
180056	1.0332	180132	1.1124	190060	1.0953	190139	1.0132	200005	0.8831
180058	0.8952	180133	1.1206	190064	1.1804	190140	1.0580	200006	0.9934
180059	0.9534	180134	1.0694	190065	1.2749	190141	0.9190	200007	1.0066

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
200008	1.1627	210013	1.1382	220011	1.0990	220074	1.0307	220171	1.2591
200009	1.4606	210015	1.1381	220012	1.1928	220075	0.6486	230001	1.0270
200012	1.0940	210016	1.3922	220015	1.0982	220076	1.0637	230002	1.1133
200013	1.1377	210017	1.0767	220016	1.0984	220077	1.2528	230003	1.0829
200015	1.2047	210018	1.1573	220017	1.0919	220079	1.0256	230004	1.3225
200016	1.0703	210019	1.1797	220019	1.0763	220080	1.0580	230005	1.0700
200017	1.0936	210021	1.0638	220020	1.0870	220081	0.9907	230006	1.0338
200018	1.0917	210022	1.1203	220021	1.1331	220082	1.0966	230007	1.0349
200019	1.1830	210023	1.1540	220022	1.0755	220083	1.0805	230008	0.9641
200020	1.0446	210024	1.1759	220023	1.0830	220084	1.0861	230011	1.0614
200021	1.1347	210025	1.0614	220024	1.1232	220086	1.3238	230012	1.0437
200023	1.0011	210026	1.1485	220025	1.0623	220087	0.8959	230013	1.1525
200024	1.1641	210027	1.1077	220026	1.1403	220088	1.2297	230014	1.0739
200025	1.1122	210028	1.0272	220028	1.0848	220089	1.1038	230015	1.0775
200026	1.0151	210029	1.1804	220029	1.0275	220090	1.0349	230017	1.2519
200027	1.0665	210030	1.0289	220030	1.0688	220092	1.0698	230019	1.1956
200028	0.9665	210031	1.4006	220031	1.1981	220094	1.0556	230020	1.1785
200031	1.1634	210032	1.0498	220033	1.0845	220095	1.0142	230021	1.2393
200032	1.1754	210033	1.1037	220034	1.0356	220097	1.0302	230022	1.1248
200033	1.3169	210034	1.0919	220035	1.0849	220098	1.0799	230024	1.3411
200034	1.1024	210035	1.0882	220036	1.1630	220099	1.0586	230027	1.0133
200037	1.1198	210037	1.1161	220038	1.0415	220100	1.1948	230029	1.1564
200038	0.9966	210038	1.0306	220040	1.0658	220101	1.0914	230030	1.0775
200039	1.1743	210039	1.1120	220041	1.0823	220102	0.8381	230031	1.1962
200040	1.0785	210040	1.1764	220042	1.0348	220104	1.0275	230032	1.4106
200041	1.0181	210041	1.0652	220045	1.1008	220105	1.0533	230034	1.0464
200043	0.9530	210042	1.1262	220046	1.1770	220106	1.0739	230035	0.9867
200044	1.1317	210043	1.0694	220048	1.0859	220107	0.9777	230036	1.1380
200047	1.1035	210044	1.0548	220049	1.0653	220108	1.0606	230037	1.0528
200049	0.9569	210045	1.0301	220050	0.9847	220110	1.4292	230038	1.4782
200050	1.0476	210046	1.0076	220051	1.0742	220111	1.0682	230039	1.1421
200051	0.9964	210047	0.9594	220052	1.0734	220114	1.0092	230040	1.0965
200052	1.0423	210048	1.0572	220053	1.1044	220115	1.0923	230041	1.0875
200055	1.0100	210049	1.1033	220055	1.1000	220116	1.3241	230042	1.0583
200058	0.9509	210050	1.0166	220057	1.0621	220117	0.9465	230043	0.8837
200062	1.0307	210051	1.1610	220058	1.0640	220118	1.3173	230046	1.4420
200063	1.1832	210054	1.1026	220060	1.0685	220119	1.1277	230047	1.0882
200066	1.1516	210055	1.1132	220061	1.0137	220120	0.9587	230051	0.9996
210001	1.1873	210056	1.2228	220062	0.7408	220121	1.0545	230053	1.2600
210002	1.2706	210057	1.1986	220063	1.1043	220123	1.0110	230054	1.3136
210003	1.1423	210058	1.3964	220064	1.0772	220126	1.0907	230055	1.0442
210004	1.1423	220001	1.1000	220065	1.1000	220128	1.0293	230056	0.9803
210005	1.1707	220002	1.2521	220066	1.1215	220129	1.0951	230057	1.0598
210006	1.0695	220003	0.9877	220067	1.1530	220131	1.0073	230058	1.0556
210007	1.2158	220004	1.1092	220068	0.8801	220133	0.8517	230059	1.2203
210008	1.1074	220005	1.0137	220069	0.9518	220135	1.1243	230060	1.0640
210009	1.1925	220006	1.0832	220070	1.1375	220153	1.0016	230062	1.0575
210010	1.0601	220008	1.0585	220071	1.3018	220154	1.0389	230063	1.1328
210011	1.1830	220009	1.0875	220072	0.9814	220156	1.0796	230065	1.0996
210012	1.0955	220010	1.0686	220073	1.1300	220163	1.3086	230066	1.0989

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
230067	0.9768	230128	1.1411	230190	1.1034	240001	1.2832	240058	1.0559
230068	1.2010	230129	1.4605	230191	0.9257	240002	1.4025	240059	1.1002
230069	1.1034	230130	1.2566	230193	1.0841	240003	1.1604	240061	1.3505
230070	1.1863	230132	1.1830	230194	1.0545	240004	1.2934	240062	1.0866
230071	0.6680	230133	1.1246	230195	1.1482	240005	1.0083	240063	1.2441
230072	1.0921	230134	0.9929	230197	1.0808	240006	1.1115	240064	1.1308
230075	1.0954	230135	1.0644	230199	1.0642	240007	1.0796	240065	0.9353
230076	1.2100	230137	1.0630	230201	0.9606	240008	1.0505	240066	1.1833
230077	1.4845	230138	0.9088	230203	0.9326	240009	1.0459	240069	1.0326
230078	1.0338	230139	1.0079	230204	1.1922	240010	1.6994	240071	1.0855
230080	1.0559	230140	1.0144	230205	1.0884	240011	1.0552	240072	1.0324
230081	1.0346	230141	1.2762	230207	1.0395	240013	1.1359	240073	0.9907
230082	0.9557	230142	1.0639	230208	1.0126	240014	1.1134	240074	1.0722
230084	1.0438	230143	1.1959	230211	0.9191	240016	1.1397	240075	1.1456
230085	1.0724	230144	1.0412	230212	1.0551	240017	1.1501	240076	1.0873
230086	1.0536	230145	1.0646	230213	0.9693	240018	1.1433	240077	1.0013
230087	1.0364	230146	1.1385	230216	1.1589	240019	1.3297	240078	1.2477
230089	1.1037	230147	1.0603	230217	1.0627	240020	1.0830	240079	1.0188
230090	1.1289	230149	1.0089	230219	0.9133	240021	1.1253	240080	1.2420
230092	1.1195	230150	1.3825	230221	1.0961	240022	1.0603	240081	1.2205
230093	1.0603	230151	1.2297	230222	1.1096	240023	1.0681	240082	1.1300
230095	1.0285	230153	1.0693	230223	1.1250	240024	1.1994	240083	1.1762
230096	1.0092	230154	0.9501	230224	0.9851	240025	1.1060	240084	1.2088
230097	1.1537	230155	0.9581	230225	1.0112	240026	1.2472	240085	0.9791
230098	1.1378	230156	1.3040	230227	1.1082	240027	1.0555	240086	1.0606
230099	1.0630	230157	1.1101	230228	1.1384	240028	1.0352	240087	1.0908
230100	1.0108	230158	0.9817	230230	1.1331	240029	1.0651	240088	1.3068
230101	1.0815	230159	1.1211	230231	1.0140	240030	1.2719	240089	1.0106
230102	1.2356	230161	0.8709	230232	0.9292	240031	0.9132	240090	1.1082
230103	1.0292	230162	0.9104	230235	0.9606	240033	0.9684	240091	1.0037
230104	1.1761	230163	0.9831	230236	1.1750	240036	1.2608	240093	1.2269
230105	1.3243	230165	1.2922	230237	1.1300	240037	1.0722	240094	1.0375
230106	1.0301	230167	1.1119	230238	0.9456	240038	1.3235	240096	1.0497
230107	1.0095	230169	1.0907	230239	1.0088	240040	1.1524	240097	1.1613
230108	1.1320	230171	1.0159	230241	0.9888	240041	1.0706	240098	0.9991
230110	1.1194	230172	1.0936	230244	1.1029	240043	1.1678	240099	1.0760
230111	0.9386	230173	1.1073	230253	1.0245	240044	1.1156	240100	1.1317
230113	0.8881	230174	1.1134	230254	1.1139	240045	1.0530	240101	1.0491
230114	0.8447	230175	0.9832	230256	1.0088	240046	1.2475	240102	0.9922
230115	1.0770	230176	1.0945	230257	0.9833	240047	1.2416	240103	1.0941
230116	0.9229	230177	0.8974	230258	1.0318	240048	1.1165	240104	1.1453
230117	1.5737	230178	1.0047	230259	0.9922	240049	1.3808	240105	0.9587
230118	1.1068	230179	0.9376	230264	0.8583	240050	1.1271	240106	1.2252
230119	1.0330	230180	1.0150	230265	1.0768	240051	1.0836	240107	1.0330
230120	0.9853	230181	1.0219	230266	1.0497	240052	1.2006	240108	1.1063
230121	1.0173	230183	1.0808	230269	1.1064	240053	1.2528	240109	1.0351
230122	1.1634	230184	1.0285	230270	1.0905	240054	1.1620	240110	1.0662
230123	0.9285	230186	1.0110	230272	0.9761	240055	1.1626	240111	1.0645
230124	1.0419	230188	1.0093	230273	1.1393	240056	1.2639	240112	1.0036
230125	1.2066	230189	0.9156	230276	1.4308	240057	1.5648	240114	1.0506

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
240115	1.1764	240173	1.0208	250036	0.9587	250097	1.0131	260015	1.0359
240116	1.0120	240175	1.0287	250037	0.9071	250098	0.8718	260016	1.1288
240117	1.0673	240176	1.1024	250038	0.8937	250099	1.0420	260017	1.1277
240118	0.9481	240177	0.9507	250039	1.0205	250100	1.1270	260018	0.9335
240119	0.9539	240179	1.0418	250040	1.0720	250101	0.9276	260019	1.0440
240121	0.9764	240180	1.1096	250041	0.9305	250102	1.3152	260020	1.2495
240122	1.0249	240183	1.0300	250042	0.9969	250104	0.9857	260021	1.2172
240123	1.0423	240184	1.0926	250043	0.8927	250105	0.9373	260022	1.1445
240124	1.0312	240187	1.1394	250044	0.9781	250106	0.8667	260023	1.0479
240125	1.0757	240192	0.9413	250045	0.9920	250107	0.9500	260024	1.0593
240127	1.1094	240193	1.0565	250046	0.9584	250109	0.9343	260025	1.0913
240128	1.1496	240194	0.9910	250047	0.9219	250110	0.9764	260026	1.0713
240129	1.0084	240195	0.9571	250048	1.2670	250111	0.9319	260027	1.2535
240130	0.9982	240196	1.3769	250049	0.9219	250112	0.8766	260029	1.0644
240131	1.1977	240200	0.9432	250050	1.1328	250113	0.9335	260030	1.0414
240132	1.1915	240201	0.9818	250051	0.8305	250114	0.8963	260031	1.2945
240133	1.0967	240205	0.8823	250057	1.0160	250116	0.8784	260032	1.3952
240134	1.1430	240206	0.9340	250058	1.0611	250117	0.9477	260033	1.1645
240135	0.9410	240207	1.1773	250059	1.0176	250118	1.0115	260034	1.0282
240136	1.0635	250001	1.2955	250060	0.8822	250119	0.9031	260035	0.9778
240137	1.0723	250002	0.8873	250061	0.9724	250120	1.0789	260036	1.0204
240138	1.0360	250003	0.8886	250062	0.9416	250121	0.9521	260037	1.0875
240139	1.0685	250004	1.1885	250063	0.8831	250122	1.0118	260039	1.0525
240140	0.9618	250005	0.9536	250065	0.9144	250123	1.8792	260040	1.2506
240141	0.9835	250006	0.9356	250066	0.9141	250124	0.8965	260041	1.0539
240142	1.0950	250007	1.0055	250067	1.0616	250125	1.0762	260042	0.9229
240143	1.0199	250008	0.9287	250068	0.9057	250126	0.9926	260044	1.0325
240144	1.0794	250009	1.1052	250069	1.0699	250127	0.9234	260045	1.1009
240145	1.0335	250010	0.9113	250071	0.9683	250128	0.9879	260047	1.0703
240146	1.0150	250012	0.9570	250072	1.0870	250129	0.9798	260048	1.1442
240148	0.9996	250014	1.0075	250073	0.9554	250130	0.8905	260049	0.9333
240150	0.9242	250015	0.9933	250075	0.9914	250131	0.9902	260050	0.9959
240152	0.9865	250016	0.8576	250076	0.8939	250132	1.0121	260051	1.1181
240153	1.0177	250017	0.9190	250077	0.9277	250133	0.8692	260052	1.0868
240154	0.9932	250018	0.9857	250078	1.1365	250134	1.0555	260053	1.0897
240155	1.0392	250019	1.0925	250079	0.8831	250137	0.8687	260054	1.1996
240156	1.0407	250020	0.9386	250080	0.9342	260001	1.3258	260055	0.9720
240157	1.0373	250021	0.9792	250081	1.0660	260002	1.1280	260056	1.0573
240158	1.0601	250023	0.8659	250082	1.1497	260003	0.9905	260057	1.0754
240160	1.0383	250024	0.9465	250083	0.8806	260004	0.9881	260058	1.1986
240161	0.9460	250025	0.9705	250084	1.0459	260005	1.1501	260059	1.0426
240162	1.1341	250026	0.8441	250085	0.9872	260006	1.1129	260061	1.0477
240163	1.0009	250027	0.9605	250086	0.9871	260007	1.0534	260062	1.1015
240165	1.0735	250029	0.9541	250088	1.0072	260008	1.1557	260063	1.0487
240166	1.0513	250030	0.8970	250089	0.9907	260009	1.0924	260064	1.1036
240167	1.0135	250031	1.0246	250091	0.9248	260010	1.0924	260065	1.2965
240169	0.9605	250032	1.0720	250093	1.0324	260011	1.1115	260066	1.0213
240170	1.0338	250033	0.9266	250094	1.0863	260012	0.9370	260067	0.9916
240171	1.0545	250034	1.0645	250095	0.9290	260013	1.0380	260068	1.5029
240172	1.0629	250035	0.8909	250096	1.0410	260014	1.3285	260070	1.0075

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
260073	0.9729	260141	1.4937	270017	1.1923	280003	1.4664	280063	0.9094
260074	1.0845	260142	1.1015	270018	1.0236	280004	1.0733	280064	0.9993
260077	1.1642	260143	1.1264	270019	0.9387	280005	1.1968	280065	1.0965
260078	1.0273	260146	0.9125	270021	1.0352	280009	1.1886	280066	1.0563
260079	0.9917	260147	1.0528	270023	1.1947	280010	1.0784	280068	0.9868
260080	0.9866	260148	0.9777	270024	0.9770	280011	0.9455	280070	0.9880
260081	1.1903	260150	1.0742	270026	0.9147	280012	1.1001	280071	0.9423
260082	1.0898	260158	1.0356	270027	1.0146	280013	1.3427	280073	1.0181
260083	0.9806	260159	0.9158	270028	1.0381	280014	1.0123	280074	1.0717
260084	0.9160	260160	1.0451	270029	0.9398	280015	0.8957	280075	1.1309
260085	1.1793	260162	1.1040	270030	0.9125	280017	1.0115	280076	1.0075
260086	1.0121	260163	1.1360	270031	0.9113	280018	0.9914	280077	1.1171
260088	1.0067	260164	1.0357	270032	1.0630	280020	1.1347	280078	0.9479
260089	1.1198	260165	1.0614	270033	0.9041	280021	1.1819	280079	0.9626
260090	1.2186	260166	1.1107	270035	0.9931	280022	1.0594	280080	0.9651
260091	1.2466	260168	0.8993	270036	1.0829	280023	1.1322	280081	1.1882
260092	1.0177	260172	0.9862	270039	0.9277	280024	0.8888	280082	0.9359
260093	1.2003	260173	1.1295	270040	1.0571	280025	0.9395	280083	1.0477
260094	1.0479	260175	1.0417	270041	0.9657	280026	0.9630	280084	0.9782
260095	1.1172	260176	1.1444	270042	0.8245	280028	0.9322	280085	1.1558
260096	1.1961	260177	1.1677	270043	0.8469	280029	0.9721	280087	1.1665
260097	1.0854	260178	1.1390	270044	1.0122	280030	1.3806	280088	1.2653
260100	1.1252	260179	1.2622	270046	0.9213	280031	1.0011	280089	0.9780
260102	0.9313	260180	1.2391	270047	0.9053	280032	1.1479	280090	0.9080
260103	1.1714	260182	0.9958	270048	0.9955	280033	0.9639	280091	1.1252
260104	1.2728	260183	1.1287	270049	1.3266	280034	1.1376	280092	0.9014
260105	1.6231	260184	0.7824	270050	0.9847	280035	0.9480	280093	0.9139
260107	1.1338	260186	1.0713	270051	1.1119	280037	1.0849	280094	0.9769
260108	1.4011	260187	0.8211	270052	0.9383	280038	1.0980	280097	0.9677
260109	0.9243	260188	1.1081	270053	0.8920	280039	1.0140	280098	0.9217
260110	1.1813	260189	0.9951	270055	0.8024	280040	1.2945	280101	1.0049
260111	0.9663	260190	1.1105	270057	1.1236	280041	0.9352	280102	1.0005
260112	1.2061	260191	1.1235	270058	1.0033	280042	1.0565	280103	0.9072
260113	1.0678	260192	0.7276	270059	0.8818	280043	0.9889	280104	0.9736
260115	1.0006	260193	1.0990	270060	0.8964	280045	1.0492	280105	1.1132
260116	1.1200	260195	0.9929	270063	0.9826	280046	0.9906	280106	0.9741
260118	1.1915	260197	1.0528	270067	0.9954	280047	1.0873	280107	1.0387
260119	1.0285	270001	0.9296	270068	0.9693	280048	1.0387	280108	1.0599
260120	1.0754	270002	1.0122	270070	0.9129	280049	0.9459	280109	1.0053
260121	0.9508	270003	1.1012	270071	0.9321	280050	0.9944	280110	1.0218
260122	1.0564	270004	1.5114	270072	0.9160	280051	0.9994	280111	1.0582
260123	0.9535	270006	0.9822	270073	1.0296	280052	1.0298	280114	0.9697
260127	1.0007	270007	0.9421	270074	0.8693	280054	1.0893	280115	1.0065
260128	0.9138	270008	0.8995	270075	0.9156	280055	0.9694	280116	1.1101
260129	1.1054	270009	0.9493	270076	0.9300	280056	1.0798	280117	1.0175
260131	1.1672	270011	1.0341	270079	0.9117	280057	0.9574	280118	1.0325
260133	1.0842	270012	1.2588	270080	1.0844	280058	1.0791	280123	0.6988
260134	1.0711	270013	1.1858	270081	0.9933	280060	1.1271	290001	1.3601
260137	1.0773	270014	1.4949	270082	0.9282	280061	1.1951	290002	0.9602
260138	1.6566	270016	0.9421	280001	1.0117	280062	1.0598	290003	1.2907

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
290005	1.0880	310005	1.1451	310061	1.1230	320013	1.0079	330013	1.2679
290006	1.0084	310006	1.1379	310062	0.9972	320014	0.9249	330014	1.1140
290007	1.3174	310008	1.1331	310063	1.1911	320016	1.0351	330015	0.9791
290008	1.1387	310009	1.0643	310064	1.0815	320017	1.1289	330016	0.9909
290009	1.2470	310010	1.1300	310067	1.1199	320018	1.1530	330019	1.0245
290010	1.0025	310011	1.1211	310068	1.1386	320019	1.2619	330020	0.9730
290011	0.9579	310012	1.1569	310069	1.1000	320021	1.5144	330022	0.9962
290012	1.1904	310013	1.1340	310070	1.1478	320022	1.1153	330023	1.0756
290013	1.1912	310014	1.2150	310071	1.0387	320023	1.0159	330024	1.2583
290014	0.9651	310015	1.1962	310072	1.1650	320030	1.0590	330025	0.9908
290015	0.9268	310016	1.1454	310073	1.1396	320031	0.9371	330027	1.0945
290016	1.0748	310017	1.0929	310074	1.1272	320032	0.9431	330028	1.1188
290018	0.8397	310018	1.0093	310075	1.1434	320033	1.1087	330029	1.0693
290019	1.1672	310019	1.3566	310076	1.1234	320035	1.0071	330030	0.9658
290020	0.9733	310020	1.1103	310077	1.2477	320037	1.1632	330033	1.0068
290021	1.3359	310021	1.1015	310078	1.1230	320038	1.1074	330034	1.0705
290022	1.3240	310022	1.1084	310081	1.1692	320046	1.0352	330036	1.0326
290027	1.0576	310024	1.1166	310083	1.0495	320048	1.0889	330037	1.0437
290031	1.0533	310025	1.0585	310084	1.1496	320049	1.0670	330038	1.0568
290032	1.2042	310026	1.1030	310085	1.0502	320051	0.9449	330039	0.9979
300001	1.1475	310027	1.1214	310086	1.0725	320053	0.9756	330041	1.0212
300002	1.0985	310028	1.0311	310087	1.0987	320056	0.9124	330043	1.0502
300003	1.4231	310029	1.4212	310088	1.0631	320057	1.0728	330044	1.0835
300005	1.1423	310031	2.3026	310090	1.0968	320058	0.8921	330045	1.0792
300006	1.0585	310032	1.0804	310091	1.1252	320059	1.1139	330047	1.0720
300007	1.0639	310033	1.0236	310092	1.1599	320060	0.9501	330048	1.0121
300008	1.1240	310034	1.1183	310093	1.0030	320061	1.1016	330049	1.1015
300009	1.1092	310036	1.0693	310094	0.9672	320062	0.9212	330050	1.0083
300010	1.1007	310037	1.1408	310096	1.2927	320063	1.1143	330052	1.0171
300011	1.0934	310038	1.2960	310105	1.0263	320065	1.0789	330053	0.9929
300012	1.1312	310039	1.1298	310108	1.1311	320066	0.9312	330055	1.0851
300013	1.0822	310040	1.0548	310110	1.1367	320067	0.9280	330056	1.0995
300014	1.1098	310041	1.1506	310111	1.0655	320068	1.0064	330057	1.1762
300015	1.0267	310042	1.0626	310112	1.1087	320069	1.0430	330058	1.0870
300016	1.0503	310043	1.0714	310113	1.0607	320070	0.9943	330059	1.1897
300017	1.1154	310044	1.1073	310115	1.0684	320071	0.9666	330061	1.0185
300018	1.1274	310045	1.1049	310116	1.1388	320073	0.9407	330062	0.9952
300019	1.0909	310047	1.2188	310118	1.0459	320074	1.1741	330064	1.1209
300020	1.1143	310048	1.1552	310119	1.1838	330001	1.0878	330065	1.0252
300021	1.0884	310049	1.0768	310120	1.0349	330002	1.0716	330066	1.0388
300022	1.0425	310050	0.9682	320001	1.2387	330003	1.1175	330067	1.0914
300023	1.1468	310051	1.1995	320002	1.1780	330004	1.0414	330072	1.0755
300024	1.1191	310052	1.1243	320003	1.0804	330005	1.1840	330073	1.0159
300028	1.0692	310053	1.1306	320004	1.1080	330006	1.1383	330074	1.0932
300029	1.1568	310054	1.2114	320005	1.2102	330007	1.1002	330075	0.9631
300033	0.9747	310056	1.1132	320006	1.1350	330008	1.0340	330076	1.0139
300034	1.1550	310057	1.1922	320009	1.1872	330009	0.9462	330077	0.9681
310001	1.1883	310058	0.9995	320010	1.1054	330010	1.0165	330078	1.1263
310002	1.4692	310059	0.9252	320011	1.0335	330011	1.0723	330079	1.1162
310003	1.0896	310060	1.1216	320012	0.9378	330012	1.1411	330080	1.0179

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
330082	1.0333	330157	1.0040	330217	1.0054	330286	1.0993	340003	1.0983
330084	1.0006	330158	1.0899	330218	1.0249	330288	1.0064	340004	1.2428
330085	1.1722	330159	1.1606	330219	1.1217	330290	1.1478	340005	1.1216
330086	1.0209	330160	1.0423	330221	1.0703	330291	1.0055	340006	1.0194
330088	1.0988	330161	0.9739	330222	0.9875	330293	0.9737	340007	1.0474
330090	1.2479	330162	1.0959	330223	0.9498	330297	0.9810	340008	1.0362
330091	1.0904	330163	1.0080	330224	1.0508	330300	0.8729	340009	0.6773
330092	0.9900	330164	1.2531	330225	1.0295	330304	1.0718	340010	1.0911
330094	1.0809	330165	1.0058	330226	1.1200	330306	1.1350	340011	1.0054
330095	1.0354	330166	0.9970	330229	1.0378	330307	1.0514	340012	1.0638
330096	0.9605	330167	1.1505	330230	1.0562	330308	1.0710	340013	1.1284
330097	1.0316	330168	1.0747	330231	1.0362	330309	1.0761	340014	1.2224
330100	0.5646	330169	1.0870	330232	1.0884	330314	1.0782	340015	1.0991
330101	1.2552	330171	1.0820	330233	1.0651	330315	1.0651	340016	1.0564
330102	1.1377	330172	1.0148	330234	1.4884	330316	1.1100	340017	1.1263
330103	1.0711	330174	0.9655	330235	1.0954	330318	1.0501	340018	1.2092
330104	1.0720	330175	1.0203	330236	1.1139	330320	1.0202	340019	1.0620
330106	1.2536	330176	0.8892	330238	1.0317	330323	0.9882	340020	1.1049
330107	1.1165	330177	1.0224	330239	1.0386	330327	0.9377	340021	1.1662
330108	1.0383	330179	0.9200	330240	1.0039	330331	1.0519	340022	1.0351
330109	0.9744	330180	1.0389	330241	1.3999	330332	1.0364	340023	1.1143
330111	1.0605	330181	1.1048	330242	1.0820	330333	0.9563	340024	1.0335
330114	0.9519	330182	1.7808	330244	1.0508	330335	1.0411	340025	1.0787
330115	1.0373	330183	1.2571	330245	1.1116	330336	1.0471	340026	0.9486
330116	0.9640	330184	1.0717	330246	1.0616	330338	1.0072	340027	1.0614
330117	1.0611	330185	1.0388	330247	0.5476	330339	0.8890	340028	1.1421
330118	1.1474	330186	0.9895	330249	1.0496	330340	0.9495	340030	1.5061
330119	1.0847	330188	1.0982	330250	1.0165	330345	0.8691	340031	1.0710
330120	1.2635	330189	0.6215	330252	0.9408	330350	1.3413	340032	1.1976
330121	1.0325	330191	1.0637	330254	1.0138	330351	0.9571	340034	1.2350
330122	1.0377	330193	1.1180	330256	0.9528	330353	1.0514	340035	1.1421
330125	1.3819	330194	1.2828	330257	0.9536	330354	0.8872	340036	1.0163
330126	1.0275	330195	1.1821	330258	1.0635	330357	1.0664	340037	1.0560
330127	1.0563	330196	1.1280	330259	1.0640	330359	0.9624	340038	1.1329
330128	1.1053	330197	0.9863	330260	1.0732	330361	1.1958	340039	1.0982
330132	0.9967	330198	1.0734	330261	1.1104	330362	1.3057	340040	1.3510
330133	1.0290	330199	1.0754	330263	0.9755	330366	0.9950	340041	1.1559
330135	1.0297	330201	1.0760	330264	1.0178	330372	1.0498	340042	1.0506
330136	1.1870	330202	1.0570	330265	1.1210	330381	0.9413	340044	1.0310
330140	1.1818	330203	1.0131	330267	1.0840	330385	1.0433	340045	1.0450
330141	1.0841	330204	1.0469	330268	1.0357	330386	1.0419	340047	1.4456
330142	1.0391	330205	1.0225	330270	1.5339	330387	0.9743	340049	0.5966
330144	0.9709	330208	1.0438	330272	0.9370	330389	1.3528	340050	1.1022
330148	0.9794	330209	1.0297	330273	1.0269	330390	1.0044	340051	1.0952
330150	0.9462	330210	1.0030	330275	1.1374	330393	1.2210	340052	0.9749
330151	1.0037	330211	1.0283	330276	1.0752	330394	1.0614	340053	1.1634
330152	1.0750	330212	0.9732	330277	1.0112	330395	1.0651	340054	0.9795
330153	1.1094	330213	0.9636	330279	1.0733	330397	1.0802	340055	1.0969
330154	1.2154	330214	1.2803	330281	0.9448	340001	1.1196	340060	1.0492
330155	1.0295	330215	1.0522	330285	1.3394	340002	1.4045	340061	1.3618

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
340063	1.0706	340129	1.0702	350023	0.9948	360020	1.1274	360074	1.1449
340064	1.0584	340130	1.1223	350024	0.9780	360021	1.0913	360075	1.1496
340065	1.0437	340131	1.2266	350025	0.9803	360022	1.0659	360076	1.0871
340067	0.9649	340132	1.0982	350027	1.0100	360024	1.0520	360077	1.2060
340068	1.0292	340133	0.9686	350029	0.9803	360025	1.0635	360078	1.0998
340069	1.4371	340135	0.9899	350030	1.0480	360026	1.1180	360079	1.2011
340070	1.2436	340136	1.0021	350031	1.0441	360027	1.3254	360080	1.0868
340071	0.9900	340137	0.9682	350032	1.0407	360028	1.1690	360081	1.0952
340072	0.9857	340138	1.0720	350033	0.9314	360029	1.0215	360082	1.2183
340073	1.0715	340141	1.1963	350034	1.0280	360030	1.0908	360083	1.0927
340075	1.0970	340142	1.1610	350035	0.9101	360031	1.1686	360084	1.1838
340076	0.9979	340143	1.1726	350036	1.0812	360032	1.0883	360085	1.3784
340079	0.9634	340144	1.0291	350037	0.9761	360034	1.1106	360086	1.1251
340080	1.0161	340145	1.0422	350038	0.9301	360035	1.3195	360087	1.2139
340084	1.0412	340146	1.0121	350039	0.9757	360036	1.0840	360088	1.0524
340085	1.1373	340147	1.1972	350041	1.0007	360037	1.4617	360089	1.1166
340086	1.0150	340148	1.0787	350042	1.1255	360038	1.1448	360090	1.0925
340087	0.9793	340151	1.0451	350043	1.1613	360039	1.1092	360091	1.1792
340088	1.0843	340153	1.7283	350044	0.9390	360040	1.1345	360092	1.0573
340089	1.0162	340154	0.8551	350045	0.9552	360041	1.1461	360093	1.0403
340090	1.1032	340155	1.2281	350047	1.0243	360042	1.0239	360094	1.0762
340091	1.3939	340156	0.8861	350048	1.0014	360044	1.0910	360095	1.1432
340093	1.0949	340157	1.1301	350049	1.0291	360045	1.2469	360096	1.1076
340094	1.1193	340158	1.0301	350050	0.9321	360046	0.9900	360097	1.0488
340096	1.1213	340159	1.0756	350051	0.9520	360047	1.0032	360098	1.1852
340097	0.9865	340160	0.9915	350053	0.9927	360048	1.3069	360099	1.0549
340098	1.3675	340162	1.0724	350055	0.9263	360049	1.1484	360100	1.1171
340099	1.0789	340164	1.1153	350056	0.9428	360050	1.1318	360101	1.3053
340100	1.1653	340165	0.9724	350058	1.0197	360051	1.2170	360102	1.2031
340101	1.0850	350001	0.9675	350060	1.0014	360052	1.1727	360103	1.1477
340104	0.9687	350002	1.3032	350061	1.0218	360053	1.1674	360104	1.1073
340105	1.1736	350003	1.0755	350063	0.9095	360054	1.1302	360106	1.1647
340106	0.9628	350004	1.4438	350064	0.9251	360055	1.1447	360107	1.0898
340107	1.1672	350005	1.2240	360001	1.1221	360056	1.1092	360108	1.0867
340109	1.2245	350006	1.0968	360002	1.0779	360057	1.0374	360109	1.0584
340111	1.1332	350007	0.9987	360003	1.2024	360058	1.0754	360110	0.7811
340112	1.0395	350008	0.9333	360006	1.3482	360059	1.1942	360112	1.3376
340113	1.6081	350009	1.0861	360007	1.0558	360060	1.0080	360113	1.1176
340114	1.1010	350010	1.0684	360008	1.1025	360061	0.7150	360114	1.0291
340115	1.2067	350011	1.5326	360009	1.1468	360062	1.2466	360115	1.0904
340116	1.3332	350012	1.0031	360010	1.0826	360063	1.0191	360116	1.0791
340119	1.1066	350013	1.0114	360011	1.1696	360064	1.2659	360118	1.1457
340120	1.0354	350014	1.0074	360012	1.1611	360065	1.1764	360119	1.0767
340121	1.0469	350015	1.3863	360013	1.1254	360066	1.1152	360120	1.0061
340122	0.9949	350016	1.0791	360014	1.0437	360067	1.0711	360121	1.1763
340123	1.0798	350017	1.0874	360015	1.2809	360068	1.2861	360122	1.1209
340124	0.9426	350018	1.0477	360016	1.1876	360069	1.0315	360123	1.1179
340125	1.2494	350019	1.2630	360017	1.2388	360070	1.1503	360124	1.1269
340126	1.1528	350020	1.1929	360018	1.1218	360071	1.1023	360125	1.0779
340127	1.1382	350021	1.0103	360019	1.1332	360072	1.1332	360126	1.0787

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
360127	1.0220	360186	0.9574	370029	1.0814	370096	1.0211	370176	1.0749
360128	1.0374	360187	1.1780	370030	1.0673	370097	1.1051	370177	1.0109
360129	0.9965	360188	1.0304	370032	1.1154	370099	0.9768	370178	1.0657
360130	1.0519	360189	1.0604	370033	1.0292	370100	0.9350	370179	0.9775
360131	1.1113	360190	1.0369	370034	1.0723	370103	0.9380	370180	1.1196
360132	1.0416	360192	1.1676	370035	1.2845	370105	1.6893	370182	0.9811
360133	1.1965	360193	1.1374	370036	0.9903	370106	1.1611	370183	1.0408
360134	1.2356	360194	1.0818	370037	1.5271	370107	1.0165	370184	1.2377
360135	1.0336	360195	1.0506	370038	0.9883	370108	1.0339	380001	1.2379
360136	1.0290	360197	1.0328	370039	1.1166	370109	0.9145	380002	1.1841
360137	1.2838	360200	1.0769	370040	1.0651	370110	0.9962	380003	1.1513
360139	1.0014	360203	1.0392	370041	0.9724	370112	0.9150	380004	1.5834
360140	1.0388	360204	1.1096	370042	0.9010	370113	1.0078	380005	1.1090
360141	1.1998	360210	1.0665	370043	0.9558	370114	1.3926	380006	1.0706
360142	1.0447	360211	1.0284	370045	1.0947	370116	1.0010	380007	1.4035
360143	1.1502	360212	1.1902	370046	0.9964	370117	1.0883	380008	1.0995
360144	1.1280	360213	1.1329	370047	1.0873	370121	1.1491	380009	1.3548
360145	1.2523	360218	1.1451	370048	0.9869	370122	0.9456	380010	1.1236
360147	1.0087	360230	1.1540	370049	1.1376	370123	1.1560	380011	1.0633
360148	1.1319	360231	1.0231	370050	0.9523	370125	0.9729	380013	1.0374
360149	1.0466	360232	1.1471	370051	1.0332	370126	1.1330	380014	1.1661
360150	1.1401	360234	1.1123	370054	1.1119	370130	0.9752	380016	0.8176
360151	1.1440	360236	1.1335	370056	1.1946	370131	0.9174	380017	1.4359
360152	1.1974	360238	1.2489	370057	1.1281	370133	1.0095	380018	1.4436
360153	1.0621	360239	1.1045	370059	1.0972	370136	1.0570	380019	1.1223
360154	1.0337	360241	1.3386	370060	1.0209	370138	1.0113	380020	1.1778
360155	1.0668	370001	1.4089	370061	0.9836	370139	1.0511	380021	1.2160
360156	1.0556	370002	1.0287	370063	1.0667	370140	0.9735	380022	1.1198
360159	1.0955	370003	1.0123	370064	0.9880	370141	1.1770	380023	1.1380
360161	1.0417	370004	1.0211	370065	1.0520	370144	1.1600	380024	1.1275
360162	1.0775	370005	0.9573	370069	0.9004	370146	1.0283	380025	1.1881
360163	1.3447	370006	1.1067	370071	0.8994	370148	1.1852	380026	1.1109
360164	1.0507	370007	1.1852	370072	0.9990	370149	1.1663	380027	1.1167
360165	0.9733	370008	1.1508	370076	1.1137	370153	1.0180	380029	1.1000
360166	0.9717	370011	0.9815	370077	1.0834	370154	0.9919	380030	0.7671
360167	0.9837	370012	0.9366	370078	1.2565	370156	0.9886	380031	1.0193
360168	0.9945	370013	1.3339	370079	0.9393	370157	0.9692	380033	1.3492
360169	0.9685	370014	0.9857	370080	1.0775	370158	0.9957	380035	1.1219
360170	1.0576	370015	1.0573	370082	0.9616	370159	1.1357	380036	1.0610
360171	1.0804	370016	1.1492	370083	0.9856	370161	1.0127	380037	1.1208
360172	1.0750	370017	0.9846	370084	0.9634	370163	0.9312	380038	1.1712
360174	1.0364	370018	1.1640	370085	0.9556	370165	0.9495	380039	1.1947
360175	1.0473	370019	0.9724	370086	1.0458	370166	0.9847	380040	1.0117
360176	1.1010	370020	1.1531	370089	1.0556	370168	0.9191	380041	0.8453
360177	1.0635	370021	1.0094	370090	1.0723	370169	1.0090	380042	1.0859
360178	0.9983	370022	1.1205	370091	1.4038	370170	1.0826	380043	1.0879
360179	1.1363	370023	1.1294	370092	0.9616	370171	1.0146	380044	1.0322
360180	1.0179	370025	1.1920	370093	1.3366	370172	1.0226	380045	1.0224
360184	1.0824	370026	1.2014	370094	1.0958	370173	1.0931	380047	1.1995
360185	1.1015	370028	1.4040	370095	1.0323	370174	0.8335	380048	0.9473

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TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
380050	1.1467	390018	1.1308	390071	1.0573	390128	1.1154	390185	1.1028
380051	1.1907	390019	1.0303	390072	0.9945	390130	1.0341	390186	1.0286
380052	1.1088	390020	1.0347	390073	1.1456	390131	1.1319	390187	1.0692
380055	1.1959	390021	1.0742	390074	1.1420	390132	1.0483	390188	1.0952
380056	1.0033	390022	1.1110	390075	1.1321	390133	1.2578	390189	0.9875
380059	0.9770	390023	1.0743	390076	1.1281	390135	1.1430	390191	1.0754
380060	1.2248	390024	0.6654	390077	1.0923	390136	1.1164	390192	0.9886
380061	1.3631	390025	0.8182	390078	0.9877	390137	1.0738	390193	1.0732
380062	0.8641	390026	1.1958	390079	1.4731	390138	1.2364	390194	1.0133
380063	1.1510	390027	1.2476	390080	1.1402	390139	1.2511	390195	1.3518
380064	1.0929	390028	1.3835	390081	1.1860	390142	1.3404	390197	1.1234
380065	1.0684	390029	1.2977	390083	1.1397	390143	0.7392	390198	1.0739
380066	1.1074	390030	1.0723	390084	1.0055	390145	1.1007	390199	1.1272
380068	1.0622	390031	1.1213	390086	1.0482	390146	1.0595	390200	1.0472
380069	0.9971	390032	1.1184	390087	0.9590	390147	1.1003	390201	1.1775
380070	1.0390	390034	1.0663	390088	1.1346	390148	1.0430	390203	1.1327
380071	1.1311	390035	1.2060	390090	1.3330	390149	1.0878	390204	1.1127
380072	1.0163	390036	1.1266	390091	1.0920	390150	1.0922	390205	1.1376
380074	0.9814	390037	1.1322	390092	1.0012	390151	1.1527	390206	1.1429
380075	1.1604	390039	1.0289	390093	1.0586	390152	1.0742	390209	0.9687
380077	0.9557	390040	0.9688	390095	1.0093	390153	1.1196	390211	1.0590
380078	1.0942	390041	1.1143	390096	1.2301	390154	1.0908	390213	0.9569
380079	1.1622	390042	1.0982	390097	1.1630	390155	1.1359	390215	1.0840
380081	0.9702	390043	1.0354	390098	1.3731	390156	1.1376	390217	1.0549
380082	1.1158	390044	1.3102	390099	1.0513	390157	1.1075	390219	1.1152
380083	1.0753	390045	1.1431	390100	1.3413	390158	1.2141	390220	1.0622
380084	1.2469	390046	1.2800	390101	1.1459	390159	1.1631	390222	1.1571
380087	0.9022	390047	1.3258	390102	1.2228	390160	1.0308	390223	1.4429
380088	1.0183	390048	1.1333	390103	1.0386	390161	0.9857	390224	0.9303
380089	1.1907	390049	1.2352	390104	1.0392	390162	1.1646	390225	1.0825
380090	1.2158	390050	1.4990	390106	1.0419	390163	1.1236	390226	1.3114
380091	1.2141	390051	1.5882	390107	1.1333	390164	1.4209	390228	1.1647
380094	0.9841	390052	1.0510	390108	1.1535	390165	1.0282	390229	1.2041
390001	1.1965	390054	1.1017	390109	1.0039	390166	1.1106	390231	1.2003
390002	1.1308	390055	1.5055	390110	1.0822	390167	1.1304	390232	1.0529
390003	1.0868	390056	1.0656	390111	1.4928	390168	1.0336	390233	1.1875
390004	1.1302	390057	1.2293	390112	1.1310	390169	1.1075	390234	1.0772
390005	1.0066	390058	1.1466	390113	1.1181	390170	1.6016	390235	1.4333
390006	1.3494	390059	1.1576	390114	0.9099	390171	1.0358	390236	1.0348
390007	1.0793	390060	1.1011	390115	1.1462	390172	1.1020	390237	1.3106
390008	1.0793	390061	1.1826	390116	1.1243	390173	1.0540	390238	0.7157
390009	1.2166	390062	1.0688	390117	1.0383	390174	1.4686	390240	1.0528
390010	1.0808	390063	1.3738	390118	0.9945	390176	1.0845	390242	1.1784
390011	1.1251	390064	1.1507	390119	1.1351	390177	1.0055	390244	0.8895
390012	1.1524	390065	1.1490	390121	1.1182	390178	1.2359	390245	1.1103
390013	1.0815	390066	1.1347	390122	1.0485	390179	1.1145	390246	1.0063
390014	0.9207	390067	1.3436	390123	1.1506	390180	1.1680	390247	0.9838
390015	1.0480	390068	1.1161	390125	1.1216	390181	1.0291	390249	0.9666
390016	1.0576	390069	1.0578	390126	1.1238	390183	0.9971	390252	0.6996
390017	1.0310	390070	1.0833	390127	1.0697	390184	0.9820	390256	1.4476

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
390258	1.1294	420032	0.9490	430007	1.0654	430079	1.0553	440051	1.0021
390260	1.1402	420033	1.1328	430008	1.1073	430080	0.9057	440052	0.9384
390261	1.6379	420035	0.7944	430009	1.0000	430081	0.9638	440053	1.1128
390262	1.1792	420036	1.1382	430010	1.0061	430082	0.8910	440054	0.9483
390263	1.2746	420037	1.1043	430011	1.1173	430083	0.8841	440055	1.0574
390265	1.1842	420038	1.0352	430012	1.1737	430084	0.9274	440056	0.9290
390266	1.0608	420039	1.0345	430013	1.0481	430085	0.9378	440057	0.9760
390267	1.0980	420040	1.1574	430014	1.1495	430086	0.9185	440058	1.0331
390268	1.1252	420042	1.0781	430015	1.0222	430087	0.8307	440059	1.0865
390270	1.1283	420043	1.0491	430016	1.2219	430088	1.1102	440060	0.9486
390272	1.0576	420044	1.0888	430017	0.9569	440001	1.0128	440061	1.0802
410001	1.1997	420048	1.0120	430018	0.9931	440002	1.2612	440063	1.0893
410002	1.1127	420049	1.0244	430020	0.9636	440003	1.0394	440064	0.9767
410004	1.2191	420050	0.9787	430022	0.8707	440005	1.0089	440065	0.9746
410005	1.1911	420051	1.2627	430023	0.9895	440006	1.1594	440067	1.0315
410006	1.1886	420053	0.9494	430024	1.0177	440007	1.0249	440068	1.0717
410007	1.2939	420054	1.0897	430025	0.9345	440008	0.9897	440069	1.1551
410008	1.0614	420055	1.0158	430026	0.9380	440009	1.0110	440070	0.9699
410009	1.1615	420056	1.1088	430027	1.4012	440010	0.9645	440071	1.1240
410010	0.9624	420057	1.0815	430028	0.9760	440011	1.1431	440072	1.0892
410011	1.1062	420059	1.1126	430029	0.9127	440012	1.1031	440073	1.0705
410012	1.3226	420061	1.0267	430030	1.0642	440014	0.9668	440074	0.8728
410013	1.1069	420062	1.1180	430031	0.9498	440015	1.3266	440078	0.9782
410014	1.1448	420064	1.0142	430033	0.9943	440016	0.9976	440079	0.8614
410016	1.0253	420065	1.1030	430034	0.9881	440017	1.2499	440081	1.0426
420002	1.1217	420066	0.9120	430036	0.9916	440018	1.0883	440082	1.6436
420003	1.0400	420067	1.0016	430037	0.9199	440019	1.2196	440083	0.9355
420004	1.3225	420068	1.1546	430038	1.0630	440020	1.0176	440084	1.0031
420005	1.0458	420069	1.0343	430039	0.9307	440022	0.9969	440086	0.9423
420006	1.1686	420070	1.1657	430040	1.0096	440023	0.9777	440087	0.9464
420007	1.2878	420071	1.1588	430041	1.0505	440024	1.0982	440090	0.9673
420009	1.1036	420072	0.9053	430042	1.0270	440025	1.0723	440091	1.2329
420010	1.0169	420073	1.1273	430043	1.0665	440026	1.1299	440095	0.9702
420011	1.0101	420074	0.9672	430044	0.9073	440028	0.9568	440100	0.9292
420014	1.0360	420075	1.0010	430047	1.0294	440029	1.1214	440101	0.9861
420015	1.0800	420076	0.8373	430048	0.9671	440030	1.0550	440102	1.0549
420016	1.1124	420078	1.2486	430049	0.9266	440031	0.9819	440103	1.0371
420017	0.9710	420079	1.3140	430051	0.9642	440032	0.9960	440104	1.1930
420018	1.2809	420080	1.0659	430054	0.9347	440033	1.6304	440105	0.5815
420019	1.0502	420081	0.7449	430056	0.9471	440034	1.1508	440109	1.0511
420020	1.0377	420082	1.1153	430057	0.9603	440035	1.1496	440110	0.9985
420022	1.0258	420083	1.0736	430060	1.0671	440038	1.0182	440111	1.1856
420023	1.1502	420084	0.8158	430062	0.9021	440039	1.3534	440113	1.0298
420024	0.9147	420085	1.1347	430064	0.9613	440040	0.9074	440114	1.0254
420026	1.4267	420086	1.1315	430065	0.9669	440041	0.9251	440115	1.0016
420027	1.0948	420087	1.2842	430066	0.9333	440046	1.0698	440117	0.9021
420028	0.9803	420088	1.0599	430072	1.0254	440047	0.9648	440120	1.1429
420029	1.7649	430001	1.0502	430073	1.0189	440048	1.3293	440121	1.0274
420030	1.0259	430004	1.0625	430076	0.9565	440049	1.2719	440125	1.1354
420031	0.9763	430005	1.0361	430077	1.1095	440050	1.0308	440128	1.0048

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
440130	1.1155	440193	1.0203	450055	1.0476	450122	0.9487	450185	0.8976
440131	1.0199	440194	1.0997	450056	1.2649	450123	1.1237	450187	1.2397
440132	0.9913	440196	1.0321	450057	1.1052	450124	1.3660	450188	0.9430
440133	1.2485	440197	1.1754	450058	1.2089	450126	1.1669	450190	1.0963
440134	1.0528	440200	0.9894	450059	1.1352	450127	0.9752	450191	1.1345
440135	1.0916	440202	0.8880	450060	1.0406	450128	1.1195	450192	1.0324
440136	1.0837	440203	1.0544	450063	0.9285	450129	0.8148	450193	1.9495
440137	1.0308	450002	1.1470	450064	1.2484	450130	1.1826	450194	1.0380
440141	0.9936	450004	1.0037	450065	0.9557	450131	1.0907	450195	1.1913
440142	0.8861	450005	0.9899	450066	1.1785	450132	1.3047	450196	1.1140
440143	0.9670	450007	1.1876	450068	1.2394	450133	1.1799	450197	1.0209
440144	1.0021	450008	1.1248	450069	0.9239	450134	1.0990	450200	1.2478
440145	0.9254	450010	1.1291	450070	1.0724	450135	1.2871	450201	1.0767
440146	0.8860	450011	1.1550	450072	1.0601	450136	0.9014	450203	1.0349
440147	0.7164	450013	1.2228	450073	1.0201	450137	1.1425	450206	1.0123
440148	1.0585	450014	0.9524	450074	1.0189	450140	0.8200	450207	1.0883
440149	1.0341	450015	1.2860	450077	0.9845	450141	0.8608	450208	1.1206
440150	1.1207	450016	1.2930	450078	1.0186	450142	1.0721	450209	1.1833
440151	1.0695	450018	1.2988	450079	1.0836	450143	0.9630	450210	0.9887
440152	1.2232	450019	1.1049	450080	1.1083	450144	0.9933	450211	1.1108
440153	0.9117	450020	1.0334	450081	1.0578	450145	0.8821	450213	1.2101
440154	0.9006	450021	1.3652	450082	0.9851	450146	0.8545	450214	1.0681
440156	1.1596	450022	1.0129	450083	1.2017	450147	1.1484	450217	0.9265
440157	0.9506	450023	1.1946	450084	1.0334	450148	1.1046	450218	0.9929
440159	1.0100	450024	1.1566	450085	1.0259	450149	1.1328	450219	1.0236
440160	0.9961	450025	1.2317	450087	1.1363	450150	1.0201	450221	0.9880
440161	1.3500	450027	1.0387	450090	1.0567	450151	0.9806	450222	1.1179
440162	0.9827	450028	1.1455	450092	1.0529	450152	1.1373	450224	0.9709
440166	1.2717	450029	1.1170	450093	0.9577	450153	1.2642	450229	1.1270
440167	1.1681	450031	1.0895	450094	1.1175	450154	1.0991	450230	1.0189
440168	1.0762	450032	1.0777	450095	1.0150	450155	1.0113	450231	1.3588
440170	0.6598	450033	1.3748	450096	1.2024	450157	1.0138	450233	0.9503
440171	1.0117	450034	1.3723	450097	1.1296	450160	0.8786	450234	0.9477
440173	1.0974	450035	1.1946	450098	0.9540	450162	1.2671	450235	0.9912
440174	0.9461	450037	1.1565	450099	1.0573	450163	1.0542	450236	0.9411
440175	0.9822	450039	1.1806	450101	1.1639	450164	0.9536	450237	1.2349
440176	1.0849	450040	1.4239	450102	1.2873	450165	0.9774	450239	1.1055
440177	0.9496	450041	1.0329	450104	1.0814	450166	0.9413	450241	0.9427
440178	1.1212	450042	1.4559	450107	1.2321	450169	0.9167	450242	0.9199
440180	0.9939	450043	1.1164	450108	1.0290	450170	1.0066	450243	0.9968
440181	1.0323	450044	1.3997	450109	1.0004	450174	1.0484	450246	0.9354
440182	0.9470	450045	1.1255	450110	1.0805	450175	0.9977	450247	0.9450
440183	1.1531	450046	1.1863	450111	1.0663	450176	1.1083	450248	1.0613
440184	1.0978	450047	1.0355	450112	1.1156	450177	1.0055	450249	0.9464
440185	1.0773	450048	1.0434	450113	1.0547	450178	0.9881	450250	0.8720
440186	0.9524	450050	1.0513	450115	1.0386	450179	1.1803	450253	0.9708
440187	0.9899	450051	1.4259	450116	1.1697	450181	0.8930	450256	0.9511
440189	1.1632	450052	1.0466	450118	1.1702	450182	0.9219	450258	0.8852
440191	1.0899	450053	1.0081	450119	1.1747	450183	1.1327	450259	1.0691
440192	1.0136	450054	1.3542	450121	1.2000	450184	1.2456	450261	0.9880

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450263	1.0453	450340	1.0241	450425	0.9728	450550	1.0310	450631	1.3945
450264	0.9023	450341	0.8694	450429	0.9696	450551	0.9810	450632	0.9651
450267	0.8978	450342	0.9685	450431	1.2086	450557	0.9837	450633	1.2422
450268	1.0723	450343	1.0073	450438	1.0103	450558	1.2574	450634	1.1706
450269	0.9292	450346	1.0983	450440	0.9654	450559	0.9300	450635	1.1899
450270	0.9795	450347	1.0577	450446	0.9950	450561	1.1687	450637	1.0708
450271	1.0298	450348	1.0255	450447	1.1701	450563	0.9862	450638	1.2008
450272	1.1014	450349	1.0548	450450	0.8953	450565	1.1333	450639	1.0926
450275	0.9870	450351	1.0039	450451	0.9414	450568	1.0191	450641	0.9642
450276	1.0535	450352	1.1335	450454	0.9461	450569	1.0155	450643	1.0852
450278	0.9108	450353	1.0416	450455	0.9854	450570	0.9382	450644	1.1847
450280	1.1621	450355	0.9429	450457	1.3839	450571	1.1711	450646	1.2255
450281	1.1611	450357	1.0402	450458	0.8990	450573	1.0191	450647	1.4276
450282	0.8884	450358	1.5352	450459	0.8836	450574	0.9336	450648	1.0295
450283	0.9816	450359	0.9583	450460	0.9310	450575	0.9856	450649	1.0143
450284	1.0465	450362	0.9999	450462	1.2157	450577	0.8720	450651	1.1570
450286	1.0195	450365	0.9993	450464	0.9517	450578	0.8724	450652	0.9534
450288	1.0720	450366	1.0937	450465	1.0370	450579	0.9449	450653	1.1151
450289	1.1537	450369	1.0402	450467	0.9947	450580	1.0271	450654	0.9096
450292	1.0560	450370	0.9624	450469	1.1359	450581	0.9971	450655	0.8997
450293	0.9483	450371	1.0294	450472	1.0366	450582	0.8652	450656	1.0984
450296	0.9975	450372	1.1648	450473	1.0122	450583	1.0155	450657	0.8734
450297	0.9718	450373	1.1049	450475	0.9860	450584	1.0379	450658	0.9561
450299	1.0405	450374	0.8817	450476	0.9619	450586	0.9817	450659	1.1956
450300	0.9311	450376	1.2072	450481	0.9810	450587	1.0591	450660	1.3269
450303	0.9421	450378	1.1900	450484	1.1333	450588	0.9356	450661	1.0174
450304	0.9399	450379	1.1897	450486	0.9714	450590	1.0445	450662	1.1428
450305	1.0151	450381	0.9650	450488	0.9786	450591	1.1027	450665	0.9788
450306	0.9824	450382	0.9182	450489	0.9626	450595	0.9952	450666	1.0511
450307	0.8871	450388	1.3041	450492	0.9651	450596	1.0457	450667	0.9209
450309	1.0473	450389	1.0505	450493	0.9320	450597	1.0091	450668	1.3437
450311	0.9358	450391	1.0680	450497	1.0103	450600	0.9861	450669	1.0889
450312	0.9957	450393	1.1382	450498	0.9276	450603	0.8190	450670	1.0232
450315	1.0907	450394	1.1106	450508	1.1747	450604	1.0495	450671	0.9412
450317	0.9245	450395	0.9648	450513	0.9297	450605	1.1237	450672	1.2919
450319	0.9396	450399	0.9646	450514	1.0607	450607	0.8644	450673	1.0717
450320	1.1175	450400	0.9796	450517	0.9417	450609	0.9095	450674	0.8902
450321	0.8530	450402	1.1131	450518	1.1112	450610	1.1833	450675	1.1346
450322	0.9349	450403	1.1687	450523	1.1836	450614	0.9276	450676	0.9887
450324	1.2077	450410	0.9863	450527	0.9940	450615	0.9409	450677	1.1093
450325	0.9730	450411	0.9602	450530	1.1153	450617	1.1011	450678	1.1570
450327	0.9588	450415	1.0718	450534	0.8838	450620	1.0243	450679	0.9389
450328	0.9822	450416	1.1269	450535	1.0666	450621	0.9101	450681	1.1768
450330	1.0783	450417	0.9342	450537	1.1153	450623	1.0366	450682	1.0894
450331	1.0278	450418	1.2212	450538	1.0692	450624	0.9668	450683	1.1339
450332	0.9366	450419	0.9616	450539	1.1433	450626	0.9792	450684	1.1008
450333	1.1245	450421	1.0662	450544	1.0403	450627	0.9936	450685	1.1003
450334	1.0816	450422	0.5925	450545	1.0871	450628	0.8892	450686	1.1910
450337	1.0261	450423	1.0672	450546	1.0879	450629	0.9341	450687	1.1343
450338	1.0686	450424	1.0945	450547	0.9164	450630	1.3545	450688	1.0144

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450690	1.1171	460033	0.9896	490030	1.0675	490100	1.1155	500029	0.9714
450691	1.0716	460035	0.8708	490031	1.0403	490101	1.0745	500030	1.2915
450694	1.1152	460036	1.0083	490032	1.6064	490104	0.8615	500031	1.1192
450696	1.0128	460037	0.9706	490033	1.1163	490105	0.8864	500033	1.1179
450697	1.1165	460039	0.9131	490035	1.0612	490106	0.9053	500034	1.0660
450698	0.8792	460041	1.1411	490037	1.0394	490107	1.0460	500035	1.2079
450700	0.9588	460042	1.1903	490038	0.9997	490108	0.9020	500036	1.1425
450702	1.1092	460044	1.0701	490040	1.1592	490109	0.9441	500037	1.0621
450703	1.0664	470001	1.0584	490041	1.0241	490110	1.0215	500039	1.1356
450704	1.0656	470003	1.5304	490042	1.0261	490111	1.0295	500040	1.0231
450705	0.8549	470004	1.0824	490043	1.0916	490112	1.3051	500041	1.2140
450706	1.0998	470005	1.1450	490044	1.0911	490113	1.0987	500042	1.1334
450709	1.0159	470006	1.0869	490045	1.1425	490114	0.9984	500043	1.0748
450711	1.1208	470008	1.1558	490046	1.1555	490115	1.0411	500044	1.5816
450712	0.8970	470010	1.0791	490047	1.0913	490116	0.9603	500045	1.1472
450713	1.1235	470011	1.1225	490048	1.1123	490117	0.9381	500046	1.2139
450715	1.1813	470012	1.1180	490050	1.1587	490118	1.3127	500048	0.9124
450716	1.0940	470013	1.0378	490052	1.1966	490119	1.1429	500049	1.1645
450718	1.0799	470015	1.1016	490053	1.0449	490120	1.1840	500050	1.1011
450721	0.8914	470016	1.0097	490054	0.9843	490122	1.0811	500051	1.3819
450724	1.2310	470018	1.1135	490055	0.8456	490123	1.1107	500052	1.1005
460001	1.3573	470020	0.9682	490056	0.8985	490124	1.0904	500053	1.0714
460003	1.3114	470023	1.1302	490057	1.1022	490125	1.0680	500054	1.5581
460004	1.4187	470024	1.0887	490059	1.2322	490126	1.0507	500055	1.0404
460005	1.1756	490001	0.9352	490060	0.9352	490127	0.9030	500057	1.1140
460006	1.1918	490002	0.9391	490063	1.2761	490130	1.1067	500058	1.1816
460007	1.1371	490003	0.5630	490066	1.0224	500001	1.2718	500059	1.0925
460008	1.0953	490004	1.1184	490067	1.0642	500002	1.2362	500060	1.0868
460009	1.3341	490005	1.2574	490069	1.1747	500003	1.1543	500061	1.0087
460010	1.5794	490006	1.0533	490071	1.1823	500005	1.3434	500062	0.9439
460011	1.0489	490007	1.4947	490073	1.1499	500006	1.1082	500064	1.3457
460012	1.4406	490008	0.9956	490074	1.1671	500007	1.1483	500065	1.1318
460013	1.2207	490009	1.3464	490075	1.0654	500008	1.6884	500066	0.9700
460014	0.9579	490010	0.9866	490077	1.1236	500009	1.1796	500068	1.0082
460015	1.1136	490011	1.1633	490078	0.9138	500010	1.1293	500069	1.0061
460016	0.8812	490012	0.9913	490079	1.0872	500011	1.1583	500070	1.0886
460017	1.1877	490013	1.0585	490083	0.5623	500012	1.3199	500071	1.1281
460018	0.9957	490014	1.3207	490084	1.0013	500014	1.4677	500072	1.1066
460019	1.0221	490015	1.1903	490085	1.0170	500015	1.2347	500073	1.0965
460020	1.0068	490017	1.1703	490088	1.0293	500016	1.3051	500074	1.0465
460021	1.1604	490018	1.0259	490089	0.9966	500017	1.1866	500075	1.1319
460022	0.9867	490019	1.1354	490090	1.0656	500019	1.0911	500076	1.0592
460023	1.0832	490020	1.0231	490091	1.1521	500020	1.1507	500077	1.2020
460024	0.9639	490021	1.0208	490092	1.0541	500021	1.1659	500078	1.1828
460025	0.8657	490022	1.0984	490093	1.1292	500023	1.0920	500079	1.1460
460026	0.9261	490023	1.1444	490094	1.1382	500024	1.2023	500080	0.8806
460027	0.8633	490024	1.2774	490095	1.1047	500025	1.6686	500081	0.8009
460029	0.9918	490027	0.9545	490097	1.0198	500026	1.2034	500084	0.9932
460030	1.0699	490028	1.0965	490098	1.0637	500027	1.3030	500085	1.0087
460032	0.9512	490029	1.0550	490099	0.9916	500028	1.0484	500086	1.1100

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
500087	1.1623	510024	1.1685	520006	1.0910	520063	1.1278	520126	0.9645
500088	1.1988	510025	0.9984	520007	1.0277	520064	1.4097	520127	0.9974
500089	1.1259	510026	1.0144	520008	1.1628	520066	1.1552	520130	0.9943
500090	0.9570	510027	1.0332	520009	1.2239	520067	1.3293	520131	1.0207
500092	1.0568	510028	1.0515	520010	1.1038	520068	1.0290	520132	1.2168
500093	1.0950	510029	1.0560	520011	1.1260	520069	1.1109	520134	1.0326
500094	0.9330	510030	1.0768	520012	0.9742	520070	1.2399	520135	1.0239
500096	1.0747	510031	1.0383	520013	1.1806	520071	1.1471	520136	1.3265
500097	0.9917	510033	1.1483	520014	1.1772	520074	1.0804	520138	1.6421
500098	0.9525	510035	0.9875	520015	1.1786	520075	1.2270	520139	1.1878
500100	0.9688	510036	1.0282	520016	0.9930	520076	1.1535	520140	1.2463
500101	0.9307	510038	1.0332	520017	1.0820	520077	0.9956	520141	1.0769
500102	0.9951	510039	1.1193	520018	0.9979	520078	1.1987	520142	0.9773
500104	1.1131	510040	0.8956	520019	1.1531	520081	1.2459	520143	0.9638
500106	0.9933	510043	0.9937	520020	1.2585	520082	1.0681	520144	1.0262
500107	1.0593	510045	0.9349	520021	1.1438	520083	1.3748	520145	1.0722
500108	1.4485	510046	1.0821	520022	1.0889	520084	1.0725	520146	1.0516
500109	1.1647	510047	1.0753	520024	0.9876	520087	1.3891	520148	1.0880
500110	1.1647	510048	1.0702	520025	1.0747	520088	1.1840	520149	1.1183
500114	1.2645	510050	1.1028	520026	1.0812	520089	1.2159	520151	1.0733
500118	1.1178	510052	1.0653	520027	1.1712	520090	1.0422	520152	1.1303
500119	1.1641	510053	0.9778	520028	1.2162	520091	1.2820	520153	1.0234
500122	1.2039	510054	0.9206	520029	1.0068	520092	1.1074	520154	1.0741
500123	0.8924	510055	1.1404	520030	1.3045	520094	1.2306	520156	1.0487
500124	1.1702	510058	1.1281	520031	1.1587	520095	1.1142	520157	1.0843
500125	1.0205	510059	0.5673	520032	1.0337	520096	1.2429	520159	1.0866
500129	1.3329	510060	1.0582	520033	1.1634	520097	1.1530	520160	1.5740
500132	0.9087	510061	1.0141	520034	1.1509	520098	1.4396	520161	1.0125
500133	1.1898	510062	1.1172	520035	1.1677	520100	1.1101	520167	1.1505
500135	1.1269	510063	1.0772	520037	1.4183	520101	1.0601	520170	1.1786
510001	1.1604	510064	1.0360	520038	1.1379	520102	1.1061	520171	1.0940
510002	1.1094	510065	0.9920	520039	1.0323	520103	1.2205	520173	1.1083
510003	1.0414	510066	1.0358	520040	1.2167	520104	0.9946	520174	1.4348
510004	0.9718	510067	1.0466	520041	1.0856	520105	1.0239	520175	0.8392
510005	1.0197	510068	1.0444	520042	1.0542	520107	1.1107	520177	1.3067
510006	1.1176	510070	0.9993	520043	1.3573	520109	1.0926	520178	1.0856
510007	1.1632	510071	1.0900	520044	1.1905	520110	1.0585	520180	0.7627
510008	1.0581	510072	1.0519	520045	1.3718	520111	1.1015	530001	1.1572
510009	1.0688	510074	0.9131	520047	1.0090	520112	1.0712	530002	1.1183
510011	1.0335	510076	0.9462	520048	1.2237	520113	1.1422	530003	0.9575
510012	1.0406	510077	0.9674	520049	1.5825	520114	1.0929	530004	1.0036
510013	1.0149	510080	0.9633	520051	1.5432	520115	1.2025	530005	0.9758
510014	1.0068	510081	0.9947	520053	1.0635	520116	1.0950	530006	1.0568
510015	1.0084	510082	1.0104	520054	1.0540	520117	1.0385	530007	1.0492
510016	0.9639	510084	1.0116	520056	1.1415	520118	1.0050	530008	1.0755
510018	1.0594	510085	1.1062	520057	1.0672	520120	1.1222	530009	1.0112
510019	0.9743	520001	1.1769	520058	1.0841	520121	1.0658	530010	1.1213
510020	1.1832	520002	1.2007	520059	1.1117	520122	1.0591	530011	1.1227
510022	1.3291	520003	1.0803	520060	1.0376	520123	1.1237	530012	1.2558
510023	1.0260	520004	1.1348	520062	1.1330	520124	1.1048	530014	1.0946

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE, 1986.

TABLE 3C HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1985

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
530015	1.0973								
530016	1.3066								
530017	0.8898								
530018	0.9414								
530019	0.9571								
530021	1.0579								
530022	0.9810								
530023	0.9284								
530024	0.9499								
530025	1.0739								
530026	1.0987								
530027	0.9080								
530029	0.9814								
530031	0.9877								

BILLING CODE 4120-03-C

TABLE 4a.—WAGE IDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage Index
Abilene, TX	.8931
Taylor, TX	
Akron, OH	1.0993
Portage, OH	
Summit, OH	
Albany, GA	.8118
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9175
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0991
Bernalillo, NM	
Alexandria, LA	.9096
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0372
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	.9943
Blair, PA	
Amarillo, TX	.9520
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2518
Orange, CA	
Anchorage, AK	1.5724
Anchorage, AK	
Anderson, IN	.9696
Madison, IN	
Anderson, SC	.8303
Anderson, SC	
Ann Arbor, MI	1.2507
Washtenaw, MI	
Anniston, AL	.8452
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	1.0582
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Asheville, NC	.8774
Buncombe, NC	
Athens, GA	.8115
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9587
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0482
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9526
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0928
Kane, IL	
Kendall, IL	
Austin, TX	1.1089
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1964
Kern, CA	
Baltimore, MD	1.1062
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9212
Penobscot, ME	
Baton Rouge, LA	.9748
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0221
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0003
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0833
Beaver, PA	
Bellingham, WA	1.1381
Whatcom, WA	
Benton Harbor, MI	.8841
Berrien, MI	
Bergen-Passaic, NJ	1.0663
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.0145
Yellowstone, MT	
Biloxi-Gulfport, MS	.8422
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9483
Broome, NY	
Tioga, NY	
Birmingham, AL	.9587
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9865
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9821
Monroe, IN	
Bloomington-Normal, IL	.9767
McLean, IL	
Boise City, ID	1.0501
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1468
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1 1236
Boulder, CO	
Bradenton, FL	.9123
Manatee, FL	
Brazoria, TX	.8673
Brazoria, TX	
Bremerton, WA	.9736
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1753
Fairfield, CT	
Brownsville-Harlingen, TX	.8906
Cameron, TX	
Bryan-College Station, TX	.9494
Brazos, TX	
Buffalo, NY	1.0603
Erie, NY	
Burlington, NC	.7863
Alamance, NC	
Burlington, VT	1.0051
Chittenden, VT	
Grand Isle, VT	
Canton, OH	1.0001
Carroll, OH	
Stark, OH	
Casper, WY	1.0976
Natrona, WY	
Cedar Rapids, IA	1.0094
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9887
Champaign, IL	
Charleston, SC	.8841
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.0399
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.8920
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.9271
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9962
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.9625

TABLE 4a.—WAGE IDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage Index
Laramie, WY	
Chicago, IL	1.2253
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.2365
Butte, CA	
Cincinnati, OH-KY-IN	1.0963
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8119
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.1473
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0356
El Paso, CO	
Columbia, MO	1.0935
Boone, MO	
Columbia, SC	.9096
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.7867
Russell, AL	
Chattahoochee, GA	
Muscogee, GA	
Columbus, OH	.9608
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9821
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8925
Allegeny, MD	
Mineral, WV	
Dallas, TX	1.0649
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.8023
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	1.0576
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0853
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.9066
Volusia, FL	

TABLE 4a.—WAGE IDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage Index
Decatur, IL	.9516
Macon, IL	
Denver, CO	1.2763
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0473
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1633
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
Dothan, AL	.8391
Dale, AL	
Houston, AL	
Dubuque, IA	1.0507
Dubuque, IA	
Duluth, MN-WI	.9852
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9423
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9362
El Paso, TX	
Elkhart-Goshen, IN	.9574
Elkhart, IN	
Elmira, NY	.9664
Chemung, NY	
Enid, OK	.9550
Garfield, OK	
Erie, PA	.9912
Erie, PA	
Eugene-Springfield, OR	1.1075
Lane, OR	
Evansville, IN-KY	1.0136
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0560
Clay, MN	
Cass, ND	
Fayetteville, NC	.8264
Cumberland, NC	
Fayetteville-Springdale, AR	.8014
Washington, AR	
Flint, MI	1.1953
Genesee, MI	
Shiawassee, MI	
Florence, AL	.7827
Colbert, AL	
Lauderdale, AL	
Florence, SC	.7625
Florence, SC	
Fort Collins-Loveland, CO	1.0761
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1160
Broward, FL	
Fort Myers-Cape Coral, FL	.9458

TABLE 4a.—WAGE IDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage Index
Lee, FL	
Fort Pierce, FL	1.0134
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9170
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.8682
Okaloosa, FL	
Fort Wayne, IN	.9492
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.9920
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1399
Fresno, CA	
Gadsden, AL	.8708
Etowah, AL	
Gainesville, FL	.9566
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1322
Galveston, TX	
Gary-Hammond, IN	1.0892
Lake, IN	
Porter, IN	
Glens Falls, NY	.9531
Warren, NY	
Washington, NY	
Grand Forks, ND	.9793
Grand Forks, ND	
Grand Rapids, MI	1.0579
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0637
Cascade, MT	
Greeley, CO	1.0678
Weld, CO	
Green Bay, WI	1.0245
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9314
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9057
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9510
Washington, MD	
Hamilton-Middletown, OH	1.0133
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9790
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1371
Hartford, CT	

VOL 51 ISS 170 SE 3 1986 UMI

TABLE 4a.—WAGE IDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage Index
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8911
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1927
Honolulu, HI	
Houma-Thibodaux, LA	.9156
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0584
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9434
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8593
Madison, AL	
Indianapolis, IN	1.0510
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.2981
Johnson, IA	
Jackson, MI	1.0125
Jackson, MI	
Jackson, MS	.9281
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7853
Madison, TN	
Jacksonville, FL	.9406
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7903
Onslow, NC	
Janesville-Beloit, WI	.9347
Rock, WI	
Jersey City, NJ	1.1020
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.8549
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9451
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1164
Grundy, IL	
Will, IL	
Joplin, MO	.9130
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2244
Kalamazoo, MI	
Kankakee, IL	.9435
Kankakee, IL	
Kansas City, KS-MO	1.0576
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0789
Kenosha, WI	
Killeen-Temple, TX	.8779
Bell, TX	
Coryell, TX	
Knoxville, TN	.8925
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9792
Howard, IN	
Tipton, IN	
LaCrosse, WI	1.0087
LaCrosse, WI	
Lafayette, LA	1.0034
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9091
Tippecanoe, IN	
Lake Charles, LA	.9957
Calcasieu, LA	
Lake County, IL	1.1545
Lake, IL	
Lakeland-Winter Haven, FL	.8781
Polk, FL	
Lancaster, PA	1.0314
Lancaster, PA	
Lansing-East Lansing, MI	1.0684
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8099
Webb, TX	
Las Cruces, NM	.8698
Dona Ana, NM	
Las Vegas, NV	1.1165
Clark, NV	
Lawrence, KS	1.0099
Douglas, KS	
Lawton, OK	.9394
Comanche, OK	
Lewiston-Auburn, ME	.9351
Androscoggin, ME	
Lexington-Fayette, KY	.9795
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9788
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9634
Lancaster, NE	
Little Rock-North Little Rock, AR	1.1047
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8344
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0198
Lorain, OH	
Los Angeles-Long Beach, CA	1.3185
Los Angeles, CA	
Louisville, KY-IN	1.0002
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0048
Lubbock, TX	
Lynchburg, VA	.9142
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9251
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0815
Dane, WI	
Manchester-Nashua, NH	.9502
Hillsboro, NH	
Merrimack, NH	
Mansfield, OH	.9841
Richland, OH	
McAllen-Edinburg-Mission, TX	.8041
Hidalgo, TX	
Medford, OR	1.0274
Jackson, OR	
Melbourne-Titusville, FL	.9304
Brevard, FL	
Memphis, TN-AR-MS	1.0411
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.2038
Merced, CA	
Miami-Hialeah, FL	1.0618
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0267
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	

TABLE 4a.—WAGE IDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage Index
Midland, TX	1.1215
Midland, TX	
Milwaukee, WI	1.1321
Milwaukee, WI	
Ozaukee, WI,	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1679
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8857
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.2007
Stanislaus, CA	
Monmouth-Ocean, NJ	.9846
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9269
Ouachita, LA	
Montgomery, AL	.8806
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	.9986
Delaware, IN	
Muskegon, MI	.9833
Muskegon, MI	
Naples, FL	1.0366
Collier, FL	
Nashville, TN	.9340
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3293
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9718
Bristol, MA	
New Haven-West Haven-Waterbury-Meriden, CT	1.1187
New Haven, CT	
New London-Norwich, CT	1.1015
New London, CT	
New Orleans, LA	.9270
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John the Baptist, LA	
St. Tammany, LA	
New York, NY	1.3700
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1314
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8892
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9615
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4775
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8666
Marion, FL	
Odessa, TX	.9543
Ector, TX	
Oklahoma City, OK	1.0844
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0702
Thurston, WA	
Omaha, NE-IA	1.0426
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9225
Orange, NY	
Orlando, FL	1.0108
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8178
Daviess, KY	
Oxnard-Ventura, CA	1.2749
Ventura, CA	
Panama City, FL	.8288
Bay, FL	
Parkersburg-Marietta, WV-OH	.9049
Washington, OH	
Wood, WV	
Pascagoula, MS	.9601
Jackson, MS	
Pensacola, FL	.8673
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.0501
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1690
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0716
Maricopa, AZ	
Pine Bluff, AR	.7946
Jefferson, AR	
Pittsburgh, PA	1.0924
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0165
Berkshire, MA	
Portland, ME	.9802
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1979
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9299
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	.9973
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0419
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Statewide, RI	
Washington, RI	
Provo-Orem, UT	.9780
Utah, UT	
Pueblo, CO	1.1122
Pueblo, CO	
Racine, WI	.9923
Racine, WI	
Raleigh-Durham, NC	.9643
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.9547
Pennington, SD	
Reading, PA	1.0167
Berks, PA	
Redding, CA	1.2298
Shasta, CA	
Reno, NV	1.1745
Washoe, NV	
Richland-Kennewick, WA	1.0175
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9489
Charles City Co., VA	

TABLE 4a.—WAGE IDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage Index
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.2418
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8925
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0203
Olmsted, MN	
Rochester, NY	1.0145
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.1264
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2866
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0983
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9938
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9412
Buchanan, MO	
St. Louis, MO-IL	1.0741
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0884
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2472
Monterey, CA	
Salt Lake City-Ogden, UT	1.0272
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8650
Tom Green, TX	
San Antonio, TX	.8872
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.3000
San Diego, CA	
San Francisco, CA	1.6387
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4689
Santa Clara, CA	
Santa Barbara-Santa Maria-Lompoc, CA	1.1728
Santa Barbara, CA	
Santa Cruz, CA	1.2334
Santa Cruz, CA	
Santa Fe, NM	.9732
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.3009
Sonoma, CA	
Sarasota, FL	.9563
Sarasota, FL	
Savannah, GA	.8847
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9903
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1487
King, WA	
Snohomish, WA	
Sharon, PA	.9680
Mercer, PA	
Sheboygan, WI	.9807
Sheboygan, WI	
Sherman-Denison, TX	.8551
Grayson, TX	
Shreveport, LA	.9537
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	.9983
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	1.0130
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0007
St. Joseph, IN	
Spokane, WA	1.1467
Spokane, WA	
Springfield, IL	1.0580
Menard, IL	
Sangamon, IL	
Springfield, MO	.9785
Christian, MO	
Greene, MO	
Springfield, MA	.9981
Hampden, MA	
Hampshire, MA	
State College, PA	1.0686
Centre, PA	
Steubenville-Weirton, OH-WV	.9579
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.2770
San Joaquin, CA	
Syracuse, NY	1.0220
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0965
Pierce, WA	
Tallahassee, FL	.9434
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.9753
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8389
Clay, IN	
Vigo, IN	
Texarkana, TX-Texarkana, AR	.8582
Miller, AR	
Bowie, TX	
Toledo, OH	1.2170
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.0548
Shawnee, KS	
Trenton, NJ	1.0235
Mercer, NJ	
Tucson, AZ	1.0010
Pima, AZ	
Tulsa, OK	1.0051
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0092
Tuscaloosa, AL	
Tyler, TX	.9956
Smith, TX	
Utica-Rome, NY	.8770
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3291
Napa, CA	
Solano, CA	
Vancouver, WA	1.1567
Clark, WA	
Victoria, TX	.8140
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9851
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0559
Tulare, CA	
Waco, TX	.9045
McLennan, TX	
Washington, D.C.-MD-VA	1.1870
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	

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TABLE 4a.—WAGE IDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage Index
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9914
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9793
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.9894
Palm Beach, FL	
Wheeling, WV-OH	.9694
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1498
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8706
Wichita, TX	
Williamsport, PA	.8977
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0504
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9515
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0014
Worcester, MA	
Yakima, WA	1.0307
Yakima, WA	

TABLE 4a.—WAGE IDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage Index
York, PA	.9775
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0397
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0378
Sutter, CA	
Yuba, CA	

TABLE 4b.—Wage Index for Rural Areas

Nonurban area	Wage index
Alabama	.7407
Alaska	1.4870
Arizona	.9249
Arkansas	.7642
California	1.1295
Colorado	.9252
Connecticut	1.0377
Delaware	.8577
Florida	.8745
Georgia	.7718
Hawaii	1.0077
Idaho	.9058
Illinois	.8847
Indiana	.8617
Iowa	.8650
Kansas	.8414
Kentucky	.7973
Louisiana	.8537
Maine	.8586

TABLE 4b.—Wage Index for Rural Areas—Continued

Nonurban area	Wage index
Maryland	.8704
Massachusetts	1.0465
Michigan	.9474
Minnesota	.8719
Mississippi	.7644
Missouri	.8260
Montana	.9081
Nebraska	.8244
Nevada	1.0714
New Hampshire	.9179
New Jersey*	
New Mexico	.9140
New York	.8662
North Carolina	.8066
North Dakota	.8989
Ohio	.9028
Oklahoma	.8395
Oregon	1.0697
Pennsylvania	.9352
Rhode Island*	
South Carolina	.7765
South Dakota	.8198
Tennessee	.7672
Texas	.8116
Utah	.9430
Vermont	.8818
Virginia	.8129
Washington	1.0192
West Virginia	.8746
Wisconsin	.8924
Wyoming	.9668

*All counties within the State are classified urban.

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VOL 51 ISS 170 SE 3 1986 UMI

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	1	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.5610	21.4	16.2	33
2	1	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.9111	19.7	13.4	30
3	1	SURG	• CRANIOTOMY AGE <18	2.9183		12.7	30
4	1	SURG	SPINAL PROCEDURES	2.7296	20.2	15.0	32
5	1	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.6508	9.7	8.0	25
6	1	SURG	CARPAL TUNNEL RELEASE	.4073	2.8	2.3	7
7	1	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC AGE >69 &/OR CC	1.3866	11.5	6.1	23
8	1	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC AGE <70 W/O CC	.7464	5.6	3.7	19
9	1	MED	SPINAL DISORDERS & INJURIES	1.4235	14.4	8.4	25
10	1	MED	NERVOUS SYSTEM NEOPLASMS AGE >69 AND/OR CC	1.1322	11.6	7.8	25
11	1	MED	NERVOUS SYSTEM NEOPLASMS AGE <70 W/O CC	.9338	10.2	6.1	23
12	1	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.0001	11.4	7.8	25
13	1	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.9790	10.9	7.7	25
14	1	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3143	12.6	8.5	26
15	1	MED	TRANSIENT ISCHEMIC ATTACK AND PRECEREBRAL OCCLUSIONS	.6241	6.1	4.7	19
16	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS WITH CC	.9042	8.9	6.8	24
17	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6802	7.8	5.6	23
18	1	MED	CRANIAL & PERIPHERAL NERVE DISORDERS AGE >69 AND/OR CC	.7566	8.2	6.1	23
19	1	MED	CRANIAL & PERIPHERAL NERVE DISORDERS AGE <70 W/O CC	.6549	7.2	5.3	22
20	1	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.4087	11.5	7.8	25
21	1	MED	VIRAL MENINGITIS	1.3143	10.6	7.9	25
22	1	MED	HYPERTENSIVE ENCEPHALOPATHY	.7086	6.5	5.0	20
23	1	MED	NONTRAUMATIC STUPOR & COMA	1.1239	8.5	5.2	22
24	1	MED	SEIZURE & HEADACHE AGE >69 AND/OR CC	.7642	6.8	5.0	22
25	1	MED	SEIZURE & HEADACHE AGE 18-69 W/O CC	.5520	5.5	4.0	18
26	1	MED	SEIZURE & HEADACHE AGE 0-17	.6255	3.9	2.7	14
27	1	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.5645	9.8	4.7	22
28	1	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >69 AND/OR CC	.9422	8.5	5.0	22
29	1	MED	TRAUMATIC STUPOR & COMA <1 HR AGE 18-69 W/O CC	.6462	6.0	3.6	21
30	1	MED	• TRAUMATIC STUPOR & COMA <1 HR AGE 0-17	.3539		2.0	8
31	1	MED	CONCUSSION AGE >69 AND/OR CC	.5381	5.7	3.9	20
32	1	MED	CONCUSSION AGE 18-69 W/O CC	.4064	4.1	2.9	14
33	1	MED	• CONCUSSION AGE 0-17	.2457		1.6	5
34	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE >69 AND/OR CC	.9761	8.9	6.1	23
35	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE <70 W/O CC	.7383	7.6	4.9	22

• MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
•• DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.
NOTE: ARITHMETIC MEAN INCLUDED FOR COMPARATIVE PURPOSES. IT IS NOT USED FOR PAYMENT.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	2	SURG	RETINAL PROCEDURES	.7101	4.7	4.1	12
37	2	SURG	ORBITAL PROCEDURES	.6687	4.2	3.2	12
38	2	SURG	PRIMARY IRIS PROCEDURES	.3963	3.0	2.4	8
39	2	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5719	2.3	2.1	4
40	2	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.4133	2.5	2.1	6
41	2	SURG •	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3657		1.6	4
42	2	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6542	3.7	3.0	10
43	2	MED	HYPHEMA	.3461	4.6	3.7	13
44	2	MED	ACUTE MAJOR EYE INFECTIONS	.6395	7.3	5.9	21
45	2	MED	NEUROLOGICAL EYE DISORDERS	.5407	4.7	3.6	14
46	2	MED	OTHER DISORDERS OF THE EYE AGE >17 WITH CC	.6009	5.6	3.7	21
47	2	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4187	3.6	2.5	11
48	2	MED •	OTHER DISORDERS OF THE EYE AGE 0-17	.4018		2.9	13
49	3	SURG	MAJOR HEAD & NECK PROCEDURES	2.8742	17.1	13.1	30
50	3	SURG	SIALOADENECTOMY	.7033	4.4	3.7	11
51	3	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5878	4.0	3.3	10
52	3	SURG	CLEFT LIP & PALATE REPAIR	.6955	4.4	3.5	13
53	3	SURG	SINUS & MASTOID PROCEDURES AGE >17	.6175	3.8	3.0	10
54	3	SURG •	SINUS & MASTOID PROCEDURES AGE 0-17	.6889		3.2	11
55	3	SURG	MISCELLANEOUS EAR, NOSE & THROAT PROCEDURES	.4342	2.6	2.1	6
56	3	SURG	RHINOPLASTY	.4357	2.8	2.3	7
57	3	SURG	T&A PROC EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.7717	5.7	3.7	20
58	3	SURG •	T&A PROC EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3097		1.5	3
59	3	SURG	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY, AGE >17	.4130	2.9	2.3	7
60	3	SURG •	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY, AGE 0-17	.2616		1.5	3
61	3	SURG	MYRINGOTOMY WITH TUBE INSERTION AGE >17	.4273	2.9	2.0	8
62	3	SURG •	MYRINGOTOMY WITH TUBE INSERTION AGE 0-17	.3089		1.3	3
63	3	SURG	OTHER EAR, NOSE & THROAT O.R. PROCEDURES	1.1618	8.1	5.1	22
64	3	MED	EAR, NOSE & THROAT MALIGNANCY	.9769	8.5	4.8	22
65	3	MED	DYSEQUILIBRIUM	.4500	4.8	3.8	14
66	3	MED	EPISTAXIS	.4144	4.3	3.3	13
67	3	MED	EPIGLOTTITIS	.9363	6.5	4.8	21
68	3	MED	OTITIS MEDIA & URI AGE >69 AND/OR CC	.6088	6.3	5.1	17
69	3	MED	OTITIS MEDIA & URI AGE 18-69 W/O CC	.5040	5.1	4.1	14
70	3	MED	OTITIS MEDIA & URI AGE 0-17	.5251	4.2	3.3	12

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	3 MED		LARYNGOTRACHEITIS	.6582	5.8	4.6	18
72	3 MED		NASAL TRAUMA & DEFORMITY	.5216	5.2	3.5	19
73	3 MED		OTHER EAR, NOSE & THROAT DIAGNOSES AGE >17	.6045	5.1	3.4	18
74	3 MED	*	OTHER EAR, NOSE & THROAT DIAGNOSES AGE 0-17	.3427		2.1	9
75	4 SURG		MAJOR CHEST PROCEDURES	2.9776	16.2	13.4	30
76	4 SURG		OTHER RESPIRATORY SYSTEM O.R. PROCEDURES WITH CC	2.5663	14.9	10.3	27
77	4 SURG		OTHER RESPIRATORY SYSTEM O.R. PROCEDURES W/O CC	1.6734	11.5	7.0	24
78	4 MED		PULMONARY EMBOLISM	1.4798	11.7	9.5	27
79	4 MED		RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >69 AND/OR CC	1.9344	12.9	9.6	27
80	4 MED		RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 18-69 W/O CC	1.4387	12.0	8.5	26
81	4 MED	*	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	.8652		6.1	23
82	4 MED		RESPIRATORY NEOPLASMS	1.1258	9.9	6.6	24
83	4 MED		MAJOR CHEST TRAUMA AGE >69 AND/OR CC	.8397	8.6	6.6	24
84	4 MED		MAJOR CHEST TRAUMA AGE <70 W/O CC	.5920	6.0	4.6	19
85	4 MED		PLEURAL EFFUSION AGE >69 AND/OR CC	1.1196	9.9	7.2	24
86	4 MED		PLEURAL EFFUSION AGE <70 W/O CC	.9761	8.8	5.9	23
87	4 MED		PULMONARY EDEMA & RESPIRATORY FAILURE	1.8076	10.2	7.0	24
88	4 MED		CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0768	8.5	6.6	24
89	4 MED		SIMPLE PNEUMONIA & PLEURISY AGE >69 AND/OR CC	1.1657	9.6	7.5	25
90	4 MED		SIMPLE PNEUMONIA & PLEURISY AGE 18-69 W/O CC	.8842	7.7	6.2	22
91	4 MED		SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.7914	5.5	4.3	18
92	4 MED		INTERSTITIAL LUNG DISEASE AGE >69 AND/OR CC	1.1115	9.0	6.8	24
93	4 MED		INTERSTITIAL LUNG DISEASE AGE <70 W/O CC	.8641	7.5	5.4	22
94	4 MED		PNEUMOTHORAX AGE >69 AND/OR CC	1.3044	10.1	7.6	25
95	4 MED		PNEUMOTHORAX AGE <70 W/O CC	.8796	7.8	5.9	23
96	4 MED		BRONCHITIS & ASTHMA AGE >69 AND/OR CC	.8446	7.3	6.0	20
97	4 MED		BRONCHITIS & ASTHMA AGE 18-69 W/O CC	.7091	6.2	5.1	17
98	4 MED		BRONCHITIS & ASTHMA AGE 0-17	.7201	4.5	3.8	12
99	4 MED		RESPIRATORY SIGNS & SYMPTOMS AGE >69 AND/OR CC	.8072	6.4	4.6	22
100	4 MED		RESPIRATORY SIGNS & SYMPTOMS AGE <70 W/O CC	.6253	5.0	3.6	16
101	4 MED		OTHER RESPIRATORY SYSTEM DIAGNOSES AGE >69 AND/OR CC	.8460	7.5	5.5	23
102	4 MED		OTHER RESPIRATORY SYSTEM DIAGNOSES AGE <70 WITHOUT CC	.6841	6.1	4.3	21
103	5 SURG		HEART TRANSPLANT				
104	5 SURG		CARDIAC VALVE PROCEDURE WITH PUMP & WITH CARDIAC CATH	7.3151	21.0	18.0	35
105	5 SURG		CARDIAC VALVE PROCEDURE WITH PUMP & W/O CARDIAC CATH	6.3388	16.2	15.0	32

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	5	SURG	CORONARY BYPASS WITH CARDIAC CATH	5.3324	16.3	14.7	32
107	5	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.6608	14.5	12.7	30
108	5	SURG	OTHER CARDIOTHORACIC OR VASCULAR PROC, WITH PUMP	4.7803	14.7	10.6	26
109	5	SURG	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	4.3579	14.7	9.0	26
110	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP AGE >69 AND/OR CC	3.3118	16.4	13.1	30
111	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP AGE <70 W/O CC	2.4549	13.1	11.2	28
112	5	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2.2055	11.7	8.1	25
113	5	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.5345	21.7	17.2	34
114	5	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.8918	17.2	12.4	29
115	5	SURG	PERM CARDIAC PACEMAKER IMPLANT WITH AMI, HEART FAILURE OR SHOCK	4.1727	16.7	13.9	31
116	5	SURG	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	2.9868	9.7	7.8	25
117	5	SURG	CARDIAC PACEMAKER REPLACE & REVIS EXC PULSE GEN REPL	1.2989	6.4	4.8	20
118	5	SURG	CARDIAC PACEMAKER PULSE GENERATOR REPLACEMENT	1.9224	4.8	3.5	15
119	5	SURG	VEIN LIGATION & STRIPPING	.9164	7.7	5.6	23
120	5	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.2577	17.0	11.4	28
121	5	MED	CIRCULATORY DISORDERS WITH AMI & C.V. COMP. DISCH. ALIVE	1.7687	12.4	10.3	27
122	5	MED	CIRCULATORY DISORDERS WITH AMI W/O C.V. COMP. DISCH. ALIVE	1.3267	10.6	8.8	26
123	5	MED	CIRCULATORY DISORDERS WITH AMI, EXPIRED	1.3522	5.6	3.0	20
124	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH & COMPLEX DIAG	1.2551	7.1	5.0	22
125	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH W/O COMPLEX DIAG	.7265	3.8	2.8	11
126	5	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.9836	23.8	18.1	35
127	5	MED	HEART FAILURE & SHOCK	1.0098	8.9	6.8	24
128	5	MED	DEEP VEIN THROMBOPHLEBITIS	.8456	9.9	8.6	24
129	5	MED	CARDIAC ARREST, UNEXPLAINED	1.7199	7.9	3.8	21
130	5	MED	PERIPHERAL VASCULAR DISORDERS AGE >69 AND/OR CC	.8251	8.3	5.7	23
131	5	MED	PERIPHERAL VASCULAR DISORDERS AGE <70 W/O CC	.6705	6.7	4.5	22
132	5	MED	ATHEROSCLEROSIS AGE >69 AND/OR CC	.8037	7.0	5.3	22
133	5	MED	ATHEROSCLEROSIS AGE <70 W/O CC	.7049	5.2	3.8	16
134	5	MED	HYPERTENSION	.6363	6.6	5.1	20
135	5	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >69 AND/OR CC	.8937	7.3	5.3	22
136	5	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 18-69 W/O CC	.7525	5.6	3.8	18
137	5	MED *	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6315		3.3	20
138	5	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS AGE >69 AND/OR CC	.8136	6.5	4.9	21
139	5	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS AGE <70 W/O CC	.6514	5.1	3.9	16
140	5	MED	ANGINA PECTORIS	.6894	5.7	4.6	16

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DRG	MDC	TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	5 MED	SYNCOPE & COLLAPSE AGE >69 AND/OR CC	.6187	5.7	4.4	18
142	5 MED	SYNCOPE & COLLAPSE AGE <70 W/O CC	.5335	4.7	3.6	14
143	5 MED	CHEST PAIN	.5893	4.5	3.5	13
144	5 MED	OTHER CIRCULATORY SYSTEM DIAGNOSES WITH CC	1.1160	8.4	6.2	23
145	5 MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.8475	7.1	5.0	22
146	6 SURG	RECTAL RESECTION AGE >69 AND/OR CC	3.0751	18.9	16.6	34
147	6 SURG	RECTAL RESECTION AGE <70 W/O CC	2.2735	15.4	14.0	31
148	6 SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES AGE >69 AND/OR CC	2.9401	17.8	15.3	32
149	6 SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES AGE <70 W/O CC	2.1069	14.3	12.6	30
150	6 SURG	PERITONEAL ADHESIOLYSIS AGE >69 AND/OR CC	2.3426	14.9	12.8	30
151	6 SURG	PERITONEAL ADHESIOLYSIS AGE <70 W/O CC	1.5900	11.5	10.1	27
152	6 SURG	MINOR SMALL & LARGE BOWEL PROCEDURES AGE >69 AND/OR CC	1.4059	10.8	8.6	26
153	6 SURG	MINOR SMALL & LARGE BOWEL PROCEDURES AGE <70 W/O CC	1.0992	9.1	7.3	24
154	6 SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >69 AND/OR CC	2.6876	15.1	11.5	29
155	6 SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 18-69 W/O CC	1.7902	11.7	8.9	26
156	6 SURG •	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8382		6.0	20
157	6 SURG	ANAL AND STOMAL PROCEDURES AGE >69 AND/OR CC	.7302	6.4	4.8	21
158	6 SURG	ANAL AND STOMAL PROCEDURES AGE <70 W/O CC	.5511	4.9	3.9	14
159	6 SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >69 AND/OR CC	.9997	7.8	6.3	22
160	6 SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE 18-69 W/O CC	.7457	5.9	5.0	16
161	6 SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >69 AND/OR CC	.6536	5.3	4.4	14
162	6 SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE 18-69 W/O CC	.5261	4.1	3.6	10
163	6 SURG	HERNIA PROCEDURES AGE 0-17	.9647	5.6	4.2	18
164	6 SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE>69 AND/OR CC	2.0646	12.2	10.7	28
165	6 SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE <70 W/O CC	1.4375	9.2	8.4	19
166	6 SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE >69 AND/OR CC	1.3604	9.0	7.5	23
167	6 SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE <70 W/O CC	.8872	6.1	5.3	13
168	6 SURG	MOUTH PROCEDURES AGE >69 AND/OR CC	.9182	6.2	4.0	21
169	6 SURG	MOUTH PROCEDURES AGE <70 W/O CC	.6580	4.0	3.0	12
170	6 SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES AGE >69 AND/OR CC	2.7611	17.6	12.3	29
171	6 SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES AGE <70 W/O CC	2.3295	15.4	9.8	27
172	6 MED	DIGESTIVE MALIGNANCY AGE >69 AND/OR CC	1.0748	10.4	6.7	24
173	6 MED	DIGESTIVE MALIGNANCY AGE <70 W/O CC	.9602	9.3	5.4	22
174	6 MED	G.I. HEMORRHAGE AGE >69 AND/OR CC	.9073	7.5	5.8	23
175	6 MED	G.I. HEMORRHAGE AGE <70 W/O CC	.7067	6.0	4.7	18

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	6	MED	COMPLICATED PEPTIC ULCER	.9316	8.3	6.3	23
177	6	MED	UNCOMPLICATED PEPTIC ULCER >69 AND/OR CC	.6615	6.6	5.4	18
178	6	MED	UNCOMPLICATED PEPTIC ULCER <70 W/O CC	.5554	5.5	4.6	15
179	6	MED	INFLAMMATORY BOWEL DISEASE	.9875	9.6	7.1	24
180	6	MED	G.I. OBSTRUCTION AGE >69 AND/OR CC	.7583	7.4	5.4	22
181	6	MED	G.I. OBSTRUCTION AGE <70 W/O CC	.5827	5.8	4.5	18
182	6	MED	ESOPHAGITIS,GASTROENT.& MISC. DIGEST. DIS AGE >69 &/OR CC	.6032	6.1	4.8	18
183	6	MED	ESOPHAGITIS,GASTROENT.& MISC. DIGEST. DIS AGE 18-69 W/O CC	.5104	5.0	4.0	15
184	6	MED	ESOPHAGITIS, GASTROENTERITIS & MISC. DIGEST. DISORDERS AGE 0-17	.4928	3.7	2.6	12
185	6	MED	DENTAL & ORAL DIS. EXC EXTRACTIONS & RESTORATIONS,AGE >17	.7147	6.6	4.3	21
186	6	MED *	DENTAL & ORAL DIS. EXC EXTRACTIONS & RESTORATIONS,AGE 0-17	.4112		2.9	11
187	6	MED	DENTAL EXTRACTIONS & RESTORATIONS	.4209	2.9	2.3	7
188	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >69 AND/OR CC	.7171	6.4	4.3	21
189	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 18-69 W/O CC	.5260	4.8	3.3	17
190	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.9178	6.1	4.3	21
191	7	SURG	MAJOR PANCREAS, LIVER & SHUNT PROCEDURES	4.4603	22.0	18.1	35
192	7	SURG	MINOR PANCREAS, LIVER & SHUNT PROCEDURES	4.0437	21.7	16.7	34
193	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE >69 &/OR CC	2.8115	18.4	15.7	33
194	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE <70 W/O CC	2.1204	15.0	12.3	25
195	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE >69 AND/OR CC	2.2724	14.6	13.1	30
196	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE <70 W/O CC	1.5974	11.2	10.3	22
197	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE >69 AND/OR CC	1.7055	11.9	10.5	27
198	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE <70 W/O CC	1.1399	8.7	8.0	17
199	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3379	17.4	14.2	31
200	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.6281	15.8	10.9	28
201	7	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.7125	16.1	10.4	27
202	7	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.1665	10.8	7.8	25
203	7	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.0338	10.1	6.9	24
204	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	.9698	8.2	6.5	24
205	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE >69 AND/OR CC	1.0718	9.5	6.7	24
206	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE <70 W/O CC	.7735	7.5	5.0	22
207	7	MED	DISORDERS OF THE BILIARY TRACT AGE >69 AND/OR CC	.7775	7.0	5.4	22
208	7	MED	DISORDERS OF THE BILIARY TRACT AGE <70 W/O CC	.5793	5.2	4.0	16
209	8	SURG	MAJOR JOINT AND LIMB REATTACHMENT PROCEDURES	2.3925	15.8	14.4	31
210	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >69 AND/OR CC	2.0317	16.9	14.6	32

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, ARITHMETIC AND GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 18-69 W/O CC	1.7866	15.0	12.7	30
212	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.6608	9.7	8.3	23
213	8	SURG	AMPUTATIONS FOR MUSCULOSKELETAL SYSTEM & CONN. TISSUE DISORDERS	1.9750	17.1	12.1	29
214	8	SURG	BACK & NECK PROCEDURES AGE >69 AND/OR CC	1.8749	15.6	13.1	30
215	8	SURG	BACK & NECK PROCEDURES AGE <70 W/O CC	1.4275	12.8	10.2	27
216	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.5565	13.7	6.9	26
217	8	SURG	WND DEBRID & SKN GRFT EXC HAND,FOR MUSCSKELETAL & CONN.TISS.DIS	2.3097	18.8	11.2	26
218	8	SURG	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE >69 &/OR CC	1.3797	11.2	8.9	26
219	8	SURG	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 18-69 W/O CC	1.0436	8.1	6.7	22
220	8	SURG •	LOWER EXTREM & HUMER PROC EXC HIP,FOOT,FEMUR AGE 0-17	.9242		5.3	22
221	8	SURG	KNEE PROCEDURES AGE >69 AND/OR CC	1.0141	7.4	5.0	22
222	8	SURG	KNEE PROCEDURES AGE <70 W/O CC	.7262	4.8	3.5	16
223	8	SURG	MAJOR SHOULDER/ELBOW PROC,OR OTHER UPPER EXTREMITY PROC WITH CC	1.2263	8.6	6.6	24
224	8	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.6894	4.9	3.8	14
225	8	SURG	FOOT PROCEDURES	.6552	4.9	3.9	14
226	8	SURG	SOFT TISSUE PROCEDURES AGE >69 AND/OR CC	.8783	7.1	4.9	22
227	8	SURG	SOFT TISSUE PROCEDURES AGE <70 W/O CC	.6573	4.8	3.7	14
228	8	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC WITH CC	.8180	5.2	3.9	16
229	8	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.4995	3.2	2.4	9
230	8	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	1.0156	8.7	5.7	23
231	8	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	.7381	5.4	3.6	18
232	8	SURG	ARTHROSCOPY	.6723	4.6	3.2	15
233	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE >69 &/OR CC	1.3892	11.6	8.2	25
234	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC AGE <70 W/O CC	.9517	7.6	5.4	22
235	8	MED	FRACTURES OF FEMUR	1.4136	17.9	10.1	27
236	8	MED	FRACTURES OF HIP & PELVIS	1.0712	13.1	8.8	26
237	8	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.6049	7.4	5.4	22
238	8	MED	OSTEOMYELITIS	1.6471	15.8	11.1	28
239	8	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN.TISS.MALIGNANCY	.9268	10.6	8.0	25
240	8	MED	CONNECTIVE TISSUE DISORDERS AGE >69 AND/OR CC	.9047	9.5	7.3	24
241	8	MED	CONNECTIVE TISSUE DISORDERS AGE <70 W/O CC	.7463	8.1	6.2	23
242	8	MED	SEPTIC ARTHRITIS	1.4562	13.5	9.7	27
243	8	MED	MEDICAL BACK PROBLEMS	.6840	8.0	6.2	23
244	8	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES AGE >69 AND/OR CC	.6742	7.9	6.1	23
245	8	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES AGE <70 W/O CC	.6400	6.7	5.1	22

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•• DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	8 MED		NON-SPECIFIC ARTHROPATHIES	.5935	6.9	5.4	21
247	8 MED		SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5793	6.3	4.7	21
248	8 MED		TENDONITIS, MYOSITIS & BURSITIS	.5892	6.3	4.8	20
249	8 MED		AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.7875	8.8	5.6	23
250	8 MED		FX,SPRNS,STRNS & DISL OF FOREARM,HAND,FOOT AGE >69 &/OR CC	.5158	5.6	3.8	20
251	8 MED		FX,SPRNS,STRNS & DISL OF FOREARM,HAND,FOOT AGE 18-69 W/O CC	.4003	3.5	2.5	11
252	8 MED	•	FX,SPRNS,STRNS & DISL OF FOREARM,HAND,FOOT AGE 0-17	.3496		1.8	7
253	8 MED		FX,SPRNS,STRNS & DISL OF UPARM,LOWLEG EX FOOT AGE >69 &/OR CC	.6321	7.8	5.4	22
254	8 MED		FX,SPRNS,STRNS & DISL OF UPARM,LOWLEG EX FOOT AGE 18-69 W/O CC	.4929	5.8	4.0	20
255	8 MED	•	FX,SPRNS,STRNS & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4638		2.9	15
256	8 MED		OTHER DIAGNOSES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.6991	7.2	4.9	22
257	9 SURG		TOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR CC	1.0630	8.7	7.8	19
258	9 SURG		TOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O CC	.9696	7.6	6.9	16
259	9 SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR CC	.8605	7.6	4.9	22
260	9 SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O CC	.6659	4.8	3.5	15
261	9 SURG		BREAST PROC FOR NON-MALIG EXCEPT BIOPSY & LOC EXC	.6104	4.1	3.3	11
262	9 SURG		BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.4252	2.8	2.3	6
263	9 SURG		SKIN-GRAFTS &/OR DEBRID FOR SKIN ULCER OR CELLULITIS AGE >69 &/OR	2.4173	22.1	16.1	33
264	9 SURG		SKIN-GRAFTS &/OR DEBRID FOR SKIN ULCER OR CELLULITIS AGE <70 W/O	2.1798	21.7	14.9	32
265	9 SURG		SKIN-GRAFT AND/OR DEBRID EXC FOR SKIN ULCER OR CELLULITIS WITH CC	1.3967	11.6	7.6	25
266	9 SURG		SKIN-GRAFT AND/OR DEBRID EXC FOR SKIN ULCER OR CELLULITIS W/O CC	.7313	6.1	4.0	21
267	9 SURG		PERIANAL & PILONIDAL PROCEDURES	.6360	5.4	4.0	17
268	9 SURG		SKIN,SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.5657	3.9	2.8	12
269	9 SURG		OTHER SKIN, SUBCUT TISS & BREAST O.R. PROC AGE >69 &/OR CC	1.1334	9.6	5.5	23
270	9 SURG		OTHER SKIN, SUBCUT TISS & BREAST O.R. PROC AGE <70 W/O CC	.7622	6.3	3.8	21
271	9 MED		SKIN ULCERS	1.2612	14.1	10.1	27
272	9 MED		MAJOR SKIN DISORDERS AGE >69 AND/OR CC	.8524	9.5	7.2	24
273	9 MED		MAJOR SKIN DISORDERS AGE <70 W/O CC	.7971	9.4	6.5	24
274	9 MED		MALIGNANT BREAST DISORDERS AGE >69 AND/OR CC	1.0367	10.9	7.0	24
275	9 MED		MALIGNANT BREAST DISORDERS AGE <70 W/O CC	.9880	10.4	5.8	23
276	9 MED		NON-MALIGANT BREAST DISORDERS	.5677	5.4	3.4	19
277	9 MED		CELLULITIS AGE >69 AND/OR CC	.8861	9.2	7.3	24
278	9 MED		CELLULITIS AGE 18-69 W/O CC	.7582	7.9	6.2	23
279	9 MED	•	CELLULITIS AGE 0-17	.4739		4.2	13
280	9 MED		TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >69 &/OR CC	.5414	6.4	4.6	22

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 18-69 W/O CC	.4467	4.8	3.4	16
282	9	MED *	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.3424		2.2	9
283	9	MED	MINOR SKIN DISORDERS AGE >69 AND/OR CC	.6365	7.0	5.0	22
284	9	MED	MINOR SKIN DISORDERS AGE <70 W/O CC	.5170	5.3	3.7	18
285	10	SURG	AMPUTATION OF LOWER LIMB FOR ENDOCRINE,NUTRITIONAL&METABOLIC DIS.	3.2719	28.0	21.5	39
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.6727	15.8	13.3	30
287	10	SURG	SKIN GRAFTS & WOUND DEBRIDE FOR ENDOC,NUTRIT & METAB DISORDERS	2.3776	21.5	15.7	33
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.1128	12.4	9.7	27
289	10	SURG	PARATHYROID PROCEDURES	1.3304	8.8	6.9	24
290	10	SURG	THYROID PROCEDURES	.8561	5.9	5.0	14
291	10	SURG	THYROGLOSSAL PROCEDURES	.6072	4.2	3.4	11
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC AGE > 69 &/OR CC	2.3129	16.7	11.3	28
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC AGE <70 W/O CC	1.7960	14.0	8.2	25
294	10	MED	DIABETES AGE > 35	.7454	8.3	6.7	24
295	10	MED	DIABETES AGE 0-35	.7886	6.7	5.0	22
296	10	MED	NUTRITIONAL & MISC. METABOLIC DISORDERS AGE >69 AND/OR CC	.8271	8.3	6.1	23
297	10	MED	NUTRITIONAL & MISC. METABOLIC DISORDERS AGE 18-69 W/O CC	.6984	7.0	4.9	22
298	10	MED	NUTRITIONAL & MISC. METABOLIC DISORDERS AGE 0-17	.7203	5.3	3.3	18
299	10	MED	INBORN ERRORS OF METABOLISM	.8041	7.6	5.3	22
300	10	MED	ENDOCRINE DISORDERS AGE >69 AND/OR CC	.9348	9.2	6.9	24
301	10	MED	ENDOCRINE DISORDERS AGE <70 W/O CC	.6882	6.9	5.1	22
302	11	SURG	KIDNEY TRANSPLANT	4.6267	24.6	21.3	38
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURE FOR NEOPLASM	2.7606	16.6	14.2	31
304	11	SURG	KIDNEY,URETER & MAJ BLDR PROC FOR NON-NEOPL AGE >69 &/OR CC	2.0322	13.5	10.8	28
305	11	SURG	KIDNEY,URETER & MAJ BLDR PROC FOR NON-NEOPL AGE <70 W/O CC	1.4893	10.4	8.4	25
306	11	SURG	PROSTATECTOMY AGE >69 AND/OR CC	1.2593	9.8	8.1	25
307	11	SURG	PROSTATECTOMY AGE <70 W/O CC	.9585	7.7	6.5	19
308	11	SURG	MINOR BLADDER PROCEDURES AGE >69 AND/OR CC	1.1487	8.8	6.1	23
309	11	SURG	MINOR BLADDER PROCEDURES AGE <70 W/O CC	.8644	6.7	4.7	22
310	11	SURG	TRANSURETHRAL PROCEDURES AGE >69 AND/OR CC	.7265	5.6	4.3	17
311	11	SURG	TRANSURETHRAL PROCEDURES AGE <70 W/O CC	.5564	4.1	3.3	11
312	11	SURG	URETHRAL PROCEDURES, AGE >69 AND/OR CC	.7307	5.8	4.4	18
313	11	SURG	URETHRAL PROCEDURES, AGE 18-69 W/O CC	.5804	4.6	3.5	14
314	11	SURG *	URETHRAL PROCEDURES, AGE 0-17	.4323		2.3	11
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.7736	15.3	9.8	27

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.3210	10.0	6.4	23
317	11	MED	ADMIT FOR RENAL DIALYSIS	.4907	3.4	2.3	10
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS AGE >69 AND/OR CC	.9216	8.8	5.5	23
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS AGE <70 W/O CC	.7415	6.6	3.8	21
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >69 AND/OR CC	.8626	8.2	6.5	24
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 18-69 W/O CC	.6750	6.4	5.1	19
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.6996	6.4	5.2	19
323	11	MED	URINARY STONES AGE >69 &/OR CC, &/OR ESW LITHOTRIPSY	.5862	5.1	3.7	17
324	11	MED	URINARY STONES AGE <70 W/O CC	.4096	3.6	2.8	11
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >69 AND/OR CC	.6503	6.5	4.6	22
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 18-69 W/O CC	.5156	4.9	3.5	16
327	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.5511	28.6	3.3	20
328	11	MED	URETHRAL STRICTURE AGE >69 AND/OR CC	.5939	5.4	4.0	18
329	11	MED	URETHRAL STRICTURE AGE 18-69 W/O CC	.4870	4.1	3.0	12
330	11	MED *	URETHRAL STRICTURE AGE 0-17	.2788		1.6	5
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >69 AND/OR CC	.8329	7.6	5.4	22
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 18-69 W/O CC	.6725	6.0	4.1	21
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.7912	5.9	3.7	21
334	12	SURG	MAJOR MALE PELVIC PROCEDURES WITH CC	1.8035	13.5	12.3	28
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.4643	11.9	11.0	23
336	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE >69 AND/OR CC	.9869	7.9	7.0	18
337	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE <70 W/O CC	.7788	6.3	5.8	12
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.8907	7.3	4.9	22
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.5766	4.4	3.4	12
340	12	SURG *	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.4335		2.4	7
341	12	SURG	PENIS PROCEDURES	.9970	6.4	5.3	16
342	12	SURG	CIRCUMCISION AGE >17	.4265	3.0	2.4	8
343	12	SURG *	CIRCUMCISION AGE 0-17	.3788		1.7	4
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.1214	8.3	6.3	23
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIG	.8173	6.5	4.8	22
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE >69 AND/OR CC	.8568	8.5	5.6	23
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE <70 W/O CC	.6441	5.9	3.7	21
348	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE >69 AND/OR CC	.6257	5.6	3.9	19
349	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE <70 W/O CC	.4853	3.9	2.9	12
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6270	5.9	4.8	17

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	STERILIZATION, MALE	.3333	1.9	1.6	5
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5354	4.8	3.3	16
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.3887	17.3	14.8	32
354	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGN AGE >69 OR CC	1.3563	10.3	9.2	22
355	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGN AGE < 70 W/O C	1.0359	8.1	7.6	15
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.8470	7.6	7.0	15
357	13	SURG	UTERINE & ADNEXA PROCEDURES, FOR OVARIAN OR ADNEXAL MALIGNANCY	2.1103	14.5	12.7	30
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY, AGE > 69 OR CC	1.1152	9.0	8.2	18
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY AGE < 70 W/O CC	.9462	7.6	7.1	14
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.6338	5.1	3.6	17
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.6594	4.5	3.1	15
362	13	SURG	ENDOSCOPIC TUBAL INTERRUPTION	.3510	2.0	1.8	4
363	13	SURG	D&C,CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6156	4.9	3.6	15
364	13	SURG	D&C,CONIZATION EXCEPT FOR MALIGNANCY	.3921	2.8	2.2	7
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9085	14.0	10.9	28
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE >69 AND/OR CC	.8624	8.4	4.9	22
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE <70 W/O CC	.5353	4.7	2.8	16
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.7610	7.8	5.9	23
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5496	5.6	3.9	20
370	14	SURG	CESAREAN SECTION WITH CC	1.1063	8.0	7.1	17
371	14	SURG	CESAREAN SECTION W/O CC	.7669	6.2	5.6	12
372	14	MED	VAGINAL DELIVERY WITH COMPLICATING DIAGNOSES	.5942	5.2	4.0	14
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3538	3.1	2.8	7
374	14	SURG	VAGINAL DELIVERY WITH STERILIZATION AND/OR D&C	.5754	3.7	3.3	8
375	14	SURG *	VAGINAL DELIVERY WITH O.R. PROC EXCEPT STERIL AND/OR D&C	.6817		4.4	15
376	14	MED	POSTPARTUM AND POSTABORTION DIAGNOSES W/O O.R. PROCEDURE	.4539	5.0	3.4	16
377	14	SURG	POSTPARTUM AND POSTABORTION DIAGNOSES WITH O.R. PROCEDURE	.7698	4.2	3.1	15
378	14	MED	ECTOPIC PREGNANCY	.7357	5.2	4.3	14
379	14	MED	THREATENED ABORTION	.2409	2.6	1.9	8
380	14	MED	ABORTION W/O D&C	.3792	3.2	2.1	10
381	14	MED	ABORTION WITH D&C, ASPIRATION CURETTAGE, OR HYSTEROTOMY	.3725	2.0	1.7	5
382	14	MED	FALSE LABOR	.1136	1.5	1.2	3
383	14	MED	OTHER ANTEPARTUM DIAGNOSES WITH MEDICAL COMPLICATIONS	.4452	4.8	3.4	16
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.4586	4.4	2.6	16
385	15	*	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	.6811		1.8	14

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15	*	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.6480		17.9	35
387	15	*	PREMATURITY WITH MAJOR PROBLEMS	1.8267		13.3	30
388	15	*	PREMATURITY W/O MAJOR PROBLEMS	1.1571		8.6	26
389	15	*	FULL TERM NEONATE WITH MAJOR PROBLEMS	.5425		4.7	16
390	15	*	NEONATES WITH OTHER SIGNIFICANT PROBLEMS	.3486		3.4	9
391	15	*	NORMAL NEWBORNS	.2218		3.1	7
392	16	SURG	SPLENECTOMY AGE >17	3.2488	17.3	13.7	31
393	16	SURG *	SPLENECTOMY AGE 0-17	1.5206		9.1	26
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD & BLOOD FORMING ORGANS	1.0889	8.0	5.0	22
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7153	6.7	4.7	22
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.2952	1.7	1.3	4
397	16	MED	COAGULATION DISORDERS	.9969	8.4	5.9	23
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS AGE >69 AND/OR CC	.9752	8.1	5.5	23
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS AGE <70 W/O CC	.7247	6.4	4.2	21
400	17	SURG	LYMPHOMA & LEUKEMIA WITH MAJOR O.R. PROCEDURE	3.1139	15.0	12.0	29
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA WITH OTHER O.R. PROC WITH CC	1.9327	14.5	10.2	27
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA WITH OTHER O.R. PROCEDURE W/O CC	1.0514	8.7	5.9	23
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA WITH CC	1.3493	11.0	7.4	24
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.9101	8.6	5.3	22
405	17	MED *	ACUTE LEUKEMIA WITHOUT MAJOR O.R. PROCEDURE AGE 0-17	1.0407		4.9	22
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPLASM W MAJ O.R.PROC & CC	2.5302	16.8	12.9	30
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.7124	13.0	8.6	26
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL WITH OTHER O.R.PROC	1.0500	8.3	5.3	22
409	17	MED	RADIOTHERAPY	.9855	10.9	7.0	24
410	17	MED	CHEMOTHERAPY	.4284	3.1	2.4	9
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.5907	5.9	3.8	21
412	17	MED	HISTORY OF MALIGNANCY WITH ENDOSCOPY	.3388	2.4	1.9	6
413	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE>69 &/OR C.C	1.0455	10.7	6.9	24
414	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE<70 W/O CC	.8983	9.2	5.4	22
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.3287	20.5	14.7	32
416	18	MED	SEPTICEMIA AGE >17	1.6182	11.7	8.3	25
417	18	MED	SEPTICEMIA AGE 0-17	1.1530	7.6	5.4	22
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0022	9.8	7.5	25
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >69 AND/OR CC	.9305	8.4	6.1	23
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE 18-69 W/O CC	.8316	7.5	5.5	23

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.5672	5.8	4.6	16
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.6583	5.2	3.6	18
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.3205	11.0	8.0	25
424	19	SURG	O.R. PROCEDURES WITH PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	2.2113	22.1	15.0	32
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6090	7.6	4.8	22
426	19	MED	DEPRESSIVE NEUROSES	.8332	11.8	7.8	25
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.7018	9.8	6.4	23
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.8513	11.9	7.4	24
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8419	11.0	7.6	25
430	19	MED	PSYCHOSES	1.0760	15.5	10.5	28
431	19	MED	CHILDHOOD MENTAL DISORDERS	.6493	10.4	6.6	24
432	19	MED	OTHER DIAGNOSES OF MENTAL DISORDERS	.6968	8.1	4.9	22
433	20		ALCOHOL/DRUG USE AND INDUCED ORGANIC MENTAL DISORDERS, LEFT AMA	.3906	4.4	2.9	16
434	20		ALC/DRUG ABUSE,INTOX INDUCD MNTL SYN EXC DEPEND &/OR OTH SYMPT TR	.7096	8.2	5.4	22
435	20		ALCOHOL/DRUG DEPENDENCE, DETOX AND/OR OTHER SYMPTOMATIC TREATMENT	.7978	10.2	6.7	24
436	20		ALCOHOL/DRUG DEPENDENCE WITH REHABILITATION THERAPY	1.0166	14.2	9.8	27
437	20		ALCOHOL/DRUG DEPENDENCE, COMBINED REHABILITATION AND DETOX THERAP	1.3273	19.0	14.6	32
438			NO LONGER VALID	.0000			
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6505	14.2	8.0	25
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	2.0421	16.1	9.6	27
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7303	4.6	2.7	16
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE >69 AND/OR CC	1.8143	10.5	6.1	23
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE <70 W/O CC	1.4841	9.4	5.6	23
444	21	MED	MULTIPLE TRAUMA AGE >69 AND/OR CC	.7072	7.7	5.4	22
445	21	MED	MULTIPLE TRAUMA AGE 18-69 W/O CC	.6014	6.2	4.1	21
446	21	MED	* MULTIPLE TRAUMA AGE 0-17	.4796		2.4	10
447	21	MED	ALLERGIC REACTIONS AGE >17	.4470	4.1	2.9	14
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.3470		2.9	9
449	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE >69 AND/OR CC	.6951	6.5	4.7	22
450	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE 18-69 W/O CC	.5422	5.1	3.3	18
451	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE 0-17	.5497	5.0	3.4	20
452	21	MED	COMPLICATIONS OF TREATMENT AGE >69 AND/OR CC	.8079	7.0	4.7	22
453	21	MED	COMPLICATIONS OF TREATMENT AGE <70 W/O CC	.7468	6.5	4.3	21
454	21	MED	OTHER INJURIES, POISONINGS & TOXIC EFF DIAG AGE >69 AND/OR CC	.8099	7.5	4.6	22
455	21	MED	OTHER INJURIES, POISONINGS & TOXIC EFF DIAG AGE <70 W/O CC	.6002	6.0	3.5	21

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DRG	MDC		TITLE	RELATIVE WEIGHTS	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.8155	11.9	5.5	23
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	3.2280	9.5	4.0	21
458	22	SURG	NON-EXTENSIVE BURNS WITH SKIN GRAFTS	3.9450	26.0	18.9	36
459	22	SURG	NON-EXTENSIVE BURNS WITH WOUND DEBRIDEMENT OR OTHER O.R. PROC	3.2658	20.8	13.5	31
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.1592	11.2	7.5	25
461	23	SURG	O.R. PROC WITH DIAGNOSES OF OTHER CONTACT WITH HEALTH SERVICES	1.3548	10.2	5.3	22
462	23	MED	REHABILITATION	2.1404	24.2	18.0	35
463	23	MED	SIGNS & SYMPTOMS WITH CC	.7949	8.0	5.9	23
464	23	MED	SIGNS & SYMPTOMS W/O CC	.6952	7.8	5.0	22
465	23	MED	AFTERCARE WITH HISTORY OF MALIGNANCY AS SECONDARY DX	.2881	2.1	1.7	5
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DX	.4152	4.5	2.7	16
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.7212	7.8	3.9	21
468			UNRELATED OR PROCEDURE	2.4516	17.1	11.7	29
469		**	PDX INVALID AS DISCHARGE DIAGNOSIS	.0000	11.5	7.6	25
470		**	UNGROUPABLE	.0000	12.1	7.1	24
471	8	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCEDURES OF THE LOWER EXTREMI	3.6991	23.5	20.9	38
472	22	SURG	EXTENSIVE BURNS WITH O.R. PROCEDURE	12.3234	35.4	23.1	40
473	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE > 17	2.3275	13.6	7.5	25

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TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	GROUPER MODIFICATION
A. DRG Logic Issues	
In the September 3, 1985 final rule concerning DRG classification changes, removal of coronary artery obstruction (procedure code 360) was deleted from DRG 109 and assigned to DRG 112 when there was no mention of use of extracorporeal circulation. Most such procedures were accomplished through percutaneous methods (PTCA) rather than open surgery	Unique procedure codes have been approved for PTCA and other methods of removing coronary artery obstructions. Therefore, open surgical removal of the obstruction (new procedure code 3603) is reassigned to DRG 109.
Procedure code 8421, thumb reattachment, had been inadvertently omitted from the procedures classified in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue).	Add procedure code 8421 to DRGs 228 and 229.
DRG 385 (Neonates, Died or Transferred) includes transfers to foster care facilities, as well as other facilities, in addition to transfers to acute care hospitals. It is not appropriate to classify normal newborns transferred to foster care facilities, or similar facilities, into DRG 385.	Assign a newborn to DRG 385 only for cases with a reported discharge status of "died" or "transferred to an acute care hospital." Assign a newborn transferred to other than an acute care facility to DRGs 386-391, as appropriate, based on the diagnosis and procedure codes.
DRG 118 contains cases in which the only pacemaker procedure reported is replacement of pulse generator. Cases reporting replacement of both leads and pulse generator are assigned to DRG 117.	We are revising the decision table for MDC 5 by changing the criteria for DRG 118 by deleting the word "only". Cases involving replacement of pacemaker pulse generators and additional pacemaker procedures will now be classified to DRG 118.
B. SURGICAL HIERARCHY	
Cases showing multiple surgical procedures should be classified into the DRG that coincides with the most resource intensive procedure performed. Based upon the current weights:	
In MDC 2 (Diseases and Disorders of the Eye), extraocular procedures except orbit are more resource intensive than primary iris procedures.	1. The revised surgical hierarchy for MDC 2 is a follows: Retinal procedures (DRG 36) Orbital procedures (DRG 37) Intraocular procedures except retina, iris and lens (DRG 42) Lens procedures (DRG 39) Extraocular procedures except orbit (DRGs 40 & 41) Primary iris procedures (DRG 38)

PROBLEM

In MDC 3 (Diseases and Disorders of the Ear, Nose and Throat), cleft lip and palate repair and sinus and mastoid procedures, are more resource intensive than salivary gland procedures except sialoadenectomy.

In MDC 5 (Diseases and Disorders of the Circulatory System), permanent cardiac pacemaker implantations are more resource intensive than vascular procedures.

GROUPER MODIFICATION

2. The revised surgical hierarchy for MDC 3 is as follows:

Major head and neck procedures (DRG 49)
Sialoadenectomy (DRG 50)
Cleft lip and palate repair (DRG 52)
Sinus and mastoid procedures (DRGs 53 & 54)
Salivary gland procedures except sialoadenectomy (DRG 51)
Miscellaneous ear, nose and throat procedures (DRG 55)
Rhinoplasty (DRG 56)
Tonsillectomy and/or adenoidectomy only (DRGs 57 & 58)
Tonsil and adenoid procedures except tonsillectomy and/or adenoidectomy only (DRGs 59 & 60)
Myringotomy with tube insertion (DRGs 61 & 62)
Other ear, nose and throat operating room procedures (DRG 63)

3. The revised surgical hierarchy of MDC 5 is as follows:

Heart transplant (DRG 103)
Cardiac valve procedure with pump (DRGs 104 & 105)
Coronary bypass (DRGs 106 & 107)
Other cardiothoracic procedures (DRGs 108 & 109)
Vascular procedures with pump (DRG 108)
Permanent cardiac pacemaker implantation (DRGs 115 & 116)
Vascular procedures without pump (DRGs 110, 111, & 112)
Amputation except upper limb and toe (DRG 113)
Amputation upper limb and toe (DRG 114)
Cardiac pacemaker replacement and/or revision (DRGs 117 & 118)
Vein ligation and stripping (DRG 119)
Other circulatory system operating room procedures (DRG 120)

VOL 51 ISS 170 SE 3 1986 UMI

PROBLEM	GROUPER MODIFICATION
In MDC 6 (Disease and Disorders of the Digestive System), mouth procedures are more resource intensive than anal and stomal procedures.	4. The revised surgical hierarchy of MDC 6 is as follows: Rectal resection (DRGs 146 & 147) Major small and large bowel procedures (DRGs 148 & 149) Stomach, esophageal and duodenal procedures (DRGs 154 & 155) Peritoneal adhesiolysis (DRGs 150 & 151) Minor small and large bowel procedures (DRGs 152 & 153) Appendectomy (DRGs 164 through 167) Hernia procedures (DRGs 159 through 162) Mouth procedures (DRGs 168 & 169) Anal and stomal procedures (DRGs 157 & 158) Other digestive system operating room procedures (DRG 170)
In MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), the present bottom half of surgical hierarchy does not reflect resource intensity or the revised definitions of DRGs 223, 224, 228, and 229 (see sections C.3. and C.4 of this Table).	5. The revised surgical hierarchy of MDC 8 is as follows: Bilateral or multiple major joint procedures of the lower extremity (DRG 471) Major joint and limb reattachment procedures (DRG 209) Hip and femur procedures except major joint (DRGs 210, 211, and 212) Wound debridement and skin graft except hand (DRG 217)

PROBLEM	GROUPER MODIFICATION
	Amputations (DRG 213) Back and neck procedures (DRGs 214 & 215) Biopsies (DRG 216) Lower extremity and humerus procedures except hip, foot, and femur (DRGs 218 through 220) Upper extremity procedures except humerus and hand (DRGs 223 & 224) Local excision and removal of internal fixation devices (DRGs 230 & 231) Knee procedures (DRGs 221 & 222) Soft tissue procedures (DRGs 226 & 227) Hand procedures (DRGs 228 and 229) Arthroscopy (DRG 232) Foot procedures (DRG 225) Other musculoskeletal system and connective tissue operating room procedures (DRGs 233 & 234)
In MDC 13 (Diseases and Disorders of the Female Reproductive System), the surgical hierarchy is changed because we are reconfiguring this category (see section C.6. of this Table).	6. The revised surgical hierarchy of MDC 13 is as follows: Pelvic eviseration, radical hysterectomy and radical vulvectomy (DRG 353) Uterus and adnexal procedures (DRGs 354, 355, 357, 358, & 359) Reconstruction (DRG 356) Vagina, cervix and vulva (DRG 360) Laparoscopy and incisional tubal interruption (DRG 361) D and C, conization and radio implant (DRG 363 & 364) Endoscopic tubal interruption (DRG 362) Other female reproductive system operating room procedures (DRG 365)
In MDC 21 (Injuries, Poisonings and Toxic Effect of Drugs), wound debridements are more resource intensive than skin grafts.	7. The revised surgical hierarachy of MDC 21 is as follows: Wound debridements (DRG 440) Skin grafts (DRG 439) Hand procedures (DRG 441) Other operating room procedures for injuries (DRGs 442 & 443)

VOL 51 ISS 170 SE 3 1986 UMI

	PROBLEM	GROUPER MODIFICATION
C	Homogeneity	
	In MDC 4, the resources associated with treatment of cases in which the principal diagnosis is bacterial pneumonia, not elsewhere classified (diagnosis code 4828) were found to be significantly higher than other cases in DRG 89, 90 and 91 (simple pneumonia and pleurisy) thereby disrupting the homogeneity of these DRGs.	1. Diagnosis code 4828 is removed from DRGs 89, 90 and 91 and reassigned to DRGs 79, 80 and 81 (Respiratory Infections and Inflammations).
	In MDC 5, thoraco-abdominal aortic aneurysms repair procedures are commonly assigned to DRGs 110 and 111 (Major reconstructive vascular procedures). The resources associated with this procedure are significantly higher than other procedures in these DRGs. Similarly, from a clinical perspective, the procedure is much more complex than other major vascular procedures.	2. Thoraco-abdominal aortic aneurysms repair (procedure codes 38.44 and 38.45 used simultaneously) are assigned to DRGs 108 and 109 since they are more homogeneous in both a clinical sense and from a resource perspective.
	In MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), the construction of DRGs 223-224, upper extremity O.R. procedures, results in the comingling of a broad range of procedures that can be performed on a single body site. There is substantial variability in resources associated with these procedures.	3. DRGs 223-224 are reconfigured to eliminate age considerations from this classification. Major shoulder and elbow joint procedures (codes 8011, 8012, 8123, 8124, 8181, 8183, 8184, and 8185) are grouped to DRG 223. Other upper extremity O.R. procedures are classified into DRG 223 if a CC is present and into DRG 224 if no CC is present.
	Also in MDC 8, the construction of DRGs 228-229, hand O.R. procedures, results in the comingling of a broad range of surgical procedures, with DRG assignment dependent only on the presence or absence of ganglion diagnoses. There is substantial variation in the resources associated with these procedures.	4. DRGs 228-229 are reconfigured to eliminate ganglion diagnoses from consideration in the classification of hand procedures Major wrist, hand and thumb O.R. procedures (codes 8013, 8014, 8171, 8179, 8186, 8187, 8261, and 8269) and other O.R. procedures with CC are grouped to DRG 228. Hand or wrist procedures, other than major joint procedures, without CC comprise DRG 229.
	In MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract), it was found that age or absence of CC had little effect on the resource consumption associated with extracorporeal shock wave lithotripsy (ESWL). Regardless of patient age and the absence of complications or comorbidities, the procedure is similar in resources to those cases classified into DRG 323, urinary Stones, age greater than 69 and/or CC.	5. All cases with a principal diagnosis of urinary stones that were treated with ESWL and no O.R. procedures are assigned to DRG 323, regardless of age and/or CC.

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VOL 51 ISS 170 SE 3 1986 UMI

PROBLEM	GROUPER MODIFICATION
In MDC 13 (Diseases and Disorders of the Female Reproductive System), a high degree of heterogeneity existed.	6. MDC 13 has been reconfigured as follows: • Unilateral vulvectomy (procedure code 7161) and bilateral vulvectomy (procedure code 7162) are removed from DRG 353 and reassigned to DRG 360. • Uterus and adnexa procedures (except for incisional tubal interruption: procedure codes 6631, 6632, 6639, and 6663) are combined with the non-radical hysterectomy procedures (codes 6830, 6840, and 6850) above reconstructive procedures in the surgical hierarchy and sorted into DRGs based on principal diagnosis of ovarian and adnexal malignancy (DRG 357), other malignancy (DRG 354 or 355, depending on age or CC), and non-malignancy (DRG 358 or 359, depending on age or CC). • Incisional tubal interruption procedures are removed from DRG 359 and reassigned to DRG 361.
In MDC 17 (Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms), a high degree of heterogeneity exists in DRGs 401 through 404. Two factors have been identified as contributing to this heterogeneity, that is, comingling of acute leukemia with lymphoma and other leukemia cases and differentiating classification on the basis of age.	7. DRGS 401 through 405 are reconfigured to remove acute leukemia cases. Acute leukemia without major O.R. procedure is classified into 2 DRGs, that is, DRG 405 for patients under age 18 and a new DRG 473 for patients over age 17. Lymphoma/non-acute leukemia without major O.R. procedure is classified based on other O.R. procedures, with and without CC (DRGs 401 and 402), and medical cases, with and without CC (DRGs 403 and 404). Age no longer affects DRG classification of lymphoma/non-acute leukemia.
In MDC 22 (Burns), cases assigned to DRG 457 show a high degree of heterogeneity. One of the factors contributing to this heterogeneity is the comingling of cases requiring surgical procedures with those treated medically.	8. DRG 457, extensive burns, is divided into 2 categories. The new DRG 457 includes only extensive burns without O.R. procedures. A new DRG 472 includes extensive burns with burn-related O.R. procedures.

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PROBLEM	GROUPER MODIFICATION
D. Other Changes	
Medicare coverage has been extended to implantation of automatic cardiac defibrillators under certain circumstances.	1. Implantation of a cardiac defibrillator total system (procedure code 3794) is assigned to DRG 104. Insertion or replacement of defibrillator leads or devices is assigned to DRG 117.
Medicare coverage for implantation of cochlear prosthetic devices will be announced soon.	2. Implantation or replacement of a cochlear prosthetic device (procedure codes 2096, 2097 and 2098) is assigned to DRG 49.

BILLING CODE 4120-03-C

Appendix A—Data Sources Used To Estimate the Market Basket Relative Weights, and Choice of Price Proxies

As discussed above in section III of the preamble, we are rebasing and reweighting the hospital market basket. The market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. Below we list the data sources used to estimate the relative weights in the hospital market basket and our choice of price proxies.

A. Data Sources Used to Estimate Relative Weights

1. Payroll Expenses: Wages and Salaries

Source: American Hospital Association, *Hospital Statistics*, Annual Survey. Chicago, Illinois, 1983.

2. Payroll Expenses: Employee Benefits

Source: Same as above.

3. Professional Fees

Source: Same as above.

This category was split into two components:

- Professional fees, medical; and
- Professional fees, other.

Medical professional fees comprise the larger portion of the professional fees component in the AHA *Annual Survey* of hospital costs. The weight for medical fees was calculated as a residual. The weight for other professional fees was derived from an analysis of the value of input consumption by the hospital industry as published in "The Detailed Input-Output Structure of the U.S. Economy: 1977," compiled by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce.[1] This weight was then subtracted from professional fees, resulting in the weight for professional fees, medical.

4. Utility and Energy Consumption

Source: Same as above.

This item was split into five cost components: (1) Fuel, oil, coal and other fuel; (2) electricity; (3) natural gas; (4) motor gasoline; and (5) water and sewerage. The proportions of each cost were derived from an analysis of the value of input consumption by the hospital industry, as published in "The Detailed Input-Output Structure of the U.S. Economy: 1977," compiled by BEA.[2]

5. Malpractice Insurance

This cost category was derived from an analysis of the median percentage of professional liability insurance expense applied to total hospital insurance costs, as compiled in the *HAS/MONITREND Six-Month National Data Book*, published by the Hospital Administrative Services Division of AHA. The data from the six months ending June 30, 1982, and December 31, 1982, were combined and a weighted average based on bed-size was computed.

6. All Other Products and Services

This residual measures the weights of unattributed products and services included in the residual "Other" category published in the AHA Annual Survey. Shares were derived from an analysis of BEA's hospital input-output matrix and incorporates all noncapital-related categories consumed by the hospital industry, with the exception of utilities and energy consumption, malpractice insurance premiums, salaried and fee-paid other professional remuneration that were delineated above. The following major classifications were derived by aggregating like products and services consumed by the hospital industry:

Other Products

1. Pharmaceuticals
2. Food
   a. Direct Purchases
   b. Indirect Purchases (by dietary contractors)
3. Chemical and Cleaning Products
4. Surgical and Medical Instruments
5. Photographic Supplies
6. Rubber and Plastics
7. Paper Products
8. Apparel
9. Minor Machinery and Equipment
10. Miscellaneous Products

Other Services

1. Business Services
2. Computer and Data Processing Services
3. Transportation and Shipping
4. Telephone
5. Blood Services
6. Postage
7. All Other Services: Labor-Intensive
8. All Other Services: Nonlabor-Intensive

B. Choice of Price Proxies

1. Payroll Expenses (Wages and Salaries)

External Wage Variable (used in Reimbursement Price Index)—Percentage change in weighted average of nine employment cost indexes and the internal wage variable, as described below.

Data Source—Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*.

Frequency—Monthly.

Payroll expenses (wages and salaries) include all expenses defined as payroll by the AHA in their annual survey. Remuneration for salaried physicians, residents, and interns is included in payroll expenses, while remuneration for physicians who bill the hospital for their fees is not. Their fees are included in the cost category "professional fees, medical." For purposes of establishing the 1982 base-year weights, expenditures for trainees and residents and interns are removed.

In order to construct an external occupation-specific measure of hospital wages and salaries, occupational data were derived from a survey by the U.S. Census Bureau Survey of employment by the hospital industry published in the *1980 Census of Population, Subject Report, Occupation of Industry* in May 1984. The survey reported the number of employees in 1980 and the mean 1979 earnings of employees in each of these occupations. Earnings and employment levels were combined to yield total payroll (wages and salaries) costs for nine occupational categories that can be measured by a corresponding Employment Cost Index (ECI). The ECI maintains a series on the level of wages and salaries paid to private industry workers in each of these occupational groups. Total payroll for each occupation in 1979 was then updated to 1982 by using the change in the corresponding ECI. Weights for each category were calculated. By calculating a weighted average of price changes for each occupation, an external wage variable was constructed that associates the employment structure of the hospital industry with a reasonable measure of wage movements.

The following table describes the 1982 labor cost shares for wages and salaries paid employees of the hospital industry per ECI occupational groups.

[1] The Interindustry Economics Division of BEA conducts a survey of the value of input consumption by major industry classification at five-year intervals. The last study was for cost consumption during 1977. The calculated cost of each individual input goods and services supplied to the hospital industry was aged and updated from 1977 to 1982 using appropriate historical price movements for the detailed expense categories. Relative expenditure weights were then computed for the various cost categories.

[2] Ibid.

TABLE.—ECI OCCUPATIONAL GROUPS

	(1982) Wage cost shares (percent)
1 Professional/Technical	57.239
2. Managers/Administrators	7.248
3. Sales Workers	.337
4. Clerical Workers	12.537
5. Craft/Kindred Workers	2.461
6. Operatives, Except Transport	.994
7 Transport Equipment Operatives	.265
8. Nonfarm Workers	196
9. Service Workers	16.723
Total	100.000

2. Employee Benefits

External Price Variable (used in Reimbursement Price Index)—Percentage change in supplements to wages and salaries per employee on nonagricultural payrolls.

Data Sources—For supplements to wages and salaries—U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business.* July issues have details on components. For number of employees on nonagricultural payrolls—U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings.*

Frequency—For supplements to wages and salaries, quarterly; for number of employees on nonagricultural payrolls, monthly.

Employee benefits include employer-paid fringe benefits for Social Security, group insurance, retirement, and other fringe benefits. Supplements to wages and salaries have two major categories of benefits:

- Employer contributions for social insurance; and
- Employer contributions to private pension and welfare funds. Employer contributions for social insurance include Federal, State, and local social insurance funds. These funds are for old-age, survivors, disability, and hospital insurance; State unemployment insurance; workmen's compensation; and other programs. Employer contributions to private pension and welfare funds include pension and profit-sharing, group health insurance, group life insurance, workmen's compensation, and supplemental unemployment. Supplements to wages and salaries include an irrelevant third component, "Other," which was approximately 0.7 percent of the total in 1982.

In calendar year 1982, employee benefits were 15.2 percent of community hospital employee compensation.[3] For total nonfarm, supplements to wages and salaries were 16.0 percent of employee compensation, and for all domestic industries supplements to wages and salaries were 15.9 percent of employee compensation in 1982.[4]

The percent change in supplements to wages and salaries per employee on nonagricultural payrolls provides an external indicator of fringe benefit cost pressure on a per employee basis.

3. Professional Fees: Medical

External Price Variable (used in National Hospital—Percentage change in the charges for physicians' services as measured by the Price Index)—Consumer Price Index for All Urban Consumers (component of medical care services).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly.

The medical fees category primarily represents fees billed to hospitals by physicians for services furnished in hospital ancillary departments such as radiology, pathology and anesthesiology. These services are usually billed under Medicare Part B, and as such are not part of the prospective payment system inpatient market basket. Salaries for staff physicians as well as for interns and residents are not included in this classification. The physician services component of the Consumer Price Index is used to approximate percent changes in fees charged.

It is assumed that the physician specialists working in hospitals experience similar cost pressures in maintaining their practice and, thus, would generally modify their charge structure in line with the rest of the profession.

4. Professional Fees: Other

External Price Variable—Percentage change in the employment cost index for professionals and technicians.

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly.

The cost category "Professional Fees: Other," includes fees for legal, auditing, consulting, and other hospital-specific professional contracting. As such, this cost category reflects salaries as well as expenses for travel, research assistance, clerical assistance, and overhead. The proxy chosen is the Employment Cost Index for Professionals and Technicians.

5. Fuel Oil, Coal, and Other Fuel

External Price Variable—Percentage change in the cost of middle distillates as measured by the Producer Price Index (Commodity code #0573).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly.

Institutions purchase heating fuel in bulk quantities. Accordingly, price movement of this commodity is appropriately measured at the wholesale level. This proxy incorporates middle distillates, to include fuel oil number two and diesel, that are primarily utilized in the heating of plants. Since the cost of refining is included in the price charged for this fuel, use of a proxy reflecting only changes in the cost of crude oil was not considered adequate.

6. Electricity

External Price Variable—Percentage change in the cost of industrial electric power, 500 kw-demand, as measured by the Producer Price Index (Commodity code #0543).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly.

This proxy measures rates charged to industrial users (500 kw-demand). While the hospital industry is composed of both small and large size plants, average hospital usage is much higher than the 40 kw-demand (for commercial users) incorporated in the overall cost of electric power. On an average basis, hospital usage is more typical of industrial 500-kw demand, and thereby is the proxy of choice.

7. Natural Gas

External Price Variable—Percentage change in the cost of gas fuels as measured by the Producer Price Index (Commodity code #0531).

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*

Frequency—Monthly.

This proxy measures both domestic and imported costs of various gas fuels including liquified petroleum gas. Purchases by hospitals are generally from a regional gas company which may utilize all types of gas fuel; hence, a broadly-defined index of costs of gas fuels is appropriate.

8. Motor Gasoline

External Price Variable—Percentage change in the cost of gasoline as

[3] American Hospital Association, *Notional Hospital Panel Survey.*

[4] U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* July 1982.

measured by the Producer Price Index (Commodity code #0571).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

Hospitals maintain a fleet of vehicles, including ambulances, and would generally purchase motor fuel at wholesale quantities. This index is composed of all grades of gasoline (regular, unleaded, and premium) used by different classes of vehicles.

9. Water and Sewage

External Price Variable—Percentage change in the cost of water and sewage maintenance, as measured by the Consumer Price Index for All Urban Consumers.
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

Costs for this combined product and service category are generally for purchases from municipal entities or utility companies. There are no data available on cost to preferred commercial users of these services and, thus, the Consumer Price Index for water and sewage is used to approximate price changes facing hospitals.

10. Malpractice Insurance

External Price Variable—Percentage change in the hospital malpractice insurance component in the AHA Annual Survey (for the period 1966–1976). Set by DHHS in collaboration with AHA from 1977 to 1981. Percentage changes in hospital insurance premium data from the Insurance Services Offices from 1982 through April 1985 and thereafter projected forward.
Data Source—Unpublished data provided to DHHS by AHA, Office of Research Affairs, and unpublished data from the Insurance Services Offices.
Frequency—For AHA and DHHS estimates and data, annually, and for the Insurance Services Offices data, quarterly.

The costs associated with professional liability in hospitals are difficult to quantify in both cross-section and time-series data. Hospitals may self-insure, pay on a claims-made basis, or purchase professional liability insurance for a fixed or changing level of coverage. Hospitals located in the same area may have varying experience ratings; therefore, premium rates may differ significantly. No national or regional data source currently exists that can quantify precisely the many variations in the cost associated with professional liability in hospitals.

11. Pharmaceuticals

External Price Variable—Percentage change in ethical (prescription) preparations as measured by the Producer Price Index (Commodity code #0635).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

Hospitals commonly purchase drugs in bulk quantities and, accordingly, a Producer Price Index is an appropriate measure. The more broadly-based Producer Price Index for drugs and pharmaceuticals was considered. That category consists of medicinal and chemical preparation, prescription and over-the-counter drugs, and other biological products. It also includes many items that are not usually associated with inpatient hospital treatment. On the other hand, prescription drugs predominate the use of drugs and pharmaceuticals used in hospitals, and therefore, the producer price index for ethical drugs is an appropriate proxy.

12. Food: Direct Purchases

External Price Variable—Percentage change in the cost of processed foods and feeds, as measured by the Producer Price Index (Commodity code #02).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

Items included under this variable are purchased directly by those hospitals that independently operate their dietary department or certain segments of their dietary service. Purchases tend to be in bulk quantity for both perishable and nonperishable foodstuffs, and prices generally reflect those available at the wholesale price level. Major groups of processed foods measured under this classification include cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, beverages, and other miscellaneous processed foods. Other ingredients utilized in the course of preparing the culinary output, such as oils, shortening and confectionary sweeteners, are also reflected in this index. Since price movements for raw, unprocessed farm products, such as milk and eggs, tend to parallel the price trends for processed foods, it is appropriate to use this index as a proxy for both categories of food purchases.

13. Food: Contract Services

External Price Variable—Percentage change in the cost of food purchased away from home, as measured by the Consumer Price Index for All Urban Consumers (Commodity code #19).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

Much of the hospital industry employs outside contractors to facilitate dietary preparations and service requirements for hospital patients and personnel. As such, the cost of food products is intermingled with the labor costs and other nonlabor costs (such as napkins, flatware and glassware) incurred by these contractors. Although a consumer price index is utilized for products typically purchased at a bulk rate, this index is considered relevant in that many of the food inputs provided at food service establishments are generally purchased at the wholesale level, especially by the nationwide chains so prevalent in the restaurant industry today. Therefore, the proxy of food purchased away from home tends to mirror the pattern of hospital dietary services provided by outside contractors.

14. Chemical and Cleaning Products

External Price Variable—Percentage change in the cost of industrial chemical products, as measured by the Producer Price Index (Commodity code #061).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

The hospital industry consumes a vast variety of chemical products, ranging from organic and inorganic solutions and compounds to cleaning agents and hygienic paraphernalia. The variable "Industrial Chemicals" was selected as representative of all chemical products and derivatives because the more broad-based index of "Chemicals and Allied Products" subsumes to a great extent the surveyed prices for drugs and pharmaceuticals, and for biological products, each of which is categorized and measured elsewhere in this market basket index. Industrial chemicals are comprised of both organic and inorganic solids, liquids, and gases.

15. Surgical and Medical Equipment

External Price Variable—Percentage change in Medical and Surgical instruments, as measured by the Producer Price Index (Commodity code #1562).

VOL 51 ISS 170 SE 3 1986 UMI

Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

Products and parts used for surgical and medical purposes incorporate a multitude of minor equipment and accessories too low in price to capitalize. This equipment ranges from parts of diagnostic and therapeutic instruments to pacemakers. Since most of these products utilize electronic components, a proxy reflecting a broad diversification of electronic parts and accessories was selected to monitor price movements for this category of costs. Included in the BLS survey under this classification are x-ray equipment and parts, generator parts, batteries and transistors, and a host of intricate mechanisms that are utilized in manufacturing an electronic appliance. Most of these specialized products are generally not available at the consumer level, and the Producer Price Index proxy is, therefore, indicated.

16. Photographic Supplies

External Price Variable—Percentage change in the cost of photographic supplies, as measured by the Producer Price Index (Commodity code #1542).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

A considerable quantity of photographic materials are consumed by the hospital industry, especially in the diagnostic services. Radiology and pathology departments use a variety of photographic apparatus and films. Therefore, it is reasonable to conclude that items under this classification are usually purchased in wholesale lots and changes in prices are best quantified by the Producer Price Index proxy.

17. Rubber and Plastics

External Price Variable—Percentage change in the cost of rubber and plastic products, as measured by the Producer Price Index (Commodity code #07).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

The rubber and plastic product category includes a wide array of miscellaneous rubber and plastic products, including rubber gloves, rubber hoses, and disposable plastic products. Among the items measured by this index are rubber clothing and coated fabrics, plastic packaging, and plastic tableware. Purchases are generally at the wholesale level, and the broad-based Producer Price Index for rubber and plastic products was chosen because it has tended to approximate combined price movements of both components historically.

18. Paper Products

External Price Variable—Weighted average of percentage change in the cost of converted paper and paperboard products, as measured by the Producer Price Index (Commodity code #0915) (59.9 percent), and percentage change in the cost of paper excluding newsprint and packaging paper (Commodity code #091301) (40.1 percent).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

Products measured under this category include printing and office paper goods, disposable garments and tableware, and packaging products. Hospitals are consumers in each of these areas. The proxy chosen encompasses an array of converted paper and paperboard products and various milled paper products, such as tissues and napkins, bags and writing paper.

19. Apparel

External Price Variable—Percentage change in the cost of textile house furnishings, as measured by the Producer Price Index (Commodity code #382).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

Hospitals are major purchasers of various types of textile goods, including uniforms, gowns, sheets, blankets, pillow cases, towels, and washcloths. Though this cost category is entitled "apparel," the majority of it is composed of textile house furnishings. The apparel portion of the Producer Price Index is heavily weighted toward apparel items that are irrelevant to hospital consumption, such as men's suits and women's dresses. The broad-based Producer Price Index for apparel and other fabricated textile products is unsatisfactory because it includes a significant amount of items like camping tents, automotive and other trimmings, etc., as well as the apparel items mentioned above. On the other hand, the Producer Price Index for textile house furnishings is almost entirely composed of items relevant to this hospital cost category (bedding supplies and other textile furnishings, such as towels, washcloths, draperies, and curtains). Since these products tend to be acquired in multiple quantities, the Producer Price Index for textile house furnishings is an appropriate variable.

20. Minor Machinery and Equipment

External Price Variable—Percentage change in the cost of machinery and equipment, as measured by the Producer Price Index (Commodity code #11).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

This category is designed to measure the various types of tools, accessories and parts that are minor in cost and, therefore, not capitalized. A broad-based Producer Price Index for minor machinery and equipment is used to approximate price movements for this cost category.

21. Miscellaneous Products

External Price Variable—Percentage change in the cost of all finished goods, as measured by the Producer Price Index.
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

This residual category is intended to measure a diversified grouping of consumable commodities utilized by hospitals, each of which is considered too small individually to have a measurable impact on price movements within this market basket. Some of these groups are identified as metals and metal products, nonmetallic mineral products, minor transportation equipment and parts, minor furniture and other household durables, photographic equipment, and other consumable products. Since these products are at the finished stage, a Producer Price Index measuring all finished goods is appropriate for such a broad-based grouping.

22. Business Services

External Price Variable—Percentage change in the average hourly earnings of employees engaged in the business services industry, as measured by the Employment and Earnings Index (SIC code #73).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings.*
Frequency—Monthly.

As is true in the majority of the service industry, the price charged for the various services furnished primarily reflects the salaries and wages paid the employees of each particular firm. Other

VOL 51 ISS 170 SE 3 1986 UMI

costs do indeed play a role in setting prices, but the key ingredient, labor-related costs, are predominant. This is also true for the hospital services industry. Therefore, a measurement of changes in average labor costs for a particular service-based industry is an appropriate indicator of the changes in prices charged to clients of those services.

By far, the largest component of services provided to a hospital from external sources, representing over a third of the total, is business services. A broad spectrum of business services purchased by hospitals includes computer programming and data processing, management and consulting services, stenographic services, credit collection, marketing, and numerous other administrative functions. Among the industries surveyed by the Bureau of Labor Statistics and classified under Business Services are those enumerated above, as well as a number of miscellaneous business services such as public relations or protective services. Since computer and data processing services compose a sizable segment on their own, those services were measured and proxied separately from other business services.

23. Computer and Data Processing Services

External Price Variable—Percentage change in the average hourly earnings of employees engaged in firms furnishing computer and data processing services, as measured by the Employment and Earnings Index (SIC code #737).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings.*
Frequency—Monthly.

This rapidly growing sector accounts for over 15 percent of all contracted services purchased by hospitals. Although hospitals may rely on their internal staff for the day-to-day operations of their information processing needs, institutions also often obtain the consulting services of firms specializing in the design and implementation of a computerized data-gathering and monitoring system. In addition, outside firms are often "on call" in facilitating solutions to any technical problems that may arise or to adopt a particular system to additional or modified uses. Changes in average hourly earnings in the computer and data processing services are an appropriate measure of price movements in this highly labor-intensive industry.

24. Transportation and Shipping

External Price Variable—Percentage change in the transportation component of the Consumer Price Index for All Urban Consumers.
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

This cost category encompasses a diverse group of transportation services utilized by the hospital industry. It includes public transportation services that may be used for business travel and private transportation sources such as ambulance travel for hospital patients. The cost of shipping and motor freight fees are applied to many hospital purchases. Each of these types of transportation costs is embodied in the total transportation component of the Consumer Price Index, which measures both private and public transportation modes. Since shipping fees are basically a function of the cost of maintaining the vehicles used to haul freight, this index is considered appropriate in that it also measures the underlying cost of operating a vehicle such as repairs, insurance fees, motor fuels, finance charges, and other incidentals.

25. Telephone

External Price Variable—Percentage change in the cost of telephone services, as measured by the Consumer Price Index for All Urban Consumers.
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

This component includes charges for both local and long-distance phone calls. In this rapidly changing industry, the cost to the phone companies of furnishing worldwide facilities fundamentally stems from a vast capital infrastructure and the most sophisticated, up-to-date equipment. Since labor-related costs are also reflected in telephone fees, the Consumer Price Index for telephones is used as the proxy.

26. Blood Services

External Price Variable—Percentage change in the cost of providing blood and related biologicals, as measured by the Producer Price Index (Commodity code #063711).
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

Blood supplies are often provided to hospitals from external sources, predominantly from public service agencies. In addition to whole blood products, many derivatives are obtained for specific types of operations. These include plasma, platelets, and other blood components. The index in the Producer Price Index measures both human blood and its derivatives, as well as other biological products, and, as such, is an appropriate measure of price movements.

27. Postage

External Price Variable—Percentage change in the cost of postage, as measured by the Consumer Price Index for All Urban Consumers.
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

In recent times, many businesses, including the hospital industry, have begun to make use of alternative mail services for either parcel post or express mail. However, the prevalent cost of postage services still appears to be linked to mail transported by the U.S. Postal Service. As such, the index for postage surveyed by the Consumer Price Index is considered an appropriate measure of price movements for this service.

28. All Other Services: Labor-Intensive

External Price Variable—Percentage change in the average employment cost index for all service workers.
Data Source U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings.*
Frequency—Monthly.

The majority of the residual services not measured before are highly labor-intensive and are grouped together for purposes of using the employment cost index for workers engaged in the services sector as a forecast proxy. Some of these individual services purchased by hospitals include miscellaneous repairs, commercial laundry, refuse systems, and general building services.

29. All Other Services: Nonlabor-Intensive

External Price Variable—Percentage change in the all-items component of the Consumer Price Index for All Urban Consumers.
Data Source—U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Frequency—Monthly.

The remaining residual services were classified as nonlabor-intensive and included such services as insurance (noncapital-related, such as property, automobile, and fidelity), bank service

charges, fees for business and professional associations, and vehicle rentals. In this case, an overall measure for all services covered by the Consumer Price Index is an appropriate indicator.

Appendix B—Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any regulations that would be likely to result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Under the RFA, we treat all hospitals as small entities.

In the proposed rule published June 3, 1986, we included, as Appendix B, an initial combined economic impact and regulatory flexibility analysis. Several provisions proposed in that document met the criteria of E.O. 12291 and would affect a substantial number of small entities.

We also included in that document a regulatory impact and flexibility analysis of the interim final rule published May 6, 1986 (51 FR 16772) to implement provisions of Pub. L. 99-272 related to operation of the prospective payment system during FY 1986. (Due to time constraints, the Director of the Office of Management and Budget waived the requirements of E.O. 12291 for that interim final rule, and the Secretary deferred the preparation of a regulatory flexibility analysis, which is consistent with section 606 of the RFA. We promised in the May 6, 1986 interim final rule to prepare and publish the necessary analyses in conjunction with the proposed rule which was later published on June 3, 1986.)

The discussion below, in combination with the rest of this rule, constitutes a combined final regulatory impact analysis and regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA. In it, we respond to comments received in the initial analyses published on June 3.

B. Changes Occurring Subsequent to Publication of the NPRM

In the June 3, 1986 NPRM we proposed to incorporate capital-related costs in the prospective payment system, under section 1886(a)(4) of the Act, to become effective with costs reporting periods beginning in FY 1987. In the same document, we also proposed to eliminate periodic interim payments for hospitals.

Subsequent to publishing the NPRM, the following events have occurred:

- On July 2, 1986, Pub. L. 99-349 was enacted, which included a provision (section 206) that amended section 1886(a)(4) of the Act to extend the period (through cost reporting periods beginning prior to October 1, 1987) during which capital-related costs must be treated separately from other inpatient hospital operating costs. Therefore, we are not incorporating capital-related costs into the prospective payment system in this final rule. Accordingly, we are not presenting a final impact analysis of the incorporation of capital-related costs into the prospective payment system, nor are we addressing comments regarding our initial analysis of the impact of the capital proposal included in the NPRM.
- Also, since publishing the NPRM we published a final rule on August 15, 1986 (51 FR 29386) that eliminates periodic interim payments for most hospitals. We presented a final impact analysis of that provision in that document, and therefore it will not be dealt with here.

C. Problems of Impact Quantification and Attributing Causality

With each successive iteration in promulgating prospective payment rates and modifications to the system, our analyses of the impact of such changes have increased both in scope and in sophistication. As we have learned how the prospective payment system affects the hospital industry, we have focused our attention and resources on those areas that appear most responsive to the financial incentives offered to providers and practitioners to increase efficiency and improve practice patterns. At the same time, we remain vigilant with respect to the quality of care provided to Medicare patients admitted to prospective payment hospitals.

In addition, we continue to study many aspects of the prospective payment system with the intent of obtaining more adequate data for the purpose of better quantifying the effects of behavioral changes caused by the payment system. Examples of these initiatives include various reports to Congress, as required by section 603 of Pub. L. 98-21 and sections 9113 and 9114 of Pub. L. 99-272. These studies will examine many issues including the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates, the feasibility and desirability of applying the payment methodology to payment by all payors for inpatient hospital services, and the impact of outlier and transfer policies on rural hospitals. We are also required, under section 603(a)(2)(A) of Pub. L. 98-21, to study and report annually to the Congress on the impact of the prospective payment system. In addition to these initiatives, we and others (such as the hospital industry) have undertaken a variety of studies on the effects of the prospective payment system, such as examining selected aspects of hospital management behavior under the prospective payment system, to be able to predict better certain effects and outcomes from the system.

Comment: Although the analysis included in the proposed rule included more impact data than any previous prospective payment regulatory impact analysis, some commenters criticized the analysis for not presenting even more detailed analysis. One commenter even requested that we provide analyses of the effects the proposed changes would have on individual hospitals.

Response: As our analytical capabilities and resources increase, we do present more detailed analyses. However, due to the limitations of our data and methodologies, many of the results we get from our model (which is discussed in section D. of this impact analysis) are reliable only in the aggregate.

To date, all our analytical efforts have been retrospective in nature; that is, they are concerned with examining the historical record in efforts to trace the impact of the prospective payment system through the perceived changes in the behavior of providers and practitioners. As a result, efforts to predict providers' responses to the new initiatives contained in this document take the form of speculations rather than of a rigorous analytic prediction. Only with a substantial increase in resources and data collection above current levels would we be able to attempt to develop a dynamic predictive model of the health care industry. Without vast amounts of data on individual providers and extensive computer modeling based on those data, we are confined to

making general statements based on reasoned judgment as to the likely responses of relatively broad categories of providers. Of necessity our present models are static, and reflect only the specific policy changes and their impact on the variables being measured.

Another limitation of our analytical methodology is the inability to establish definite causal relationships between policy changes and changes in provider behavior. The enormous number of variables at work in the economic environment, introduced both by the prospective payment system and other sources, make it nearly impossible to isolate and measure the effects of a single variable. The difficulty is compounded further by the interactive and stimulative effects of the different variables upon each other. For example, the introduction of the prospective payment system not only had a direct effect on hospital operations, but it also encouraged other third party payors (including Medicaid programs) to set up similar cost control systems. These non-Medicare initiatives also affected hospitals' behavior, and it is now impossible to distinguish the effects of the Medicare prospective payment system from the effects of these other cost control initiatives. In many cases, then, it may be difficult to determine the extent to which the prospective payment system in itself or some other initiative caused the result, or whether two (or more) initiatives caused the result interactively. Further, the prospective payment system itself is interactive and it is sometimes difficult to isolate the effects, within the system, of a particular change of policy or procedure.

Apart from the more easily identifiable initiatives that are affecting the demand side of the health care market, for example, the public and private efforts to control payment for health care services, changes also have been occurring on the supply side. Most notable of these changes is the increase in the supply of physicians, which enhances the competition for patients among providers. There also has been significant growth of facilities furnishing out-of-hospital treatment and of health maintenance organizations (HMOs). In addition, home health services are the fastest growing component of the Medicare program.

In view of the problems we have experienced in quantifying impacts and attributing causality, we believe that the approach we are taking in the specific impact discussions below is the most feasible one. In some cases we have included quantitative estimates of program savings or anticipated changes in payment levels. However, it is not possible to develop a reliable quantitative analysis and comparison of the costs and benefits of all the provisions. We focused on explaining the most significant kinds of interactions and the decisions that affected entities will have to consider.

Comment: One commenter criticized the initial regulatory impact analysis for not adequately explaining certain "unexpected findings". Examples cited included high profit margins for disproportionate share hospitals, and relatively low payments for proprietary and rural hospitals.

Response: As discussed above, it is difficult to be certain why some results happen. We must stress that our model is limited by historical data. Provider behavior changes in the recent past are not yet reflected in the data available to us, and future changes cannot be predicted. When we view a conclusion as speculative, to some extent, we try to qualify it appropriately. Were we not to do so, our analysis would be subject to criticism on another basis. Moreover, our objective in an impact analysis is to assess the probable direct consequences of changes being proposed or issued in final, not to evaluate the overall effects of the prospective payment system or to compare them to cost reimbursement.

Much of the available Medicare program data still reflect patterns and trends of utilization and payment under cost reimbursement. Where it is feasible and appropriate, we have used these data to model and analyze the effects of particular proposals. However, the quantitative estimates given below should be received with a qualified recognition of the limitations of the data on which they are based. Moreover, from October 1, 1985, through April 30, 1988, the prospective payment system was operating under legislative constraints that we had not expected. Further, the implementation of changes required under Pub. L. 99-272 (contained in the May 6, 1986 interim final rule) have made the task of modeling and presentation of the analysis more complex.

D. Basis and Methodology of Estimates

Comment: One commenter stated that it was too difficult to evaluate the validity of our impact results without more information regarding data sources, analytical methodology, and assumptions.

Response: In order to assess the impact of changes to the prospective payment system, we have developed a computerized statistical model of the payment system. The main objective of the regulatory impact analysis is to assess the effects of changes in payment policy on various groups of hospitals. For this reason, statistical modeling of impacts focuses on estimating the effects on payments of changes in the prospective payment formula. No attempt is made to model the subsequent responses of hospitals to the changes. In addition, the model does not incorporate forecasts of case mix or Medicare discharges. In this way, the impact analysis focuses on the impact of the Federal government's decisions, rather than on the impact of the decisions of other parties.

The strength of the model is its ability to simulate Medicare operating payments in considerable detail. In addition to modeling the basic components of PPS payments on an individual hospital basis (based on the historical costs, discharges and case mix of the hospital), the model accounts for special treatment accorded several types of hospitals: Sole community hospitals, rural referral centers, hospitals in metropolitan areas that cross regional boundaries, and new providers. In this regulation, cost per case data from the PPS-1 Medicare cost reports are also used to compute ratios of net Medicare operating revenues (Medicare operating revenue minus Medicare operating cost) to Medicare operating costs.

An attempt is made to include all hospitals in the impact analysis that are expected to receive prospective payment during the period under investigation. For this reason, hospitals in Maryland and New Jersey are omitted, as are New York hospitals that participate in the Rochester area and the Finger Lakes area demonstrations. The chief reason for excluding other hospitals from the analysis is the absence of necessary data. The most common reason for excluding a hospital from the impact analysis is the absence of a PPS-1 cost report. In the tables below we identify the number of hospitals used in each category for developing our impact results.

In order to simulate PPS payments, the following information is required. First, the relevant hospital-specific and Federal payment amounts (or rates) must be known. Determining the appropriate Federal payment amounts requires information on the location of the hospital (the census division and urban or rural status). Second, determining the appropriate wage index to use in adjusting the Federal payment amounts requires additional location information (the MSA for urban hospitals and the State for rural hospitals). The location information just

VOL 51 ISS 170 SE 3 1986 UMI

described, together with case mix and discharge data, is sufficient to simulate basic DRG payment and outlier payments.

Additional data are required to simulate the additional payments for indirect medical education and disproportionate share. Simulation of the payments for indirect medical education requires the resident-to-bed ratio for teaching hospitals. Simulation of disproportionate share payments requires knowledge of bed-size and urban/rural status, as well as estimates of the proportion of a hospital's total inpatient days provided to Medicaid recipients and the proportion of a hospital's Medicare inpatient days provided to Medicare beneficiaries that are eligible for the Supplemental Security Income (SSI) program. Finally, it is useful to know whether special payment rules are applicable, such as those for referral centers, sole community hospitals, etc.

The data used in the simulation model come from a variety of sources. Hospital location is obtained from records of Medicare certification. Case mix and discharge information is obtained from the MEDPAR file that is derived from Medicare patient bills. Hospital-specific rates, resident-to-bed ratios, and special characteristics (for example, sole community hospital status) come from the Provider Specific file that is obtained from the fiscal intermediaries. The SSI percent was obtained by matching MEDPAR records of individual beneficiary bills against the Social Security Administration's SSI eligibility file. Bed size and the percent Medicaid days were taken from the PPS–1 Medicare cost reports.

In general, the best available data are used. Some data items change little or not at all over time (hospital location and the base year hospital-specific rates) and are not regularly revised with more current values. The case mix indexes used in the impact analysis for this final rule have been updated since the proposed rule and are based on the most complete FY 1985 data currently available to us. Also updated is the SSI percent, which is now based on FY 1985 rather than FY 1984 data. Finally, this is the first time that bed-size data from the PPS–1 cost reports have been used.

Because this analysis includes a discussion of the May 6, 1986 interim final rule as well as provisions of this final rule, and because the provisions of Pub. L. 99–272 created certain analytic problems through extension of the transition period (with the Oregon exception) and requirements to restandardize the FY 1987 rates, we have had to consider carefully what baseline we used to assess the relative impacts of the various provisions of this rule. In previous impact analyses, we have simply used projected payments for the fiscal year preceding the year for which we were setting rates as the baseline, and represented the impact of specific provisions relative to the projected percent change in total payments.

As a result of the enactment of Pub. L. 99–272, however, payments for FY 1986 have been made on two distinct bases. Thus, we had a choice: We could use FY 1985 rates (that is, the rates actually paid during the first seven months of FY 1986), or the FY 1986 payment rates (that is, those paid during the period May 1, 1986 through September 30, 1986) as a baseline.

We decided to use the payment parameters in effect for the seven-month period from October 1, 1985 to April 30, 1986 as our initial baseline. Because of statutory postponements in implementing the September 3, 1985 rule, the rates paid during the first seven months of FY 1986 reflect the FY 1985 payment rates. Thus, the following discussion of the provisions of the interim final rule published May 6, 1986 compares payments for the baseline period to the May to September FY 1986 payments. The FY 1986 payments in effect from May through September 1986 are then used as the baseline for FY 1987 impact assessments of the provisions of this rule. To ensure comparability, we assumed that all payment periods and payment parameters used in the comparisons were in effect for a full twelve months.

Generally, to assess the effect of a specific provision, we have treated all hospitals in our database as if they had the same cost reporting period; that is, a cost reporting period coinciding with the Federal fiscal year. In some instances, however, we want to reflect the effects of hospitals' phasing in on different schedules according to their actual cost reporting periods. Those instances, such as the estimates of payment per case, are clearly identified below.

E. Hospitals Included In and Excluded From the Prospective Payment System

Since October 1983, hospitals operating under prospective payment have been phasing into the system according to their own accounting year starting dates. Further, since September 1985, both Massachusetts and New York have discontinued their waivers, and hospitals in those States have entered the prospective payment system. Based on the most recent data available, nearly 5700 hospitals (84 percent of all Medicare-participating hospitals) were operating under the prospective payment system. Only 169 hospitals remain excluded from the prospective payment system because of waivers (New Jersey and Maryland) or demonstrations (Rochester and Finger Lakes regions of New York State). Table I below shows the number of prospective payment hospitals in each payment category; that is, by urban/rural status by census division (hospitals in waiver States are excluded):

TABLE I.—NUMBER OF PROSPECTIVE PAYMENT HOSPITALS BY PAYMENT CELL [1]

[August 1986]

All Hospitals	5,658
Urban	2,892
New England	185
Mid Atlantic	370
South Atlantic	418
East North Central	526
East South Central	170
West North Central	201
West South Central	373
Mountain	118
Pacific	531
Rural	2,766
New England	62
Mid Atlantic	103
South Atlantic	358
East North Central	375
East South Central	330
West North Central	612
West South Central	870
Mountain	281
Pacific	175

[1] The number of hospitals included here as being under the prospective payment system may be lower than reported in other documents. We have found errors as a result of improperly assigned short-term care provider numbers to providers that should be excluded from the prospective payment system.

As of July 26, 1986, 732 Medicare hospitals were excluded from the prospective payment system and continue to be paid on the basis of reasonable cost reimbursement, subject to hospital-specific limits on the rate of their cost increases. Examples of these hospitals include psychiatric, rehabilitation, alcohol/drug, long-term, and children's hospitals. Another 1,702 psychiatric, rehabilitation, and alcohol/drug units, in hospitals included in the prospective payment system, are excluded from prospective payment as of the same date. These units, too, are paid on the basis of reasonable cost reimbursement, subject to hospital-specific limits on the rate of their cost increases. Of these excluded hospitals and units, 42 hospitals and 38 units are located in the waiver States.

More than four hundred hospitals are being paid on various special bases under the prospective payment system, as required by statute. They include hospitals accorded special treatment as described in our regulations at 42 CFR Part 412, Subpart G, such as sole community hospitals, and cancer

treatment and research hospitals. Also included in this group receiving payment on special bases are referral centers and hospitals that previously allowed extensive direct billing under Part B of Medicare.

F. Implementation of Certain Provisions of Pub. L. 99–272

As discussed earlier, on May 6, 1986, we published an interim final rule with comment period (51 FR 16772) implementing certain provisions of Pub. L. 99–272 that affected operation of the prospective payment system during FY 1986, as well as subsequent years. Comments received on that rule are responded to in section II of the preamble of this final rule. Although these statutory provisions generally afford us little administrative discretion, we have prepared a final analysis of the impact of these provisions. The provisions of the May 6, 1986 interim final rule are discussed in section II of the preamble of this final rule.

We received no substantive comments with respect to our initial analysis of these provisions. Thus, as in the NPRM, we have examined both the separate effects of the major provisions on selected categories of hospitals, and the combined effects of these provisions. The comparisons we made are based on the percent change in estimated annualized total payments for the periods October 1, 1985 to April 30, 1986, and May 1, 1986 to September 30, 1986. Table II, below, shows the comparative effect of implementation of certain provisions of Pub. L. 99–272, assuming that the provisions would be effective for all hospitals at the commencement of the Federal fiscal year. The results of this final analysis reflect a more complete hospital database of 5,391 hospitals compared to 4,642 hospitals used for the initial analysis. As a result of the more complete data available for this final analysis Table II shows a greater increase in payment amounts attributable to the changes mandated under Pub. L. 99–272 than were presented in the initial analysis. Nationally, payments are now estimated to increase 1.33 percent as a result of changes instituted by Pub. L. 99–272, compared to a 0.9 percent increase estimated in the initial analysis. The increase for the percentage change in payments over the base period is generally reflected across hospital payment cells and most hospital categories. The most notable exception is disproportionate share hospitals. The average percentage increase in payments for all categories of disproportionate share hospitals is estimated to be lower in our final analysis than in the initial analysis. Again, this results from more complete Medicaid data for these hospitals, which permitted us to include more hospitals in our impact database. Nonetheless, our impact database probably does not include all the hospitals that will qualify for these payments. We expect between 1100 and 1200 hospitals to qualify, about 200 of them being rural and the rest urban.

Note that the column titled "Total Combined Effects" reflects the use of the HCFA survey-based wage index and the statutory 0.50 percent increase to the FY 1986 standardized amounts and hospital-specific rates, as well as all the factors included in the separately identified columns.

BILLING CODE 4120-03-M

VOL 51 ISS 170 SE 3 1986 UMI

TABLE II-ESTIMATED IMPACT OF PUB. L. 99-272 REVISIONS TO OPERATING COST PAYMENTS FOR THE PERIOD MAY 1, 1986 TO SEPTEMBER 30, 1986, COMPARED TO OCTOBER 1, 1985 TO APRIL 30, 1986 PAYMENTS BASED ON FY 1985 PAYMENT PARAMETERS

	Number in Database	Reduction in Teaching Adjustment Factor	Additional Payments to Disproportionate Share Hospitals	Change in Blend (55/45)	Revised Outlier Criteria[1]	Total Combined Effects[2]
All Hospitals	5391	-1.28	0.94	0.16	1.05	1.35
Urban by Region	2749	-1.49	1.10	0.18	1.15	1.48
New England	184	-2.04	0.59	0.27	1.76	1.61
Mid Atlantic	321	-2.42	1.47	0.46	2.37	2.40
South Atlantic	402	-1.24	1.09	0.20	0.93	0.95
East North Central	513	-1.75	0.86	0.17	1.24	0.75
East South Central	165	-0.84	1.54	0.08	0.92	1.72
West North Central	197	-1.35	0.60	-0.08	0.87	0.87
West South Central	369	-0.83	1.20	-0.09	0.77	1.13
Mountain	100	-1.17	0.44	0.04	0.61	0.34
Pacific	498	-1.06	1.49	0.21[3]	0.44	2.69
Rural by Region	2642	-0.18	0.08	0.05	0.50	0.65
New England	56	-0.97	0.00	0.17	0.74	-0.66
Mid Atlantic	91	-0.69	0.01	0.31	1.43	-0.18
South Atlantic	336	-0.33	0.14	0.18	0.58	0.27
East North Central	365	-0.07	0.02	-0.00	0.50	0.34
East South Central	326	-0.03	0.21	0.02	0.52	1.12
West North Central	596	-0.05	0.02	-0.21	0.33	0.70
West South Central	452	-0.02	0.15	0.04	0.31	1.02
Mountain	256	-0.01	0.02	0.07	0.17	0.84
Pacific	164	-0.00	0.03	0.36[3]	0.03	2.38
Urban Hospitals	2749	-1.49	1.10	0.18	1.15	1.48
0-99 Beds	688	-0.10	0.15	0.58	0.49	1.99
100-404 Beds	1655	-0.82	1.15	0.10	0.94	2.15
405-684 Beds	333	-2.27	1.09	0.24	1.38	0.63
685 + Beds	73	-3.65	1.30	0.24	2.00	-0.05
Rural Hospitals	2642	-0.18	0.08	0.06	0.50	0.65
0-99 Beds	2045	-0.02	0.14	0.05	0.33	0.84
100-169 Beds	399	-0.02	0.05	-0.07	0.45	0.62
170 + Beds	198	-0.56	0.02	0.21	0.80	0.38

1/ These criteria were set forth in the September 3, 1985 final rule, but did not go into effect until May 1, 1986.

2/ This column includes the combined effects of all the previous columns, plus the statutory 0.5 percent increase to both standardized amounts and hospital-specific rates, plus the effect of implementation of the HCFA survey-based gross wage index.

3/ Oregon alone would receive payments based on 75 percent of the Federal rate and 25 percent of the hospital-specific rate.

TABLE II-ESTIMATED IMPACT OF PUB. L. 99-272 REVISIONS TO OPERATING COST PAYMENTS FOR THE PERIOD MAY 1, 1986 TO SEPTEMBER 30, 1986, COMPARED TO OCTOBER 1, 1985 TO APRIL 30, 1986 PAYMENTS BASED ON FY 1985 PAYMENT PARAMETERS

	Number in Database	Reduction in Teaching Adjustment Factor	Additional Payments to Disproportionate Share Hospitals	Change in Blend (55/45)	Revised Outlier Criteria[1/]	Total Combined Effects[2/]
Teaching Status						
Non-Teaching	4414	0.00	0.61	0.10	0.68	1.92
Resident/Bed Ratio Less than 0.25	808	-1.55	0.97	0.12	1.27	1.34
Resident/Bed Ratio 0.25 or Greater	169	-6.31	2.33	0.55	2.02	-1.30
Disproportionate Share Hospitals (DSH)						
No Additional Payments	4281	-0.78	0.03	0.16	0.91	0.75
Urban DSH 100 Beds or More	833	-2.48	3.01	0.14	1.40	2.68
Urban DSH fewer than 100 Beds	71	-0.15	2.03	0.60	0.62	3.48
Rural DSH	206	-0.01	1.49	0.28	0.38	2.21
Other Special Status						
Sole Community Hospital (SCHs)	338	-0.03	0.08	0.00	0.18	0.63
Rural Referral Centers (RRCs)	151	-0.68	0.03	0.63	0.72	0.78
Both SCH and RRC	16	-0.12	0.00	0.00	0.30	0.90
Rural with fewer than 50 Beds	1246	-0.03	0.17	0.33	0.33	1.28
Type of Ownership						
Voluntary	3242	-1.30	0.85	0.14	1.13	1.33
Proprietary	777	-0.23	0.80	-0.00	0.51	1.58
Government	1350	-1.94	1.58	0.39	1.03	1.32

1/ These criteria were set forth in the September 3, 1985 final rule, but did not go into effect until May 1, 1986.

2/ This column includes the combined effects of all the previous columns, plus the statutory 0.5 percent increase to both standardized amounts and hospital-specific rates, plus the effect of implementation of the HCFA survey-based gross wage index.

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We also analyzed the effect that these changes, as a whole, made on the average payment per case for operating costs. To do this, we modeled each hospital's total operating payments according to its own fiscal year. These payments again were compared for two annualized periods: the baseline used the FY 1985 payment parameters in effect for the 7-month period from October 1985 through April 1986, and the comparison period used the payment parameters established under Pub. L. 99–272. Payments included additional payment for the costs of indirect medical education and disproportionate share payments, but excluded payments for capital-related costs, the direct costs of medical education, and other pass-through costs. The results are shown in Table IV, in section J. of this appendix, along with projected average payments per case for FY 1987.

In the June 3, 1986 initial analysis, we projected savings as a result of modifying the calculation for determining payments for indirect medical education costs as a result of Pub. L. 99–272. We are not revising those estimates.

G. Referral Center Criteria

There are currently 170 rural referral centers and one urban referral center. Those that qualified for referral center status in FY 1984 must requalify in FY 1987, for a new three-year period to begin in FY 1988, or lose their referral center status. The bulk of referral centers qualified during FY 1985, and will not have to requalify for a new three-year period until FY 1988.

The criteria as revised in this final rule may enable some hospitals that could not meet the earlier discharge criteria to qualify in FY 1987. Under the specific criteria set forth in section 9106(a) of Pub. L. 99–272, we expect a small number of osteopathic hospitals to qualify, perhaps as few as two. Since hospitals in Massachusetts and New York State entered the prospective payment system only recently, we also expect some additional hospitals from those States to qualify for referral center status.

The initial qualification criteria for referral centers that qualified in FY 1984 included only hospitals with 500 beds or more. For the most part, those centers have met the qualifying criteria for at least two years since FY 1984, and should requalify in FY 1987. The revision to the discharge criteria minimizes the possibility that a hospital will fail to requalify because of that criterion. A hospital would have to have qualified on the basis of the 6000 discharges criterion (or the regional urban median) and have experienced a greater than average decline in discharges to fail to requalify solely on the basis of that criterion.

H. Excluded Hospitals and Units

1. Target Amount Updates

As noted above, 732 Medicare hospitals and 1,702 units in hospitals included in the prospective payment system currently are paid on a reasonable cost basis subject to the rate-of-increase ceiling requirement of §405.463. For cost reporting periods beginning in FY 1987, these hospitals will have a target amount 0.5 percent greater than the target amounts for their previous cost reporting period. That is, the FY 1986 cost reporting period target amount, which was equal to the FY 1985 target amount increased by five-twenty-fourths of a percent in accordance with section 9101 of Pub. L. 99–272, will be multiplied by 1.005.

The effect this will have on affected hospitals and units will vary depending on each one's existing relationship of costs per discharge to its target amount, and the relative gains in productivity (efficiency) the hospital or unit is able to achieve. For hospitals and units that achieve per discharge costs lower than their target amounts, the primary impact will be to affect the level of additional payments made under §405.463(d)(2) proportional to the hospital's increase or decrease in per-discharge costs.

In general, we expect the increased ceiling on payments will maintain existing incentives for economy and efficiency experienced by excluded hospitals and units. We do not believe that these limits will achieve incentives comparable to those produced by the prospective payment system. Therefore, we will, as required under the law, continue to study means for establishing an appropriate prospective payment methodology for those hospitals and units that are currently excluded from the prospective payment system. Nonetheless, we believe the target amount level will ensure that services furnished to beneficiaries by affected hospitals and units will, for the most part, be paid for at a level no higher than necessary for the efficient delivery of needed health services.

2. Alcohol/Drug Hospitals and Units

In the September 3, 1985 final rule we extended the exclusion of alcohol/drug hospitals and units from the prospective payment system for an additional year (50 FR 35669). As of July 1986, there were 26 excluded alcohol/drug hospitals and 359 excluded units in hospitals included in the prospective payment system. In June 1985, there were 23 hospitals and 317 units. Thus, there has been some increase in numbers over the additional extension period.

Our study of the potential effects of the new DRGs for these services is incomplete. Thus, we cannot predict the effect of bringing these hospitals and units under the prospective payment system.

I. DRG Classificotion Changes

The GROUPER changes contained in this document reflect both the changes proposed on March 13, 1986 in the Federal Register and finalized on June 3, (51 FR 20192) and changes proposed June 3 and finalized in this document in response to recommendations made by ProPAC. We do not expect these GROUPER modifications to have a significant impact on any particular category of hospitals, except possibly some of those hospitals specializing in treating cases that fall into affected DRGs or MDCs.

Changes in GROUPER classification, logic and surgical hierarchy are intended to foster greater homogeneity within each DRG, to ensure that the method of assigning cases to a DRG or MDC is such that payment for the average case does not systematically advantage one group of hospitals at the expense of another, or to ensure that DRG assignment accurately reflects appropriate resource consumption. Because we evaluate DRG classification changes from the perspective of their ability to better explain variation in resource use across cases, and because most DRGs are defined broadly enough so that there is little concentration of cases in a given DRG among hospitals, we do not believe that an analysis of the economic impact of our classification changes would reveal anything other than coincidental effects, particularly given the aggregate level of hospital payments at which we are capable of evaluating economic impacts.

J. Updoted Payment Rates and Resulting FY 1987 Payment Amounts

The addendum to this rule, which is printed after the text of the regulation changes and which precedes this appendix, sets forth the methodology for computation of FY 1987 standardized amounts and includes tables of the Federal national and regional rates, DRG relative weights, and outlier thresholds. In this section we present an analysis of the impact of those payment rates and of the combined effects of the various provisions incorporated into those rates.

Many of the changes to hospital prospective payments for FY 1987 result

from changes required under sections 1886 (d) and (e) of the Act, as amended by sections 9101 through 9105 of Pub. L. 99–272. The following changes are required under the statute as currently amended:

• Effective with cost reporting periods beginning in FY 1987, except for hospitals located in Oregon and for sole community hospitals, hospital prospective payment rates will be the sum of 75 percent of the Federal rates and 25 percent of a hospital-specific rate (section 1886(d)(1)(C) of the Act);

• For discharges occurring on or after October 1, 1986, (with the exception of discharges from sole community hospitals and hospitals located in Oregon), the Federal portion of the prospective payment rates will be comprised of 50 percent of the national standardized amount and 50 percent of the appropriate regional standardized amounts, per section 1886(d)(1)(D) of the Act;

• The hospital costs used to establish the rates will be restandardized to reflect the indirect costs of medical education as measured by the revised indirect medical education adjustment factor and to reflect payment adjustments to disproportionate share hospitals per sections 1886(d)(2)(C)(i) and (iv) of the Act as amended by sections 9104(b) and 9105(b) of Pub. L. 99–272; and

• The standardized amounts will be adjusted, by the indirect medical education payment equality factor, to reflect the savings from the change in the indirect medical education adjustment, as required under section 1886(d)(3)(C)(iii) of the Act, as added by section 9104(b) of Pub. L. 99–272.

• Consistent with section 9202(d) of Pub. L. 99–272, the regional adjusted DRG prospective rate for the region in which a State has terminated its waiver from the prospective payment system effective with cost reporting periods beginning on or after January 1, 1986 may be adjusted to reflect a revised cost allocation sequence for teaching hospitals located within the State. The provisions also allow for a corresponding adjustment to be made to the hospital specific portion of the rate for any hospital that elects to change its allocation sequence. Because only teaching hospitals in New York State had used an allocation sequence differing from the Medicare sequence, the rates for the Mid Atlantic region are the only ones affected by this provision of the law.

In addition to reflecting changes required under the Act, the hospital payment rates reflect changes we initiated, some as a result of changes in the industry, in response to the prospective payment system and other influences, some as a result of more accurate data. We are proposing the following additional changes under general authority granted the Secretary in the prospective payment statute:

• A 0.5 percent update factor for both the Federal and hospital-specific rates (See section II.A.3.g. of the Addendum);

• A revised and rebased market basket, which results in different weights for the labor and non-labor components of the market basket (see section III of the preamble for a detailed discussion); and

• The incorporation of the HCFA gross wage index into the restandardization of the Federal amounts and for computing the prospective payment rates (See section II.A.1.a. of the addendum).

Table III below, replicates the same analysis that was presented in the initial impact analysis. The major differences, however, between this final analysis and the initial one are as follows:

• We have more complete data for the hospital data sets used in computing the standardized amounts and for computing payments to disproportionate share hospitals. In the initial impact analysis we had usable data from 4,673 hospitals. We now have data for 5,391 hospitals.

• The effect of the change in the labor/nonlabor portions of the market basket reflects the latest reweighting of the market basket that was performed since the NPRM, which increases the nonlabor portion even more.

• In addition to including the 0.5 percent update factor, the column headed "Total Combined Effects" also reflects the special adjustment for New York teaching hospitals and the latest HCFA wage index, which has been revised to reflect the latest MSA redesignations and corrections to the wage index values for certain geographic areas.

BILLING CODE 4120-03-M

VOL 51 ISS 170 SE 3 1986 UMI

TABLE III--ESTIMATED IMPACT ON PAYMENTS FOR OPERATING COSTS
FOR FY 1987 COMPARED TO FY 1986 RATES FOR THE PERIOD MAY 1, 1986 TO SEPTEMBER 30, 1986

	Number in Database	New Labor/ Nonlabor Portion	New Standardized Amounts (Federal Rates)[1]	Combined Effect of Portion & Rate Changes[2]	Blend Change (75/25)	Total Combined Effects[3]
All Hospitals	5391	0.01	-0.81	-0.77	0.83	0.27
Urban by Region	2749	-0.01	-0.90	-0.91	0.95	0.20
New England	184	-0.02	-0.30	-0.31	1.00	0.63
Mid Atlantic[4]	321	-0.11	-1.10	-1.20	2.99	1.78[5]
South Atlantic	402	0.10	-0.95	-0.84	0.89	0.42
East North Central	513	-0.01	-0.69	-0.69	-0.35	-0.87
East South Central	165	0.08	-1.30	-1.20	2.06	1.28
West North Central	197	0.01	-0.49	-0.46	0.30	-0.03
West South Central	369	0.07	-1.00	-0.95	0.31	-0.32
Mountain	100	-0.02	-0.44	-0.43	0.95	0.66
Pacific	498	-0.11	-1.30	-1.40	1.07[4]	0.38
Rural by Region	2642	0.16	-0.31	-0.02	0.17	0.64
New England	56	0.12	-0.09	0.05	-0.72	-0.25
Mid Atlantic[4]	91	0.12	-0.29	-0.00	-0.73	-0.34[5]
South Atlantic	336	0.20	-0.42	-0.16	0.34	0.69
East North Central	365	0.18	-0.21	0.51	-0.86	-0.03
East South Central	326	0.20	-0.58	-0.33	0.55	1.01
West North Central	596	0.13	-0.12	0.06	-0.05	0.60
West South Central	452	0.18	-0.40	-0.17	1.12	1.54
Mountain	256	0.09	-0.12	-0.00	0.78	1.21
Pacific	164	0.02	-0.45	-0.45	1.27[4]	1.02
Urban Hospitals	2749	-0.01	-0.90	-0.91	0.95	0.20
0-99 Beds	688	0.04	-1.00	-0.99	2.46	1.70
100-404 Beds	1655	0.00	-0.90	-0.90	0.91	0.16
405-684 Beds	333	-0.01	-0.88	-0.89	0.82	0.12
685 + Beds	73	-0.14	-0.86	-0.99	0.77	0.13

1/ This column shows the combined effects of restandardization of base year cost data and adjustment of the standardized amounts by the indirect medical education payment equality factor.

2/ This column shows the combined effects of the previous two columns.

3/ This column includes the effects of the 0.5 percent update factor, application of the most recent wage index values to the most recent geographic area designations, and assumes that outlier criteria remain unchanged.

4/ Oregon alone would receive payments based on 100 percent of the Federal national rate.

5/ The Federal regional rates for the Mid-Atlantic region reflect the adjustment of base year costs to recognize the effects of a revised sequence of cost allocation for certain teaching hospitals. This change and the corresponding effects on hospital-specific rates and payments for the indirect costs of medical education are reflected in the projected payments for hospitals in that region.

TABLE III--ESTIMATED IMPACT ON PAYMENTS FOR OPERATING COSTS
FOR FY 1987 COMPARED TO FY 1986 RATES FOR THE PERIOD MAY 1, 1986 TO SEPTEMBER 30, 1986

	Number in Database	New Labor/ Nonlabor Portion	New Standardized Amounts (Federal Rates)[1/]	Combined Effect of Portion & Rate Changes[2/]	Blend Change (75/25)	Total Combined Effects[3/]
Rural Hospitals	2642	0.16	-0.31	-0.02	0.17	0.64
0-99 Beds	2045	0.02	-0.14	0.05	0.45	1.01
100-169 Beds	399	0.14	-0.30	-0.01	-0.48	-0.02
170 + Beds	198	0.37	-0.59	-0.13	0.38	0.71
Teaching Status						
Non-Teaching	4414	0.06	-0.76	-0.66	0.82	0.44
Resident/Bed Ratio						
Less than 0.25	808	-0.01	-0.85	-0.85	0.67	-0.02
Resident/Bed Ratio						
0.25 or Greater	169	-0.15	-0.87	-1.00	1.39	0.42
Disproportionate Share Hospitals (DSH)						
No Additional Payments	4281	0.03	-0.74	-0.67	0.54	0.05
Urban DSH 100						
Beds or More	833	-0.03	-0.97	-1.00	1.43	0.67
Urban DSH fewer than						
100 Beds	71	0.03	-1.20	-1.20	3.42	3.35
Rural DSH	206	0.08	-0.29	-0.15	1.65	2.76
Other Special Status						
Sole Community Hospital						
(SCHs)	338	0.01	-0.11	-0.07	0.00	0.43
Rural Referral Centers						
(RRCs)	151	0.60	-0.91	-0.31	2.16	2.24
Both SCH and RRC	16	0.23	-0.28	-0.05	0.00	0.44
Rural fewer than 50						
Beds	1246	0.01	-0.13	0.02	1.74	2.28
Type of Ownership						
Voluntary	3242	0.01	-0.79	-0.76	0.69	0.11
Proprietary	777	0.00	-0.96	-0.94	0.60	-0.07
Government	1350	0.06	-0.79	-0.69	1.87	1.47

1/ This column shows the combined effects of restandardization of base year cost data and adjustment of the standardized amounts by the indirect medical education payment equality factor.

2/ This column shows the combined effects of the previous two columns.

3/ This column includes the effects of the 0.5 percent update factor, application of the most recent wage index values to the most recent geographic area designations, and assumes that outlier criteria remain unchanged.

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The update factor of 0.5 percent, applied to both the Federal standardized amounts and the hospital-specific portion, results in an aggregate national increase of 0.26 percent in operating payments. In the aggregate, hospitals in rural areas will receive a higher percentage increase in payments than hospitals located in urban areas, although the average payment per case for a rural hospital is about 57 percent of the average payment per case for an urban hospital (see Table IV below). Among rural hospitals, those located in the West South Central census division will receive the greatest percentage increase in payments. Among urban hospitals, those located in the Mid-Atlantic census division will receive the greatest percentage increase, as well as the largest increase of all other census divisions, be they urban or rural.

Comment: We received one comment stating that we failed to analyze the impact of the combined effects of the new HCFA wage index and the reweighted market basket. The commenter contended that we failed to take into account the effect of the reweighted market basket on the wage index and the interaction between the new market basket and the decline in admissions to hospitals that has occurred since the beginning of the prospective payment system. The commenter maintains that unless we recognize and adjust the market basket for the resultant payment reductions, funds will be inappropriately removed from the system. For this reason the commenter suggested that we prepare a separate impact analysis of the changes in the market basket that reflects specifically the changes in discharges.

Response: We disagree with the commenter both with respect to the need for a separate impact analysis of the reweighted market basket beyond what we included in the NPRM and with respect to including the effects of declining hospital admissions on hospital payments. We discussed extensively the effects of implementing the wage index based on HCFA data in the June 10, 1985 NPRM (50 FR 24366) and in the September 3, 1985 final rule (50 FR 35646). We see no need to reexamine those effects in this document.

We did not consider the effects of declining admissions because, being a variable that is essentially exogenous to the prospective payment system, we treat it as a constant factor that should remain fixed regardless of our policy on weighting the market basket. Our primary concern in preparing an impact analysis is to identify and measure only the changes in those variables that are affected by our policy decisions, so as to enable the reader to assess what could be expected as a result of our actions. Since we believe that our decision to reweight the market basket will not affect hospital admission rates one way or the other, we see no point in measuring that variable. The major effect on payments of reweighting the market basket is the result of assigning a smaller portion of the standardized amount to the labor component. This will lower the average payment per case to hospitals with above-average wage index values (that is, wage index values above 1.000) and slightly increase payments for those hospitals with below-average labor costs (wage index values below 1.000). To the extent that a hospital with above-average labor cost may also be experiencing (either because of management decisions, demographic changes, or market factors beyond the hospital's control) a falling admission rate, the loss in revenues to that hospital will reflect both the change in the relative share of the labor component and the change in admissions.

In the second column of Table III above, the effect of the new labor/nonlabor portions on payments is presented. As one might expect, hospitals located in urban areas are estimated to sustain a slight drop in payments (0.01 percent reduction) as a result of the new labor/nonlabor portions. This compares to an average 0.16 percent estimated increase for hospitals located in rural areas. In neither case is the change in payments resulting from the reweighted market basket considered to be significant.

As in the NPRM, in addition to examining the percent change in payments, we looked at the trends in dollar amounts of payment per case. This enables us to reflect the practical effect of hospitals phasing into the prospective payment system on the basis of their own cost reporting periods. Table IV shows the comparative average payments per case for FYs 1986 and 1987, compared to the baseline payments for the period from October 1, 1985 to April 30, 1986.

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L39

TABLE IV--COMPARISON OF ESTIMATED OPERATING PAYMENTS PER CASE PHASED IN ACCORDING TO HOSPITAL FISCAL YEAR[1/]

	Average Payment Per Case				
	Baseline Period [2/]	FY 1986	Percent Payment Difference (FY 1986/Base)	FY 1987	Percent Payment Difference (FY 1987/FY 1986)
All Hospitals	$3892.20	$3909.20	0.44	$3935.40	0.67
Urban by Region	$4367.50	$4388.50	0.48	$4417.30	0.66
New England	$4279.70	$4307.00	0.64	$4367.50	1.40
Mid Atlantic	$4536.90	$4570.40	0.74	$4674.20	2.27
South Atlantic	$3928.80	$3940.90	0.31	$3966.40	0.65
East North Central	$4638.30	$4646.80	0.18	$4612.40	-0.74
East South Central	$3586.30	$3607.00	0.58	$3664.90	1.61
West North Central	$4460.60	$4473.40	0.29	$4481.70	0.19
West South Central	$3935.40	$3951.90	0.42	$3962.80	0.28
Mountain	$4415.80	$4417.60	0.04	$4431.50	0.31
Pacific	$5009.00	$5055.90	0.93	$5099.00	0.85
Rural by Region	$2477.10	$2481.70	0.19	$2500.10	0.74
New England	$3197.00	$3185.70	-0.35	$3154.00	-1.00
Mid Atlantic	$2929.00	$2922.10	-0.24	$2893.10	-0.99
South Atlantic	$2441.30	$2443.10	0.07	$2461.30	0.74
East North Central	$2688.30	$2690.10	0.07	$2688.40	-0.06
East South Central	$2122.10	$2131.00	0.42	$2163.80	1.54
West North Central	$2363.60	$2369.70	0.26	$2390.00	0.86
West South Central	$2161.60	$2168.90	0.34	$2205.00	1.66
Mountain	$2656.70	$2662.70	0.22	$2696.10	1.25
Pacific	$3082.00	$3103.90	0.71	$3164.90	1.97
Urban Hospitals	$4367.50	$4388.50	0.48	$4417.30	0.66
0-99 Beds	$3326.40	$3346.10	0.59	$3412.30	1.98
100-404 Beds	$4104.70	$4135.90	0.76	$4178.20	1.02
405-684 Beds	$4843.20	$4849.50	0.13	$4851.80	0.05
685+ Beds	$5621.70	$5615.40	-0.11	$5599.30	-0.29
Rural Hospitals	$2477.10	$2481.70	0.19	$2500.10	0.74
0-99 Beds	$2208.40	$2214.00	0.26	$2239.10	1.13
100-169 Beds	$2528.40	$2533.80	0.21	$2541.70	0.31
170+ Beds	$2944.00	$2945.80	0.06	$2962.60	0.57

1/ Operating payments includes operating costs, disproportionate share payments, indirect medical education payments, and outlier payments, but exclude payments for capital-related costs and the direct costs of medical education.

2/ The baseline period extends from October 1, 1985 through April 30, 1986, during which hospitals were paid on the basis of parameters in effect for FY 1985.

L40

TABLE IV--COMPARISON OF ESTIMATED OPERATING PAYMENTS PER CASE PHASED IN ACCORDING TO HOSPITAL FISCAL YEAR[1/]

	Average Payment Per Case				
	Baseline Period [2/]	FY 1986	Percent Payment Difference (FY 1986/Base)	FY 1987	Percent Payment Difference (FY 1987/FY 1986)
Teaching Status					
Non-Teaching	$3258.60	$3280.70	0.68	$3319.30	1.18
Resident/Bed Ratio Less than 0.25	$4559.50	$4579.70	0.44	$4600.00	0.44
Resident/Bed Ratio 0.25 or Greater	$6634.50	$6587.70	-0.71	$6526.30	-0.93
Disproportionate Share Hospitals (DSH)					
No Additional Payments	$3654.30	$3661.70	0.20	$3668.20	0.18
Urban DSH 100 Beds or More	$4727.10	$4772.30	0.95	$4853.30	1.70
Urban DSH fewer than 100 Beds	$3363.90	$3402.70	1.15	$3536.30	3.93
Rural DSH	$1998.80	$2014.30	0.77	$2081.50	3.34
Other Special Status					
Sole Community Hospital (SCHs)	$2793.00	$2797.20	0.15	$2815.70	0.66
Rural Referral Centers (RRCs)	$3148.50	$3152.10	0.11	$3207.10	1.74
Both SCH and RRC	$3120.00	$3128.10	0.26	$3153.80	0.82
Rural Hospitals fewer than 50 Beds	$2070.90	$2078.20	0.35	$2123.70	2.19
Type of Ownership					
Voluntary	$4059.00	$4076.90	0.44	$4101.20	0.60
Proprietary	$3567.60	$3586.60	0.53	$3602.30	0.44
Government	$3345.40	$3357.40	0.36	$3402.30	1.34

1/ Operating payments includes operating costs, disproportionate share payments, indirect medical education payments, and outlier payments, but exclude payments for capital-related costs and the direct costs of medical education.

2/ The baseline period extends from October 1, 1985 through April 30, 1986, during which hospitals were paid on the basis of parameters in effect for FY 1985.

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Comment: Some commenters argued that our "profit" margin analysis in the June 3, 1986 initial analysis overstated the relative amount of profit hospitals have earned under the prospective payment system. They presented data showing hospital profit margins to be substantially lower than those we presented.

Response: We believe that the differences between our "profit" margin analysis and those that commenters have presented have more to do with differences in the various ways "profit" can be defined and calculated than with disagreements over the data.

We recognize that our method of computing "profit" margins may not be the generally accepted accounting method used by the hospital industry, and by labeling our results as "profits" we may have caused some confusion. Because of this possible confusion, we will refer to our results as "operating margins." We define and calculate "operating margin" in the following way:

Medicare operating revenue—Medicare operating costs=Net Medicare operating revenue

$$\frac{\text{Net Medicare operating revenue}}{\text{Medicare operating costs}} = \text{Operating margin}$$

We then divide operating margin by the number of discharges to arrive at an average operating margin per case.

Also, profitability depends on what revenues and costs are included in the computations and this, in turn, may depend on one's perspective. For example, a hospital administrator may want a measure of total operating profit that encompasses revenue and costs from all payment sources including Medicare. When margins reflect all payment sources, the results differ drastically from what they would be if only profits from Medicare were considered. As discussed in the addendum, Medicare revenue, as a portion of total hospital revenues, has increased while Medicare utilization has decreased. This suggests that non-Medicare revenue may be declining or, at least, not increasing as rapidly as Medicare revenues. The loss of profitability that some commenters claim may thus result from falling non-Medicare revenue sources rather than from our efforts to limit payments.

Given that our concern is to ensure that we pay only our fair share of hospital patient care cost, we include in our calculations only those costs and revenues that are directly related to Medicare patient care and that are required to be considered under our regulations. We are not concerned that our payments guarantee a certain level of profitability for hospitals. We prefer to examine the amount by which Medicare operating revenues exceed Medicare operating costs. This generally yields a somewhat higher margin than does the generally accepted accounting principle of comparing net revenues (total revenues less costs) to total revenues. The latter approach reflects a concern with a financial measure of profits while our approach reflects an economic concern for the relationship between revenue and costs.

Table V below compares operating margins as defined above for the baseline period (from October 1, 1985 to April 30, 1986), FY 1986 and FY 1987 by payment cell and for selected hospital categories. Since we are not now including capital costs in the prospective payment system, we are confining our analysis to the operating costs and revenue directly related to those activities paid for under DRG-based payments. However, in the June 3, 1986 proposed rule, the "profit" margin figures in Table VII of Appendix B were based on total Medicare revenues and costs (excluding the direct costs of medical education).

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L44

TABLE V--COMPARISON OF ESTIMATED FY 1986 AND FY 1987 OPERATING MARGINS

	Estimated Base Year 1/ Operating Margin	Estimated FY 1986 2/ Operating Margin	Estimated FY 1987 3/ Operating Margin
All Hospitals	17.40	18.98	15.07
Urban by Region	18.66	20.42	16.38
New England	9.09	10.85	7.60
Mid Atlantic	15.65	18.43	16.27
South Atlantic	17.81	18.93	15.20
East North Central	20.19	21.09	15.79
East South Central	15.15	17.14	14.43
West North Central	25.64	26.73	22.20
West South Central	23.50	24.89	20.08
Mountain	20.74	21.15	17.62
Pacific	19.63	22.85	18.05
Rural by Region	11.20	11.92	8.64
New England	12.75	12.01	7.77
Mid Atlantic	6.74	6.54	2.42
South Atlantic	11.43	11.73	8.52
East North Central	13.03	13.42	9.37
East South Central	10.82	12.06	9.18
West North Central	10.58	11.36	8.05
West South Central	12.20	13.35	11.02
Mountain	10.49	11.42	8.77
Pacific	11.35	14.00	11.08
Urban Hospitals	18.66	20.42	16.38
0-99 Beds	18.11	20.46	18.17
100-404 Beds	16.89	19.40	15.35
405-684 Beds	21.00	21.76	17.59
685 + Beds	22.48	22.42	17.93
Rural Hospitals	11.20	11.92	8.64
0-99 Beds	10.94	11.88	9.00
100-169 Beds	8.99	9.67	5.76
170 + Beds	13.76	14.19	10.93

1/ Estimated for a hypothetical full year of payments using the payment parameters in effect from October 1, 1985 through April 30, 1986 (FY 1985 payment parameters).

2/ Estimated for a hypothetical full year of payments using the payment parameters in effect from May 1, 1986 through September 30, 1986.

3/ Projected for a hypothetical full year of payments with an 0.5 percent update factor applied to operating cost standardized amount (labor, nonlabor,) and the operating cost (excluding capital) hospital-specific portions. All projected costs were inflated using the projected hospital market basket. All hospitals were assumed to have the same cost reporting period, corresponding to the Federal fiscal year.

L45

TABLE V--COMPARISON OF ESTIMATED FY 1986 AND FY 1987 OPERATING MARGINS

	Estimated Base Year 1/ Operating Margin	Estimated FY 1986 2/ Operating Margin	Estimated FY 1987 3/ Operating Margin
Teaching Status			
Non-Teaching	14.59	16.79	13.14
Resident/Bed Ratio Less than 0.25	19.63	21.23	16.91
Resident/Bed Ratio 0.25 or Greater	23.87	22.26	18.42
Disproportionate Share Hospitals (DSH)			
No Additional Payments	17.07	17.95	13.82
Urban DSH 100 Beds or More	18.31	21.49	17.97
Urban DSH fewer than 100 Beds	16.30	20.35	19.97
Rural DSH	12.75	15.24	14.23
Other Special Status			
Sole Community Hospital (SCHs)	7.95	8.62	5.23
Rural Referral Centers (RRCs)	20.88	21.81	20.13
Both SCH and RRC	13.64	14.67	11.09
Rural fewer than 50 Beds	10.76	12.18	10.67
Type of Ownership			
Voluntary	17.76	19.33	15.22
Proprietary	14.75	16.56	12.35
Government	17.79	19.34	16.80

1/ Estimated for a hypothetical full year of payments using the payment parameters in effect from October 1, 1985 through April 30, 1986 (FY 1985 payment parameters).

2/ Estimated for a hypothetical full year of payments using the payment parameters in effect from May 1, 1986 through September 30, 1986.

3/ Projected f - a hypothetical full year of payments with an 0.5 percent update factor applied to operating cost standardized amount (labor, nonlabor,) and the operating cost (excluding capital) hospital-specific portions. All projected costs were inflated using the projected hospital market basket. All hospitals were assumed to have the same cost reporting period, corresponding to the Federal fiscal year.

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L. Quality of and Access to Care

We received several comments regarding access to and quality of care.

Comment: Several commenters displayed concern that our proposed policies regarding the update factor and incorporation of capital into the prospective payment system would have a detrimental effect on the access to and quality of care hospitals would be able to provide to Medicare patients.

Response: Since we are not incorporating capital-related payments into the prospective payment system, we believe that the concern over drastic reductions in total payments that was reflected in comments on the NPRM has been mitigated. Nonetheless, we are not convinced that the proposals we set forth on June 3, 1986 would have had an adverse impact on quality of and access to care. The commenters presented no evidence supporting their claims. We estimate that Medicare operating margins for FY 1987, even though decreased from previous levels, will still be quite robust for most hospitals. Hospitals should be able to at least maintain present levels of quality of and access to care at these payment levels. As yet, we see no basis for the concerns that the commenters express regarding the link between our efforts to control Medicare expenditures and an alleged degradation in the quality of and access to care that Medicare beneficiaries now enjoy.

In view of the extensive discussion in the NPRM of our efforts to ensure that quality of and access to care are maintained, and our adoption of several of ProPAC's recommendations regarding the interests of beneficiaries and the scope of PRO reviews, we do not believe there is much more we can do or say in this final rule regarding these issues.

M. Alternatives Considered

Throughout the discussions in the preamble and this analysis, we have explained why we are proposing to do one thing rather than another. Many interrelated decisions are involved in this process, and the number of possible combinations of different DRG weights, different update factors, and other proposals is large. Further, there are additional alternatives that had to be considered in developing the DRG classification changes and the update factor for the Federal rates. Altogether, there is a potentially enormous number of permutations.

Nonetheless, we have been particularly concerned with the impact of certain main options, and we have reviewed them in the light of how they would interact with each other. We also considered all the ProPAC recommendations. Each of the factors taken into consideration in the development of the FY 1987 standardized amounts has been reviewed both individually and in combination with other factors.

N. Summary and Conclusions

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise. For major rules, we must discuss those costs and benefits in impact analyses, and show that the potential benefits outweigh the potential cost to society. In addition, we must discuss alternative methods of achieving the objectives of our regulations. Throughout the preamble, addendum, and this impact analysis, such alternatives are discussed.

For the most part, the costs and disadvantages that could result from these changes will take the form of limiting the amount of payment to affected hospitals. Most of the changes will have their major effect through their influence on the level of FY 1987 prospective payments. As we have said before, the primary benefit expected to result from this rule is the maintenance and effective management of the prospective payment system itself. The incentives of this system are expected to produce substantial benefits in the form of economy and efficiency of operation of participating hospitals, and as improvements in trends of the health care marketplace as a whole. As noted earlier, the objective of this rule is to refine the prospective payment system. Whereas the system as a whole has had a large and dramatic impact, the refinements generally are of a marginal nature, rather than large-scale adjustments.

We believe that, from this perspective, the overall benefits to society more than offset any resulting liabilities. For the above reasons, we believe that this analysis meets the objectives of E.O. 12291 and the Regulatory Flexibility Act, as noted in the Introduction to this Regulatory Impact Analysis.

[FR Doc. 86-19661 Filed 8-29-86; 4:31 pm]

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VOL
51
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31089–
31309–

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Federal Register

Vol. 51, No. 170

Wednesday, September 3, 1986

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308.....2
31309-31604.....3

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5519.....31309
5520.....31311

7 CFR

226.....31313
1065.....31133
1068.....31133
1079.....31133
1475.....31316

Proposed Rules:
1137.....31340

10 CFR

477.....31316

Proposed Rules:
2.....31340
50.....31341

14 CFR

21.....31317
39.....31089, 31090
71.....31097
75.....31097
91.....31098
95.....31319
97.....31322

Proposed Rules:
39.....31133-1137, 31342, 31343
71.....31138

21 CFR

81.....31323
175.....31098
178.....31099
193.....31324
510.....31100

30 CFR

Proposed Rules:
733.....31139

32 CFR

199.....31100
205.....31325
286g.....31103
708.....31103-31112

33 CFR

117.....31112, 31113
165.....31113, 31114

36 CFR

800.....31115

39 CFR

10.....31325
233.....31328

40 CFR

52.....31125, 31127, 31129
261.....31330

Proposed Rules:
261.....31340

42 CFR

405.....31454
412.....31454

44 CFR

64.....31330

47 CFR

0.....31303
1.....31303
2.....31303
13.....31303
21.....31303
22.....31335
63.....31303
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303

Proposed Rules:
15.....31147
67.....31149
68.....31149
76.....31147
80.....31306

48 CFR

5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
32.....31194
45.....31196
47.....31424
48.....31197, 31424
50.....31424
52.....31194, 31197
914.....31335
933.....31335
952.....31335
970.....31335

Proposed Rules:
515.....31344
538.....31344
552.....31344

49 CFR

Proposed Rules
391.....31150

50 CFR

17.....31412
20.....31430
23.....31130

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 27, 1986

VOL 51 ISS 170 SE 3 1986 UMI

VOL
51

ISS
1
7
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3

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VOL
51
ISS
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4
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9-4-86
Vol. 51 No. 171

federal register

Thursday
September 4, 1986

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VOL
51
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9-4-86
Vol. 51
Pages

9-4-86
Vol. 51 No. 171
Pages 31605-31756

federal register

Thursday
September 4, 1986

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For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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VOL
51
ISS
1
7
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 25; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Dorls Tucker 202–523–3419

Contents

Federal Register

Vol. 51, No. 171

Thursday, September 4, 1986

Agricultural Marketing Service
See Packers and Stockyards Administration

Agriculture Department
See also Animal and Plant Health Inspection Service; Commodity Credit Corporation; Cooperative State Research Service; Packers and Stockyards Administration
NOTICES
Agency information collection activities under OMB review, 31696
Import quotas and fees:
  Sugar—
    Quota system review, 31696

Air Force Department
NOTICES
Meetings:
  Scientific Advisory Board, 31712

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
  Citrus canker, 31605
PROPOSED RULES
Exportation and importation of animals and animal products:
  Horses from countries affected with CEM—
    Mares not having undergone clitoral sinusectomy, etc., 31637

Antitrust Division
NOTICES
National cooperative research notifications:
  Corporation for Open Systems International, 31735

Arts and Humanities, National Foundation
See National Foundation on the Arts and Humanities

Bicentennial of the United States Constitution Commission
See Commission on the Bicentennial of the United States Constitution

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration
PROPOSED RULES
Acquisition regulations:
  Contracts for ship construction, ship alteration, and ship repair, 31687

Commission on the Bicentennial of the United States Constitution
NOTICES
Meetings, 31711

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
  Wheat, feed grains, upland cotton, and rice, 31697

Commodity Futures Trading Commission
PROPOSED RULES
Federal speculative position limits, 31648
NOTICES
Meetings:
  Agricultural Advisory Committee, 31712
Meetings; Sunshine Act, 31747, 31748
  (12 documents)

Cooperative State Research Service
NOTICES
Grants; availability, etc.:
  Small business innovation research, 31705

Defense Department
See also Air Force Department
PROPOSED RULES
Personnel:
  Conflict of interests, 31651
NOTICES
Meetings:
  DIA Scientific Advisory Committee, 31746

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
  Ocko, Felix H., M.D., 31736

Education Department
PROPOSED RULES
Postsecondary education:
  College housing program, 31754
NOTICES
Grants; availability, etc.:
  Postsecondary education improvement fund; lectures program, 31712

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
  Georgia, 31618
NOTICES
Air and water pollution control:
  List of facilities prohibited from receiving Government contracts, etc., 31717
Grants, State and local assistance:
  Municipal wastewater treatment works construction; allotments and correction, 31718
Hazardous waste:
  Confidential information and data transfer to—
    Contractors, 31719
    (2 documents)
Pesticides; temporary tolerances:
  Thiodicarb, 31720

Executive Office of the President
See Science and Technology Policy Office

Federal Aviation Administration
RULES
Airworthiness directives:
Garrett, 31607
Grob-Werke, 31608
PROPOSED RULES
Aircraft products and parts, certification, etc.:
Piper, 31644
Airworthiness directives:
McDonnel Douglas, 31647
VOR Federal airways; correction, 31648
NOTICES
Advisory circulars; availability, etc.:
Auxiliary fuel system installations, 31742
Exemption petitions; summary and disposition, 31743

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 31748

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arizona et al., 31635
PROPOSED RULES
Flood elevation determinations:
Alabama et al., 31675, 31678
(2 documents)

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Generic determination of rate of return on common equity for public utilities, 31651
NOTICES
Electric rate and corporate regulation filings:
Florida Power & Light Co. et al., 31714
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 31716
Applications, hearings, determinations, etc.:
Huffco Petroleum Corp., 31713
Northern Natural Gas Co., 31713
Northwest Pipeline Corp., 31714
West Texas Gas, Inc., 31714

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 31748
Applications, hearings, determinations, etc.:
Chittenden Corp. et al., 31721
Huntington Bancshares Inc. et al., 31722
Itasca Bancorp, Inc., 31722
Walsh County Bancorporation, Inc., 31722

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 31723
Premerger notification waiting periods; early terminations; correction, 31723

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
American Druggists' Insurance Co. et al., 31745

Fish and Wildlife Service
RULES
Alaska National Wildlife Refuges; transportation and utility systems in and across, access into, and conservation system units, 31619

Food and Drug Administration
NOTICES
Biological products:
Acellular pertussis vaccines; workshop, 31724

General Services Administration
PROPOSED RULES
Federal Information Resources Management Regulation:
ADP equipment; reuse, 31674

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements:
Dentistry general practice, residency training and advanced education, 31724

Immigration and Naturalization Service
PROPOSED RULES
Nonimmigrant classification:
Temporary alien workers
Correction, 31637

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Mines Bureau; National Park Service
RULES
Alaska; transportation and utility systems in and across, access into, and conservation system units, 31619

Internal Revenue Service
RULES
Income taxes:
Cash in excess of $10,000 received in trade or business; reporting requirements, 31610
Cooperative hospital service organizations, 31613

International Trade Administration
NOTICES
Export trade certificates of review, 31707
Meetings:
Semiconductor Technical Advisory Committee, 31707
Applications, hearings, determinations, etc.:
Baylor College of Medicine, 31706

International Trade Commission
NOTICES
Import investigations:
Annual reports on imports, 31729
Fans with brushless DC motors, 31729
Generalized System of Preferences; eligible articles list, etc., 31733
Nut jewelry and parts, 31730

VOL 51 ISS 171 SE 4 1986 UMI

Sickle guards, 31730
Soft sculpture dolls (Cabbage Patch Kids), related literature and packaging, 31731
Tapered roller bearings and parts, and housing incorporating tapered rollers from Hungary, Italy, Japan, China, Romania and Yugoslavia, 31732
Upper body protector apparatus for use in motosports, 31733
Welded carbon steel pipes and tubes from—China, 31733
Meetings; Sunshine Act, 31748 (2 documents)

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Corp. et al., 31734

Justice Department
See also Antitrust Division; Drug Enforcement Administration; Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Scientific Coating Co., Inc., 31735

Land Management Bureau
RULES
Alaska; transportation and utility systems in and across, access into, and conservation systems unit [Editorial Note: For a document on this subject see entry under Interior Department]
NOTICES
Coal leases, exploration licenses, etc.:
Alabama, 31752
Meetings:
Vale District Advisory Council, 31726
Oil and gas leases:
Wyoming, 31725
Withdrawal and reservation of lands:
Colorado, 31725

Merit Systems Protection Board
NOTICES
Meetings; Sunshine Act, 31749

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Amoco Production Co., 31726
Hall-Houston Oil Co., 31727

Mines Bureau
NOTICES
Meetings:
Mining and Mineral Research Advisory Committee, 31727

National Archives and Records Administration
RULES
Research rooms, archival, in field facilities; public use, 31617

National Foundation on the Arts and Humanities
NOTICES
Agency information collection activities under OMB review, 31736
Meetings:
Dance Advisory Panel, 31736 (2 documents)
Inter-Arts Advisory Panel, 31737
Music Advisory Panel, 31737
Visual Arts Advisory Panel, 31737

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Oceans and Atmosphere National Advisory Committee, 31711
Monitor Collection of Artifacts and Papers; principal museum selection; guidelines, 31708

National Park Service
RULES
Alaska National Park System Units; transportation and utility systems in and across, access into, and conservation system units, 31619
NOTICES
Historic Places National Register; pending nominations:
California et al., 31727
Meetings:
Illinois and Michigan Canal National Heritage Corridor Commission, 31729

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 31737

National Transportation Safety Board
NOTICES
Accident reports, safety recommendations, and responses, etc.; availability, 31738

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 31742
Meetings; Sunshine Act, 31749
Applications, hearings, determinations, etc.:
Mississippi Power & Light Co. et al., 31740

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Bourbon Stock Yard Co. et al., 31705

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Second-class publications, supplements, 31673

Public Health Service
See Food and Drug Administration; Health Resources and Services Administration

Science and Technology Policy Office
NOTICES
Committees; establishment, renewals, terminations, etc.:
Aeronautical Policy Review Committee, 31742

Transportation Department
See Federal Aviation Administration

Treasury Department
See Fiscal Service; Internal Revenue Service

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Dark Caves, Bright Visions, 31745

Veterans Administration
NOTICES
Agency information collection activities under OMB review, 31745

Separate Parts In This Issue

Part II
Department of the Interior, Bureau of Land Management, 31752

Part III
Department of Education, 31754

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
301.....31605
8 CFR
Proposed Rules:
214.....31637
9 CFR
Proposed Rules:
92.....31637
14 CFR
39 (2 documents).....31607, 31608
Proposed Rules:
21.....31644
23.....31644
39.....31647
71.....31648
17 CFR
Proposed Rules:
150.....31648
18 CFR
Proposed Rules:
37.....31651
26 CFR
1 (2 documents).....31610, 31613
602 (2 documents).....31610, 31613
32 CFR
Proposed Rules:
40.....31651
34 CFR
Proposed Rules:
614.....31754
36 CFR
13.....31619
1254.....31617
39 CFR
Proposed Rules:
111.....31673
40 CFR
271.....31618
41 CFR
Proposed Rules:
201-33.....31674
43 CFR
36.....31619
44 CFR
65.....31635
Proposed Rules:
67 (2 documents).....31675, 31678
48 CFR
Proposed Rules:
1317.....31687
1352.....31687
50 CFR
36.....31619

Rules and Regulations

Federal Register
Vol. 51, No. 171
Thursday, September 4, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86-313]

Citrus Canker—Compensation for Destroyed Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Citrus Canker regulations by providing compensation for scion plants and seed plants that were destroyed pursuant to orders that were issued by inspectors. This document further amends the regulations by providing that compensation will be paid for all plants that are listed in § 301.75–15 of the regulations and that were destroyed pursuant to orders issued by inspectors through January 29, 1986.

DATES: Effective date of this interim rule August 29, 1986. Written comments concerning this interim rule must be received on or before November 3, 1986.

ADDRESSES: Written comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination Group, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86–313. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Emergency Programs Coordinator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker, a disease caused by the bacterial pathogen, *Xanthomonas compestris pv. citri* (Hasse) Dawson, is a devastating disease which is known to affect plants and plant parts (including fruit) of citrus and citrus relatives (Family Rutaceae). Infection by the pathogen causing citrus canker can result in defoliation and other serious damage to the leaves and twigs of susceptible plants. Infected fruit become unmarketable and often drops from a tree prematurely. Citrus canker is a very aggressive disease which can rapidly infect susceptible plants, and can lead to extensive economic losses throughout entire citrus growing areas. Citrus canker presents a severe threat to citrus producing and packing industries and poses a burden on interstate and international commerce.

Because of the finding of citrus canker in Florida, regulations captioned "Subpart-Citrus Canker" (contained in 7 CFR 301.75 *et seq.* and referred to below as the regulations) were established by the United States Department of Agriculture (USDA) to regulate the interstate movement from anywhere in Florida of certain articles designated as regulated articles.

The regulations in § 301.75–15 include provisions concerning the payment of compensation for plants destroyed in Florida pursuant to an order issued by an inspector because of citrus canker.

Section 301.75–15 of the regulations provides that USDA shall pay compensation for plants destroyed in Florida because of citrus canker pursuant to an order issued on or after October 17, 1984. Compensation shall be paid as follows:

Class of plant	Compensation to be paid by USDA [1]
Field Grown Nursery Plants:	
Seedling	$0.0135
Liner	.1385
Budded tree	.8450
Greenhouse Grown Nursery Plants:	
Seedling	.0315
Liner	.2660
Budded tree	.9625
Container Plants:	
One (1) gallon	1.315
Two (2) gallons	1.710
Three (3) gallons	2.100
Grove Plants:	
Reset or new planting	3.740

[1] Rates of compensation for scion and seed plants.

[1] The amount of compensation to be paid by USDA for plants ordered destroyed by an inspector represents fifty percent (50%) of the replacement value of the plants as determined by the Deputy Administrator. The replacement values for plants were determined based on information provided by the Citrus Canker Indemnity Work Group (a group composed of representatives of USDA–ERS, USDA–APHIS, the University of Florida, and the Florida Department of Agriculture and Consumer Services) and representatives from the citrus industry.

In addition to the plants that have been listed in § 301.75–15, scion plants and seed plants were destroyed because of citrus canker and pursuant to orders issued by inspectors. However, rates of compensation for scion plants and seed plants had not been established at the time the destruction orders were issued.

This document amends the compensation provisions in § 301.75–15 by providing that the following compensation will be paid by USDA for scion plants and seed plants destroyed because of citrus canker pursuant to a destruction order issued by an inspector:

Age of plant (years)	Dollar value
1	$8.69
2	14.19
3	20.07
4	25.41
5	30.15
6	34.45
7	38.36
8	41.92
9	45.15
10	48.09
11	50.77
12	53.20
13	55.41
14	57.41
15	59.24
16	60.90
17	62.41
18	63.78
19	65.02
20	66.16
21	67.19
22	68.13
23	68.98
24	69.75
25	70.45

The amount of compensation to be paid by USDA for such scion and seed plants represents fifty percent (50%) of the replacement value of the plants as determined by the Deputy Administrator. The replacement value of the plants is based on the average cost of purchasing, planting, and maintaining the plants.

Payment of Compensation for Orders Issued Through January 29, 1986

This document also amends § 301.75–15 by establishing a termination date for the payment of compensation for plants destroyed pursuant to a destruction order issued by an inspector. The Secretary of Agriculture has determined that funds are only available to pay compensation for plants that were ordered destroyed through January 29, 1986, and that such compensation would be paid at the rate of fifty percent of the replacement value of the plants. The Department has also determined that no authorized inspector has issued an order for the destruction of plants in Florida because of citrus canker after January 29, 1986. The Secretary of Agriculture has determined that this action would allow for the best use of the available Federal funds in the citrus canker eradication effort in Florida, and that the remainder of the economic losses incurred as a result of the destruction of plants because of citrus canker should be absorbed by the State of Florida, the citrus industry, or both.

Compensation Procedures

This document also amends § 301.75–16 of the regulations entitled, "Claim for compensation" by adding provisions which require that a person seeking compensation for scion or seed plants submit, in addition to PPQ Form 751, a copy of the current registration/validation issued by the Office of Budwood Registration, of the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, for such scion and seed plants. It is necessary to require that such current registration/validation be submitted in order to ensure that compensation is paid by USDA only for verified scion and seed plants.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule provides for the payment of compensation for scion and seed plants destroyed because of citrus canker pursuant to an order issued by an inspector. In addition, this rule provides that compensation will be paid by USDA for plants destroyed pursuant to an order issued by an inspector only through January 29, 1986.

It appears that an insignificant number of nurseries that are eligible to receive compensation for scion and seed plants under the Citrus Canker regulations would be deemed a small entity under the Regulatory Flexibility Act. (5 U.S.C. 601 *et seq.*)

Under the circumstances referred to above, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant impact on a substantial number of small entities.

Emergency Action

In accordance with section 105(b)(2) of the Federal Plant Pest Act (7 U.S.C. 150dd(b)(2)), the amount of compensation which the Secretary determines may be paid for articles destroyed after the declaration of an extraordinary emergency, shall be final. Thus, the amount to be paid is solely within the Secretary's discretion. Similarly, the decision not to issue destruction orders after January 29, 1986, and not to pay compensation reflects a policy decision by the Secretary of Agriculture that would allow for the best use of available Federal funds in the citrus canker eradication effort in Florida.

The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule in order to provide compensation for those persons who had scion and seed plants destroyed. This situation requires immediate action to provide for such compensation.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are unnecessary; and good cause is found for making this interim rule effective upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the Federal Register as soon as possible.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

In accordance with section 1504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in "Subpart-Citrus Canker" (7 CFR 301.75 *et seq.*) have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0579–0083.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant disease, Plant pests, Plants (Agriculture), Quarantine, Transportation, Citrus canker.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances described above, "Subpart-Citrus Canker" (contained in 7 CFR 301.75 *et seq.*) is amended as follows:

1. The authority citation for "Subpart-Citrus Canker" is revised to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, and 162, 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.75–15 is revised to read as follows:

§ 301.75–15 Compensation for destroyed plants.

Compensation by the United States Department of Agriculture shall be paid for plants destroyed in Florida because of citrus canker pursuant to an order issued by an inspector that was issued between October 17, 1984, through January 29, 1986. Compensation shall be based on inspector's inventories of destroyed plants. Compensation shall be as follows:

Class of plant	Compensation to be paid by USDA[1]
Field grown nursery plants:	
Seedling	$0.0135
Liner	.1365
Budded tree	.8450
Greenhouse grown nursery plants:	
Seedling	.0365
Liner	.2860
Budded tree	.9625
Container plants:	
One (1) gallon	1.235
Two (2) gallons	1.710

Class of plant	Compensation to be paid by USDA[1]
Three (3) gallons	2.100
Grove plants:	
Reset or new planting	3.740
Scion plants and seed plants:	
Age of plant (years)	Dollar value
1	$8.80
2	14.19
3	20.07
4	26.41
5	30.15
6	34.45
7	38.36
8	41.92
9	45.15
10	48.09
11	50.77
12	53.20
13	55.41
14	57.41
15	59.24
16	60.90
17	62.41
18	63.78
19	65.02
20	66.16
21	67.19
22	68.13
23	68.98
24	69.75
25	70.45

[1] The amount of compensation to be paid by USDA for plants ordered destroyed by an inspector represents fifty percent (50%) of the replacement value of the plants as determined by the Deputy Administrator. The replacement values for plants were determined based on information provided by the Citrus Canker Indemnity Work Group (a group composed of representatives of USDA-ERS, USDA-APHIS, the University of Florida, and the Florida Department of Agriculture and Consumer Services) and representatives from the citrus industry.

3. Section 301.75–16 is revised to read as follows:

§ 301.75–16 Claim for compensation.

(a) A claim for compensation to be paid by the United States Department of Agriculture for economic losses resulting from the destruction of plants must be presented to an inspector before compensation will be made. The claim must be made on PPQ Form 751. The claimant must state whether the items for which compensation is requested are, or are not, subject to a mortgage, lien, or other security or beneficial interest held by any person other than the claimant. If the claimant is the owner and states that there is no mortgage, lien, or other such interest on the items, payment will be made to the owner. If the claimant states that there is a mortgage, lien, or other such interest, PPQ Form 751 shall be signed by the claimant and by each person holding a mortgage, lien, or other such interest on the items, consenting to the payment of any compensation allowed to the person specified thereon, and payment will be made to such person.

(b) A person seeking compensation for scion or seed plants shall submit, in addition to PPQ Form 751, a copy of the current registration/validation issued by the Office of Budwood Registration, of the Forida Department of Agriculture and Consumer Services, Division of Plant Industry for such scion and seed plants.

Done at Washington, DC, this 29th day of August 1986.

Donald F. Hueznik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86–19803 Filed 9–3–86; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–ANE–25; Amdt. 39–5371]

Airworthiness Directives; Garrett Turbine Engine Company Model TPE331–25AA, –25AB, –25DA, –25DB, –25FA, –43A, –43BL, –47A, –55B, –1, –2, –2UA, –3U, –3UW, –5, –6, –6A, –8, –10, –10G, –10R, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –11UA, –12, and TSE331–3U Turboprop and Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known owners and operators of certain Garrett Turbine Engine Company Models TPE–331–25AA, –25AB, –25DA, –25DB, –25FA, –43A, –43BL, –47A, –55B, –1, –2, –2AU, –3U, –3UW, –5, –6, –6A, –8, –10, –10G, –10R, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –11UA, –12, and TSE331–3U turboprop and turboshaft engines by individual priority letter. The AD requires accomplishing spectrometric analysis of oil samples, inspection of torsion shaft and the turbine oil scavenge pump drive spur gear shaft assembly, rework or replacement of the turbine oil scavenge pump, replacement of the beryllium-copper nut, and change of engine oil and oil filter. This AD is needed to prevent the failure of the beryllium-copper nut on the turbine end of the tiebolt shouldered shaft which could result in unstacking of the engine rotor.

DATES: Effective September 5, 1986 as to all persons except those persons to whom it was immediately effective by Priority Letter AD 86–12–02, issued June 5, 1986, which contained this amendment.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective on September 5, 1986.

ADDRESSES: The applicable service bulletin (SB) may be obtained from:

Garrett Turbine Engine Company (GTEC), P.O. Box 5217, Phoenix, Arizona 85010; telephone (602) 231–1000.

A copy of the SB is contained in Rules Docket Number 86–ANE–25, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined during the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Propulsion Section, ANM–174W, Federal Aviation Administration (FAA), Northwest Mountain Region, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007; telephone (213) 297–1382.

SUPPLEMENTARY INFORMATION: On June 5, 1986, Priority Letter AD 86–12–02 was issued and made effective immediately as to all known U.S. owners and operators of certain GTEC engines. The priority letter AD requires accomplishing a spectrometric analysis of oil samples collected in accordance with a schedule provided in Garrett Service Bulletin No. TPE331–72–0530(SB 0530) or FAA approved equivalent. Priority letter AD action was necessary to prevent additional failures in service of the beryllium-copper nut on the turbine end of the tiebolt shouldered shaft and subsequent unstacking of the engine rotor.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued June 5, 1986, as to all known U.S. owners and operators of certain GTEC engines. The FAA has determined that accomplishment of actions required by Paragraph 2 of Garrett SB TPE331–72–0533 and TPE331–72–0534, both dated May 9, 1986, correct the unsafe condition which is the basis for this AD. Therefore, engines inspected and modified in accordance with these two Garrett SB's are exempt from the requirements of this AD. These conditions still exist in unmodified engines and the AD is hereby published

in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation Safety, Incorporation by Reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Garrett Turbine Engine Company: Applies to GTEC Model TPE331-25AA, -25AB, -25DA, -25DB, -25FA, -43A, -43BL, -47A, -55B, -1, -2, -2UA, -3U, -3UW, -5, -6, -6A, -8, -10, -10G, -10R, -10U, -10UA, -10UF, -10UG, -10UGR, -10UR, -11U, -11UA, -12, and TSE331-3U turboprop and turboshaft engines.

Compliance required as indicated unless already accomplished:

To prevent the failure of the beryllium-copper nut on the turbine end of the tiebolt shouldered shaft and resultant major damage to the engine, accomplish the following:

(a) Engines with less than 100 engine operating hours since new or since installation of a turbine oil scavenge pump assembly for any reason are to have an initial oil sample taken and processed in accordance with the instructions provided in Paragraph 2 of Garrett Service Bulletin (SB) No. TPE331-72-0530, dated May 9, 1986, (SB 0530), or FAA approved equivalent. This is to be accomplished at not less than 20 hours or more than 25 hours since new or after the installation of that pump assembly, or within 5 engine operating hours after the effective date of this AD, whichever occurs later unless Paragraph (e) below has been accomplished. Additional oil samples are to be taken and processed at not more than 25 operating hour intervals thereafter until a total of 100 operating hours has been accumulated since new or since installation of that pump assembly or until Paragraph (e) below has been accomplished.

(b) Engines with 100 or more, but less than 500 engine operating hours since new or since installation of a turbine oil scavenge pump assembly for any reason on the effective date of this AD, are to have an oil sample taken and processed in accordance with the instructions provided in paragraph 2 of SB 0530 or FAA approved equivalent within the next 50 engine operating hours after the effective date of this AD. This inspection is not required if Paragraph (e) below has been accomplished.

Notes: (1) Garrett recommends that oil samples continue to be taken at regular intervals after accomplishment of this AD in accordance with the Spectrometric Oil Analysis Program (SOAP) described in Garrett Service Information Letter No. P331-97. While the FAA encourages this program, it is not mandatory per this AD.

(2) Engines which have not had the turbine oil scavenge pump assembly removed for any reason during the 500 hours of operation prior to the effective date of this AD are not required to have the oil sampled for beryllium per this AD.

(c) If oil sample analysis indicates beryllium content of oil is in excess of 0.2 (two-tenths) parts per million, accomplish paragraph (e) before further flight.

(d) If oil sample analysis indicates beryllium content of oil is in excess of 0.1 (one-tenth) parts per million, but equal to or less than 0.2 (two-tenths) parts per million, accomplish Paragraph (e) within the next 5 engine operating hours.

(e) Engines which exceed the limits for beryllium content in the engine oil are to have the torsion shaft inspected, the turbine oil scavenge pump reworked or replaced, the beryllium-copper nut replaced, the turbine oil scavenge pump drive spur gear shaft assembly inspected, and the engine oil and filter changed in accordance with Paragraph 2 of SB 0530 or equivalent approved by the Manager, Weatern Aircraft Certification Office. The inspection of the torsion shaft does not apply to the following engine models which have "strain-gage" torque sensors:

TPE331-10G TPE331-10UG TPE331-10UGR
TPE331-11U TPE331-11UA TPE331-12

(f) This AD does not apply to engines which have been inspected and modified in accordance with Paragraph 2 of Garrett SB Nos. TPE331-72-0533, dated May 9, 1986, and TPE331-72-0534, dated May 9, 1986, or equivalent approved by the Manager, Western Aircraft Certification Office.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and FAR 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

Upon submission of substantiating data by an owner or operator, through an FAA Maintenance Inspector, the Manager, Western Aircraft Certification Office may adjust the compliance time specified in this AD.

Garrett Turbine Engine Company SB No. TPE331-72-0530 dated May 9, 1986, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Garrett Turbine Engine Company, P.O. Box 5217, Phoenix, Arizona 85010. This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, Rules Docket Number 86-ANE-25, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m., or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This amendment becomes effective September 5, 1986, as to all persons except those persons to whom it was made immediately effective by priority letter AD 86-12-02, issued June 5, 1986, which contained this amendment.

Issued in Burlington, Massachusetts, on August 12, 1986.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 86-19861 Filed 9-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-32; Amendment 39-5399]

Airworthiness Directives; Grob Werke GmbH & Co. KG (Burkhart Grob) Models G103 TWIN II & G103A TWIN II ACRO Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Grob-Werke GmbH G103 TWIN II & G103A TWIN II ACRO gliders which requires a dimensional inspection, and modification as required, of the stop pad of the outer airbrake pivot levers. This action was prompted by the determination that the stop pad on the outer airbrake pivot levers could be jammed by the wing skin. This condition, if not corrected, could result in loss of control of the airbrake system.

DATE: Effective September 10, 1986.

Compliance Schedule: As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective on September 10, 1986.

ADDRESSES: The technical information and modification parts specified in this AD may be obtained from Grob Systems, Inc., Aircraft Division, I–75 and Airport Drive, Bluffton, Ohio 45817. A copy of the technical notes is contained in the Rules Docket, FAA, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts, 08103, and may be examined between the hours of 8:00 am and 4:30 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium, Telephone 513.38.30 ext. 2710, or John J. Maher, ANE–172, New York Aircraft Certification Office, Aircraft Certification Division, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone No. (516) 791–6221.

SUPPLEMENTARY INFORMATION: Grob-Werke GmbH has determined that the stop pad on the outer airbrake pivot levers may be jammed by the wing skin. The manufacturer has issued Technical Information, TM 315–31, dated October 7, 1985, which requires the installation of an additional stop pad on the outer airbrake pivot levers on certain serial numbered gliders if the length of the original stop pad does not measure between 36 mm and 40 mm. The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of Technical Information No. TM 315–31 on gliders operated under the Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Grob Technical Information No. TM 315–31 and the issuance of AD No. 85–236 Grob by LBA. Based on the foregoing, the FAA has determined that the condition addressed by Grob Technical Information No. TM 315–31 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Applicability information was provided because not all aircraft serial numbers of the named models were affected by the AD.

Therefore, an AD is being issued to require a dimensional inspection, and modification as required, of the stop pad on the outer airbrake pivot lever on certain serial numbered Grob-Werke GmbH Models b103 TWIN and Model G103A TWIN II ACRO gliders. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by Reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–448, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Grob Werke GmbH (Burkhart Grob): Applies to Models G103 TWIN II and G103A TWIN II ACRO gliders serial numbers 33879—(K–117) through 34012–(K–245) certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent jamming of the outer airbrake pivot lever which could result in the loss of airbrake control, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD, measure the airbrake pivot lever stop pad length in accordance with Part 1 of the "Instructions" section of Grob Technical Information No. TM 315–31, dated October 7, 1985.

(b) If a stop pad of a length of less than 36 mm is found during the inspection required by Paragraph (a) of this AD, or if a stop pad is found that can be wedged under the wingskin, before further flight, install a stop pad extension in accordance with part 2 of the "Instructions" section of Grob Technical Information No. TM 315–31, dated October 7, 1985, and Grob Repair Instructions No. 315–31, dated October 7, 1985.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium, Telephone No. 513.38.30 ext. 2710 or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, Telephone No. (516) 791–6680.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office or the Maneger, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Grob Technical Information No. TM 315–31, dated October 7, 1985, and Grob Repair Instructions No. 315–31, dated

October 7, 1985, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Grob Systems, Inc., Aircraft Division, I–75 and Airport Drive, Bluffton, Ohio 45817. These documents also may be examined at the Office of Regional Counsel, ANE–7, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 86–ANE–32, between the hours of 8:00 am and 4:30 pm; Monday thru Friday, except Federal holidays.

This amendment becomes effective on September 10, 1986.

Issued in Burlington, Massachusetts on August 15, 1986.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 86–19860 Filed 9–3–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8098]

Income Taxes; Returns Relating to Cash Payments In Excess of $10,000 Received in a Trade or Business

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the requirement of reporting cash in excess of $10,000 received in a trade or business. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect any person who, in the course of a trade or business in which such person is engaged, receives cash in excess of $10,000 in 1 transaction (or 2 or more related transactions). The regulations provide these persons with the guidance necessary to comply with the law.

DATES: The regulations apply to cash payments received after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), 202–566–3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1985, the Federal Register published temporary regulations (T.D. 8025; 50 FR 21239) and proposed amendments (50 FR 21308) to the Income Tax Regulations (26 CFR Part 1) under section 60501 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 146 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 685). Twenty-eight written comments responding to this notice were received.

On September 19, 1985, a public hearing concerning these proposed regulations was held. Nine commentators spoke at this hearing. After consideration of all written comments and oral comments received at the public hearing regarding the proposed amendments those amendments are adopted as revised by this Treasury decision.

Public Comments

Section 6050I provides that an information return must be made by any person engaged in a trade or business who receives, in the course of that trade or business, cash in excess of $10,000 in 1 transaction (or 2 or more related transactions). Several comments were received suggesting that an exception to the reporting requirements be established for attorney's fees. Because section 6050I and legislative history to section 6050I make no provision for an exception of this type, the final regulations do not adopt the suggestion.

Several commentators requested that the regulations provide that each betting window at a pari-mutuel racetrack be considered a separate recipient for purposes of the reporting requirement. The proposed regulations included a rule which generally reached that result. The final regulations clarify this rule by adding an example illustrating that betting windows at a pari-mutuel racetrack are separate recipients if in the ordinary course of business the operator of each betting window does not have reason to know the identity of persons making wagers at other betting windows.

Question and answer 12 of the proposed regulations provided rules for reporting multiple cash payments relating to the same transaction. The final regulations adopt those rules without change. However, because of compliance concerns, the Internal Revenue Service is considering amending those rules to require, under the authority of section 6050I(b)(2)(D), reporting of the total amount of cash paid in multiple payments relating to the same transaction. If the Service issues a rule requiring the reporting of the total amount of cash in a transaction, the rule will apply prospectively only and there will be an opportunity for public comment on the rule.

Special Analysis

Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Treasury Department has determined that these final regulations are not major rules under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget ("OMB") in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Bruce H. Jurist of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel in the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.600–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

OMB control numbers under the Paperwork Reduction Act.

Adoption of amendments to the regulations.

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.6050I–1 also issued under 26 U.S.C. 6050I.

Par. 2. The following new § 1.6050I–1 shall be added immediately before § 1.6050I–1T to read as follows:

§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.

(a) *Reporting requirement*—(1) *In general.* Any person (as defined in section 7701(a)(1)) who, in the course of a trade or business in which such person is engaged, receives cash in excess of $10,000 in 1 transaction (or 2 or more related transactions) shall, except as otherwise provided, make a return of information with respect to the receipt of cash.

(2) *Cash received for the account of another.* Cash in excess of $10,000 received by a person for the account of another must be reported under this section. Thus, for example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of cash in excess of $10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (*i.e.*, where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

(3) *Cash received by agents*—(i) *General rule.* Except as provided in paragraph (a)(3)(ii) of this section, a person who in the course of a trade or business acts as an agent (or in some other similar capacity) and receives cash in excess of $10,000 from a principal, must report the receipt of cash under this section.

(ii) *Exception.* An agent who receives cash from a principal and uses all of the cash within 15 days in a cash transaction (the "second cash transaction") which is reportable under section 6050I or section 5312 of Title 31 of the United States Code and the regulations thereunder (31 CFR Part 103), and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second cash transaction need not report the initial receipt of cash under this section. An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

(iii) *Example.* The following example illustrates the application of the rules in paragraphs (a)(3) (i) and (ii) of this section:

Example. B, the principal, gives D, an attorney, $75,000 in cash to purchase real property on behalf of B. Within 15 days D purchases real property for cash from E, a real estate developer, and discloses to E, B's name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in paragraph (a)(3)(ii) of this section, D need not report with respect to the initial receipt of cash under this section. The exception does not apply, however, if D pays E by means other than cash, or effects the purchase more than 15 days following receipt of the cash from B, or fails to disclose B's name, address, and taxpayer identification number (assuming D does not know that E already has B's address and taxpayer identification number), or purchases the property from a person whose sale of the property is not in the course of that person's trade or business. In any such case, D is required to report the receipt of cash from B under this section.

(b) *Multiple payments.* The receipt of cash deposits or cash installment payments (or other similar payments or prepayments) relating to a single transaction (or two or more related transactions) are reported under this section in different manners depending on the dollar amounts of the initial and subsequent payments. Reporting of multiple payments is effected as follows:

(1) *Initial and subsequent payments in excess of $10,000.* If the initial payment exceeds $10,000 and any subsequent payment exceeds $10,000, the recipient must report each payment that exceeds $10,000. These payments must be reported separately (or if the payments are made less than 15 days apart, the recipient may (if it so elects) make a single report with respect to such payments).

(2) *Initial payment only in excess of $10,000.* If the initial payment exceeds $10,000 but no subsequent payment exceeds $10,000, the recipient must report with respect to the initial $10,000 payment (within 15 days of receipt of the initial payment), but need not report with respect to any subsequent payment.

(3) *Initial payment of $10,000 or less.* If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until such aggregate amount exceeds $10,000, and report with respect to the aggregate amount within 15 days after receipt of the payment that causes the aggregate amount to exceed $10,000. Any subsequent payment which by itself exceeds $10,000 must be separately reported.

(c) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) The term "cash" means the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. Cash includes United States notes and Federal Reserve notes, but does not include bank checks, travelers checks, bank drafts, wire transfers or other negotiable or monetary instruments not customarily accepted as money.

(2) The term "trade or business" has the same meaning as under section 162 of the Internal Revenue Code of 1954.

(3)(i) The term "transaction" means the underlying event precipitating the payer's transfer of cash to the recipient. Transactions include (but are not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of cash for other cash; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a preexisting debt; a conversion of cash to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(ii) The term "related transactions" means any transaction conducted between a payer (or its agent) and a recipient of cash in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a cash recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

(iii) The following examples illustrate the definition of paragraphs (c)(3) (i) and (ii).

Example (1). A person has a tacit agreement with a gold dealer to purchase $36,000 in gold bullion. The $36,000 purchase represents a single transaction under paragraph (c)(3)(i) of this section and the reporting requirements of this section cannot be avoided by recasting the single sales transaction into 4 separate $9,000 sales transactions.

Example (2). An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to $8,000 which the client pays in cash. In the second month in which the attorney represents the client, the

bill for the attorney's services comes to $4,000, which the client again pays in cash. The aggregate amount of cash paid ($12,000) relates to a single transaction as defined in paragraph (c)(3)(i) of this section, the sale of legal services relating to the criminal case, and the receipt of cash must be reported under this section.

Example (3). A person intends to contribute a total of $45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The $45,000 contribution is a single transaction under paragraph (c)(3)(i) of this section and the reporting requirement of this section cannot be avoided by the grantor's making five separate $9,000 cash contributions to a single fund or by making five $9,000 cash contributions to five separate funds administered by a common trustee.

Example (4). K, an individual, attends a one day auction and purchases for cash two items, at a cost of $9,240 and $1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(3)(ii) of this section, the auction house is required to report the aggregate amount of cash received from the related sales ($10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.

Example (5). F, a coin dealer, sells for cash $9,000 worth of gold coins to an individual on three successive days. Under paragraph (c)(3)(ii) of this section the three $9,000 transactions are related transactions aggregating $27,000 if F knows, or has reason to know, that each transaction is one of a series of connected transactions.

(4)(i) The term "recipient" means the person receiving the cash. Except as provided in paragraph (c)(4)(ii) of this section, each store, division, branch, department, headquarters, or office ("branch") (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

(ii) A branch that receives cash payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making cash payments to other branches of such person.

(iii) *Examples.* The following examples illustrate the application of the rules in paragraphs (c)(4) (i) and (ii) of this section:

Example (1). N, an individual, purchases regulated futures contracts at a cost of $7,500 and $5,000, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with cash. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Under paragraph (c)(4)(ii) of this section the separate branches of Commodities Broker X are not deemed to be separate recipients; therefore, Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Example (2). P, a corporation, owns and operates a racetrack. P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places cash wagers of $3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate cash recipient under paragraph (c)(4)(i) of this section. As no individual recipient received cash in excess of $10,000, no report need be made by P under this section.

(d) *Exceptions to the reporting requirements of section 6050I*—(1) *Receipt of cash by certain financial institutions.* A financial institution as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312 (a)(2) of Title 31, United States Code is not required to report the receipt of cash exceeding $10,000 under section 6050I.

(2) *Receipt of cash by certain casinos having gross annual gaming revenue in excess of $1,000,000.* (i) *In general.* If a casino receives cash in excess of $10,000 and is required to report the receipt of such cash directly to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25 and is subject to the recordkeeping requirements of 31 CFR 103.36, then the casino is not required to make a return with respect to the receipt of such cash under section 6050I and these regulations.

(ii) *Casinos exempt under 31 CFR 103.45(c).* Under the authority of section 6050I(c)(1)(A), the Secretary many exempt from the reporting requirements of section 6050I casinos with gross annual gaming revenue in excess of $1,000,000 that are exempt under 31 CFR 103.45(c) from reporting certain cash transactions to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25. The determination whether a casino which is granted an exemption under 31 CFR section 103.45(c) will be required to report under section 6050I will be made on a case by case basis, concurrently with the granting of such an exemption.

(iii) *Reporting of cash received in a nongaming business.* Nongaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of cash in excess of $10,000 is reportable under section 6050I and these regulations. Thus, a casino exempt under paragraph (d)(2) (i) or (ii) of this section must report with respect to cash in excess of $10,000 received in its nongaming businesses.

(iv) *Example.* The following example illustrates the application of the rules in paragraph (d)(2) (i) and (iii) of this section:

Example. A and B are casinos having gross annual gaming revenue in excess of $1,000,000. C is a casino with gross annual gaming revenue of less than $1,000,000. Casino A receives $15,000 in cash from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25. Casino B receives $15,000 in cash from a customer in payment for accommodations provided to that customer of Casino B's hotel. Casino C receives $15,000 in cash from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under section 6050I or these regulations because the exception for certain casinos provided in paragraph (d)(2)(i) ("the casino exception") applies. Casino B is required to report under section 6050I and these regulations because the casino exception does not apply to the receipt of cash from a nongaming activity. Casino C is required to report under section 6050I and these regulations because the casino exception does not apply to casinos having gross annual gaming revenue of $1,000,000 or less which do not have to report to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25.

(3) *Receipt of cash not in the course of the recipient's trade or business.* The receipt of cash in excess of $10,000 by a person other than in the course of the person's trade or business is not reportable under section 6050I. Thus, for example, F, an individual in the trade or business of selling real estate, sells a motorboat for $12,000, the purchase price of which is paid in cash. F did not use the motorboat in any trade or business in which F was engaged. F is not required to report under section 6050I or these regulations because the exception provided in this paragraph (d)(3) applies.

(4) *Receipt is made with respect to a foreign cash transaction*—(i) *In general.* Generally, there is no requirement to report with respect to a cash transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in paragraph (c)(3)(i) of this section and the receipt of cash by the recipient. If, however, any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of cash in that transaction is subject to the general

jurisdiction of the Internal Revenue Service under Title 26 of the United States Code, the recipient is required to report the transaction under this section.

(ii) *Example.* The following example illustrates the application of the rules in paragraph (d)(4)(i) of this section:

Example. W, an individual engaged in the trade or business of selling aircraft, reaches an agreement to sell an airplane to a U.S. citizen living in Mexico. The agreement, no portion of which is formulated in the United States, calls for a purchase price of $125,000 and requires delivery of and payment for the airplane to be made in Mexico. Upon delivery of the airplane in Mexico, W receives $125,000 in cash. W is not required to report under section 6050I or these regulations because the exception provided in paragraph (d)(4)(i) of this section ("foreign transaction exception") applies. If, however, any part of the agreement to sell had been formulated in the United States, the foreign transaction exception would not apply and W would be required to report the receipt of cash under section 6050I and these regulations.

(e) *Time, manner, and form of reporting*—(1) *Time of reporting.* The reports required by paragraph (a) of this section must be filed with the Internal Revenue Service by the 15th day after the date the cash is received. If a person elects to report as one payment several independently reportable payments received within a 15-day period (as described in paragraph (b)(1) of this section), the report must be filed with the Internal Revenue Service by the 15th day after the date the initial payment is received.

(2) *Form of reporting.* A report required by paragraph (a) of this section must be made on Form 8300. A return of information made in compliance with this paragraph must contain the name, address, and taxpayer identification number of the person from whom the cash was received; the name, address, and taxpayer identification number of the person on whose behalf the transaction was conducted (if the recipient knows or has reason to know that the person from whom the cash was received conducted the transaction as an agent for another person); the amount of cash received; the date and nature of the transaction; and any other information required by Form 8300. Form 8300 can be obtained from any Internal Revenue Service Forms Distribution Center.

(3) *Manner of reporting*—(i) *Where to file.* A person making a return of information under this section must file Form 8300 by mailing it to the address shown in the instructions to the form.

(ii) *Verification.* A person making a return of information under this section must verify the identity of the person from whom the reportable cash is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be made by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a return will be considered incomplete if the person required to make a return knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

(iii) *Retention of returns.* A person required to make an information return under this section must keep a copy of each return filed for five years from the date of filing.

(f) *Requirement of furnishing statements*—(1) *In general.* Any person required to make an information return under this section must furnish a single, annual, written statement to each person whose name is set forth in a return ("identified person") filed with the Internal Revenue Service.

(2) *Form of statement.* The statement required by the preceding paragraph need not follow any particular format, but it must contain the following information:

(i) The name and address of the person making the return;

(ii) The aggregate amount of reportable cash received by the person who made the information return required by this section during the calendar year in all cash transactions relating to the identified person; and

(iii) A legend stating that the information contained in the statement is being reported to the Internal Revenue Service.

(3) *When statement is to be furnished.* Statements required under this paragraph (f) must be furnished to an identified person on or before January 31 of the year following the calendar year in which the cash is received. A statement shall be considered to be furnished to an identified person if it is mailed to the identified person at the identified person's last known address.

(g) *Cross-reference to penalty provisions*—(1) *Failure to file information return.* Any person who fails to make a return under section 6050I and paragraph (a) of these regulations shall be subject to the penalties provided in section 6652.

(2) *Failure to furnish statement.* Any person who fails to furnish any statement to identified persons under section 6050I and paragraph (f) of these regulations shall be subject to the penalties provided in section 6678.

(3) *Criminal penalties.* Any person who willfully fails to make a return under section 6050I and these regulations may be subject to criminal prosecution.

PART 602—[AMENDED]

OMB Control Numbers Under the Paperwork Reduction Act

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6050I–1 * * * 1545–0892".

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved:

J. Roger Mentz,

Assistant Secretary of the Treasury.

July 21, 1986.

[FR Doc. 86–19939 Filed 9–3–86; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 602

[T.D. 8100]

Income Tax; Taxable Years Beginning After December 31, 1953; OMB Control Numbers Under the Paperwork Reduction Act Cooperative Hospital Service Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the treatment of certain cooperative hospital service organizations. Changes to the applicable tax law were made by the Revenue and Expenditure Control Act of 1968 and by the Tax Reform Act of 1976. The final regulations provide the public with the guidance needed to comply with those Acts and affect organizations seeking to qualify for tax exempt status as organizations described in section 501(e).

DATES: The regulations are effective generally for taxable years ending after June 28, 1968. In the case of an organization performing clinical services, the regulations are effective for taxable years ending after December 31, 1976. However, pursuant to the grant of section 7805(b) relief, an organization that has received a ruling or determination letter recognizing it as exempt under section 501(e) has until

January 2, 1987 to conform its operations to the requirements of the regulations.

FOR FURTHER INFORMATION CONTACT: Sylvia F. Hunt or Harry Beker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:EE) (202-566-6212).

SUPPLEMENTAL INFORMATION:

Background

On January 11, 1984, the Internal Revenue Service published proposed regulations in the Federal Register to amend the Income Tax Regulations (26 CFR Part 1) under sections 170 and 501 of the Internal Revenue Code of 1954 (49 FR 1384). By notice published in the Federal Register on March 26, 1984 (49 FR 11186), the public was invited to comment orally upon the issues addressed in the proposals. A public hearing was held on May 31, 1984.

This document contains final regulations under sections 170(b)(1)(A) and 501(e). These regulations are issued to conform the regulations to section 109(a) of the Revenue and Expenditure Control Act of 1968 (82 Stat. 269) and section 1312(a) of the Tax Reform Act of 1976 (90 Stat. 1730) and are issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

Comments and Revisions

After consideration of all comments received regarding the proposed regulations, those proposed regulations are adopted, as revised, by this Treasury decision.

Several comments indicated uncertainty as to the meaning of certain of the provisions in the proposed regulations and requested clarification of the positions announced. These recommendations have generally been adopted and are reflected in the final regulations. Thus, for example, an allocation will be deemed suficient if it consists of bookkeeping entries and written notice to the patron-hospitals; retention of net earnings may be based on the reasonably anticipated needs of the organization; permissible sources of investment income (particularly with respect to rents) have been clarified; radiology services are specifically included within the term "clinical"; and the term "voting rights" of patron-hospitals has been defined.

Other comments recommended more extensive changes concerning accounting and operation practices. These changes, it was noted, would allow greater flexibility for cooperative hospital service organizations. Where these recommendations are neither contrary to the statutory language nor inconsistent with Congressional intent, they have been incorporated in the final regulations. Thus, for example, capital contributions have been excluded from the definition of "net earnings" and need not satisfy the allocation and payment rules; the status of membership dues and related membership assessments, gifts and grants has been clarified; certain income derived from sources that are incidental to the conduct of exempt purposes or functions has been deemed permissible; a section 501(e) organization may own stock in and receive dividends from certain public corporations where such ownership is a condition for obtaining credit; de minimis services to other than patron-hospitals where mandated by a governmental unit as a condition for operating in a particular jurisdiction, or for other reasons, has been deemed permissible; and the effective date provision has been modified for a period sufficient to permit organizations that have already been recognized as exempt under section 501(e) to modify their operations to bring them into conformance with the requirements of the final regulations.

Certain comments, however, recommended changes that would permit cooperative hospital service organizations to engage in practices that are either beyond the scope of or directly contrary to the statutory language of section 501(e). Those recommendations were also inconsistent with the holding of *HCSC—Laundry v. United States*, 450 US 1 (1981). Accordingly, the final regulations do not incorporate recommendations that would, for example, permit a section 501(e) organization to engage in unrelated trade or business so long as those activities do not become the organization's primary purpose; establish wholly-owned for-profit subsidiaries; generally sell services to other than patron-hospitals; engage in any services which are identified by the organization as cost-effective if performed centrally; or pay dividends on the organization's capital stock.

Conforming changes are also made under § 1.170A-9(c)(1) and § 1.501(k)-1 of the Income Tax Regulations.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this Regulation is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The Internal Revenue Service has concluded that the regulations herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this regulation has been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0814.

Drafting Information

The principal author of these regulations is Harry Beker of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61-1—1.281-4

Income taxes, Deductions.

26 CFR 1.501(a)-1—1.528-10

Income taxes, Exempt Organizations, Cooperatives.

26 CFR Part 602

Reporting and Recordkeeping Requirements.

Adoption of Amendments to the Regulations

PART 1—[AMENDED]

Accordingly, the amendments to 26 CFR Parts 1 and 602 published as a notice of proposed rulemaking in the Federal Register on January 11, 1984 (49 FR 1384) are hereby adopted, as amended, to read as follows:

Paragraph 1: The authority citation for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Paragraph (c)(1) of § 1.170A-9 is revised to read as follows:

§ 1.170A-9 Definition of section 170(b)(1)(A) organization.

* * * * *

(c) *Hospitals and medical research organizations—*(1) *Hospitals.* An organization (other than one described

in subparagraph (2) of this paragraph) is described in section 170(b)(1)(a)(iii) if:

(i) It is a hospital, and

(ii) Its principal purpose or function is the providing of medical or hospital care or medical education or medical research.

The term "hospital" includes (A) Federal hospitals and (B) State, county, and municipal hospitals which are instrumentalities of governmental units referred to in section 170(c)(1) and otherwise come within the definition. A rehabilitation institution, outpatient clinic, or community mental health or drug treatment center may qualify as a "hospital" within the meaning of subdivision (i) of this subparagraph if its principal purpose or function is the providing of hospital or medical care. For purposes of this subdivision, the term "medical care" shall include the treatment of any physical or mental disability or condition, whether on an inpatient or outpatient basis, provided the cost of such treatment is deductible under section 213 by the person treated. An organization, all the accommodations of which qualify as being part of a "skilled nursing facility" within the meaning of 42 U.S.C. 1395x(j), may qualify as a "hospital" within the meaning of subdivision (i) of this subparagraph if its principal purpose or function is the providing of hospital or medical care. For taxable years ending after June 28, 1968, the term "hospital" also includes cooperative hospital service organizations which meet the requirements of section 501(e) and § 1.501(e)–1. The term "hospital" does not, however, include convalescent homes or homes for children or the aged, nor does the term include institutions whose principal purpose or function is to train handicapped individuals to pursue some vocation. An organization whose principal purpose or function is the providing of medical education or medical research will not be considered a "hospital" within the meaning of subdivision (i) of this subparagraph, unless it is also actively engaged in providing medical or hospital care to patients on its premises or in its facilities, on an inpatient or outpatient basis, as an integral part of its medical education or medical research functions. See, however, subparagraph (2) of this paragraph with respect to certain medical research organizations.

* * * * *

Par. 3. Section 1.501(e)–1 is redesignated as § 1.501(k)–1.

Par. 4. The following new § 1.501(e)–1 is added immediately after § 1.501(d)–1:

§ 1.501(e)–1 Cooperative hospital service organizations.

(a) *General rule.* Section 501(e) is the exclusive and controlling section under which a cooperative hospital service organization can qualify as a charitable organization. A cooperative hospital service organization which meets the requirements of section 501(e) and this section shall be treated as an organization described in section 501(c)(3), exempt from taxation under section 501(a), and referred to in section 170(b)(1)(A) (iii) (relating to percentage limitations on charitable contributions). In order to qualify for tax exempt status, a cooperative hospital service organization must—

(1) Be organized and operated on a cooperative basis,

(2) Perform, on a centralized basis, only one or more specifically enumerated services which, if performed directly by a tax exempt hospital, would constitute activities in the exercise or performance of the purpose or function constituting the basis for its exemption, and

(3) Perform such service or services solely for two or more patron-hospitals as described in paragraph (d) of this section.

(b) *Organized and operated on a cooperative basis*—(1) *In general.* In order to meet the requirements of section 501(e), the organization must be organized and operated on a cooperative basis (whether or not under a specific statute on cooperatives) and must allocate or pay all of its net earnings within 8½ months after the close of the taxable year to its patron-hospitals on the basis of the percentage of its services performed for each patron. To "allocate" its net earnings to its patron-hospitals, the organization must make appropriate bookkeeping entries and provide timely written notice to each patron-hospital disclosing to the patron-hospital the amount allocated to it on the books of the organization. For the recordkeeping requirements of a section 501(e) organization, see § 1.521–1(a)(1).

(2) *Percentage of services defined.* The percentage of services performed for each patron-hospital may be determined on the basis of either the value or the quantity of the services provided by the organization to the patron-hospital, provided such basis is realistic in terms of the actual cost of the services to the organization.

(3) *Retention of net earnings.* Exemption will not be denied a cooperative hospital service organization solely because the organization, instead of paying all net earnings to its patron-hospitals, retains an amount for such purposes as retiring indebtedness, expanding the services of the organization, or for any other necessary purpose and allocates such amounts to its patrons. However, such funds may not be accumulated beyond the reasonably anticipated needs of the organization. See, § 1.537–1(b). Whether there is an improper accumulation of funds depends upon the particular circumstances of each case. Moreover, where an organization retains net earnings for necessary purposes, the organization's records must show each patron's rights and interests in the funds retained. For purposes of this paragraph, the term "net earnings" does not include capital contributions to the organization and such contributions need not satisfy the allocation or payment requirements.

(4) *Nonpatronage and other income.* An organization described in section 501(e) may, in addition to net earnings, receive membership dues and related membership assessment fees, gifts, grants and income from nonpatronage sources such as investment of retained earnings. However, such an organization cannot be exempt if it engages in any business other than that of providing the specified services, described in paragraph (c), for the specified patron-hospitals, described in paragraph (d). Thus, an organization described in section 501(e) generally cannot have unrelated business taxable income as defined in section 512, although it may earn certain interest, annuities, royalties, and rents which are excluded from unrelated business taxable income because of the modifications contained in sections 512(b) (1), (2) or (3). An organization described in section 501(e) may, however, have debt-financed income which is treated as unrelated business taxable income solely because of the applicability of section 514. In addition, exempt status under section 501(e) will not be affected where rent from personal property leased with real property is treated as unrelated business taxable income under section 512(b)(A)(ii) solely because the rent attributable to the personal property is more than incidental or under section 512(b)(3)(B)(i) solely because the rent attributable to the personal property exceeds 50 percent of the total rent received or accrued under the lease. Exemption will not be affected solely because the determination of the amount of rent depends in whole or in part on the income or profits derived from the property leased. See, section 512(b)(3)(B)(ii). An organization described in section 501(e) may also derive nonpatronage income from sources that are incidental to the

conduct of its exempt purposes or functions. For example, income derived from the operation of a cafeteria or vending machines primarily for the convenience of its employees or the disposition of by-products in substantially the same state they were in on completion of the exempt function (e.g., the sale of silver waste produced in the processing of x-ray film) will not be considered unrelated business taxable income. See, section 513(a)(2) and § 1.513–1(d)(4)(ii). The nonpatronage and other income permitted under this subparagraph (4) must be allocated or paid as provided in subparagraph (1) or retained as provided in subparagraph (3).

(5) *Stock ownership*—(i) *Capital stock of organization.* An organization does not meet the requirements of section 501(e) unless all of the organization's outstanding capital stock, if there is such stock, is held solely by its patron-hospitals. However, no amount may be paid as dividends on the capital stock of the organization. For purposes of the preceding sentence, the term "capital stock" includes common stock (whether voting or nonvoting), preferred stock, or any other form evidencing a proprietary interest in the organization.

(ii) *Stock ownership as a condition for obtaining credit.* If by statutory requirement a cooperative hospital service organization must be a shareholder in a United States or state chartered corporation as a condition for obtaining credit from that corporate-lender, the ownership of shares and the payment of dividends thereon will not for such reason be a basis for the denial of exemption to the organization. See, e.g., National Consumer Cooperative Bank, 12 U.S.C. 3001 et seq.

(c) *Scope of services*—(1) *Permissoble services.* An organization meets the requirements of section 501(e) only if the organization performs, on a centralized basis, one or more of the following services and only such services: data processing, purchasing (including the purchasing and dispensing of drugs and pharmaceuticals to patron-hospitals), warehousing, billing and collection, food, clinical (including radiology), industrial engineering (including the installation, maintenance and repair of biomedical and similar equipment), laboratory, printing, communications, record center, and personnel (including recruitment, selection, testing, training, education and placement of personnel) services. An organization is not described in section 501(e) if, in addition to or instead of one or more of these specified services, the organization performs any other service (other than services referred to under paragraph (b)(4) that are incidental to the conduct of exempt purposes or functions).

(2) *Illustration.* The provisions of this subparagraph may be illustrated by the following example.

Example. An organization performs industrial engineering services on a cooperative basis solely for patron-hospitals each of which is an organization described in section 501(c)(3) and exempt from taxation under section 501(a). However, in addition to this service, the organization operates laundry services for its patron-hospitals. This cooperative organization does not meet the requirements of this paragraph because it performs laundry services not specified in this paragraph.

(d) *Patron-hospitals*—(1) *Defined.* Section 501(e) only applies if the organization performs its services solely for two or more patron-hospitals each of which is—

(i) An organization described in section 501(c)(3) which is exempt from taxation under section 501(a),

(ii) A constituent part of an organization described in section 501(c)(3) which is exempt from taxation under section 501(a) and which, if organized and operated as a separate entity, would constitute an organization described in section 501(c)(3), or

(iii) Owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing.

(2) *Business with nonvoting patron-hospitals.* Exemption will not be denied a cooperative hospital service organization solely because the organization (whether organized on a stock or membership basis) transacts business with patron-hospitals which do not have voting rights in the organization and therefore do not participate in the decisions affecting the operation of the organization. Where the organization has both patron-hospitals with voting rights and patron-hospitals without such rights, the organization must provide at least 50 percent of its services to patron-hospitals with voting rights in the organization. Thus, the percentage of services provided to nonvoting patrons may not exceed the percentage of such services provided to voting patrons. A patron-hospital will be deemed to have voting rights in the cooperative hospital service organization if the patron-hospital may vote directly on matters affecting the operation of the organization or if the patron-hospital may vote in the election of cooperative board members. Notwithstanding that an organization may have both voting and nonvoting patron-hospitals, patronage refunds must nevertheless be allocated or paid to all patron-hospitals solely on the basis specified in paragraph (b) of this section.

(3) *Services to other organizations.* An organization does not meet the requirements of section 501(e) if, in addition to performing services for patron-hospitals (entities described in subdivisions (i), (ii) or (iii) of subparagraph (1)), the organization performs any service for any other organization. For example, a cooperative hospital service organization is not exempt if it performs services for convalescent homes for children or the aged, vocational training facilities for the handicapped, educational institutions which do not provide hospital care in their facilities, and proprietary hospitals. However, the provision of the specified services between or among cooperative hospital service organizations meeting the requirements of section 501(e) and this section is permissible. Also permissible is the provision of the specified services to entities which are not patron-hospitals, but only if such services are de minimis and are mandated by a governmental unit as, for example, a condition for licensing.

(e) *Effective dates.* An organization, other than an organization performing clinical services, may meet the requirements of section 501(e) and be a tax exempt organization for taxable years ending after June 28, 1968. An organization performing clinical services may meet the requirements of section 501(e) and be a tax exempt organization for taxable years ending after December 31, 1976. However, pursuant to the authority contained in section 7805(b) of the Internal Revenue Code, these regulations shall not become effective with respect to an organization which has received a ruling or determination letter from the Internal Revenue Service recognizing its exemption under section 501(e) until January 2, 1987.

PART 602—[AMENDED]

Par. 5. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by inserting the following item in the appropriate place in the table:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

§ 1.501(e)–1	1545–0014

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954, (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Comissioner of Internal Revenue.

Approved:

J. Roger Mentz,
Assistant Secretary of the Treasury.

August 15, 1986.

[FR Doc. 86–19949 Filed 9–3–86; 8:45 am]
BILLING CODE 4830–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

Use of Archival Research Rooms in NARA Field Facilities

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This rule establishes regulations relating to archival research rooms in Presidential libraries and National Archives field branches. The regulation prohibits the use of personal copiers in research rooms that have self-service copiers and limits other personal property that may be brought into research rooms where original records are used. These changes are being made to enhance the security of records being used by the public and to ensure proper handling of records while they are being reproduced.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: This rule extends to the National Archives field branches and Presidential libraries certain research room procedures which have been implemented at the National Archives Building and the Washington National Records Center. The rule will also affect researchers using agency records stored in Federal Records Centers where the records center and the National Archives Field Branch share a common research room.

The new procedures will prohibit the use of personal paper-to-paper copiers in research rooms where self-service copiers are available; require researchers to store most of their personal belongings in lockers or other storage facilities provided by NARA; and require inspection of items brought into and removed from the research room. In some facilities, NARA will also provide researchers with specially marked lined and unlined notepaper and notecards. These procedures will apply in research rooms where original records are used; they will not apply in microfilm research rooms which are physically separated from textual research rooms.

Two comments were received in response to the notice of proposed rulemaking published on May 9, 1986 (51 FR 17207) concerning the need for NARA to provide a self-service copier in the research room if personal copiers were banned. At present, it is not economically feasible to install self-service copiers in all locations, particularly in some of the Presidential libraries. Therefore, NARA has modified the procedures to allow researchers to use personal paper-to-paper copiers in archival research rooms where NARA does not provide a self-service copier. Researchers must obtain prior permission from the facility director to bring in the copier to ensure that the copier can be accommodated. Because we are concerned that the documents being copied on self-service copiers and personal copiers are handled properly by the researcher, we have also added procedures for monitoring copying by researchers and criteria for determining which documents may be copied safely by researchers. These procedures and criteria are drawn from procedures used in the National Archives Building (see 36 CFR 1254.71).

These procedures will be implemented in the Presidential libraries and National Archives field branches at Fort Worth, TX, and Laguna Niguel, CA, on the effective date of this rule. Implementation of the procedures in other NARA field branches will take place over the next several years when resources permit modifications in those facilities to allow installation of lockers and separation of the textual records research room from the microfilm research room in each branch.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1254

Archives and records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for Part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118.

2. Section 1254.27 is added to read as follows:

§ 1254.27 Additional rules for use of certain research rooms in National Archives field branches and Presidential libraries.

(a) When directed by the appropriate director, the following procedures shall be observed in Federal Records Center, National Archives field branch and Presidential library archival research rooms where original documents are used. These procedures are in addition to the procedures specified elsewhere in this Part.

(b) Researchers shall present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the Daily Registration Book at the entrance to the research room. Researchers will also record the time they leave the research room at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

(c) Researchers may not bring into the research room overcoats, raincoats, hats, and similar apparel, and briefcases, suitcases, daypacks, purses, or similar containers of personal property. In facilities where NARA provides notepaper and notecards, researchers also may not bring into the research room notebooks, notepaper, notecards, folders or other containers for papers. In facilities where NARA provides a self-service copier, researchers may not bring into the research room personal copying equipment including personal paper-to-paper copiers. These items may be stored at no cost in lockers or other storage facilities in the NARA facility. The following exceptions may be granted:

(1) Hand-held wallets and coin purses for carrying currency, coins, credit cards, keys, drivers licenses and other identification cards may be brought into research rooms, but are subject to inspection when the researcher enters or leaves the room. The guard or research room attendant shall judge whether the wallet or purse may be considered small for purposes of this section;

(2) Notes, references, lists of records to be consulted, and other materials may be admitted if the chief of the

branch administering the research room or the senior attendant on duty in the research room determines they are essential to a researcher's work requirements. Materials will be presented to the attendant when the researcher enters the research room. If the materials are approved for admission, they may be stamped to indicate that they are the researcher's property;

(3) Typewriters, personal computers, tape recorders, and hand-held cameras may be admitted by the guard or research room attendant provided that they are inspected, approved, and tagged prior to admittance. The chief of the branch administering the research room or the senior attendant on duty in the research room will review the determination made by the guard or research room attendant if requested to do so by the researcher. In facilities where personal paper-to-paper copiers are permitted, the researcher must obtain prior written approval from the facility director to bring in the copier. The request to bring a personal copier should state the space and power consumption requirements and the intended period of use; and

(4) Notepaper and notecards provided by the National Archives and electrostatic copies made on copying machines in NARA research rooms which are marked with the statement "Reproduced at the National Archives" may be brought back into the research room on subsequent visits but must be presented on entry to the guard or research room attendant for inspection.

(d) NARA may furnish specially marked lined and unlined notepaper and notecards, without charge, to researchers for use in the research rooms. Unused notepaper and notecards should be returned to the research room attendant at the end of the day.

(e) The personal property of all researchers, including notes, electrostatic copies, typewriter cases, tape recorders, cameras, personal computers, and other personal property, will be inspected before removal from the research room. Guards and research room attendants may request that a member of the research room staff examine such personal items prior to their removal from the research room.

(f) Researchers may use NARA self-service copiers or authorized personal paper-to-paper copiers to copy documents, in accordance with NARA document handling instructions and after review of the documents by the research room attendant to determine their suitability for copying. The chief of the branch administering the research room or the senior archivist on duty in the research room will review the determination of suitability, if requested by the researcher. The following types of documents are not suitable for copying on a self-service or personal copier:

(1) Bound archival volumes;

(2) Records fastened together by staples, clips, acco fasteners, rivets, or similar fasteners, where folding or bending the record may cause damage;

(3) Records larger than 11 inches by 14 inches;

(4) Records with uncancelled security classification markings;

(5) Records with legal restrictions on copying; and

(6) Records in poor physical condition in the judgment of the research room attendant.

Dated: August 14, 1986.

Claudine J. Weiber,

Acting Archivist of the United States.

[FR Doc. 86-19889 Filed 9-3-86; 8:45 a.m.]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-4-FRL-3074-3]

Georgia; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule on Georgia's application for program revision.

SUMMARY: Georgia has applied for Final Authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Georgia's application and has decided that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Thus, EPA is granting Final Authorization to Georgia for the program revisions, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final Authorization for Georgia shall be effective at 1:00 p.m. on September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section, Residuals Management Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland St., NE, Atlanta, Georgia 30365, (404) 347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with Final Authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occurs. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266, and 124, and 270. Also, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") extensively amended RCRA, thereby necessitating State program revisions. HSWA allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for Final Authorization for the HSWA requirements.

B. Georgia

Georgia initially received Final Authorization on August 21, 1984. On September 26, 1985, Georgia submitted a program revision application for additional program approvals. On July 7, 1986, EPA published a proposed rule (51 FR 24549) to tentatively approve Georgia's application for program revisions in accordance with 40 CFR 271.21(b)(4).

Only one comment was received during the public comment period. The commenter questioned Georgia's testing methods for analyzing hazardous constituents in ground water. EPA has reviewed Georgia's testing requirements and believes they are at least as stringent as EPA's. A hearing was not held because significant interest was not expressed by the public.

EPA has reviewed Georgia's application and has made a final decision that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA is granting Final Authorization to Georgia for the program modifications.

Effective September 18, 1986, Georgia will be authorized to implement, in lieu

of EPA, all changes made to the Federal program from the date the State received Final Authorization up to and including the July 15, 1985 codification rule (50 FR 28702), except for the authority to implement RCRA section 3005(j). A detailed discussion of the revisions for which Georgia is granted Final Authorization is included in EPA's tentative decision published July 7, 1986 (51 FR 24549).

C. Joint Permitting

After the passage of the Hazardous and Solid Waste Amendments of 1984 (HSWA), responsibilities for hazardous waste permitting in Georgia were split between EPA and the State. EPA was responsible for issuing the HSWA portion of permits until Georgia was granted authorization for all or a portion of the HSWA provisions. Georgia has been responsible for the non-HSWA portion of permits under the authority granted to the State in EPA's Final Authorization decision of August 21, 1984. In addition, the State has been assisting EPA in administering the permitting provisions of HSWA.

Effective September 18, 1986, EPA will suspend issuance of Federal permits in those areas for which the State is receiving authorization, and will transfer in a timely manner all pending permit applications and pertinent file information to Georgia for processing.

Upon authorization and in accordance with 40 CFR 124.5, EPA will terminate the RCRA permits it has issued to facilities, if requested by the RCRA permittee, once Georgia incorporates the terms and conditions of the Federal permits in the State RCRA hazardous waste permits issued to those facilities. When EPA promulgates standards for additional processes or regulations mandated by HSWA not covered by this authorization, EPA will issue and enforce RCRA permits in the State for those HSWA requirements until the State receives authorization for those revisions.

Georgia is not authorized by the Federal government to operate the RCRA program on Indian Lands. This authority will remain with EPA.

D. Decision

I conclude that Georgia's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised. Georgia now has responsibility for issuing permits to treatment, storage, and disposal facilities within its borders incorporating standards based on the revised program and carrying out other aspects of the RCRA program, subject to HSWA. Georgia also has primary enforcement responsibilities for these revisions, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: August 22, 1986.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 86-19907 Filed 9-3-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 36

Fish and Wildlife Service

50 CFR Part 36

National Park Service

36 CFR Part 13

Bureau of Land Management

Transportation and Utility Systems in and Across, and Access Into, Conservation System Units in Alaska

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking implements the provisions of Title XI of the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2371, Pub. L. 96-487, concerning transportation and utility systems (TUS) in Alaska when any portion of the route of the system will be within any conservation system unit (CSU), national recreation area or national conservation area. These provisions detail the procedures that must be followed to obtain any Federal approval needed for a TUS. In addition, the regulations address special access, temporary access and access to inholdings.

EFFECTIVE DATE: October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Bingham, Bureau of Land Management, 343-5441; Cynthia deFranceaux, National Park Service, 343-4279; or Jim Gillett, Fish and Wildlife Service, 343-5333; Main Interior Building, 18th and C Streets, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The proposed rulemaking implementing Title XI of ANILCA (Title XI) was published in the **Federal Register** on July 15, 1983 (48 FR 32506), with a 120-day comment period. During the comment period, timely written comments were received from 42 sources; 12 from corporations, 10 from organizations, 9 from governmental agencies, and 11 from individuals. A handful of comments were also received after the comment period had expired. In addition, hearings were held at Juneau, Fairbanks, and Anchorage, Alaska on September 12, 14, and 16, 1983, respectively. The general tenor of the comments cannot be easily characterized. Certain sections of the proposed regulations generated large numbers of comments with almost equal numbers presenting favorable and unfavorable views. Only those sections of the proposed rulemaking that were the subject of comments are discussed in this preamble. In addition to the changes discussed below, minor editorial changes were also made.

43 CFR Part 36

Section 36.1 Applicability and Scope

Several commenters recommended that the discussion of applicability and scope be broken down into sections that clearly separate the distinct situations to which the regulations apply. This suggestion has been followed in order to clarify that these regulations apply to four types of access in Alaska within or

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VOL 51 ISS 171 SE 4 1986 UMI

across CSUs or other special areas: (1) TUSs, (2) access to inholdings, (3) special access; and (4) temporary access.

Several commenters questioned or demonstrated confusion regarding the applicability of these regulations to all or part of a TUS which partially crosses a CSU. In response to those questions, the regulations have not been changed. It is the opinion of the Department of the Interior (Interior) that when part of a TUS crosses a CSU, the entire route of the TUS is subject to Federal approvals and to these regulations. Some commenters expressed concern that this interpretation might confer additional authority on Federal agencies; no such additional grant of authority is intended and none have been conferred by these regulations.

Several commenters stated that the regulations should expressly mention the role of the Secretary of Transportation. Section 1104(b)(2) of ANILCA clearly sets forth the situations in which the Secretary of Transportation has decision-making responsibility, or responsibility to provide planning or assistance to other Federal agencies. These are responsibilities rested by virtue of other statutes, and are not new responsibilities conferred by ANILCA. Nothing appears in these regulations regarding these responsibilities because it would be inappropriate for the Interior to make rules regarding the manner by which the Secretary of Transportation exercises his/her responsibilities.

One commenter asked whether these regulations would require an application for and govern the extension of a TUS outside of any CSU where an already constructed TUS crosses a CSU. These regulations will not apply to the extension of an existing TUS, unless the extension of the TUS causes a significant change in that part of the TUS already in existence within the CSU.

Other commenters discussed specific exclusions to the applicability of the regulations. One commenter requested that the regulations explicitly state that they apply neither to landing nor departing aircraft, nor to the passage of aircraft over CSUs. The statement is unnecessary since by their terms these regulations were not intended to apply to those situations but rather to those involving access to landing areas.

Another commenter requested that a reference be included to state that these regulations do not apply to the provisions of the Alaska Natural Gas Transportation Act of 1976 (Pub. L. 94-586). Section 1327 of ANILCA makes an exemption which will be quoted here rather than cross-referenced in the regulations. It provides:

> Nothing in this Act shall be construed as imposing any additional requirements in connection with the construction and operation of the transportation system designated by the President and approved by the Congress pursuant to the Alaska Natural Gas Transportation Act of 1976 (P.L. 94-586; 90 Stat. 2903), or imposing any limitations upon the Secretary concerning such system.

One commenter asserted that TUSs to be constructed by Federal agencies incident to their management of the CSUs should not be exempted from the effect of these regulations. The commenter suggested that there should be separate requirements for major and minor TUS needs; minor TUSs could appropriately be exempted, but major TUSs, even for management purposes, should be subject to the full procedure. This proposed approach is contrary to the express provisions of the law. In section 1102(4)(A) of ANILCA, Congress expressly exempted management of CSUs from Title XI procedures for management related TUS needs. Interior recognizes that management agency TUS needs could occasionally require major construction with significant effects. This does not mean that major systems will be constructed without consideration of potential environmental effects; proposed TUSs of any significance will normally be addressed in management, conservation or area plans involving public participation. Agencies must comply with the requirements of the National Environmental Policy Act (NEPA) of 1969 as well. For these reasons, no change has been made in the final rule in this regard.

One commenter requested clarification regarding which laws and regulations administered by which agencies are meant within the ambit of "applicable law." Following is a list of those laws and regulations which will be the source of applicable law in the majority of situations. The list is intended only for illustrative purposes. Depending upon the agency and nature of the TUS many other laws and regulations could apply such as:

Bureau of Land Management: Title V of FLPMA, 43 U.S.C. 1761 *et seq.*; 30 U.S.C. 185.

Fish and Wildlife Service: Refuge Administration Act, 16 U.S.C. 668dd. 50 CFR 29.21 *et seq.*

National Park Service: 16 U.S.C. 5 and 79; 23 U.S.C. 317 and 36 CFR 14.

None of the above-mentioned agencies have applicable laws providing the authority to approve the crossing of a designated wilderness area by a TUS. For many TUSs, the agencies can only provide the right-of-way or permit allowing use of the grounds where a TUS is proposed. Other Federal or State regulatory agencies have the authority or responsibility to approve the development of a TUS but not necessarily the authority to grant a right-of-way across certain lands.

Another commenter proposed an additional paragraph to expressly establish the precedence of these regulations over the general regulations of the Federal agencies insofar as transportation and access in Alaska CSUs are concerned. The requested statement is unnecessary. These regulations establish uniform procedures for the managing agencies to use in administering the body of applicable law pertaining to authorization and administration of TUSs. In other words, these regulations provide the procedural methodology regardless of an agency's existing regulations. However, the substantive standards of the existing statutory authorizations remain applicable to these TUSs.

One commenter stated that the areas to which these regulations apply were not clearly delineated. The proposed regulations did not list each of the CSUs and other areas subject to these regulations, but they were listed in the section-by-section analysis of the preamble. The CSUs in Alaska to which these regulations apply are as follows:

Administered by National Park Service

Alagnak National Wild River
Aniakchak National Monument and Preserve
Aniakchak National Wild River
Bering Land Bridge National Preserve
Cape Krusenstern National Monument
Charley National Wild River
Chilikadrotna National Wild River
Denali National Park and Preserve
Gates of the Arctic National Park and Preserve
Glacier Bay National Park and Preserve
John National Wild River
Katmai National Park and Preserve
Kenai Fjords National Park
Kobuk Valley National Park
Kobuk National Wild River

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Lake Clark National Park and Preserve
Mulchatna National Wild River
Noatak National Preserve
Noatak National Wild River
North Fork of the Koyukuk National Wild River
Salmon National Wild River
Tinayguk National Wild River
Tlikakila National Wild River
Wrangell-Saint Elias National Park and Preserve
Yukon-Charley Rivers National Preserve

Administered by Fish and Wildlife Service

Alaska Maritime National Wildlife Refuge
Alaska Peninsula National Wildlife Refuge
Andreafsky National Wild River
Arctic National Wildlife Refuge
Becharof National Wildlife Refuge
Innoko National Wildlife Refuge
Ivishak National Wild River
Izembek National Wildlife Refuge
Kanuti National Wildlife Refuge
Kenai National Wildlife Refuge
Kodiak National Wildlife Refuge
Koyukuk National Wildlife Refuge
Nowitna National Wild River
Nowitna National Wildlife Refuge
Selawik National Wild River
Selawik National Wildlife Refuge
Sheenjek National Wild River
Tetlin National Wildlife Refuge
Togiak National Wildlife Refuge
Wind National Wild River
Yukon Delta National Wildlife Refuge
Yukon Flats National Wildlife Refuge

Administered by Bureau of Land Management

Beaver Creek National Wild River
Birch Creek National Wild River
Delta National Wild and Recreational River
Fortymile National Wild, Scenic and Recreational River
Gulkana National Wild River
Unalakleet National Wild River

Section 36.2 Definitions.

The proposed regulations defined "adequate and feasible access" in § 36.2(a). The section received a number of comments suggesting two opposite approaches. Many commenters stated that the definition should add more factors stressing environmental protection. Conversely, many commenters stated that economic considerations should be given more weight. No change was made. The definition provides enough flexibility to consider economic factors, and application processing as set forth in the regulations provided for consideration of environmental issues. We conclude that the definition originally proposed provided an adequate balance of interests. This definition was moved to section 36.10 in these final regulations because it is applicable only to access to inholdings. Further discussion of this issue can be found under that section.

The proposed regulations defined the word "area" in § 36.2(f) (§ 36.2(g) final regulations (final)). One commenter suggested that "units" was the appropriate term for areas administered by the National Park Service (NPS). Whatever the preferred general terminology for areas administered by the NPS, the areas covered by these regulations include land management units administered by the Fish and Wildlife Service (FWS) and the Bureau of Land Management (BLM) as well. The words "unit" and "area" have, however confusingly, been used interchangeably both in the law and proposed regulations. In this final rule, in order to be more uniform, the word "area" has been used whenever possible.

Section 36.2(g) of the proposed regulations (renumbered as § 36.2(f)) defined "compatible with the purposes for which the unit was established." Several commenters suggested that the definition be modified or deleted. The majority of commenters were concerned that most, if not all, proposals could be found to interfere with or detract from the purpose for which a unit was established. The majority of relevant comments suggested that the addition of "significantly" as a modifier in order to clarify that "compatible with the purposes for which the unit was established" means that the system will not significantly interfere with the purposes for which the unit was established. Interior agrees and this change was made. Other comments concerning (§ 36.2(g) § 36.2(f) final) suggested that the definition should include an express statement that the management purposes of the unit, and not just the purpose for which it was established, be considered. This change was not adopted because the management purposes of a unit are inherent in the purpose for which the unit was established, and the additional statement would be redundant.

A few comments discussed § 36.2(i) of the proposed regulations (§ 36.2(h) final). This section defines "economically feasible and prudent alternative route." These commenters requested that the definition be altered to further clarify and stress the need for economic comparisons; in particular they requested that greater weight be given to relative costs in determining the feasibility of alternate routes. After reconsideration of the proposed definition, Interior determined that a revision was called for and concluded that the definition in the proposed regulations could be improved. The new definition determines economic feasibility upon whether or not financing could be obtained for the project should the alternate route be required. In addition, the new definition provides an economic focus for determining prudence although non-economic factors could be included in the consideration. It provides that the alternate route will be considered to be prudent if the difference of its benefits minus its costs is equal to or greater than that of the benefits of the proposed TUS minus its costs. The definition allows consideration of a broad range of factors in determining prudence, such as resource and aesthetic values, as well as the impact on local populations.

A number of comments discussed the definitions of "improved rights-of-way" (§ 36.2(j) proposed regulations (proposed)) (§ 36.2(i) final), and "road" (§ 36.2(p) proposed) (deleted from the final). A number of commenters noted that many Alaskan routes would fall within the definition of "improved rights-of-way" and would not be within the definition of "roads" although they would be roads within common understanding. As the proposed regulations were drafted, many routes would have been neither "roads" nor "improved rights-of-way," and would have been inadvertently removed from the ambit of the regulations.

Many commenters also stated that the definition of "roads" was unnecessary. We agree that the definition of "roads" was confusing and unnecessary, and it has been eliminated. The definition of "improved rights-of-way" was frequently criticized. The definition pertains to section 1102(4)(b) of ANILCA which describes improved rights-of-way as the type of routes used by snow machines, air cushion vehicles, and other all-terrain vehicles. The proposed definition was taken almost verbatim from the legislative history of that section. We intend to differentiate improved rights-of-way, and eliminate from Title XI processing, those snow machine and dog sled trails that have no terrain alteration and only minor vegetation control, but which may be marked by flagging or otherwise for directional control.

One comment pertained to the definition of "other systems of general transportation" (§ 36.2(l) proposed) (§ 36.2(k) final). The commenter requested that the definition be expanded to include related facilities. This change was not made because related structures and facilities are

provided for in the definition of a TUS (§ 36.2(r) proposed) (§ 36.2(p) final).

Some commenters stated that the definition of "public values" (§ 36.2(m) proposed) (§ 36.2(l) final), should be stated with more specificity. The definition was left unchanged. While stated in broad terms, it provides sufficient direction for the agencies to make rational decisions in specific cases.

Numerous comments were received on the apparent conflict between the definition of "related structures and facilities" and the definition of a TUS (§ 36.2(n) proposed) (§ 36.2(m) final). Many comments also noted the apparent discrepancy between the section-by-section analysis in the preamble and the specific wording of the proposed regulation. The preamble seemed to say that related structures and facilities were included within the TUS, as did the general language of the proposed regulation, but specific subsections of the same excluded many related structures. The exceptions were an error, and have been removed from the final regulations. The inclusion or exclusion of related facilities within the TUS will be considered on a case-by-case basis at the time an application is submitted. The test will be whether the related facility is reasonably necessary to the operation of the TUS.

Section 36.3 Preapplication

One comment was received which supported the concept of encouraging preapplication contacts. A minor change in paragraph (a) adds the words "resource concerns" in order to highlight one of the principal subjects to be addressed in any preapplication meeting. It is intended that the Federal agency express to the applicant its concerns for particular resources within the unit so the applicant may have a definite understanding of the resources and the constraints within which the applicant will be required to operate.

Varying comments expressed a broad range of views regarding the requirements for permits for preapplication activities. As the proposed regulations were drafted, all preapplication activities on lands administered by the NPS and the FWS would require permits. For lands administered by the BLM, permits would not be required for those preapplication activities which would not ordinarily cause any appreciable disturbance or damage to the lands involved and which would not ordinarily require a right-of-way or temporary use permit.

Some commenters stated that preapplication permits should be required in all situations before any preapplication work is performed. Another commenter stated that information gathering should be allowed only after the filing of an application for a TUS and that any activities having a significant effect should be postponed until their effects would be considered through the NEPA process. In addition, that commenter argued that no statutory authority exists for preapplication activities. Yet another commenter thought that some preapplication activities, such as core drilling, could impact the environment and should be addressed in a NEPA compliance document separate from the TUS environmental document.

In contrast, other commenters asserted that all preapplication activities must be allowed without any permit requirements. They reasoned that no statutory authority regulates preapplication activities; therefore, there should be no restrictions, hindrance or other formalism prior to the performance of preapplication activities. These commenters argued that if the BLM requires no permits, neither should the NPS. Additionally, special permits should be required only for those activities not otherwise permitted by the agencies under existing law or practice. Another commenter suggested that the federal agencies should be required to respond to requests for preapplication permits within 30 days of the request.

The final rule remains largely as proposed. The range of comments supports the conclusion that the proposed rule represented a reasonable approach to balance the needs of the applicants to gather information preparatory to developing an application and the needs of the managing agencies to manage the lands in a manner that is consistent with their general authorities. Approved permits or other approvals are to be issued under existing authority in accordance with NEPA requirements, agency mandates, and the purposes for which the area was established.

Another series of comments was concerned with the standard under which a preapplication activity permit would be analyzed and issued or disapproved. They sought more explicit guidance pertaining to the standard to be applied. In response, the final rule has been changed to state that the proposed preapplication activity be found by the appropriate federal agency to be compatible with the purposes for which the unit was established. Otherwise, the standards outlined in the proposed regulations have been preserved. Activities will be permitted that are necessary to adequately complete the consolidated application form for a TUS. Those activities may not cause significant or permanent damage to the values for which the unit was established; the resulting impacts from preapplication activities must be temporary, not significant, and cause no interference with other authorized uses or activities.

Several commenters noted that preapplication activities are subject to the provisions of section 810 of ANILCA (section 810) concerning the effects of activities of subsistence uses. The final rule has been modified to require an agency determination that the activities will not significantly restrict subsistence uses.

Section 36.4 Filing of Application

A number of commenters suggested that a single agency be designated for receipt of all applications. While such a procedure would be more convenient to the applicants, these regulations apply to applications for TUSs in, through or across CSUs which are under the management of four agencies, three within Interior and one within the Department of Agriculture. Interior lacks authority to issue regulations binding another Department to Interior's receipt of an application. However, these regulations have provided that a filing with one of Interior's agencies will be deemed a filing with all of them. This provision, together with preapplication procedures where applicants are urged to participate in a preapplication conference where they will be advised in the efficient preparation of their application, should simplify the filing.

A number of commenters suggested replacing the term "Standard Form 299" with "the consolidated application form." Some of these comments were based on the pending review and revision of Standard Form 299, Application for Transportation and Utility Systems and Facilities on Federal Lands (SF 299). Since the form has now been revised and reissued, there is no need for the suggested change.

Two commenters suggested that either the SF 299 be revised to specifically request all information that may ultimately be required of an applicant, or alternatively that all such information be identified during the preapplication meetings and agreed upon by the applicant. This is not possible. The SF 299 was designed to provide basic data needed by any appropriate federal agency for all types of TUSs. It is flexible enough to allow the applicant to attach any special information that may additionally be required by an agency pertaining to specific or unique types of TUSs. An application form that

identified all information that might potentially be required would be extremely complex, cumbersome and unreasonable. Currently each Federal agency has regulations and informational material which specifies the type of information that must be included in an application for a specific right-of-way, lease, license, permit, etc., from that agency. These requirements can easily be identified during a preapplication session.

One commenter objected to the 15 day period during which agencies may receive applications, as contrary to law and inviting invalid applications. The law requires that applications be filed with all appropriate Federal agencies on the same day. To facilitate reasonable implementation of this provision, the proposed regulations allowed a 15 day period during which Federal agencies may receive applications, and the filing day would be deemed to be the last day on which an agency receives an application. This grace period has been preserved. It would be unnecessarily burdensome and costly to require an applicant to file the application literally on the same day in locations as diverse as Anchorage, Alaska, Seattle, Washington, and Washington, DC.

Section 36.5 Application Review

A number of commenters requested that a single agency be established as a clearinghouse for all applications. Just as Interior cannot designate a single agency to receive all applications, so it cannot designate a single agency as the clearinghouse; doing so would include agencies outside of Interior within the purview of Interior's regulations. Accordingly, no single agency can be designated as a clearinghouse.

Similarly, many commenters suggested replacing the term "appropriate Federal agency" with the term "lead agency." According to this concept, the lead agency would then assure that all other appropriate Federal agencies are involved. In order to accommodate this suggestion, the lead agency paragraph which appeared in the proposed regulations under the discussion of NEPA compliance has been brought forward in the final regulations of this section on application review. It has also been slightly revised. When the application is received, one of the four area managing agencies will be identified initially as the lead agency. For the purposes of this initial identification, the agency selected will be the agency having the most land (defined not in terms of area measurement but in terms of the most lineal surface crossed by the proposed TUS) under its jurisdiction. This procedure will allow for immediate identification of a lead agency to begin timely coordination of the application review process. The regulation also provides that another agency may ultimately be designated as the lead agency for the remainder of the process.

Several commenters were concerned with the provisions pertaining to requests for additional information. Some commenters suggested that any additional information requested be limited to that directly related to the TUS application. It is implicit in the process that any information requested must be reasonably related to the TUS application and the agency's required review. However, what is required may include any number of things that are not currently foreseeable, particularly in light of those situations where the agency may be mandated to consider viable alternatives to the specific application. Another commenter similarly suggested that additional information requested should be limited to matters discussed in the preapplication meetings. This latter suggestion would overly restrict the agency in gathering information that it may be required by law to collect before granting an application.

Interior has considerable experience in processing applications for similar types of systems as those covered under Title XI. Interior has learned that applications which supply inadequate information far outnumber those applications which are complete when initially filed. Failure to supply adequate information jeopardizes the applicant's ability to proceed with a project. The agency may be unable to prepare an Environmental Impact Statement (EIS) or may produce an inadequate EIS leading to disapproval of the application. The proposed regulations are intended to avoid this result. Therefore, no change has been made in the regulations.

Section 36.6 NEPA Compliance

Comments were received regarding compliance with section 810. This section provides a procedure for allowing public participation in the decision when a proposed activity would significantly restrict subsistence uses. Specifically, clarification was requested regarding whether the section 810 analysis and decision would be made by the lead agency. The clarification is as stated here: the lead agency will be responsible for ensuring compliance with section 810 pursuant to § 36.6(b)(4). Whether the actual compliance will be performed by each of the involved agencies, independently or in cooperation, or as a part of the NEPA process, is left to the discretion of the lead agency and other involved agencies and will be resolved on a case-by-case basis. In order to clarify that section 810 compliance is required independently of whether an EIS is required, the regulation was slightly reordered.

Two commenters noted that the Council on Environmental Quality (CEQ) regulations require public involvement to the extent practicable in the preparation of Environmental Assessments (EA). They were concerned that the statement of no public hearings being required in the preparation of an EA would be misleading. The statement has been omitted. However, the agencies are expected to follow their normal practices which ordinarily would not involve public hearings in EA preparation.

Some commenters suggested that the requirement that hearings on EISs be held in Washington, DC was unnecessary. The statute mandates that hearings be held both in Alaska and Washington, DC. The requirement is therefore necessary.

Comments were also received which suggested that the solicitation and consideration of comments be separated from the EIS hearing requirement. The final regulations have been modified accordingly.

The preamble to the proposed regulations requested comments regarding the provision on recovery of costs for EIS preparation. No comments were received. As the discussion in the preamble noted, BLM is in the process of preparing new cost recovery regulations pursuant to FLPMA section 304(b), 43 U.S.C. 1734. Under ANILCA, agencies are to recover their EIS preparation costs in a manner consistent with that provision. The BLM regulations are still not in place. Until regulations specifying the procedure for application of that provision are in place, total costs will be presumed to be recoverable. If an applicant can make a showing that a reduced assessment is justified, a new amount will be negotiated.

See BLM Instruction Memorandum 85-3721, April 9, 1985. These regulations are deferring to the interim guidance of the Instruction Memorandum and completion of the final BLM regulations by not making any attempt to more specifically define the meaning of FLPMA § 304(b).

Section 36.7 Decision Process

Comments were made opposing and favoring the use of two decision-making processes. Although two processes may cause some confusion upon a superficial

reading of the regulations, two processes are required by ANILCA itself and the provisions in the regulations come directly from the statute. Where there is an already existing body of law to be applied, that law is to be followed. Where there is no law, there is a procedure created by ANILCA pursuant to which application for a TUS may be made. When there is no existing law applying to part of a TUS, there will most likely be some existing law for the other part. Some of the decision-making will therefore involve agencies which do and do not have existing authority. Those agencies that have authority will be able to process the permits and approvals and prepare the documents that will be transmitted to Congress. Those agencies that do not have authority will only be able to prepare their recommendations. The final decision on the whole project will rest with Congress, although it is not expected that Congress will revisit those determinations already made by agencies having preexisting Congressionally delegated authority.

Some commenters suggested that the proposed standards for reviewing impacts seemed to restrict an agency to considering effects occurring within its own land base. However, the regulations are not intended to have that result.

At times, NEPA requires an agency to look at impacts beyond the borders of the land within its management jurisdiction, and ANILCA does not alter the NEPA requirements. Environmental statements will continue to examine all significant impacts to the human environment including secondary and cumulative effects.

Comments were also made that the determination of significant impact under § 36.7(a)(1) should be made through a public participation process. The regulations have not been changed. The NEPA process provides a substantial opportunity for public involvement.

A few commenters also requested that the decision process specifically take into account the requirements of section 810. Accordingly, § 36.7(a)(2)(ix) has been added to require agencies to make specific findings regarding the impacts, if any, on subsistence uses.

Section 36.8 Administrative Appeal

Comments were received that § 36.8(a) provided inadequate guidance for exercising the statutory appeal rights under section 1106 of ANILCA. No change has been made because Interior cannot regulate matters outside of its jurisdiction. For that same reason Interior cannot legally provide for administrative appeals of denials issued under § 36.7(b).

Section 36.9 Issuing Permits

A few commenters suggested that all TUS right-of-way permits should include requirements to reasonably minimize adverse impacts on subsistence resources and uses. No change was made in the final regulations because this was already provided for in § 36.9(b)(5) which requires the protection of the interests of individuals living in the general area of the right-of-way permit who rely on the fish, wildlife and biotic resources of the area for subsistence purposes.

Some commenters suggested changes to the requirements for the terms and conditions. Except for adding the words "maximum and" when discussing the right-of-way width in § 36.9(b)(4), the proposed regulations repeat the statutory requirements. Accordingly, comments suggesting changes in the statutory language have not been adopted, and the words "maximum and," added to the statutory language in the proposed regulations, have been deleted.

Section 36.10 Access to Inholdings

This section is the most controversial of these regulations. Overall, the comments ranged from those recommending deletion of the entire section as unnecessary or inconsistent with area purposes, to those perceiving the section as needed, to those arguing that the access to inholdings provisions in section 1110(b) of ANILCA (1110(b)) should not be treated separately from the remainder of Title XI.

Section 36.10(b) has been modified slightly to correct an error in drafting the proposed regulation. The change clarifies that this part is to address all access issues in CSUs, and it was incorrect to also refer to "other applicable law."

A number of comments were received about the definitions pertaining to this section. The definition section has been supplemented so that the principal terms regarding or applying only to access to inholdings are found in this section rather than in the definition § 36.2.

The term "adequate and feasible access" received a number of comments. Some agreed with the interpretation followed in the proposed rule which includes all forms of access without limitation within the scope of section 36.10. Others preferred the narrower definition found in the interim or present regulations of the NPS and FWS which guaranteed access but limited it to pedestrian or vehicular means of transportation, arguing that the proposed definition was too broad. Other commenters argued that the law was intended to provide for small scale personal use access only and not pipelines or transmission lines. We have reviewed these comments and determined that the proposed definition of adequate and feasible will be retained with minor modifications. The definition has been restructured into a single sentence.

The reason for retaining the definition as stated in the proposed rule is our conclusion that it reflects Congressional intent. First, we find no justification for distinguishing between small private routes and larger systems. The criteria for applicability within the statute itself pertain to the type of inholding, not the type of system. Second, the statute clearly states that the access right is for "economic and other purposes;" not merely for ingress and egress. Third, the legislative history clearly states that the grant of access must be broadly construed:

> The Committee understands that the common law guarantees owners of inholdings access to their land, and that rights of access might also be derived from other statutory provisions, including other provisions of this title, or from constitutional grants. This provision is intended to be an independent grant *supplementary to all other rights of access*, and shall not be construed to limit or be limited by any right of access granted by the common law, other statutory provisions, or the Constitution. (emphasis supplied)
>
> H. Rept. No. 97, Part 1, 96th Congress, 1st Sess. 1979, 240; also, S. Rept. No. 413, 96th Congress, 1st Sess. 1979, 249.

A number of comments stated that a definition of the terms "effectively surrounded" was necessary. A number of alternative means of deriving a definition were suggested. We have retained the definition from the proposed regulations which was based on the following excerpt from Senate Report 96–413, 96th Cong., 1st Sess., 1979, 248–249:

> The Committee adopted a specific standard regarding access which is designed to include inholders and other landowners where lands are effectively surrounded by a unit or units established by this Act. The Committee finds that in certain instances, there will be a need for access to be effected across such units and expects the Secretary to be reasonable and fair in his judgments regarding access in these situations.
>
> The most obvious situations involve those of physical barriers which would prevent feasible access except across a unit. Such barriers can include rugged mountain terrain, extensive marsh areas, shallow water depths, and presence of ice for large periods of the year. The Committee does not intend to limit the application of the term "effectively surrounded" to only those situations. Rather,

the Committee expects the Secretary to judge these situations on a case-by-case basis and to work with the inholder to come to a reasonable solution which will assure that adequate and feasible access for economic and other purposes can be realized.

The agencies are expected to use this guidance from Congress in making determinations.

Several commenters suggested changes in the definition of "inholding." Some argued that the term should be narrowly defined to include only those property rights which are permanent in nature such as State lands, native and other privately owned lands, valid mining claims and permanent right of occupancy inherited by devise or descent at common law. Under that theory administratively created rights of occupancy which are discretionary in nature, such as leaseholds, would not be inholdings. Other comments took an opposite view and argued that the word "leasehold" should be inserted in the definition. Another comment argued that rights acquired subsequent to the passage of ANILCA are not inholdings.

Upon consideration of these comments, Interior has determined that the proposed regulation will be changed in the final rule. The proposed definition uses identical language to that set forth in 1110(b). The statute establishes the circumstances where the Secretary of the Interior is required to give such access rights as may be necessary to assure adequate and feasible access. It resolves the issues raised by the comments. For instance, 1110(b) lists the term "valid occupancy" as an interest to which it applies. This included a valid leasehold. Likewise the statute makes no distinction between inholdings in existence at the time of ANILCA or inholdings interests created subsequent to ANILCA.

Application Filing Requirements

Several commenters requested a simpler application form for access to inholdings than the SF 299 currently being used. Because of the great variety in size and nature of inholdings, the variety of potential access needs, and the potential range of environmental consequences, the agencies will continue to use SF 299 because it is adaptable to a variety of situations. However, the information required for each application should be tailored by the applicant and the applicable Federal agency. This can best be accomplished through a preapplication meeting.

In response to comments suggesting the need for multiple application to the Federal government, an alternative procedure for mining access has been inserted in the final rule. Mining claimants may address their access needs in their proposed plan of operations instead of on the SF 299. However, the appropriate Federal agency may require the mining claimant to file a SF 299, if in its discretion, more complete information is necessary.

With respect to documentation of the property interest held by an applicant, a few comments were made expressing concern that the Federal agencies ensure that inholdings are valid prior to issuing approval for access. One commenter stated that requirements for determining validity should be addressed in the regulations. Particular concern was expressed about unpatented mining claims. Interior takes the position that is not necessary to regulate the procedures to determine valid inholdings. However, Interior does expect the applicable bureaus within Interior to ensure valid rights to the greatest extent practicable.

Application Processing and NEPA Compliance

A number of commenters stated in a variety of ways that the procedures for application processing and NEPA compliance should be more specifically tailored to the needs of inholders. The procedures for the application processing and NEPA compliance provided in the proposed regulations have been retained. Because of the variety of access needs that might be applied for, the procedures must cover the complex as well as the simple access situations. However, agency processing can be tailored to the complexity of the proposal on a case-by-case basis. Applications will all be filed, reviewed and processed in the same manner as under §§ 36.4, 36.5 and 36.6. Agencies with frequent applications can however, establish internal procedures involving shorter time periods or other means of handling applications that involve minor degrees of access and have little impact on the environment.

Comments were specifically invited on proposed regulation § 36.10(h) which would have excluded applicants for access to inholdings from paying reasonable fees, charges, or rent. About one-fourth of the comments received responded to this invitation, with a nearly equal split for or against the proposed rule.

Upon further review, we find it would be inappropriate to exclude applicants for access to inholdings from paying reasonable fees. Nearly all recent legislation authorizing the granting of a right-of-way across Federal lands has required, at least, a payment for the use of Federal lands. Congress has also directed that, where identifiable, the user of public lands or resources pay a reasonable amount for such use. This policy is applicable to inholders. However, this policy should not result in unfair charges. Applicable law will apply to determine appropriate fees, which may include fee application processing, permit issuance, monitoring and land use.

Restrictions on Access

Many comments were received on § 36.10(e) which implements that portion of 1110(b) giving the Secretary of the Interior the authority to reasonably regulate access to inholdings. Some commenters argued that the regulation was too permissive in granting the landowners their choice of route. Others argued that too much discretion was given to the agencies. We have concluded that the proposed regulations have properly balanced the applicant's right of access with Interior's right to reasonably regulate. If there is an alternate, adequate and feasible route that has no or fewer significant adverse impacts on natural or cultural values, then it is reasonable the alternate route rather than the applicant's selected route be required. If the applicant's route truly jeopardizes public health or safety, then it is reasonable to use an alternate route.

Some commenters objected to reliance on management plans for guidance as to the appropriate level of access because such plans are not referenced in ANILCA. Although the law does not specifically mention management plans with respect to access to inholdings, management plans for CSUs provide background for understanding the valuable resources, concerns, public use, and management strategies pertaining to a CSU.

Appeal Process

One comment was received suggesting that the proposed regulation be amended to read: "An applicant denied a route or method of access applied for or when the method of access is deemed unnecessary under the provisions of this section may appeal. . . ." Upon further consideration of the matter of appeals relative to "guaranteed" access, the final regulation has been changed to reflect that access cannot be denied but that a particular route or method may be denied. The final agency decision is the final administrative decision.

Multiple Use Right-of-Way

The preamble to the proposed rule solicited comments on the following issue: Whether a potentially multiple

use right-of-way should be for the exclusive use of the applicant or whether the right-of-way should be open to public use or the use by other inholders. Some commenters stated that the concept of multiple use should be construed to include acquisition of reciprocal rights-of-way across other private or State lands which may be crossed by a TUS outside the CSU. Others were concerned that potential impacts from a multiple use right-of-way could be considered as factors against an original applicant. The regulations would have to define the basis of sharing; that multiple impacts associated with a TUS should not be assumed and applied to the initial applicant for a TUS. One commenter stated that other potential users of an existing TUS should be required to submit an application if it sought any expansion, change in use or increased use or impacts. Another opposed opening access routes initially granted to inholders for use by the public. One commenter argued that a right-of-way granted to inholders should be closed to fee paying guests of a CSU. Another commenter stated that if an inholder assumes the costs of construction he should not have to share the access with anyone. One agency commented that it should have the right to use any access route to carry out agency function. One comment recommended that if any agency and an inholder cannot agree on exclusive use or public use, the decision should be submitted to binding arbitration.

Some commenters addressed the means of fair costs or compensation related to multiple use of a right-of-way. Various methods suggested include: reaching agreement with the original applicant for reimbursement; binding arbitration if no agreement can be reached; and as a last resort, rate, a formula involving the original cost of facilities and other related factors by vesting the original TUS builder with certain exclusive rights, which other parties to reach equitable settlement with the builder.

Considering the complexities of the multiple use of a right-of-way, it is Interior's intention to pursue this issue in further study. Until the study is completed, the issue will be dealt with on a case-by-case basis.

Section 36.11 Special Access

This section implements the provisions of section 1110(a) of ANILCA (1110(a)), concerning special access across CSUs, national recreation and national conservation areas, and those public lands designated as wilderness study areas.

Comments were received requesting a more specific definition of "adequate snow cover." The proposed regulations and the statute authorize the use of snowmachines in areas, but that use is limited to "periods of adequate snow cover or frozen river conditions." Interior agrees that the definition should be as specific as possible. In response to this comment, the definition has been revised to provide more guidance on when the snow cover will be viewed as adequate.

A number of comments were received requesting a clarification on the relationship between the provisions of this section and the subsistence provisions of Title VIII of ANILCA (Title VIII). One commenter suggested that the regulations need to define more precisely the limits upon access for subsistence activities. Nothing in this section is intended to limit or restrict the rights of rural residents as specified in Title VIII. Accordingly, a new paragraph (b) has been added to this section to clarify that the regulations contained in this section in no way restrict the rights of rural residents as specified in Title VIII and agency regulations implementing those provisions. A related question asks how the BLM will address subsistence issues, since, unlike the NPS and the FWS, it has not promulgated regulations to implement the provisions of Title VIII. BLM does not intend to promulgate Title VIII regulations in the near future, but internal BLM procedures require satisfying Title VIII requirements prior to granting a right-of-way in Alaska.

Some commenters criticized the proposed regulations on motorboat and aircraft use within areas, in that those uses are not restricted to traditional activities and travel to and from villages and homesites as in the statutory authorization. These commenters preferred the more restrictive language of the statute. Interior is of the view that it has the discretion to broaden the authorization beyond that required in the statute in light of other authorizations. Executive Order 11644 (E.O. 11644), on off-road vehicles (ORV), does not apply to motorboats or aircraft, so Interior is not limited by its requirements in authorizing these uses. After review of the impacts of these uses on the areas, including a review of the experience of the NPS and the FWS with their current regulations which are identical in addressing motorboat and aircraft use, it was decided that deleting the limiting language of the statutory authorization would not significantly increase the use of areas by motorboats and airplanes. Such use would not be in derogation of the values and purposes for which these areas were established, and would provide for greater enjoyment of these areas by visitors. Accordingly, to allow for access to the areas, the restrictions on motorboat and fixed wing aircraft use have not been increased in the final regulations.

Another commenter suggested that snowmachines should be treated, except for subsistence purposes, similar to other ORVs, in that they should be restricted to designated areas or trails. Interior views this suggested revision as contrary to the specific statutory provisions for snowmachine use in areas which is limited only to use for traditional activities and for travel to and from villages and homesites. The statutory authorization is not limited by E.O. 11644.

A number of comments were received on the ORV provisions of this section. Some argued that the proposal was too restrictive, and that the areas should be open to greater ORV use. Others argued that ORV use should be further limited to assure that the values and purposes for the areas are adequately protected. Section 1110(a) does not authorize general ORV use. Accordingly, with the exception of snowmachines, which are specifically addressed in section 1110(a), other applicable laws must be used to determine appropriate ORV use in these areas. Interior believes that as proposed, the regulation of ORVs in areas provides the proper balance between adequate ORV use and protection of the purposes and values for which the areas were established. Under these provisions, the use of ORVs in locations other than established roads and parking areas or in areas designated pursuant to E.O. 11644, is prohibited, unless pursuant to a valid permit. Under this procedure, individuals could apply for and receive permits for ORV use on existing trails in non-wilderness areas upon a finding that the use would be compatible with the purposes and values for which the areas were established. Permitted ORVs are exempted from E.O. 11644, which controls ORV use, and thus, this procedure offers the maximum ORV use allowable under current law. Persons desiring the opening of specific new trails may petition Interior to initiate rulemaking under 43 CFR Part 14, to open new trails under the provisions of E.O. 11644.

Section 36.11(g) has also been revised to clarify that areas will be designated for ORV use according to E.O. 11644 and regulations promulgated by the agencies to implement the Order. In addition, the provision in the proposed regulations that closures and openings would be

according to § 36.11(h) has been deleted. Since that section has been revised to apply only to uses authorized by section 1110(a) (snowmachines, motorboats, airplanes, and nonmotorized surface transportation methods), it is no longer appropriate for closure and opening provisions of that section to apply to ORVs. Other established agency law will apply.

Some commenters suggested that a definition of "traditional activity" should be included in these regulations. Under these regulations, the use of snowmachines is limited to "for traditional activities and travel to and from villages and homesites." One suggestion was made that the regulations should limit access to traditional activities to the means traditionally employed, and should define what those means are. Another commenter argued that access for a traditional activity is only permissible in areas where the activity has traditionally occurred. Because these regulations apply to a number of areas under the administrative jurisdiction of three agencies, it has been decided that it would be unwise, and perhaps impossible to develop a definition that would be appropriate for all areas under all circumstances. Exactly what "traditional activities" are must be decided on a case-by-case basis. Once the agencies have had the opportunity to review this question for each area under their administration, it may be possible to specifically define "traditional activity" for each area. Accordingly, these regulations do not contain a definition of "traditional activity."

Other comments suggested that the provisions of this section should not apply to parks and monuments which predated ANILCA. The argument is made that Congress did not intend to open the pre-ANILCA areas to the uses described in section 1110(a), since these pre-ANILCA areas had been closed to such uses prior to the enactment of ANILCA. Interior does not find any statutory support for this position, since section 1110(a) provides no exception for the pre-ANILCA areas. Accordingly, no exception for pre-ANILCA areas is provided for in these regulations.

A number of comments were received on the aircraft provisions of this section. A few objected to any restrictions being placed upon helicopter use, arguing that helicopters are a widely used means of transportation in Alaska, and that there is no reason to distinguish helicopters from fixed-wing aircraft. Others suggested that the provisions be amended to specifically allow emergency use of helicopters in areas without a permit, and also to allow helicopter use if pursuant to a memorandum of understanding with the appropriate Federal agency. Interior does not read the statutory authorization "airplane" of section 1110(a) as including helicopters. Accordingly, it is within its discretion to restrict helicopter use. Interior's experience has shown that uncontrolled helicopter use may have negative impacts on the purposes and values for which the various areas were established, especially upon the wildlife. Accordingly, Interior believes that helicopter use must be controlled through a general permit system to protect the purposes and values for which the areas were established. However, the proposed regulations have been revised to allow for emergency use without a permit, since it would not be practical to require a permit under emergency circumstances, or use without a permit pursuant to a memorandum of understanding, since the memorandum of understanding can contain provisions to assure adequate protection of the areas.

A few commenters suggested that the words "in accordance with the paragraph" be deleted from paragraph (e)(1) of the proposed regulations, without explanation as to why the request was made. The provisions proposed to be amended read: "Fixed-wing aircraft may be landed and operated on lands and water within areas, except where such use is prohibited or otherwise restricted by the appropriate Federal agency in accordance with this paragraph." Interior agrees that the quoted language is limiting, and unnecessary. Accordingly, it has been deleted.

Comments were received suggesting that owners of downed aircraft be permitted to remove valuable parts from the aircraft at the time of rescue without a permit. The proposed regulations required a permit prior to the removal of any downed aircraft on area lands. This proposal has been modified to permit the removal of valuable aircraft parts to the extent authorized by other federal laws and regulations.

A comment was received that downed aircraft should be removed from all public lands, and should not be limited to areas administered by the NPS and the FWS. Interior agrees, and § 36.11(f)(3) has been revised accordingly.

Another commenter argued that the aircraft authorization is too broad in that it fails to restrict wheeled aircraft access to designated sites during non-winter conditions. This is contrary to Interior's reading of the statutory authorization of section 1110(a), in that the authorized use applies to "airplanes," which Interior would interpret to include wheeled aircraft.

It has also been noted that Interior does not have the authority to regulate flight paths and altitudes of aircraft. This is a function of the Federal Aviation Administration. Therefore, a technical change has been made to the language of § 36.11(f)(1) dealing with aircraft harassment of wildlife.

Closures

Some comments suggested that the regulations should specify standards for the three types of closures: emergency, temporary, and permanent. The proposed regulations, as well as the present regulations of the NPS and the FWS provide a standard only for emergency closures. No standard is provided for temporary and permanent closures. Interior agrees that standards should be provided for all types of closures developed in these regulations. The standard for closure of areas to the uses authorized by section 1110(a) is "that such use would be detrimental to the resource values of the unit or area." In reviewing the issue of the standards for closures under the provisions of section 1110(a), Interior has concluded that this standard must be applied to all types of closures developed in these regulations. For purposes of this section, only if it is determined that a proposed use otherwise authorized by this section would be detrimental to the resource values of a particular area may that area be closed to the use, unless closure is authorized under other agency law. In the proposed and present regulations, the standard established for emergency closures and restrictions is as follows: "In determining whether to close an area or restrict an activity on an emergency basis, the area manager shall be guided by factors such as public health and safety, fire danger, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the area was established." After reviewing this standard, Interior has determined that it is not appropriate for the closures provided for under this provision. Our review of section 1110(a) leads us to conclude that the closure of areas to the authorized uses (snowmachines, motorboats, airplanes, and nonmotorized surface transportation methods) should occur

only under the standards of the law which this section is to implement. Accordingly, the final regulations have been amended to provide that no closure to any use authorized under this section may be made unless the "area manager determines that the use would be detrimental to the values of the unit or area."

It is Interior's view however, that these uses may be limited or restricted pursuant to other applicable law. The Secretary of the Interior has authority in the areas administered by Interior to close areas or restrict use for a variety of reasons, such as for health and safety. We do not believe that the provisions of this section of ANILCA were intended to preclude the Secretary from utilizing other statutory authorizations to restrict these uses. The proposed and interim regulations attempted to incorporate these other laws the standard, stated above, for emergency closures. After reconsideration of these closure provisions as a result of the comments made about the standard for closure under section 1110(a), Interior has determined that these regulations should be limited to closures under the authority of that section. Accordingly, by, limiting these regulations to closures authorized by section 1110(a), it was determined that the category of closure "emergency" was no longer necessary, and as such is covered by other established authority. Regulations providing for the closure of areas for reasons other than under the provisions of section 1110(a) include: For the NPS, 36 CFR 1.5; for the FWS, 50 CFR 25.21; and for the BLM, 43 CFR 8364.

One commenter suggested that section 1110(a) does not require notice and hearings for temporary or emergency closures, and that the regulations should be amended to allow temporary and emergency closures for a reasonable period of time without notice and hearings. We do not believe the statute authorizes the discretion to make any ciosures before a notice and hearing. As with the standards discussed above, section 1110(a) does not distinguish between the various types of closures developed in these regulations. The statutory language clearly provides that the authorized uses "shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary of Interior finds that such use would be detrimental to the resources values of the unit or area." Accordingly, the regulations require notice and hearing prior to any of the forms of closures.

A few commenters pointed out that the taking of fish and wildlife are addressed in the appropriate agency regulations and suggested that it not be addressed here. Since section 1110(a) does not address the taking of fish and wildlife, Interior agrees with this suggestion and it has been adopted.

One commenter suggested that the regulations be amended so that animal owners and users have to respect the private property rights of others under penalty of being required to obtain a permit which can be revoked if abuses continue. This suggestion cannot be adopted since these provisions do not apply to privately owned lands.

Another commenter suggested that the regulations require an EA or an EIS for each access request under these regulations. Interior is of the view that the provisions of NEPA will address the need for an EA or an EIS, and that the provisions of section 1110(a) did not amend those provisions. NEPA was enacted to assure that agencies adequately consider environmental impacts in proposed agency actions. Interior does not see a need to revise the requirements of NEPA for the purposes of ths special access provisions of this section.

One commenter suggested that the provisions of § 36.11(j), which provide for criminal penalties for violations of the special access provisions, be deleted entirely as being unauthorized. Interior believes that this enforcement tool is needed for these special access provisions, since, for the most part, permits are not required. Interior is authorized to promulgate this penalty provision in these regulations pursuant to the provisions of 16 U.S.C. 3 for areas administered by the NPS; 16 U.S.C. 668dd for areas administered by the FWS, and 43 U.S.C. 1733 for areas administered by the BLM.

Section 36.12 Temporary Access

Commenters suggested that reference should be made to compliance with NEPA and section 810. This has been done in § 36.12(d). One commenter suggested that this section should not include lands designated for wilderness study or managed to maintain the wilderness character. Section 1111(a) of ANILCA (1111(a)), the statutory authorization for this regulatory provision on temporary access, specifically includes these lands. Accordingly, the regulation has not been revised as suggested.

Another commenter suggested that the proposed language requiring "permanent harm" justify denial does not allow enough administrative flexibility to protect resources. This standard comes directly from the statutory provision and it supercedes any other law that might have a different standard. Therefore, the regulatory provisions has not been revised in this final rule.

One commenter noted that section 1111(a) does not distinguish between developed and undeveloped land in regard to obtaining a special access permit, but merely to "State or private land." Interior agrees with this comment, and the definition of "temporary access" has been revised in the final regulation by deleting the word "undeveloped" as a modifier to "State or private lands."

Finally, one commenter suggested that the permits issued under section 36.12 should be limited to a duration of not more than one year, and should not be renewable. The regulation does limit temporary access to one year. However, Interior believes there may be some circumstances when it would be appropriate to renew a temporary access permit and that it should not be limited by such a restriction.

Section 36.13 Special Provisions

One commenter requested more opportunity for public involvement in siting of the access for surface transportation purposes across the Gates of the Artic National Preserve in § 36.13(a). We note that the regulations, in accordance with the statutory authorization (section 201(4)(b) through (d) of ANILCA), indicate that the environmental and economic analysis for determining the route of the right-of-way is to be prepared in accordance with the procedural requirements of § 36.6, which applies to other TUSs. Interior believes section 36.6 provides ample opportunity for the public to comment, and no additional provisions concerning public involvement have been added in the final regulations. One commenter requested that § 36.13(a)(5) should be amended to add the provision that the right-of-way would be issued in accordance with the provisions of section 1107 of ANILCA, as directed by section 201(4)(d) of ANILCA. Interior agrees and reference to § 36.9 of the regulations, which implements section 1107 of ANILCA, has been added.

Finally, other commenters objected to the underlying statutory basis for this section. No changes were made to the regulations as a result of these comments.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned

clearance numbers 1024–0026 and 1004–0060.

Economic Effect

Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This finding is based on the minimal positive economic impact on salvage aircraft companies, local repair shops, filling stations, parts stores and retail outlets for access vehicles. Small entities will also be minimally impacted by the various permit provisions regarding access.

Enviromental Considerations

As requested by NEPA, Interior has prepared an EA and made a Finding of No Significant Impact. Copies of these documents are available at the address listed at the beginning of this rulemaking.

The primary authors of these regulations are William P. Horn, Assistant Secretary for Fish and Wildlife and Parks, Washington, DC; Brian Koula, Division of Conservation and Wildlife, Office of the Solicitor, Washington, DC; Richard Stenmark, Alaska Regional Office, NPS, Anchorage, Alaska; Adam Misztal, Division of Refuge Management, FWS, Washington, DC; and Theodore Bingham, Division of Rights-of-Way, BLM, Washington, DC.

Lists of Subjects

43 CFR Part 36

Alaska, Transportation, Utilities, Access, Rights-of-Way, Conservation system units.

36 CFR Part 13

Aircraft, Alaska, National parks, Penalties, Traffic regulations.

50 CFR Part 36

Alaska, Recreation and recreation areas, Traffic regulations, Wildlife refuges.

Accordingly, Titles 36, 43 and 50 are amended as set forth below.

TITLE 36—[AMENDED]

PART 13—[AMENDED]

1. The authority citation for Part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et seq., § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

§§ 13.10 through 13.16 [Removed and reserved]

2. Sections 13.10 through 13.16 of Title 36 are removed and reserved.

TITLE 50—[AMENDED]

PART 36—[AMENDED]

1. The authority citation for Part 36 is revised to read as follows:

Authority: 16 U.S.C. 460(k) et seq., 668dd et seq., 742(a) et seq., 3101 et seq., and 44 U.S.C. 3501 et seq.

§§ 36.21 through 36.24 [Removed and reserved]

2. Sections 36.21 through 36.24 of Title 50 are removed and reserved.

TITLE 43—[AMENDED]

Accordingly, 43 CFR is amended by adding a new Part 36 to read as follows:

PART 36—TRANSPORTATION AND UTILITY SYSTEMS IN AND ACROSS, AND ACCESS INTO, CONSERVATION SYSTEM UNITS IN ALASKA

Sec.

36.1 Applicability and scope.
36.2 Definitions.
36.3 Preapplication.
36.4 Filing of application.
36.5 Application review.
36.6 NEPA compliance and lead agency.
36.7 Decision process.
36.8 Administrative appeals.
36.9 Issuing permit.
36.10 Access to inholdings.
36.11 Special access.
36.12 Temporary access.
36.13 Special provisions.

Authority: 16 U.S.C. 1, 3, 668dd *et seq.*, and 3101 *et seq.*; 43 U.S.C. 1201.

§ 36.1 Applicability and scope.

(a) The regulations in this part apply to any application for access in the following forms within any conservation system unit (CSU), national recreation area or national conservation area within the State of Alaska which is administered by the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS) or National Park Service (NPS):

(1) A transportation or utility system (TUS) is any portion of the route of the system within any of the aforementioned areas and the system is not one which the Department or agency having jurisdiction over the unit or area is establishing incident to its management of the unit or area;

(2) Access to inholdings within these areas, as well as within public lands administered by the BLM designated as wilderness study areas;

(3) Special access within these areas, as well as within public lands administered by the BLM designated as wilderness study areas;

(4) Temporary access within the aforementioned areas, as well as the National Petroleum Reserve in Alaska and public lands administered by the BLM designated as wilderness study areas or managed to maintain the wilderness character or potential thereof.

(b) Except as specifically provided in this part, applicable law shall apply with respect to the authorization and administration of TUSs.

§ 36.2 Definitions.

As used in this part, the term:

(a) "ANILCA" means the Alaska National Interest Lands Conservation Act (94 Stat. 2371; Pub. L. 96–487).

(b) "Applicable law" means a law or regulation of general applicability, other than Title XI of ANILCA, under which a Federal department or agency has jurisdiction to grant an authorization (including but not limited to, a right-of-way, permit, license, lease or certificate) without which a TUS cannot, in whole or in part, be established or operated.

(c) "Applicant" means an individual, partnership, corporation, association or other business entity, and a Federal, State or local government entity including a municipal corporation submitting an application under this part.

(d) "Appropriate Federal agency" means a Federal agency (or the agency official to whom the authority has been delegated) that has jurisdiction to grant any authorization without which a TUS cannot, in whole or in part, be established or operated.

(e) "Area" means a CSU, National Recreation Area, or National Conservation Area in Alaska administered by the NPS, the FWS or the BLM.

(f) "Compatible with the purposes for which the unit was established" means that the system will not significantly interfere with or detract from the purposes for which the area was established.

(g) "Conservation System Unit" (CSU) means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System or the National Wilderness Preservation System administered by the NPS, the FWS or the BLM.

(h) "Economically feasible and prudent alternate route" means an alternate route must meet the requirements for being both economically feasible and prudent. To be economically feasible, the alternate route must be able to attract capital to finance its construction and an alternate route will be considered to be prudent only if the difference of its benefits minus its costs is equal to or greater

than that of the benefits of the proposed TUS minus its costs.

(i) "Improved right-of-ways" means routes which are of a permanent nature and would involve substantial alteration of the terrain or vegetation such as grading and graveling of surfaces or other such construction. Trail right-of-ways which are annually or periodically marked, brushed, or broken for off-road vehicles are excluded.

(j) "Incident to its management of the unit or area" means a type of TUS which is used directly or indirectly in support of authorized activities, and which is built by or for the Federal agency which has jurisdiction over the area.

(k) "Other system of general transportation" means private and commercial transportation of passengers and/or shipment of goods or materials.

(l) "Public values" means those values relating to the purposes for which the area was established as defined by the enabling legislation for the area.

(m) "Related structures and facilities" means those structures, facilities and right-of-ways which are reasonably and minimally necessary for the construction, operation and maintenance of a TUS, and which are listed as part of the TUS on the consolidated application form, Standard Form 299, "Application for Transportation and Utility Systems and Facilities on Federal Lands" (SF 299).

(n) "Right-of-way permit" means a right-of-way permit, lease, license, certificate or other authorization for all or part of a TUS in an area.

(o) "Secretary" means the Secretary of the Interior.

(p) "Transportation or utility system" (TUS) means any of the systems listed in paragraphs (p) (1) through (7) of this section, if a portion of the route of the system will be within an area and the system is not one that the Department or agency having jurisdiction over the area is establishing incident to its management of the area. The systems shall include related structures and facilities.

(1) Canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other systems for the transportation of water.

(2) Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels and any refined product produced therefrom.

(3) Pipelines, slurry and emulsion systems and conveyor belts for the transportation of solid materials.

(4) Systems for the transmission and distribution of electric energy.

(5) Systems for transmission or reception of radio, television, telephone, telegraph and other electronic signals and other means of communication.

(6) Improved rights-of-way for snowmachines, air cushion vehicles and other all-terrain vehicles.

(7) Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks and other systems of general transportation.

§ 36.3 Preapplication.

(a) Anyone interested in obtaining approval of a TUS is encouraged to establish early contact with each appropriate Federal agency so that filing procedures and details may be discussed, resource concerns and potential constraints may be identified, the proposal may be considered in agency planning, preapplication activities may be discussed and processing of an application may be tentatively scheduled.

(b) Reasonable preapplication activities in areas shall be permitted following a determination by the appropriate Federal agency that the activities are necessary to obtain information for filing the SF 299, that the activities would not cause significant or permanent damage to the values for which the area was established or unreasonably interfere with other authorized uses or activities and that it would not significantly restrict subsistence uses. In areas administered by the NPS or the FWS, a permit shall be obtained from the appropriate agency prior to engaging in any preapplication activities. Prior to approval and issuance of such a permit, the appropriate Federal agencies must find that the proposed preapplication activity is compatible with the purposes for which the area was established.

§ 36.4 Filing of application.

(a) A SF 299, which may be obtained from an appropriate Federal agency, shall be completed by the applicant according to the instructions on the form. The form shall be filed on the same day (except in compliance with paragraph (c) of this section) with each appropriate Federal agency from which an authorization, such as a permit, license, lease or certificate is required for the TUS. Filing with any appropriate Interior agency in Alaska shall be considered to be a filing with all of its agencies. Any filing fee required by the appropriate Federal agency pursuant to applicable law must be paid at the time of filing.

(b) Prior to filing the SF 299, the applicant shall determine whether additional information to that requested on the form is required by the appropriate Federal agencies. If so, the applicant shall file the additional information as an attachment to the SF 299.

(c) When, because of separate filing points, an applicant is not able to file with each appropriate Federal agency on the same day, the applicant shall file all applications as soon as possible. All applications must be filed within a 15 calendar day period. For purposes of the time requirements provided for in this part, the application shall not be considered to have been filed until the last appropriate Federal agency receives the application. The lead agency, determined pursuant to § 36.5(a), shall determine the date of filing or that the application was not filed within the 15 day period and inform all appropriate Federal agencies.

(d) The information collection requirements contained in these regulations have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1024–0026 and 1004.0060. The information collected by the appropriate Federal agency will be used to determine whether or not to issue a permit to obtain a benefit. A response is required to obtain or retain a benefit.

§ 36.5 Application review.

(a) When there is more than one appropriate Federal agency, the Federal agency having management jurisdiction over the longest lineal portion of the right-of-way requested in the TUS application shall be the lead agency for the purpose of coordinating appropriate Federal agency actions in the review and processing of the SF 299, as well as for the purpose of compliance with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*

(1) By agreement among the appropriate Federal agencies, a different Federal agency may be designated the lead agency for any or all parts of the review, processing or NEPA compliance.

(2) Upon identification of the lead agency, other involved agencies will provide assistance as requested by the lead agency.

(b) Upon receipt of an application, the lead agency will review it and determine the filing date pursuant to § 36.4. If it is determined that the applicant has not met the 15 calendar day filing deadline, pursuant to § 36.4(c) of this part, the lead agency shall notify each appropriate Federal agency to return the application to the applicant without further action.

(c) Within 60 days of the date of filing, each appropriate Federal agency shall

inform the applicant and the lead agency, in writing, whether the application on its face:

(1) Contains the required information; or

(2) Is insufficient, together with a specific listing of the additional information the applicant must submit.

(d) When the application is insufficient, the applicant must furnish the specific information requested within 30 days of receipt of notification of deficiency:

(1) If the applicant needs more time to obtain information, additional time may be granted by the appropriate Federal agency upon request of the applicant, provided the applicant agrees that the application filing date will change to the date of filing of the specific additional information.

(2) Unless extended pursuant to the provisions of paragraph (d)(1) of this section, failure of the applicant to respond within the 30 day period will result in return of the application without further action.

(3) The lead agency shall keep all appropriate Federal agencies informed of actions occurring under paragraph (d)(1) and (2) of this section in order that such agencies may note their application records accordingly.

(e) Within 30 days of the receipt of additional information requested by the appropriate Federal agency, the applicant shall be notified in writing whether the supplemental information is sufficient.

(1) If the applicant fails to provide all the requested information, the application shall be rejected and returned to the applicant along with a list of the specific deficiencies.

(2) When the applicant furnishes the additional information, the application will be reinstated, and it will be considered filed as of the date the final supplemental information is actually received by the appropriate Federal agency.

(3) The lead agency shall notify appropriate Federal agencies of any final rejection under paragraph (e)(1) of this section.

§ 36.6 NEPA compliance and lead agency.

(a) The provisions of NEPA and the Council for Environmental Quality regulations (40 CFR Parts 1500–1508) will be applied to determine whether an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required, or that a categorical exclusion applies.

(1) The lead agency, with cooperation of all appropriate Federal agencies, shall complete an EA or a draft environmental impact statement (DEIS) within nine months of the date the SF 299 was filed.

(2) If the lead agency determines, for good cause, that the nine-month period is insufficient, it may extend such period for a reasonable specific time. Notification of the extension, together with the reasons therefore, shall be provided to the applicant and published in the Federal Register at least 30 days prior to the end of the nine-month period.

(3) If the lead agency determines that an EIS is not required, a Finding of No Significant Impact (FONSI) will be prepared.

(4) If an EIS is determined to be necessary, the lead agency shall hold a public hearing on the joint DEIS in Washington, DC, and at least one location in Alaska.

(5) The appropriate Federal agencies shall solicit and consider the views of other Federal departments and agencies, the Alaska Land Use Council, the State, affected units of local government in the State and affected corporations formed pursuant to the Alaska Native Claims Settlement Act. After public notice, the agencies shall receive and consider statements and recommendations regarding the application submitted by interested individuals and organizations.

(6) The lead agency shall ensure compliance with section 810 of ANILCA.

(b) When an EIS is determined to be necessary, within three months of completing the DEIS or within one year of the filing of the application, whichever is later, the lead agency shall complete the EIS and publish a notice of its availability in the Federal Register.

(c) Cost reimbursement.

(1) The costs to the United States of application processing, other than costs for EIS preparation and review as provided in paragraph (c)(2) of this section, shall be reimbursed by the applicant, if such reimbursement is required pursuant to the applicable law and procedures of the appropriate Federal agency incurring the costs.

(2) The reasonable administrative and other costs of EIS preparation shall be reimbursed by the applicant, according to the BLM's cost recovery procedures and regulations implementing section 304 of FLPMA, 43 U.S.C. 1734.

§ 36.7 Decision process.

There are two separate decision processes. The first is used when the appropriate Federal agencies have an applicable law to issue a right-of-way permit and the area involved is outside the National Wilderness Preservation System. The second is used when an area involved in the application is within the National Wilderness Preservation System or an appropriate Federal agency has no applicable law with respect to issuing a right-of-way permit across all or any area covered by a TUS application.

(a) When the appropriate Federal agencies have an applicable law and the area involved is outside the National Wilderness Preservation System:

(1) Within four months of the date of the notice of availability of a FONSI or final EIS, each appropriate Federal agency shall make a decision based on applicable law to approve or disapprove the TUS and so notify the applicant in writing.

(2) Each appropriate Federal agency in making its decision shall consider and make detailed findings supported by substantial evidence as to the portion of the TUS within that agency's jurisdiction, with respect to:

(i) The need for and economic feasibility of the TUS;

(ii) Alternative routes and modes of access, including a determination with respect to whether there is any economically feasible and prudent alternative to routing the system through or within an area and, if not, whether there are alternate routes or modes which would result in fewer or less severe adverse impacts upon the area;

(iii) The feasibility and impacts of including different TUSs in the same area;

(iv) Short and long term social, economic and environmental impacts of national, State or local significance, including impacts on fish and wildlife and their habitat and on rural, traditional lifestyles;

(v) The impacts, if any, on the national security interests of the United States, that may result from approval or denial of the application for the TUS;

(vi) Any impacts that would affect the purposes for which the Federal unit or area concerned was established;

(vii) Measures which should be instituted to avoid or minimize negative impacts;

(viii) The short and long term public values which may be adversely affected by approval of the TUS versus the short and long term public benefits which may accrue from such approval; and

(ix) Impacts, if any, on subsistence uses.

(3) To the extent the appropriate Federal agencies agree, the decisions may be developed jointly, singularly or in some combination thereof.

(4) If an appropriate Federal agency disapproves any portion of the TUS, the application in its entirety is disapproved and the applicant may file an

VOL 51 ISS 171 SE 4 1986 UMI

administrative appeal pursuant to section 1106(a) of ANILCA.

(b) When an area involved is within the National Wilderness Preservation System or an appropriate Federal agency has no applicable law with respect to granting all or any part of a TUS application:

(1) Within four months of the date of publication of the notice of the availability of the final EIS or FONSI, each appropriate Federal agency shall determine whether to tentatively approve or disapprove each right-of-way permit within its jurisdiction that applies with respect to the TUS and the Secretary of the Interior shall make notification pursuant to section 1106(b) of ANILCA.

(i) The Federal agency having jurisdiction over a portion of a TUS for which there is no applicable law shall recommend approval of that portion of the TUS if it is determined that:

(A) Such system would be compatible with the purposes for which the area was established; and

(B) There is no economically feasible and prudent alternate route for the system.

(ii) If there is applicable law for a portion of the TUS which is outside the National Wilderness Preservation System, the applicable law shall be applied in making the determination to approve or disapprove that portion of the TUS.

(2) The notification shall be accompanied by a statement of the reasons and findings supporting each appropriate Federal agency's position. The findings shall include, but not be limited to, the findings required in paragraph (a)(2) of this section. The notification shall also be accompanied by the final EIS, the EA or statement that a categorical exclusion applies and any comments of the public and other Federal agencies.

§ 36.8 Administrative appeals.

(a) If any appropriate Federal agency disapproves a TUS application pursuant to section 36.7(a), the applicant may appeal the denial pursuant to section 1106(a) of ANILCA.

(b) There is no administrative appeal for a denial issued under the provisions of section 36.7(b).

§ 36.9 Issuing permit.

(a) Once an application is approved under the provisions of § 36.7(a), a right-of-way permit will be issued by the appropriate Federal agency or agencies, according to that agency's authorizing statutes and regulations or, if approved pursuant to the provisions of section 36.7(b), according to the provisions of Title V of the the Federal Land Policy Management Act of 1976 (43 U.S.C. 1701) or other applicable law. The permit shall not be issued until all fees and other charges have been paid in accordance with applicable law.

(b) All TUS right-of-way permits shall include, but not be limited to, the following terms and conditions:

(1) Requirements to ensure that to the maximum extent feasible, the right-of-way is used in a manner compatible with the purposes for which the affected area was established or is managed;

(2) Requirements for restoration, revegetation and curtailment of erosion of the surface of the land;

(3) Requirements to ensure that activities in connection with the right-of-way will not violate applicable air and water quality standards and related facility siting standards established pursuant to law;

(4) Requirements, including the minimum necessary width, designed to control or prevent:

(i) Damage to the environment (including damage to fish and wildlife habitat);

(ii) Damage to public or private property; and

(iii) Hazards to public health and safety.

(5) Requirements to protect the interests of individuals living in the general area of the right-of-way permit who rely on the fish, wildlife and biotic resources of the area for subsistence purposes; and

(6) Requirements to employ measures to avoid or minimize adverse environmental, social or economic impacts.

(c) Any TUS approved pursuant to this part which occupies, uses or traverses any area within the boundaries of a unit of the National Wild and Scenic Rivers System shall be subject to such conditions as may be necessary to assure that the stream flow of, and transportation on, such river are not interfered with or impeded and that the TUS is located and constructed in an environmentally sound manner.

(d) In the case of a pipeline described in section 28(a) of the Mineral Leasing Act of 1920, a right-of-way permit issued pursuant to this part shall be issued in the same manner as a right-of-way is granted under section 28, and the provisions of subsections (c) through (j), (1) through (q), and (u) through (y) of section 28 shall apply to right-of-way permits issued pursuant to this part.

§ 36.10 Access to inholdings.

(a) This section sets forth the procedures to provide adequate and feasible access to inholdings within areas in accordance with section 1110(b) of ANILCA. As used in this section, the term:

(1) "Adequate and feasible access" means a route and method of access that is shown to be reasonably necessary and economically practicable but not necessarily the least costly alternative for achieving the use and development by the applicant on the applicant's nonfederal land or occupancy interest.

(2) "Area" also includes public lands administered by the BLM designated as wilderness study areas.

(3) "Effectively surrounded by" means that physical barriers prevent adequate and feasible access to State or private lands or valid interests in lands except across an area(s). Physical barriers include but are not limited to rugged mountain terrain, extensive marsh areas, shallow water depths and the presence of ice for large periods of the year.

(4) "Inholding" means State-owned or privately owned land, including subsurface rights of such owners underlying public lands or a valid mining claim or other valid occupancy that is within or is effectively surrounded by one or more areas.

(b) It is the purpose of this section to ensure adequate and feasible access across areas for any person who has a valid inholding. A right-of-way permit for access to an inholding pursuant to this section is required only when this part does not provide for adequate and feasible access without a right-of-way permit.

(c) Applications for a right-of-way permit for access to an inholding shall be filed with the appropriate Federal agency on a SF 299. Mining claimants who have acquired their rights under the General Mining Law of 1872 may file their request for access as a part of their plan of operations. The appropriate Federal agency may require the mining claimant applicant to file a SF 299, if in its discretion, it determines that more complete information is needed. Applicants should ensure that the following information is provided:

(1) Documentation of the property interest held by the applicant including, for claimants under the General Mining Law of 1872, as amended (30 U.S.C. 21–54), a copy of the location notice and recordations required by 43 U.S.C. 1744;

(2) A detailed description of the use of the inholding for which the applied for right-of-way permit is to serve; and

(3) If applicable, rationale demonstrating that the inholding is effectively surrounded by an area(s).

(d) The application shall be filed in the same manner as under § 36.4 and shall be reviewed and processed in accordance with §§ 36.5 and 36.6.

(e)(1) For any applicant who meets the criteria of paragraph (b) of this section, the appropriate Federal agency shall specify in a right-of-way permit the route(s) and method(s) of access across the area(s) desired by the applicant, unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the area and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety and adequate and feasible access otherwise exists; or

(iii) The route or method is inconsistent with the management plan(s) for the area or purposes for which the area was established and adequate and feasible access otherwise exists; or

(iv) The method is unnecessary to accomplish the applicant's land use objective.

(2) If the appropriate Federal agency makes one of the findings described in paragraph (e)(1) of this Section, another alternate route(s) and/or method(s) of access that will provide the applicant adequate and feasible access shall be specified by that Federal agency in the right-of-way permit after consultation with the applicant.

(f) All right-of-way permits issued pursuant to this section shall be subject to terms and conditions in the same manner as right-of-way permits issued pursuant to § 36.9.

(g) The decision by the appropriate Federal agency under this section is the final administrative decision.

§ 36.11 Special access.

(a) This section implements the provisions of section 1110(a) of ANILCA regarding use of snowmachines, motorboats, nonmotorized surface transportation, aircraft, as well as off-road vehicle use.

As used in this section, the term:

(1) "Area" also includes public lands administered by the BLM and designated as wilderness study areas.

(2) "Adequate snow cover" shall mean snow of sufficient depth, generally 6–12 inches or more, or a combination of snow and frost depth sufficient to protect the underlying vegetation and soil.

(b) Nothing in this section affects the use of snowmobiles, motorboats and nonmotorized means of surface transportation traditionally used by rural residents engaged in subsistence activities, as defined in Tile VIII of ANILCA.

(c) The use of snowmachines (during periods of adquate snow cover and frozen river conditions) for traditional activities (where such activities are permitted by ANILCA or other law) and for travel to and from villages and homesites and other valid occupancies is permitted within the areas, except where such use is prohibited or otherwise restricted by the appropriate Federal agency in accordance with the procedures of paragraph (h) of this section.

(d) Motorboats may be operated on all area waters, except where such use is prohibited or otherwise restricted by the appropriate Federal agency in accordance with the procedures of paragraph (h) of this section.

(e) The use of nonmotorized surface transportation such as domestic dogs, horses and other pack or saddle animals is permitted in areas except where such use is prohibited or otherwise restricted by the appropriate Federal agency in accordance with the procedures of paragraph (h) of this section.

(f) Aircraft.

(1) Fixed-wing aircraft may be landed and operated on lands and waters within areas, except where such use is prohibited or otherwise restricted by the appropriate Federal agency, including closures or restrictions pursuant to the closures of paragraph (h) of this section. The use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish and wildlife for subsistence uses therein is prohibited, except as provided in 36 CFR 13.45. The operation of aircraft resulting in the harassment of wildlife is prohibited.

(2) In imposing any prohibitions or restrictions on fixed-wing aircraft use the appropriate Federal agency shall:

(i) Publish notice of prohibition or restrictions in "Notices to Airmen" issued by the Department of Transportation; and

(ii) Publish permanent prohibitions or restrictions as a regulatory notice in the United States Flight Information Service "Supplement Alaska."

(3) Except as provided in paragraph (f)(3)(i) of this section, the owners of any aircraft downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the appropriate Federal agency. In establishing a removal procedure, the appropriate Federal agency is authorized to establish a reasonable date by which aircraft removal operations must be complete and determine times and means of access to and from the downed aircraft.

(i) The appropriate Federal agency may waive the requirements of this paragraph upon a determination that the removal of downed aircraft would constitute an unacceptable risk to human life, or the removal of a downed aircraft would result in extensive resource damage, or the removal of a downed aircraft is otherwise impracticable or impossible.

(ii) Salvaging, removing, possessing or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under this paragraph and as may be controlled by the other laws and regulations.

(4) The use of a helicopter in any area other than at designated landing areas pursuant to the terms and conditions of a permit issued by the appropriate Federal agency, or pursuant to a memorandum of understanding between the appropriate Federal agency and another party, or involved in emergency or search and rescue operations is prohibited.

(9) Off-road vehicles.

(1) The use of off-road vehicles (ORV) in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the appropriate Federal agency in accordance with Executive Order 11644, as amended or pursuant to a valid permit as prescribed in paragraph (g)(2) of this section or in §§ 36.10 or 36.12.

(2) The appropriate Federal agency is authorized to issue permits for the use of ORVs on existing ORV trails located in areas (other than in areas designated as part of the National Wilderness Preservation System) upon a finding that such ORV use would be compatible with the purposes and values for which the area was established. The appropriate Federal agency shall include in any permit such stipulations and conditions as are necessary for the protection of those purposes and values.

(h) Closure procedures.

(1) The appropriate Federal agency may close an area on a temporary or permanent basis to use of aircraft, snowmachines, motorboats or nonmotorized surface transportation only upon a finding by the agency that such use would be detrimental to the resource values of the area.

(2) Temporary closures.

(i) Temporary closures shall not be effective prior to notice and hearing in the vicinity of the area(s) directly affected by such closures and other locations as appropriate.

(ii) A temporary closure shall not exceed 12 months.

(3) Permanent closures shall be published by rulemaking in the **Federal Register** with a minimum public comment period of 60 days and shall not be effective until after a public hearing(s) is held in the affected vicinity and other locations as deemed appropriate by the appropriate Federal agency.

(4) Temporary and permanent closures shall be (i) publishing at least once in a newspaper of general circulation in Alaska and in a local newspaper, if available; posted at community post offices within the vicinity affected; made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity; and designated or a map which shall be available for public inspection at the office of the appropriate Federal agency and other places convenient to the public; or (ii) designated by posting the area with appropriate signs; or (iii) both.

(5) In determining whether to open an area that has previously been closed pursuant to the provisions of this section, the appropriate Federal agency shall provide notice in the **Federal Register** and shall, upon request, hold a hearing in the affected vicinity and other locations as appropriate prior to making a final determination.

(6) Nothing in this section shall limit the authority of the appropriate Federal agency to restrict or limit uses of an area under other statutory authority.

(i) Except as otherwise specifically permitted under the provisions of this section, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

(j) Any person convicted of violating any provision of the regulations contained in this section, or as the same may be amended or supplemented, may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the area.

§ 36.12 Temporary access.

(a) For the purposes of this section, the term:

(1) "Area" also includes public lands administered by the BLM designated as wilderness study areas or managed to maintain the wilderness character or potential thereof, and the National Petroleum Reserve—Alaska.

(2) "Temporary access" means limited, short-term (i.e., up to one year from issuance of the permit) access which does not require permanent facilities for access to State or private lands.

(b) This section is applicable to State and private landowners who desire temporary access across an area for the purposes of survey, geophysical, exploratory and other temporary uses of such non-federal lands, and where such temporary access is not affirmatively provided for in §§ 36.10 and 36.11. State and private landowners meeting the criteria of §36.10(b) are directed to use the procedures of § 36.10 to obtain temporary access.

(c) A landowner requiring temporary access across an area for survey, geophysical, exploratory or similar temporary activities shall apply to the appropriate Federal agency for an access permit by providing the relevant information requested in the SF 299.

(d) The appropriate Federal agency shall grant the desired temporary access whenever it is determined, after compliance with the requirements of NEPA, that such access will not result in permanent harm to the area's resources. The area manager shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purposes for which the area was established and to ensure that no permanent harm will result to the area's resources and section 810 of ANILCA is complied with.

§ 36.13 Special provisions.

(a) Gates of the Arctic National Park and Preserve.

(1) Access for surface transportation purposes across Gates of the Arctic National Park and Preserve (from the Ambler Mining District to the Alaska Pipeline Haul Road (Dalton Highway)) shall be permitted in accordance with the provisions of this section.

(2) Upon the filing of an application in accordance with section 36.4 for a right-of-way across the western (Kobuk River) unit of the preserve, including the Kobuk Wild River, the Secretary shall give notice in the **Federal Register**, and other such notice as may be appropriate, of a 30 day period for other applicants to apply for access. The original application and any additional applications received during the 30 day period will be reviewed in accordance with section 36.5.

(3) The Secretary and the Secretary of Transportation shall jointly prepare an environmental and economic analysis solely for the purpose of determining the most desirable route for the right-of-way and terms and conditions which may be required for the issuance of that right-of-way. This analysis shall be completed within one year and the draft thereof within nine months of the receipt of the application and shall be prepared in lieu of an EIS which would otherwise be required under section 102(2)(C) of NEPA. This analysis shall be deemed to satisfy all requirements of that Act and shall not be subject to judicial review. This analysis shall be prepared in accordance with the procedural requirements of § 36.6.

(4) The Secretaries, in preparing this analysis, shall consider the following:

(i) Alternate routes including the consideration of economically feasible and prudent alternate routes across the preserve which would result in fewer, or less severe, adverse impacts upon the preserve.

(ii) The environmental, social and economic impacts of the right-of-way including impacts upon wildlife, fish, and their habitat, and rural and traditional lifestyles including subsistence activities and measures which should be instituted to avoid or minimize negative impacts and enhance positive impacts.

(5) Within 60 days of the completion of the enviornmental and economic analysis, the Secretaries shall jointly agree upon a route for issuance of the right-of-way across the preserve. Such right-of-way shall be issued in accordance with the provisions of § 36.9.

(b) Yukon-Charley Rivers National Preserve.

(1) Any application filed by Doyon, Limited, for a right-of-way to provide access in a southerly direction across the Yukon River from its landholdings in the watersheds of the Kandik and Nation Rivers shall be processed in accordance with this part.

(2) No right-of-way shall be granted which would cross the Charley River or which would involve any lands within the watershed of the Charley River.

(3) An application shall be approved by the appropriate Federal agency if it is determined that there exists no economically feasible or otherwise reasonably available alternate route.

(c) Oil and Gas Pipelines—Arctic Slope Regional Corporation.

(1) Upon the filing by Arctic Slope Regional Corporatation for an oil and gas TUS across lands identified in section 1431(j) of ANILCA, the appropriate Federal agency shall review the filing, determine the alignment and location of facilities across/on Federal lands, and issue such authorizations as are necessary with respect to the establishment of the TUS.

(2) No environmental document pursuant to NEPA shall be required.

(3) Investigations as to the proper final alignment of the pipeline and location of related facilities are at the discretion of the Federal agency and the costs associated with such investigations are not recoverable under § 36.36.

(d) Forty Mile Component of National Wild and Scenic Rivers System. The classification of segments of the Forty Mile Components as Wild Rivers shall not preclude access across those river segments where the appropriate Federal agency determines such access is necessary to permit commercial development of asbestos deposits in the North Fork drainage.

Dated: July 2, 1986.

Ann McLaughlin,

Under Secretary.

[FR Doc. 86-19734 Filed 9-3-86; 8:45 am]

BILLING CODE 4310-70, 4310-55-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6728]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fourth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)], 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona: Maricopa	City of Phoenix	July 29, 1986 and August 5, 1986, *Arizona Business Gazette.*	The Honorable Terry Goddard, Mayor, City of Phoenix, City Hall, 25 West Washington, Phoenix, Arizona 85003.	July 10, 1986	040051
Illinois: Lake	Village of Lincolnshire	July 31, 1986, August 7, 1986, *The Deerfield Review.*	The Honorable Evelyn Cooper, Mayor, Village of Lincolnshire, 175 Olde Half Day Road, Lincolnshire, Illinois 60069.	July 24, 1986	170378
Texas: Tarrant	City of Arlington	March 24, 1986, March 31, 1986, *The Arlington Daily News.*	The Honorable Harold Patterson, Mayor of the City of Arlington, P.O. Box 231, Arlington, Texas 76010.	Mar. 6, 1986	485454
Texas: Dallas, Denton, and Collin.	City of Carrollton	June 30, 1986, July 7, 1986, *Times Chronicle.*	The Honorable Milburn Gravley, Mayor of the City of Carrollton, Carrollton, Texas 75011-0535.	July 1, 1986	480167
Texas: Dallas	City of Irving	February 21, 1986, February 28, 1986, *The Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the City of Irving, Dallas County, P.O. Box 2288, Irving, Texas 75061.	Feb. 7, 1986	480180
Texas: Dallas	City of Irving	July 22, 1986, July 29, 1986, *Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the City of Irving, Dallas County, P.O. Box 2288, Irving, Texas 75061.	July 11, 1986	480180B
Texas: Dallas	City of Irving	August 22, 1986, August 29, 1986, *Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the City of Irving, Dallas County, P.O. Box 2288, Irving, Texas 75061.	Aug. 18, 1986	480180

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Texas: Bexar	City of San Antonio	July 18, 1986, July 25, 1986, *San Antonio Express.*	The Honorable Henry Cisneros, Mayor of the City of San Antonio, Bexar County, P.O. Box 9066, San Antonio, Texas 78285.	July 3, 1986	480045

Issued: August 20, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-19900 Filed 9-3-86; 8:45 am]

BILLING CODE 6718-03-M

VOL 51 ISS 171 SE 4 1986 UMI

Proposed Rules

Federal Register
Vol. 51, No. 171
Thursday, September 4, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

Correction

In FR Doc. 86-17938 beginning on page 28576 in the issue of Friday, August 8, 1986, make the following corrections:

§ 214.2 [Corrected]

1. On page 28581, third column, in § 214.2(h)(2)(i)(A), fifth line, "I-120H" should read "I-129H".

2. On page 28587, third column, in §214.2(h)(6)(iii), second line, "notified of" should read "notified on".

3. On page 28588, third column, in § 214.2(h)(13)(ii)(C), third line, "of the" should read "for the".

4. On the same page, same column, in § 214.2(h)(14), second line, "of filing" should read "or filing".

5. On page 28589, second column, the paragraph designation "(6)" should read "(16)".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-019]

Importation of Horses; Mares From Countries Affected With CEM

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to permit the importation into the United States from countries affected with contagious equine metritis (CEM) of mares over 731 days of age that have not undergone a clitoral sinusectomy, when specific requirements to prevent their introducing CEM into the United States are met. This action appears to be warranted to provide an additional means of importing such mares into the United States, when this can be done without undue risk to livestock of the United States. This document also proposes to clarify the regulations concerning the anatomical location of specimens taken from mares being tested for CEM, the supervision of certain surgery, topical treatment and specimen collection required for certain stallions and mares imported from CEM countries, and the number and frequency of certain specimens required from mares and stallions imported from CEM countries.

DATE: Written comments on this rule must be received on or before October 6, 1986.

ADDRESSES: Written comments must be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments must indicate that they are in response to docket number 86-019. Written comments may be inspected in Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR 92 (referred to below as the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding.

Section 92.2(i) of the regulations, among other things, authorizes the importation of certain mares into the United States from countries affected with CEM, when specific requirements to prevent their introducing CEM into the United States are met, and when the animals imported are moved into approved States for further inspection, treatment, and testing.

Specifically, § 92.2(i)(2)(iii) of the regulations, among other things, authorizes the importation of thoroughbred mares imported for permanent entry from the Federal Republic of Germany, the United Kingdom, Ireland, and France, when certain testing requirements are met, and when the mares have at no time since reaching 731 days of age been on a premises where breeding is carried out. A thoroughbred horse that has not been on a breeding premises since reaching 731 days of age is highly likely to be in training. Because CEM is a venereal disease, and because standard procedure in the horse industry prohibits training and breeding from being carried out on the same premises, CEM is highly unlikely to exist in or be transmitted by horses that are in training rather than being used for breeding. In addition, the thorough recordkeeping that is maintained concerning the activities of a thoroughbred horse provides a well-documented record of the fact that the horse has never been bred and has never been on a breeding premises.

Additionally, § 92.2(i)(2)(v) of the regulations authorizes the importation of mares over 731 days of age from CEM countries, when the clitoral sinuses of such mares have been removed in the country of origin, and when certain other treatment and testing requirements are met. The Department has determined that if a mare is infected with CEM, the CEM organism is highly likely to reside in the clitoral sinuses of the mare. Consequently, when the clitoral sinuses of the mare are removed and certain other treatment and testing requirements are met, there is very little risk of the mare being affected with or transmitting CEM.

In addition to the provisions for importing mares into the United States according to paragraph §§ 92.2(i)(2)(iii) and 92.2(i)(2)(v), discussed above, it appears that mares that are not thoroughbreds in training or that have not undergone a clitoral sinusectomy can under certain conditions be imported from CEM countries into the United States with the same degree of protection against the transmission of CEM that is afforded by the current regulations. These required conditions would ensure that a mare has never been affected with CEM and would

establish treatment and testing requirements to provide additional assurance that the mare is free of CEM when imported into the United States.

Therefore, it is proposed to establish provisions for the importation of mares over 731 days of age that have not undergone a clitoral sinusectomy, and that are imported from CEM countries, as indicated below. The provisions of § 92.2(i)(2) that prohibit the importation of horses from certain countries would not apply to:

(i) • • •
(2) • • •
(vi) Any mare over 731 days of age imported, if:

(A) The mare is accompanied by an import permit as required in § 92.4; and,

(B) The mare is accompanied by a certificate which contains the information required by § 92.17, which is either signed by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so, and, which in addition, states:

(*1*) That the mare has never resided in a country in which CEM is known to exist, unless such country has had in effect for no less than 5 years preceding the mare's importation into the United States a Code of Practice containing requirements and procedures designed to contain and eradicate CEM, and unless such country is one in which CEM is a disease notifiable or reportable to the National Veterinary Services of the country of origin for the breed of which the mare is a registered member;

(*2*) That the CEM organism has never been recovered from the mare and the mare has at no time been affected with CEM;

(*3*) That the mare has at no time been bred by a stallion that is known to have been affected with CEM;

(*4*) That during the 12 months preceding its importation into the United States, the mare has not been on a premises on which CEM has within such 12-month period been diagnosed in any horse on such premises;

(*5*) The results of all cultures required by paragraph (i)(2)(vi) of this section and the name of the laboratory that conducted such cultures; and

(*6*) That all specimens required to be cultured have been found negative for CEM; and

(C) The certificate required by § 92.2(i)(2)(vi)(B) is issued for each country in which the mare has resided during the five years preceding its importation into the United States, and accompanies each mare that is imported into the United States under the provisions of this paragraph. Dates during which the mare was in each country shall be included as part of the certificate.

(D) Records of the mare's breeding history for each year the mare has been bred during the 5 years preceding its importation into the United States are available for inspection by a salaried representative of the National Veterinary Services of the country of origin. Such records shall include the names of stallions by which the mare was bred, and shall indicate that such stallions have at no time been affected with CEM. Such records shall also indicate that the mare has at no time been affected with CEM when bred, based on bacteriological results from cultures that were taken by a veterinarian each time the mare was bred and that were analyzed by a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. Such bacteriological results shall be certified by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the record of such bacteriological results was authorized to do so; and

(E) A licensed veterinarian, who either is, or is acting under the supervision of, the veterinarian signing the certificate specified in paragraph (i)(2)(vi)(B) of this section, collects a specimen from each clitorial sinus of the mare within 2 hours prior to the treatment required by paragraph (i)(2)(vi)(F) of this section and submits such specimens to a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. Such required supervision, the dates of collection and culturing, and the results of such cultures shall be recorded on the certificate specified in paragraph (i)(2)(vi)(B) of this section; and

(F) For 5 consecutive days, a licensed veterinarian, who either is, or is acting under the supervision of, the veterinarian signing the certificate specified in paragraph (i)(2)(vi)(B) of this section, aseptically cleans and washes (scrubs) the external genitalia and vaginal vestibule, including the clitoral fossa and clitoral sinuses, with a solution of not less than 2 percent chlorhexidine in a detergent base and then fills the clitoral fossa and clitoral sinuses and coats the external genitalia and vaginal vestibule with an ointment of not less than 0.2 percent nitrofurozone. Such required supervision and the dates of treatment shall be recorded on the certificate specified in paragraph (i)(2)(vi)(B) of this section; and

(G) After an interim of 7 days following the 5th consecutive day of scrubbing the external genitalia and the vaginal vestibule and filling the clitorial fossa and clitoral sinuses, a licensed veterinarian, who either is, or is acting under the supervision of, the veterinarian signing the certificate specified in paragraph (i)(2)(vi)(B) of this section, on 3 separate occasions collects a set of specimens comprised of a specimen from the clitoral fossa and a specimen from each of the clitoral sinuses, at intervals of not less than 7 days between the collection of each set of specimens, and each specimen is cultured with negative results for CEM at a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. The last of the 3 sets of specimens collected during this procedure is collected and cultured within 30 days of the date of export of the mare described on the certificate. Such required supervision, the dates of collection and culturing, and the results of such cultures shall be recorded on the certificate specified in paragraph (i)(2)(vi)(B) of this section; and

(H) The mare described on the certificate is not bred from the time treatment required by this paragraph was begun through the date of export.

The provisions in § 92.2(i)(2)(vi)(B), quoted above, would require that a mare never has resided in a country in which CEM is known to exist, unless such country has had in effect for no less than 5 years preceding the mare's importation into the United States a Code of Practice containing requirements and procedures designed to contain and eradicate CEM, and unless such country is one in which CEM is a disease notifiable or reportable to the National Veterinary Services for the breed of which the mare is a registered member.

One of the key factors in reducing the risk that a mare from a CEM-affected country is affected with the disease is the existence in the country of a Code of Practice containing requirements and procedures designed to contain and eradicate CEM. A Code of Practice is a voluntary system of procedures designed to reduce disease spread, that is established by the veterinarians and horse industry in a country.

From the Department's perspective, an acceptable Code of Practice is one which includes procedures for the following: testing for and treatment of the disease, quarantine of horses that are affected with or suspected of being affected with the disease, certification of whether horses have been affected with or exposed to the disease, and hygiene for personnel conducting treatments and specimen collections.

The existence of a Code of Practice in a CEM country significantly reduces the risk that a mare that is bred in that country will contract CEM during the breeding process. Additionally, a Code of Practice provides for a system of recordkeeping through which the government of the country of origin can certify whether a mare has ever been directly exposed to CEM during the mare's breeding history.

The proposed requirement that a CEM-affected country has had in effect a Code of Practice for a minimum of 5 years preceding the mare's importation into the United States appears to be necessary to ensure that the Code of Practice has been in effect a sufficient length of time to both control the disease in the country and to establish a

breeding history record sufficient to track the breeding history of the mare for a period of time adequate to help ensure that the mare is not affected with CEM upon importation into the United States.

The proposed requirement that a CEM-affected country be one in which the disease is notifiable or reportable for the breed of which the mare is a registered member appears to be necessary for an authorized veterinarian to be able to reliably certify that the CEM organism has never been recovered from the mare and that the mare has at no time been affected with CEM—two requirements that are discussed below. In most CEM-affected countries, the disease is not reportable or notifiable for all horses, but only for certain breeds registered for pedigree with a breeding association recognized in the country of origin. In order for a mare to qualify for importation under the proposed regulations, it would have to be a member of a breed for which CEM is notifiable or reportable. The Department has determined that there is little likelihood that a mare residing in a country in which CEM is a notifiable or reportable disease for the mare's breed would be affected with the disease without such incidence of CEM being reported to officials of the National Veterinary Services of such country.

Section 92.2(i)(2)(vi)(B)(*2*), quoted above, would require both that the CEM organism never has been recovered from the mare in question, and that the mare has at no time been affected with CEM. Both requirements appear to be necessary. Any mare from which the CEM organism has at any time been recovered (isolated and cultured) presents a significant risk of transmitting the CEM organism to other horses, unless all of the requirements in § 92.2(i)(2)(v), including the requirement for a sinusectomy, have been met. Additionally, a mare can be determined, through a serological test, to be affected with CEM, even if the CEM organism has not been recovered from the mare. If a mare is so determined to be affected with CEM, it is likely to transmit the CEM organism to other horses, unless all of the requirements in § 92.2(i)(2)(v), including the requirement for a clitoral sinusectomy, have been met.

Section 92.2(i)(2)(vi)(B)(*3*), quoted above, would require that any mare imported from a CEM country without having undergone a clitoral sinusectomy has at no time been bred by a stallion that is known to have been affected with CEM. There is a significant risk that a stallion that so covers a mare will transmit the CEM organism to the mare, and that unless the mare undergoes a clitoral sinusectomy and other specified treatment, the mare will subsequently transmit the CEM organism to other horses.

Section 92.2(i)(2)(vi)(B)(*4*), quoted above, would require that during the 12 months preceding the mare's importation into the United States, the mare in question has not been on a premises on which CEM has been diagnosed in any horse during that period. If CEM were so diagnosed in any other horse on the premises, there is a risk that the CEM organism would be transmitted to the mare that is offered for importation. If CEM were diagnosed in another horse on the premises *before* the 12-month period preceding the mare's importation, however, there would be sufficient time prior to importation to determine whether the mare in question has contracted CEM from any other horse on the premises.

Section 92.2(i)(2)(vi)(B) would require that a mare imported into the United States pursuant to § 92.2(i)(2)(vi), be accompanied by a certificate that contains the information required by § 92.17 and that states in addition that certain criteria regarding the mare's residence, breeding history, and testing for CEM, as quoted in § 92.2(i)(2)(vi)(B)(*1*) through (*6*), have been met. Proposed § 92.2(i)(2)(vi)(C) would require that such a certificate be issued for each country in which the mare has resided for the 5 years preceding the mare's importation into the United States. The Department believes that this 5-year requirement is necessary to provide adequate documentation that the criteria quoted above have been met for a sufficient length of time to ensure that the mare is not affected with CEM when imported into the United States.

The provisions in § 92.2(i)(2)(vi)(D), quoted above, would require that records of the mare's breeding history for each of the years the mare was bred during the 5 years preceding its importation into the United States be available for inspection by a salaried representative of the National Veterinary Services of the country of origin. This requirement appears to be necessary to provide officials of the National Veterinary Services of the country of origin with documentation that would allow them to determine if either the mare or any stallion by which the mare was bred was affected with CEM at the time of such breeding. Maintaining the records for 5 years would provide documentation sufficient to track the breeding history of the mare for a period of time adequate to help ensure that the mare is not affected with CEM upon importation into the United States.

Proposed § 92.2(i)(2)(vi)(F), quoted above, would establish provisions for scrubbing the external genitalia and vaginal vestibule of the mare prior to exportation, and for filling and packing specified areas of the mare's genitalia with an ointment of not less than 0.2 percent nitrofurozone. This treatment appears to be necessary to provide a further safeguard against the contagion of CEM in the mare.

Also, certain tests, discussed below, would be required to assure that the mare is free of CEM before it is imported into the United States.

Proposed § 92.2(i)(2)(vi)(E), quoted above, would require that a specimen be collected by a licensed veterinarian from each of the clitoral sinuses of the mare within 2 hours prior to the treatment specified in proposed § 92.2(i)(2)(vi)(F), and that the specimens be submitted by the licensed veterinarian to a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. The collection of these specimens and their culture appear to be necessary to identify those mares that are harboring the CEM organism and that therefore would not be eligible for importation into the United States.

Proposed § 92.2(i)(2)(vi)(G), quoted above, would require post-treatment cultures in order to provide further evidence that the mare is free of CEM.

The Department would impose the requirement that the necessary tests for CEM be performed in a laboratory approved to culture for the disease by the National Veterinary Services of the country of origin, in order to ensure the accuracy of the tests.

An interval of not less than 7 days between the topical treatment specified above and the first collection of post-treatment specimens, and intervals of not less than 7 days between each set of specimens, are necessary to allow any CEM organisms that may exist to grow, so that they may be detected. The Department would require 3 separate sets of specimens because it is not always possible to grow a CEM culture from 1 specimen, even if the organism does exist in the animal being tested. The experience of equine practitioners in Kentucky and elsewhere who have tested horses affected with CEM indicates that 3 separate sets of specimens, collected from the prescribed anatomical areas at an interval of at least 7 days between each set, provide a sufficient diversity of specimens so that a test of such specimens for CEM is considered accurate.

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Proposed § 92.2(i)(2)(vi)(G) would require that the last of the 3 sets of specimens which would be required by this procedure be collected and cultured within 30 days of the date of export of the mare to the United States. This requirement would be imposed to reduce the likelihood of a mare's becoming affected with CEM after the last test and prior to exportation. The Department believes that requiring exportation within 30 days of the last test for CEM would provide an importer with a reasonable time during which to arrange for the importation, without creating a significant risk of the mare's becoming affected with CEM following the date of the last test and prior to exportation.

Proposed § 92.2(i)(2)(vi)(H) would require that a mare not be bred from the time the treatment described in § 92.2(i)(2)(vi) was begun through the date of export. This requirement would ensure that the mare does not become affected with CEM by such breeding at any time from the start of the required procedures through the date of exportation.

As stated in § 92.2(i)(2)(vi) (E), (F), and (G), the certificate accompanying the mare must, among other things, state that either a salaried veterinarian of the National Veterinary Services of the country of origin, or an otherwise authorized veterinarian, either performed or directly supervised the topical treatment and specimen collection procedures set forth in § 92.2(i)(2)(vi). The Department would require this certification to ensure that the procedures in § 92.2(i)(2)(vi) have in fact been complied with.

Section 92.17 of the regulations requires, among other things, that horses imported from any port of the world be accompanied by a certificate showing that such horses have not been in any country listed in § 92.2(i)(1) as affected with CEM during the 12 months immediately prior to their importation into the United States. Horses which are imported from countries listed in § 92.2(i)(1) under the exemptions in §§ 92.2(i)(2) (i) through (v) are presently exempt from that requirement.

This proposal would provide that mares over 731 days of age imported from countries listed in § 92.2(i)(1) for permanent entry under the exemption in proposed § 92.2(i)(2)(vi) would also be exempt from the requirement in § 92.17 that the certificate accompanying them indicate that the horses have not been in any country listed in § 92.2(i)(1) during the 12 months immediately preceding their importation into the United States. Such horses would be exempt from that requirement because they appear to present no risk of introducing CEM into the United States.

As is required for mares over 731 days of age imported from CEM-affected countries after having undergone a clitoral sinusectomy, this amendment would provide additional procedures for mares over 731 days of age that have not undergone a clitoral sinusectomy, following their importation from CEM-affected countries into the United States. These procedures, which are described below, are believed necessary to provide further assurance that CEM will not be disseminated in the United States.

Proposed § 92.4(a)(8) would require, among other things, that any mare over 731 days of age from a CEM-affected country, for which a permit is requested pursuant to § 92.2(i)(2)(vi) of the regulations, must be consigned to a State which the Deputy Administrator of Veterinary Services, Animal and Plant Health Inspection Service, has approved to receive such mares. Import permits would be issued for such mares only if such a State is indicated as the place to which the mare is consigned. Section 92.4(a)(8)(ii) would list those States which have been approved to receive mares over 731 days of age pursuant to § 92.2(i)(2)(vi).

For a State to be approved to receive mares from CEM-affected countries pursuant to § 92.2(i)(2)(vi), the State would be required to have entered into a written agreement with the Deputy Administrator, Veterinary Services, whereby the State agrees to enforce its laws and regulations to control CEM and to abide by the conditions of approval established by the regulations in Part 92.

This procedure is believed necessary to provide added assurance that a State will control the movement of mares over 731 days of age that have not undergone a clitoral sinusectomy and that are imported from CEM-affected countries, to ensure that CEM is not disseminated in the United States.

Section 92.4(a)(9) would require the State to have laws or regulations in effect to require additional inspection, treatment, and testing of such mares to further insure their freedom from CEM. This proposal would establish the minimum standards a State must meet in order to be approved to receive mares over 731 days of age that have not undergone a clitoral sinusectomy and that are imported from CEM-affected countries for permanent entry. These standards contain treatment, testing, and handling procedures which are believed necessary to ensure that such mares being imported into the United States are free from CEM.

Further, to be approved, the State would be required to quarantine mares over 731 days of age from CEM-affected countries imported pursuant to § 92.2(i)(2)(vi) of the regulations until the mares have been treated and found free of CEM in accordance with the provisions of § 92.4(a)(9). The quarantine of such mares is deemed to be necessary to ensure that the mares, if affected with CEM, do not transmit the disease to other horses in the United States. To be approved, a State would be required to have laws and regulations to ensure that mares over 731 days of age from CEM-affected countries that are imported pursuant to § 92.2(i)(2)(vi) are treated in the State as follows: on 5 consecutive days, an accredited veterinarian shall aseptically clean and wash the external genitalia, vaginal vestibule, clitoral fossa, and clitoral sinuses with a solution of not less than 2 percent chlorhexidine in a detergent base and then fill the clitoral fossa and clitoral sinuses and coat the external genitalia and vaginal vestibule with an ointment of not less than 0.2 percent nitrofurozone.

For pregnant mares, after an interim of 7 days following the 5th consecutive day of scrubbing the external genitalia and vaginal vestibule and filling the clitoral fossa and clitoral sinuses, an accredited veterinarian would on 3 separate occasions collect a set of specimens comprised of a specimen from the clitoral fossa and a specimen from each clitoral sinus, at intervals of not less than 7 days between the collection of each set of specimens. The specimens would then be submitted to a State or Federal animal disease diagnostic laboratory for culture. Seven days after the mare foals, an accredited veterinarian would be required to collect one specimen from the endometrium of the uterus of the mare and one specimen from the foal. If the foal is female, this specimen would be collected from the vaginal vestibule. If the foal is a male, this specimen would be collected from the prepuce. Each of these specimens would be required to be submitted to a State or Federal animal disease diagnostic laboratory for culture.

For nonpregnant mares, an accredited veterinarian would on 3 separate occasions collect a set of specimens comprised of a specimen from the clitoral fossa and a specimen from each clitoral sinus, at intervals of not less than 7 days between the collection of each set of specimens, with 1 additional specimen collected from the endometrium of the uterus during estrus. All such specimens would be required to

be submitted to a State or Federal animal disease diagnostic laboratory for culture.

If any specimen required by § 92.4(a)(9) for mares imported pursuant to § 92.2(i)(2)(vi) were positive for CEM, the mare would not be released from quarantine unless certain criteria were met. To obtain release from quarantine, the mare would be required to undergo a clitoral sinusectomy performed by an accredited veterinarian, and the clitoral sinuses would be required to be submitted to a State or Federal animal disease diagnostic laboratory. Subsequent to the removal of the clitoral sinuses, a negative culture would be required to be collected from the clitoral fossa by an accredited veterinarian on 3 separate occasions, at intervals of not less than 7 days. The first culture would be requred to be collected not less than 1 year from the date of the last positive culture. One additional specimen would be collected from the endometrium of the uterus. As discussed above, the Department believes that the CEM organism in a mare affected with the disease resides primarily in the mare's clitoral sinuses. Removal of the clitoral sinuses of a mare testing positive for CEM appears to be necessary to help ensure that the mares does not transmit CEM to other horses. Additionally, experience has shown that many mares will cleanse themselves of the CEM organism over time, and a 1-year waiting period is believed to be a necessary adjunct to the clitoral sinusectomy and antibiotic topical treatment.

Clarifications

As noted above, certain mares over 731 days of age are currently authorized importation into the United States under the provisions of § 92.2(i)(2)(v). Among those provisions, § 92.2(i)(2)(v)(B) currently reads that "a licensed veterinarian [shall collect] a specimen from the clitoral sinus of the mare within 2 hours prior to surgery." In actuality, each mare has three, rather than one, clitoral sinuses, and, in practice, licensed veterinarians are already taking a specimen from each of the three sinuses. Accordingly, it is proposed to amend § 92.2(i)(2)(v)(B) to reflect this practice and to clarify the Department's intent.

This document would also clarify the current regulations regarding the supervision of certain surgery, topical treatment, and specimen collection required for certain stallions and mares imported from CEM-affected countries pursuant to § 92.2(i)(2) (iv) and (v). The regulations require that certificate accompany certain stallions and mares imported into the United States from CEM-affected countries pursuant to 92.2(i)(2) (iv) and (v). This certificate must be signed either by a salaried veterinarian of the National Veterinary Services of the country of origin, or by a veterinarian authorized by the National Veterinary Services of the country of origin. Presently, the regulations require that certain specified surgery, topical treatment, and specimen collection required by the regulations be performed by a licensed veterinarian under the supervision of the veterinarian signing the certificate. In practice, however, the veterinarian carrying out the specified medical procedures is in many cases the same veterinarian signing the certificate. This is in accord with the Department's intent and the intent of the regulations. This document would therefore amend the wording of the regulations to clarify that in those cases where the same veterinarian carries out of the medical procedures and signs the certificate, no supervision of the medical procedures is necessary.

Additionally, this document would clarify the provisions in § 92.2(iii)(C), § 92.2(i)(2)(v) (E) and (G), § 92.4(a)(6)(iii)(C), and § 92.4(a)(9)(iii)(C) that require the collection of 3 separate specimens or sets of specimens from certain stallions and mares to make it clear that what is being required is one specimen or set of specimens on 3 separate occasions, rather than 3 specimens or sets of specimens on each of 3 different occasions.

Executive Order 12291 and Regulatory Flexibility Act.

This action has been reviewed in accordance with Executive Order 12291 and has been classified as not a major rule. The Department has determined that this action will not have a significant annual effect on the economy; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The primary effect of this document would be to reduce the time necessary to prepare a mare for importation and to lower the cost of such importation, without increasing the risk of disseminating CEM in the United States. The proposed changes would not significantly change the number of mares currently imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579-0040.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.625 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.1, a new definition of Code of Practice would be added as paragraph (cc), to read as follows:

§ 92.1 Definitions.

* * * * *

(cc) *Code of Practice.* A voluntary system of procedures designed to reduce disease spread, that is established by the veterinarians and horse industry in a country and that includes procedures for the following: testing for and treatment of the disease, quarantine of horses that are affected with or are suspected of being affected with the disease, certification of whether horses have been affected with or exposed to the

disease, and hygiene for personnel conducting treatments and specimen collections.

3. In § 92.2, paragraphs (i)(2)(iii)(C), (i)(2)(iv) (A) and (B), (i)(2)(v)(A)*(2)(i)*, (i)(2)(v)(B), (i)(2)(v)(E), and (i)(2)(v)(G) would be revised, paragraph (i)(2)(vi) would be redesignated as (i)(2)(vii), and a new paragraph (i)(2)(vi) would be added, as follows:

§ 92.2 General prohibitions; exceptions.

* * * * *

(i) * * *
(2) * * *
(ii) * * *

(C) For stallions over 731 days of age, that negative cultures were conducted from sets of specimens collected on 3 separate occasions from each of the surfaces of the urethral fossa, the urethra, and the penile sheath for each set of specimens, at intervals of not less than 7 days between the collection of each set of specimens, and that the last set of specimens was collected within 30 days of the date of exportation; and

* * * * *

(iv) * * *

(A) On 5 consecutive days the prepuce, penis, including the fossa glandis, and urethral sinus of the stallion described on the certificate were aseptically cleaned and washed (scrubbed) while in full erection with a solution of not less than 2 percent of a surgical type of chlorhexidine and were then thoroughly coated (packed) with an ointment of not less than 0.2 percent nitrofurozone, either by or under the supervision of the veterinarian signing the certificate;

(B) After an interim of 7 days following the 5th consecutive day of scrubbing and packing required in paragraph (i)(2)(A) of this section, 3 separate sets of 3 specimens each were collected from the stallion described on the certificate, at intervals of not less than 7 days between the collection of each set, from the surface of the fossa glandis, urethral sinus, and the penile sheath respectively, either by or under the supervision of the veterinarian signing the certificate, and that all of the 9 specimens collected were cultured negative for CEM in a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin;

* * * * *

(v)(A) * * *
(*2*) * * *

(*i*) That the veterinarian signing the certificate either performed or directly supervised the surgery, topical treatment, and specimen collection required by paragraphs (i)(2)(v)(B), (i)(2)(v)(C), (i)(2)(v)(D), (i)(2)(v)(E), and (i)(2)(v)(G) of this section.

* * * * *

(B) A licensed veterinarian collects a specimen from each clitoral sinus of the mare within 2 hours prior to the surgery required by paragraph (i)(2)(v)(C) of this section, and submits such specimens to a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin; and

* * * * *

(E) After an interim of 7 days following the 5th consecutive day of scrubbing the external genitalia and the vaginal vestibule and filling the clitoral fossa, a licensed veterinarian on 3 separate occasions collects a specimen from the clitoral fossa, at intervals of not less than 7 days between the collection of each specimen, and each specimen is cultured with negative results for CEM at a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. For any nonpregnant mare, a licensed veterinarian collects an additional specimen during estrus from the endometrium of the uterus and the specimen is cultured with negative results for CEM at a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. The last of the 3 specimens collected from the clitoral fossa during this procedure is collected within 30 days of the date of export of the mare described on the certificate; and

* * * * *

(G) Any specimen required by paragraph (i)(2)(v)(B), (i)(2)(v)(C), (i)(2)(v)(D), or (i)(2)(v)(E) of this section is found to be positive for CEM, and a licensed veterinarian on 3 separate occasions collects an additional specimen from the clitoral fossa, at intervals of not less than 7 days between the collection of each specimen, with the first additional specimen collected not less than 1 year from the date of the last positive culture, and each additional specimen is cultured with negative results at a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. One additional specimen shall be collected from the endometrium of the uterus during estrus. The last of the 3 specimens collected from the clitoral fossa shall be collected within 30 days prior to the date of export.

* * * * *

(vi) Any mare over 731 days of age imported, if:

(A) The mare is accompanied by an import permit as required in § 92.4; and,

(B) The mare is accompanied by a certificate which contains the information required by § 92.17, which is either signed by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so, and, which in addition, states:

(*1*) That the mare has never resided in a country in which CEM is known to exist, unless such country has had in effect for no less than 5 years preceding the mare's importation into the United States a Code of Practice containing requirements and procedures designed to contain and eradicate CEM, and unless such country is one in which CEM is a disease notifiable or reportable to the National Veterinary Services of the country of origin for the breed of which the mare is a registered member;

(*2*) That the CEM organism has never been recovered from the mare and the mare has at no time been affected with CEM;

(*3*) That the mare has at no time been bred by a stallion that is known to have been affected with CEM;

(*4*) That during the 12 months preceding its importation into the United States, the mare has not been on a premises on which GEM has within such 12-month period been diagnosed in any horse on such premises;

(*5*) The results of all cultures required by paragraph (i)(2)(vi) of this section and the name of the laboratory that conducted such cultures; and

(*6*) That all specimens required to be cultured have been found negative for GEM; and

(C) The certificate required by § 92.2(i)(2)(vi)(B) is issued for each country in which the mare has resided during the 5 years preceding its importation into the United States, and accompanies each mare that is imported into the United States under the provisions of this paragraph. Dates during which the mare was in each country shall be included as part of the certificate; and

(D) Records of the mare's breeding history for each year the mare has been bred during the 5 years preceding its importation into the United States are available for inspection by a salaried representative of the National Veterinary Services of the country of origin. Such records shall include the names of stallions by which the mare

VOL 51 ISS 171 SE 4 1986 UMI

was bred, and shall indicate that such stallions have at no time been affected with CEM. Such records shall also indicate that the mare has at no time been affected with CEM when bred, based on bacteriological results from cultures that were taken by a veterinarian each time the mare was bred and that were analyzed by a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. Such bacteriological results shall be certified by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the record of such bacteriological results was authorized to do so; and

(E) A licensed veterinarian, who either is, or is acting under the supervision of, the veterinarian signing the certificate specified in paragraph (i)(2)(vi)(B) of this section, collects a specimen from each clitoral sinus of the mare within 2 hours prior to the treatment required by paragraph (i)(2)(vi)(F) of this section and submits such specimens to a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. Such required supervision, the dates of collection and culturing, and the results of such cultures shall be recorded on the certificate specified in paragraph (i)(2)(vi)(B) of this section; and

(F) For 5 consecutive days, a licensed veterinarian, who either is, or is acting under the supervision of, the veterinarian signing the certificate specified in paragraph (i)(2)(vi)(B) of this section, aseptically cleans and washes (scrubs) the external genitalia and vaginal vestibule, including the clitoral fossa and clitoral sinuses, with a solution of not less than 2 percent chlorhexidine in a detergent base and then fills the clitoral fossa and clitoral sinuses and coats the external genitalia and vaginal vestibule with an ointment of not less than 0.2 percent nitrofurozone. Such required supervision and the dates of treatment shall be recorded on the certificate specified in paragraph (i)(2)(vi)(B) of this section; and

(G)After an interim of 7 days following the 5th consecutive day of scrubbing the external genitalia and the vaginal vestibule and filling the clitoral fossa and clitoral sinuses, a licensed veterinarian, who either is, or is acting under the supervisor of, the veterinarian signing the certificate specified in paragraph (i)(2)(vi)(B) of this section, on 3 separate occasions collects a set of specimens comprised of a specimen from the clitoral fossa and a specimen from each of the clitoral sinuses, at intervals of not less than 7 days between the collection of each set of specimens, and each specimen is cultured with negative results for CEM at a laboratory approved to culture for CEM by the National Veterinary Services of the country of origin. The last of the 3 sets of specimens collected during this procedure is collected and cultured within 30 days of the date of export of the mare described on the certificate. Such required supervision, the dates of collection and culturing, and the results of such cultures shall be recorded on the certificate specified in paragraph (i)(2)(vi)(B) of this section; and

(H) The mare described on the certificate is not bred from the time treatment required by this paragraph was begun through the date of export.

* * * * *

5. Section 92.4 would be amended by revising paragraphs (a)(6)(iii)(C)(*1*), (a)(8)(i) and the introductory paragraph of (ii), and the introductory paragraph of (a)(9), (a)(9)(ii), and (a)(9)(iii), and by adding a new paragraph (a)(9)(iii)(D) to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds, and for animal specimens for diagnostic purposes;[1] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

(a) * * *

(6) * * *

(iii) * * *

(C) *For mares after breeding.* For each mare: (*1*) Cultures for CEM shall be conducted from sets of specimens that are collected from each of the mucosal surfaces of the cervix, the clitoral fossa, and the clitoral sinuses on the second, fourth, and seventh day after the breeding.

* * * * *

(8)(i) For mares over 731 days of age from countries listed in § 92.2(i)(1) and for which a permit is requested pursuant to § 92.2(i)(2)(v) or § 92.2(i)(2)(vi), a permit will be issued only if the mare for which the permit is issued is to be consigned to a State which the Deputy Administrator, Veterinary Services, has approved to receive mares over 731 days of age in accordance with the provisions of paragraph (a)(9) of this section.

(ii) The following States have been approved to receive mares over 731 days of age pursuant to § 92.2(i)(2)(v) and § 92.2(i)(2)(vi):

* * * * *

(9) In order for a State to be approved to receive mares over 731 days of age pursuant to § 92.2(i)(2)(v) or § 92.2(i)(2)(vi), the following conditions must be met:

* * * * *

(ii) The State must agree to quarantine all mares over 731 days of age imported from countries listed in § 92.2(i)(1) pursuant to § 92.2(i)(2)(v) or § 92.2(i)(2)(vi), until such mares have been treated in accordance with the provisions of this paragraph, and

(iii) the State must have laws and regulations to insure that mares over 731 days of age imported from countries listed in § 92.2(i)(1), pursuant to § 92.2(i)(2)(v) or § 92.2(i)(2)(vi), have been treated and handled in the following manner:

(A) For 5 consecutive days, an accredited veterinarian shall aseptically clean and wash (scrub) the external genitalia and vaginal vestibule, including the clitoral fossa, with a solution of not less than 2 percent chlorhexidine in a detergent base and then fill the clitoral fossa and coat the external genitalia and vaginal vestibule with an ointment of not less than 0.2 percent nitrofurozone; except that, in the case of mares over 731 days of age imported pursuant to § 92.2(i)(2)(vi), an accredited veterinarian shall also clean and wash the clitoral sinuses with a solution of not less than 2 percent chlorhexidine in a detergent base and fill the clitoral sinuses with an ointment of not less than 0.2 percent nitrofurozone.

(b) After an interim of 7 days following the 5th consecutive day of the topical treatment required by § 92.4(a)(9)(iii)(A):

(*1*) For any pregnant mare over 731 days of age, an accredited veterinarian shall on 3 separate occasions collect a specimen from the clitoral fossa and, if the clitoral sinuses are present, a specimen from each clitoral sinus, at intervals of not less than 7 days between the collection of each specimen or set of specimens, and shall submit each specimen or set of specimens to a State or Federal animal disease diagnostic laboratory for culture. Seven days after the mare foals, an accredited veterinarian shall collect 1 specimen from the endometrium of the uters of the mare and 1 specimen from the foal, and

---

[1] * * *

each specimen shall be submitted by the accredited veterinarian to a State or Federal animal disease diagnostic laboratory for culture. If the foal is female, this specimen shall be collected from the vaginal vestibule; and, if male, the specimen shall be collected from the prepuce.

(2) For any nonpregnant mare over 731 days of age, an accredited veterinarian shall on 3 separate occasions collect a specimen from the clitoral fossa and, if the clitoral sinuses are present, a specimen from each clitoral sinus, at an interval of not less than 7 days between the collection of each specimen or set of specimens, with one additional specimen collected from the endometrium of the uterus during estrus, and shall submit each specimen to a State or Federal animal disease diagnostic laboratory for culture.

(C) For any mare imported from countries listed in § 92.2(i)(1) pursuant to § 92.2(i)(2)(v), if any specimen required by this section or by § 92.2(i)(2)(v)(H) is found to be positive for CEM, the mare shall not be released from State quarantine except as provided in this paragraph. For such mare, an accredited veterinarian shall on 3 separate occasions collect a specimen from the clitoral fossa, at intervals of not less than 7 days between the collection of each specimen, with the first specimen collected not less than 1 year from the date of the last positive culture; and one additional specimen shall be collected from the endometrium of the uterus during estrus. If each of such specimens are negative of CEM, the mare may be released from quarantine.

(D) For any mare imported from countries listed in § 92.2(i)(1) pursuant to § 92.2(i)(2)(vi), if any specimen required by this section is found to be positive for CEM, the mare shall not be released from State quarantine except as provided in this paragraph. For such mare, an accredited veterinarian shall remove the clitoral sinuses of the mare and submit such clitoral sinuses to a State or Federal animal disease diagnositic laboratory. An accredited veterinarian shall then on 3 additional separate occasions collect a specimen from the clitoral fossa, at intervals of not less than 7 days between each specimen, with the first specimen collected subsequent to the clitoral sinusectomy required by this paragraph, and not less than 1 year from the date of the last positive culture; and 1 additional specimen shall be collected from the endometrium of the uterus during estrus. If each of such specimens are negative for CEM, the mare may be released from quarantine.

§ 92.17 [Amended]

6. Section 92.17 would be amended by revising the clause in the first sentence that presently reads "and, except as provided in § 92.2(i)(2)(i), (ii), (iii), (iv), and (v), the horses have not been in any country listed in § 92.2(i)(1) as affected with CEM during the 12 months immediately prior to their importation into the United States;" to read "and, except as provided in § 92.2(i)(2)(i), (ii), (iii), (iv), (v), and (vi), the horses have not been in any country listed in § 92.2(i)(1) as affected with CEM during the 12 months immediately prior to their importation into the United States;".

Done at Washington, DC, this 28th day of August 1986.

J. K. Atwell,

Deputy Administrator.

Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86-19801 Filed 9-3-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 027CE, Notice No. 23-ACE-27]

Special Conditions; Piper PA-42 Series Airplanes With Electronic Flight Instrument Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for incorporation of Electronic Flight Instrument Systems (EFIS) in the Piper PA-42 series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards applicable to these airplanes when EFIS is installed. These novel and unusual design features include the use of cathode-ray tube electronic flight instrument systems for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

DATE: Comments must be received on or before October 3, 1986.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 027CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 027CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: David M. Warner, Aerospace Engineer, Regulations and Policy Office [ACE-110], Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone [816] 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 027CE." The postcard will be dated, stamped and returned to the commenter. The proposal's contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Piper Model PA-42 is as follows: Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 23-1 through 23-16; § 23.1385(c) as amended by Amendment 23-17; § 23.1145 as amended by Amendment 23-16; §§ 23.45, 23.49, 23.65, 23.67, 23.77, and 23.1581 as amended by Amendment 23-21; § 23.1145(a) as amended by Amendment 23-23; § 25.977

as amended by Amendment 25-26; Special Condition No. 23-90-SO-3, Amendment 1, Docket No. 19591; § 55 of SFAR 23 effective January 20, 1970; fuel venting section of SFAR 27-1 effective January 1, 1975; FAA Southern Region, Engineering and Manufacturing Branch letter of August 7, 1980, showing the equivalent level of safety finding to § 23.201(e); and Part 36 including Amendments 1 through 6, effective January 25, 1977.

The type certification basis for the Piper Model PA-42-720 includes: § 23.1447 (c) and (d) as amended by Amendment 23-20, and the requirements cited for the Model PA-42.

The type certification basis for the Piper Model PA-42-1000 includes: § 23.1111 as amended by Amendment 23-17; §§ 23.1327 and 23.1547 as amended by Amendment 23-20; FAA Atlanta Aircraft Certification Office letter of July 9, 1984, showing the equivalent level of safety findings to §§ 23.201, 23.203, 23.205, and 23.207; Part 36, including Amendments 1 through 12 effective August 1, 1981; and the requirements cited for the Model PA-42-720.

On July 11, 1986, Piper Aircraft Corporation, Vero Beach, Florida, notified the FAA of their intention to install dual Collins Electronic Flight Instrument Systems (EFIS) in the Piper Model PA-42-720. On October 10, 1985, the FAA Small Airplane Certification Directorate notified all FAA Aircraft Certification Offices that, notwithstanding previous agency actions relative to EFIS, incorporation of EFIS in small airplanes was a novel and unusual relative to the current amendment of Part 23 and that for all such installations, special conditions would be proposed. Prior to that time, Piper had installed and approved a single EFIS in the Model PA 42-720. These proposed special conditions do not affect those approvals prior to this Notice.

These EFIS installations incorporate electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of traditional mechanical or electromechanical displays providing similar information to the flight crew.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by § 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the EFIS installation in the Piper PA 42-720 contains a number of novel or unusual design features not envisioned by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the EFIS installation in the Piper PA 42-720.

Special conditions that result from this Notice for installation of EFIS will also be applicable to all PA-42 series airplanes for installation of similar EFIS without further amendment of the special conditions.

Piper has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading, and navigational cockpit displays. The cockpit instrument panel configuration would feature five EFIS displays, an electronic attitude director (EADI) and electronic horizontal situation indicator (EHSI) in the left and right instrument panels and a multi-function display in the center panel. All other displays; i.e., airspeed, altitude, vertical speed, etc., will be conventional instruments.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions, including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pliot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight. Back-up instruments for these instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplanes could be safely flown following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has long included the required demonstration of ability to fly the airplane safely following failure of any one of the previously cited instruments and has not required, as basic IFR rating requirement, that all IFR rated airmen must demonstrate abilities using other back-up instruments.

A special condition is proposed which would allow installation of electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument, display, or system. The proposed special condition would also provide requirements to assure adequate reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

In installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This is in regard to the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the proposed special condition includes requirements for identifying complex, safety critical systems, and defines requirements needed for their certification.

The proposed special condition will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the proposed special condition.

The present § 23.1309 has been used as a means of evaluating systems since being incorporated into 14 CFR Part 23

by Amendment 23-14, dated December 20, 1973. The "single-fault" or "fail-safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment have been used to successfully evaluate most airplane systems and equipment. However, the FAA is finding it difficult to apply the "single fault" concept as a means of determining the effect or likelihood of certain failure conditions to complex systems like those proposed for the EFIS installation. Therefore, the FAA considers it necessary to include the proposed additional system analysis requirements in the certification basis. This will also allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur.

Use of these methods for safety assessment of systems does not mandate use of numerical analysis. An applicant may use numerical analysis to assist in showing compliance but, in many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, an analysis based on identification of failure modes and their consequences is frequently better substantiation of compliance with the various required levels of system reliability than a numerical analysis alone.

If it is determined that the airplane includes systems that perform more critical functions, it will be necessary to show that those systems meet more stringent requirements. Systems that perform a function that is needed for continued safety of flight and landing of the airplane, and whose failure would be catastrophic, would be required to meet requirements that establish either that there will be no failures of that system, or that a failure is extremely improbable.

The special condition also requires that the occurrence of systems failures which would significantly reduce the airplane's capability, or the ability of the crew to cope with adverse operating conditions, and thereby potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree as to lead to potentially catastrophic results.

The proposed special condition provides reliability requirements which are based on the criticality of the system's function and will provide the standards needed for certification of complex, safety-critical systems being proposed for installation.

The FAA has considered the features proposed for the EFIS installation and has concluded that, notwithstanding the existing small airplane requirements which did not envision the use of such complex or critical systems, special conditions can be promulgated for the affected systems, in lieu of applicable requirements, that will provide the intended level of safety. Accordingly, the special condition is proposed.

Conclusion

This action affects only specified model series airplanes. It is not a rule of general applicability and applies only to the series and models of airplanes identified in this proposed special condition.

List of Subjects in 14 CFR Parts 21 and 23.

Aviation safety, Aircraft, Air transportation, and Safety.

The authority citation for these special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special condition:

1. In lieu of § 23.1309(b) and applicable requirements of Part 23 of the Federal Aviation Regulations to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) System and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following additional requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no other single failure or probable combination of failures under any anticipated operating condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. This warning information must not tend to intitiate crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunctions and damage from foreseeable sources;

(ii) Consequences of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequences;

(iv) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Each item of equipment of each system, and each installation whose functioning is essential for safe operation and that requires a power supply, is an "essential load" on the power supply. The power sources and its distribution system must be able to

supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential equipment of each system (loads) after failure of:

(i) Any one engine on the airplane;

(ii) Any power converter, or energy storage device; or

(iii) Essential loads for which an alternate source of power is required by this special condition, after any failure or malfunction in any one power supply system, distribution systems, or other utilization system.

(c) In determining compliance with paragraph (b)(2) of this special condition, the power loads may be assumed to be reduced or shed under a monitoring procedure consistent with safety.

(d) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this special condition, the ability to provide continuous, safe service under foreseeable environmental and atmospheric conditions may be shown by tests, design analysis, or reference to previous comparable service experience on other airplanes.

(e) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation do not inhibit the primary display of attitude;

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units; and

(iv) incorporate visual displays of instrument markings required by §§ 23.1541 through 23.1543, or visual displays that alert the pilot to abnormal operational values, or approaches to unsafe values, of any parameter required to be displayed by Part 23 requirements.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to continued safe flight and landing will remain available to the crew, without need for immediate action for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

Issued in Kansas City, Missouri, on August 22, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-19859 Filed 9-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-141-AD]

Airworthiness Directives: McDonnell Douglas Model DC-10-10, -15, -30, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing AD's which require purging and grease packing of wing spar mounted and aft fuselage mounted fuel fire shutoff valves on McDonnell Douglas Model DE-10 and KC-10A (military) airplanes. This proposal would require modification, reidentification, and/or rotation, as applicable, of these fuel fire shutoff valves. This action is prompted by reports of restricted movement of emergency fire handles that are necessary to discharge the fire agent. This condition, if not corrected, could result in loss of fuel shutoff and fire extinguishing capabilities.

DATES: Comments must be received on or before October 28, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-141-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. a report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-141-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On April 30, 1986, the FAA issued Amendment 39-5305 (51 FR 17007; May 8, 1986), AD 86-09-10, which requires purging and grease packing the No. 2 engine aft fuselage mounted fuel fire shutoff valve bodies, and the No. 1 and No. 2 engine wing spar mounted fuel fire shutoff valve bodies on McDonnell Douglas Model DC-10 and KC-10A (Military) airplanes. That AD was prompted by reports of numerous incidents in which the engine fuel fire shutoff valves could not be closed, due to water accumulating in the valve mechanism cavity and subsequently freezing. After issuance of that AD, the FAA issued Amendment 39-5375 (51 FR 27526; August 1, 1986), AD 86-16-08, which requires purging the gate groove of the wing spar mounted valves of any water accumulation. That action was determined to be necessary to minimize the potential for loss of fuel shutoff and fire extinguishing capabilities due to ice forming in the valve gate grooves. The requirements of AD 86-09-10 and AD 86-16-08 were intended as interim

procedures until a permanent solution to the problem could be designed.

McDonnell Douglas has issued DC-10 Service Bulletin 28-168, dated April 16, 1986, which described as modification (drilling a drain hole) to prevent the water accumulation and subsequent ice formation from occurring, and reidentification of the No. 2 engine aft fuselage mounted fuel fire shutoff valve. McDonnell Douglas DC-10 Service Bulletin 28-55, Revision 3, dates December 19, 1980, also described a similar modification for the wing spar mounted fuel fire shutoff valves which will prevent water from accumulating. The FAA has determined that the modifications described in these service bulletins will act as a permanent solution to the problems addressed by the AD's previously issued.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD would supersede AD 86-09-10 and AD 86-16-08 to require the accomplishment of the modifications to the wing spar mounted fire shutoff valves and aft fuselage mounted fuel fire shutoff valves in accordance with the two McDonnell Douglas service bulletins mentioned above.

Approximately 180 U.S. registered Model DC-10 series airplanes would be affected by the requirements of paragraph A. of this AD (modification in accordance with McDonnell Douglas Service Bulletin 28-168); approximately 86 airplanes would be affected by the requirements of paragraph B. (modification in accordance with McDonnell Douglas Service Bulletin 28-55). It is estimated that it would take 5 manhours for each airplane modified in accordance with Service Bulletin 28-168, and 43 manhours per airplane modified in accordance with Service Bulletin 28-55. The average labor cost would be $40 per manhour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $183,920.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-10 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend §39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

2. By superseding Amendment 39-5305 (51 FR 17007; May 8, 1986), AD 86-09-10; and Amendment 39-5375 (51 FR 27526; August 1, 1986), AD 86-16-08; with the following new airworthiness directive:

§ 39.13 [Amended]

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -15, -30, -40, and KC-10A (Military) series airplanes, certificated in any category. To prevent loss of fuel shutoff and fire extinguishing capabilities, accomplish the following within the next twelve (12) months after the effective date of this AD, unless previously accomplished:

A. Modify and reidentify engine No. 2 aft fuselage mounted fuel fire shutoff valve in accordance with the Accomplishment Instructions of McDonnell Douglas DC-10/KC-10A Service Bulletin 28-168, dated April 16, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Modify, reidentify, and rotate engine No. 1 and engine No. 2 wing spar mounted fuel fire shutoff valves, and modify and reidentify engine No. 3 wing spar mounted fuel fire shutoff valves, in accordance with the Accomplishment Instructions of McDonnell Douglas DC-10 Service Bulletin 28-55, Revision 3, dated December 19, 1980, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance with this AD which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base for accomplishment of the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. Attention: Director, Publications and Training. C1-750 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on August 27, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-19863 Filed 9-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-15]

Proposed Alteration of VOR Federal Airways V-325 and V-463—Georgia

Correction

In FR Doc. 86-17715 beginning on page 28389 in the issue of Thursday, August 7, 1986, make the following correction:

§ 71.123 [Corrected]

On page 28389, third column, in § 71.123, in the heading "V-235 [Revised]", "235" should have read "325".

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Revision of Federal Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has long established and enforced speculative position limits for futures contracts on various agricultural commodities. For the most part, these limits were established by the Commodity Exchange Authority, and Commission's predecessor agency. Generally, the appropriateness of the particular levels of these speculative position limits has not been reviewed in recent years. In this regard, the Commission has received petitions for rulemaking from the Chicago Board of Trade and the New York Cotton Exchange to revise certain of these limits.

Accordingly, the Commission is publishing, as part of this Advance Notice of Proposed Rulemaking, a series of questions concerning Federal speculative position limits. The Commission seeks public comment to assist in determining the need for revisions to these speculative position

limits. In addition to answers to the specific questions raised, the Commission welcomes comments regarding any other pertinent issues.

DATE: Comments must be received by November 3, 1986.

ADDRESS: Comments should be sent to the Office of the Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, and should make reference to "Amendment of Federal Speculative Position Limits."

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, at the above address. Telephone: (202) 254-3203 or (202) 254-6990, respectively.

SUPPLEMENTARY INFORMATION: Speculative position limits have been a tool for the regulation of the futures markets for over half a century. The Congress early recognized that position limits were an effective means of preventing unreasonable or unwarranted price fluctuations. As the Congress reported, one purpose of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* (1982) ("Act"), was

> to provide a measure of control over those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves.

H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935).

In section 4a(1) of the Act, 7 U.S.C. 6a(1), the Congress declared that:

> [E]xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Thus, the Congress provided the Commission with the authority to:

> fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

Section 4a(1) of the Act.

Pursuant to this authority, the Commission's predecessor agency, the Commodity Exchange Authority, established speculative position limits for many of the futures contract on those commodities which were then regulated under the Act. These included limits on grains, cotton, soybeans, corn, wheat and other agricultural commodities. *See,* 17 CFR Part 150.

Each of these speculative position limits contains a limit on net positions held in any one future and all futures combined, a hedge-exemption and, where applicable, a provision subjecting positions which are spread or arbitrage positions between futures and option contracts to exchange-set speculative position limits approved pursuant to § 1.61 of the Commission's rules. In conjunction with these speculative position limits, and in order adequately to enforce them, traders are required to file futures and cash market reports with the Commission. *See* 17 CFR Parts 18 and 19. For the most part, those position limit levels which were in existence at the time the Commission was created in 1975 remain in effect.

With the adoption of Commission Rule 1.61, the Commission has required that all contract markets have speculative position limits. Since that time, the Commission systematically has reviewed and approved speculative position limits for almost all contract markets having exchange-set speculative position limits including those in effect prior to the promulgation of Rule 1.61. In light of its nearing the completion of that task, [1] the Commission believes that it is appropriate to re-examine Federal speculative position limits at this time.

In addition, the New York Cotton Exchange submitted petitions on April 22, 1980, May 19, 1982 and February 8, 1985 to raise the speculative positions limits in cotton and the Chicago Board of Trade ("CBOT"), on July 24, 1986, petitioned the Commission to bring soybean oil and soybean meal futures contracts under Federal speculative position limits. The CBOT reasoned that:

> By amending Part 150 of CFTC regulations as proposed, the Commission would be providing consistency with all other agricultural commodities traded at the CBOT. Federal speculative position limits for all other agricultural commodities traded at the CBOT, with the exception of soybeans, have been in effect since 1938.

Petition of Rulemaking of the Chicago Board of Trade, dated July 24, 1986.

The CBOT's petition to bring soybean meal and soybean oil futures contracts under Federal speculative position limits included certain unique exemptions from such limits in those contracts. These exemptions include enumerated categories in addition to those established for *bona fide* hedging under existing Federal speculative position limits.[2]

In light of the above, the Commission is requesting public comment on the possible revision of current Federal speculative position limits and is requesting responses on the following specific issues. The Commission will evaluate these comments in conjunction with the data which the Commission itself develops concerning the appropriatenes of current speculative position limits.

(1) Do current levels of speculative position limits on futures contracts on agricultural commodities need to be revised?

Commenters may wish to address the relative levels of open contracts and trading volume in specific futures contracts on these commodities over the years. Commenters should discuss why higher speculative position limits are appropriate if the levels of open contracts and trading volume are near the levels existing at the time the current limits were established or amended. For example, at least one agricultural commodity, cotton, is trading at volumes

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[1] Notwithstanding the Commission's comprehensive review of exchange-set speculative limits, under section 5a(12) of the Act and Commission Rule 1.61, an exchange at any time may adopt and submit for Commission approval adjustments to its exchange-set speculative levels.

[2] The text of these provisions for soybean meal and soybean oil, in pertinent part, are as follows:

[soybean meal]

Proposed § 150.13(b) Bona fide hedging. The foregoing limits upon position shall not be construed to apply: (1) To bona fide hedging transactions as defined in § 1.3(z) of this Chapter; nor (2) to positions commonly known in the trade as "crush" or "reverse crush" spreading positions; nor (3) to transactions or positions in soybean meal futures by a processor or merchandiser or dealer in feed ingredients other than soybean meal, to the extent that the bona fide purpose and the reasonable effect of such transactions or positions are to offset the price risk incident to the ownership, purchase, or sale of such feed ingredients, provided such risk is not otherwise off-set; nor (4) to sales or short positions by a processor of soybeans, to the extent that such sales or short positions are off-set in quantity by the meal content of such soybeans owned or purchased by such processor, provided the price risk incident to such ownership or purchase is not otherwise off-set.

[soybean oil]

Proposed § 150.14(b) Bona fide hedging. The foregoing limits upon position shall not be construed to apply: (1) to bona fide hedging transactions as defined in § 1.3(z) of this Chapter; nor (2) to positions commonly known in the trade as "crush" or "reverse crush" spreading positions; nor (3) to transactions or positions in crude soybean oil futures by a processor or merchandiser of or dealer in an edible fat or oil other than crude soybean oil, to the extent that the bona fided purpose and the reasonable effect of such transactions or position are to offset the price risk incident to the ownership, purchase, or sale of such edible fat or oil, provided such risk is not otherwise off-set; nor (4) to sales or short positions by a processor of edible oil-bearing seeds or similar oil-bearing raw materials, to the extent that such sales or short positions are off-set in quantity by the oil content of such edible oil-bearing seeds or similar oil-bearing raw materials owned or purchased by such processor, provided the price risk incident to such ownership or purchase is not otherwise off-set.

equivalent to those experienced at the time its speculative position limit was set.

(2) Are the terms and conditions of each of the particular contracts in sufficient conformity with conditions in the cash market to ensure a deliverable supply that is adequate to deter speculative abuses in the event that the limits are increased?

Commenters are requested to address the matter of raising limits in the delivery month as a matter separate from increasing the limits more generally in all or particular contract months.

(3) What is the impact of changes to the speculative position limit on the hedging utility of the contract?

The Commission is particularly interested in receiving comments concerning the impact on hedging, if any, of increasing position limits in particular commodities and of establishing higher "back month" limits possibly coupled with different limits for the spot month.

(4) Should Federal speculative position limits for the same commodity vary by contract market?

Currently, Federal speculative position limits are set at the same level for all contract markets in the same commodity. However, the relative liquidity of various contract markets varies as well as the relative size of positions in those markets. Should Federal speculative position limits reflect those differences? Does a uniform level address adequately the specific characteristics of different contract markets?

(5) Should Federal speculative position limits be cumulative for all contract markets in the same commodity?

Different contract markets for the same commodity may draw on the same deliverable supplies. Commenters may wish to address the extent to which particular contract markets draw from the same deliverable supply as others and how that should affect the establishment of speculative position levels. In this regard, commenters should address whether the Commission should establish cumulative speculative position limits for different contract markets in the same commodity. If such levels are not cumulative, should levels for individual contract markets be set at different levels?

(6) Have changes in the Commission's definition of "*bona fide* hedging transactions and positions" made unnecessary the exemption for spread positions between individual cotton futures?

Section 150.2(b) of the Commission's rules concerning position limits for cotton provides an exemption for spread or straddle positions between individual cotton futures. A major rationale for the establishment of this exemption in 1940 was to facilitate commercial risk shifting positions which may not have conformed to the so-called mechanical definition of bona fide hedging which was then contained in section 4(a)(3) of the Act. However, such positions could now be classified as hedging pursuant to the more general definition of hedging contained in Commission Rule 1.3(z)[3] Accordingly, if the spread exemption were eliminated from §150.2 of the Commission's rule, those persons desiring to establish spread positions in excess of the speculative limits for purposes of *bona-fide* hedging could make application to the Commission pursuant to paragraph (3) of Commission Rule 1.3(z) and the requirements of Commission Rule 1.47.

The Commission is interested in receiving comments concerning the elimination of this spread provision in view of the fact that the existing exemption for cotton permits the establishment of large speculative spread positions involving delivery months in different crop years. Such large spread positions across different crop years, under certain circumstances, could be nearly equivalent to the establishment of large one-sided speculative positions which are subject to specific limitations under the current rules.

(7) With respect to the exemptions for the soybean meal and soybean oil contracts proposed by the CBT, what are the circumstances under which positions commonly known to the trade as "crush" and "reverse crush" spreading positions conform with the general definition of hedging in Commission Rule 1.3(z)?

The Commission requests that commenters provide an appropriate description of such positions, including the ratio of futures contracts in soybeans, soybean oil and soybean meal normally considered to constitute a crush or reverse crush position, and any necessary temporal relation, including the crop years, for each of the legs of such positions. The Commission further requests that commenters address the risks and market impact attendent to such positions in excess of the proposed speculative limits in the event certain of these positions do not otherwise constitute *bona fide* hedging. In such cases commenters should address whether such non-hedging crush and reverse crush spread positions should be exempted from the limits. Comments on this matter also should address the relation of the crop years in which the various legs of the positions are placed. In addition, persons commenting may wish to address the appropriateness of placing a higher numerical limit on such non-hedging positions, rather then establishing an outright exemption.

(8) Also with respect to the proposed exemptions for the soybean meal and soybean oil contracts, are the specific exemptions contained in Rules 150.13(b)(3) and (4) and 150.14(b) (3) and (4) as proposed by the CBT (*see* footnote 1) unnecessary?

It appears that parts (b)(3) and (b)(4) of the CBOT's proposed rules for soybean oil and meal would be largely covered by the enumerated listing of exempted positions in Commission Rule 1.3(z)(2). In addition, it appears that any such hedging transactions not so covered would be permitted under the more general language of paragraph (1) of Rule 1.3(z). Accordingly, the Commission seeks comment on whether these sections are unnecessary and could be eliminated.

List of Subjects in 17 CFR Part 150

Arbitrage, Contract markets, Hedging, Speculative position limits, Commodity futures.

Issued in Washington, DC this 28th day of August, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-19922 Filed 9-3-86 8:45 am]

BILLING CODE 6351-01-M

[3] In particular, a cotton merchant may contract to purchase and sell cotton in the cash market in relation to the futures prices in different delivery months for cotton, *i.e.*, a basis purchase and a basis sale. Prior to the time when the price is fixed for each leg of such a cash position the merchant is subject to a variation in his merchandising margin which is attributable to the price variation in the two futures contracts utilized for price basing. This variation can be offset by purchasing the future on which the sales were based on selling the future on which purchases were based. Since the definition of hedging previously contained in section 4(a)(3) of the Act pertained to cash market sales and purchases at a fixed price, this transaction may not have conformed to that definition. The Commission believes that the same transaction will conform to its current general definition in paragraph (1) of Regulation 1.3(z) under economically appropriate circumstances.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM86-12-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Staff Submittal

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking; staff submittal.

SUMMARY: On July 21, 1986, the Commission issued a notice of proposed rulemaking involving the generic determination of rate of return on common equity for public utilities (51 FR 27050, July 29, 1986). By memorandum dated August 26, 1986, the Commission staff has placed in the record computer printouts with listings of rates of return on common equity allowd by state regulatory commissions since 1977.

DATES: The computer printouts were made available August 27, 1986.

ADDRESS: A copy of this document is available for inspection and copying through the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary; (202) 357-8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19932 Filed 9-3-86; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 40

[DoD Directive 5500.7]

Standards of Conduct

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed rule.

SUMMARY: This part is designed to prescribe standards of conduct required of all DoD personnel, regardless of assignment. It is being formulated to reflect statutory and regulatory changes since the last DoD Directive 5500.7 was issued on January 15, 1977 (42 FR 3646). This action will provide updated guidelines of DoD personnel to observe when making decisions or taking action.

DATE: Comments due on or before November 3, 1986.

ADDRESS: Comments should be submitted to the Department of Defense Office of General Counsel, Office of Legal Counsel, Pentagon, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: David W. Ream or Captain Randi E. DuFresne, Department of Defense, Office of General Counsel, Office of Legal Counsel, Pentagon, Washington, DC 20301-1600. Telephone 202/695-3272.

SUPPLEMENTARY INFORMATION: Since the issuance of DoD Directive 5500.7 in January of 1977, the Ethics of Government Act of 1978, Pub. L. 95-521, October 26, 1978, as amended, has been passed and numerous Executive Branch directives in government ethics and standards of conduct related areas have been promulgated. Since material, listed as references in the proposed new directive, comprise a substantial body of law and regulation, with considerations not addressed in the previous 1977 directive. Critical new topics in these areas include the establishment of a DoD Hotline, allowing for ready reports of standards of conduct violations to the DoD Inspector General, as well as post-government employment restrictions and reporting requirements for former DoD employees. The Digest of Laws concerning conflict of interest rules applicable to DoD personnel has been updated and a discussion of the requirement for certain DoD personnel to file a financial disclosure report (SF 278) has been incorporated.

The large volume of government directives and the major statutory changes concerning standards of conduct over the last ten years reflect that the area of government ethics is dynamic and constantly evolving thereby requiring that a current set of guidelines be provided to DoD personnel concerning the responsibilities related to their employment.

List of Subjects in 32 CFR Part 40

Conflict of interests.

Accordingly, 32 CFR Part 40 is revised to read as follows:

PART 40—STANDARDS OF CONDUCT

Sec.

40.1 Reissuance and purpose.
40.2 Applicability and scope.
40.3 Definitions.
40.4 Policy.
40.5 Responsibilities.
40.6 Procedures.
40.7 Digest of laws.
40.8 Code of ethics for government service.
40.9 Confidential Statement of affiliations and financial interests Appendix A to § 40.9 DD Form 1555.
40.10 Financial disclosure report (SF 278).
40.11 Statement of employment (DD Form 1357).
40.12 Post-government-service employment of senior defense officials.
40.13 Potential employment contacts.

Authority: E.O. 11222; Pub. L. 87-651; 3 U.S.C. 301

§ 40.1 Reissuance and purpose.

(a) This part reissues 32 CFR Part 40 and implements Pub. L. 95-521, 5 CFR Part 734, Executive Order 11222, and 5 CFR Part 735.

(b) This part prescribes standards of conduct required of all DoD personnel, regardless of assignment.

(c) Penalties for violations of these standards include the full range of statutory and regulatory sanctions of civilian and military personnel.

§ 40.2 Applicability and scope.

This part applies to all DoD personnel and to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Inspector General, and the Defense Agencies (hereafter referred to collectively as "DoD Components"), including nonappropriated fund activities.

§ 40.3 Definitions.

Designated agency ethics officials. An officer or employee of a component who has been appointed, pursuant to component procedures, to administer the provisions of the Ethics in Government Act. The term is abbreviated, DAEO. The DAEO for the Office of the Secretary of Defense is the General Counsel.

DoD personnel. All civilian officers and employees, including special government employees, of all the offices, agencies, and departments in DoD (including nonappropriated fund activities), all regular and reserve officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps on active duty, and reserve officers (commissioned and warrant) and enlisted members on *inactive* duty for training. This definition includes professors and cadets of the military service academies.

Gratuity. Any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefits, including discounts, passes, and promotional vendor training, given or

extended to or on behalf of DoD personnel, their immediate families, or households, for which fair market value is not paid by the recipient or the U.S. Government.

Inside information. Information not generally available to the public and obtained by reason of one's official DoD duties or position. Information is available if it would be released in response to an appropriately framed request under the Freedom of Information Act. See 32 CFR Part 286.

Personal commercial solicitation. Any effort to contact an individual to conduct or transact matters involving business, finance, or commerce. This does not include off-duty employment of DoD personnel as employees in retail stores. See 32 CFR Part 43.

Special government employee. A person who is retained, designated, appointed, or employed to perform, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a reserve officer who is serving on active duty involuntarily or for training for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

§ 40.4 Policy.

(a) *General requirements.* (1) Government service or employment is a public trust requiring DoD personnel to place loyalty to country, ethical principles, and the law above private gain and other interests. DoD personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of U.S. laws, executive orders, or applicable directives, instructions, or regulations.

(2) DoD personnel shall become familiar with the scope of, authority for, and limitations of the activities for which they are responsible. DoD personnel also shall acquire a working knowledge of appropriate statutory standards of conduct prohibitions and restrictions. The most commonly encountered of these provisions, which include conflict of interest laws, general post employment restrictions, laws particularly applicable to retired regular officers, and other laws applicable to all DoD personnel, are summarized in § 40.7. Except for filing regulations, the same standards apply to all DoD personnel even where certain laws or regulations are limited to only certain personnel.

(3) If the propriety of a proposed action or decision is in question because it may be contrary to law or regulation, DoD personnel shall consult DoD Component legal counsel, or, if appropriate, the Component's Designated Agency Ethics Official or subordinate ethics counselors for guidance. This will promote the proper and lawful conduct of DoD programs and activities.

(4) Practices that may be accepted in the private business world are not necessarily acceptable for DoD personnel. Sound judgment must be exercised. All personnel must be prepared to account fully for the manner in which that judgment has been exercised.

(5) DoD personnel shall adhere strictly to the DoD program of equal opportunity regardless of race, color, religion, sex, age, national origin, or handicap in accordance with 32 CFR Part 191 and 32 CFR Part 56.

(6) DoD personnel shall avoid any action, whether or not specifically prohibited by this part, that might result in or reasonably be expected to create the appearance of any of the following:

(i) Using public office for private gain,

(ii) Giving preferential treatment to any person or entity,

(iii) Impeding government efficiency or economy,

(iv) Losing independence or impartiality,

(v) Making a government decision outside official channels, or

(vi) Affecting adversely the confidence of the public in the integrity of the government.

(7) In accordance with Pub. L. 96-303 DoD Components shall display copies of the Code of Ethics for Government Service in appropriate areas of Federal buildings in which at least 20 persons are regularly employed as civilian emloyees. See Code of Ethics, § 40.8.

(b) *Conflicts of interest prohibitions*—(1) *Affiliations and financial interests.* DoD personnel shall not engage in any personal, business, or professional activity, nor hold direct or indirect financial interest that conflicts with the public interests of the United States related to the duties and responsibilities of their DoD positions. For the purpose of this prohibition, the private interests of a spouse, minor child, and household members are treated as private interests of the DoD personnel.

(2) *Using "Inside Information".* DoD personnel shall not engage in any personal, business, or professional activity, not enter into any financial transaction that involves the direct or indirect use of "inside information" for personal advantage to themselves or others.

(3) *Using official DoD position.* DoD personnel shall not use their DoD positions to induce, coerce, nor in any manner influence any person, including subordinates, to provide any personal benefit, financial or otherwise, to themselves or others.

(i) *Contributions of gifts to superior.* DoD personnel shall not solicit a contribution from other DoD personnel for a gift to an official superior, make a contributions or a gift to an official superior, or accept a gift or contribution from subordinate DoD personnel. This prohibition also applies to gifts or contributions to immediate family members of an official superior. This paragraph does not prohibit voluntary gifts of nominal value or voluntary contributions of nominal amounts (or acceptance thereof) on personal occasions such as marriage, transfer, illness, or retirement, as long as any gift acquired with such contributions does not exceed a reaonable value under the circumstances.

(ii) *Use of civilian and military title.* DoD personnel shall not use their official titles or positions in connection with any commercial enterprise or to endorse any commercial product, subject to the following:

(A) Such personnel may make speeches or publish books or articles that identify them by reference to their title or position, provided that the material is approved for public release in accordance with DoD procedure. See DoD Directive 5230.9.[1]

(B) Retired military personnel and members of reserve components not on active duty, may use their military titles in connection with commercial enterprises, provided they indicate their retired or reserve status. However, the use of military titles is prohibited if it casts discredit on any DoD Component or gives the appearance of sponsorship, sanction, endorsement, or approval by any DoD Component. Overseas commanders of DoD Components may further restrict the use of titles, including use by retired military personnel and members of reserve components not on active duty, in overseas areas to avoid confusing foreign governments or populations on the status of such individuals.

(4) *Release of acquisition information.* DoD personnel shall not release any information concerning proposed acquisitions or purchases by any DoD contracting activity, except in accordance with authorized procedures.

[1] Copies may be obtained, if needed from the U.S. Naval Publications and Forms Center, Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120

(5) *Statements or commitments with respect to award of contracts.* DoD personnel other than contracting officers shall not make any commitment or promise relating to award of a contract nor make any representation that reasonably can be construed as such a commitment.

(6) *Membership in associations.* DoD personnel who are members or officers of nongoverment associations or organizations shall avoid activities on behalf of the association or organization that are incompatible with their official DoD positions. See 32 CFR Part 91 and 32 CFR Part 237a.

(7) *Commerciol dealings involving DoD personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, DoD personnel shall not make personal commercial solicitations or solicited sale to DoD personnel who are junior in rank or grade, and their family members, at any time, on or off-duty.

(i) This prohibition includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(ii) This prohibition does not include the sale or lease, by a person, of a privately-owed former residence or of personal property not held for commercial or business purposes.

(iii) For civilian personnel this prohibition applies only to personnel under their supervision at any level.

(8) *Assignment of reserves for training.* DoD personnel who assign reserves for training shall not assign them to duties in which they will obtain information that they or their private sector employers could use to gain unfair advantage over civilian competitors. Reservists must disclose to superiors or assignment personnel information necessary to ensure that no conflict exists between their duty assignment and their private interests.

(9) *Dealing with personnel.* DoD personnel shall not knowingly deal, on behalf of the government, with present or former military or civilian personnel of the government whose participation in the transaction violates a statute described in § 40.7 or any provision or policy set forth in this part.

(10) *Honoraria.* DoD personnel shall not accept honoraria for official activities. See 18 U.S.C. 209, 40.7. They shall not suggest charitable contributions in place of such honoraria. Even when acting in a personal rather than official capacity, there are restrictions:

(i) DoD personnel shall not accept an honorarium of more than $2,000 (excluding expenses for travel, subsistence and agents' fees or commissions) for any appearance, speech, or article made in a personal capacity. See 2 U.S.C. 441i.

(ii) DoD personnel shall not accept an honorarium from groups doing business with DoD because of the potential for a conflict of interest or the appearance of a conflict of interest. Before accepting any honorarium, DoD personnel should consult their ethics counselors.

(11) *Negotiating for employment.* DoD personnel shall not participate, personally and substantially, on behalf of the government in any particular matter in which an organization with which they are negotiating for employment, or have any arrangement concerning future employment, has a financial interest. See 18 U.S.C 208, 40.7.

(i) DoD personnel who have any contract regarding future employment with an entity shall not participate in any official action involving the entity. Written, formal disqualification normally will be required. Disqualification statements shall be filed with the individual's supervisor and with his agency's designated agency ethics official (DAEO) (or designee). Disqualification statements need not be filed if the discussions are with entities not having, nor expected to have, business with the DoD individual or officer. A disqualification may be withdrawn if employment discussions end without an employment agreement.

(ii) Additional, persons involved in the performance of procurement functions should see the detailed reporting and disqualification procedures to which they are subject. See 10 U.S.C. 2397a, 40.7, and 40.13.

(12) *Outside employment of DoD personnel.* DoD personnel may not engage in outside employment or other outside activity, with or without compensation, that is not compatible with the performance of their government duties, may reasonably be expected to bring discredit upon the government or DoD Component concerned, or its otherwise inconsistent with the requirements of this part. This include the requirement to avoid actions that reasonably can be expected to create a conflict of interest or the appearance of a conflict of interest.

(i) *No enlisted members* of the Armed Forces on active duty may be ordered or permitted to leave their post to engage in a civilian pursuit or business, or a professional activity in civil life if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(ii) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity before the strike began and if the employment is otherwise in conformance with the provisions of this part. After a strike begins and while it continues, no military personnel may accept employment with the involved entity at the strike location.

(iii) DoD personnel are encouraged to engage in teaching, lecturing, and writing. See *Honoraria*, paragraph (10) of this section. However, they shall not, either with or without compensation, engage in activities that are dependent on information obtained as a result of their government employment, except under the following circumstances:

(A) The information has been published or is generally available to the public,

(B) The information will be made available to the public under FOIA, or

(C) The head of the employing DoD Component, or designee, gives written authorization for the use of nonpublic information on the basis that the use is in the public-interest. See DoD Directive 5230.9.

(iv) Presidential appointees shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, when the subject matter:

(A) Is devoted substantially to DoD responsibilities, programs, or operations, or

(B) Draws substantially on official material that has not become part of the body of public information.

(c) Gratuities, reimbursement, and other benefits from outside sources. (1) DoD personnel and members of their families shall not accept gratuities from those who have or seek business with the Department of Defense or from those whose business interests are affected by DoD functions. No matter how innocently the gratuity is tendered or received, acceptance may be a source of embarrassment to the Department of Defense, may affect the objective judgment of the DoD personnel involved, and may impair public confidence in the integrity of government.

(2) DoD personnel and their families shall not solicit, accept, nor agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from, or on behalf of, any source that:

(i) Is engaged in or seeks business or financial relations of any sort with any DoD Component,

(ii) Conducts operations or activities that are either regulated by a DoD Component or significantly affected by DoD decisions, or

(iii) Has interests that may be substantially affected by the performance of nonperformance of the official duties of DoD personnel.

(3) The prohibitions in paragraph (c)(1) and (2) of this section do not apply to the following:

(i) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate supervisor with the advice of the Designated Agency Ethics Official (DAEO) or appropriate ethics counselors;

(ii) The acceptance of unsolicited advertising or promotional items that are less than $10 in retail value;

(iii) Trophies, entertainment, prizes, of awards for public service or achievement in an individual capacity, or given in games or contests that do not relate to official duties and are clearly open to a broad segment of the public generally or that are officially approved for DoD personnel participation;

(iv) Benefits available to the public (such as university scholarships covered by DoD Directive 1322.6 [2] and free exhibitions by DoD contractors at public trade fairs;

(v) Discounts or concessions realistically available to all personnel in the Component, provided that such discounts or concessions are not used to obtain any item for the purpose of resale at a profit;

(vi) Participation by DoD personnel in civic and community activities that also involve a DoD contractor, when any relationship between DoD personnel and the contractor is indirect (such as participation in a Little League or Combined Federal Campaign luncheon that is subsidized by a defense contractor);

(vii) Activities engaged in by officials of a DoD Component and officers in command, or their representatives, with local civic or military leaders as part of authorized community relations programs of the 32 CFR Part 237;

(viii) The participation of DoD personnel in widely attended gatherings of mutual interest to government and industry, sponsored or hosted by universities or industrial, technical, and professional associations (not by individual contractors) provided that they have been approved in accordance with 32 CFR Part 237a;

(ix) Situations in which participation by DoD personnel at public ceremonial activities of mutual interest to industry, local communities, and the DoD Component concerned serves the intersts of the government and acceptance of the invitation must be approved by the DAEO of the employing DoD Component. or his or her designee;

(x) When on official government business, space available use of previously scheduled transportation to or from the contractor's place of business provided by the contractor for its own employees, and contractor-provided transportation, meals or overnight accommodations when arrangements for government or commercial transportation, meals, or accommodations are clearly impracticable, and the person reports the circumstances in writing to his or her superior or supervisor as soon as possible;

(xi) Attendance at vendor training sessions when the vendor's products or systems are provided under contract to the Department of Defense and the training is to facilitate the use of those products or systems by DoD personnel;

(xii) Attendance or participation of DoD personnel in gatherings (including social events such as reception) that are hosted by foreign governments or international organizations when:

(A) Acceptance of the invitation is approved by the DAEO of the employing DoD Component, or his or her designee, or

(B) Attendance or participation is authorized by other exceptions as in paragraph (c)(7) or (c)(13) of this section

(C) The social event involves a routine or customary social exchange with officials of foreign governments (including military forces) in pursuit of official duties;

(xiii) Customary exchanges of gratuities between DoD personnel and their friends and relatives and the friends and relatives of their spouse, minor children, and members of their household when the circumstances clearly indicates that it is the relationship, rather than the business of the person concerned, that is the motivating factor for the gratuity and it is clear that the gratuity is not paid for by the government or any DoD contractor;

(xiv) Acceptance of transportation and related travel expenses from a potential employer in connection with a job interview, provided that the recipient, before departure on that trip, notifies his or her immediate superior or supervisor of these travel arrangements and that he or she files a written disqualification statement concerning any possible official actions involving the potential employer, including some evidence that the potential employer offers the same benefits to all similarly situated applicants, not only those employed within the Department of Defense (see § 40.4(b)(11)(i));

(xv) On an occasional basis only, acceptance of coffee, donuts, and similar refreshments of nominal value offered as a normal courtesy incidental to the performance of duty;

(xvi) With respect to attendance at ceremonies and acceptance of gratuities in connection with the christening or launching of a Navy vessel, rollout of Air Force plane, Army vehicle, or similar occasion (see § 40.4(d)).

(4) The guidance in paragraphs (c)(4)(i) through (v) of this section applies when government contractors provide training, orientation, and refresher courses to government personnel. These courses range from executive orientation course in which all expenses are borne by the contractor to annual seminars devoted to technical developments in which the only "gratuity" may be lectures given free of charge.

(i) When a course is given pursuant to a contractual undertaking with the government, the course itself is not a gratuity. The furnishing of meals, lodging, and transportation to the extent required by the contract is likewise not a gratuity. However, the furnishing of such accommodations, if not required by the contract, is a gratuity if appropriate charge therefore is not made to the individual. If lodging, meals, transportation, or other accommodations are furnished as a part of a contract, travel and other expenses chargeable to the government will be reduced according to applicable regulations.

(ii) Attendance at tuition-free training or refresher courses, or other educational meetings, offered by contractors (although not required to do so by the contract) may be authorized when attendance is clearly in the best interest of the government, and provided the contractor waives all claims against the government for such training. In these cases, the training or instruction itself will not be regarded as a gratuity reportable under paragraph (c)(6) of this section.

(iii) Selection of personnel to attend such courses will be made by the government and not by the contractor. Invitations to persons to attend courses at the expense of the contractor may not be accepted by the individual recipient.

(iv) Authorized attendance at such courses will be considered official business, with payment of transportation and per diem as well as reimbursement for any tuition or other training expenses paid by the government. Attendance will not be

[2] See footnote 1 to § 40.4(b)(3)(ii)(A)

authorized if there is any doubt of the contractor's intention to impose appropriate charges for meals, lodging, and entertainment not required by contracts, as may be furnished in connection with the course.

(5) Procedures for ROTC staff members receiving payments or other benefits offered by educational institutions are set forth in 32 CFR Part 92.

(6) DoD personnel who receive gratuities, or have gratuities received for them, under circumstances that do not conform to the standards of this section will promptly report the circumstances to their immediate superior for review and to the appropriate ethics counselor. Ultimate disposition of the gratuity will be determined by the ethics counselor.

(7) DoD personnel may not accept form any source, other than the United States Government, either personal reimbursement for expenses incident to official travel or in kind accommodations, subsistence, transportation, or service, except as indicated below. Where acceptance is authorized, DoD personnel will not accept, either in kind or for cash reimbursement, benefits that are extravagant or excessive in nature. Such reimbursement will be considered gifts to the United States Government, pursuant to statutory gift acceptance authority, and not as a reimbursement to the official concerned. Nevertheless, officials will report such reimbursements if required by the applicable financial disclosure report. When accommodations, subsistence, or services in kind are furnished to DoD personnel by sources other than the United States Government and are authorized by this paragraph, appropriate deductions will be reported and made in the travel, per diem, or other allowances payable.

(i) Persons who are to be speakers, panelists, project officers, or other bona fide participants in the activity attended may accept accommodations, subsistence, transportation, or services furnished in kind in connection with official travel only from sources specifically authorized by 5 U.S.C. 4111 (Certain Tax Exempt Organizations), or other statutory authority, and only when acceptance is approved by their superior, consistent with guidance from the Designated Agency Ethics Official or an ethics counselor.

(ii) Persons may accept travel, or reimbursement for travel expenses, from a foreign government as provided in DoD Directive 1005.13[3]

[3] See footnote 1 to § 40.4(b)(3)(ii)(A)

(d) *Ship launch and similar ceremonies—(1) Attendance at ceremonies.* (i) The "ceremonies" covered by this provision are those associated with the launch or commissioning of a naval vessel, the roll-out on an aircraft, and all similar events.

(ii) Acceptance of an invitation to attend a ceremony shall be approved by the commanding officer or head of the activity to which the invitee belongs.

(iii) Attendance is permitted at appropriate functions incident to the ceremony, such as a dinner preceding the ceremony and the reception following it, as long as the function is not lavish, excessive, or extravagant.

(2) *Acceptance of gifts.* (i) DoD personnel who are official participants may accept a tangible thing of value as a gift or memento in connection with the ceremony as long as its retail value does not exceed $100 and the cost is not born by the government.

(ii) When a gift exceeds the $100 limit the recipient shall pursue one of these alternatives:

(A) Return the gift to the donor,

(B) Retain the gift after reimbursing the donor the full value of the gift, or

(C) Forward the gift to the appropriate component official for disposition as a gift to the government.

(e) *Use of government facilities, property, and personnel.* (1) DoD personnel have a duty to protect and conserve government property. Government property, facilities, and work assistance will be used only for official government business. This includes, but is not limited to, telephone calls, stationery, stenographic services, typing assistance, duplication equipment and services, chauffeur services, and computer facilities. DoD personnel shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for other than official purposes.

(2) These prohibitions do not prevent the limited use of government facilities for approved activities to promote authorized DoD community relations; however, the activities must not interfere with military missions or government business. See 32 CFR Part 237 for community relations guidance.

(i) Government equipment and clerical support may be authorized for the preparation of papers to be presented to professional associations, if appropriate to the mission of the office concerned, when approved pursuant to Component regulations.

(ii) Telephone calls may be made on a limited basis to overcome problems when official business interferes with personal plans.

(f) *Gambling, betting, and lotteries.* DoD personnel shall not participate in any unauthorized gambling activity while on property owned, controlled, leased by the government otherwise while on duty for the government. This includes lotteries, pools, games for money or property, or the sale or purchase of number slips or ticket. This paragraph does not prevent activities that are:

(1) Necessitated by an employee's law enforcement duties,

(2) Specifically approved by the Head of the DoD Component, or

(3) Otherwise authorized by law, such as the sale on DoD premises of state lottery tickets by blind vendors licensed pursuant to the laws of that state.

(g) *Indebtedness.* DoD personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law (such as federal, state or local taxes) so that their indebtedness does not adversely affect the government as their employer. DoD Components are not required to determine the validity or amount of disputed debts.

§ 40.5 Responsibilities.

(a) The *heads of DoD Components* shall:

(1) Through a formal written delegation of authority, appoint a Designated Agency Ethics Official (DAEO) who is qualified to manage and supervise the Component's ethic and standards of conduct program for both civilian and military personnel.

(2) Appoint an Alternate Agency Ethics Official who will serve in the absence of the DAEO, and

(3) Provide sufficient resources (including investigative, audit, legal, and administrative staff) to enable the DAEO to administer the Component's ethics program in a positive and effective manner.

(b) The *designated agency ethics official* shall:

(1) Coordinate and approve final disposition of all matters relating to standards of conduct, conflicts of interest, and financial disclosure covered by this part,

(2) Ensure the proper collection, review, and handling of all financial disclosure reports, including those submitted by Presidential appointees for confirmation purposes, certain executive personnel (SF's 278, see § 40.10) and certain designated military and civilian personnel (DD Forms 1555, see § 40.9).

(3) Initiate and maintain a counseling, education, and training program

concerning all ethics and standards of conduct matters, including post-employment restrictions,

(4) Administer a system for periodic evaluation of the Component's ethics program, to include the disclosure reporting system,

(5) Initiate prompt, effective action to remedy violations, potential violations, and appearances of violations of laws or regulations relating to applicable standards of conduct, conflicts of interest, or financial disclosure requirements,

(6) Select deputy ethics officials who may, in turn, designate ethics counselors to provide advice and assistance to Component personnel,

(7) Provide advice and assistance to Component personnel not otherwise assigned an ethics counselor, and

(8) Maintain liaison with the Office of Government Ethics (OGE), Office of Personnel Management (OPM), and provide to OGE all information required by law or regulation.

(c) The *general counsel, DoD*, shall:

(1) Serve as the DAEO for the OSD,

(2) Perform all responsibilities of a DAEO as set out in the preceding paragraph,

(3) Provide legal guidance and assistance to the DAEO, Department of Defense, and to the DAEOs of all DoD Components,

(4) Represent the Department of Defense to the OGE on matters relating to ethics and standards of conduct, and

(5) Have the authority to modify or supplement any of the enclosures to this part in a manner consistent with the policies set forth in this part.

§ 40.6 Procedures.

(a) *Reporting suspected violations by DoD personnel.* (1) Suspected violations of the criminal statutes listed at § 40.7 and of the standards of conduct imposed by this part shall be reported promptly to the immediate supervisor of those persons suspected, to the DAEO, appropriate ethics counselor, or law enforcement official.

(2) Reports of any violations also may be made to the Inspector General, DoD, in accordance with DoD Directive 7050.1 [4] and DoD Directive 5240.4.[5]

(3) DoD personnel shall cooperate with official investigations of possible violations.

(b) *Resolution of a violation or its appearance.* (1) Resolution of real or apparent standards of conduct violations shall be accomplished promptly.

(2) DoD Components are encouraged to establish a procedure that enables consultation and administrative action to resolve violations at the lowest possible command level in accordance with applicable laws, Executive Orders, and this part.

(3) Resolution will be accomplished through use of one or more of the following measures:

(i) Disqualification from particular official actions (see (b) paragraph (4) of this section);

(ii) Limitation of duties;

(iii) Divestiture;

(iv) Transfer or reassignment;

(v) Resignation;

(vi) Exemption under 18 U.S.C. 208(b) (see § 40.7);

(vii) Other appropriate action as provided by statute or administrative procedure.

(4) DoD personnel who have affiliations or financial interests that create conflicts of interest, or the appearance of conflicts of interest, with their official duties must disqualify themselves from any official activities related to those affiliations, interests, or entities involved, unless otherwise expressly authorized by action taken under 18 U.S.C. 208 (§ 40.7).

(i) Written notice of disqualification must be delivered to a person's superior or supervisor and immediate subordinates whenever it appears likely that the person's official duties may affect the affiliations, interests, or entities involved.

(ii) If such persons cannot adequately perform their official duties after such disqualification, they must divest their interests or be removed from their positions.

(iii) DoD Components shall provide for the periodic review of a disqualification by an individual's superior to ensure its effectiveness.

(c) *Financial disclosure procedures*—(1) *Statement of affiliations and financial interests (DD Form 1555).* (i) The following DoD personnel must submit initials and annual Statements of Affiliation and Financial Interest (DD Form 1555) unless they are expressly exempted or are required to file a Financial Disclosure Report (SF 278) under paragraph (c)(2) of this section:

(a) Commanders and deputy commanders of major installations, activities, and operations, as determined by the Heads of the DoD Components.

(b) DoD personnel classified at GS/GM–15 or below under 5 U.S.C. 5332, or a comparable pay level under other authority, and members of the military below the rank of 0–7, when the official responsibilities of such personnel require them to exercise judgment in making government decision or in taking government action for contracting or procurement, regulating or auditing private or other nonfederal enterprise, or other activities in which the final decision or action may have economic impact on the interests of any nonfederal activity,

(c) Special government employees, except those exempted by § 40.9.

(ii) DoD Components shall ensure that personnel officers, in coordination with supervisors and ethics counselors, develop systems to identify all positions and persons required to file DD Forms 1555. See Federal Personnel Manual, Chapter 734, paragraph 2–3.

(iii) Additional guidance about the applicability, submission, and review of DD Forms 1555 is in § 40.9.

(2) *Financial disclosure report (SF 278).* (i) The DoD personnel listed below are required by the Ethics in Government Act of 1978 to file Standard Form 278. Instructions are in § 40.10 (persons required to file SF 278 are not required to file DD Form 1555):

(A) General and Flag officers (paygrade O–7 and above),

(B) Members of the Senior Executive Service (SES),

(C) General schedule (GS) employees, grade 16 and above,

(D) Personnel (including special government employees) whose rate of pay is fixed, other than under the GS, at a rate equal to or greater than the minimum rate of pay for GS–16 (GS/GM 15s are not required to file SF 278 even though their pay is higher than that of a GS/GM 16),

(E) Employees in the excepted service in positions of a confidential or policymaking character (Schedule C employees). This requirement does not apply to positions that have been excluded by the Director of the Office of Government Ethics.

(ii) DoD Components shall ensure that personnel officers, in coordination with supervisors and ethics counselors, develop systems to identify all positions and persons required to file SFs 278. See Federal Personnel Manuals, Chapter 734 paragraph 2–3.

(iii) Compliance with the financial disclosure provisions of the Ethics in Government Act shall be enforced by administrative, civil, or criminal remedies, as appropriate. These are discussed more fully at § 40.10.

(iv) Additional guidance about the submission, review, and public availability of SFs 278 is in § 40.10.

(d) *Post service or post employment procedures.* (1) DoD Personnel, upon completing service with the Department of Defense, shall review the post service

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[4] See footnote 1 to § 40.4(b)(3)(ii)(A).

[5] See footnote 1 to § 40.4(b)(3)(ii)(A).

reporting procedures and restrictions imposed by law and regulation and determine those that apply to future employment and dealing with agencies of the federal government, especially the Department of Defense.

(i) Certain former military officers and DoD civilian personnel who, within 3 years of retirement, release, or departure from the Department of Defense, are employed by a contractor that was awarded at least $10 million in DoD contracts in the fiscal year in which employed, must file DD Form 1787 (Report of DoD and Defense Related Employment) as required in 32 CFR Part 166.

(ii) Any person who is a Presidential appointee in federal employment and who acted as the primary government representative in the negotiation or settlement of a government contract is barred for two years from accepting employment with that contractor. Detailed implementation provisions are set out in § 40.12.

(iii) Additional post government service statutory restrictions are set out at § 40.7.

(2) Each retired regular officer of the Armed Force shall file annually with the Military Department in which he or she holds retired status a DD Form 1357 (Statement of Employment) (§ 40.11). Filing shall be within 30 days after retirement and annually for three years following retirement.

(i) The Military Departments shall establish procedures for the submission and review of DD Form 1357 to ensure compliance with applicable statutes and regulations.

(ii) Changes to DD Form 1357 must be filed within 30 days after the information in the previous statement has ceased to be accurate.

(3) DoD Components shall establish administrative procedures for submission, receipt, review, and disposition of reported violations of statutory or administrative post service or post employment restrictions. See 5 CFR Part 737 Office of Personnel Management Regulation (Regulations Concerning Post Employment Conflict of Interest).

(i) Upon a determination that information about a reported statutory violation is substantial, the DoD Component concerned may forward that information to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice or take other appropriate action.

(ii) DoD Components shall establish procedures to initiate an administrative disciplinary proceeding where information about a reported statutory or administrative violation has been substantiated.

(iii) DoD Components shall take disciplinary action if a statutory or administrative violation is substantiated. This may include prohibiting the person from making, on behalf of any other person except the United States, any formal or informal appearance before, or with the intent to influence any oral or written communication to, the Component concerned on any matter of business for a period not to exceed five years.

§ 40.7 Digest of laws.

(a) *Conflict of interest laws applicable to DoD personnel*—(1) 18 U.S.C. 203.

(i) Subsection (a) prohibits officers or government employees (other than enlisted personnel) from directly or indirectly receiving or seeking compensation for services rendered or to be rendered before any department or agency in connection with any contract, claim, controversy or particular matter in which the United States is a party or has a direct and substantial interest. The purpose of this section is to reach any situation, including those where there is no intent to be corrupted or to provide preferential treatment, in which the judgment or efficiency of a government agency might be influenced because of payments or gifts, made by reason of the position occupied, to that official in a manner otherwise than provided by law.

(ii) Subsection (b) makes it unlawful to offer or pay compensation, the solicitation or receipt of which is barred by subsection (a).

(2) 18 U.S.C. 205.

(i) This section prohibits government personnel (other than enlisted personnel) from acting as agent or attorney for anyone else before a department, agency, or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

(ii) The following exemptions are allowed:

(A) Section 205 does not prevent government personnel from giving testimony under oath or making statements required to be made under penalty of perjury or contempt or from representing another person, without compensations in a disciplinary, loyalty, or other personnel administration proceeding.

(B) Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special government employee, who represents his or her parents, spouse, or child, or a person or estate he or she serves as a fiduciary. The waiver is available only if approved by the official making appointment to the position. In no event does the waiver extend to the appointee's representation of any such person in matters in which he or she has participated personally and substantially or which, even in the absence of such participation, are the subject of his or her official responsibility.

(C) Finally, section 205 gives the head of a department or agency the authority to allow a special-government employee to represent his or her regular employer or other outside organization in the performance of work under a government grant or contract if the department or agency head certifies and publishes in the **Federal Register** that the national interest requires such representation.

(3) 18 U.S.C. 208.

(i) Subsection (a) requires executive branch personnel (other than enlisted personnel) to refrain from personal and substantial participation as government personnel through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any particular matter in which, to their knowledge, they, their spouses, minor children, or partners have a financial interest or in which business or nonprofit organizations with which such personnel are connected or are seeking employment have a financial interest. A "particular matter" may be less concrete than an actual contract, but is something more specific than rule making or abstract scientific principles. The test is whether the individual might reasonably anticipate that his government action, or the decision in which he participates or with respect to which he advises, will have a direct and predictable effect upon such financial interests.

(ii) Subsection (b) permits agencies to grant an exemption in writing from subsection (a) if the outside financial interest is deemed in advance not substantial enough to affect the integrity of government services. Categories of financial interests may also be made nondisqualifying by a general regulation published in the **Federal Register**. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted as being too remote or inconsequential to affect the integrity of the services of government personnel.

(4) 18 U.S.C. 209. Subsection (a) prevents executive branch personnel (other than enlisted personnel) from receiving, and anyone from paying them,

any salary or supplementation of salary from a private source as compensation for their government service. Subsection (b) permits participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) exempts special government employees and anyone serving the government without compensation. Subsection (d) exempts contributions, awards, or other expenses under the awards, or other expenses under the Government Employees Training Act. See 5 U.S.C. 4111 (a).

(5) 10 U.S.C. 2397a. This section applies to DoD employees at pay rates of GS–11 or higher and to officers in pay grades O–4 or higher. Such officials must report any contract they have had, or will have, with DoD contractors regarding future employment with the DoD contractor in any DoD procurement. Such officials must also disqualify themselves from any participation in DoD procurement related to the DoD contractor. The penalty for violation is a bar from employment with the DoD contractor for 10 years after government service and up to $10,000.

(b) *Post Government Service Statutory Restrictions.*—(1) 10 U.S.C. 2397.

(i) Any Presidential appointee in federal employment who acts as a primary government representative in the negotiation of a government contract or the settlement of a contract with a defense contractor is prohibited for two years after the termination of such activities from accepting employment with that contractor. The penalty for violating this prohibition is a prison term of up to one year and a fine of up to $5,000. A contractor who violates this prohibition shall forfeit up to $50,000 in liquidated damages which shall be provided for in the contract.

(ii) For purposes of this provision, the term, "Presidential appointee in federal employment" includes civilian officials appointed to their positions by the President of the United States with the advice and consent of the senate.

(2) 18 U.S.C. 207.

(i) *Permanent restriction on representation.* All former officers or employees (other than enlisted personnel) are permanently prohibited from knowingly representing anyone other than the United States or, with an intent to influence, making any oral or written communication on behalf of someone, in connection with a particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which the individual participated personally and substantially government (18 U.S.C. 207(a)).

(ii) *Two-year restriction on representation.* (A) Former officers or employees who terminate government service on or after July 1, 1979, are subject to a restriction that lasts for 2 years after termination of service. Such persons may not act as agent or attorney or otherwise represent others in formal or informal appearances before the government in connection with particular matters that were pending under the former employee's official responsibility during the final year of service. This restriction includes oral or written communications as described in paragraphs (b)(2)(i) (18 U.S.C. 207(b)(i)).

(B) "Official responsibility" includes the direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government actions (18 U.S.C. 202(b)). Ordinarily, the scope of an employee's official responsibility is determined by reference to the pertinent statute, regulation, Executive Order, job description, or delegation of authority.

(iii) *Additional restrictions applicable to senior employees.* (A) A "senior employee" includes all civilian officials at the executive level and all three and four star generals and flag officers. It also includes other persons holding positions designated as "senior employee" positions by the Director, Office of Government Ethics, as involving significant decision-making or supervisory responsibility. A list of designated positions is published annually in the **Federal Register.**

(B) For 2 years after leaving government service, a former senior employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which he or she personally and substantially participated while in government service (18 U.S.C. 207(b)(ii)). While such employees could, for example, work on a contract with which they were involved while in government service, they may not render assistance while in attendance at any meeting, negotiations, or proceedings with the government.

(C) For 1 year after leaving government service a former senior employee may not represent another person or himself or herself in attempting to influence his or her former agency in any matter pending before, or of substantial interest to, that agency. (18 U.S.C. 207(c)). This provisions does not require that the former employee have had any prior involvement in the particular matter. The prohibition does not apply to communications made by a former senior employee who is an elected official or employee of a state or local government, acting on behalf of that government, or to communications on behalf of a degree-granting institution of higher learning, or nonprofit hospitals or medical institutions by a former senior employee who is principally employed by those institutions or medical organizations. It also does not apply to purely social or informational communications, responses to requests from the former agency, or to expressions of personal views when the former senior employee has no pecuniary interest. The provision results in a 1 year "cooling off" period to prevent the possible use of personal influence based on past government affiliations to facilitate the transaction of business.

(D) *Exceptions to post government service restrictions. (1)* Title 18 U.S.C. 207's restrictions do not apply to communications made solely for the purpose of furnishing scientific or technological information in accordance with procedures established by the DoD Component concerned.

(2) Title 18 U.S.C. 207's restrictions do not apply when the head of a DoD Component, in accordance with established procedures, certifies that a former officer or employee has outstanding scientific or technological qualifications and that the national interest would be served by that person's participation in a particular matter.

(c) Laws particularly applicable to retired regular officers—(1) *Claims.* (i) A retired regular officer of the Armed Forces may not, within 2 years of retirement, act as agent or attorney for prosecuting any claim against the government, or assist in the prosecution of such a claim, or receive any gratuity or any share of or interest in such a claim in consideration for having assisted in the prosecution of such a claim, if such claim involves the Military Department in whose service he or she holds a retired status (18 U.S.C. 283).

(ii) A retired regular officer of the Armed Forces may never act as an agent or attorney for prosecuting any claim against the government, or assist in the prosecution of such a claim, or receive any gratuity or any share of or interest in such a claim in consideration for having assisted in the prosecution of such a claim if such a claim involves any subject matter with which he or she was directly connected while on active duty (18 U.S.C. 283).

(2) *Selling.*

(i) A retired regular officer is prohibited, at all times, from representing any person in the sale of anything to the government through the Military Department in whose service he or she holds a retired status (18 U.S.C. 281).

(ii) Payment may not be made from any appropriation, to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service, for a period of 3 years after his or her name is placed on that list, who is engaged for himself, herself or others in selling, or contracting or negotiating to sell, supplies or war materials to an agency of the Department of Defense, the Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service. See 37 U.S.C. 801(b) as amended, October 9, 1962, Pub. L. 87–777 formerly 5 U.S.C. 59(c).

(iii) For the purpose of this statute, "selling" means:

(A) Signing a bid, proposal, or contract,

(B) Negotiating a contract,

(C) Contacting an officer or employee of any of the foregoing departments or agencies to obtain or negotiate contracts, negotiate or discuss changes in specifications, price, cost allowances, or other terms of contract, or settle disputes concerning performance of a contract, or

(D) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract is subsequently negotiated by another person.

(3) *Employment in the Department of Defense.* A retired regular officer of the Armed Forces may not be appointed to a position in the civil service in the Department of Defense (including nonappropriated fund instrumentalities) within 180 days following retirement unless the conditions set out in DoD Directive 1402.1 [6] are met. Specifically:

(i) The appointment is authorized by the Secretary of a Military Department, or designee, and, if appropriate, by the Office of Personnel Management,

(ii) The minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305, or

(iii) A state of national emergency exists.

(d) Other laws applicable to DoD personnel. Engaging in the following activities may subject present and former DoD personnel to criminal or other penalties:

(1) Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (see 18 U.S.C. 201);

(2) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if such personnel knew of the actual commission of the crime (see 18 U.S.C. 4);

(3) Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (see 18 U.S.C. 371);

(4) Lobbying with appropriated funds (see 18 U.S.C. 1913);

(5) Disloyalty and striking (see 5 U.S.C. 7311, 18 U.S.C. 1918);

(6) Disclosure of classified information (see 18 U.S.C. 793 and 798, 50 U.S.C. 783); and disclosure of trade secrets and other confidential information (see 18 U.S.C. 1905);

(7) Habitual use of intoxicants to excess (see 5 U.S.C. 7352);

(8) Misuse of a government vehicle (see 31 U.S.C. 638a(c)(2));

(9) Misuse of the mailing privilege (see 18 U.S.C. 1719);

(10) Deceit in an examination or personnel action in connection with government employment (see 18 U.S.C. 1917);

(11) Committing fraud or making false statement in a government matter (see 18 U.S.C. 1001);

(12) Mutilating or destroying a public record (see 18 U.S.C. 2071);

(13) Counterfeiting and forging transportation requests (see 18 U.S.C. 641);

(14) Embezzlement of government money or property (see 18 U.S.C. 641); failing to account for public money (see 18 U.S.C. 643); private use of public money (see 18 U.S.C. 653); and embezzlement of the money or property of another person in the possession of an employee by reason of his government employment (see U.S.C. 654);

(15) Unauthorized use of documents relating to claims from or by the government (see 18 U.S.C. 285);

(16) Certain political activities (see 5 U.S.C. 7321–7327 and 18 U.S.C. 600, 601, 602, 603, 606, and 607, these statutes apply to civilian employees; regulations govern military personnel (see DoD Directive 1344.10 [7]).

(17) Any person (including a special government employee) who is required to register under the Foreign Agents Registration Act of 1938 (see 18 U.S.C. 219), serving the government as an officer or employee (the section does not apply to (i) retired regular officers who are not on regular duty, or reserves who are not on active duty or who are on active duty for training, or (ii) a special government employee in any case in which the department head certifies to the Attorney General that his or her employment by the United States Government is in the national interest);

(18) Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (see 5 U.S.C. 7351, this statute applies only to civilian employees; regulations set out at subparagraph D.2.c. (1) in DoD Directive 5500.7 [8] governs military personnel);

(19) Accepting of excessive honoraria (see 2 U.S.C. 441i);

(20) Accepting without statutory authority, any present, emolument, office or title, or employment of any kind whatever, from any king, prince, or foreign state by any person holding any office or profit in or trust of the Federal Government, including all retired military personnel and regular enlisted personnel (U.S. Constitution, Art. I, Sec. 9, cl 8, exceptions to this prohibition are authorized under 37 U.S.C. 908);

(21) Union activities of military personnel (10 U.S.C. 976);

(22) Violation of merit system principles (see 5 U.S.C. 2301);

(23) Prohibited personnel practices (see 5 U.S.C. 2302);

(24) Civilian presidential appointees occupying full-time positions, appointment to which is required to be made with the advice and consent of the senate, in any calendar year earning outside income in excess of 15 percent of their government salary (see 5 U.S.C. App. 4, sec. 210);

(25) Employment of an officer of the Regular Navy or the Regular Marine Corps, other than a retired officer, by a person furnishing naval supplies or war materials to the United States (see 37 U.S.C. 801(a)).

§40.8 Code of ethics for government service.

Any person in government service should:

(a) Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.

(b) Uphold the constitution, laws, and legal regulations of the United States

[6] See footnote 1 to § 40.4(b)(3)(ii)(A).

[7] See § 40.4(b)(3)(ii)(A)

[8] See § 40.4(b)(3)(ii)(A)

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and of all governments therein and never be a party to their evasion.

(c) Give a full day's labor for a full day's pay; giving the performance of his or her duties his or her earnest and best thought.

(d) Seek to find and employ more efficient and economical ways of getting tasks accomplished.

(e) Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself/herself or his/her family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his/her governmental duties.

(f) Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.

(g) Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his/her government duties.

(h) Never use any information coming to him or her confidentially in the performance of governmental duties as a means for making private profit.

(i) Expose corruption wherever discovered.

(j) Uphold these principles, ever conscious that public office is a public trust.

§40.9 Confidential statement of affiliations and financial interests.

(a) DoD personnel required to submit statements. DoD personnel required to file a statement of Affiliations and Financial Interests (DD Form 1555) on an annual basis are listed at subparagraph F.3.a.(1) of DoD Directive 5500.7.

(1) Except as provided in paragraph (a)(1)(i) (A) and (B) of this section, each member of any DoD advisory committee or DoD Component advisory committee who is not required to file an SF 278 shall, before appointment, file a DD Form 1555.

(i) Categories of special Government employees who are not required to file DD Forms 1555 unless specifically required by the Designated Agency Ethics Official (DAEO) to do so are as follows:

(A) Physicians, dentists, and allied medical specialists engaged only in providing service to patients,

(B) Veterinarians providing only veterinary services.

(C) Lecturers participating in educational activities,

(D) Chaplains performing only religious services,

(E) Individuals in the motion picture and television fields who are utilized only as narrators or actors in DoD productions,

(F) An employee who is not a "consultant" or "expert" as defined in chapter 304, Federal Personnel Manual,

(G) Reservists on active duty for less than 30 consecutive days during the calendar year,

(ii) The DAEO may determine that the submission of statements is not necessary for certain positions because of the remoteness of any impairment of the integrity of the Government and the degree of supervision and review of the incumbent's work. Such determinations will be documented fully and retained by the DAEO of the Component concerned.

(b) Review of positions. All positions in the categories indicated in paragraph (a) of this section will be review annually by the appropriate supervisor in consultation with the DAEO or designee.

(1) If, as a result of this review, a determination is made that the incumbent of the position must file a DD Form 1555, he or she will be so informed in writing by the appropriate personnel officer, and the requirement for such filing will be included in the appropriate document describing the duties and responsibilities of the position.

(2) A person who believes that he or she has been improperly required to file a DD Form 1555 may request a review of the decision through established grievance procedures of the DoD Component.

(c) Submission and review of statements. (1) DD Form 1555 will be filed in the manner described below:

(i) *Initial statements.* Before the assumption of duties in a position that requires the filing of the DD Form 1555, the reporting individual must file the required statement either with his or her new superior and supervisor, or with the DAEO or

(ii) *Annual statements.* DD Forms 1555 will be filed by October 31 of each year for all affiliations and financial interests held as of September 30 of that year. Even though no change occur, a complete statement is required.

(iii) *Excusable delay.* The DAEO or designee may grant an extension of time to file a DD Form 1555 when the extension is necessitated by duty assignment, infirmity, or other good cause. Any extension in excess of 30 days requires the concurrence of the DAEO or his or her designee. Any late statement must include a notation of any extension of time granted.

(2) Personnel of the Unified Commands will submit their statements through their superiors and supervisors to the DAEO or designee in the Office of the Legal Advisor to the Unified Command. Commanders who have a dual responsibility as commanders of both joint commands and DoD Components will submit their statements through Military Service channels.

(3) Military Department and other DoD Component personnel will submit their statements through their immediate supervisors or supervisors for review and forwarding to officials designated in the regulations of their Components.

(4) Before the commencment of service or assumption of new duties and annually thereafter, all statements will be reviewed and approved by the DAEO or Deputy DAEO and the immediate superior or supervisor.

(d) Interests of relatives of DoD personnel. The interest of a spouse, minor child, or any member of one's household shall be reported as if it were an interest of the individual.

(e) Information not known by DoD personnel. DoD personnel shall request submission on their behalf of required information known only to other persons. The submission may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure to the DoD personnel concerned.

(f) Information not required to be submitted. DoD personnel are not required to submit any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or similar organization not conducted as a business for profit.

However, educational and other institutions doing research and development or related work involving grants of money from or contracts with the government shall be included in a person's statement.

(g) Confidentiality of statement of DoD personnel. Each Form 1555 shall be held in confidence. A DoD Component shall not disclose information from a statement except for good cause, as determined by the DAEO or his or her designee, or by the Office of Government Ethics. Persons designated to review and process the statements are responsible for maintaining the statements in confidence. They shall not allow access to or disclosure from the statements except to carry out the purposes of this part. Inspections by government officials charged with the responsibility for determining the proper operation of the financial disclosure

reporting system fall within this exemption.

(h) Retention of statements. DD Forms 1555 shall be retained for 6 years from the date of filing.

(i) Effect of filing a DD form 1555 on other requirements. Submission does not permit DoD personnel to participate in matters in which their participation is prohibited by law, Executive order, or regulation.

BILLING CODE 3810-01-M

Appendix A to § 40.9——DD Form 1555

IF ADDITIONAL SPACE IS REQUIRED
USE SEPARATE SHEETS REFERENCING ITEM NUMBERS BELOW

CONFIDENTIAL STATEMENT OF AFFILIATIONS AND FINANCIAL INTERESTS
DEPARTMENT OF DEFENSE PERSONNEL
(INCLUDING SPECIAL GOVERNMENT EMPLOYEES)

DATA REQUIRED BY THE PRIVACY ACT

AUTHROYTY: Executive Order 11222.

PRINCIPAL PURPOSE: Information is required from categories of DoD personnel specified in DoD Directive 5500.7 Section F.3.a and Enclosure 5 or implementing regulations to enable supervisors and other responsible DoD officials to determine whether there are actual or apparent conflicts of interest between the individual's present and prospective official duties and the individual's non-federal affiliations and financial interests.

ROUTINE USE: This information shall be treated as confidential except as determined by the component head concerned or the Office of Government Ethics.

DISCLOSURE: Filing is voluntary in the sense that no criminal penalties will follow from refusal to file. However, the refusal to provide requested information may result in such measures as suspension of consideration for appointment, reassignment of duties, disciplenary action, or termination of employment.

1.NAME (Last - First - MI)	2.SOCIAL SECURITY NO. ☐☐☐-☐☐-☐☐☐☐
3.TITLE OR POSITION	4.WORK TELEPHONE NO. ☐☐☐-☐☐☐-☐☐☐☐
5.DoD COMPONENT ADDRESS (include office symbol)	6.GRADE OR RANK

PART I

TO BE COMPLETED BY DoD PERSONNEL INDICATED IN SECTION F.3.a. AND ENCLOSURE 5 OF DoD DIRECTIVE 5500.7 OR IMPLEMENTING REGULATIONS

7.NON-FEDERAL AFFILIATIONS AND FINANCIAL INTERESTS: see instructions

NAME OF ORGANIZATION	ADDRESS OF ORGANIZATION	YOUR AFFILIATION	NATURE OF FINANCIAL INTEREST (stock,pension,..)

DD FORM 1555 (Draft)

8. CREDITORS: list all creditors other than conventional loans on customary terms. If none, write "none."

NAME AND ADDRESS OF CREDITOR	NATURE OF DEBT

9. INTERESTS IN REAL PROPERTY: list all other than personal residence you occupy, note any DoD contractor relationships present of future.

ADDRESS OF PROPERTY	NATURE OF INTEREST (owner, mortgagee...)	TYPE OF PROPERTY (apts., farm...)

PART II

TO BE COMPLETED ONLY BY "SPECIAL GOVERNMENT EMPLOYEES" (see instructions)

10. NUMBER OF DAYS YOU EXPECT TO PERFORM GOVERNMENT SERVICE

a. FOR DoD COMPONENT		d. DAYS WORKED FOR PRESENT DoD COMPONENT DURING 365 DAYS PRIOR TO PRESENT APPOINTMENT	
b. FOR OTHER AGENCIES			
c. TOTAL (a. + b.)			

e. DAYS WORKED FOR ANY DoD COMPONENT DURING 365 DAYS PRIOR TO PRESENT APPOINTMENT

11. FEDERAL GOVERNMENT EMPLOYMENT: list all other agencies with whom you are presently employed

AGENCY NAME AND ADDRESS	TITLE OR POSITION	NUMBER OF DAYS	DATE FROM	DATE TO

DD FORM 1555 (Draft)

PART III

ALL FILERS CERTIFY

12. I CERTIFY THAT THE STATEMENTS I HAVE MADE ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT NONE OF THE REPORTED AFFILIATIONS/FINANCIAL INTERESTS ARE IN CONFLICT WITH MY OFFICIAL DUTIES. I HAVE READ AND UNDERSTOOD DoD DIRECTIVE 5500.7 "STANDARDS OF CONDUCT" OR IMPLEMENTING REGULATIONS.

SIGNATURE	DATE

PART IV

EVALUATION AND REVIEW
(see instructions)

I have reviewed the above statement inlight of the present and prospecitve duties of the individual to ensure that both actual and apparent conflicts of interest are avoided. My evaluation is:

- ☐ No affiliation/financial interests reported.
- ☐ Reported affiliations/financial interests are unrelated to assigned or prospective duties, and no conflicts appear to exist.
- ☐ Assigned duties require participation in matters involving or which may involve the highlighted affiliations/financial interests. This conflict will be resolved by: ☐ Change of assigned duties; ☐ Divestiture of the interests and relief of incumbent from all related duties pending divestitute; ☐ Disqualification; ☐ Other. Detailed advice attached. Notice of corrective action will follow.
- ☐ The highlighted reported affiliations/financial interests are related to assigned or prospective duties, fut have been determined by the appropriate appointing official to be not so substantial as to affect the integrity of the individual's services. A copy of the formal determination and rationale is attached.
- ☐ The prospective employee's duties will require participation in matters involving the highlighted reported affiliations/financial interests and the appointment cannot be consummated until divestiture of these affiliations/financial interests is completed.

SIGNATURE	PRINTED NAME	DATE

As a Designated Agency Ethics Official of designee, I have examined the foregoing Statement and Evaluation.

- ☐ I concure with the supervisor's evaluation
- ☐ I do not concure with the supervisor's evaluation. Advice attached.

INSTRUCTIONS

Before the assumption of duties in a position that requires the filing of DD Form 1555, this DD Form 1555 must be filed with the new superior of supervisor, or with the Designated Agency Ethics Official or designee. A new DD Form 1555 shall be filed by October 31 of each year and shall include all affiliations and financial interests as of September 30 of that year. A new DD Form 1555 shall be filed each year even though no changes in affiliations or financial interests occur. Extensions may be granted for good cause by a Designated Agency Ethics Official or designee. For required information not known by you but known by another person, you are required to request the submission of the information on your behalf. Personnel who are required to file Financial Disclosure Report SF 278 are exempted from filing this DD Form 1555. Personnel required to file SF 278 are listed in DoD Directive 5500.7, F.3.b.

DD FORM 1555 (Draft)

PART I. This part must be completed by the following personnel:

a. Commanders and deputy commanders of major installations, activities, and operations (as determined by the Heads of the DoD Components), and DoD personnel classified at GS/GM-15 or below under 5 U.S.C. §5332, or a comparable pay level under other authority, and members of the military below the rank of O-7, when the official responsibilities of such personnel require them to exercise judgment in making government decisions or in taking government action for contracting or procuring, regulating or auditing private or other nonfederal enterprise, or other activities in which the final decision or action may have economic impact on the interests of any nonfederal activity.

b. Special government employees, except for the following categories of personnel unless specifically required to file by the Designated Agency Ethics Official: physicians, dentists, and allied medical specialists engaged only in providing service to patients; veterinarians providing only veterinary services; lecturers participating only in educational activities; chaplains performing only religions services; individuals in the motion picture and television fields who are utilized only as narrators or actors in DoD productions; reservists on active duty for less than 30 consecutive days during the calendar year; others from whom the Designated Agency Ethics Official determines DD Form 1555 is not necessary.

THE INTERESTS OF A SPOUSE, MINOR CHILD, AND ANY MEMBER OF YOUR HOUSEHOLD SHALL BE REPORTED IN THE SAME MANNER AS IF THEY WERE YOUR OWN INTERESTS.

1-6. Fill in appropriate information.

---

7. List the names of all corporations, firms, partnerships, and other business enterprises, nonprofit or educational organizations, or other institutions in which you: (a) are (or were since your last filing of a DD Form 1555) affiliated as an employee, officer, owner, director, member, trustee, partner, advisor, agent, representative, or consultant, as a person on leave from such affiliation, or as a person with an understanding or with plans for affiliation in the future; (b) have any continuing financial interests, such as through a pension or retirement plan, shared income, continuing termination payments, or other arrangement as a result of any current of prior employment or business or professional association; or (c) have any financial interest through the legal or beneficial ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

Identify with an asterisk any affiliations or financial interests which you have acquired since last filing DD Form 1555.

Associations with, or interests in, nonprofit professional, charitable, religious, social, fraternal, recreational, public service, civic, or political organizations, need not be reported if the association or interest is not one of ownership nor maintained to conduct business for profit. ASSOCIATION WITH, OR INTERESTS IN, EDUCATIONAL OR OTHER INSTITUTIONS DOING RESEARCH OR DEVELOPMENT RELATED WORK INVOLVING GRANTS FROM OR CONTRACTS WITH THE GOVERNMENT MUST BE REPORTED IN THIS FORM.

The amounts of financial interests need not be reported unless specifically required by the Designated Agency Ethics Official or designee.

VOL 51 ISS 171 SE 4 1986 UMI

8. List all creditors other than those who have given you conventional loans on customary commercial terms. If none, write "none."

9. List your interests in real property other than the personal residence you occupy. Note any relationships with DoD contractors, present of prospective, related to interests in real estate.

PART II.

This part must be completed only by special government employees with the exception of those listed as exempted in Part I, b., above.

10. a. Fill in the number of days you expect to work for the DoD Component to which you will submit this DD Form 1555.

b. Fill in the total number of days you expect to work for other FEDERAL agencies.

c. Fill in the total.

d. Fill in the number of days you worked for the DoD Component to with you will submit this DD Form 1555 during the 365 days prior to the beginning date of your present appointment.

e. Fill in the number of days you worked for ANY DoD Component during the 365 days prior to the beginning date of your present appointment.

11. List all other federal agencies with whom you are presently employed.

PART III. All filers must certify by signature and date.

PART IV. All DD Forms 1555 must be submitted to supervisors or superiors for evaluation. All DD Forms 1555 must be reviewed by the Designated Agency Ethics Official or designee.

DD FORM 1555 (Draft)

BILLING CODE 3810-01-C

§ 40.10 Financial disclosure report (SF 278).

(a) DoD personnel required to file SF 278. DoD personnel required to file a Financial Disclosure Report (SF 278) are listed at subparagraph F.3.b.(1) of DoD Directive 5500.7. These personnel occupy "covered positions."

(1) A person who is nominated to or assumes a covered position is not required to file an SF 278 if the Secretary of Defense or DAEO of the Component concerned determines that the person is not reasonably expected to perform the duties of the position for more than 60 days in the calendar year. However, if the person performs the duties of the office or position for more than 60 days in the calendar year, as SF 278 shall be filed within 15 days after the 61st day of duty.

(2) A person otherwise required to file an SF 278, but who is expected to perform the duties of the position for less than 130 days in the calendar year, may request a waiver of any or all reporting requirements from the Director, Office of Government Ethics, if the person is not a full-time employee of the government, is able to provide specially needed services, and does not have outside employment of financial interests likely to create a conflict of interest.

(3) Personnel of the OSD and OJCS will submit their statements through their superiors or supervisors for review and forwarding to the DAEO, DoD.

(b) Time of filing. An SF 278 shall be submitted under the circumstances described below.

(1) *Nomination report.* Each civilian nominated to a position requiring senate confirmation shall submit an SF 278 according to the procedures established by the DoD Component concerned. The DoD Component shall ensure that a full and complete SF 278 is filed within 5 days of the transmittal of the nomination to the senate. General and flag officers and 0–7 designees are not required to file nomination reports with respect to their nomination for promotion to 0–7 and above.

(2) *Assumption report.* DoD personnel shall submit an SF 278 before assuming a covered position. This requirement does not apply if the individual has left another covered position within 30 days before assuming a new position, or already has filed with respect to nomination for the new position.

(3) *Annual report.* DoD personnel, including special government employees' occupying a covered position for more than 60 days during a calendar year shall submit an SF 278 annually according to the procedures established by the DoD Component concerned.

(4) *Termination report.* DoD personnel occupying a covered position shall submit an SF 278 no sooner than 15 days before and no later then 30 days after the date of departure from that position. The termination report will cover the portion of the present calendar year up to the date of termination and, if the annual report has not yet been filed, the preceding calendar year.

(c) Contents of reports. Instructions for completing SFs 278 are included a part of the report forms. Additional guidance for personnel in covered positions is available for ethics counselors or legal counsel.

(d) Submission and review of reports.

(1) Regulations of the individual Components will prescribe the offices to which SFs 278 will be submitted for preliminary and final review. Procedures may include supervisory and/or legal review before submission to DAEO.

(i) OSD civilian presidential appointees and DAEOs submit their SFs 278 directly to the General Counsel, OSD, for final review.

(ii) DoD personnel employed by or assigned to OSD and OJCS submit their SFs 278 to their immediate superior or supervisor for a preliminary review and then to the General Counsel or designee, for final review.

(iii) Personnel on detail to other Executive Branch Agencies follow the filing procedures of those agencies.

(2) Final review of an SF 278 is completed when the reviewing official has signed the SF 278, indicating that each item is completed and that the report discloses no unresolved conflict or appearance of a conflict of interest under applicable laws and regulations.

(i) If the reviewing official, after reviewing an SF 278, believes additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the requested information directly to the reviewing official.

(ii) If the reviewing official, after reviewing the SF 278, is of the opinion, on the basis of information submitted, that the reporting person is not in compliance with applicable laws and regulations, the following steps shall be taken.

(A) The person shall be notified in writing of the preliminary determination.

(B) If the person is determined to be not in compliance, he or she shall be notified in writing of that determination. After an opportunity for personal consultation, if practicable, the reviewing official shall notify the person in writing of the remedial measures outlined in paragraph F.2.c. of the DoD Directive 5500.7 that should be taken to bring the person into compliance. The notification shall specify a date by which such measures must be taken.

(1) When the reviewing official determines that a reporting person has fully complied with the remedial measures, a notation to that effect shall be made in the comment section of the SF 278. The reviewing official shall then sign and date the SF 278 and send written notice of that action to the person.

(2) If steps assuring compliance with applicable laws and regulations are not taken by the date established, the reviewing official shall report the matter to the head of the DoD Component for appropriate action, or, in the case of a civilian Presidential appointee, the matter shall be referred to the President. The Office of Government Ethics also shall be notified.

(e) Public availability of SFs 278. SFs 278 must be made available for public examination upon request 15 days after the report is filed unless otherwise exempted pursuant to law. Receipt of the report by a DoD Component for final review constitutes official filing and establishes the date from which the 15 days shall run.

In most cases, this means the reports are available to the public before final review is completed. Reporting persons are personally responsible for ensuring that their reports are accurate, complete, and timely.

(f) Retention SFS 278. SFs 278 shall be retained for 6 years from the date of filing.

(g) Penalties. Compliance with the financial disclosure provisions shall be enforced by administrative, civil, or criminal remedies, as appropriate.

(1) *Action within the DoD component.* The head Of tthe DoD Component may take appropriate action, including a change in assigned duties or adverse action, in accordance with applicable law or regulation, against any person who fails to file an SF 278, or who falsifies or fails to report required information.

(2) *Action by the attorney general.* The head of the Dod Component is required to refer the the Attorney General the name of any person whom he or she has reasonable cause to believe has willfully failed to file an SF 278 on time or has willingly falsified or failed to file information required to be reported. Such referral does not bar additional administrative or judicial enforcement. The Attorney General may

bring a civil action in the U.S. District Courts against any person who knowingly and willfully falsifies or fails to file or report any required information. The court may assess a civil penalty not to exceed $5,000. Knowing or willful falsification of information required to be filed may also result in criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.

(3) *Misuse of reports.*

(i) The Attorney General may bring a civil action against a person who abtains or uses an SF 278 filed pursuant to the Ethics in Government Act for the following reasons:

(A) Any unlawful purpose,

(B) Any commercial purpose, other than by news and communications media for dissemination to the general public,

(C) Determing or establishing the credit rating of any individual,

(D) Use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(ii) The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000. This is in addition to any other legal remedy available.

BILLING CODE 3810-01-M

§ 40.11 Statement of employment (DD Form 1357)

IF ADDITIONAL SPACE IS REQUIRED
USE BLANK SHEETS REFERENCING ITEM NUMBERS BELOW

STATEMENT OF EMPLOYMENT
Regular Retired Officers

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: 37 U.S.C. §801 (c) and 5 U.S.C. §5532

PRINCIPAL PURPOSE: Information is required from retired regular officers to enable DoD personnel to determine whether such officers are engaged in activities prohibited by law or regulation, including those that could result in the loss or reduction in retired pay due to other federal employment.

ROUTINE USE: This information shall be forwarded to the Military Department in which the individual holds a retired status and is appropriately reviewed to assure compliance with applicable statutes and regulations.

DISCLOSURE: Filing is voluntary in the sense that no criminal penalties will follow from refusal to file. However, the refusal to provide requested information may result in further investigation which may lead to the withholding of retired pay and the referral of the matter to the Comptroller General of the United States or other federal agencies.

1. I AM A REGULAR RETIRED OFFICER OF
- ☐ ARMY
- ☐ NAVY
- ☐ AIR FORCE
- ☐ MARINES
- ☐ OTHER

RETIREMENT DATE ☐☐ ☐☐☐ ☐☐
Day Month Year

2. I AM PRESENTLY EMPLOYED ☐ YES ☐ NO

IF YES, COMPLETE ALL ITEMS OF THIS FORM. IF NO, SKIP TO ITEM NUMBER 11.

3. NAME OF EMPLOYER

4. DATE OF EMPLOYMENT
☐☐ ☐☐☐ ☐☐
Day Month Year

5. EMPLOYER SELLS, OR OFFERS FOR SALE TO DoD COMPONENTS, THE COAST GUARD THE PUBLIC HEALTH SERVICE, OR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, GOODS OR SERVICES.

☐ YES ☐ NO

IF YES, COMPLETE ALL ITEMS BELOW. IF NO, SKIP TO ITEM NUMBER 11.

6. ADDRESS OF EMPLOYER
- a. Street
- b. City
- d. State
- e. Zip Code ☐☐☐☐☐-☐☐☐☐
- f. Telephone No. of Employer ☐☐☐-☐☐☐-☐☐☐☐

7. DESCRIPTION OF GOODS OR SERVICES

8. MY POSITION TITLE IS

9. DESCRIPTION OF DUTIES

DD FORM 1357 (Draft)

VOL 51 ISS 171 SEP 4 1986 UMI

10. MY DUTIES INCLUDE ONE OR MORE OF THE FOLLOWING ACTIVITIES IN REGARD TO AN ORGANIZATION SPECIFIED IN ITEM 5
(1) signing a bid, proposal, or contract, (2) negotiating a contract, (3) contacting an officer or employee of the agency for the purpose of (i) obtaining or negotiating contracts, (ii) negotiatins or discussing changes in specifications, price, cost allowances, or other contract terms, or (iii) settling disputes concerning performance of a contract, (4) any other liaison activity toward the ultimate consumation of a sale even though the actual contract is later negotiated by another.
☐ NO ☐ YES If YES attach explanatory details

11. I CERTIFY THE ABOVE INFORMATION IS TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE, AND I HAVE RECEIVED, READ AND UNDERSTOOD DoD DIRECTIVE 5500.7 OR THE IMPLEMENTING REGULATION ISSUED BY THE DoD COMPONENT FROM WHICH I HAVE RETIRED. I ALSO CERTIFY I WILL FILE A NEW STATEMENT OF EMPLOYMENT WITHIN 30 DAYS AFTER THE INFORMATION IN THIS STATEMENT CEASES TO BE ACCURATE. I UNDERSTAND THAT IF I HAVE BEEN RETIRED FOR LESS THAN THREE YEARS AND HAVE BEEN EMPLOYED BY A DEFENSE CONTRACTOR, I MIGHT ALSO BE SUBJECT TO THE REQUIREMENT TO FILE A REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT (DD FORM 1787) PURSUANT TO 50 U.S.C. $1436 AND DoD DIRECTIVE 7700.15.

SIGNATURE	DATE
NAME TYPED OR PRINTED	SOCIAL SECURITY NUMBER ☐☐☐-☐☐-☐☐☐☐

INSTRUCTIONS

1. Check the service from which you retired. If "other," write in the name of the service. Include date of retirement. YOU MUST FILE YOUR FIRST STATEMENT OF EMPLOYMENT (DD FORM 1357) WITHIN 30 DAYS OF YOUR RETIREMENT DATE.

2. If you are presently employed, complete all items of this form. If you are not presently employed, proceed to item 11. YOU MUST SUBMIT A NEW STATEMENT OF EMPLOYMENT (DD FORM 1357) WITHIN 30 DAYS AFTER THE INFORMATION IN THIS FORM HAS CEASED TO BE ACCURATE. THE REQUIREMENT TO FILE CONTINUES FOR THREE YEARS AFTER RETIREMENT. IF YOU BECOME EMPLOYED, CHANGE JOBS, OR TAKE ON NEW DUTIES, YOU MUST FILE A NEW DD FORM 1357 WITHIN 30 DAYS AFTER THE CHANGE UNLESS MORE THAN 3 YEARS HAVE PASSED SINCE YOUR RETIREMENT DATE.

3. through 5. Fill in the appropriate information.

6. If your present employer sells, or offers for sale, any goods of services to any of the named organizations, check "yes" and complete all following items. If not, proceed to item 11.

7. Describe the goods or services that your employer sells, or offers for sale, to any of the organizations named in item 6.

8. and 9. Fill in the appropriate information.

10. If your duties include any of the listed activities in regard to the organizations named in item 6, check "yes." IF YOU CHECK "YES," ATTACH A SHEET WITH EXPLANATORY DETAILS.

11. Be sure to include your social security number.

DD FORM 1357 (Draft)

BILLING CODE 3810-01-C

VOL 51 ISS 171 SE 4 1986 UMI

§ 40.12 Post-Government-Service employment of senior defense officials

(a) Two year post government service employment limitation on Presidential appointees.

(1) For the period defined below, a Presidential Appointee employed by or serving in any component of the Department of Defense shall not accept post-government employment:

(i) With any defense contractor he or she has dealt with,

(ii) As a primary government representative,

(iii) In the negotiation or settlement of a government contract.

(2) This bar on employment extends for two years from the date the Presidential Appointee last acted in such capacity with that contractor.

(3) Knowing violation of these provisions may result in the following penalties:

(i) Upon conviction, the appointee may be fined up to $5,000 or imprisoned for a period up to one year,

(ii) The employing contractor shall forfeit up to $50,000 in liquidated damages pursuant to contractual requirements.

(b) Definitions. For purposes of this post government limitation, terms used shall have the following meanings:

(1) *Defense contractor.* An individual or business entity that provides services, supplies, or both (including construction) to any component of the Department of Defense under a contract directly with the Department of Defense. Individuals and business entities holding contracts with a combined net cost of not more than $25,000 in any calendar year shall not be considered "contractors," for purposes of this regulation, during such year.

(2) *Presidential appointee.* Civilian officials appointed to their positions by the President of the United States with the advice and consent of the senate.

(3) *Primary government representative.* To act as a "respresentative" requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of the contractor. If more than one government representative is involved in any particular transaction, it is the officer supervising the government's effort in that matter.

(4) *Negotiation and settlement.* Exchange of views between representatives of the government and a contractor regarding respective liabilities and responsibilities of the parties on a particular contract. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

§ 40.13 Potential employment contacts.

(a) Report of potendial employment contracts—(1) *Reports required.* A covered defense official (as defined in paragraph (d)(1), who has participated in the performance of a procurement function in connection with a contract awarded by any component of the Department of Defense, who contact, or is contacted by, any representative of that contractor regarding his or her future employment with that defense contractor, shall:

(i) In writing, promptly report the contact to his supervisor and to his agency's designated agency ethics official (DAEO) (or designee), and

(ii) For any period for which future employment opportunities for the official have not been rejected by the official or the contractor, disqualify himself or herself from all participation in the performance of procurement functions relating to contracts of the defense contractor and such disqualification shall be in writing and shall be filed with the supervisor and the DAEO.

(2) *Limited exception.* A defense official is not required to report the first contact with a defense contractor or to disqualify him or herself if the official terminates the contact immediately. However, if an additional contact of the same or similar nature is made by or with the contractor; the official shall report the contact and all contacts of the safe of similar nature by or with the contractor during the 90-day period ending on the date the additional contact is made.

(3) *Contents of reports. (i) Reports of contacts shall include:*

(A) The name, title, agency address and telephone number of reporting official,

(B) The name of the defense contractor concerned,

(C) The date of such contact covered by the report,

(D) A brief description of the substance of each contact.

(ii) Reports of disqualification, where required, shall accompany reports of contacts and shall include:

(A) The name of contractor,

(B) Extent of disqualification (this may be a description of duties the official cannot perform as a result of the disqualification),

(C) Identification of the individual or office that will handle duties during disqualification period,

(D) An explanation of any other steps required to avoid potential conflict of interest.

(iii) A disqualification is considered to remain in effect until canceled in writing. Such cancellation shall include:

(A) A copy of the original disqualification,

(B) An explanation of the reason for the cancellation,

(C) Effective date of the cancellation.

(4) *Processing of reports.* (i) The original of each report of contact, disqualification and cancellation of disqualification shall be filed with the supervisor. The reporting individual shall simultaneously file a copy with the agency ethics official.

(ii) The date and time of receipt shall be noted on each report.

(iii) Supervisors and ethics officials taking remedial actions in connection with any report shall keep a brief record of such action with each report.

(b) *Enforcement and implementation.* (1) The Head of each Component shall establish procedures to identify persons who fail to file required reports or to take necessary disqualification action, shall establish procedures for agency hearings, and shall establish other implementing regulations as required by 10 U.S.C. 2397a.

(2) Penalties that may be imposed pursuant to component regulations shall include:

(i) Prohibition of employment with the defense contractor for up to 10 years from date of separation from employment or service with the Department of Defense,

(ii) Administrative penalty not to exceed $10,000.

(c) *Advisory opinions.* (1) Designated Agency Ethics Officials or designees shall counsel DoD officers and employees and guide in specific instances regarding the need for reports or disqualification action.

(2) If a written opinion of the DAEO or designee is desired, it shall be given in response to a written request from the officer or employee. Such request for an opinion shall contain a full account of the relevant facts.

(3) There shall be a rebuttable presumption in favor of a covered defense official that failure to report a contact with a defense contractor, or failure to disqualify himself from participation in the performance of certain procurement functions, is not a violation if the defense official has received an opinion in writing from the DAEO stating that a report or disqualification by the official was not necessary.

(d) *Definitions.* For purposes of this provision, terms used shall have the following meanings:

(1) *Covered defense official.* Any individual serving as a civilian officer or employee of the Department of Defense in a position for which the rate of pay is equal to or greater than the minimum rate of pay for GS–11 under the General Schedule or any officer on active duty in the Armed Forces in a pay grade of O–4 or higher.

(2) *Defense contractor.* An individual or business entity that provides services, supplies, or both (including construction) to any component of the Department of Defense under a contract directly with the Department of Defense. Individuals and business entities holding contracts with a combined net cost of not more than $25,000 in any calendar year shall not be considered "contractors," for purposes of this regulation, during such year.

(3) *Designated agency ethics official.* An officer or employee who has been appointed, pursuant to component procedures, to administer the provisions of the Ethics in Government Act.

(4) *Employment.* A relationship under which an individual receives compensation paid directly or indirectly to the individual for the services.

(5) *Procurement function.* Includes, with respect to a contract, any function relating to:

(i) The negotiation, award, administration, or approval of the contract,

(ii) The selection of a contractor,

(iii) The approval of changes in the contract,

(iv) Quality assurance, operation and developmental testing, the approval of payment, or auditing under the contract, or,

(v) The management of the procurement program.

(e) *Delegation of authority.* The Head of each DoD Component is hereby delegated the authority of the Secretary of Defense to make determinations and to impose sanctions.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–19746 Filed 9–3–86; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR PART 111

Supplements to Second-Class Publications

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposal is to clarify the existing postal regulations and procedures concerning the mailing of supplements to second-class publications. In addition, there are proposed substantive rules which would allow the mailing of supplements to bound second-class publications when they are sent together under the same cover, and prescribe the proper name of addressing copies of second-class publications which are enclosed in plastic wrappers with supplements.

DATE: Comments must be received on or before October 4, 1986.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young (202) 268–5321.

SUPPLEMENTARY INFORMATION: Supplements may be included in copies of newspapers and other periodical publications mailed at the second-class rates of postage under the requirements prescribed in section 425.4, Domestic Mail Manual, and the policies developed by the Postal Service in administering these provisions. This proposed rule would codify these policies into the Domestic Mail Manual, as well as certain new substantive provisions. A description of these proposed changes follows:

Section 425.4 provides no guidance concerning the content of a supplement. The Postal Service considers a supplement to consist of one or several printed sheets, containing advertising or nonadvertising matter, or a combination of both. It is proposed that this definition be added in section 425.41.

The postal regulations (sections 422.231 and 422.6b) impose limitations on the percentage of advertising that may be contained in issues of second-class publications. The advertising content of a supplement must be measured and taken into consideration when determinations are made concerning the total percentage of advertising matter in each issue. This requirement is not published in the regulations. Therefore, it is being proposed that that requirements be added as section 425.42b.

It is permissible to prepare a second-class newspaper or other periodical publication in two or more editions and prepare a supplement for inclusion in one or more of them. Thus, if copies of an issue are prepared in two editions, it is permissible to include supplements in copies of one of the editions which are addressed for delivery in particular areas such as, for example, within the county of publication of Zones 1 and 2. A statement on Form 3541, *Statement of Mailing—2nd Class Publications Except Requester Publications* or Form 3541–A, *Statement of Mailing-Second-Class/Requester Publications,* must be file with the copies of each edition presented for mailing. These requirements are not published in section 425.4. Therefore, it is proposed that the requirements concerning supplements in editions be published in section 425.43.

A supplement is not required to be bound in bound second-class publications because it is recognized that it is supplementing a publication. However, the mailing of a loose supplement with a bound publication creates processing problems for the Postal Service since they may become separated. Accordingly, we propose to add a new section which requires that when a loose supplement is mailed with a copy of a bound second-class publication, the two of them must be mailed together under cover (in an envelope, sleeve, or paper or plastic wrapper) to preclude the possibility of the supplement becoming separated from the main publication while they are being handled in the mails. Additionally, under current policy, if a supplement is mailed by itself, it is subject to the applicable third- or fourth-class rates of postage, according to weight. It is proposed that these requirements be published in sections 425.44 and 425.46b.

Pages prepared as supplements and printed materials subject to the third-class rates frequently have the same physical appearance which may lead to misunderstandings when the publication is presented for mailing. Thus, it is suggested that publishers identify printed materials prepared as supplements. Suggested methods of identifying supplements to a publication are listed in proposed section 425.45.

Second-class publications must be formed of printed sheets. Thus, for example, merchandise samples, swatches of material and envelopes containing coupons which could not form bona fide pages of a second-class publication may not be included within copies of a supplement to a second-class publication unless postage at the appropriate third-class rate is paid on

them. This limitation is set forth in proposed section 445.46.

Finally, proposed section 452.lg sets forth the proper manner of addressing second-class publications which are enclosed in plastic wrappers. This new requirement will facilitate the handling of these copies in the mails.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a): 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

2. Revise 425.4 to read as follows:

425.4 Supplements.

.41 Definition. A supplement consists of one or several printed sheets, containing advertising or nonadvertising matter, or a combination of both. It must be germane to the issue, having been omitted in the interest of space, time, or convenience.

.42 General Conditions. Publishers may include supplements in the regular issue of a newspaper or other periodical publication as second-class mail provided:

a. The supplements are folded and mailed with the regular issue.

b. The advertising content of the supplement is measured and taken into consideration when determining the total percentage of advertising matter in each issue.

.43 Editions. Supplements may be included in copies of editions. A separate mailing statement must be filed for each edition.

.44 Bound Publications. Loose supplements may be mailed together with bound publications when the combination is:

a. Totally enclosed in an envelope, plastic wrapper (polybag), or paper wraper; or

b. When the combination is contained in a sleeve and the supplements are inserted within the pages of the publications or secured in such a manner that they will not be separated from the publications while in the mails.

.45 Identification. Publishers are not required to identify supplements. However, to preclude misunderstandings, it is recommended that supplements be identified in one or more of the following ways:

a. Include the material in the pagination of the copies of the second-class publication.

b. List the materials in a table of contents, or elsewhere in the copies of the second-class publication.

c. Show the second-class title and date of issue in the foot- or date-lines of the material.

d. Show the second-class title preceded by the words "Supplement to" on the material.

.46 Limitations.

a. Third-class materials such as merchandise samples, swatches of materials and envelopes containing coupons are not includible as supplements or as parts of supplements to publications mailed at the second-class rates of postage. See section 136.31.

b. supplements may not be mailed by themselves at the second-class rates of postage, but are subject to the applicable third- or fourth-class rates of postage according to weight. See section 425.1.

3. In 452.1, add new subsection g as follows:

452.1 General Addressing.

* * * * *

g. Addresses, including address strips, may appear on a label carrier (card or paper stock) which must be placed on top of publications which are enclosed in a plastic wrapper (polybag). The label carrier should be positioned in the manner shown in Exchibit 452.6. To avoid problems in mail processing, label carriers which are not the same size as the publication must be prepared in one of the following ways:

(1) Attached to the publication or supplement placed inside the plastic wrapper; or

(2) Secured in such a manner so as to prevent the label carrier from shifting inside the plasctic wrapper.

An appropriate amendment to 39 CFR 111 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–19920 Filed 9–3–86; 8:45 am]

BILLING CODE 7710–12–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–33

Revision of Reuse of Automatic Data Processing Equipment Provisions in the Federal Information Resources Management Regulations

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed final regulation revises FIRMR Part 201–33 to separate policy and procedural provisions and makes a number of changes to update the provisions. Agencies have indicated a need for a review and update of the provisions so that other agency reuse assignments of excess ADPE can be accomplished expeditiously and the excess property removed from holding agency responsibility. The intended effect is to shorten the reuse transfer cycle and make the process more efficient and effective.

DATE: Comments are due November 3, 1986.

ADDRESS: Comments should be submitted to the General Services Administration (KMPR), Project 86.14A, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Roger W. Walker, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566–0194 or FTS, 566–0194. The full text of the proposed rule is available upon request.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management, acquisition and use regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Part 201–33

Computer technology, Government property mangement, Information resources activities.

Dated: June 27, 1986.

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Manogement.

[FR Doc. 86–19833 Filed 9–3–86; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6729]

Proposed Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevation listed below for selected locations in the nation. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed modified base (100-year) flood elevation determinations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)], 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which if adopted by a local community, will govern future construction within the flood plain area. The elevation determination, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevation prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alaba na	City of Montgomery, Montgomery, Elmore, Autauga, and Lowndes Counties.	Alabama River	Approximately 0.9 mile downstream of confluence of Catoma Creek.	*158	*158
			Just downstream of Interstate 65	*163	*164
			About 1,600 feet upstream of confluence of Galbraith Creek.	*168	*168
		West End Ditch	At confluence with the Alabama River	*160	*161
			About 200 feet downstream of U.S. Highways 31 and 82.	*162	*162
Maps available for inspection at the Engineering Department, City Hall, P.O. Box 1111, Montgomery, Alabama.					
Send comments to The Honorable Emory Folmar, Mayor, City of Montgomery, City Hall, P.O. Box 1111, Montgomery, Alabama 36192.					
Florida	City of Temple Terrace, Hillsborough County.	Hillsborough River	About 1,500 feet downstream of 56th Street	None	*22
			Just downstream of Fowler Avenue	None	*29
Maps available for inspection at the City Clerk's Office, P.O. Box 16960, Temple Terrace, Florida.					
Send comments to The Honorable Edward B. Simmon, Mayor, City of Temple Terrace, City Hall, P.O. Box 16950, Temple Terrace, Florida 33687.					
Indiana	City of Auburn, DeKalb County	Cedar Creek	About 600 feet downstream of the Chessie System	*852	*852
			About 1,250 feet downstream of 9th Street	*857	*857
			About 1,550 feet upstream of First Street	*861	861
Maps available for inspection at the City Hall, P.O. Box 506, Auburn, Indiana.					
Send comments to The Honorable Burt Dickman, Mayor, City of Auburn, City Hall, P.O. Box 506, Auburn, Indiana 46706.					
Missouri	City of Belton, Cass County	Oil Creek	Just upstream of 155th Street	*975	*977
			Just downstream of 162nd Street	*1,005	*1,003
			Just downstream of 163rd Street	*1,007	*1,007
Maps available for inspection at the City Hall, P.O. Box 230, Belton, Missouri.					
Send comments to The Honorable Gary L. Mallory, Mayor, City of Belton, P.O. Box 230, Belton, Missouri 64012.					
Missouri	City of Grandview, Jackson County.	Oil Creek	About 0.48 mile downstream of 155th Street	*969	*969

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just downstream of 155th Street	*975	*977
Maps available for inspection at the Engineering Department, Attn: Harry Finley, 1200 Main Street, Grandview, Missouri.					
Send comments to The Honorable Harry Wilson, Mayor, City of Grandview, 1200 Main Street, Grandview, Missouri 64030.					
Missouri	Unincorporated areas, Platte Creek.	Burlington Creek	About 2,200 feet downstream of 49th Street	*763	*764
			Just upstream of 49th Street	*772	*775
			About 900 feet upstream of Paradise Valley Road	*782	*797
Maps available for inspection at the City Hall, P.O. Box 406, Platte City, Missouri.					
Send comments to The Honorable Ralph Wittmeyer, Commissioner of Platte County, P.O. Box 406, Platte City, Missouri 64079.					
Missouri	City of Riverside, Platte County	Missouri River	About 0.86 mile downstream of the confluence of Line Creek.	*756	*757
			About 0.55 mile upstream of Fairfax Bridge	*759	*758
			About 0.31 mile upstream of the confluence of Burlington Creek.	*762	*762
		Burlington Creek	At confluence with the Missouri River	*762	*762
			Just downstream of State Highway 9	*762	*762
			Just upstream of State Highway 9	*763	*764
			About 400 feet upstream of Paradise Valley Road	*763	*764
		Line Creek	At confluence with the Missouri River	*756	*757
			Just downstream of Northwest Platte Road	*756	*757
Maps available for inspection at the City Hall, P.O. Box 9135, Riverside, Missouri.					
Send comments to The Honorable Michael Holmes, Mayor, City of Riverside, P.O. Box 9135, Riverside, Missouri 64168					
New Hampshire	Lebanon, City, Grafton County	Mascoma River	Approximately 580 feet downstream of the Mascoma Street bridge.	*508	*509
			Approximately 400 feet upstream of the Hanover Street bridge.	*576	*575
Maps available for inspection at the City Hall, 51 North Park Street, Lebanon, New Hampshire.					
Send comments to The Honorable James Hogan, Mayor of the City of Lebanon, Grafton County, 51 North Park Street, Lebanon, New Hampshire 03766.					
New Jersey	Nutley, township, Essex County	Third River	Downstream corporate limits	*45	*43
			Upstream side of Vreeland Avenue	*58	*57
			Approximately 570 feet downstream of Chestnut Street	*60	*61
			Downstream side of Chestnut Street	*62	*64
			Upstream side of Centre Street	*71	*70
		St. Pauls Branch	Downstream side of Elm Place	*59	*54
			Downstream side of dam	*81	*78
		Passaic River	Upstream corporate limits	*13	*14
Maps available for inspection at the Municipal Engineer's Office, 1 Kennedy Drive, Nutley, New Jersey.					
Send comments to Mr. Peter Scarpelli, Director, Department of Public Works, 1 Kennedy Drive, Nutley, New Jersey 07110.					
New York	Babylon, town, Suffolk County	Atlantic Ocean	Entire shoreline within community	*15	*15
		Fire Island Inlet	At confluence with Atlantic Ocean	*15	*15
			At Captree State Park	*12	*9
		Great South Bay	At Western Concourse, extended	*8	*10
			At western end of Harding Avenue	*6	*9
Maps available for inspection at the Engineering Division, Department of Planning and Development, Town Hall, 200 East Sunrise Highway, North Lindenhurst, New York.					
Send comments to The Honorable Anthony Noto, Supervisor of the Town of Babylon, Suffolk County, 200 East Sunrise Highway, North Lindenhurst, New York 11757-2598.					
New York	Bellport (village), Suffolk County	Great South Bay	Shoreline at Browns Lane (extended)	*6	*10
			Approximately 350 feet south of intersection of Point Road and Thorn Hedge Road.	*5	*7
			Approximately 650 feet southeast along Point Road from intersection of Point Road and Thorn Hedge Road.	*5	*6
Maps available for inspection at the Village Hall, 144 South Country Road, Bellport, New York.					
Send comments to The Honorable Frank C. Trotta, Mayor of the Village of Bellport, Suffolk County, P.O. Box 3, Bellport, New York 11713.					
New York	Greenburgh, town, Westchester County.	Sprian Brook	Downstream corporate limits	None	*180
			2nd upstream coprorate limits	None	*187
Maps available for inspection at 320 Knollwood Road, Greenburgh, New York.					
Send comments to the Honorable Susan Polchin, Town Clerk of the Town of Greenburgh, Westchester County, P.O. Box 205, Elmsford, New York 10523.					
New York	Islip, town, Suffolk County	Atlantic Ocean	Atlantic Ocean shoreline at Atlantic Avenue, extended	*14	*15
			Intersection of Beachwood Avenue and Neptune Walk	*9	*10
		Great South Bay	Shoreline at East Bay Street, extended	*7	*10
			Intersection of Tower Mews Avenue and Forest Drive	*5	*4
Maps available for inspection at the Planning Department, Town Hall, 655 Main Street, Islip, New York.					
Send comments to The Honorable William T. Tyler, Islip Town Clerk, Suffolk County, 655 Main Street, Islip, New York 11751.					
New York	Southampton, Town, Suffolk County	Atlantic Ocean	At Southampton/Easthampton corporate limits	*14	*13
			Shoreline of Fairfield Pond	*11	*9
			Shoreline west of Village of Westhampton and Southamtopn Beach corporate limits.	*14	*15
		Moriches Bay	At confluence with Clam Creek	*11	*10

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At Apacuck Point	*9	*11
			At intersection of South County Road and Baynor Drive.	*7	*9
			Shoreline at Rogers Lane Extended	*9	*12
		Quantuck Bay	Shoreline at Delarfield Street extended	*9	*11
			Shoreline at Quantuck Bay Road extended	*7	*9
		Shinnecock Bay	At Pine Neck Point	*9	*11
			Entire shoreline of Doves Creek	*7	*8
			At Ponquogue Point	*9	*10
			Shoreline at Sweet Briar Road extended	*9	*12
		Mecox Bay	Shoreline at Crescent Avenue extended	*8	*11
			Entire shoreline of Burnett Creek	*7	*9
			Wickapogue Road extended	*10	*8

Maps available for inspection at the Town Clerk's Office, Town Hall, 116 Hampton Road, Southampton, New York.

Send comments to The Honorable Martin Long, Supervisor of the Town of Southampton, Suffolk County, 116 Hampton Road, Southampton, New York 11968.

New York	Southampton, village, Suffolk County.	Atlantic Ocean	At western corporate limits	*14	*14
			At Halsey Neck Lane extended	*14	*13
			At Phillips Pond	*10	*8
		Shinnecock Bay	Shoreline of Heady Creek at Pennies Landing extended.	*7	*8
			At north end of Shinnecock Road extended	*8	*10

Maps available for inspection at the Village Hall, 23 Main Street, Southampton, New York.

Send comments to The Honorable Williams A. Hattrick, Mayor of the Village of Southampton, Suffolk County, 23 Main Street, Southampton, New York 11968.

New York	Westhampton Beach, village, Suffolk County.	Atlantic Ocean	Entire shoreline within community	*14	*15
		Moriches Bay	Shoreline at west end of Fisk Avenue	*9	*11
			At Pond Point	*8	*10
			At Pickett Point	*10	*12
			Shoreline at South Road extended	*7	*9
		Moneybogue Bay	At Cross Lane extended	*9	*11
			At intersection of Stevens Lane and Mitchell Road	*7	*9
		Quantuck Bay	Shoreline at Sunswyck Lane extended	*9	*11
			Shoreline of Aspatuck River at Mortimer Street extended.	*7	*9

Maps available for inspection at the Village Office, Sunset Avenue, P.O. Box 991, Westhampton Beach, New York.

Send comment to The Honorable Robert W. Morgan, Jr., Mayor of the Village of Westhampton Beach, Suffolk County, Sunset Avenue, P.O. Box 991, Westhampton Beach, New York 11979.

Ohio	City of Franklin, Warren County	Carlisle Drain	About 0.86 mile downstream of the divergence with Dry Run.	*674	*669
			Just downstream of the divergence with Dry Run	*675	*671
		Dry Run	At mouth	*673	*673
			Just downstream of Conrail	*674	*674
			Just upstream of Conrail	*674	*671
			About 0.67 mile upstream of Conrail	*676	*673
		Tommys Run	Just downstream of the confluence of Greens Run	*702	*702
			About 400 feet upstream of the confluence of Greens Run.	*702	*709

Maps available for inspection at the City Manger, 35 East Forth Street, Franklin, Ohio.

Send comment to the Honorable William Thomas, Mayor, City of Franklin, 35 East North Street, Franklin, Ohio 45005.

Ohio	Unincorporated areas of Montgomery County.	Holes Creek	Just upstream of Mad River Road	*800	*799
			About 400 feet upstream of Interstate 675	*894	*893
			About 2.0 miles upstream of State Highway 725	*910	*909

Maps available for inspection at the Recorders Office, 451 W. 3rd. Street, 5th Floor, Dayton, Ohio.

Send comments to The Honorable Claude Malone, County Administrator, Montgomery County, 451 West 3rd Street, Dayton, Ohio 45422.

Ohio	City of Newark, Licking County	South Fork Licking River	Just upstream of confluence with Licking River landward of levee.	None	*814
			Just downstream of South 2nd Street landward of levee.	None	*814
			About 600 feet upstream of National Drive landward of levees.	None	*816

Maps available for inspection at the City Hall, 40 W. Main Street, Newark, Ohio.

Send comments to The Honorable William S. Moore, Mayor, City of Newark, City Hall, 40 W. Main Street, Newark, Ohio 43055.

Pennsylvania	Berwick, township, Adams County.	Spring Run	Approximately 525 feet upstream of corporate limits	*518	*519
			Approximately 1,700 feet	*523	*522

Maps available for inspection at the Hanover Evening Sun, 135 Baltimore Road, Hanover, Pennsylvania.

Send comments to The Honorable Kenneth Wolfe, Chairman of the Board of Supervisors of the Township of Berwick, Adams County, 351 Green Springs Road, Hanover, Pennsylvania 17331.

Texas	Edinburg, city, Hidalgo County	Ponding Area	East of Jackson Road and north of Pin Oak Road	None	*98

Maps available for inspection at the City Hall, 117 North 10th Street, Edinburg, Texas.

Send comments to The Honorable Richard Alamia, Mayor of the City of Edinburg, Hidalgo County, P.O. Box 1079, Edinburg, Texas 78540.

Texas	Harris County	Cypress Creek, unincorporated areas.	Approximately 900 feet downstream of confluence of Dry Gully.	*115	*113

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			At confluence of Pillot Gully	*119	*118
			Approximately 1.3 miles downstream of confluence of Snake Creek and Mound Creek.	None	*180
			Approximately 0.6 mile downstream of confluence of Snake Creek and Mound Creek.	None	*182
			Approximately 1,800 feet downstream of confluence of Snake Creek and Mound Creek.	None	*184
		Horsepen Creek	Approximately 0.6 mile downstream of West Little York Road.	*109	*110
			Upstream side of FM 529	*116	*117
			Downstream side of State Route 6	*120	*121
		Tributary 32.23 to Greens Bayou	Upstream side of Spears Road	None	*104
			Approximately 0.8 mile upstream of T.C. Jester Boulevard.	None	*107
		Wilhams Gully	Approximately 1.2 miles downstream of confluence of Tributary 2.01 to Williams Gully.	*58	*57
			At confluence of Tributary 2.01 to Williams Gully	*63	*57
			Approximately 2.3 miles upstream of confluence of Tributary 2.01 to Williams Gully.	*68	*62

*Elevation in feet NGVD 1973 Releveling.

Maps available for inspection at the Harris County Engineering Department, Sweeny Building, 301 Main Street, Houston, Texas.

Send comments to The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002.

Texas	Nueces County	Oso Creek	Approximately 11,000 feet upstream of FM 2444	*16	*17
			Approximately 1,400 feet upstream of State Route 43	*17	*18
			Downstream side of State Route 286	*18	*19
		Oso Creek Tributary No. 8	At confluence with Oso Creek	*16	*17

Maps available for inspection at the County Courthouse, 901 Leopard, Room 103, Nueces, Texas.

Send comments to The Honorable Robert N. Barnes, Nueces County Judge, P.O. Box 2157, Corpus Christi, Texas 78401.

Texas	Pittsfield, city, Berkshire County	Southwest Branch	Upstream side of Conrail bridge	*984	*978
			Approximately 1,100 feet downstream of Cadwell Road.	*984	*978
			Approximately 80 feet upstream of Cadwell Road	*984	*982
			Approximately 800 feet upstream of Cadwell Road	*986	*985

Map available for inspection at the Pittsfield Planning Board, 70 Allen Street, Room 205, Pittsfield, Massachusetts.

Send comments to The Honorable Charles Smith, Mayor of the City of Pittsfield, Berkshire County, City Hall, 70 Allen Street, Pittsfield, Massachusetts 01201.

Virginia	Cedar Bluff, town, Tazewell County.	Clinch River	Upstream side of Mill Dam	*1,954	*1,955
			Approximately 2. mile upstream of Mill Dam	*1,956	*1,957

Maps available for inspection at the Town Hall, Valley Drive, Cedar Bluff, Virginia.

Send comments to The Honorable Richard H. Lee, Mayor of the Town of Cedar Bluff, Tazewell County, P.E., Box 182, Cedar Bluff, Virginia 24609.

Issued August 20, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-19899 Filed 9-3-86; 8:45 am]

BILLING CODE 6718-03-M

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-6730]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the

second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Ashville (Town), St. Clair County	
Big Canoe Creek:	
About 400 feet downstream of U.S. Highway 231	*549
About 2,700 feet upstream of Pinedale Road	*556
Maps available for inspection at the City Hall, P.O. Drawer 70, Ashville, Alabama 35953.	
Send comments to The Honorable William J. Murray, Mayor, Town of Ashville, City Hall, P.O. Drawer 70, Ashville, Alabama 35953.	
ARIZONA	
Cochise County, (Unincorporated Areas)	
Graveyard Gulch: At the downstream side of San Juan Capistrano Avenue	*4,450
Buena #3 North Extension: 1,700 Feet due north of intersection of Colombo Avenue and Charleston Highway	*4,420
Savanna Drive Drainage: Intersection of stream and center of Leonardo Da Vinci Drive	*4,398
Coyote Wash: At the downstream side of Fry Boulevard (State Highway 90)	*4,392
Coyote Wash: At the City of Sierra Vista corporate limits immediately east of the Fort Huachuca Military Reservation boundary	*4,874
Unnamed Wash: Intersection of State Highway 92 and the stream	*4,550
Unnamed Wash: 100 feet downstream from the center of Fry Boulevard (Highway 90) crossing	*4,339
Stream E Tributary: At the Fort Huachuca Military Reservation boundary	*4,656
Stream K: Downstream side of the Highway 92 crossing	*4,619
Stream E Tributary No. 2: Center of El Camino Real, 530 feet south of its intersection with Stream E Tributary	*4,552
Stream J: 50 feet downstream from the center of Highway 92 crossing	*4,597
Maps are available for review at the Department of Public Works, Cochise County Courthouse, Bisbee, Arizona.	
Send comments to The Honorable V.L. Thompson, Chairman, Cochise County Board of Supervisors, Cochise County Courthouse, Bisbee, Arizona 85603.	
Pinal County (Unincorporated Areas)	
Santa Rosa Wash: 200 feet upstream of the intersection of Parter Road and the Southern Pacific Railroad, along Parter Road	#1
Vekol Wash: 200 feet south of the Southern Pacific Railroad along the boundary between R2E and R3E	*1,152
Vekol Wash: 2,100 feet west of the intersection between Vekol Wash Tributary and McDavid Road, along McDavid Road extended	#1
Vekol Wash Tributary: Intersection of Hathaway Avenue and King Street, downstream of Southern Pacific Railroad	#2
Maps are available for review at the County Planning and Zoning Department, 1301 Pinal, Florence, Arizona.	
Send comments to the Honorable William Mathieson, Chairman, Pinal CountyBoard of Supervisors, P.O. Box 87, Florence, Arizona 85232.	
ARKANSAS	
Bald Knob (City), White County	
Gum Creek:	
Upstream of corporate limits	*213
Approximately 1,700 feet downstream of East 1st Street	*218
Downstream of corporate limits	*228
Overflow Creek Tributary:	
Downstream of Missouri Pacific Railroad	*212
Upstream of Union Street	*252
Approximately 1,400 feet upstream of Union Street	*267
Maps available for inspection at the City Hall, 305 Main Street, Bald Knob, Arkansas.	
Send comments to The Honorable Raymond Emde, Mayor of the City of Bald Knob, White County, City Hall, Bald Knob, Arkansas 72010.	
CALIFORNIA	
Fontana (City), San Bernardino County	
San Sevaine Channel: At the intersection of Southern Pacific Railroad and Base Line Avenue, upstream of the railroad bridge	*1,301
Maps are available for review at the Department of Public Works, 8353 Sierra Avenue, Fontana, California.	
Send comments to The Honorable Nathan Simon, Mayor, City of Fontana, 8353 Sierra Avenue, Fontana California 82335.	
Siskiyou County (Unincorporated Areas)	
Klamath River (Near Town of Klamath River): 200 feet upstream from center of Walker Road Bridge	*1,700
Scott River (Near Fort Jones): 100 feet upstream from center of State Highway 3	*2,723
Moffett Creek (Near Fort Jones): 100 feet upstream from center of Scott River Road	*2,725
Whitney Creek Alluvial Fan (Near Weed): Approximately 2,000 feet downstream from center of U.S. Highway 97	#1
Maps available for inspection at the Siskiyou County Public Works Department, 305 Butte Street, Yreka, California.	
Send comments to The Honorable Norma Frey, Chairman, Siskiyou County Board of Supervisors, Route 1, Box 63 E, Tulelake, California 96134.	
COLORADO	
Aspen (City), Pitkin County	
Castle Creek: 70 feet downstream of West Hallam Street	7,833
Maroon Creek: 240 feet downstream of State Highway 82	7,772
Roaring Fork River: 240 feet downstream of N. Mill Street	7,843
Maps are available for review at the Engineer's Office, 130 South Galena, 3rd Floor, Aspen, Colorado.	
Send comments to The Honorable William Sterling, Mayor, City of Aspen, 130 South Galena, Aspen, Colorado 81611.	
Basalt (Town), Pitkin County	
Roaring Fork River: 30 feet upstream of East Cottonwood Drive	6,584
Fryingpan River: 20 feet upstream of South Cottonwood Drive	6,607
Maps are available for review at the Town Hall, Basalt, Colorado.	
Send comments to The Honorable Bob Murray, Mayor, Town of Basalt, P.O. Box Q, Basalt, Colorado 81621.	
Pitkin County (Unincorporated Areas)	
Brush Creek: 30 feet upstream of State Highway 82 Bridge	*7,471
Castle Creek: 80 feet upstream of West Hallum Street Bridge	*7,837
Coal Creek: 20 feet upstream of State Highway 133 Bridge	7,169
Crystal River: 60 feet upstream of North Redstone Bridge	7,119
Crystal River: 60 feet upstream of Janeway Campground Bridge	6,734
Hunter Creek: 55 feet upstream of Red Mountain Road Bridge	7,837
Mareen Creek: 60 feet upstream of State Highway 82 Bridge	*7,778
Roaring Fork River: 80 feet upstream of Snowmass Creek Road Bridge	*6,851
Roaring Fork River: 75 feet upstream of Cemetery Lane Bridge	*7,709
Roaring Fork River: 25 feet upstream of Hemann Road Bridge	*8,021
Snowmass Creek: 50 feet upstream of Snowmass Creek Road at Snowmass Village	*8,279
Snowmass Creek: 80 feet upstream of State Highway 82 Bridge	*6,853
Maps are available for review at the Pitkin County Asset Management Office, 0100 Lone Pine Road, Aspen Colorado.	

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
Send comments to The Honorable Helen Klanderud, Chairperson, Pitkin County Board of Commissioners, Pitkin County Courthouse, 506 East Main, Aspen, Colorado 81611.	
Rio Grande County (Unincorporated Areas)	
Rio Grande—vicinity of Monte Vista: At Gunbarrel Road (U.S. Highway 285)	*7,659
Rio Grande—vicinity of Del Norte: Approximately 260 feet east of the center of the intersection of First and Spruce Streets	*7,874
Rio Grande—vicinity of South Fork: At Gerrard Road (County Road 19)	*8,137
South Fork Rio Grande: At U.S. Highway 160	*8,187
Maps are available for inspection at the County Commissioners Office, Rio Grande County Courthouse, 6th and Cherry Streets, Del Norte, Colorado.	
Send comments to The Honorable Vern Rominger, Chairman, Rio Grande County Board of Commissioners, P.O. Box 396, 6th and Cherry Streets, Del Norte, Colorado 81132.	
Snowmass Village (Town), Pitkin County	
Snowmass Creek: 0.23 miles downstream from Snowmass Creek Road	8,246
Brush Creek: 180 feet upstream from eastern corporate limit of Snowmass Village	7,859
Maps are available for review at the Town Hall, Snowmass Village, Colorado.	
Send comments to The Honorable Jeff Tippett, Mayor, Town of Snowmass Village, P.O. Box 5010, Snowmass Village, Colorado 81615.	
DELAWARE	
New Castle (City), New Castle County	
Delaware River: Entire shoreline within community	*10
Maps available for inspection at the City Administration Building, 220 Delaware, New Castle, Delawara.	
Send comments to The Honorable John F. Klingmeyer, Mayor of the City of New Castle, New Castle County, 220 Delaware, New Castle, Delaware 19720.	
Newport (Town), New Castle County	
Christina River:	
Approximately 375 feet downstream of corporate limits	*10
At upstream corporate limits	*12
Maps available for inspection at the Town Hall, 15 North Augustine Street, Newport, Delaware.	
Send comments to The Honorable Deborah Barney, Mayor of the Town of Newport, New Castle County, 15 North Augustine Street, P.O. Box 3053, Newport, Delaware 19804.	
GEORGIA	
Alma (City), Bacon County	
Hurricane Creek:	
About 1500 feet downstream of State Route 32	*142
About 600 feet upstream of U.S. Route 1	*150
Maps available for inspection at the City Manager's Office, City Hall, P.O. Box 429, Alma, Georgia.	
Send comments to the Honorable James E. Dean, Mayor, City of Alma, City Hall, P.O. Box 429, Alma, Georgia 31510.	
Bainbridge (City), Decatur County	
Flint River:	
About 2.4 miles downstream of U.S. Route 27	*91
About 2.85 miles upstream of U.S. Route 27 (Business)	*96
Maps available for inspection at the Building Inspection Department, City Hall, P.O. Box 158, Bainbridge, Georgia.	
Send comments to The Honorable B. K. Reynolds, Mayor, City of Bainbridge, City Hall, P.O. Box 158, Bainbridge, Georgia 31717.	
Cordele (City), Crisp County	
Gum Creek:	
About 1,700 feet downstream of Seaboard Coast Line Railroad	*277
Just upstream of U.S. Route 41	*287
Cordele Creek:	
About 1,700 feet downstream of Sixth Avenue	*283
Just upstream of Norfolk Southern Railway	*292
Malcolm Branch:	
Just upstream of Sixth Street	*288
Just downstream of Eighth Avenue	*303
Maps available for inspection at the City Hall, Community Development Department, Rm 240, P.O. Box 569, Cordele, Georgia.	
Send comments to The Honorable Perry M. Culpepper, Sr., Chairman, City Commission, City of Cordele, P.O. Box 569, Cordele, Georgia 31015.	
Floyd County (Unincorporated Areas)	
Coosa River:	
Just upstream of State Route 100	*585
About 2,000 feet upstream of confluence of Horseleg Creek	*596
Etowah River:	
About 3,500 feet upstream of Norfolk Southern Railway	*599
At county boundary	*618
Oostanaula River:	
About 2,500 feet downstream of Norfolk Southern Railway	*596
About 2.2 miles upstream of confluence of Armuchee Creek	*604
Armuchee Creek:	
At mouth	*602
At county boundary	*636
Booze Creek:	
At mouth	*637
Just downstream of Booze Mountain Road	*673
Dykes Creek:	
At mouth	*605
Just downstream of Halls Lake Dam	*644
Just upstream of Halls Lake Dam	*652
Just downstream of Gentry Road	*735
Little Armuchee Creek:	
At mouth	*622
At county boundary	*636
Little Cedar Creek:	
At mouth	*604
About 0.9 mile upstream of Norfolk Southern Railway	*628
Little Dry Creek:	
At mouth	*596
Just downstream of Possum Trot Road	*653
Silver Creek:	
About 0.4 mile downstream of Darlington Drive	*602
About 1.7 miles upstream of Lindale Road	*672
Prentis Branch:	
At mouth	*609
Just downstream of Eden Valley Road	*639
Tributary A:	
At mouth	*599
About 1,200 feet upstream of Turner Chapel Road	*600
Horseleg Creek:	
At confluence of South Fork Horseleg Creek	*607
About 500 feet upstream of Burnett Ferry Road	*814
South Fork Horseleg Creek:	
At mouth	*607
About 2,000 feet upstream of mouth	*817
Burwell Creek: Within community	*596
Maps available for inspection at the Code Enforcement Department, City of Rome, P.O. Box 1433, Rome, Georgia.	
Send comments to The Honorable C.T. Blankenship, Chairman, Floyd County Board of Commissions, P.O. Box 946, Rome, Georgia 30161.	
Hogansville (City), Troup County	
Yellowjacket Creek:	
About 1,150 feet downstream of State Route 54	*676
About 0.9 mile upstream of State Route 54	*682
Hogansville Branch:	
At mouth	*682
About 2,750 feet upstream of mouth	*696
Maps available for inspection at the Building Inspection Department, City Hall, Hogansville, Georgia.	
Send comments to The Honorable Susan Cook, Mayor, City of Hogansville, City Hall, 400 East Main Street, Hogansville, Georgia 30230.	
INDIANA	
La Fontaine (Town), Wabash County	
Grant Creek:	
About 1,750 feet downstream of State Route 15	*786
About 2,100 feet upstream of Main Street	*805
Maps available for inspection at the Town Hall, P.O. Box 207, 23 West Branson, Lafontaine, Indiana.	
Send comments to The Honorable Phillip Steicher, Town Board President, Town of La Fontaine, Town Hall, P.O. Box 207, 22 West Branson, Lafontaine, Indiana 46940.	
Lagro (Town), Wabash County	
Wabash River:	
About 3,000 feet downstream of America Road	*674
About 2,300 feet upstream of America Road	*679
Maps available for inspection at the Town Hall, P.O. Box 305, Lagro, Indiana.	
Send comments to The Honorable Anna M. Harvey, Town Board President, Town of Lagro, Town Hall, P.O. Box 305, 230 Buchanan, Lagro, Indiana 46941.	
KANSAS	
Bel Aire (City), Sedgewick County	
East Fork Chisholm Creek:	
Just upstream of Missouri Pacific Railroad	*1,376
Just downstream of 45th Street	*1,377
East Fork Chisholm Creek Tributary No. 3:	
Just upstream of 37th Street	*1,372
Just downstream of East Fork Chisholm Creek Tributary No. 3 Dam	*1,377
Just upstream of East Fork Chisholm Creek Tributary No. 3 Dam	*1,383
About 0.46 mile upstream of Harding Avenue	*1,387
East Fork Chisholm Creek Tributary No. 7:	
Just upstream of Missouri Pacific Railroad	*1,374
About 0.25 mile upstream of Forty Fifth Street	*1,405
Maps available for inspection at the City of Bel Aire, 4343 North Woodlawn,Wichita, Kansas.	
Send comments to The Honorable Dale Walter, Mayor, City of Bel Aire, 4343 North Woodlawn, Wichita, Kansas 67220.	
Junction City, (City), Geary County	
Smoky Hill River:	
At confluence of Republican River	*1,070
About 0.55 mile upstream of U.S. Highway 77	*1,089
Smoky Hill River Overflow:	
Just upstream of 6th Street	*1,074
About 1.9 miles upstream of 6th Street	*1,083
Republican River:	
At confluence with Smoky Hill River	*1,070
About 0.8 mile upstream of Washington Street	*1,074
Maps available for inspection at the City Engineer's Office, Municipal Building, P.O. Box 287, Junction City, Kansas.	
Send comments to The Honorable Alex Scott M.D., Mayor, City of Junction City, Municipal Building, P.O. Box 287, Junction City, Kansas 66441.	

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MAINE	
Bowdoinham (Town), Sagadahoc County	
Kennebec River:	
At downstream corporate limits	*9
At the Obald Point	*13
At upstream corporate limits	*16
Merrymeeting Bay: Entire shoreline within community	*9
Abagadasset River: From confluence with Merrymeeting Bay to approximately .44 mile downstream confluence of Baker Brook	*9
Maps available for inspection at the Planning Board, **Bowdoinham, Maine.**	
Send comments to The Honorable Kathryn Ruth, Town Manager of the Town of Bowdoinham, Sagadahoc County, Town Offices, P.O. Box 85, Bowdoinham, Maine 04008.	
Dresden (Town), Lincoln County	
Kennebec River:	
At downstream corporate limits	*12
Upstream side of State Route 197	*17
At upstream corporate limits	*24
Maps available for inspection at the Town Hall, Dresden, Maine.	
Send comments to The Honorable Richard G. Main, First Selectman of the Town of Dresden, Lincoln County, P.O. Box 210, Dresden, Maine 04342.	
Hudson (Town), Penobscot County	
Pushaw Stream:	
Approximately 800 feet upstream of State Route 221	*138
At Jeep Trail Crossing	*143
At confluence with Little Pushaw Pond	*147
Maps available for inspection at the Selectman's Office, Hudson, Maine.	
Send comments to The Honorable Wayne Collins, First Selectman of the Town of Hudson, Penobscot County, Box 3, Hudson, Maine 04449.	
MASSACHUSETTS	
Malden (City), Middlesex County	
Town Line Brook:	
At downstream corporate limits	*6
Upstream side of first upstream bridge	*7
Upstream side of Lynn Street	*8
Lower Spot Pond Brook: Upstream side of Malden River Tunnel	*37
Malden River:	
At downstream corporate limits	*4
Upstream side of Medford Street	*5
Maps available for inspection at the City Engineer's Office, Malden Governor Center, 200 Pleasant Street, Malden, Massachusetts.	
Send comments to The Honorable James Conway, Mayor of the City of Malden, Middlesex County, Malden Governor Center, 200 Pleasant Street, Malden, Massachusetts 02148.	
MICHIGAN	
Chocolay (Township), Marquette County	
Chocolay River:	
At mouth	*604
About 3.4 miles upstream of State Highway 28	*617
Silver Creek:	
At mouth	*612
Just downstream of U.S. Highway 41	*633
Just upstream of U.S. Highway 41	*639
About 600 feet upstream of Willow Road	*653
Maps available for inspection at the Township Hall, Marquette, Michigan.	
Send comments to The Honorable Ivin Fenden, Supervisor, Township of Chocolay, 5010 U.S. 41, South, Marquette, Michigan 49685.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MISSISSIPPI	
Warren County (Unincorporated Areas)	
Bliss Creek:	
Just downstream Illinois Central Gulf Railroad	*105
Just upstream Illinois Central Gulf Railroad	*111
About 1.2 miles upstream of Bypass 61	*129
Maps available for inspection at the County Courthouse, P.O. Box 351, Vicksburg, Mississippi.	
Send comments to The Honorable Thomas Ackers, President, Board of Supervisors, Warren County, County Courthouse, P.O. Box 351, Vicksburg, Mississippi 39180.	
MISSOURI	
Kirkwood (City), St. Louis County	
Kirkwood Creek:	
Just upstream of Big Bend Road	*568
About 800 feet upstream of Burlington Northern Railroad	*583
Sugar Creek:	
Just upstream of I-270 at corporate limits	*463
About 1,100 feet upstream of Second Private Road Crossing	*500
Meramec River:	
Downstream corporate limits	*425
Upstream corporate limits	*428
Maps available for inspection at the City Hall, 139 South Kirkwood, Kirkwood, Missouri.	
Send comments to The Honorable Michael G. Brown, Chief Administrative Officer, City of Kirkwood, City Hall, 139 South Kirkwood, Kirkwood, Missouri 63122.	
Miner (City), Scott County	
Shallow Flooding (St. John's Bayou Main Ditch):	
Just north of Ables Street	*309
Just north of County Highway HH	*312
Shallow Flooding (North Cut Ditch):	
About 0.5 mile south of Woods Lane	*309
About 0.3 mile east of intersection of County Highway HH and Main Street	*314
Maps available for inspection at the Miner City Hall, 103 H Road, Sikeston, Missouri.	
Send comments to The Honorable Bill James, Mayor, City of Miner, Miner City Hall, 103 H Road, Sikeston, Missouri 63801.	
Scott County (Unincorporated Areas)	
Mississippi River:	
At downstream County Boundary	*338
About 0.15 mile upstream of confluence of Headwater Diversion Channel	*353
Shallow Flooding (Ditch No. 1):	
Just downstream of State Highway 114	*300
About 0.5 mile upstream of County Highway ZZ	*306
Shallow Flooding (Ditch No. 2):	
At downstream County Boundary	*301
About 0.5 mile upstream of County Highway ZZ	*306
Shallow Flooding (Ditch No. 4):	
Just upstream of City of Sikeston corporate limits	*304
About 0.5 mile upstream of County Highway ZZ	*306
Shallow Flooding (St. Johns Bayou Main Ditch):	
At downstream County Boundary	*309
About 2.9 miles upstream of County Highway HH	*316
Shallow Flooding (North Cut Ditch):	
At downstream County Boundary	*308
Just downstream County Highway D	*323
Ramsey Creek Diversion Channel: Within Community	*353
Ramsey Creek:	
Just upstream of Burlington Northern railroad	*353
Just downstream of confluence of Ilmo Branch	*354
Ilmo Branch:	
Just upstream of confluence with Ramsey Creek	*354
Just downstream of Interstate 55	*355
Maps available for inspection at the County Courthouse, Box 188, Benton, Missouri.	
Send comments to The Honorable Louie Hirchowitz, Presiding Commissioner, Scott County, County Courthouse, Box 188, Benton, Missouri 63736.	
Ste. Genevieve County (Unincorporated Areas)	
Mississippi River:	
About 5.1 miles downstream of state boundary	*393
At upstream county boundary	*406
North Gabouri Creek:	
About 1.3 miles upstream of Burlington Northern Railroad	*403
About 3.2 miles upstream of Burlington Northern Railroad	*463
South Gabouri:	
Just upstream of U.S. Highway 61	*413
Just downstream of Missouri Pacific Railroad	*470
Maps available for inspection at the County Courthouse, Ste. Genevieve, Missouri.	
Send comments to The Honorable Adrian J. Eheler, Presiding Commissioner, Ste. Genevieve County, County Courthouse, Ste. Genevieve, Missouri 63670.	
MONTANA	
Blaine County (Unincorporated Areas)	
Lodge Creek: 150 feet downstream of U.S. Highway 2, along Lodge Creek	*2,404
Lodge Creek (Overbank 1): Approximately 420 feet east of North Chinook Road, along north edge of Burlington Northern Railroad	*2,403
Lodge Creek (Overbank 2): 0.7 mile due east of Fort Belknap Canal crossing on Lodge Creek	*2,412
Milk River (near Chinook): 750 feet downstream from County Highway 529, along centerline of drainage	*2,410
Milk River (near Zurich): Intersection of Zurich Road and Paradise Valley Road	*2,377
Redrock Coulee: Intersection of Redrock Coulee and U.S. Highway 2	*2,411
Thirtymile Creek: 760 feet downstream from County Road 241, along centerline of drainage	*2,367
Maps are available for review at the Flood Plain Administrator's Office, Blaine County Courthouse, Chinook, Montana.	
Send comments to The Honorable Ordell Clindworth, Chairman, Blaine County Board of Commissioners, Blaine County Courthouse, Chinook, Montana 59523.	
Chinook (City), Blaine County	
Lodge Creek: Intersection of 13th Street and Missouri Street	*2,409
Milk River: 100 feet southwest of the center of the intersection of County Roads 240 and 529	*2,408
Maps are available for review at the Town Hall, Chinook, Montana.	
Send comments to The Honorable George Vandeven, Mayor, City of Chinook, P.O. Box 1177, Chinook, Montana 59523.	
Harlem (City), Blaine County	
Thirtymile Creek: At intersection of Water Street and Buckeye Avenue	*2,366
Maps are available for review at the City Engineer's Office, City Hall, Harlem, Montana.	
Send comments to The Honorable William Dave Boisvert, Mayor, City of Harlem, P.O. Box 485, Harlem, Montana 59526.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
Livingston (City), Park County	
Yellowstone River: Intersection of I Street and Clark Street	*4,475
Maps are available for review at the City Superintendent's Office, 414 East Callender, Livingston, Montana.	
Send comments to The Honorable Bill R. Dennis, Mayor, City of Livingston, 414 East Callender, Livingston, Montana 59047.	
Malta (City), Phillips County	
Milk River: The intersection of South 2nd Avenue West and South 1st Street West	*2,249
Maps are available for review at the City Hall, Malta, Montana.	
Send comments to The Honorable Garry Adams, Mayor, City of Malta, Drawer L, Malta, Montana 59538.	
Phillips County (Unincorporated Areas)	
Milk River: 100 feet upstream from the center of US Highway 2	*2,248
Shallow Flooding: 500 feet south from the confluence of Alkali Creek and Milk River	*2,256
Maps are available for review at the County Clerk and Recorder's Office, Phillips County Courthouse, Malta, Montana.	
Send comments to The Honorable Sherman Doucette, Chairman, Phillips County Board of Commissioners, Box 7, Malta, Montana 59538.	
NEW YORK	
Alexander (Town), Genesee County	
Tonawanda Creek:	
Upstream side of U.S. Route 20	*930
Upstream side of Stroth Road	*945
Upstream corporate limits	*955
Approximately 3,700 feet upstream of upstream corporate limits	*962
Maps available for inspection at the Town Clerk's Home, 3361 Buffalo Street, Alexander, New York.	
Send comments to The Honorable Roy Worthington, Supervisor of the Town of Alexander, Genesee County, Gillette Road, Alexander, New York 14005.	
Alexander (Village), Genesee County	
Tonawanda Creek:	
Upstream corporate limits	*932
Downstream corporate limits	*930
Maps available for inspection at the Village Clerk's Home, Alexander, New York.	
Send comments to The Honorable Richard Charlau, Mayor of the Village of Alexander, Genesee County, 4 Bartz Drive, Alexander, New York 14005.	
Beekmantown (Town), Clinton County	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Spellman Road, Beekmantown, New York.	
Send comments to The Honorable James Sears, Supervisor of the Town of Beekmantown, Clinton County, 9 A Brookbend Road, R.F.D. 1, Plattsburgh, New York 12901.	
Carmel (Town), Putnam County	
Muscoot River:	
Downstream corporate limits	*513
At confluence with Secor Brook	*513
Secor Brook:	
At confluence with Muscoot River	*513
Approximately 1,500 feet upstream of Secor Lake Road	*569
Plum Brook:	
Downstream corporate limits	*499
At Teakettle Spout Road	*606
Approximately 480 feet upstream of most upstream dam	*653
Michael Brook:	
At confluence with Croton Falls Reservoir	*306
At Kelly Road	*353
Approximately 1,165 feet upstream of Old New York Route 6	*418
Approximately .4 mile upstream of Fair Street	*508
At upstream corporate limits	*590
Middle Branch Croton River:	
At downstream corporate limits	*495
At upstream corporate limits	*510
Maps available for inspection at the Town Clerk's Office, Town Hall, Mahopac, New York.	
Send comments to The Honorable Richard Othmer, Supervisor of the Town of Carmel, Putnam County, McAlpin Avenue, Mahopac, New York 10541.	
Chazy (Town), Clinton County	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Main Street, Route 9, Chazy, New York.	
Send comments to The Honorable Harold Jubert, Supervisor of the Town of Chazy, Clinton County, Main Street, Route 9, Chazy, New York 12921.	
Chesterfield (Town), Essex County	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Office, Clinton Street, Keeseville, New York.	
Send comments to The Honorable Roger Poland, Supervisor of the Town of Chesterfield, Essex County, Town Office, Clinton Street, Keeseville, New York 12944.	
Cochecton (Town), Sullivan County	
Delaware River:	
At downstream corporate limit	*715
At Skinners Falls Bridge	*723
At Newman Road/State Route 371	*734
Upstream corporate limit	*748
Maps available for inspection at the Town Clerk's Office, Lake Huntington, New York.	
Send comments to The Honorable Jean McCoach, Supervisor of the Town of Cochecton, Sullivan County, P.O. Box 184, Cochecton, New York 12726.	
Essex (Town), Essex County	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Essex, New York.	
Send comments to The Honorable Wallace Hill, Supervisor of the Town of Essex, Essex County, New York 12936.	
Fremont (Town), Sullivan County	
Delaware River:	
At downstream corporate limits	*790
At confluence of Hankins Creek	*806
Upstream side of Kellams Bridge	*816
At upstream corporate limits	*841
Hankins Creek:	
Upstream side of State Route 97 Bridge	*806
Upstream side of County Route 94 Bridge	*946
Approximately 345 feet upstream of Private Bridge	*1,074
Maps available for inspection at the Fremont Town Hall, Fremont Center, New York.	
Send comments to The Honorable Walter Sipple, Supervisor of the Town of Fremont, Sullivan County, Box 190, Hankins, New York 12741.	
Groton (Village), Tompkins County	
Owasco Inlet:	
At downstream corporate limits	*964
Upstream side of Spring Street	*997
Approximately 30 feet downstream of upstream corporate limits	*1,005
Maps available for inspection at the Village Hall, 108 Courtland Street, Groton, New York.	
Send comments to The Honorable Edward Westlake, Mayor of the Village of Groton, Tompkins County, 108 Courtland Street, Village Hall, Groton, New York 13073.	
Lenox (Town), Madison County	
Cowaselon Creek:	
At most downstream corporate limits	*386
Approximately 1,240' upstream of downstream corporate limits with the Village of Canastota	*392
At upstream corporate limits with the Village of Canastota	*403
Approximately 220' upstream of most upstream corporate limits	*419
Owlville Creek:	
At downstream corporate limits	*402
Upstream side of Beebe Bridge Road	*412
Upstream side of CONRAIL	438
Approximately 300' upstream of U.S. Route 5	*466
Approximately 930' upstream of Bruce Road	*496
Canastota Creek:	
At downstream corporate limits at U.S. Route 5	*464
Approximately .38 mile upstream of U.S. Route 5	*480
At upstream corporate limits	*497
Oneida Creek:	
At confluence with Oneida Lake	*373
Approximately 300' upstream of State Route 31	*382
At first upstream corporate limits	*386
Approximately 175' upstream of Swallow Road	*397
Oneida Lake: Entire shoreline within community	*373
Maps available for inspection at the Town Hall, 205 South Peterboro, Canastota, New York.	
Send comments to The Honorable John S. Patane, Supervisor of the Town of Lenox, Madison County, 205 South Peterboro Street, Canastota, New York 13032.	
Palatine (Town), Montgomery County	
Mohawk River:	
Approximately 2.4 miles upstream of corporate limits	*298
At Falling Hill Road (extended)	*300
Most upstream corporate limits	*310
Maps available for inspection at the Town Clerk's Office, Box 254 Arnold Lane, Nelliston, New York.	
Send comments to The Honorable Miles Frasier, Supervisor of the Town of Palatine, Montgomery County, R.D. 1, Box 167, Palatine Bridge, New York 13428.	
Peru (Town), Clinton County	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, North Main Street, Peru, New York.	
Send comments to The Honorable Michael J. Borden, Supervisor of the Town of Peru, Clinton County, P.O. Box 596, Peru, New York 12972.	
Philipstown (Town), Putnam County	
Clove Creek:	
At downstream corporate limits	*251
Upstream side of Horton Road	*327
Upstream side of East Mountain Road	*365
Upstream side of Campbell Road	*414

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1.1 miles upstream of Campbell Road	*495
Canopus Creek:	
At downstream corporate limits	*97
Upstream side of County Route 13	*155
At upstream corporate limits	*165
Hudson River: Entire shoreline within community	*8
Maps available for inspection at the Town Clerk's Office, Town Hall, 238 Main Street, Cold Springs, New York 10516.	
Send comments to The Honorable Anthony Mazzuca, Supervisor of the Town of Philipstown, Putnam County, Town Hall, 238 Main Street, P.O. Box 155, Cold Springs, New York 10516.	
Rockland (Town), Sullivan County	
Willowemoc Creek:	
Confluence with Beaver Kill	*1277
Upstream of State Route 17 westbound bridge (second upstream crossing)	*1316
Upstream side of Hazel Road	*1341
Upstream side of State Route 17 westbound bridge (fourth upstream crossing)	*1367
Downside side of covered bridge	*1400
Upstream side of County Route 178	*1431
Approximately 0.93 mile downstream of confluence of Sprague Brook	*1480
Confluence of Sprague Brook	*1510
Approximately 1000' upstream of Parkston Road	*1547
Beaver Kill:	
Confluence of Willowemoc Creek	*1277
Approximately 110' upstream of corporate limits	*1306
Stewart Brook:	
Confluence with Willowemoc Creek	*1293
Approximately 0.5 mile downstream of Huber Road (extended)	*1340
Approximately 1450' upstream of Huber Road (extended)	*1394
Cattail Brook:	
Confluence with Willowemoc Creek	*1422
Upstream of Hoos Road	*1469
Approximately 1170' upstream of Shandelee Road	*1524
Little Beaver Kill:	
Confluence with Willowemoc Creek	*1422
Approximately 1.0 mile upstream of confluence with Willowemoc Creek	*1428
Upstream of County Route 146	*1467
Upstream of Old Liberty Road	*1492
Approximately 220' upstream of corporate limits	*1517
Sprague Brook:	
Confluence with Willowemoc Creek	*1510
Upstream side of Grooville Road	*1566
Approximately 0.38 mile upstream of Grooville Road	*1610
Approximately 0.77 mile upstream of Grooville Road	*1659
Maps available for inspection at the Town Hall, Main Street, Rockland, New York.	
Send comments to The Honorable Leon L. Siegel, Supervisor of the Town of Rockland, Sullivan County, P.O. Box 355, Livingston Manor, New York 12758.	
Webster (Town), Monroe County	
1st Tributary to Mill Creek:	
At confluence of Mill Creek	*297
Downstream side of Holt Road	*334
Upstream side of Shoemaker Road	*349
Upstream side of Klem Road	*362
Upstream side of CONRAIL	*375
Approximately 0.8 mile upstream of CONRAIL	*402
2nd Tributary to Mill Creek:	
At confluence with Mill Creek	*321
Approximately 80 feet downstream of Wall Road	*337
Approximately 110 feet upstream of Klem Road	*356
At CONRAIL	*388
Approximately 40 feet downstream of New York State Route 104	*405
1st Tributary to Fourmile Creek:	
At confluence with Fourmile Creek	*278
Approximately 80 feet downstream of Bridgeboro Drive	*305
Downstream side of Salt Road	*328
Upstream side of 3rd dam	*344
Downstream side of Schlegal Road	*362
Approximately 250 feet upstream of Basket Road	*382
Approximately .5 mile upstream of Basket Road	*393
West Creek:	
Approximately 40 feet downstream of corporate limits	*306
Upstream side of Whiting Road	*343
Downstream side of CONRAIL	*360
Tributary to 1st Tributary to Fourmile Creek:	
At confluence with 1st Tributary to Fourmile Creek	*378
Tributary to Fourmile Creek approximately 0.35 mile upstream of confluence with 1st Tributary to Fourmile Creek	*385
Maps available for inspection at the Town Hall, 1000 Ridge Road, Webster, New York.	
Send comments to The Honorable Adrian Stanton, Supervisor of the Town of Webster, Monroe County, Town Hall, 1000 Ridge Road, Webster, New York 14580.	
Woodbury (Town), Orange County	
Downstream corporate limits	*269
Approximately 50 feet upstream of Interstate Route 87	*338
Downstream side of Old State Route 32	*398
Approximately 420 feet upstream of CONRAIL bridge	*432
Upstream side of Pine Hill Road	*475
Approximately 900 feet upstream of Estrada Road	*486
Maps available for inspection at the Woodbury Town Hall, Highland Mills, New York 10930.	
Send comments to The Honorable Robert Till, Supervisor of the Town of Woodbury Town Hall, Orange County, P.O. Box D, Highland Mills, New York 10930.	

NORTH CAROLINA

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Town of Bridgeton, Craven County	
Neuse River: Within community	*9
Maps available for inspection at the Town Hall, Bridgeton, North Carolina.	
Send comments to The Honorable Peter S. Harmatuk, Mayor, Town of Bridgeton, P.O. Box 577, Bridgeton, North Carolina 28519.	
Craven County (Unincorporated Areas)	
Atlantic Ocean/Pamlico Sound/Neuse River:	
About 1500 feet northeast of the intersection of SR 1907 and SR 1905	*9
At intersection of Berkentine Drive and St. Michael Drive	*9
Atlantic Ocean/Pamlico Sound/Neuse River/Trent River: Within community	*9
Atlantic Ocean/Pamlico Sound/Neuse River/Hancock Creek: Just downstream of New Bern Road	*9
Atlantic Ocean/Pamlico Sound/Neuse River/Clubfoot Creek/Mitchell Creek: Within community	*9
Maple Cypress:	
Just upstream of SR 1400	*19
Just downstream of SR 1462	*29
Mauls Swamp:	
At confluence with Swift Creek	*13
Just downstream of SR 1637	*16
Mills Branch:	
At confluence with Neuse River	*9
About 2500 feet upstream of SR 1433	*17
Mills Branch Tributary:	
At confluence with Mills Branch	*9
Just downstream of SR 1616	*13
Mosley Creek:	
About 2000 feet upstream of confluence with Neuse River	*20
Just downstream of SR 1264	*43
Mosley Creek Tributary:	
About 1500 feet downstream of NC 55	*34
Just downstream of NC 55	*34
Samuels Creek: Within community	*9
Rocky Run:	
At confluence with Samuels Creek	*9
About 3800 feet upstream of Seaboard Coast Line Railroad	*21
Scotts Creek:	
At confluence with Neuse River	*9
About 2000 feet upstream of Airport Road	*21
Snake Branch:	
At confluence with Mitchell Creek	*9
Just downstream of SR 1711	*13
Swift Creek:	
Just upstream of SR 1482	*9
About 1.4 miles upstream of SR 1440	*14
Tucker Creek:	
About 1.5 miles downstream of U.S. Highway 70	*9
About 2800 feet upstream of Seaboard Coast Line Railroad	*21
Village Creek:	
Just upstream of SR 1472	*20
Just downstream of NC 55	*45
Wilson Creek:	
Just upstream of SR 1278	*14
About 1600 feet upstream of Seaboard Coast Line Railroad	*18
Maps available for inspection at the County Courthouse, P.O. Box 1425, New Bern, North Carolina.	
Send comments to The Honorable Tyler B. Harris, County Manager, Craven County, County Courthouse, P.O. Box 1425, 405 Middle Street, New Bern, North Carolina 28560.	
Havelock (City), Craven County	
East Prong Slocum Creek:	
At Confluence with Sandy Branch	*9
About 2200 feet upstream of Gray Fox Road	*15
East Prong Slocum Creek Tributary:	
At Confluence with East Prong Slocum Creek	*9
About 1150 feet upstream of Cunningham Boulevard	*20
Southwest Prong Slocum Creek: Within Community	*9
Tucker Creek: Within Community	*9
Slocum Creek: Within Community	*9
Hancock Creek: Within Community	*9
Neuse River: Within Community	*9
Maps available for inspection at the City Hall, Havelock, North Carolina.	
Send comments to The Honorable Thomas Mylett, Mayor, City of Havelock, P.O. Box 368, Havelock, North Carolina 28532.	
New Bern (City), Craven County	
Neuse River: Within community	*9
Trent River: Within community	*9
Jack Smith Creek: Within community	*9
Lawson Creek: Within community	*9
Maps available for inspection at the City Hall, New Bern, North Carolina.	
Send comments to The Honorable Ella J. Bengel, Mayor, City of New Bern, P.O. Box 1129, New Bern, North Carolina 28560.	
Southern Shores (Town), Dare County	
Atlantic Ocean:	
About 500 feet east of the intersection of Porpoise Run and Ocean Boulevard	*11
Along shoreline	*12

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Atlantic Ocean/Currituck Sound:	
About 1800 feet west of the intersection of 12th Avenue and Duck Road	*7
At the intersection of Birch Lane and Holly Trail	*8
Maps available for inspection at the Town Hall, Kitty Hawk, North Carolina.	
Send comments to The Honorable Kern P. Pitts, Mayor, Town of Southern Shores, P.O. Box 272, Kitty Hawk, North Carolina 27949.	
Trent Woods (Town), Craven County	
Atlantic Ocean/Pamlico Sound/Pamlico River/Neuse River/Trent River: Within community	*9
Jimmies Creek:	
At confluence with Wilson Creek	*9
Just downstream of Trent Road	*18
Morris Branch:	
At confluence with Wilson Creek	*9
Just downstream of River Road	*14
Trent River Tributary:	
At confluence with Trent River	*9
Just downstream of Longwood Drive	*17
Wilson Creek:	
At confluence with Trent River	*9
Just downstream of Trent Road	*12
Maps available for inspection at the Trent Woods Town Hall, New Bern, North Carolina.	
Send comments to The Honorable Leroy H. Price, Mayor, Town of Trent Woods, P.O. Box 188, New Bern, North Carolina 28560.	
OHIO	
Enon (Village), Clark County	
Mad River:	
Just downstream of State Route 4	*876
Just upstream of Enon Road	*879
Mud Run:	
Just upstream of Enon-Xenia Pike	*882
About 1.1 miles upstream of Hunter Road	*895
Maps available for inspection at the Municipal Building, Enon, Ohio.	
Send comments to The Honorable Charles Koons, Mayor, Village of Enon, Municipal Building, Box 63, Enon, Ohio 45323.	
OKLAHOMA	
Cache (Town), Comanche County	
West Cache Creek:	
At downstream limits	*1,237
At upstream corporate limits	*1,247
Crater Creek:	
Approximately 550 feet downstream of corporate limits	*1,224
Approximately 120 feet of Old U.S. Highway 62	*1,242
Approximately 150 feet upstream of St. Louis-San Francisco Railway	*1,247
At upstream corporate limits	*1,262
Approximately 0.6 mile upstream of U.S. Highway 62	*1,275
Rock Creek:	
At Old U.S. Highway 62	*1,240
At upstream corporate limits	*1,246
Tributary A—West:	
At confluence with Tributary A	*1,239
At upstream corporate limits	*1,242
Tributary A:	
At downstream corporate limits	*1,226
Approximately 40 feet upstream of St. Louis-San Francisco Railway	*1,236
Approximately 565 feet upstream of confluence of Tributary A-West	*1,239
Tributary B:	
At downstream corporate limits	*1,244
Approximately 75 feet upstream of U.S. Highway 62 bridge	*1,250
Approximately 1650 feet upstream of U.S. Highway 62 bridge	*1,255
At upstream corporate limits	*1,264

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
West Branch Blue Beaver Creek:	
At downstream corporate limits	*1,239
At approximately 380 feet upstream of corporate limits	*1,242
At approximately 50 feet downstream of U.S. Highway 62 bridges	*1,247
At upstream corporate limits	*1,256
Maps available for inspection at the City Hall, 520 C Avenue, Cache, Oklahoma.	
Send comments to The Honorable Hubert Meadows, Mayor of the Town of Cache, Comanche County, P.O. Box 466, Cache, Oklahoma 73527.	
PENNSYLVANIA	
Complanter (Township), Venango County	
Allegheny River:	
Downstream corporate limits	*1,002
Upstream corporate limits	*1,020
Oil Creek:	
Downstream corporate limits	*1,009
Downstream side of CONRAIL downstream crossing	*1,026
Downstream side of State Route 6 upstream crossing	*1,041
Upstream side of CONRAIL upstream crossing	*1,056
Cherry Run:	
Downstream corporate limits	*1,089
Upstream side of State Route 227 upstream crossing	*1,116
Approximately 0.73 mile upstream of State Route 227 upstream crossing	*1,158
Approximately 2,420 feet downstream of Old Bankson Road	*1,200
Approximately 140 feet upstream of Old Bankson Road	*1,234
Maps available for inspection at the Township Municipal Building, Oil City, Pennsylvania.	
Send comments to The Honorable G. Robert Thompson, Chairman of the Board of Supervisors of the Township of Complanter, Venango County, Plumber Road, Oil City, Pennsylvania 16301.	
East Chillisquaque (Township), Northumberland County	
Chillisquaque Creek:	
Approximately 400 feet downstream of the downstream corporate limits	*465
At State Route 45	*468
Maps available for inspection at the Potts Grove Fire Company, Potts Grove, Pennsylvania.	
Send comments to The Honorable Steve W. Croman, Chairman of the Board of Supervisors of the Township of East Chillisquaque, Northumberland County, P.O. Box 50, Potts Grove, Pennsylvania 17865.	
Ford City (Borough), Armstrong County	
Allegheny River:	
Downstream corporate limits	*788
Approximately 275 feet upstream from confluence of Fort Run	*791
Entire shoreline of Fort Run within community	*791
Maps available for inspection at the Municipal Offices, Ford City, Pennsylvania.	
Send comments to The Honorable Homer Pendleton, Council President of the Borough of Ford City, P.O. Box 112, 10th Street & 4th Avenue, Ford City, Pennsylvania 16226.	
Frenchcreek (Township), Venango County	
French Creek:	
At downstream corporate limits	*968
Confluence of Sugar Creek	*1,012
Downstream corporate limits with Utica	*1,032
Maps available for inspection at the Township Building, Franklin, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Send comments to The Honorable Lyle Doverspike, Chairman of the Township of Frenchcreek Board of Supervisors, Venango County, R. D. 1 Polk, Polk, Pennsylvania 16342.	
Indiana (Borough), Indiana County	
Marsh Run:	
Downstream corporate limits	*1,242
Upstream side of Nixon Alley	*1,265
Upstream side of Oak Street	*1,273
Upstream corporate limits	*1,286
Whites Run:	
Downstream corporate limits	*1,244
Downstream side of Klondike Avenue	*1,258
Upstream corporate limits	*1,279
Maps available for inspection at the Municipal Building, Indiana, Pennsylvania.	
Send comments to The Honorable J. David Naylon, Borough President of the Borough of Indiana, Venango County, Municipal Building, 80 North 8th Street, Indiana, Pennsylvania 15701.	
Northampton (Township), Somerset County	
Wills Creek:	
Approximately 560 feet downstream of L.R. 55014	*1,593
Upstream side of L.R. 55014	*1,601
Approximately 200 feet upstream of Chessie System	*1,621
Fitchner Run:	
At confluence with Wills Creek	*1,603
Upstream side of access road	*1,610
Approximately 70 feet upstream of T-377	*1,628
Maps available for inspection at the Municipal Office, Glencoe, Pennsylvania.	
Send comments to The Honorable John Lane, Chairman of the Township of Northampton Board of Supervisors, Somerset County, R.D. 1, Glencoe, Pennsylvania 15543.	
Rouseville (Borough), Venango County	
Oil Creek:	
Downstream corporate limits	*1,027
At confluence of Cherry Run	*1,030
Upstream corporate limits	*1,037
Cherry Run:	
At confluence with Oil Creek	*1,030
Upstream side of State Route 8	*1,037
Upstream side of State Route 227	*1,074
Upstream corporate limits	*1,089
Shallow Flooding:	
Area east of CONRAIL, west of State Route 8, 400 feet north of corporate limits	#2
At south corporate limits between CONRAIL and State Route 8	#1
Maps available for inspection at the Borough Building, Rouseville, Pennsylvania.	
Send comments to The Honorable Joseph E. Smith, Council President of the Borough of Rouseville, Venango County, 8 Main Street, Rouseville, Pennsylvania 16344.	
Sugarcreek (Borough), Venango County	
Allegheny River:	
Downstream corporate limits	*975
Upstream corporate limits	*990
French Creek:	
Downstream corporate limits	*995
At the confluence of Sugar Creek	*1,012
Approximately 1.5 miles upstream of Sugar Creek confluence	*1,020
Upstream corporate limits	*1,027
Sugar Creek:	
Confluence with French Creek	*1,012
Approximately 100 feet upstream of Sugar Creek Road	*1,027
Downstream side of U.S. Route 322	*1,060
Upstream side of McCleary Road	*1,062
Upstream corporate limits	*1,09!

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Borough Manager's Office, Franklin, Pennsylvania.	
Send comments to The Honorable John McClelland, Mayor of the Borough of Sugarcreek, Venango County, 212 Fox Street, Franklin, Pennsylvania 16323.	
Summit (Township), Crawford County	
Inlet Run:	
At confluence with Conneaut Lake	*1,075
Upstream side of State Route 18	*1,090
Approximately 1,825 feet upstream of LR 20046	*1,127
Maps available for inspection at the Township Building, Summit, Pennsylvania.	
Send comments to The Honorable Lud Zarembinski, Chairman of the Board of the Township of Summit, Crawford County, Route 3, Linesville Box 330, Linesville, Pennsylvania 16424.	
White (Township), Indiana County	
Stoney Run:	
Downstream of corporate limits	*1,070
Upstream side of CONRAIL first crossing	*1,115
Approximately 0.3 mile upstream of Indian Spring Road	*1,177
At confluence of Whites and Marsh Run	*1,238
Marsh Run:	
At confluence with Stoney Run	*1,238
Approximately 528 feet upstream of corporate limits	*1,242
Whites Run:	
At confluence with Stoney Run	*1,238
At upstream corporate limits	*1,244
McCarthy Run:	
At confluence with Stoney Run	*1,140
Upstream side of Indian Springs Road	*1,200
Upstream side of Rustic Lodge Road	*1,245
Approximately 800 feet upstream of Warren Road	*1,265
Approximately .63 mile ustream of Benjamin Franklin Road	*1,302
Maps available for inspection at the Township Building, White, Pennsylvania.	
Send comments to The Honorable Rocco Vanity, Chairman of the Board of Supervisors of the Township of White, Indiana County, 950 Indian Springs Road, Indiana, Pennsylvania 15701.	
SOUTH CAROLINA	
Unincorporated Areas of Charleston County	
Atlantic Ocean:	
At Bream Drive	*8
About 3500 feet east of the intersection of Davidson Road and Parkers Ferry Road	*8
Just upstream of River Road bridge over Cedar Creek	*8
At the mouth of MacBeth Creek	*9
Along Wando River from confluence of Rethall Creek to the confluence of Mill Creek	*11
At the mouth of Church Creek	*12
At the mouth of Alligator Creek	*13
At the mouth of Dawho River	*15
At the mouth of Toogoodoo Creek	*15
At the mouth of Schooner Creek	*17
At the mouth of Venning Creek	*18
Along shoreline from about 1.0 mile northeast of Sandy Point to the Charleston County—Georgetown County boundary	*19
Along shoreline from Dewees Inlet to Northeast Point	*19
Along shoreline from about 2 miles southwest of the mouth of Captain Sams Inlet to the mouth of Stono Inlet	*19
Along shoreline from Jeremy Inlet to just northeast of the mouth of South Creek	*20
Along shoreline from just east of the mouth of Bull River to Sandy Point	*20
Along shoreline of Bull Bay from just west of mouth of Saltpond Creek to the mouth of Harbor River	*22
Sawmill Creek:	
At downstream county boundary	*46
At upstream county boundary	*54
Maps available for inspection at the County Courthouse, 2 Courthouse Square, Charleston, South Carolina.	
Send Comments to The Honorable Zan Furtwagas, County Administrator, Charleston County, County Courthouse, 2 Courthouse Square, Charleston, South Carolina 29401.	
Colleton County (Unincorporated Areas)	
Atlantic Ocean:	
Along Edisto River from about 2.7 miles downstream of Route 17 to about 8.4 miles upstream of U.S. Route 17	*6
At mouth of Two Sisters Creek	*22
Ireland Creek:	
At mouth	*32
Just upstream of Stevens Road	*52
Great Swamp:	
About 2.6 miles downstream of U.S. Route 17A	*23
About 0.95 miles upstream of U.S. Route 17A	*35
Maps available for inspection at the County Courthouse, P.O. Box 1176, Walterboro, South Carolina. Send comments to The Honorable David Carter, County Supervisor, Colleton County, County Courthouse, P.O. Box 1176, Walterboro, South Carolina 29488.	
Folly Beach (Township), Charleston County	
Atlantic Ocean:	
At intersection of Center Street and Indian Avenue	*12
At mouth of Second Sister Creek	*15
Along shoreline	*19
Maps available for inspection at the City Hall, P.O. Box 22, Folly Beach, South Carolina.	
Send Comments to The Honorable Bill Griffith, City Manager, Township of Folly Beach, P.O. Box 22, Folly Beach, South Carolina 29346.	
Marion (City), Marion County	
Catfish Canal:	
About 4,000 feet downstream of U.S. Route 76	*53
About 1,000 feet upstream of English Park Road	*56
Smith Swamp:	
About 2,500 feet downstream of State Route 19	*59
About 300 feet downstream of State Route 19	*61
Maps available for inspection at the Town Hall, P.O. Box 1190, Marion, South Carolina.	
Send comments to The Honorable Henry Gerald, Mayor, City of Marion, Town Hall, P.O. Box 1190, Marion, South Carolina 29571.	
McClellanville (Town), Charleston County	
Atlantic Ocean:	
About 400 feet northwest of the intersection of U.S. Route 17 and State Route 45	*14
At the intersection of Morrison Street and Baker Street	*15
Along shoreline of Intracoastal Waterway	*19
Maps available for inspection at the City Hall, 405 Penkincy Street, McClellanville, South Carolina.	
Send comments to The Honorable Rutledge Leland, Mayor, Town of McClellanville, City Hall, P.O. Box 181, McClellanville, South Carolina 29456.	
Nichols (Town), Marion County	
Lumber River:	
About 1.9 miles downstream of Seaboard Coast Line Railroad	*54
About 0.8 mile upstream of Seaboard Coast Line Railroad	*58
Maps available for inspection at the Town Hall, Nichols, South Carolina.	
Send comments to The Honorable Gary Strickland, Mayor, Town of Nichols, Town Hall, P.O. Box 32, Nichols, South Carolina 29581.	
Walterboro (City), Colleton County	
Great Swamp:	
About 1.97 miles downstream of U.S. Route 17A	*25
Just upstream of U.S. Route 17A	*34
Ireland Creek:	
At mouth	*32
About 0.8 mile upstream of U.S. Route 15	*43
Maps available for inspection at the City Hall, P.O. Box 109, Walterboro, South Carolina.	
Send comments to The Honorable Charles Bickley, Mayor, City of Walterboro, City Hall, P.O. Box 109, Walterboro, South Carolina 29488.	
TENNESSEE	
Kimball (Town), Marion County	
Kimball Cove Branch:	
Just downstream of Interstate 24	*614
Just downstream of Lee Highway	*644
Just upstream of Lee Highway	*653
About 1.0 mile upstream of Interstate 24	*802
Raulston Branch:	
Just downstream of Dixie Highway	*617
About 0.45 mile upstream of Old U.S. Route 64	*698
Battle Creek:	
About 0.5 mile downstream of Lee Highway	*614
About 1.6 miles upstream of Lee Highway	*617
Tennessee River:	
About 1.6 miles downstream of confluence of Glover Creek	*614
About 0.62 miles upstream of confluence of Glover Creek	*615
Maps available for inspection at the City Hall, P.O. Box 367, Jasper, Tennessee.	
Send comments to The Honorable Jim Lofty, Mayor, Town of Kimball, City Hall, P.O. Box 367, Jasper, Tennessee 37347	
Spring Hill (City), Maury & Williamson Counties	
McCutcheon Creek:	
At mouth	*656
About 1430 feet upstream of Duplex Road	*707
Haynes Peacock Creek:	
At mouth	*684
Just upstream of Beechcroft Road	*740
Jones-Fraser Branch	
At mouth	*684
Just upstream of Louisville & Nashville Railroad	*756
Maps available for inspection at the City Hall, Springhill, Tennessee.	
Send comments to The Honorable George Jones, Mayor, City of Springhill, City Hall, Springhill, Tennessee 37173.	
TEXAS	
Denton County	
Elm Fork Trinity River below Lewisville Lake:	
At County boundary	*448
At confluence with Indian Creek	*452
Elm Fork Trinity River above Lewisville Lake:	
At confluence with Lewisville Lake	*537
Approximately 120 feet upstream of FM 428	*542
At downstream side of Ray Roberts dam	*553

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
Denton Creek:	
Approximately 100 feet upstream of State Route 121	*458
Approximately 0.6 mile upstream of confluence of Baker's Branch	*472
Marshall Branch:	
At confluence with Grapevine Lake	*564
At downstream side of State Route 114	*598
Timber Creek:	
Approximately 350 feet downstream of the County boundary	*597
Approximately 700 feet upstream of Woodland Trail Street	*629
Furneaux Creek:	
Approximately 50 feet downstream of Old Denton Road (FM 2281)	*467
Approximately 0.5 mile upstream of Old Denton Road	*472
Dudley Branch:	
At confluence with Elm Fork Trinity River	*451
Approximately 2.4 miles upstream of the Missouri-Kansas-Texas Railroad	*474
Approximately 50 feet upstream of Denton Road (FM 2281)	*477
Indian Creek:	
Approximately 5.2 miles upstream of confluence with Elm Fork Trinity River	*490
At upstream County boundary	*620
Hickory Creek:	
At confluence with Lewisville Lake	*537
Approximately 50 feet downstream of FM 1830	*562
Approximately 125 feet downstream of northbound lanes of Interstate Route 35W	*585
At confluence of North Hickory Creek	*618
Bryant Branch:	
Approximately 550 feet downstream of FM 2181	*540
Approximately 100 feet upstream of FM 2181	*547
Loving Branch:	
At confluence with Hickory Creek	*543
Approximately 50 feet upstream of Mayhill Road (FM 407)	*614
Fincher Branch:	
At confluence with Hickory Creek	*547
At downstream side of Gibbons Road	*623
Fletcher Branch:	
At confluence with Hickory Creek	*551
At downstream side of El Paso Street	*611
Dry Fork Hickory Creek:	
At confluence with Hickory Creek	*579
At Jim Crystal Road	*644
Approximately 0.7 mile upstream of U.S. Route 380	*665
Stream DF-1:	
At confluence with Dry Fork Hickory Creek	*590
At most upstream County boundary	*607
North Hickory Creek:	
At confluence of Hickory Creek	*618
At upstream side of U.S. Route 380	*649
Approximately 50 feet upstream of FM 156	*675
Stream LC-1:	
Approximately 520 feet upstream of Shady Shores Road	*560
Approximately 730 feet upstream of Shady Shores Road	*560
Pecan Creek:	
At confluence with Lewisville Lake	*537
At downstream side of Mayhill Road	*571
Stream PEC-1:	
At confluence with Pecan Creek	*537
Approximately 0.5 mile upstream of Missouri-Kansas-Texas Railroad crossing	*581
Cooper Creek:	
At confluence with Lewisville Lake	*537
At downstream side of Mayhill Road	*573
Culp Branch:	
At confluence with Elm Fork Trinity River	*537
At upstream side of FM 426	*573
Approximately 200 feet upstream of most upstream crossing of FM 2153	*645

Maps available for inspection at the Denton County Planning Department, 300 East McKinney, Denton, Texas.

Send comments to The Honorable Buddy Cole, Denton County Judge, Denton County Courthouse, 401 West Hickory, Denton, Texas 76201.

Tarrant County

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
Ash Creek:	
Approximately 0.66 mile downstream of confluence of Paschal Branch	*667
At City of Azle corporate limits	*675
Bear Creek 1:	
Upstream side of corporate limits at South Lake City boundary	*577
Downstream side of corporate limits at South Lake City boundary	*582
Upstream side of Texas and Pacific Railroad bridge at corporate limits, City of Keller boundary	*687
Approximately .78 mile upstream of Alta Vista Road	*745
Approximately 600 feet upstream of Old Denton Road	*772
Briar Creek:	
Approximately 200 feet downstream of Liberty School Road	*658
Approximately 0.92 mile upstream of Liberty School Road	*680
Approximately 450 feet upstream of FM 730	*697
Buffalo Creek:	
At confluence with Henrietta Creek	*642
Upstream side of Interstate Route 35	*654
Upstream side of Harmon Road	*670
Approximately 1.3 miles upstream of Harmon Road	*690
Approximately 2.8 miles upstream of Harmon Road	*723
Chambers Creek:	
At downstream corporate limits	*581
At upstream corporate limits	*593
Deer Creek:	
At confluence with Village Creek	*632
Upstream side of Forest Hill-Everman Road	*643
Elm Branch:	
At confluence with Village Creek	*596
Approximately 1,600 feet downstream of Shelby Road	*640
At upstream corporate limits	*670
Henrietta Creek:	
Approximately 100 feet downstream of White Chapel Road	*636
At downstream Haslet corporate limits	*657
At upstream Haslet corporate limits	*685
Approximately 0.45 mile upstream of Keller-Haslet Road	*712
Low Branch:	
At downstream corporate limits	*615
Approximately 860 feet upstream of downstream corporate limits	*616
Marys Creek:	
Approximately 1,350 feet downstream of confluence with Marys Tributary 2	*676
Upstream side of FM 2871	*701
Approximately 1,300 feet upstream of U.S. Route 80 (westbound)	*725
Approximately 0.51 mile upstream of Fort Worth corporate limits	*742
North Branch of Deer Creek:	
Downstream of downstream corporate limits	*765
Approximately 120 feet upstream of downstream corporate limits	*766
Paschal Branch:	
At downstream County boundary	*678
Approximately 600 feet upstream of Azle Road	*690
South Fork of Deer Creek:	
At downstream County boundary	*775
Approximately 1.7 miles upstream of downstream County boundary	*795
South Fork of North Branch of Deer Creek:	
At downstream County boundary	*766
Approximately 0.3 mile upstream of downstream County boundary	*778
South Marys Creek:	
At confluence with Marys Creek	*710

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
Upstream side of Diamond Bar Trail	*731
Upstream side of Link Meadow Drive	*780
Approximately 600 feet upstream of County boundary	*825
Stream BB-6:	
At confluence with Bear Creek 1	*577
At upstream County boundary	*577
Stream BFC-2A:	
At downstream County boundary	*657
Approximately 425 feet upstream of downstream County boundary	*669
Stream CF-5:	
At downstream County boundary	*681
Approximately 150 feet upstream of upstream County boundary	*702
Stream HEN-1:	
At downstream County boundary	*667
Approximately 0.5 mile upstream of County boundary	*672
Stream HEN-2:	
Upstream side of Atchison, Topeka, and Santa Fe Railway	*703
Approximately 0.43 mile upstream of Atchison, Topeka, and Santa Fe Railway	*707
Stream HEN-2A:	
At downstream County boundary	*734
Approximately 430 feet upstream of downstream County boundary	*738
Stream MSC-3:	
At downstream County boundary	*738
Approximately 500 feet upstream of downstream County boundary	*748
Stream SC-7:	
At downstream County boundary	*760
Approximately 500 feet upstream of upstream County boundary	*770
Stream VC-3:	
At downstream County boundary	*570
Approximately 170 feet upstream of upstream County boundary	*587
Stream VC-4:	
Approximately 400 feet downstream of downstream County boundary	*601
Approximately 1,600 feet upstream of confluence of Stream VC-4A	*616
Stream VC-5:	
At confluence with Village Creek	*653
Upstream side of Race Street	*656
Stream VC-6:	
At confluence with Village Creek	*628
Approximately 200 feet upstream of upstream County boundary	*649
Stream VC-7:	
At confluence with Village Creek	*637
Approximately 1 mile upstream of Forest Hill-Everman Road	*663
Stream WB-1:	
At downstream County boundary	*666
Approximately 45 feet upstream of downstream County boundary	*666
Sycamore Creek:	
At downstream County boundary	*758
Upstream side of North Crowley Cleburne Road	*774
Village Creek:	
At downstream County boundary	*566
At confluence of Elm Branch	*596
At confluence of Stream VC-6	*628
Approximately 1,400 feet upstream of most upstream County boundary	*670
Walnut Creek 1:	
Confluence with Eagle Mountain Lake	*657
At most upstream County boundary	*668
Walnut Creek 2:	
Approximately 1,050 feet downstream of Texas and Pacific Railroad	*670
Approximately 320 feet upstream of most upstream County boundary	*744
Walnut Creek 3:	
At downstream County boundary	*537
At upstream County boundary	*544
Approximately 550 feet upstream of upstream County boundary	*610

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
West Fork Trinity River:	
Approximately 2,500 feet downstream of confluence of Boyd Branch	*461
Approximately 5.0 miles upstream of confluence of Boyd Branch	*467
At confluence of Stream WF-7	*502
At Eagle Mountain Dam	*653
Willow Branch:	
Approximately 225 feet downstream of downstream County boundary	*600
Approximately 0.64 mile upstream of Private Road	*624
White Branch:	
Approximately 2.2 miles upstream of confluence with Big Fossil Creek	*583
Approximately 2.3 miles upstream of confluence with Big Fossil Creek	*586

Maps available for inspection at 100 East Weatherford, Fort Worth, Texas.

Send comments to The Honorable Jim Stewart, Director of Public Works of Tarrant County, 100 East Weatherford, Fort Worth, Texas 76102.

VERMONT

Johnson (Town), Lamoille County

Lamoille River:	
Downstream corporate limits	*467
Confluence of Smith Brook	*484
At Village of Johnson downstream corporate limits	*495
Downstream side of Vermont Northern Railway	*527
Upstream corporate limits	*535
Gihon River:	
Downstream corporate limits	*566
Approximately 0.7 mile upstream of Town Highway 33	*621
Bell Brook:	
Confluence with Gihon River	*577
Approximately 0.1 mile upstream of Town Highway 32	*624
Foot Brook:	
At confluence with Lamoille River	*488
Approximately 635 feet upstream of State Route 15	*503

Maps available for inspection at the Town Clerk's Office, Johnson, Vermont.

Send comments to The Honorable Richard Simays, Chairman of the Town of Johnson Board of Selectmen, Lamoille County, P.O. Box 383, Johnson, Vermont 05656.

Johnson (Village), Lamoille County

Lamoille River:	
At downstream corporate limits	*494
Downstream side of Railroad Street	*496
At upstream corporate limits	*497
Gihon River:	
At confluence with Lamoille River	*496
Upstream side of School Street	*526
At upstream corporate limits	*565

Maps available for inspection at the Town Clerk's Office, Johnson, Vermont.

Send comments to The Honorable Harold Lumbar, Chairman of the Village of Johnson Board of Selectmen, Lamoille County, P.O. Box 387, Johnson, Vermont 05656.

VIRGINIA

Alleghany County

Jackson River:	
Approximately 1,700 feet downstream of County boundary	*1,015
Upstream side of U.S. Route 220 (1st upstream crossing)	*1,051
At confluence with Kennes Creek	*1,110
Upstream side of Interstate Route 64 (2nd eastbound upstream crossing)	*1,154

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of State Route 18	*1,196
Upstream side of WARREN Dam	*1,236
Upstream side of State Route 887 (1st upstream crossing)	*1,291
Upstream side of State Route 721	*1,348
Upstream side of State Route 638	*1,397
Approximately 0.8 mile upstream confluence of Cedar Creek	*1,427
Dunlap Creek:	
At confluence with Jackson River	*1,239
Upstream side of Chessie System (1st upstream crossing)	*1,269
Upstream side of State Route 60	*1,312
Upstream side of State Route 710	*1,363
Approximately 130 feet upstream of confluence of Mossy Run	*1,466
Potts Creek:	
At confluence with Jackson River	*1,282
Upstream side of State Route 18 (1st upstream crossing)	*1,241
Downstream side of State Route 18 (2nd upstream crossing)	*1,287
Cowpasture River:	
Approximately 140 feet downstream of County boundary	*1,815
Approximately 0.6 mile upstream of U.S. Route 60	*1,670
Simpson Creek:	
At confluence with Cowpasture River	*1,085
Upstream side of U.S. Route 60 (1st upstream crossing)	*1,113
Upstream side of U.S. Route 60 (2nd upstream crossing)	*1,178
Approximately 1.0 mile upstream of U.S. Route 60 (2nd upstream crossing)	*1,241
Approximately 2.2 miles upstream of U.S. Route 60 (2nd upstream crossing)	*1,342

Maps available for inspection at the Department of Public Works, 500 Alleghany Street, Clifton Forge, Virginia.

The Honorable Mason C. Simmons, Jr., Alleghany County Administrator, 110 Rosedale Avenue, Covington, Virginia 24426.

WEST VIRGINIA

Elkins (City), Randolph County

Tygart Valley River:	
Approximately 1,700 feet downstream of cutoff channel	*1,912
Downstream side of outlet works	*1,973
Upstream side of outlet works	*1,912
Upstream corporate limits	*1,912
Craven Run:	
Downstream corporate limits	*1,910
Upstream corporate limits	*1,948

Maps available for inspection at the City Hall, 401 Davis Avenue, Elkins, West Virginia.

Send comments to The Honorable Joseph E. Martin, III, Mayor of the City of Elkins, Randolph County, City Hall, 401 Davis Avenue, Elkins, West Virginia 26241.

WISCONSIN

Dousman (Village), Waukesha County

Bark River:	
About 0.62 mile downstream of Main Street	*856
About 750 feet upstream of U.S. Highway 18	*885

Maps available for inspection at the Clerk Treasurer's Office, Village Hall, Box 325, 118 South Main Street, Dousman, Wisconsin.

Send comments to The Honorable Tony Reday, Village President, Village of Dousman, Village Hall, Box 325, 118 South Main Street, Dousman, Wisconsin 53118.

Issued: August 14, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-19901 Filed 9-3-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

48 CFR Parts 1317 and 1352

[Docket No. 60614-6119] (Amdt. 86-1)

Acquisition Regulation; Contracts for Ship Construction, Ship Alteration, and Ship Repair

AGENCY: Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Commerce Acquisition Regulation (CAR) to provide uniform contract clauses and solicitation provisions to be used in Department contracts and solicitations for Ship Construction, Ship Alteration and Ship Repair.

DATE: Written comments on the proposed rule will be considered if received on or before October 6, 1986.

ADDRESS: Send written comments to: Director, Office of Procurement and Administrative Services, HCHB, Room H6316, U.S. Department of Commerce, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230. Please cite CAR Amendment 86-1 in any written comments submitted and mark the outside of the envelope, "Comments on CAR; Amendment 86-1". The public docket rulemaking file including all comments received on the proposed rule may be inspected by the public during normal business hours in Room H6418 at the above address.

FOR FURTHER INFORMATION CONTACT: John Dammeyer, Procurement Analyst, Office of Procurement Management, HCHB, Room H6424., U.S. Department of Commerce, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230, (202) 377-4248.

SUPPLEMENTARY INFORMATION:

Background

Proposed CAR Amendment 86-1 would establish uniform contracts clauses and solicitation provisions to be used Departmentwide in contracts and solicitations for ship construction, ship alteration, and ship repair (ship repair). These clauses and provisions would be included in a Departmentwide automated solicitation system. Currently, Department ship repair

solicitations contain clauses and provisions which can vary considerably among solicitations. Establishing uniform clauses and provisions should ultimately be less burdensome for contractors and potential contractors, since they will not need to relearn every part of a Department ship repair solicitation in order to respond to it. Once potential contractors are familiar with the uniform ship repair clauses and provisions, they can concentrate their time and efforts on learning the unique aspects of the solicitation.

Administrative Procedure Act and Small Business and Federal Procurement Competition Enhancement Act Requirements

Because this amendment involves matters of agency management, public property, and contracts, under subsection 553(a)(2) of the Administrative Procedure Act (APA) (5 U.S.C. 553(a)(2)), it is exempt from all requirements of section 553 including giving notice of proposed rulemaking, providing an opportunity for comment, and delaying the effective date until at least 30 days after publication or service.

However, section 302 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. 98–577, added section 22 to the Office of Federal Procurement Policy Act which requires that notice of proposed rulemaking and at least 30 days opportunity for comment be given for acquisition regulations having a significant cost or administrative impact on contractors or offerors, and specifies that such regulations may not take effect until 30 days after such notice. Since some of the changes that would be made to the CAR by the proposed amendment may have a significant cost or administrative impact on contractors or offerors, this notice of proposed rulemaking is published and written comments are invited and will be considered in promulgating a final rule if received on or before October 6, 1986.

Regulatory Flexibility Act Requirements

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the changes the proposed rule would make would not affect a substantial number of small entities and would not impose a significant economic impact on those small entities which would be affected. Accordingly, a regulatory flexibility analysis was not prepared.

The Department's solicitations for ship repair work involve responses from approximately 12 Department contractors a year. Of these, it is esimtated that 10 may be small entities.

The Documentation of Requests for Equitable Adjustment clause (CAR 1352.217–104) provides procedures under which a Department ship repair contractor may request or propose an equitable adjustment in the contract price pursuant to a written change order or any act or omission to act on the part of the Government. Federal Acquisition Regulation (FAR) Subpart 43.104 requires the contractor to notify the Government in writing when the contractor considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer. The proposed clause prescribes the documentation required to support the contractor's allegation of the change. This information permits the Government to evaluate the alleged change and determine if an adjustment in the price or other terms of the contract is appropriate. The proposed contract clause separates documentation requirements for equitable adjustments at the $100,000 threshold. Considerably less documentation would be required for equitable adjustment requests of $100,000 or less.

The Change Proposals clause (CAR 1352.217–105) would authorize the contracting officer to request proposals for changes in the work within the general scope of the ship repair contract. These requests for proposal would primarily be the result of a contract requirement to open, inspect, and report on repairs. The ship repair contractor would be requested to submit a scope of work, including plans and sketches, along with the estimated cost for the change. This action is necessary to effect repairs to the vessel in a timely and cost effective manner without disrupting the vessel's sailing schedule The contractor's proposal is necessary for the Government to evaluate the effect of the proposed change. the cost or benefit thereof, and to determine a fair and reasonable price for the changed work. Less documentation is required for change proposals of less than $100,000.

Executive Order 12291 Requirements

Office of Management and Budget Bulletin No. 85–7 (dated December 14. 1984) exempted certain agency procurement regulations from the requirements of sections 3 and 4 of Executive Order 12291. The exemption applies to this proposed rule. A regulatory impact analysis is not required and was not prepared.

Paperwork Reduction Act Requirements

This proposed rule contains collection of information requirements which have been approved by the Office of Management and Budget (OMB No. 0690–0004).

List of Subjects in 48 CFR Parts 1317 and 1352

Government procurement.

For the reasons set forth in the preamble, the Department proposes to amend 48 CFR Parts 1317 and 1352 as set forth below.

Issued in Washington, DC. August 28, 1986.

Hugh L. Brennan,

Director, Office of Procurement and Administrative Services, U.S. Department of Commerce.

1. The authority citations for Parts 1317 and 1352 continue to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

PART 1317—SPECIAL CONTRACTING METHODS

2. Part 1317 is amended to add a new Subpart 1317.70 as follows:

Subpart 1317.70—Contracts For Ship Construction, Ship Alteration, and Ship Repair

1317.7001 Solicitation provisions and contract clauses.

(a) (1) The contracting officer shall insert the following clauses in sealed bid fixed-price solicitations and contracts for ship construction, ship alteration, and ship repair.

(i) Inspection and Manner of Doing Work, 1352.217–90.

(ii) Delivery of the Vessel to the Contractor, 1352.217–91.

(iii) Performance, 1352.217–92.

(iv) Delays, 1352–93.

(v) Minimization of Delay Due to Government Furnished Property, 1352.217–94.

(vi) Additional Provisions Relating to Government Property, 1352.217–95.

(vii) Liability and Insurance, 1352.217–96.

(viii) Title, 1352.217–97.

(ix) Discharge of Liens, 1352.217–98.

(x) Department of Labor Occupational Safety and Health Standards for Ship Repairing, 1352.217–99.

(xi) Regulations Governing Asbestos Work, 1352.217–100.

(xii) Complete and Final Equitable Adjustments, 1352.217–101.

(xiii) Government Review, Comment, Acceptance, and Approval, 1352.217–102.

(xiv) Access to the Vessel, 1352.217–103.

(xv) Documentation of Requests for Equitable Adjustment, 1352.217–104.

(xvi) Change Proposals, 1352.217–105.

(xvii) Lay Days, 1352.217–106.

(xviii) Changes—Ship Repair, 1352.217–107.

(xix) Default—Ship Repair, 1352.217–108.

(2) Unless inappropriate due to contract type, the contracting officer shall insert the clauses listed above in negotiated solicitations and contracts for ship construction, ship alteration, and ship repair.

(b) The contracting officer shall insert a clause substantially the same as the clause at 1352.217–109, Insurance Requirements, in solicitations and contracts for ship construction, ship alteration, and ship repair, unless the contracting officer determines that the contract, or job order, requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel.

(c) The contracting officer shall insert the clause at 1352.217–110, Guarantees, unless the contracting officer determines that its use would be inappropriate under the circumstances.

(d) The contracting officer shall insert the clause at 1352.217–111, Temporary Services, in solicitations and contracts for ship construction, ship alteration, and ship repair, unless the contracting officer determines that its use would be inappropriate under the circumstances.

(e) The contracting officer shall insert the provision at 1352.217–112, Self-Insurance Information, in solicitations and contracts for ship construction, ship alteration, and ship repair, when the contracting officer determines that it is appropriate to allow offerors the opportunity to self-insure for any or all of the risks set forth in the applicable insurance clauses of the contract.

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Subpart 1352.2 is amended by adding the following Table of Contents:

1352.217–90 Inspection and Manner of Doing Work.
1352.217–91 Delivery of Vessel to the Contractor.
1352.217–92 Performance.
1352.217–93 Delays.
1352.217–94 Minimization of Delay Due to Government Furnished Property.
1352.217–95 Additional Provisions Relating to Government Property.
1352.217–96 Liability and Insurance.
1352.217–97 Title.
1352.217–98 Discharge of Liens.
1352.217–99 Department of Labor Occupational Safety and Health Standards for Ship Repairing.
1352.217–100 Regulations Governing Asbestos Work.
1352.217–101 Complete and Final Equitable Adjustments.
1352.217–102 Government Review, Comment, Acceptance, and Approval.
1352.217–103 Access to the Vessel(s).
1352.217–104 Documentation of Requests for Equitable Adjustment.
1352.217–105 Change Proposals.
1352.217–106 Lay Days.
1352.217–107 Changes-Ship Repair.
1352.217–108 Default-Ship Repair.
1352.217–109 Insurance Requirements.
1352.217–110 Guarantees.
1352.217–111 Temporary Services.
1352.217–112 Self-Insurance Information.
1352.219–1 Women-Owned Small Business Sources.
1352.233–2 Service of Protest.

Subpart 1352.2—Texts of Provisions and Clauses

4. Sections 1352.217–90 to 1352.217–112 are added to Subpart 1352.2 to read as follows:

1352.217–90 Inspection and Manner of Doing Work.

As prescribed in 1317.7001(a), insert the following clause:

Inspection and Manner of Doing Work (CAR 1352.217–90) (1986)

(a) All work and material shall be subject to the approval of the Contracting Officer or his duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any contract modification.

(b) Unless otherwise specifically provided for in the contract, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work shall be in accordance with American Bureau of Shipping Rules for Building and Classing Steel Vessels, U.S. Coast Guard Marine Engineering Regulations and Material Specifications (Subchapter F 46 CFR), U.S. Coast Guard Electrical Engineering Regulations (Subchapter J 46 CFR) (APR 1982), and U.S.P.H.S., Handbook on Sanitation in Vessel Construction, in effect at the time of the Contractor's submission of bid (or acceptance of the contract, if negotiated), and the best commercial maritime practices, except where military specifications are specified, in which case such standards of material and workmanship shall be followed.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the Contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. This Government right is in addition to its rights under any Guarantee clause in this contract. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost to the Government. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract and for a period of 2 years after delivery of the vessel to the Government.

(d) No welding, including tack welding and brazing, shall be permitted in connection with repairs, completions, alterations, or addition to hulls, machinery or components of vessels unless the welder is at the time, qualified to the standards established by the United States Coast Guard, the American Bureau of Shipping, or the Department of the Navy. The welder's qualifications shall be appropriate for the particular service application, filler material type, position of welding, and welding process involved in the work being undertaken. A welder may be required to requalify if the Contracting Officer believes there is a reasonable doubt concerning the welder's ability. Welder's qualifications for this purpose shall be outlined in "Marine Engineering Regulations" of the United States Coast Guard. When a welding process other than manual shielded arc is proposed or required, the Contractor or fabricator shall submit procedure qualification tests for approval prior to production welding. Procedure qualification tests shall be conducted in accordance with the requirements of the "Marine Engineering Regulations" of the United States Coast Guard.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazine, fuel oil tanks, or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. All tanks or bilge areas under alteraton or repair shall be cleaned, washed, and steamed out or

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otherwise made safe by the Contractor if and to the extent necessary as required by good marine practice or by current OSHA Regulations. The Contracting Officer's Technical Representative (COTR) shall be furnished with a "gas free" or "safe for hot work" or "safe for men" certificate before any hot work or entry is done. Unless otherwise provided in this contract, the Contractor shall at all times maintain a reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The Contractor shall place proper safeguards and/or effect such safety precautions as necessary, including suitable and sufficient lighting, for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance by the Government of the work performed.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the contractor or in drydock or on a marine railway and the temperature becomes as low as 35 degrees Fahrenheit, the Contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on the vessel drained to avoid damage from freezing, or if this is not practicable, the vessel shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means, as approved by the COTR.

(h) Whenever practicable, the work shall be performed in a manner which does not interfere with the berthing and messing of personnel attached to the vessel. The Contractor shall ensure that assigned personnel have access to the vessel at all times. It is understood that such personnel will not interfere with the work or the Contractor's workers.

(i) The Government does not guarantee the correctness of the dimensions, sizes, and shapes given in any sketches, drawings, plans or specifications prepared or furnished by the Government. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder, other than those furnished by the Government.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by Contractor employees or the work, and at the completion of the work shall remove all rubbish from and about the site of the work and shall leave the work and its immediate vicinity "broom clean" unless more exactly specified in this contract.

(k) While in drydock or on a marine railway, the Contractor shall be responsible for the closing before the end of working hours, of all valves and openings upon which work is being done by its workers when such closing is practicable. The Contractor shall keep the COTR cognizant of the closure status of all valves and openings upon which the Contractor's workers have been working.

(l) Without additional expense to the Government, the Contractor shall employ specialty subcontractors where required by the specifications or when necessary for satisfactory performance of the work.

(m) When requested by the COTR, the Contractor shall notify the COTR in advance: (i) prior to starting inspections or tests; and (ii) when supplies will be ready for Government inspection.

(n) When advance notification is requested, the authorized COTR shall specify the period and method of notification.

(End of Clause)

1352.217-91 Delivery of Vessel to the Contractor.

As prescribed in 1317.7001(a), insert the following clause:

Delivery of Vessel to the Contractor (CAR 1352.217-91) (1986)

(a) The Government shall deliver the vessel to the Contractor at the location specified in the contract.

(b) If the Contractor's plant is specified, it shall be understood to mean the fairway of the plant. The Contractor shall provide necessary tugs and pilot services to move the vessel from the fairway to the pier or dock and, upon completion of all work, from the pier or dock to the fairway of the plant.

(c) While the vessel is in the possession of the Contractor, any necessary movement of the vessel incidental to the work specified in the contract shall be furnished by the Contractor without additional charge to the Government.

(End of Clause)

1352.217-92 Performance.

As prescribed in 1317.7001(a), insert the following clause:

Performance (CAR 1352.217-92) (1986)

(a) Upon the issuance of the contract, the Contractor shall promptly commence the work specified in any plans and specifications made a part of the contract, and shall diligently prosecute the work to completion. The Contractor shall not commence work until the contract has been issued.

(b) The Government shall deliver the vessel described in the contract at such time and location as may be specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at such time and location as may be specified in the contract.

(c) Without additional charge to the Government, and without specific requirement in the contract, the Contractor shall:

(1) Make available at the plant to personnel of the vessel while in drydock or on a marine railway, toilet and similar facilities acceptable to the Contracting Officer as adequate in number and sanitary standards;

(2) Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel;

(3) Treat salvage, scrap, or other ship's material of the Government resulting from performance of the work as items of Government furnished property in accordance with the Government Property clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, riggings, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for himself and his staff.

(d) Except as otherwise provided in the contract, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities, and other things and services necessary for accomplishing the work, subject to Government rights under the Government Property clause.

(e) The Contractor shall conduct dock and sea trials of the vessel as required by the contract. Unless otherwise expressly provided in the contract, during the conduct of these trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the Contracting Officer; any such dock or sea trial shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the contract plans and specifications have been met. The Contractor shall also be responsible for the care, installation and removal of any instruments and apparatus furnished by the Government for such trials.

(End of Clause)

1352.217-93 Delays.

As prescribed in 1317.7001(a), insert the following clause:

Delays (CAR 1352.217-93) (1986)

When during the performance of this contract the Contractor is required to delay the work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, fueling, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment may be made in the contract price pursuant to the Changes clause.

(End of Clause)

1352.217-94 Minimization of Delay Due to Government Furnished Property.

As prescribed in 1317.7001(a), insert the following clause:

Minimization of Delay Due to Government Furnished Property (CAR 1352.217-94) (1986)

(a) In order to assure timely delivery of the vessel under this contract, it is imperative that delay in delivery of such vessel resulting from late, damaged, or unsuitable Government furnished property be held to an absolute minimum. In order to achieve minimization of delay it is agreed that:

(1) Subject to adjustment as provided in paragraph (b) below, the Government shall deliver each item of Government furnished property to the Contractor on or before the date specified in the contract or, if later, in sufficient time for the contractor to deliver the vessel in accordance with the delivery schedule specified elsewhere.

(2) The Government may forego furnishing any item of Government property to the Contractor. In that event, the Contractor shall prepare the vessel in terms of piping, wiring, structure, foundation, ventilation, and any other preinstallation requirements of the item, so that the work on the vessel may continue without delay and disruption resulting from the absence of the item. If the Government does not furnish an item designated as Government furnished property, the parties may be entitled to an equitable adjustment in the contract price, in accordance with the Changes clause for eliminating the requirement to install the Government property item. But, notwithstanding any other clause of this contract, an adjustment shall not be made in the delivery schedule of any vessel if the Government chooses not to furnish the item on or before the delivery date of the item. If the Government subsequently desires the Contractor to install the item prior to delivery of the vessel, a contract modification shall be executed which takes into account any increase in cost or performance time resulting from the installation.

(b) If the delivery date for the vessel is extended for any reason, the latest date for which the Government must deliver items of Government property shall be deemed to be extended by an equal number of days unless (i) the Contracting Officer agrees in writing that ealier delivery of the items is required, in which case some or all of the Government property shall be extended as agreed rather than on a day-for-day basis, or (ii) a Government property item was the exclusive cause for the extension of the delivery date of the vessel in which case the latest date by which the Government must deliver the item shall not be deemed to be extended unless the parties agree otherwise.

(c) The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the time stated in the specification or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. If the Government furnished property is not delivered to the Contractor by such time and the Contractor makes a timely written request, the Contracting Officer shall determine if an equitable adjustment is appropriate. If determined appropriate, the Contracting Officer shall equitably adjust the delivery or performance date, the specifications, the price, or any other contractual provision affected by any such delay, in accordance with the Changes clause.

(d) The Government Property and Minimization of Delay Due to Government Furnished Property clauses contain exclusive remedies. The Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(End of Clause)

1352.217-95 Additional Provisions Relating to Government Property.

As prescribed in 1317.7001(a), insert the following clause:

Additional Provisions Relating to Government Property (Car 1352.217-95) (1986)

(a) Notwithstanding any requirements to the contrary for the furnishing of material by the Government which may appear in plans, drawings, or other data, the Government shall furnish only the material specifically listed in the specifications as Government furnished property. Any material required for the performance of the contract which does not appear in the specifications as Government furnished shall be furnished by the Contractor.

(b) The Contracting Officer may increase the amount of material to be furnished by the Government and the contract shall be equitably adjusted in accordance with the Government Property clause.

(c) Unless otherwise specifically directed by the Contracting Officer, nonreusable crates and other nonreusable packaging in which Government material is delivered to the Contractor shall become the property of the Contractor upon removal of the packaged or crated material.

(d) Any packaging in preparation for delivery or for other disposal of Government property by the Contractor at the direction or authorization of the Contracting Officer pursuant to paragraph (i) of the Government Property clause shall be provided for by change order and an appropriate adjustment shall be made in the contract price in accordance with the Changes clause.

(e) The vessel, its equipment, movable stores, cargo and other ship's material are not designated Government furnished property under Government Property clause.

(End of Clause)

1352.217-96 Liability and Insurance.

As prescribed in 1317.7001(a), insert the following clause:

Liability and Insurance (Car 1352.217-96) (1986)

(a) The Contractor shall exercise reasonable care and use its best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall be responsible for and make good at its own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, movable stores and cargo, and Government owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the Contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the Contractor can affirmatively show that such loss or damage was due to causes beyond the Contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government, or which loss or damage the Contractor by exercise of reasonable care was unable to prevent. However, the Contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless (i) the loss or damage is discovered within 90 days after redelivery of the vessel and (ii) loss or damage is affirmatively shown to be the result of the fault or negligence of the Contractor. To induce the Contractor to perform the work for the compensation provided, it is specifically agreed that the Contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and Government owned materials and equipment shall in no event exceed the sum of $300,000. As to the Contractor, the Government assumes the risk of loss or damage to the vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of $300,000. This assumption of risk includes but is not limited to loss or damage from negligence of whatsoever degree of the Contractor's servants, employees, agents or subcontractors but specifically excludes loss or damage from willful misconduct or lack of good faith on the part of the Contractor's directors, officers and any of its managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operation at any one plant. However, as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action. Nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendant in any action against the Contractor brought to determine the Contractor's liability, or for any other purpose.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, the vessel and its owners, against all suits, actions, claims, costs or demands (including without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property

damage) to which the Government, its agencies and instrumentalities, the vessel or its owner may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, the vessel or its owners, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, its or their servants, agents or employees; provided that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. With respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law; provided that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause. In addition, the Contractor shall at its own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the Contractor against its liability as ship repairer in the amount of $300,000, or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on which work is performed. The Contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies. However, at the discretion of the Contracting Officer, such insurance need not be procured whenever the job order requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering its employees engaged in the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged in the work. The Contractor shall provide evidence of insurance as required by the Government.

(e) The Contractor shall receive no allowance in the contract price for inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of the damage shall be given by the Contractor to the Contracting Officer. The notice shall contain full particulars of the loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence; obtaining the attendance of witnesses and in the conduct of suits. The Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in this assistance. Except at its own cost, the Contractor shall not voluntarily make any payment, assume any obligation or incur any expense not imperative for the protection of the vessel or vessels at the time of the event.

(End of Clause)

1352.217-97 Title.

As prescribed in 1317.7001(a), insert the following clause:

Title (Car 1352.217-97) (1986)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part hereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the contract for the performance of the work. However, the Contractor is fully responsible for all such Contractor furnished materials and equipment or the restoration of any damaged work. It is expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the Contracting Officer at any time during the performance of the contract, all such Contractor furnished materials and equipment not incorporated in any vessel or part thereof, or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of Clause)

1352.217-98 Discharge of Liens.

As prescribed in 1317.7001(a), insert the following clause:

Discharge of Liens (Car 1352.217-98) (1986)

The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under any contract hereunder with respect to the machinery, fittings, equipment or materials for any of the vessels. If any such lien or right in rem is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of Clause)

1352.217-99 Department of Labor Occupational Safety and Health Standards for Ship Repairing.

As prescribed in 1317.7001(a), insert the following clause:

Department of Labor Occupational Safety and Health Standards for Ship Repairing (Car 1352.217-99) (1986)

Attention of the Contractor is directed to the Occupational Safety and Health Act of 1970 (29 USC 651-678), and to the Occupational Safety and Health Standards for Shipyard Employment (29 CFR 1915), promulgated under Public Law 85-742, amending Section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 USC 941), and adopted by the Department of Labor as occupational safety or health standards under Section 6(a) of the Occupation Safety and Health Act of 1970 (29 CFR 1910.13). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States, including any dry dock or marine railway. Nothing contained in this contract shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of Clause)

1352.217-100 Regulations Government Asbestos Work.

As prescribed in 1317.7001(a), insert the following clause:

Regulations Governing Asbestos Work (Car 1352.217-100) (1986)

If asbestos is encountered, the Contractor shall follow the regulations contained in 29 CFR 1910.1001 (OSHA, Chapter XVII).

(End of Clause)

1352.217-101 Complete and Final Equitable Adjustments.

As prescribed in 1317.7001(a), insert the following clause:

Complete and Final Equitable Adjustments (Car 1352.217-101) (1986)

Whenever the Contractor submits any claim for an equitable adjustment attributable to any fact or circumstance regarded as a change order whether formal or "constructive," under the Changes clause or any other clause of this contract, such claim shall include all adjustments (including but not limited to adjustments arising out of delays or disruptions or both caused by such change order) to which the Contractor is entitled under this contract. The foregoing requirement shall not preclude the Contractor from revising or resubmitting the claim prior

to agreement upon the equitable adjustment for the change order. However, unless otherwise expressly agreed in the aforesaid supplemental agreement, the Contractor shall waive any right under the Changes clause or any other clause of this contract to further equitable adjustments attributable to such facts or circumstances giving rise to the claim upon the execution of the supplemental agreement setting forth the equitable adjustment. In any event, such right shall be deemed to be waived.

(End of Clause)

1352.217-102 Government Review, Comment, Acceptance and Approval.

As prescribed in 1317.7001(a), insert the following clause:

Government Review, Comment, Acceptance, and Approval (Car 1352.217-102) (1986)

(a) Documentation, including drawings and other engineering products and reports, required by the contract to be submitted for review, comment, acceptance or approval will be acted upon by the Government within 30 calendar days after receipt by the Government, unless another period of time is specified.

(b) Review, comment, acceptance or approval by the Government as required under this contract and applicable specifications shall not relieve the Contractor of its obligation to comply with the specifications and with all other requirements of the contract, nor shall it impose upon the Government any liability it would not have had in the absence of such review, comment and acceptance or approval.

(End of Clause)

1352.217-103 Access to the Vessel(s).

As prescribed in 1317.7001(a), insert the following clause:

Access to the Vessel(s) (Car 1352.217-103) (1986)

(a) As authorized by the Contracting Officer, a reasonable number of officers, employees and associates of the Government, or other prime Contractors with the Government and their subcontractors shall have admission to the plant and access to the vessel(s) at all reasonable times to perform and fulfill their respective obligations to the Government on a noninterference basis. The Contractor shall make reasonable arrangements to provide access for these personnel to office space, work areas, storage or shop areas, and other facilities and services, reasonable and necessary to performance of their respective duties. All such personnel shall comply with Contractor rules and regulations governing personnel at its shipyard, including those regarding safety and security.

(b) The Contractor further agrees to allow a reasonable number of officers, employees, and associates of offerors on other contemplated work, the same privileges of admission to the Contractor's plant and access to the vessel(s) on a noninterference basis subject to Contractor rules and regulations governing personnel in its shipyard, including those regarding safety and security.

(End of Clause)

1352.217-104 Documentation of Requests for Equitable Adjustment.

As prescribed in 1317.7001(a), insert the following clause:

Documentation of Requests for Equitable Adjustment (Car 1352.217-104) (1986)

(a) For the purpose of this clause, the term "change" includes not only a change made pursuant to a written order designated as a "change order" but also any act or omission to act on the part of the Government where a request is made for equitable adjustment.

(b) Whenever the Contractor requests or proposes an equitable adjustment to the contract price of not more than $100,000, for a change or an act or omission on the part of the Government, the request shall include a breakdown of the price adjustment in such form and supported by such reasonable detail as the Contracting Officer may request. As a minimum, the Contractor shall provide a breakdown of direct labor hours, labor dollars, overhead, material, subcontracts, contingencies and profit for each change and a justification for any extension of delivery date.

(c) Whenever the Contractor requests or proposes an equitable adjustment of $100,000 gross (aggregate increases and/or decreases) or more to the price of the contract for a change made pursuant to a written order designated as a "change order" or whenever the Contractor requests an equitable adjustment in any amount for any other act or omission to act on the part of the Government, the proposal supporting such request shall contain the following information for each individual item or element of the request:

(1) A description of (i) the unperformed work required by the contract before the change which has been deleted by the change and (ii) the work deleted by the change that already has been completed in whole or in part. The description shall include a list of components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement, or installation of such property shall be indicated. As separate description shall be furnished for design and production work. Items of raw material, purchased parts, components, and other identifiable hardware which are made excess by the change, and which are not to be retained by the Contractor, are to be listed for later disposition;

(2) A description of the work necessary to undo work already completed which has been deleted by the change;

(3) A description of the work substituted or added by the change that was not required by the terms of the contract before the change. A list of components and equipment (not bulk material or items) involved, should be included. A separate description shall be furnished for design work and production work;

(4) A description of any interference or inefficiency encountered in performing the change;

(5) A description of disruption attributable solely to the change, which shall include the following information:

(i) A specific description of each element of disruption which states how the work has been, or will be, disrupted;

(ii) The calendar time period when disruption occured, or will occur;

(iii) The area(s) aboard ship where disruption occurred, or will occur;

(iv) The trade(s) disrupted, with a breakdown of manhours for each trade;

(v) The scheduling of trades before, during, and after the period of disruption;

(vi) A description of measures taken to lessen the disruptive effect of the change.

(6) The delay in delivery attributable solely to the change;

(7) A description of other work attributed to the change;

(8) A narrative statement of the direct causal relationship between any alleged Government act or omission and the claimed result, cross-referenced to the detailed information required above.

(9) A statement setting forth a comparative enumeration of the amounts "budgeted" for the cost elements, including the materials cost, labor hours, and indirect costs pertinent to the change estimated by the Contractor in preparing his initial and ultimate proposal(s) for this contract, and the amounts claimed to have been incurred, or projected to be incurred, corresponding to each such "budgeted cost" element.

(d) In addition to the information required by paragraph (b), each proposal submitted in support of a claim for equitable adjustment in the amount of $100,000 or more under any provision of this contract shall contain a duly executed Standard Form 1411 (Contracting Pricing Proposal) for each individual claim item. The submitted Standard Form 1411 shall fully comply with Section 15.804-6 of the Federal Acquisition Regulation and any instructions on the reverse side of the form.

(e) In addition to the information required by paragraph (c), each proposal submitted in support of a claim for equitable adjustment under any provision of this contract shall contain a duly executed SF-1411 (Contracting Pricing Proposal) for each individual claim item. The submitted SF-1411 shall fully comply with Section 15.804-6 of the Federal Acquisition Regulation and any instructions on the reverse side of the form.

(f) Individual claims for equitable adjustment may not encompass all of the factors listed in (c) above. Accordingly, the Contractor is required to set forth in his proposal information only with respect to those factors which are encompassed in the individual claim for equitable adjustment. In any event, the information furnished hereunder shall be in sufficient detail to permit the Contracting Officer to correlate the claimed increased costs or delay in delivery set forth in the SF-1411 (Contracting Pricing Proposal) with the information submitted pursuant to paragraph (c).

(End of Clause)

1352.217-105 Change Proposals.

As prescribed in 1317.7001(a), insert the following clause:

Change Proposals (Car 1352.217-105) (1986)

(a)(1) In addition to issuing changes under the Changes clause, the Contracting Officer may propose changes within the general scope of this contract, as set forth below. Within 10 days from the date of receipt of any such proposed change, or within such further time as the Contacting Officer may allow, the Contractor shall submit a scope of work, plans and sketches for the proposed change, and his estimate of: (i) the cost, (ii) the effect on the deivery date of the vessel, and (iii) the status of work on the ship affected by the proposed change. The proposed scope of work and estimate of the cost shall be in such form and supported by such reasonably detailed information as the Contracting Officer may require. (2) The Contractor's estimate shall be a firm offer for 30 days from receipt thereof by the cognizant Contracting Officer, unless extended by mutual consent. Within the time limit, the Contractor agrees to either (i) enter into a supplemental agreement covering the estimate as submitted or (ii) begin good faith negotiations at the request of the Contracting Officer, leading to the execution of a bilateral supplemental agreement, if the estimate as submitted is not satisfactory to the Contracting Officer. In either case, the supplemental agreement shall include an equitable adjustment for the preparatory work set forth above.

(b) Pending execution of a bilateral agreement or the direction of the Contracting Officer pursuant to the Changes clause, the Contractor shall proceed diligently with contract performance without regard to the effect of any such proposed change.

(c) Concurrently with the submission of any Change Proposal under this contract in which the proposed aggregate cost is $100,000 or greater, the Contractor shall submit to the Contracting Officer a completed Standard Form 1411. At the time of agreement upon the price of the Change Proposal, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of Clause)

1352.217-106 Lay Days.

As prescribed in 1317.7001(a), insert the following clause:

Lay Days (Car 1352.217-106) (1986)

(a) Lay day time will be paid for by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railways as a result of any Government change that involves work in addition to that required under the basic contract.

(b) No cost for lay day time shall be paid until all accepted items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs except for the direct cost of performing the changed work.

(End of Clause)

1352.217-107 Changes-Ship Repair.

As prescribed in 1317.7001(a), insert the following clause:

Changes—Ship Repair (Car 1352.217-107) (1986)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract, in any one or more of the following:

(1) Drawings, designs, or specifications, when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications;

(2) Method of shipment or packing;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Other requirements within the general scope of the contract.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must submit any proposal for adjustment (hereafter referred to as proposal) under this clause within 10 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of Clause)

1352.217-108 Default-Ship Repair.

As prescribed in 1317.7001(a), insert the following clause:

Default—Ship Repair (Car 1352.217-108) (1986)

(a) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to —

(1) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(2) Make progress, so as to endanger performance of this contract; or

(3) Perform any of the other provisions of this contract.

(b) If the Government terminates this contract in whole or in part, it may arrange for completion of the work in the manner the Contracting Officer considers appropriate. The Contracting Officer may designate any plant or plants for completion of the work, including the Contractor's plant or plants. If the work is to be completed at the Contractor's plant, the Government may use all tools, machinery, facilities and equipment of the Contractor which the Contracting Officer determines to be necessary. The Contractor will be liable to the Government for any excess costs, other than those costs attributable to changes in the plans or specifications made after the termination date. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partically completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and

obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

1352.217-109 Insurance Requirements.

As prescribed in 1317.7001(b), insert the following clause:

Insurance Requirements (Car 1352.217-109) (1986)

(a) The Contractor shall procure and thereafter maintain the following insurance:

(1) Ship repairer's legal liability insurance to insure the risks described in paragraph (b) of the Liability and Insurance clause. Thia insurance shall be for $300,000.

(2) Comprehensive general liability insurance and automobile insurance to insure the risks described in paragraph (c) of the Liability and Insurance clause. This insurance shall be for $300,000 on account of any one accident or occurrence with respect to each vessel, boat, and/or barge upon which work is performed. The Contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies.

(3) Full coverage in accordance with the State Workmen's Compensation law; and

(4) Full coverage in accordance with the United States Longshoremen's and Harbor Worker's Act.

(b) As evidence that it has obtained the insurance specified in (a) above, the Contractor shall furnish the Contracting Officer with a certificate or certificates executed by an agent of the insurer authorized to execute such certificates. Such certificates shall be furnished prior to commencement of the work. Each certificate shall state that (name of insurer) has insured (name of Contractor) awarded contract number ———— for repair/ alteration of (name of vessel) in accordance with the Libability and Insurance clause and the Insurance Requirements clause contained herein. Each certificate shall set forth that each policy of insurance represented thereby will expire on (date) and that each such policy contains the following clause:

"It is agreed that in the event of cancellation, or any material change in the policy adversely affecting the interest of the Government in this insurance 30 days prior written notice will be given to the Contracting Officer."

(End of Clause)

1352.217-110 Guarantees.

As prescribed in 1317.7001(c), insert the following clause:

Guarantees (Apr 1982) (Car 1352.217-110) (1986)

In case any work done or materials furnished by the Contractor under this contract on or for any vessel or the equipment thereof shall, within 90 days from the date of redelivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government in writing, be corrected and repaired by the Contractor or at Contractor expense to the satisfaction of the Contracting Officer. However, the Government shall be entitled to rely upon any guarantee secured by the Contractor or any subcontractor covering work done on materials furnished which exceeds the 90-day period until the expiration. Also, with respect to any individual work item identified and listed as incomplete at the redelivery of the vessel, the guarantee period shall run from the date of completion of such item. If and when practicable, the Government shall afford the Contractor an opportunity to effect such corrections and repairs itself. But, when it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, the corrections and repairs shall be made at Contractor expense at other Government designated locations. Where corrections and repairs are to be made by other than the Contractor, due to non-return of the vessel to the Contractor, the Contractor's liability may be discharged by an equitable deduction in the price of the contract. The Contractor's liability shall only extend for an additional 90-day guarantee period on those defects or deficiencies which it corrected and in no event to those for which payment was made. However, this clause does not limit the responsibility or relieve tha liability of the Contractor under the Liability and Insurance clause. At the Contracting Officer's option, defects and deficiencies may be left in their uncorrected condition. In that event, the Contractor and the Contracting Officer shall agree on an equitable deduction from the contract price. If the Contractor and the Contracting Officer fail to agree upon an equitable deduction from the contract price, the dispute shall be determined in accordance with the Disputes clause.

(End of Clause)

1352.217-111 Temporary Services.

As prescribed in 1317.7001(d), insert the following clause:

Temporary Services (Car 1352.217-111) (1986)

(a) Temporary services are services incidental to the performance of work which are required in the schedule or specifications to be provided by the contractor. Temporary services may include the furnishing of water, electricity, telephone service, toilet facilities, garbage removal, office space, parking places, or similar facilities as specified in the schedule or specifications.

(b) If performance time is extended due to Government caused delay or causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall have the right to request an equitable adjustment for providing temporary services in excess of the number of estimated days contained in the schedule. Any such equitable adjustment shall not exceed the amount obtained by multiplying the number of excess days by the contractor's unit price contained in the schedule for this item.

(End of Clause)

1352.217-112 Self-Insurance Information.

As prescribed in 1317.7001(e), insert the following provision:

Self-Insurance Information (Car 1352.217-112) (1986)

An offeror who proposes to self-insure for any or all of the risks set forth in the Liability and Insurance clause and the Insurance Requirements clause shall submit satisfactory evidence to permit the Contracting Officer to determine that the offeror's assets are sufficient for the risks set forth in such clauses. The offeror shall submit with its offer 2 certified copies of documents listing its assets and liabilities and other information deemed necessary by the offeror or required by the Contracting Officer. For approval of self-insurance under the State Workmen's Compensation Law and the United States Longshoremen's and Harbor Workers' Act, evidence of qualifications as a self-insurer under the applicable compensation statute must be furnished to the Contracting Officer.

(End of Provision)

[FR Doc. 86-19914 Filed 9-3-86; 8:45 am]
BILLING CODE 3510-17-M

Notices

Federal Register
Vol. 51, No. 171
Thursday, September 4, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 29, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- *Agricultural Marketing Service*

Application for Permit to Export Tobacco Seed or Plants
TB–31
On occasion
Small businesses or organizations; 85 responses; 14 hours; not applicable under 3504(h)
Larry L. Crabtree (202) 447–3489

- *Animal and Plant Health Inspection Service*

Witchweed Mail Survey
Annually
Farms; 2,800 responses; 1,400 hours; not applicable under 3504(h)
Anita G. McGrady (301) 436–7799

- *Animal and Plant Health Inspection Service*

Prohibited and restricted importation of meats, animals, animal byproducts, poultry, organisms and vectors into the United States
VS–16–3, VS–16–25
Recordkeeping, On occasion, Quarterly, Annually
State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 3,913 responses; 7.047 hours; not applicable under 3504(h)
H. A. Kryder (301) 436–8695

New

- *Food and Nutrition Service*

Study of Temporary Emergency Food Assistance Program (TEFAP) Recipients
One-time data collection
Individuals or households; State or local governments; Non-profit institutions; Small businesses or organizations; 2,124 responses; 704 hours; not applicable under 3504(h)
Linda Esrov (703) 756–3115

- *Food and Nutrition Service*

Child Care Food Program/On-site Study and Telephone Survey of Parents
One time only
Non-profit institutions; Small businesses or organizations; 2,539 responses; 1,337 hours; not applicable under 3504(h)
Jerry Burns (703) 756–3115

- *Food and Nutrition Service*

Model Food Stamps, Periodic Reporting, Notice of Late/Incomplete Reporting, Adequate Notice, Sponsored Aliens, Duplication Participation, and Disqualified Recipient Report
FNS 385, 386, 387, 394, 396, 437, 439, 441, 442, 524
Recordkeeping, On occasion, Monthly, Quarterly, Semi-annually, Annually
Individuals or households; State or local governments; 90,087,783 responses; 17,120,386 hours; not applicable under 3504(h)
Peggy Hickman (703) 756–3449

Revision

- *Agricultural Stabilization Conservation Service*

Cooperative Marketing Association
CCC–120, CCC–477–3, CCC–699, CCC–846, CCC–846–1, CCC–846–2, CCC–847, CCC–848, CCC–849, CCC Form Cotton G
Recordkeeping, On occasion, Annually, As requested
Farms; Non-profit institutions; 25,129 responses, 73,713 hours; not applicable under 3504(h)
Dale Wilson (202) 447–5396

- *Agricultural Stabilization and Conservation Service*

7 CFR Part 1475, Emergency Feed Program
ASCS–645, ASCS–646, ASCS–647, ASCS–648
As assistance is needed
Farms; 51,000 responses; 37,667 hours; not applicable under 3504(h)
Harry Millner (202) 475–3605

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 86–19926 Filed 9–3–86; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Review of the United States Sugar Import Quota System

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: This notice reviews the U.S. sugar import quota system established by Presidential Proclamation 4941 of May 5, 1982. (47b FR 19661.)

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group,

Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6603, South Building, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION:

I. Introduction

In accordance with paragraph (f) of Headnote 3, subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS), the Secretary of Agriculture has consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies on the operation of the sugar import quota system established under the authority of Headnotes 2 and 3 of subpart A of part 10 of schedule 1 of the TSUS, the now-expired International Sugar Agreement, 1977, Implementation Act, and section 201 of the Trade Expansion Act of 1962. After reviewing the operation of the sugar import quota system, the Secretary of Agriculture has determined that the system should be continued in effect in order to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT). The rationale for this decision is based on the following analysis.

A. Current World and U.S. Sugar Market Situation

World sugar consumption for 1985/86 exceeded production for the first time since the 1979/80 crop year. This will lead to a drawdown in ending stocks, the expectation of which has caused a moderate strengthening in world sugar prices. World output of centrifugal sugar in 1985/86 is estimated at 96.5 million metric tons, while consumption is projected at around 98.0 million metric tons. Ending stocks should decline by 1.5 million metric tons, but will constitute about 45 percent of projected consumption. The continued high stock levels will in the short term have a restraining effect on the recent moderate recovery in world prices. Accordingly, although the world price (f.o.b.s., Carribbean, No. 11 spot contract as published by the New York Coffee, Sugar and Cocoa Exchange) averaged 6.36 cents per pound during the December 1, 1985 through July 31, 1986 period, compared to 3.98 cents per pound during the previous quota period, the average monthly price has declined recently from 6.36 cents per pound in April 1986 to 5.62 cents per pound in July 1986.

U.S. centrifugal sugar production is estimated at 6.02 million short tons (5.46 million metric tons), and domestic utilization is expected to be 6.03 million short tons (7.28 million metric tons).

During the period December 1, 1985 through July 25, 1986, 1.12 million short tons were charged against the quotas for the 40 countries which have allocations totalling 1,845,000 short tons. The domestic price of raw sugar (c.i.f., duty and fee paid, No. 12 contract nearby futures, December 1, 1985 through July 31, 1986, as published by the New York Coffee, Sugar and Cocoa Exchange) averaged 20.60 cents per pound for the first eight months of the quota year.

B. Outlook for World and U.S. Sugar Market

After the decline in ending stocks in 1985/65, world centrifugal sugar production and consumption may be close to balanced in 1986/87. Prospective production increases around the world coupled with a moderate recovery in consumption indicate that there will not be a dramatic change in world stocks in 1986/87. However, large world sugar stocks will continue to prevent a rapid recovery in prices. This is reflected in world sugar futures prices which currently range from 6.2 cents per pound for contracts due in September 1986 to 7.6 cents per pound for contracts due to mature in October 1987.

Given these factors, we anticipate that world prices will remain at levels that make it impossible to achieve market conditions that give due consideration to the interests of domestic producers in the U.S. sugar market without a continuation of the current sugar import quota system.

II. Modification of Sugar Import Quota Year

Paragraph (d) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS authorizes the Secretary, after appropriate consultations, to amend the time period for which the quantitative limitations established by paragraph (c) are applicable if he determines that such an amendment is appropriate to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties of the GATT.

Accordingly, on March 4, 1986, after appropriate consultations, the Secretary amended the sugar import quota year from the period December 1, 1985 through September 30, 1986 to the period December 1, 1985 through December 31, 1986 (51 FR 7475). This modification was designed to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Notice

In accordance with paragraph (f) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS, I have determined that the continued operation of paragraphs (b), (c), (d) and (e) of Headnote 3 gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT, and that paragraph (g) of that headnote, which would allow entry of sugar into the United States of not to exceed 6.90 million short tons, would not give due consideration to such interests.

Signed at Washington, DC, on August 28, 1986.

Peter C. Myers,

Secretary of Agriculture.

[FR Doc. 86–19674 Filed 8–29–86; 11:12 am]

BILLING CODE 3410–10–M

Commodity Credit Corporation

1986 Wheat, Feed Grains (Corn, Sorghum, Barley, Oats, and Rye), Rice and Upland Cotton Programs; Determination Regarding the Proclamation of 1986-Crop Program Provisions for Wheat, Feed Grains, Rice and Upland Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1986-crop program provisions for wheat, feed grains, rice and upland cotton.

SUMMARY: The purpose of this notice is to affirm the determinations previously made by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), with respect to the 1986 price support and production adjustment programs for wheat, feed grains (corn, sorghum, barley, oats, and rye), rice, and upland cotton.

EFFECTIVE DATE: September 4, 1986.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7924. The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA

procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.058
Rice Production Stabilization	10.065
Upland Cotton Production Stabilization	10.052
Commodity Loans and Purchases	10.051

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

General Information

The determinations previously made by the Secretary with respect to the 1986 price support and production adjustment programs were that: (1) The loan and purchase levels per bushel, unless otherwise indicated, shall be $2.40 for wheat, $1.92 for corn, $1.82 ($3.25 per cwt.) for sorghum, $1.56 for barley, $.99 for oats and $1.63 for rye, $7.20 per cwt. for rice, and $.55 per pound for upland cotton; (2) the established (target) price levels (unchanged from 1985) per bushel, unless otherwise indicated, are $4.38 for wheat, $3.03 for corn, $2.88 ($5.14 per cwt.) for sorghum, $2.60 for barley, $1.60 for oats, $0.81 per pound for upland cotton and $11.90 per cwt. for rice; (3) acreage reduction programs will be in effect at the following percentages for wheat, 22½ percent; feed grains, 17½ percent; upland cotton, 25 percent; and rice, 35 percent; (4) 2½ percent paid land diversion programs will be in effect for wheat and feed grains; (5) winter wheat producers are eligible to receive diversion payments on an acreage equivalent to, at their option, either 5 or 10 percent of the wheat base if producers reduce the acreage planted to wheat on the farm for harvest so that it does not exceed 70 or 65 percent, respectively, of the farm's wheat crop acreage base; (6) no set-aside program; (7) haying and grazing will be permitted throughout the year on underplanted acreage devoted to conserving uses or non-program crops considered to be planted to the program crop for purposes of determining the individual farm program acreage under the 50 percent planting provision for all program crops; (8) haying and grazing will be permitted throughout the year on acreage conservation reserve (ACR) for wheat and feed grains, however, for upland cotton and rice haying and grazing on ACR will be permitted but not during any five-consecutive-month period established for a State by the State Committee; (9) wheat and feed grain producers will be able to request up to 40 percent of their estimated deficiency and up to 100 percent of their diversion payments in advance while upland cotton and rice producers may request up to 30 percent of their advance deficiency payments in cash; (10) binding contracts must be executed by producers in order to participate in the 1986 Wheat, Feed Grain, Upland Cotton, and Rice Programs; (11) cross compliance will not be required; (12) offsetting compliance will not be required; (13) farm acreage bases will not be established, and crop acreage base adjustments only will be allowed to reflect crop rotation practices and other factors in determining fair and equitable crop acreage bases; (14) a marketing loan program will not be implemented for the 1986 crop of wheat and feed grains; (15) the Secretary shall implement Plan A for upland cotton since the prevailing adjusted world price for upland cotton was below the upland cotton loan rate at the time of the announcement of the loan rate; (16) inventory protection payments will be made to any one holding free stocks of raw upland cotton on August 1, 1986; (17) inventory reduction options will not be implemented; (18) advance recourse commodity loans will not be available; (19) whether entry will be permitted into the farm-owned reserve will be determined at a later date; (2) barley producers shall be eligible for program payments; (21) malting barley shall not be exempt from the feed grain acreage reduction program; (22) price support loans will not be available for corn silage; and (23) popcorn shall not be considered to be a feed grain for purposes of program participation.

This notice affirms determinations with respect to the following issues:

1. Loan and purchase levels

A. *Wheat.* Section 107D(a)(1) of the 1949 Act provides that the Secretary shall make available to producers loans and purchases for the 1986 crop of wheat, at not less than $3.00 per bushel, as the Secretary determines will maintain the competitive relationship of wheat to other grains in domestic and export markets after taking into consideration the cost of producing wheat, supply and demand conditions, and world prices for wheat. Section 107D(a)(4) provides that if the Secretary determines that the average price received by producers for wheat in the previous marketing year was not more than 110 percent of the loan and purchase level, or that action is necessary to maintain a competitive market position, the Secretary shall reduce the loan and purchase level for the 1986 crop of wheat by at least 10 percent but not more than 20 percent.

B. *Feed grains.* Section 105C(a)(1) of the 1949 Act provides that the Secretary shall make available to producers loans and purchases for the 1986 crop of corn at such a level, at not less than $2.40 per bushel, as the Secretary detemines will encourage the exportation of feed grains and not result in excessive total stocks of feed grains after taking into consideration the cost of producing corn, supply and demand conditions, and world prices for corn. Section 105C(a)(3) provides that if the Secretary determines that the average price received by producers for corn in the previous marketing year was not more than 110 percent of the loan and purchase level or that action is necessary to maintain a competitive market position, the Secretary shall reduce the loan and purchase level for the 1986 crop of corn by at least 10 percent but not more than 20 percent. Section 105C(a)(6) provides that the Secretary shall make available to producers loans and purchases for the 1986 crops of grain sorghum, barley, oats, and rye at such levels as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value of such commodity in relation to corn and certain other factors specified in section 401(b) of the 1949 Act.

C. *Rice.* Section 101A(a)(1) of the 1949 Act provides that the Secretary shall make available to producers loans and purchases for the 1986 crop of rice at a level that is not less than $7.20 per hundredweight.

D. *Upland cotton.* Section 103A(a)(1) of the 1949 Act provides that the Secretary shall, on presentation of warehouse receipts reflecting accrued storage charges of not more than 60 days, make available for the 1986 crop of upland cotton to producers nonrecourse loans for a term of 10 months from the first day of the month in which the loan is made at such level, per pound, as will reflect for Strict Low Middling one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States a level that is not less than 55 cents per pound.

2. Established (target) price

A. *Wheat.* Section 107D(c)(1)(G) of the 1949 Act provides that the established established price for the 1986 crop of wheat shall not be less than $4.38 per bushel.

B. *Feed grains (corn, sorghum, barley, and oats).* Section 105C(c)(1)(E) of the 1949 Act provides that the established price for the 1986 crop of corn shall not be less than $3.03 per bushel. Section 105C(c)(1)(F) of the 1949 Act provides that the payment rate for grain sorghum, oats, and, if designated by the Secretary, barely, shall be such rate as the Secretary determines fair and reasonable in relation to the rate at which payments are made available for corn.

C. *Rice.* Section 101A(c)(1)(D) of the 1949 Act provides that the established price for the 1986 crop of rice shall not be less than $11.90 per hundredweight.

D. *Upland cotton.* Section 103A(c)(1)(D) of the 1949 Act provides that the established price for the 1986 crop of upland cotton shall not be less than $0.81 per pound.

3. Acreage reduction program (ARP) and paid land diversion program (PLD)

A. *Wheat.* Sections 107D(f) (1) and (2) of the 1949 Act authorizes the Secretary to provide for an acreage reduction program if the Secretary determines that the total supply of wheat will be excessive, in absence of such program, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Section 107D(f)(1)(B) of the 1949 Act provides that, if the Secretary estimates that the quantity of wheat on hand in the United States on the first day of the marketing year for that crop (not including any quantity of wheat of the 1986 crop) will be more than 1.0 billion bushels, that the Secretary shall provide for an acreage limitation program under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the crop reduced by not less than 15 percent nor more than 22½ percent and a land diversion program with in-kind payments under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not less than an amount equivalent to 2½ percent of the wheat crop acreage base, in addtion to any reduction required under the acreage limitation program. The Secretary shall announce any such acreage reduction program for the 1986 crop of wheat as soon as practicable after enactment of the Food Security Act of 1985. Such acreage reduction shall be achieved by applying a uniform percentage reduction to the wheat crop acreage base established for each wheat-producing farm. Except as provided in the inventory reduction provision (see item 13), producers who knowingly produce wheat in excess of the permitted wheat acreage for the farm shall be ineligible for wheat price support loans and purchases, and payments with respect to that farm. In addition, a number of acres on the farm determined by dividing: (1) The product obtained by multiplying the number of acres required to be withdrawn from the production of wheat by the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary shall be devoted to conservation uses, in accordance with regulations issued by the Secretary.

Section 107D(f)(5)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of wheat whether or not: (1) An acreage reduction program or set-aside program of wheat is in effect, or (2) marketing quotas for wheat are in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. Section 107D(f)(5)(B) provides that the Secretary shall implement a land diversion program for the 1986 crop of wheat for producers who plant the 1986 crop of wheat before the announcement by the Secretary of the wheat acreage limitation program for that crop. With respect to such producers, the Secretary shall make crop retirement and conservation payments to any such producer of the 1986 crop of wheat who reduces the acreage on the farm planted to wheat for harvest so that it does not exceed the wheat crop acreage base for the farm less an amount equivalent to 10 percent of the wheat crop acreage base, in addition to any reduction required under an acreage reduction program and devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the wheat crop acreage base. In accordance with section 107D(f)(5)(A), the Secretary has established a paid diversion program for producers of winter wheat who reduce the acreage on the farm planted to wheat for harvest so that it does not exceed the wheat crop acreage base for the farm less an amount equivalent to 5 percent of the wheat crop base, in addition to any reduction required under an acreage reduction program, and devotes to approved conservation uses an acreage of cropland equivalent to the required reduction from the wheat crop acreage base.

B. *Feed grains (Corn, sorghum, barley, and oats).* Sections 105C(f) (1) and (2) of the 1949 Act authorize the Secretary to provide for an acreage reduction program if the Secretary determines that the total supply of feed grains will be excessive, in absence of such program, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Section 105C(f)(1)(B) of the 1949 Act provides that if the Secretary estimates that the quantity of corn on hand in the United States on the first day of the marketing year for that crop (not including any quantity of corn of the 1986 crop) will be more than 2.0 billion bushels, the Secretary shall provide for an acreage limitation program under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the crop reduced by not less than 12½ percent nor more than 17½ percent, and a land diversion program with in-kind payments under which the acreage planted to feed grains for harvest on a farm would be limited to feed grain acreage crop base for the farm for the crop reduced by not less than an amount equivalent to 2½ percent of the feed grain crop acreage base, in addition to any reduction required under the above acreage limitation program. The Secretary shall announce any such acreage reduction program for the 1986 crop of feed grains as soon as practicable after enactment of the Food Security Act of 1985. Such acreage reduction shall be achieved by applying a uniform percentage reduction

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to the feed grain crop acreage base established for each feed grain-producing farm. Except as provided in the inventory reduction provision (see item 13), producers who knowingly produce feed grains in excess of the permitted feed grain acreage for the farm shall be ineligible for feed grain loans, purchases, and payments with respect to that farm. In addition, a number of acres determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of feed grains by the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary on the farm shall be devoted to conservation uses, in accordance with regulations issued by the Secretary.

Section 105C(f)(5)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of feed grains, whether or not an acreage reduction or set-aside program for feed grains is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of feed grains to desirable goals. Such land diversion payment shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

C. *Rice.* Sections 101A(f)(1) and (2) of the 1949 Act authorize the Secretary to provide for an acreage reduction program if the Secretary determines that the total supply of rice will be excessive, in absence of such program, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The Secretary shall announce any such acreage reduction program for the 1986 crop of rice as soon as practicable after enactment of the Food Security Act of 1985. Such acreage reduction shall be achieved by applying a uniform percentage reduction, not to exceed 35 percent, to the rice crop acreage base established for each rice-producing farm. Except as provided in the inventory reduction provision (see item 13), producers who knowingly produce rice in excess of the permitted rice acreage for the farm shall be ineligible for rice loans, purchases, and payments with respect to that farm. In addition, a number of acres on the farm determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the reproduction of rice times the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary shall be devoted to conservation uses, in accordance with regulations issued by the Secretary.

Section 101(f)(4)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of rice, whether or not an acreage limitation program for rice is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of rice to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

D. *Upland cotton.* Section 103A(f)(1) and (2) of the 1949 Act authorize the Secretary to provide for an acreage reduction program if the Secretary determines that the total supply of upland cotton will be excessive, in the absence of such program, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The Secretary shall announce any such acreage reduction program for the 1986 crop of upland cotton as soon as practicable after enactment of the Food Security Act of 1985. Such acreage reduction shall be achieved by applying a uniform percentage reduction (not to exceed 25 percent) to the upland cotton crop acreage based established for each upland cotton-producing farm. Except as provided in the inventory reduction provision (see item 13), producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm shall be ineligible for upland cotton loans, purchases, and payments with respect to that farm. In addition, a number of acres on the farm determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton by the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary shall be devoted to conservation uses, in accordance with regulations issued by the Secretary.

Section 103A(f)(4)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of upland cotton, whether or not an acreage limitation program for upland cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of upland cotton to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

4. *Set-aside program.* Sections 107D(f)(1) and (3) and 105C(f)(1) and (3) of the 1949 Act provide that the Secretary may provide for a set-aside program if it is determined that the total supply of wheat or feed grains, in the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency.

5. Haying and Grazing

A. *Fifty percent planting provision.* Sections 107D(c)(1), 105C(c)(1), 103A(c)(1), and 101A(c)(1) of the 1949 Act provide that for the 1986 crops of wheat, feed grains, upland cotton, and rice the Secretary shall permit, at the request of the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of acreage otherwise required to be devoted to conservation uses or nonprogram crops to be considered to be planted to the program crop for purposes of determining the individual farm program acreage in such State to be devoted to haying and grazing. Haying and grazing shall not be permitted if the Secretary determines that haying and grazing would have an adverse economic effect.

B. *Designated acreage conservation reserve.* Sections 107D(f)(4), 105C(f)(4), 101A(f)(3) and 103A(f)(3) of the 1949 Act provide that for the 1986 crops of wheat, feed grains, upland cotton, and rice the Secretary shall permit, at the request of the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage diverted from production by participating producers in such State to be devoted to haying and grazing in the

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case of the 1986 crops of wheat, feed grains, upland cotton, and rice. Haying and grazing shall not be permitted for the 1986 crops of rice and upland cotton during any 5-consecutive-month period that is established for such crop for a State by the State committee. Haying and grazing shall be permitted for the 1986 crops of wheat and feed grains during not less than 5 of the principle growing months that is established for such crop for a State by the State committee.

6. Advance Deficiency and Land Diversion Payments

Section 107C of the 1949 Act provides that, if the Secretary establishes an acreage reduction or acreage set-aside program for wheat, feed grains, upland cotton, or rice and determines that deficiency payments will likely be made for such crop, that the Secretary shall make advance deficiency payments available to producers who agree to participate in such program. Such payments shall be made available in such amounts as the Secretary determines appropriate to encourage adequate participation in such program, except that such amount may not exceed an amount determined by multiplying: (1) The estimated farm program acreage, by (2) the farm program payment yield for the crop, by (3) 50 percent of the projected program payment rate, as determined by the Secretary. If the Secretary makes land diversion payments under the 1949 Act to assist in adjusting the total national acreage of crops of wheat, feed grains, upland cotton, or rice to desired levels, the Secretary may make at least 50 percent of such payments available to producers as soon as possible after the producer agrees to undertake the diversion of land in return for such payments.

7. Binding Contracts

The Secretary may require that program contracts between producers and CCC be binding. These contracts may also provide for liquidated damages in the event producers do not fulfill the terms and conditions of the contracts.

8. Cross and Offsetting Compliance Requirements

Sections 107D(n)(1–2), 105C(n)(1–2), 103A(n)(1–2), and 101A(n)(1–2) of the 1949 Act provide with respect to wheat, feed grains, upland cotton and rice, that the Secretary may not require as a condition of eligibility for loans, purchases, or payments, compliance on a farm with the terms and conditions of any other commodity program (strict cross compliance). However, if an ALP is established for a crop of wheat, feed grains, upland cotton, or rice, the Secretary may require that, as a condition of eligibility of producers on a farm for loans, purchases, or payments for such crops, the acreage planted for harvest on the farm to such commodities and ELS cotton, if an ALP is in effect for such crops, shall not exceed the crop acreage base for that commodity. This requirement is referred to as limited cross compliance.

Sections 103A(n)(3) and 101A(n)(3) which are applicable to upland cotton and rice provide that the Secretary may not require producers on a farm, as a condition of eligibility for loans, purchases, or payments to comply with the terms and conditions of the upland cotton and rice programs with respect to any other farm operated by such producers (offsetting compliance). No similar requirements are applicable to wheat and feed grains. However, in accordance with sections 107D(i) and 105C(i) of the 1949 Act, the Secretary may issue regulations the Secretary determines necessary to carry out the wheat and feed grains programs. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in which they have an interest were either in compliance with program requirements or that the acreages of wheat or feed grains planted to harvest on each of such farms did not to exceed the wheat or feed grain crop acreage base established for such farms.

9. Establishment of Acreage Bases

Section 503 of the 1949 Act provides that with respect to the 1986 crop year, the Secretary may forego the establishment of farm acreage bases for the 1986 crop year. Section 503 also provides that the county committee, in accordance with regulations prescribed by the Secretary, shall determine the farm acreage base for a farm for a crop year. Such farm bases shall include the number of acres equal to the sum of the crop acreage bases for the farm. Section 504 of the 1949 Act provides that the Secretary may make adjustments to reflect crop rotation practices and to reflect other factors as the Secretary determines should be considered in determining a fair and equitable crop acreage base. Section 505 of the 1949 Act provides that the Secretary may provide for an upward adjustment of any crop acreage base for any farm for any crop year. Such adjustment may not exceed the number of acres that is equal to 10 percent of the farm acreage base for such farm for such crop year. Any upward adjustment in a crop acreage base must be offset by an equivalent downward adjustment in one or more other crop acreage bases established for the farm for such crop year. The Secretary may suspend, on a nationwide basis, any limitation with respect to the crop acreage base for any program crop if the Secretary determines that: (1) A short supply or other similar emergency situation exists with respect to the program crop, or (2) market factors exist that require the suspension of the limitation to achieve the purposes of the program.

10. Marketing Loans

A. *Wheat and feed grains.* Sections 107D(a)(5) and 105C(a)(4) of the 1949 Act provide that the Secretary may permit a producer to repay a price support loan made with respect to a crop of wheat or feed grains at a level that is the lesser of: (1) The determined wheat or feed grain price support loan levels or, (2) the higher of: (a) 70 percent of such levels; (b) if such loan levels for wheat or feed grains were reduced, 70 percent of the loan levels that would have been in effect before the reductions; or (c) the prevailing world market prices for wheat or feed grains, as determined by the Secretary.

B. *Upland cotton.* Section 103A(a)(5) of the 1949 Act provides that if the Secretary determines that the prevailing world market price for upland cotton (adjusted to United States quality and location) is below the upland cotton price support loan level, in order to make United States upland cotton competitive in world markets, the Secretary shall implement the provisions of Plan A or Plan B. If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan at a level determined and announced at the same time the Secretary announces the loan level. Such loan repayment level shall not be less than 80 percent of the loan level determined for the crop and, once announced for the crop, shall not thereafter be changed. If the Secretary elects to implement Plan B, the Secretary shall, for 1986, permit producers to repay the loan at the lesser of (1) the price support loan level for the crop, or (2) the prevailing world market price for upland cotton as determined by the Secretary. Section 103A(a)(5) further provides that if a program carried out under Plan A or Plan B fails to make United States upland cotton fully competitive in world markets and the prevailing world market price is below the current price support loan rate, the

Secretary shall provide for the issuance of marketing certificates to first handlers of cotton who have entered into an agreement with CCC to participate in the program. Such payments shall be made in such monetary amounts and subject to such terms and conditions as the Secretary determines will make upland cotton available at competitive prices, including such payment as may be necessary to make raw cotton in inventory on August 1, 1986, available on the same basis.

C. *Rice.* Section 101A(a)(5) of the 1949 Act provides that the Secretary shall permit a producer to repay a price support loan for the 1986 crop at a level that is the lesser of (1) the price support loan level, or (2) the higher of (i) 50 percent of the price support loan level or (ii) the prevailing world market price for rice, as determined by the Secretary. As a condition of permitting a producer to repay a price support loan at such lower level, the Secretary may require a producer to purchase negotiable marketing certificates, redeemable for rice owned by CCC, equal to value to 50 percent of the difference between the price support loan rate and the loan repayment rate.

11. Loan deficiency payment

Sections 107D(b), 105C(b), 103A(b), and 101A(b) of the 1949 Act provide that the Secretary may, for the 1986 crop of wheat, feed grains, upland cotton, and rice make payments available to producers who, although eligible to obtain a price support loan or purchase agreement agree to forego obtaining such loans or agreements in return for such payments. A payment made in accordance with this subseciton shall be computed by multiplying: (1) The loan payment rate by (2) the quantity of wheat, feed grains, upland cotton, or rice the producer is eligible to pledge as collateral for a price support loan. For purposes of these payments, the quantity of eligible wheat, feed grains, upland cotton and rice may not exceed the product obtained by multiplying: (1) The individual farm program acreage for the crop by (2) the farm program payment yield established for the farm. For purposes of these payments, the loan payment rate shall be the amount by which: (1) the loan level determined for such crop exceeds (2) the level at which a loan may be repaid.

12. Inventory reduction

In accordance with sections 107D(g), 105C(g), 101A(g), and 103A(g) of the 1949 Act the Secretary may, for the 1986 crops of wheat, feed grains, rice, and upland cotton, make payments available to producers who: (1) Agree to forego obtaining a price support loan or purchase agreement; (2) agree to forego receiving deficiency and disaster payments; (3) do not plant wheat, feed grains, rice, or upland cotton for harvest in excess of the crop acreage bases reduced by one-half of any acreages required to be diverted from production under either the acreage limitation or set-aside program provisions, as applicable; and (4) otherwise comply with these sections. Such payments shall be (1) made in the form of such wheat, feed grains, rice or upland cotton, respectively, owned by the CCC; and (2) subject to the availability of such wheat, feed grains, rice or upland cotton. Payments under this section shall be determined in the same manner as provided in sections 107D(b), 105C(b), 101A(b), and 103A(b) of the 1949 Act.

13. Advance recourse commodity loans

Section 424 of the 1949 Act provides that the Secretary may make advance recourse loans available to producers of the commodities of the 1986 crop for which nonrecourse loans are made available if the Secretary finds that such action is necessary to ensure that adequate operating credit is available to producers. Such recourse loans may be made available under such reasonable terms and conditions as the Secretary may prescribe, except that the Secretary shall require that a producer obtain crop insurance for the crop as a condition of eligibility for a loan.

14. Farmer-owned reserve program

Section 110 of the 1949 Act provides that the Secretary shall formulate and administer a program which producers of wheat and feed grains will be able to store wheat and feed grains when such commodities are in abundant supply, extend the time period for their orderly marketing, and provide for adequate, but not excessive carryover stocks to ensure a reliable supply of the commodities. Under such program, the Secretary shall provide original or extended price support loans at such level of support as the Secretary determines appropriate, except that the loan rate shall not be less than the current level of support provided under the wheat and feed grain programs established in accordance with sections 107D and 105C of the 1949 Act, respectively. The program may provide for (1) repayment of such loans in not less than 3 years nor more than 5 years; (2) payments to producers for storage in such amounts and under such conditions as the Secretary determines appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate of interest charged CCC by the United States Treasury, except that the Secretary may waive or adjust interest as the Secretary deems appropriate; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers when the total amount of wheat or feed grains in storage under programs under this section is below the upper limits for such storage and the market price for wheat and feed grains is below the trigger release levels; and (5) conditions designed to induce producers to redeem and market the wheat or feed grains without regard to the maturity dates thereof whenever the Secretary determines that the market price for wheat or feed grains has attained a specified trigger release level, as determined by the Secretary. The Secretary shall announce the terms and conditions of the producer storage program as far in advance of making loans as practicable. In such announcements, the Secretary shall specify the quantity of wheat or feed grains to be stored under the program which the Secretary determines appropriate to promote the orderly marketing of wheat or feed grains.

Whenever: (1) The total quantity of wheat stored under storage programs established by section 110 is less than 17 percent of the estimated total domestic and export usage of wheat during the then current marketing year for wheat, as determined by the Secretary, or (2) the total quantity of feed grains stored under storage programs established by section 110 is less than 7 percent of the estimated total domestic and export usage of feed grains during the then current marketing year for feed grains, as determined by the Secretary; and (3) the market price of the commodity, as determined by the Secretary, does not exceed 140 percent of the nonrecourse loan rate for the commodity the Secretary shall encourage participation in the programs authorized by section 110 by offering producers increased storage payments and loan levels, the waiving of interest, or such other incentives as the Secretary determines necessary to maintain the total amount of storage under the programs at the levels specified in clauses (1) and (2). The Secretary also shall ensure that producers are afforded a fair and equitable opportunity to participate in each producer storage program, taking into account regional differences in the time of harvest.

Prior to the harvest of each crop of wheat and feed grains, the Secretary shall determine and establish upper limits on the total quantity of wheat and

feed grains that may be stored under storage programs established under this section to be effective during the marketing year for such crop, as follows: (1) The upper limit on the total quantity of wheat that may be stored under such programs shall not exceed 30 percent of the estimated total domestic and export usage of wheat during the marketing year for the crop of wheat, as determined by the Secretary, and (2) the upper limit on the total quantity of feed grains that may be stored under such programs shall not exceed 15 percent of the estimated total domestic and export usage of feed grains during the marketing year for the crop, as determined by the Secretary. Notwithstanding clauses (1) and (2), the Secretary may establish the upper limits at higher levels, but not in excess of 110 percent of the levels determined under clauses (1) and (2) if the Secretary determines that the higher limits are necessary to achieve the purposes of section 110.

15. Barley as an eligible commodity for payment purposes under the feed grain program

Section 105C(c)(1)(F) of the 1949 Act provides the Secretary discretionary authority to include or exclude barley as an eligible commodity for payments under the feed grain program. In the past, barley has been included as an eligible commodity with the exception of the 1967, 1968, and 1971 feed grain programs. If barley were not included in the 1986 feed grain program, barley producers would not be eligible for price support loans and purchases and the farmer-owned grain reserve program or for established price payments (deficiency payments).

16. Exemption of malting barley

In accordance with section 105C(f)(2)(C) of the 1949 Act, the Secretary may provide that no producer of malting barley shall be required as a condition of eligiblity for feed grain loans, purchases, and payments to comply with any acreage limitation if such producer has previously produced a malting variety for harvest, and meets other conditions as the Secretary may prescribe.

17. Non-recourse loans and purchases for corn silage grain equivalent

Section 105C(a) of the 1949 Act provides that the Secretary may make available loans and purchases to producers on a farm who: (1) For silage, cut corn (including mutilated corn) that the producers have produced in such crop year or purchase or exchange corn (including mutilated corn) that has been produced in such crop year by another producer (including a producer that is not participating in an acreage limitation or set-aside program for such crop established by the Secretary), and (2) participate in an acreage limitation or set-aside program for such crop of corn established by the Secretary. Such loans and purchases may be made on a quantity of corn of the same crop, other than the corn obtained for silage, acquired by the producer equivalent to a quantity determined by multiplying: (1) The acreage cut for silage, by (2) the lower of the farm program payment yield or the actual yield on a field, as determined by the Secretary, that is similar to the field from which such silage was obtained.

Determinations

1. Loan and purchase level

In accordance with sections 107D(a)(1), 105C(a)(1) and 101A(a)(1) of the 1949 Act, the price support loan and purchase level per bushel, unless otherwise indicated, shall be $2.40 for wheat, $1.92 for corn, $1.82 ($3.25 per cwt.) for sorghum, $1.56 for barley, $.99 for oats, and $.163 for rye, and $7.20 per cwt. for rice. In accordance with section 103A(a)(1) of the 1949 Act, the price support level for nonrecourse loans for upland cotton is that which will reflect a kevek if 55 cents per pound for Strict Low Middling one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States.

2. Established (target) price

In accordance with sections 107D(b)(1)(G), 105C(b)(1)(E), 101A(c)(1)(D) and 103A(c)(1)(D) of the 1949 Act, the established (target) price per bushel shall be $4.38 for wheat, $3.03 for corn, $2.88 ($5.14 per cwt.) for sorghum, $2.60 for barley, and $1.60 for oats, $11.90 per hundredweight for rice, and $0.81 per pound for upland cotton.

3. Acreage reduction/paid land diversion program

In accordance with sections 101A(f)(2)(A), and 103A(f)(2)(A) of the 1949 Act, acreage reduction programs of 35 and 25 percent have been established with respect to the 1986 crops of rice and upland cotton, respectively. In accordance with sections 107D(f)(1)(B) and 105C(f)(1)(B), combined acreage reduction and paid diversion programs of 25 and 20 percent have been established for the 1986 crops of wheat and feed grains, respectively. The paid diversion portion of each program as 2½ percent. Accordingly, producers will be required to reduce their 1986 acreages of these commodities for harvest from the respective crop acreage bases established for a farm by a least these established percentages for each commodity in order to be eligible for price support loans and purchases, and payments for each such commodity. Winter wheat producers are eligible: (1) In accordance with section 107D(f)((5)(B) of the 1949 Act to receive diversion payments on an acreage equivalent to 10 percent of the wheat crop acreage base established for the farm if the acreage planted to wheat on the farm for harvest does not exceed 65 percent of such crop acreage base or (2) in accordance with section 107D(f)(5)(A) of the 1949 Act, to receive diversion payments on an acreage equivalent to 5 percent of the wheat crop acreage base established for the farm if the acreage planted to wheat on the farm does not exceed 70 percent of such crop acreage base.

4. Set-aside program

In accordance with sections 107D(f)(1) and (3) 105C(f)(1) and (3) of the 1949 Act, if has been determined that there will be no set-aside program for the 1986 crops of wheat and feed grains.

5. Haying and grazing

A. *Fifty percent planting provision.* In accordance with sections 107D(c)(1), 105C(1), 103A(C)(1) and 101A(c)(1) of the 1949 Act, it has been determined that haying and grazing will be permitted on acreage devoted to conservation uses or non-program crops considered to be planted to the program crop for purposes of determining the individual farm program acreage at the request of individual State ASC committees. The Secretary has determined that haying and grazing would not have an adverse economic effect.

B. *Designated acreage conservation reserve provision.* In accordance with sections 107D(f), 105C(f), 101A(f), and 103A(f), it has been determined that haying and grazing will be permitted on acreage required to be designated as ACR at the request of individual State ASC committees. However, for rice and upland cotton, haying and grazing of ACR will not be permitted during any five-consecutive month period that is established for a State by the State committee.

6. Advance deficiency and land diversion payments

In accordance with section 107C of the 1949 Act the Secretary is required to make: (1) Advance deficiency payments for the 1986 crops of wheat, feed grains, upland cotton, and rice, (2) and advance

land diversion payments for the 1986 crops of wheat and feed grains. Wheat and feed grain producers may request 40 percent of their projected deficiency payments when they enroll in the 1986 wheat and feed grain programs. Seventy-five percent of the advance deficiency payments will be paid in cash and the remaining 25 percent will be paid in the form of commodity certificates beginning April 30. Producers may request 100 percent of their diversion payments which will be paid in the form of commodity certificates, when they enroll in the 1986 wheat and feed grains program. Upland cotton and rice producers may request 30 percent of their projected deficiency payments when they enroll in the 1986 program. All upland cotton and rice advance deficiency payment will be paid in cash.

7. Binding contracts

Contracts signed by program participants will be considered binding at the end of the sign-up period and will provide for liquidated damages if producers do not comply with contractual arrangements. It has been determined that binding contracts will ensure a high level of compliance by those producers enrolling in the program and will also result in a more effective program.

8. Cross and offsetting compliance

In accordance with sections 107D(n)(2), 105C(n)(2), 103A(n)(2) and 101A(n)(2) of the 1949 Act, it has been determined that cross compliance will not be required as a condition of eligibility for program benefits. In accordance with sections 107D(i) and 105C(i) of the 1949 Act, it has been determined that offsetting compliance by wheat and feed grain program participants will not be required as a condition of eligibility for program benefits.

9. Establishment of acreage bases

In accordance with sections 503 and 505 of the 1949 Act, it has been determined that farm acreage bases will not be established for the 1986 crop year. Accordingly, adjustments in crop acreage bases of up to 10 percent of the farm acreage base for the 1986 prorgram will not be allowed. However, in accordance with section 504 of the 1949 Act, it has been determined that crop acreage base adjustments will be allowed to reflect crop rotation practices and other factors in determining fair and equitable acreage bases.

10. Marketing loan

A. *Wheat and feed grains.* In accordance with sections 107D(a)(5), and 105C(a)(4) of the 1949 Act, it has been determined that marketing loans will not be implemented at this time for the 1986 crops of wheat or feed grains since the price support loan and purchase levels applicable to such crops have been lowered to the maximum extent possible. It has been determined that this action is sufficient to maintain a competitive market position and the implementation of a marketing loan program for such crops would greatly increase program costs while program benefits would be increased marginally. If market conditions change, the Secretary may subsequently make such loans available.

B. *Upland cotton.* In accordance with section 103A(a)(5), the Secretary has determined that the prevailing adjusted world price for upland cotton is below the upland cotton price support loan rate.

Accordingly, the Secretary has determined to implement Plan A of the upland cotton program. Under Plan A, the loan repayment rate for the 1986 crop of upland cotton shall be 80 percent of the loan rate established for such crop. It also has been determined that the prevailing adjusted world market price for upland cotton is below the loan repayment rate and that a program carried out under Plan A will not make United States upland cotton fully competitive in world markets. Accordingly, payments in the form of marketing certificates will be made to first handlers of cotton and to persons holding "free" stocks (stocks not pledged as collateral for price support loan or owned by the CCC) of raw upland cotton on August 1, 1986. Such payments will be made in the form of marketing certificates as soon as possible after August 1, 1986. Payments made to persons holding "free" stocks of raw upland cotton shall be based on the total quantity of "free" stocks taking into account the 1985 loan rate plus accrued carrying charges and the adjusted world price in effect on August 1, 1986.

C. *Rice.* In accordance with section 101A(a)(5) of the 1949 Act, it has been determined that a producer of 1986 crop rice may repay a price support loan for the 1986 crop of rice at a level that is the lesser of (1) the price support loan level or (2) the higher of (i) 50 percent of the rice price support loan rate or (ii) the prevailing world market price for rice. It has been determined that a producer shall not be required to purchase a negotiable marketing certificate as a condition to repaying the rice price support loan at a lower level.

11. Loan deficiency payments

In accordance with sections 107D(b), 105C(b), 101A(b) and 103A(b) of the 1949 Act, it has been determined that, with respect to the 1986 price support and production adjustment programs, loan deficiency payments will not be available for wheat, feed grains, or rice but will be available for upland cotton. It has been determined that offering producers loan deficiency payments in lieu of obtaining a price support loan or purchase agreement will reduce the quantity of upland cotton pledged as collateral for price support loans when a marketable loan is in effect but would not reduce such quantities of rice pledged as collateral. Since, for 1986, marketing loans are available only with respect to upland cotton and rice, loan deficiency payments will not be available for feed grains and wheat producers for the 1986 crop.

12. Inventory reduction

In accordance with sections 107D(g), 105C(g), 101A(g), and 103A(g) of the 1949 Act, it has been determined that the inventory reduction program will not be implemented for the 1986 crops of wheat, feed grains, rice, and upland cotton since such a program would encourage farmers to plant non-program crops on available crop acreage and thereby adversely affect producers of such non-program crops.

13. Advance recourse commodity loans

In accordance with section 424 of the 1949 Act, it has been determined that advance recourse price support loans shall not be made available to producers since advance deficiency payments for wheat, feed grains, rice and upland cotton will substantially augment private lending to producers and therefore ease farm credit problems of producers. Further, implementing this program could encourage producers to place additional encumbrances upon crops yet to be produced which could result in increased financial stress for producers after harvest.

14. Farmer-owned reserve program

In accordance with section 110 of the 1949 Act, it has been determined that there will be no direct entry into the farmer-owned reserve (FOR) program for the 1986 crop of wheat and feed grains. It has been further determined that upper limits on the total quantity of wheat and feed grains stored under the FOR may not exceed 30 percent for wheat and 15 percent for feed grains of

the total estimated use for the 1986–87 marketing year. The Secretary intends to review the size of the reserve before regular price support loans for the 1986 crop reach maturity in order to determine whether to allow entry into the FOR for the 1986 crop of wheat and feed grains.

15. Inclusion of barley

In accordance with section 105(c)(1)(F) of the 1949 Act, it has been determined that barley is eligible for 1986 feed grains program payments since the inclusion of barley in the feed grain acreage reduction program permits the alignment of barley stocks with barley demand.

16. Exemption of malting barley

In accordance with section 105C(e)(2) of the 1949 Act, it has been determined that malting barley shall not be exempt from the feed grain acreage reduction program. Since a large portion of barley production in planted to malting barley varieties and exclusion of such varieties from any production adjustment requirememts would greatly reduce the effectiveness of the feed grain program.

17. Non-recourse loans and purchases for corn silage grain equivalent

In accordance with section 105C(a) of the 1949 Act, it has been determined that corn silage grain equivalent will not be eligible for non-recourse loans and purchases since an increase in program costs would result in only marginal increases in program benefits.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (7 U.S.C. 714b and 714c); Secs. 101, 101A, 103A, 105B, 107C, 1097D, 107E, 109, 110, 401, 504, and 505 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1383, as amended, 1448, 91 Stat. 950, as amended, 951, as amended, 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462 (7 U.S.C. 1441, 1441–1, 1444–1, 1444–b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445e, 1421, 1464, and 1465).

Signed at Washington, DC on August 28, 1986.

Earle J. Benenbaugh,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–19927 Filed 9–3–86; 8:45 am]

BILLING CODE 3410-05-M

Cooperative State Research Service

Small Business Innovation Research Program for Fiscal Year 1987; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219) and section 1472 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318), the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Program. This program will be administered by the Office of Grants and Program Systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technology innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging minority and disadvantaged participation in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1987 is approximately $1,300,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of November 17, 1986. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water, and Soils
5. Food Science and Nutrition
6. Rural and Community Development

The award of any grants under the provisions of the solicitation is subject to the availability of appropriations. All grants awarded will be administered in accordance with the USDA's "Uniform Federal Assistance Regulations" (7 CFR Part 3015), as amended. These regulations primarily consolidate internal policies and procedures relating to USDA's assistance programs and implement various Federally issued assistance policies including applicable Federal cost principles and uniform administrative requirements.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for 1986, or who have recently requested placement on the list for 1987, will automatically receive a copy of the 1987 solicitation.

Proposal Services Unit, Grants Administrative Management, Office of Grants and Programs Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 010, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251, Telephone: (202) 475–5048

Done at Washington, DC, this 27th day of August 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86–19928 Filed 9–3–86; 8:45 am]

BILLING CODE 3410-22-M

Packers and Stockyards Administration

[P & S Docket No. 6748]

Bourbon Stock Yard Company and Producers Livestock Marketing Association, Louisville, KY; Complaint, Order of Suspension, and Notice of Hearing

Notice is hereby given that on August 27, 1986, the Packers and Stockyards Administration, United States Department of Agriculture, filed a "Complaint, Order of Suspension, and Notice of Hearing", the contents of which are as follows:

By reason of a complaint by an affected party filed with the Administrator, Packers and Stockyards Administration and a preliminary investigation conducted by the Packers and Stockyards Administration pursuant to such complaint, this proceeding is instituted under the provisions of Title III of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*) (hereinafter "the Act").

I

(a) Bourbon Stock Yard Company (hereinafter "respondent Bourbon") is a division of Lincoln International Corporation with its principal place of business located at 1048 East Main Street, Louisville, Kentucky 40206.

(b) Respondent Bourbon is, and at all times material herein was, engaged in the business of conducting and operating the Bourbon Stock Yard (hereinafter "the stockyard") Louisville, Kentucky, a posted stockyard subject to the Act.

(c) Producers Livestock Marketing Association (hereinafter "respondent Producers") is an association with its principal place of business located at the stockyard.

(d) Respondent Producars is, and at all times material herein was:

(1) Engaged in the business of buying and selling livestock in commerce on a commission basis at the stockyard and buying and selling livestock in commerce for its own account; and

(2) Registered with the Secretary of Agriculture as a market agency to buy and sell livestock on a commission basis and as a dealer to buy and sell livestock for its own account.

II

(a) As a result of an arrangement, agreement or understanding between respondent Bourbon and respondent Producers, respondent Bourbon, on July 15, 1986, issued the following news release to the media and to all persons doing business at the stockyard:

Effective September 1, 1986, a reorganized sales agency, headed by the Producers Livestock Marketing Association will assume all responsibility of receiving and selling all species of livestock at the Bourbon Stock Yard. Patron and customer services will not be disrupted. The newly organized sales agency and the Bourbon Stock Yard Company will continue to provide all stock yard services, as in the past. The newly organized sales agency is contemplating a name change.

(b) In furtherance of such arrangement, agreement or understanding between respondent Bourbon and respondent Producers, each market agency operating at the stockyard except respondent Producers has been notified that its lease of facilities at the stockyard will be cancelled as of midnight, August 31, 1986.

(c) Respondent Bourbon and respondent Producers have engaged in these and other acts for the purpose or with the effect of restraining commerce and eliminating all competitor market agencies of respondent Producers currently operating at the stockyard.

III

(a) Respondent Bourbon currently has in effect a schedule of rates and charges which includes the following definition:

A. Definition—Yardage, Resale Yardage, and Selling Commission

The rates and charges for the term "Yardage" as used in the Tariff covers the following described facilities and services, unless otherwise noted:

The use of suitable facilities for safe and expeditious receiving, handling, feeding, watering, holding, sorting, selling, buying, weighing, delivery and shipment of livestock.

The services necessary in incident to the receiving of livestock at the place of unloading.

The furnishing of receipts for livestock to the carrier or consignor.

The Bourbon Stock Yard Company employees will continue to make delivery of livestock between the hours of 2:00 p.m. and 6:00 a.m. daily, and all days when no sales are conducted.

The furnishing of sufficient potable water for livestock.

The initial weighing of livestock when sold and delivered to the scales.

The issuance of scale tickets showing actual weight and other pertinent information concerning the livestock weighed.

The removal of livestock from the scales at the slaughter scale auction.

Furnish Average Weights on electronic feeder cattle scale.

The holding of livestock for a reasonable time pending delivery to buyers.

The delivery of livestock to buyers at storage or holding pens.

The obtaining of receipts for livestock delivered to buyers.

The selling agencies will deliver livestock from the unloading docks to the sales division from 6:00 a.m. to 2:00 p.m. on days sales are conducted at the Bourbon Stock Yards. The selling agencies will feed, sort, grade, and prepare livestock for sale and conduct those sales not offered through the auction. Deliver livestock to scales and perform necessary duties to see that livestock is sold at highest possible prices. Issue checks for livestock in accordance with the Packer and Stockyards regulations.

(b) The contemplated changes in business operations at the stockyard described in paragraph II above will have the further effect of changing the nature of stockyard services (including yardage services) provided by respondent Bourbon and respondent Producers at the stockyard, inasmuch as respondent Producers would assume, *inter alia*, responsibility for providing services necessary to the receiving of livestock at the stockyard, which services were the previous responsibility of respondent Bourbon.

(c) Respondent Bourbon has not filed with the Secretary any change in its schedule of rates and charges to reflect the contemplated changes in stockyard services to be provided by respondent Bourbon and respondent Producers at the stockyard.

IV

Upon an analysis of information available to the Packers and Stockyards Administration, it is concluded that the changes in business operations at the stockyard contemplated to begin September 1, 1986, as described in paragraphs II and III above, constitute, within the meaning of section 306 of the Act (7 U.S.C. 207), a new regulation or practice affecting rates or charges assessed by the respondents and other market agencies operating at the stockyard.

V

Upon an analysis of information available to the Packers and Stockyards Administration, there is reason to believe that such new regulation or practice is unfair, unreasonable and unjustly discriminatory in violation of sections 304, 307(a) and 312(a) of the Act (7 U.S.C. 205, 208(a) and 213(a)).

VI

It is therefore ordered pursuant to section 306 of the Act (7 U.S.C. 207) that the implementation of the regulation or practice described in paragraphs II and III above and scheduled to begin on September 1, 1986, is hereby suspended and deferred for 30 days beyond the time it would otherwise go into effect.

It is further ordered that for the purpose of determining whether in fact the regulation or practice described in paragraphs II and III above does or will violate the Act, a hearing concerning the matters set forth herein will be held before an Administrative Law Judge of the Department at a time and place to be specified at a later date, of which respondents will receive adequate notice. At such hearing the respondents and all other interested persons will have the right to appear and present such evidence with respect to the matters and things set forth herein as may be relevant and material.

It is furthered ordered that copies hereof shall be served upon the parties.

Any and all interested persons who may wish to appear and present evidence relative to the issues in this proceeding shall give notice by filing a statement to that effect with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, within 20 days of the date of the publication hereof in the Federal Register.

Done at Washington, DC, this 28th day of August 1986.

B.H. (Billy) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86-19902 Filed 9-3-86; 8:45 a.m.]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

International Trade Administration

Baylor College of Medicine; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM

and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 85–219R. Applicant: Baylor College of Medicine, (USDA/ARS), Houston, TX 77030. Instrument: Gas-Isotope-Ratio Mass Spectrometer, Model Delta-E with Accessories. Manufacturer: Finnigan MAT Corporation, West Germany. Intended use: See notice at 51 FR 22097.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign article is capable of measuring 10 microliters of carbon dioxide with a precision of 0.01%. The National Institutes of Health advises in its memorandum dated July 24, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–19924 Filed 9–3–86; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and State antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than September 24, 1986, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86–00006."

Applicant: Abreu de la Mota & Associates International, Inc. (ADLM), 126 West 83rd Street, Suite 1G, New York, New York 10024, Telephone: 212–873–3113

Application No.: 86–00006

Date Deemed Submitted: August 19, 1986

Members (in addition to applicant):

Francisco J. Abreu, President, Abreu de la Mota & Associates International, Inc., New York, New York; and G & M Industries, Inc., Somerville, New Jersey

Summary of Application:

A. Export Trade

The Applicant is a New York corporation established as an international management consulting firm. ADLM and its members intend to provide a wide array of export and commodity-related services to assist the export of various agricultural and high technology products obtained from its various suppliers.

The Applicant intends to export the following goods: livestock for slaughter and for breeding, grain (corn, wheat, and soybeans), computer software, and closed circuit TV security systems. In connection with these exports, ADLM will provide the following commodity-related services: computer programming and technology, communication-related services, and general business services. In the conduct of its export activities, ADLM will also provide the following export trade services: management consulting, market research and analysis, freight forwarding, export documentation, trade mission organization, financial services, risk management, public relations, and government relations services.

B. Export Markets

Worldwide.

C. Export Trade Activities and Methods of Operation

ADLM and its Members seek certification to:

1. Enter into exclusive agreements with U.S. Suppliers for the export of specified Goods and Services. These agreements may contain price, quantity, and territorial restrictions, as well as specify the mode of transport, parts and service requirements, payment, and other terms.

2. Enter into exclusive agreements with domestic or foreign Export Intermediaries for the export of consigned Goods or Services. These agreements may also contain provisions similar to those listed in Item 1 above.

3. Act as an agent or broker in the Export Markets, contacting potential foreign customers.

Dated: August 28, 1986.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 86–19923 Filed 9–3–86; 8:45 am]

BILLING CODE 3510–DR–M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

TIME AND PLACE: September 23, 1986 at 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Ave., NW., Washington, DC.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Action items underway.
4. New Business.
5. Action items due to next meeting.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation

The General Session will be open to the public and a limited number of seats

will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes call 202–377–2583.

Dated: August 29, 1986.

Dan Hoydysh,

Acting Director, Office of Technology and Policy Analysis.

[FR Doc. 86–19915 Filed 9–3–86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Guidelines for Submission of Proposals for Selection as Principal Museum for the Monitor Collection of Artifacts and Papers

AGENCY: Sanctuary Programs Division (SPD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic an Atmospheric Administration (NOAA) is seeking a qualified museum to provide museum services for the *Monitor* Collection of Artifacts and Papers, a Federally-owned collection resulting from the research component of the Monitor National Marine Sanctuary. In order to provide an open and objective selection process, based upon professional criteria, SPD/NOAA requested in 1984 that the Council of American Maritime Museums (CAMM) recommend professional criteria on which to base the selection of a qualified museum. The CAMM submitted its report on April 26, 1986. Copies of this report are available from SPD/NOAA. These guidelines have been adopted by SPD/NOAA and will be the policy for the general management of archeological collections recovered under the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* Additionally, specific evaluation factors, based on the recommended CAMM criteria, are provided which will be used for the selection of the principal museum for the *Monitor* Collection of Artifacts and Papers to assist institutions, agencies, or other organizations in submitting proposals.

DATES: Proposals will be accepted until December 22, 1986. A public meeting to review these guidelines and to answer any questions concerning the submission of proposals will be held at 10:00 a.m., Thursday, October 9, 1986 at 1825 Connecticut Avenue, NW., Washington, DC, Room 928.

ADDRESS: Send proposals to Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, SPD/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster at (202) 673–5122.

SUPPLEMENTARY INFORMATION:

I. Authority

The *Monitor* National Marine Sanctuary (MNMS) was designated by the Secretary of Commerce on January 30, 1975, pursuant to Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA/Title III), 16 U.S.C. 1431 *et seq.* SPD/NOAA has promulgated regulations for overall management of the Sanctuary, 15 CFR Part 924, and is responsible for the management of the Sanctuary and the resulting archeological collection.

II. Background

Management goals set for the MNMS can be summarized as the protection, preservation, research, and interpretation of the *Monitor* and all its associated records, documents, and archeological collections for the appreciation and education of the public. Initial research focused upon understanding the environment and the physical remains of the *Monitor* resting on the seafloor. While the wreck is still the primary concern from a cultural resource management viewpoint, the further development of the research program has identified the inherent relevance and high value of the historical, architectural, and engineering records of the ship for understanding and interpreting the *Monitor*, both historically and archeologically. The long-term management and development of these records and the resulting *Monitor* Collection of Artifacts and Papers will promote the proper management and development of the resource. At this time, a high management priority is being placed upon the development of a master plan for the Sanctuary by conducting an alternatives study of management options for achieving the goals set for the Sanctuary. This requires that all relevant information necessary for a responsible decision concerning the treatment of the resource be collected and studied. In order to provide for the long-term curation, preservation and interpretation of the existing *Monitor* Collection, as well as to facilitate the development of a master plan for the Sanctuary, which will include planning for the future development of the Collection, museum services are required. The 1975 Memorandum of Agreement (MOA) with the Department of the Navy governing the curation of *Monitor* artifacts and research materials does not provide for the required services or the costs of such services. Under the terms of cooperative agreements from 1978 until this year, the State of North Carolina and East Carolina University established and maintained repositories of project materials separate from the artifact collection curated by the Navy. The South Carolina Institute of Archeology and Anthropology of the University of South Carolina is currently compiling and cataloging the research and management records collected for the project by the State of North Carolina and East Carolina University. At appropriate ceremonies commemorating the 125th anniversary of the "Battle of the Ironclads" on Monday, March 9, 1987, NOAA intends to formally dedicate the *Monitor* Collection of Artifacts and Papers as a single collection of national significance. The selected principal museum will provide the necessary collections management and museum services for the *Monitor* Collection under terms negotiated in a cooperative agreement with NOAA.

III. Collections Management Policy

NOAA manages archeological collections recovered under authority of the MPRSA/Title III in accordance with the general body of Federal historic preservation and archeological policies, standards and applicable regulations. It is explicitly intended that professional standards of collections management be maintained and that the same degree of regulatory protection and preservation planning for archeological collections resulting from archeological investigations on land be extended to collections resulting from archeological investigations in the marine environment. The following guidelines summarize NOAA's policies for the

management of archeological collections.

NOAA shall: (a) Preserve artifacts and records of Federally authorized archeological investigations in a repository with adequate and secure curatorial capabilities and make the collections available for scientific inquiry, agency management needs, interpretation and other public benefit.

(b) For permits issued pursuant to the MPRSA for archeological investigations in national marine sanctuaries that involve the excavation or removal of items of archeological interest, stipulate the repository to be used to curate, preserve and interpret the resulting Federally-owned archeological collection.

(c) Consider long-range management, conservation, curatorial and budgetary needs during the planning phase of a project involving the collection, processing, cataloging, and interpretation of significant prehistoric and historic artifacts, specimens, and records. Ensure that research designs for Federally-funded or authorized archeological investigations limit collection of artifacts and other materials during field survey, site testing and data recovery to that specifically required for research and interpretation needs so that the amount or redundant data is minimized. Ensure that budgets for Federally-funded or authorized archeological investigations provide sufficient funds for the curation, conservation, and perpetual care of artifacts and materials recovered.

(d) Provide for the exchange or temporary exhibits of archeological collections, or representative parts thereof, between suitable museums, universities or other scientific or educational institutions for research and educational purposes or for appropriate public displays. Ensure that Federally-owned archeological collections are accessible for educational and scholarly purposes such as traveling exhibits, study or teaching purposes, educational programs and research.

(e) Ensure that Federally-owned archeological collections are never purchased or sold.

(f) Ensure that Federally-owned archeological collections are accessioned, cataloged, maintained, preserved, conserved, and stored according to accepted standards of the museum profession and that appropriate records are kept in an accession filing system secured from fire and other natural hazards.

(g) Ensure that Federally-owned archeological collections are kept under environmentally and physically secure conditions within storage, exhibition, laboratory, and study areas in accordance with the needs of the collection and accepted standards of the museum profession.

(h) Ensure that Federally-owned archeological collections remain intact as a unit, whether by site, project, geographic or cultural or other appropriate area or unit. When possible, Federally-owned archeological collections should be curated in a repository that has an appropriate contextual relationship, such as historical or geographically near the site or project location.

(i) Ensure that individuals who are responsible for caring for Federally-owned archeological collections have appropriate expertise and meet pertinent minimum professional qualifications.

(j) Ensure that repositories selected to curate Federally-owned archeological collections certify that they will at all times manage the collection in the best interests of the collection and for the benefit of the American public in accordance with the above cited policies and with other policies, standards or guidelines set by other regulatory authorities which NOAA deems applicable.

IV. Instructions

Proposals submitted in accordance with this notice will be evaluated to determine the relative professional and technical qualifications of offerors. Cost is not a factor in the evaluation of proposals. The costs associated with providing the specified services will be subject to negotiation with the repository selected using the qualitative criterion; however, a repository having existing facilities or expertise fulfilling the needs of the Collection is preferable to a repository where such facilities or expertise must be obtained. No specific criterion is absolute as no single repository may possess all the attributes identified in the evaluation criterion. Where there are no existing facilities, expertise or capabilities, offerors are encouraged to present creative or innovative proposals on how to meet stated requirements. The decision on the selection of a principal museum will be based upon the technical and professional qualifications of the offeror in meeting the specified criteria. NOAA reserves the right to select the repository it deems most qualified under the criteria and in the best interest of the Federal government through review of the submitted proposals or subsequent negotiation. Additionally, NOAA reserves the right to make no selection should all submitted proposals be found unacceptable. The proposals should be typewritten on 8½ x 11" paper and bound in a standard binder. They should be organized and written in a clear and concise manner, in sufficient depth of detail to enable the reviewers to make a comprehensive evaluation of the proposal. Offerors should be careful to address each of the specified criteria directly in their proposal. The proposal should not contain any unnecessary material and should not be expensively produced as appearance in terms of the number of drawings, photographs, color, quality of paper, etc. will not receive any additional consideration compared to a proposal that simply, accurately and thoroughly establishes the repository's qualifications. Proposals should be sent certified mail and must be received by SPD/NOAA no later than 5:00 p.m., Monday, December 22, 1986.

V. Statement of Work

The selected repository will have a delegated responsibility from NOAA for the principal long-term curation, preservation, interpretation, and management of the *Monitor* Collection under the terms of a cooperative agreement negotiated with NOAA. In addition, the selected repository will establish and maintain a research library, project archives, and conservation facility. The repository will have in its staff a qualified maritime historian and a qualified marine conservator. The principal museum shall:

(a) Develop interpretive displays on the *Monitor*, both historically and archeologically, and on the current status of the USS MONITOR PROJECT.

(b) Manage the loan of portions of the collection to other qualified repositories for research, interpretation, or educational purposes.

(c) Maintain the collection under environmentally and physically secure conditions within storage, exhibition, laboratory and study areas.

(d) Inspect the collection on a regular basis and make recommendations as to necessary maintenance conservation measures.

(e) Assist and advise NOAA regarding the future planning of the USS MONITOR PROJECT, the development of the collection, and the implementation of the approved master plan.

(f) Improve public access to the Project through suitable interpretation including educational displays and publications.

(g) Adequately insure the Collection from theft or other loss; and

(h) Comply with relevant Federal regulations regarding the curation of Federally-owned archeological collections.

VI. Evaluation and selection factors

1. *Qualifying Criteria.* The offeror must meet the following criteria in order to receive consideration for selection. Suitable documentation should be submitted in order to confirm and support the offeror's capabilities.

(a) Status

(1) AAM Accreditation (as defined in Appendix A).

(2) Non-Profit Organization (as defined in Appendix A).

(3) Financial stability including the ability to insure the MONITOR Collection adequately.

(4) Equal Opportunity Employer.

(b) Facility

(1) Physical capacity to house the current MONITOR Collection.

(2) Presence of a Conservation Facility (as defined in Appendix A).

(c) Personnel

Present employment of a historian and a conservator both of whom meet the minimum professional requirements of their respective fields (as stated in Appendix B).

2. Comparative Criteria. The evaluation of proposals which meet the above Qualifying Criteria will be comparatively ranked based on a relative weighting of the technical criteria set forth below. The relative costs of providing the specified museum services will be subject to later negotiation with the selected museum.

Factor 1—Capability.

A. Facilities

(1) Security within storage, exhibition, laboratory and study areas.

(a) Environmental security includes the ability to maintain collections under appropriate, stable environmental conditions, and to monitor collections regularly for possible deterioration or damaging effects from temperature, humidity, visible and ultraviolet light, dust, soot, gases, mold, fungus, insects and rodents, and general neglect.

(b) Physical security includes the maintenance of an adequate and operational fire detection/suppression system and a burglar prevention/detection system as well as adequate security for fragile artifacts from human contact. Repositories must also meet local electrical, fire, building, health and safety codes.

(2) Quality and technical nature of the Conservation Facility and access to appropriate professional expertise, facilities and equipment.

(3) Quality and size of an existing research library and project archives, or adequate provision for both.

(4) Scope of current collections.

(5) Capability of expansion should the MONITOR Collection be expanded in the future.

(6) Facilities for the handicapped (e.g., ramps, elevators, etc.)

(7) Adequate parking and visitor facilities (e.g., toilets, water fountains, etc.).

B. Personnel

(1) Greater weight will be given to those offerors with on-staff personnel who, in addition to the minimum professional standards, meet or exceed the following respective criteria:

(a) Historian. Experience or education in maritime history, especially strong academic credentials in Civil War naval history; and, ideally, experience or familiarity with the records or historical significance of the USS MONITOR.

(b) Conservator. Experience as a marine conservator working with a broad range of materials recovered from underwater sites; and, ideally, specialized experience in the conservation of iron from submerged sites.

(2) Resumes of key personnel should include:

(a) Relevant educational background;

(b) Pertinent professional experience; and

(c) Relevant capabilities and honors.

(3) The availability of personnel for work under the resultant cooperative agreement will be evaluated. Where the offeror proposes personnel who are not a part of the organization, greater weight will be given to those offerors who provide documentary evidence assuring the availability of such personnel.

(4) Where an offeror proposes the use of subcontractor personnel, the availability and qualifications of the subcontractor(s) will be evaluated under the criteria set forth above.

C. Management

(1) Nature and scope of the institution's established reputation including prior experience and programs in the maritime field.

(2) Nature and scope of current publications and/or access to reputable publications.

(3) Nature and scope of the management's current loan policy, collections policy and inventory procedure. (Offerors should submit copies of their policies.)

(4) Ability to engage in successful fund-raising to sustain the MONITOR Collection and support the goals of the USS MONITOR PROJECT.

(5) Ability to advise and assist NOAA in the future planning of the USS MONITOR PROJECT.

Factor 2—Accessibility.

(1) Location and ease of access for the American public.

(2) Nearby provisions (e.g., hotels/motels, restaurants, other attractions, etc.)

Factor 3—Overall Historical Context and Geographical Appropriateness.

(1) General Character of the Repository—Does the repository focus on maritime/naval history or have a maritime/naval history component?

(2) Geographical Relation to the MONITOR—Does the location of the repository relate to the historical or present geographical context of the MONITOR and the Monitor National Marine Sanctuary?

3. Other Consideration. The management of the MONITOR Collection requires that a single principal museum be delegated the managerial and curatorial responsibilities for the collection so that the best interests of the collection, and of the American public, can be served. However, through the selection process, it is possible that some offerors may be found to be likely candidates as participating museums for future loan programs and/or affiliated MONITOR exhibits.

(Federal Domestic Assistance Catalog No. 11.429 Marine Sanctuary Program)

Dated: August 29, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

Appendix A—Definitions

(a) "Repository" means a facility managed by an organization or institution or a Federal, State, or local agency which can provide professional, systematic and accountable curation, preservation and interpretation on a long-term basis and can provide access to the archeological collection and attendant records. Examples of repositories include Federal, state, or local museums, archeological centers, laboratories and storage facilities; private museums; institutes, laboratories and storage facilities associated with universities or colleges; and commercial storage facilities which meet professional museum standards.

(b) "Archeological collection" means artifacts as well as archival materials, including historical documents, site records, field notes, drawings, maps, photographs, slides and negatives, films

VOL 51 ISS 171 SE 4 1986 UMI

and cassette tapes, artifact inventories, laboratory reports, final reports, and other records and computer tapes, diskettes, and printouts.

(c) "Curation" means the management of collections by a repository according to professional museum standards and consists of: Accessioning and cataloging artifacts and related articles; storing and maintaining artifacts under appropriate environmental and physically secure controls; and, periodically inspecting artifacts and taking any necessary preservation/conservation measures.

(d) "*Monitor* Collection of Artifacts and Papers" means the artifacts, research data and other related materials that have been systematically recovered and collected or may be recovered and collected in the future in accordance with the approved master plan for the Monitor National Marine Sanctuary. Additionally the Collection includes historical documents and drawings, artwork, site records, field notes, models, maps, photographs, slides and negatives, films and video cassette tapes, artifact inventories, laboratory reports, final reports and other records documenting the *Monitor* historically, architecturally, and archeologically.

(e) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in 26 U.S.C. 501(c)(3) of the Internal Revenue Code of 1954 and exempt from taxation under 26 U.S.C. 501(a) of the Internal Revenue Code, or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(f) "AAM Accreditation" means that the institution has met the minimum professional standards of a museum as established by the American Association of Museums and as stated in *Professional Standards for Museum Accreditation*, Handbook of the Accreditation Program of the American Association of Museums, 1978.

(g) "Conservation facility" means an in-house laboratory having equipment and expertise in state-of-the-art conservation technology suitable for the care and preservation of the current collection.

(h) "Research library" means a library of books, periodicals, and other research materials available to the public for the conduct of scholarly research.

(i) "Project archives" means suitable space with appropriate physical environmental controls for the inventory, cataloging, and storage of project research materials and historical documents. Items in the archives must be readily available to researchers upon request and must be periodically inventoried and inspected for deterioration or other damage.

(j) "USS MONITOR PROJECT" is a NOAA project to plan, develop and implement the master plan for the Monitor National Marine Sanctuary. Participating agencies and organizations include the National Park Service, the U.S. Navy, and the National Trust for Historic Preservation.

Appendix B—Minimum Professional Standards for Key Personnel

1. Conservator/Museum Specialist. The minimum qualifications for a conservator or museum specialist are:

(a) A graduate degree in one on more specializations in museum conservation, anthropology, archeology, history, chemistry or other applicable subject matter plus 2 years full-time specialized experience in an established conservation laboratory; or

(b) A bachelor's degree in anthropology, archeology, history, chemistry or other applicable subject area plus 5 years full-time specialized experience in an established conservation laboratory.

2. Historian. The minimum professional requirements in history are:

(a) A graduate degree in American history or closely related field; *or*

(b) A bachelor's degree in history or a closely related field plus one of the following:

(1) At least 2 years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum or other professional institution; or

(2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

[FR Doc. 86-19917 Filed 9-3-86; 8:45 am]

BILLING CODE 3510-08-M

National Advisory Committee on Oceans and Atmosphere; Offshore Petroleum Resources Panel; Meeting

August 29, 1986.

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), notice is hereby given that the Offshore Petroleum Resources Panel of the National Advisory Committee on Oceans and Atmosphere (NACOA) will meet Thursday and Friday, September 18 and 19, 1986. The panel, chaired by Lee C. Gerhard, will meet in Santa Barbara, CA. For the exact location of the meeting, please call Regina Sheen or Joseph Bishop at 202/673-5225. This work session, which will be open to the public, will convene at 9:00 a.m. and adjourn at 5:00 p.m. on both days.

Additional information concerning this meeting may be obtained through the NACOA Acting Executive Director, Dr. James A. Almazan or Dr. Joseph Bishop, the staff person for the Offshore Petroleum Resources Panel. The mailing address is 1825 Connecticut Avenue, NW., Suite 620, Universal South, Washington, DC 20235.

Dated: August 29, 1986.

James A. Almazan,

Acting Executive Director.

[FR Doc. 86-19925 Filed 9-3-86; 8:45 am]

BILLING CODE 3510-12-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Meeting

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Notice of meeting.

SUMMARY: This Notice announces a forthcoming meeting of the Commission on the Bicentennial of the United States Constitution, to be held in Annapolis, Md., and chaired by the Commission's Chairman, Chief Justice Warren E. Burger.

Time and Date: Friday, September 12, 1986 at 1:00 p.m.; Saturday, September 13, 1986 at 12:30 p.m.

Place: On September 12, from 1:00 p.m. to 3:00, in the Joint Hearing Room of the Legislative Services Building, at Lawyers Mall, College Avenue, Annapolis MD. On September 13, from 12:30 p.m. to 5:30, in the Governor's Reception Room of the State House, Annapolis, MD. On September 12, the meeting will be a public hearing in open session; on September 13, the meeting will be a closed executive session.

Matters to be Considered

Open Session. The Commission will hear presentations from state and local officials regarding commemorative plans and programs for the bicentennial; there will also be testimony on regional, national and international bicentennial programs.

Executive Session. Evaluation of proposed bicentennial projects and programs; review of annual report and budget; status of personnel, employment and office space; pending appropriations, legislation and regulations; private funding proposals; and, negotiations involving Commission plans and programs.

Statements: The Commission is interested in hearing from all persons and organizations with proposed plans, projects or programs which would enhance the bicentennial commemoration of the U.S. Constitution, the Bill of Rights or the founding of the Federal Government. Statements prepared prior to the Commission meeting on September 12, should be filed on or before September 10, 1986, at 736 Jackson Place, NW., Washington, DC 20503. Statements will be reviewed by the Commission and its staff.

Presentations: At the public hearing on September 12, available time will permit only oral presentations. The Commission will notify in advance those witnesses who have been asked to appear and will limit oral presentations to those selected.

For Further Information Contact: Gene Mater, Special Assistant to the Director, 736 Jackson Place, NW., Washington, DC 20503. Tel: (202) USA–1787.

Supplementary Information: This meeting is to help commemorate the Annapolis Convention of September 11–14, 1786 and to give the Commission an opportunity to review the current status of its operations. It also provides an opportunity for witnesses to advise the Commission about proposed bicentennial plans and programs.

Dated: August 28, 1986.

Mark W. Cannon,

Staff Director.

[FR Doc. 86–19858 Filed 9–3–86; 8:45 am]

BILLING CODE 6340–01–M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC headquarters located at Room 532, 2033 K Street, NW., Washington, DC 20581, on September 22, 1986 beginning at 9:00 a.m. and lasting until 4:45 p.m. The agenda will consist of:

Agenda

1. Status report on audit trail and financial rules.
2. Status report on CFTC reauthorization.
3. Advance notice of proposed rulemaking on speculative limits.
4. Aggregation of accounts.
5. CFTC hedging definition.
6. Cattle futures issues.
7. Update on minimum price contracts.
8. Status report on new agricultural option applications.
9. Discussion of other issues for potential Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the June 4, 1985 first renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Kalo A. Hineman, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Charles O. Conrad, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Mr. Conrad in writing at the latter address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on August 28, 1986.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 86–19883 Filed 9–3–86; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board, Meeting

August 19, 1986.

The USAF Scientific Advisory Board Weapons Panel will meet at SRI International, 333 Ravenswood, Menlo Park, CA, on September 29, 1986.

The purpose of this meeting is to discuss the panel's findings on Air Force Project Forecast II topics and to prepare a final report on those findings.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–19865 Filed 9–3–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Notice of Proposed Priority for the Fund for the Improvement of Postsecondary Education (FIPSE) Lectures Program for Fiscal Year 1987.

SUMMARY: The Secretary proposes a Lectures Program to be conducted by the Fund for the Improvement of Postsecondary Education (FIPSE) on important issues in postsecondary education.

DATE: Comments must be received on or before October 6, 1986.

ADDRESS: All written comments and suggestions should be sent to Dr. Charles H. Karelis, Director, Fund for the Improvement of Postsecondary Education, Office of Postsecondary Education, (Room 3100, ROB–3), Department of Education, 400 Maryland Avenue, SW., Mail Stop 3331, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Russell Y. Garth, Telephone (202) 245–8091.

SUPPLEMENTARY INFORMATION: Grants for the FIPSE Lectures Program are authorized by Title X of the Higher Education Act of 1965, as amended (20 U.S.C. 1135). Program regulations are

established at 34 CFR Part 630. This program would be conducted as a Special Focus competition under 34 CFR 630.11(b)(1) of the program regulations. The purpose of the FIPSE Lectures Program would be to provide modest sponsorship for promising work on key issues in postsecondary education, and to promote dissemination and discussion of this work among educational leaders, policy makers, faculty, students and the general public. The program would enable individuals to devote at least a month to the development of ideas for presentation in lecture form at educational and other conferences, or in the context of established lecture programs such as those at colleges and universities.

Funds Available

The Department of Education Appropriations Act of 1986 appropriated $12,710,000 for FIPSE. The Department of Education requested $10,000,000 in its FY 1987 budget request for FIPSE. A comparable amount is anticipated to be appropriated by the Congress for FY 1987. Of the appropriated amount for FY 1987, the Department anticipates that $30,000 will be available for new awards under the FIPSE Lectures Program early in the fiscal year, with an additional $30,000 available for new awards in the summer of 1987. It is estimated that 12 grants of no more than $5,000 each will be made during FY 1987. These estimates do not bind the Department of Education to a specific number of grants or the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that would carry out the FIPSE Lectures Program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the establishment of this proposed lectures program. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document willb e considered before the Secretary issues a final notice establishing a FIPSE Lectures Program.

All comments submitted in response to this proposed program will be available for public inspection, during and after the comment period, in Room 3100, ROB–3, 7th & D Streets, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1135)
(Catalog of Federal Domestic Assistance No. 84.116G Fund for the Improvement of Postsecondary Education))

Dated: August 28, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–19931 Filed 9–3–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Huffco Petroleum Corp.; Partial Withdrawal of Application

[Docket No. CI86–434–000]

Issued: August 28, 1986.

Take notice that on August 28, 1986, Huffco Petroleum Corporation (Applicant) 1100 Louisiana Avenue, Suite 5200, Houston, Texas 77002 filed pursuant to Rule 216 of the Commission's Rules of Practice and Procedure a partial withdrawal of its application for limited-term blanket abandonment and blanket pre-granted abandonment filed May 21, 1986.

Applicant states that it withdraws its request for abandonment and pre-granted abandonment authority as it relates to the properties referred to in Item Nos. 2 and 3 of Appendix A of its application, which are committed to Texas Gas Transmission Corporation (Texas Gas) under a contract dated May 1, 1975, and cover Eugene Island Area Blocks 342 and 343, Offshore Louisiana. Applicant states that in view of the special concerns expressed by Texas Gas in its intervention in the instant docket, Applicant withdraws its request for abandonment as it related to Texas Gas in order to avoid any further delay in Commission action on the remaining portion of its pending application. Applicant states that it also withdraws the portion of its application requesting abandonment and pre-granted abandonment for shut-in OCS properties acquired in the future by Applicant.

Any person desiring to be heard or to make any protest with reference to said partial withdrawal of the subject application should on or before September 4, 1986, filed with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 3854.211, 385.214). Any protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–19935 Filed 9–3–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–280–000, et al.]

Northern Natural Gas Company, Division of Enron Corp.; Redesignation

August 29, 1986.

On May 8, 1986, Northern Natural Gas Company, Division of Enron Corp., filed in Docket No. G–280–000, *et al.*, an application requesting that it be designated as certificate holder under its new name in lieu of its former name, Northern Natural Gas Company, Division of InterNorth, Inc. In accordance with a corporate name change, the jurisdictional natural gas operations are to be conducted under the name of Northern Natural Gas Company, Division of Enron Corp.

Accordingly, the authorizations issued by this Commission and by the Federal Power Commission, the applications currently pending before the Commission, the FERC Gas Tariff on file, and any other records or proceedings relating to the former Northern Natural Gas Company, Division of InterNorth, Inc., are hereby redesignated as those of Northern Natural Gas Company, Division of Enron Corp.

A listing of authorizations and pending proceedings is set forth in the Appendix.[1]

This action is taken pursuant to 18 CFR 375.302(s) of the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–19936 Filed 9–3–86; 8:45 am]

BILLING CODE 6717–01–M

[1] The appendix is not being printed in the **Federal Register**, but is available from the Commission's Division of Public Reference.

VOL 51 ISS 171 SE 4 1986 UMI

[Docket No. RP86-92-004]

Northwest Pipeline Corp.; Compliance Filing

Issued: August 28, 1986.

Take notice that on August 22, 1986, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance Fifth Revised Sheet No. 201 to be a part of its FERC Gas Tariff, Original Volume No. 1-A.

Northwest states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's (Commission) order of August 8, 1986 in Docket Nos. RP86-92-002 and 003 which required that Northwest file tariff sheets to remove gathering and processing costs from its rates for Rate Schedules T-6 and T-7.

A copy of this filing has been served on all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985))— All such motions or protests should be filed on or before September 8, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19937 Filed 9-3-86; 8:45am]

BILLING CODE 6717-01-M

[Docket No. TA 87-1-35-000, 001]

West Texas Gas, Inc.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

Issued: August 28, 1986.

Take notice that on August 22, 1986, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Seventh Revised Sheet No. 3a.

Seventh Revised Sheet No. 3a was filed by WTG in order to place into effect its annual purchased gas adjustment (PGA) on October 1, 1986. The implementation of this PGA will result in a rate reduction to its customers served under Rate Schedules GS-1, IS-1, and I-1.

Copies of the filing were served upon the WTG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 8, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19938 Filed 9-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-668-000 et al.]

Florida Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission.

1. Florida Power & Light Co.

[Docket No. ER86-668-000]

August 28, 1986.

Take notice that on August 20, 1986, Florida Power & Light Company (FPL) tendered for filing a document entitled TX Operating Agreement Between Florida Power & Light Company and The Florida Municipal Power Agency (Rate Schedule FERC No. 86).

FPL states that TX Operating Agreement defines the methodology used to determine the additional incremental cost under section G.4 of the Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and The Florida Municipal Power Agency.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Agreement be made effective May 1, 1986. FPL states that copies of the filing were served on The Florida Municipal Power Agency.

Comment date: September 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power and Light Co.

[Docket No. EL86-49-000]

August 29, 1986.

Take notice that on July 2, 1986, Carolina Power and Light Company (CP&L or Company) tendered for filing a letter concerning test energy from a nuclear generating facility. Although this filing was initially docketed as a rate filing under Docket No. ER86-577-000, it has been determined to treat it as a Petition for Declaratory Order. The docket number has therefore been changed to EL86-49-000.

In its letter the company requests that it be permitted to include in Account 518 and pass through in its fuel adjustment clause the actual cost of the nuclear fuel used to produce the test energy from a CP&L nuclear generating station. CP&L states that pursuant to Electric Plant Instructions No. 3(18) of the Uniform System of Accounts, any Revenues received will be credited to the appropriate construction job account for Harris Unit #1 as the fair value of the test energy.

Comment date: September 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Co.

[Docket No. ER86-507-001]

August 29, 1986.

Take notice that on August 25, 1986, Carolina Power Light Company ("CP&L") tendered for filing in this docket an Amendment, dated August 22, 1986, which incorporates Amendments dated January 16, 1986, and May 1, 1986, between the City of Fayetteville ("Customer") and CP&L to the Service Agreement dated October 27, 1972, which is on file with the Commission as CP&L Rate Schedule FPC No. 102. The Amendments provided for the supplying of Backstand and Replacement Power by CP&L for Customer's generation and the purchase by CP&L from Customer of Peak, Reserve and Surplus Power when such is available from Customer.

The instant amendment is filed in response to the Commission's deficiency letter of August 18, 1986, in Docket No. ER86-507-000. Exhibit No. 1, submitted with the amendment, eliminates from the rate for the current billing period, costs related to transmission construction work in progress and an acquisition adjustment. The amendment also provides derivation of certain labor ratios used in computing the rate.

Comment date: September 12, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. The Connecticut Light and Power Co.

[Docket No. ER86-665-000]

August 28, 1986.

Take notice that on August 18, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with Respect to Various Gas Turbine Units between CL&P and UNITIL Power Corp. (UNITIL) dated as of August 1, 1986.

CL&P states that the Purchase Agreement provides for a sale to UNITIL of capacity and energy from CL&P's South Meadow Units Nos. 11, 12, 13, and 14 (the Units) during the period October 1, 1986 to April 30, 1993, together with related transmission service.

CL&P requests that the Commission permit the rate schedule filed herewith to become effective on October 1, 1986.

CL&P states that the capacity charge rate for the first thirteen months for the proposed service is a negotiated rate, based on the market price for this capacity, and less that the cost-of-service rate. The capacity charge for the remainder of the term is determined on a cost-service basis at the time that the Purchase Agreement was executed. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed and is determined in accordance with §13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/kW-month) and (ii) the number of kilowatts of winter capability which UNITIL is entitled to receive during such month. The Energy Charge, Variable, and Additional Maintenance Charges are based on UNITIL's portion of the applicable fuel expenses and hours of operation related to the Units and no special cost-of-service studies were made to derive these charges.

CL&P states that the services to be provided under the Purchase Agreement are the same as services provided by CL&P pursuant to purchase agreements with Vermont Electric Generation and Transmission Cooperative, Inc. (FERC Rate Schedule No. CL&P 349), and with Newport Electric Corporation (FERC Rate Schedule No. CL&P 350).

CL&P states that copies of the rate schedules have been mailed or delivered to UNITIL, Bedford, NH.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: September 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Co.

[Docket No. ES86-55-000]

August 29, 1986.

Take notice that on August 22, 1986, The Detroit Edison Company filed an application pursuant to section 204 of the Federal Power Act, seeking authorization to issue short-term debt in the amount of $409 million and to assume obligations in the amount of $420 million to be issued pursuant to a loan agreement and a nuclear fuel heat purchase contract.

Comment date: September 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Power Co.

[Docket No. ER86-674-000]

August 29, 1986.

Take notice that on August 22, 1986, Duke Power Company (Duke) tendered for filing proposed changes in its electric resale Rate Schedule No. 10 presently on file with the Commission which is applicable to Municipalities and Public Utility Companies. Based on the test period 12 months ending December 31, 1987 conditions, Duke estimates that the proposed changes in resale base rates will increase annual revenues by approximately $7,809,529. Of this amount, the Company states that approximately $7,730,979 is attributable to proposed increased rates under the Company's Rate Schedule No. 10 with the remaining $78,550 attributable to a proposed standby generation charge. The Company is proposing to implement the increase in two steps. The first step, or "interim" rates would increase rates by approximately $5,952,210. The second step, or "proposed" rates would provide additional revenues of $1,857,319 for a total increase of $7,809,529.

Duke states that the increase in wholesale rates is needed to compensate the Company for expected commercial operation of Catawba Unit No. 2 in the fall of 1986 and increased operating and maintenance costs.

Copies of the filing were served upon all of Duke's jurisdictional Wholesale Customers, the North Carolina Utilities Commission, the Public Service Commission of South Carolina, and the Southeastern Power Administration.

Comment date: September 12, 1986, in accordance with Standard Paragraph E at the end of this document.

7. Florida Power & Light Co.

[Docket No. ER86-667-000]

August 28, 1986.

Take notice that on August 20, 1986, Florida Power & Light Company (FPL) tendered for filing documents entitled Amendment Number Seventeen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and City of Homestead, Florida and TF Operating Agreement Between Florida Power & Light Company and City of Homestead, Florida (Rate Schedule FERC No. 55).

FPL states that under Amendment Number Seventeen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and City of Homestead, Florida, FPL will transmit power and energy for City of Homestead as is required in the implement of its interchange agreement with the City of Gainesville.

FPL further states that the TX Operating Agreement and TF Operating Agreements define the methodology used to determine the additional incremental cost under sections 1.4 and II.4 of Amendment Number Sixteen of the Revised Agreement to Provide Specified Transmisson Service Between Florida Power & Light Company and City of Homestead, Florida.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately and the proposed Operating Agreements be made effective June 20, 1986. FPL states that copies of the filing were served on City of Homestead, Florida.

Comment date: September 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-19933 Filed 9-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-5013-003, et al.]

Shell Western E & P Inc., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

September 2, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-5013-003, B, Aug. 6, 1986	Shell Western E & P, Inc., P.O. Box 4684, Houston, TX 77210..	El Paso Natural Gas Company, Wasson (San Andres) Field, Gaines and Yoakum Counties, Texas.	(1)	
C186-677-000, B, Aug. 15, 1986	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Phillips Petroleum, Eunice Plant and Skaggs, Drinkard Field, Lea County, New Mexico.	(2)	
C186-696-000, (C177-03), D, Aug. 22, 1986.	Shell Western E & P, Inc., P.O. Box 4684, Houston, TX 77210.	El Paso Natural Gas Company, Lusk (Morrow) Field, Lea County, New Mexico.	(3)	
G-6639-000, D, Aug. 18, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Texas Eastern Transmission Company, North Winnie & Stowell Field, Chambers County, TX.	(4)	
C161-990-000, D, Aug. 12, 1986	BHP Petroleum Company, Inc., 1300 Post Oak Tower, 5051 Westheimer, Houston, TX 77056.	Tennessee Gas Transmission Company, South Boross Field, Starr County, TX.	(5)	
C186-647-000, (G-2904), D, Aug. 11, 1986.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Natural Gas Pipeline Company of America, Calhoun & Victor Counties, TX.	(6)	
C186-673-000, (166-202), D, Aug. 14, 1986..	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Northern Natural Gas Company, Ellis County, OK	(7)	
C186-674-000, (166-723), Aug. 14, 1986.	do	Northern Natural Gas Company, Ellis County, OK	(7)	
C186-691-000, (C178-93), B, Aug. 20, 1986.	Pennzoil Producing Co., P.O. Box 2967, Houston, TX 77252-2967.	United Gas Pipe Line Company, OCS G-2078, Vermilion Block 228, Offshore Louisiana.	(8)	
C186-692-000, (C177-762-001), B, Aug. 20, 1986.	do	Sea Robin Pipeline Company, OCS G-2078, Vermilion Block 228, Offshore Louisiana.	(8)	
C186-693-000, (C185-444-000), B, Aug. 20, 1986.	Proven Properties Inc., P.O. Box 2967, Houston, Texas 77252-2967.	do	(9)	
C186-646-000, (C177-159), B, Aug. 11, 1986.	Texas Gas Exploration Corporation, 2 Houston Center, 909 Fannin Street, P.O. Box 4326, Houston, Texas 77210-4326.	Texas Gas Transmission Corporation, Vermilion Block 248 Area, Offshore Louisiana.	(9)	
C186-679-000, (C182-163-000), B, Aug. 18, 1986..	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, CA 90051.	Texas Gas Transmission Corporation, Block A-318 (OCS-G-3246), High Island Area, Offshore TX.	(10)	
C186-681-000, B, Aug. 18, 1986	D. Ivan Alapaw, c/o Mr. Lee D. Vendig, Payne & Vendig, 3800 Republic Bank Tower, Dallas, TX. 75201.	Arkla Energy Resources, a division of Arkla, Inc, Enid NE Field, Garfield County, Oklahoma.	(11)	
C186-649-000, (C164-233), D, Aug. 11, 1986.	Union Oil Co. of California, Union Oil Center, Box 7600, Los Angeles, CA 90051.	Texas Gas Transmission Corporation, West Rayne Field, Acadia Parish, Louisiana.	(12)	
C186-680-000, B, Aug. 18, 1986	Goldston Oil Corp., P.O. Box 22568, Houston, Texas 77227.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Chesterville (Wilcox 9600), Field, Colorado County, Texas.	(13)	
C186-682-000, B, Aug. 19, 1986	do	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Lissie Field, Colorado County, Texas.	(14)	
C186-683-000, B, Aug. 18, 1986	do	do	(15)	
C186-381-000, B, Aug. 16, 1986	Texaco Inc., P.O. Box 52332, Houston, Texas 77052.	Panhandle Eastern Pipeline Company, Richmond and Seiling Fields, Woodward County, Oklahoma.	(16)	
C164-1392-002, C, Aug. 25, 1986.	BHP Petroleum Co., Inc., 1300 Post Oak Tower, 5051 Westheimer, Houston, TX 77056.	Tennessee Gas Pipeline Company, Leslie Unit, McClain County, Oklahoma.	(17)	
C186-695-000, F, Aug. 22, 1986	Amoco Production Co., 1670 Broadway, Denver, Colorado 80202.	Arkla Energy Resources, a division of Arkla, Inc., Red Oak Field, LeFlore, County, Oklahoma.	(18)	
G-2889-001, B, Aug. 25, 1986	ARCO Oil and Gas, Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, Texas 75221.	Tennessee Gas Pipeline Company, Donna Field, Hidalgo County, TX.	(19)	
C168-200-004, D, Aug. 25, 1986	Sun Exploration and Produciton Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Arkla Energy Resources, a division of Arkla, Inc., Holton Unit, East Cameron Field, Le Flore County, Oklahoma.	(20)	
C169-326-000, D, Aug. 21, 1986	Sun Exploration and Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Natural Gas Pipeline Company of America, Rush Springs Unit No. 2, Rush Springs Field, Grady County, Oklahoma.	(21)	
G-6831-000, B, Aug. 22, 1986	Amoco Production Co., P.O. Box 3092, Houston, Texas 77253.	Transcontinental Gas Pipe Line Corporation, F. L. Foley Well No. 1, Harris Field, Live Oak County, Texas.	(22)	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C169-334-000, D, Aug. 25, 1986	Sun Exploration and Production Co., 5656 Blackwell, P.O. Box 2880, Dallas, Texas 75221-2880.	Natural Gas Pipeline *Company of America, Crittendon Field, Winkler County, Texas.*	([29])	
G-3694-022, D, Aug. 25, 1986	ARCO Oil and Gas Co., Division of Atlantic, Richfield Co., P.O. Box 2819, Dallas, Texas 75221.	United Gas Pipe Line Company, Burnell and North Petrus Fields, Bee and Karnes Counties, Texas.	([24])	

[1] Wells subject to this Application contain heavy concentration of carbon dioxide. Also, pre-granted abandonment is requested for wells which will later produce in excess of 60% carbon dioxide.
[2] Gas is sold to Phillips under a percentage-of-proceeds contract at Phillips Euncle Plant. Applicant wishes to enter into a percentage contract with its own Eunice Plant. The residue gas will be sold to El Paso Natural Gas Company (60%) and Northern Natural Gas Company (40%).
[3] All interests assigned to Petrus Oil Company.
[4] Acreage assigned to Sue-Ann Oil and Gas Company.
[5] Property assigned to TNT Petroleum Company.
[6] Remaining interest assigned to Sue-Ann Oil and Gas Company.
[7] Property sold to Reading & Bates Petroleum Company.
[8] Production ceased, lease expired and wells have been plugged.
[9] Reserves depleted; well plugged and abandoned.
[10] Gas reserves were depleted. Wells plugged and abandoned. The lease expired on 6-15-84.
[11] Zone has ceased to produce.
[12] By assignment executed August 21, 1983, Applicant assigned its interest in one of the dedicated leases in the proportions of three-fourths to Callery Properties, Inc., and one-fourth to Ashland Oil and Refining Company.
[13] The only well located on the subject property, the Briggs No. 1 well, is presently not producing.
[14] The only well producing gas under the subject contracts, the Brandon Unit well, has been plugged and abandoned and the gas purchase contracts covering the lands involved have expired.
[15] the only well located on the subject property, the M.E. Hoyo No. 1 well, is presently not producing.
[16] The well was pluged and abandoned.
[17] Applicant is filing under Gas Purchase contract dated May 1, 1964.
[18] By assignment effective August 1, 1985, Applicant acquired an interest in the subject area from Sun Exploration and Production Company.
[19] Leases have been released, surrendered or assigned to Harrell Drilling Company or PC, Ltd.
[20] By assignment executed April 24, 1986, effective April 1, 1986, Sun assigned certain interests to Kaiser-Francis Oil Company.
[21] By assignment executed August 16, 1985, effective July 1, 1985, Sun assigned certain interests to Kaiser-Francis Oil Company.
[22] Last producing well on lease plugged and abandoned on July 15, 1986, and the lease has reverted back to the landowner.
[23] Property sold to 88 Energy, Inc.
[24] Partial assignments, effective February 1, 1986 to Ronny G. Altman.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 86-19934 Filed 9-3-86; 8:45 am]
BILLING CODE 6717-01

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3074-1]

EPA List of Facilities Prohibited From Receiving Government Contracts Under 40 CFR Part 15

AGENCY: Environmental Protection Agency.

ACTION: EPA List of Facilities Prohibited From Receiving Government Contracts Under 40 CFR Part 15.

SUMMARY: 40 CFR 15.40 requires the Environmental Protection Agency (EPA) to publish in the **Federal Register** each year in February and August a list of all persons and facilities prohibited under 40 CFR Part 15 from receiving government contracts, grants, loans, subcontracts, subgrants, or subloans. The following list contains the names and locations of the prohibited facilities, as well as the dates they were placed on the list and the effective date of each listing.

DATE: This list is current as of August 25, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Psoras, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Rm. 3219 (LE-130A), 401 M St., SW., Washington, DC 20460. Telephone (202) 475-8785.

SUPPLEMENTARY INFORMATION: Pursuant to section 306 of the Clean Air Act [42 U.S.C. 1857 et. seq., as amended by Pub. L. 91-604], section 508 of the Clean Water Act [33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500], and Executive Order 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Clean Water Act with respect to Federal contracts, grants, loans, subcontracts, subgrants, or subloans. On April 16, 1975, regulations implementing the requirements of the statutes and the Executive Order were promulgated in the **Federal Register** [see 40 CFR Part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979. On September 5, 1985, revisions to those regulations were promulgated in the **Federal Register** [see 50 FR 36188, September 5, 1985]. The regulations provide for the establishment of a List of Violating Facilities which reflects those facilities ineligible for use in nonexempt Federal contracts, grants, loans, subcontracts, subgrants, or subloans.

The List of Violating Facilities is comprised of two sublists. Sublist 1, mandatory listing (40 CFR 15.10), includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act. Sublist 2, discretionary listing (40 CFR 15.11), includes those facilities listed on the basis of continuing or recurring noncompliance with clean air or clean water standards, and:

1. A conviction by a federal court under section 113(c)(2) of the Clean Air Act, or

2. Any injunction, order, judgment, decree (including consent decrees), or other form of civil ruling by a federal, state or local court issued as a result of noncompliance with clean air or water standards, or

4. A conviction by a state or local court for noncompliance with an order under sections 113(a), 113(d), 167, or 303 of the Clean Air Act or section 309(a) of the Clean Water Act, or

5. A Notice of Noncompliance issued by EPA under section 120 of the Clean Air Act, or

6. An enforcement action filed by EPA in federal court under sections 113(b), 167, 204, 205, or 211 of the Clean Air Act or section 309(b) of the Clean Water Act due to noncompliance with clean air or water standards.

Additions to and deletions from the List of Violating Facilities will be published periodically as they occur. Facilities on the List also are included in the General Services Administration's "Consolidated List of Debarred, Suspended, and Ineligible Contractors." Subscriptions to this document may be obtained from the U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

LIST OF VIOLATING FACILITIES

Name and effective date	Location and basis for listing
Sublist 1: Mandatory Listing	
Chemical Formulators, Jan. 29, 1981.	Nitro, West Virginia Facility, Clean Water Act section 309(c)(1).

VOL 51 ISS 171 SE 4 1986 UMI

LIST OF VIOLATING FACILITIES—Continued

Name and effective date	Location and basis for listing
Fleischmen's Yeast, Inc., Division of Nabisco Brands, Inc., May 14, 1986.	Sumner, Washington Facility, Clean Water Act section 309(c)(1).
Janco-United, Inc., Jan. 16, 1986.	Seattle, Washington Facility, Clean Water Act section 309(c)(1).
The Old Pin Shop, Dec. 19, 1985.	Oakville, Connecticut Facility, Clean Air Act section 113(c)(1).
Pioneer Excavating, Inc., d/b/a/ Rocky Mountain Materials and Excavating, Feb. 13, 1986.	Colorado Springs, Colorado Facility, Clean Water Act section 309(c)(1).
Waterbury House Wrecking Company, Dec. 19, 1985.	Waterbury, Connecticut Facility, Clean Air Act section 113(c)(1).
Will and Baumer, Inc., June 10, 1986.	Liverpool, New York Facility, Clean Water Act section 309(c)(1).
Sublist 2: Discretionary Listing	
B.F. Goodrich Company, Feb. 10, 1986.	Louisville, Kentucky Facility, Clean Air Act section 113(b).

Dated: August 25, 1986.

Thomas L. Adams, Jr.,

Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 86-19906 Filed 9-3-86; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL 3073-6]

State and Local Assistance; Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Allotment and Correction of Reallotment.

SUMMARY: This notice sets forth the allotments to the States of $1.2 billion for the municipal wastewater treatment works construction grants program. These funds were made available for allotment to the States in Pub. L. No. 99–349, the Urgent Supplemental Appropriations Act, July 2, 1986.

Section 205(c)(2) of the Clean Water Act (the Act), as amended by Pub. L. No. 97–117, provides that sums appropriated through FY 1985 be allotted to the States in accordance with the table in section 205(c)(2). Although the construction grants program's authorization period ended on October 1, 1985, in Pub. L. No. 99–349 Congress directed that the $1.2 billion be allotted to the States according to the referenced table.

Through promulgation of this notice, the requirements of the Act are fulfilled and the public is notified of the amounts made available to the States for grants to construct municipal wastewater treatment works.

This notice also explains the correction of an administrative error in the reallotment of FY 1984 construction grant funds (see 51 FR 13559, April 21, 1986). The correction involves adjustments to FY 1984 advices of allowance for all States that participated in the reallotment to allow for the inclusion of Florida.

DATE: September 4, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Widdowson, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382–5827.

SUPPLEMENTARY INFORMATION: In the Urgent Supplemental Appropriations Act, Pub. L. No. 99–349, July 2, 1986, Congress made a $1.2 billion appropriation available for allotment to the States in FY 1986. Congress directed that the funds are to be allotted to the States under section 205 of the Clean Water Act (the Act). Congress also directed in the conference report, H.R. Rep. No. 649, 99th Cong. 2d Sess. 44 (1986), that the funds to be allotted to the States are to be expended under the Act's provisions in effect in FY 1985 and could not be restricted to existing phased/segmented projects.

As directed by Congress, the additional $1.2 billion for FY 1986 are hereby allotted on the basis of the percentages listed in the table contained in section 205(c)(2) of the Act which implements section 205(e). Section 205(e) requires that all States receive at least one half of one percent of the total allotment. The percentages in the table were applied to the $1.2 billion allotment total to determine the actual dollar amounts shown in the column titled "State Allotment" in Table 1.

TABLE 1.—FY 1986 STATE ALLOTMENTS FROM ADDITIONAL $1.2 BILLION

State	State share	State allotment
Alabama	0.011398	13,678,000
Alaska	0.006101	7,321,000
Arizona	0.006885	8,262,000
Arkansas	0.006668	8,002,000
California	0.072901	87,481,000
Colorado	0.008154	9,785,000
Connecticut	0.012487	14,985,000
Delaware	0.004965	5,958,000
Dist. of Columbia	0.004965	5,958,000
Florida	0.034407	41,289,000
Georgia	0.017234	20,681,000
Hawaii	0.007895	9,474,000
Idaho	0.004965	5,958,000
Illinois	0.046101	55,321,000
Indiana	0.024566	29,478,000
Iowa	0.013796	16,555,000
Kansas	0.009201	11,041,000
Kentucky	0.012973	15,568,000
Louisiana	0.011205	13,446,000
Maine	0.007788	9,346,000
Maryland	0.024653	29,584,000
Massachusetts	0.034608	41,530,000
Michigan	0.043829	52,595,000
Minnesota	0.018735	22,482,000
Mississippi	0.009184	11,021,000
Missouri	0.028257	33,909,000
Montana	0.004965	5,958,000
Nebraska	0.005214	6,257,000
Nevada	0.004965	5,958,000
New Hampshire	0.010186	12,223,000
New Jersey	0.041654	49,985,000
New Mexico	0.004965	5,958,000
New York	0.113097	135,717,000
North Carolina	0.018398	22,075,000
North Dakota	0.004965	5,958,000
Ohio	0.057383	68,860,000
Oklahoma	0.008235	9,882,000
Oregon	0.011515	13,818,000
Pennsylvania	0.040377	48,453,000
Rhode Island	0.008750	8,100,000
South Carolina	0.010442	12,530,000
South Dakota	0.004965	5,958,000
Tennessee	0.014807	17,769,000
Texas	0.038726	46,471,000
Utah	0.005371	8,445,000
Vermont	0.004965	5,958,000
Virginia	0.020861	25,033,000
Washington	0.017726	21,271,000
West Virginia	0.015890	19,068,000
Wisconsin	0.027557	33,069,000
Wyoming	0.004965	5,958,000
Guam	0.000662	794,000
Puerto Rico	0.013295	15,954,000
Virgin Islands	0.000531	637,000
American Samoa	0.000915	1,098,000
Trust Territories of Pacific Isl	0.001305	1,566,000
Northern Mariana Islands	0.000425	510,000
Total	0.999996	1,200,000,000

Advices of allowance for these allotments have been issued by the EPA Comptroller and these allotments are available for obligation until September 30, 1987. After September 30, 1987, unobligated balances will be reallotted in accordance with the Act and EPA regulation at 40 CFR 35.2010.

The reallotment of FY 1984 construction grant funds was announced in the **Federal Register** on April 21, 1986 (51 FR 13559). A correction of this reallotment is necessary due to an administrative error by EPA.

Florida did not participate in the reallotment of FY 1984 funds because the State apparently failed to obligate $24,935 of FY 1984 funds. In reality, the apparent failure to obligate FY 1984 funds was due to an EPA administrative error. Florida has obligated all of its FY 1984 funds and should have received $423,100 in the reallotment instead of losing $24,935.

The total Florida adjustment of $448,035 must come from the States that participated in the FY 1984 reallotment, since each participant received a larger reallotment amount than was warranted. The following table shows the original reallotment amounts, the corresponding corrected figures and the necessary adjustments.

TABLE 2.—CORRECTIONS TO REALLOTMENT REQUIRED DUE TO EXCLUSION OF FLORIDA FY 1984 CONSTRUCTION GRANT FUNDS

State	Original reallotment	Corrected reallotment	Amount of correction
Alabama	$146,800	$140,200	−$6,600
Alaska	78,600	75,000	−3,600
Arizona	88,700	84,700	−4,000
Arkansas	85,900	82,000	−3,900
California	938,900	896,500	−42,400
Colorado	0	0	0
Connecticut	160,600	153,600	−7,200
Delaware	0	0	0
Dist. of Columbia	83,900	81,100	−2,800
Florida	0	423,100	423,100
Georgia	222,000	211,900	−10,100
Hawaii	0	0	0
Idaho	63,900	61,100	−2,800
Illinois	593,700	567,000	−26,700
Indiana	0	0	0
Iowa	0	0	0
Kansas	0	0	0
Kentucky	0	0	0
Louisiana	0	0	0
Maine	100,300	95,800	−4,500
Maryland	0	0	0
Massachusetts	445,700	425,600	−20,100
Michigan	0	0	0
Minnesota	241,300	230,400	−10,900
Mississippi	118,300	112,900	−5,400
Missouri	363,900	347,500	−16,400
Montana	63,900	61,100	−2,800
Nebraska	67,200	64,100	−3,100
Nevada	63,900	61,100	−2,800
New Hampshire	0	0	0
New Jersey	536,500	512,300	−24,200
New Mexico	63,900	61,100	−2,800
New York	1,456,554	1,390,819	−65,735
North Carolina	236,900	226,200	−10,700
North Dakota	0	0	0
Ohio	739,000	705,700	−33,300
Oklahoma	106,100	101,300	−4,800
Oregon	148,300	141,600	−6,700
Pennsylvania	520,000	496,600	−23,400
Rhode Island	86,900	83,000	−3,900
South Carolina	134,500	128,400	−6,100
South Dakota	63,900	61,100	−2,800
Tennessee	190,700	182,100	−8,600
Texas	498,700	476,300	−22,400
Utah	69,200	66,000	−3,200
Vermont	63,900	61,100	−2,800
Virginia	268,700	256,500	−12,200
Washington	228,300	218,000	−10,300
West Virginia	204,600	195,400	−9,200
Wisconsin	354,900	338,900	−16,000
Wyoming	63,900	61,100	−2,800
Guam	0	0	0
Puerto Rico	0	0	0
Virgin Island	0	0	0
American Samoa	0	0	0
Trust Territories of Pacific Is	0	0	0
Northern Mariana Islands	0	0	0
Total	$9,943,154	$9,918,219	[1] −$24,935

[1] Difference of $24,935 is returned to Florida since it should not have been reallotted. Total adjustment for Florida is $448,035 ($423,100 + 24,935).

The adjustments shown in the above table are being made through appropriate changes to FY 1984 advices of allowance. This correction in no way alters the allotment of FY 1986 funds announced in this notice.

A. James Barnes,

Acting Administrator.

August 28, 1986.

[FR Doc. 86-19909 Filed 9-3-86; 8:45 am]

BILLING CODE 6560-50-M

[SW-FRL-3073-7]

Transfer of Data to Contractor

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Romar Consultants Inc., of Philadelphia, PA, information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). Some of the information may have a claim of business confidentiality. This firm is working on the waste characterization efforts, in support of the Waste Listing Section, for the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing and chlorinated organics manufacturing industries.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than September 11, 1986.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is conducting a program to characterize waste and assess waste management practices within the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries. The Agency will use the results to identify and list hazardous waste under authority of section 3001 of the Resource Conservation and Recovery Act (RCRA), and to develop appropriate waste management standards under section 3004.

Under EPA Contract No. 68-01-7287, Romar Consultants, Inc. will assist the Waste Characterization Branch of the Office of Solid Waste in conducting waste characterization studies within the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries. The information being transferred to Romar was previously collected by other agency contractors and is specific to the above-noted industries. Some of the information being transferred may have been claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Romar employees require access to confidential business information (CBI) submitted to EPA under section 3007 of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of information under section 3007 of RCRA that EPA may transfer to this firm, on a need-to-know basis, CBI specific to the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke byproducts, wood preserving, rubber processing, and chlorinated organics manufacturing industries. Upon completing their review of materials submitted for these industries, Romar will return all such materials to EPA.

Romar has been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of its contractor and will inspect the facility and approve it prior to RCRA CBI being transmitted to the contractor. Personnel from this firm will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contract Requirements Manual.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Confidential business information.

Dated: July 31, 1986.

J. Winston Porter,

Assistant Administrator.

[FR Doc. 86-19910 Filed 9-3-86; 8:45 am]

BILLING CODE 6560-50-M

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

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VOL 51 ISS 171 SE 4 1986 UMI

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Dynamac Corporation, and their subcontractors: S-Cubed; Jacobs Engineering Group; Research Triangle Institute (RTI); and ENSECO, information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). Some of the information may have a claim of business confidentiality. These firms are working on the waste characterization efforts, in support of the Waste Listing Section, for the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing and chlorinated organics manufacturing industries.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than September 11, 1986.

ADDRESSES: Comments should be sent to Dina Villari, Documents Control Office, Office of Solid Waste, Information Management Staff (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Office, Office of Solid Waste, Information Management Staff (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–8551.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is conducting a program to characterize waste and assess waste management practices within the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries. The Agency will use the results to identify and list hazardous waste under the authority of section 3001 of the Resource Conservation and Recovery Act (RCRA), and to develop appropriate waste management standards under section 3004.

Under EPA Contract No. 68–01–7266, Dynamac, and their subcontractors: S-Cubed; Jacobs; RTI; and ENSECO, will assist the Waste Characterization Branch of the Office of Solid Waste in conducting waste characterization studies within the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries. The information being transferred to Dynamac and their subcontractors was previously collected by other agency contractors and is specific to the above-noted industries. Some of the information being transferred may have been claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Dynamac and their subcontractor's employees require access to confidential business information (CBI) submitted to EPA under section 3007 of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of information under section 3007 of RCRA that EPA may transfer to these firms, on a need-to-know basis, CBI specific to the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries. Upon completing their review of materials submitted for these industries, Dynamac and their subcontractors will return all such materials to EPA.

Dynamac and their subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of its contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of Information, Confidential business information.

Dated: August 22, 1986

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 86–19911 Filed 9–3–86; 8:45 am]

BILLING CODE 6560–50–M

[PP 3G2782/T529; FRL–3074–2]

Thiodicarb; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide thiodicarb and its metabolite methomyl in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire July 7, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail:

Larry Schnaubelt, Product Manager (PM) 12, Registration Division (TS 767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:

Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 18, 1985 (50 FR 37905), announcing the extension of temporary tolerances for the combined residues of the insecticide thiodicarb, dimethyl N'N'-[thiobis[[(methylamino) carbonyl] oxy]]bis[ethanimidothioate], and its metabolite methomyl, N-[(methylcarbamoyl)oxy] thioacetimidate, in or on the raw agricultural commodities field corn grain at 0.1 part per million (ppm) and corn forage and fodder at 150 ppm.

These tolerances were issued in response to pesticide petition PP 3G2782, submitted by United Carbide Agriultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709. These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 264-EUP-64, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396), 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

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1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 7, 1987. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981, (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 27, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–19912 Filed 9–3–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Chittenden Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under §225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 1986.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Chittenden Corporation*, Burlington, Vermont; to engage *de novo* through its subsidiary, Chittenden Consulting Corporation, Burlington, Vermont, in management consulting to depository institutions pursuant to §225.25(b)(11) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Ohio Bancorp*, Youngstown, Ohio; to engage *de novo* directly or indirectly in electronic fund transfers via terminals, known by the registered trade name of MoneyNet, pursuant to §225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Trumbull, Mahoning, Columbiana, Stark, Jefferson, and Carroll Counties, Ohio. Comments on this application must be received by September 24, 1986.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Norwest Financial Services, Inc., Des Moines, Iowa, in the activities of consumer and commercial finance pursuant to §225.23(b)(1) of the Board's Regulation Y; leasing real or personal property pursuant to §225.25(b)(5); the underwriting of credit life and credit accident and health insurance pursuant to §225.25(b)(9); the sale of bookkeeping, payroll, and other management financial reporting services, and data processing services pursuant to §225.25(b)(7). All of these activities will be conducted within the State of New York.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoeing, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Edna Bancshares, Inc.*, Edna, Kansas; to engage *de novo* through its subsidiary Edna Insurance Agency, Inc., Edna, Kansas, in acting as agent in the sale of general insurance in a town of less than 5,000 in population pursuant to §225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the area within a 15 mile radius of Edna, Kansas.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Community Bankers, Inc.*, Iredell, Texas; to engage *de novo* directly in the activity of issuing and retail selling of money orders and similar consumer payment instruments with a face value of not more than $1000 and the selling of travelers checks and U.S. Savings Bonds pursuant to §225.25(b)(12) of the Board's Regulation Y.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *San Diego Financial Corporation*, San Diego, California; to engage *de novo* through its subsidiary, San Diego Financial Capital Management, Inc., San Diego, California, in providing portfolio investment advice and management, placing securities trades for its customers and customers of affiliate bank's trust department on specific direction or acting as an agent, furnishing general economic information, distributing investment

recommendations and economic analyses, serving as investment advisor to investment companies, providing financial advice to state and local governments pursuant to §225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-19685 Filed 9-3-86; 8:45 am]

BILLING CODE 6210-01-M

Huntington Bancshares Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 24, 1986.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

(1) *Huntington Bancshares, Incorporated,* Columbus, Ohio; to acquire 100 percent of the voting shares of Kasco Financial Corporation, Warren, Michigan, and thereby indirectly acquire Warren Bank, Warren, Michigan. Bank will be held directly by Huntington Bancshares, Michigan, Inc., Columbus, Ohio, a wholly-owned subsidiary of Applicant to be formed in connection with this acquisition.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *H P Holding Company,* Oak Park, Illinois; to become a bank holding company by acquiring 81 percent of the voting shares of Heritage/Pullman Bank and Trust Company, Chicago, Illinois. Comments on this application must be received by September 22, 1986.

2. *Waupaca Bancorporation,* Waupaca, Wisconsin; to acquire 100 percent of the voting shares of Iola Bancshares, Inc., Iola, Wisconsin, and thereby indirectly acquire First State Bank of Iola, Iola, Wisconsin.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Marshfield Investment Company,* Springfield, Missouri; to acquire 100 percent of the voting shares of Bank of Kimberling City, Kimberling City, Missouri.

2. *Marshfield Investment Company,* Springfield, Missouri; to merge with Golden City Investment Company, Springfield, Missouri, and thereby indirectly acquire First National Bank, Lamar, Missouri.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Greater Southwest Bancshares, Inc.,* Irving, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of The West, Irving, Texas.

Board of Governors of the Federal Reserve System, August 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-19686 Filed 9-3-86; 8:45 am]

BILLING CODE 6210-01-M

Itasca Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of hearing, identifying specially any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Itasca Bancorp, Inc.,* Itasca, Illinois; to acquire 30 percent of B.I.P., Inc., Bloomingdale, Illinois, and thereby engage in data processing services pursuant to § 225.25(b)(7).

Board of Governors of the Federal Reserve System, August 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-19687 Filed 9-3-86; 8:45 am]

BILLING CODE 6210-01-M

Walsh County Bancorp., Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permission for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1986.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Walsh County Bancorporation, Inc.*, Drayton, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Minto, Minto, North Dakota.

In connection with this application, Applicant proposes to acquire Minto Insurance Agency, Minto, North Dakota, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000, pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in Minto, North Dakota.

Board of Governors of the Federal Reserve System, August 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-19888 Filed 9-3-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Correction

AGENCY: Federal Trade Commission.

ACTION: Correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on June 20, 1986 (51 FR 20050 FR Doc. 86-12655). The "Acquired Name" entry numbers 79 and 80 (86-1062 and 86-1063—The Shin-Etsu Chemical Co., Ltd.'s proposed acquisition of voting securities of The Dow Chemical Company) was incorrect. The correct entry should have been Shin-Etsu Chemical Co., Ltd.'s proposed acquisition of voting securities of Hemlock Semiconductor Corp., (Dow Chemical Company and Corning Glass Works, UPE's).

DATE: The correction is effective September 4, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, FTC/H-303, Washington, DC 20580. (202) 523-3894.

Phyllis A. Johnson,

Acting Secretary.

[FR Doc. 86-19919 Filed 9-3-86; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 86-1279—Healthnet, Inc.'s proposed acquisition of voting securities of Kanawha Valley Memorial Hospital, Inc.	July 1, 1986.
(2) 86-1295—Doyle Dane Bernbach's proposed acquisition of voting securities of BBDO International, Inc.	Do.
(3) 86-1304—Paul Cheng's proposed acquisition of voting securities of U.S. Home Corporation.	Do.
(4) 86-1305—Simon Edward Heath's proposed acquisition of voting securities of U.S. Home Corporation.	Do.
(5) 86-1309—Doyle Dane Bernbach's proposed acquisition of voting securities of Needham Harper Worldwide, Inc.	Do.
(6) 86-1310—BBDO International, Inc.'s proposed acquisition of voting securities of Needham Harper Worldwide, Inc.	Do.
(7) 86-1297—Johnson Southern Company's, (S.K. Johnston, UPE) proposed acquisition of voting securities of The Coca-Cola Bottling Company of St. Louis, Inc.	July 2, 1986.
(8) 86-1312—Ranks Hovis McDougall PLC's proposed acquisition of voting securities of Pilgrims Farms, Inc., (Edwin G. DeMont, UPE).	Do.
(9) 86-1319—Unicorp Canada Corporation's proposed acquisition of voting securities of Gelco Corporation.	Do.
(10) 86-1347—Davis J.V.'s, (Marvis Davis, UPE) proposed acquisition of assets of MidCon Exploration Co.—Gulf Coast, (Occidental Petroleum Corporation, UPE).	July 3, 1986.
(11) 86-1353—Apache Petroleum Company's proposed acquisition of assets of Oil and Gas subsidiaries, (Occidental Petroleum Corporation, UPE).	Do.
(12) 86-1359—Apache Corporation's proposed acquisition of assets of Oil and Gas subsidiaries of (Occidental Petroleum Corporation, UPE).	Do.
(13) 86-1362—Davis J.V.'s, (Marvin Davis, UPE) proposed acquisition of assets of Grantor Trusts for Davis Children.	Do.
(14) 86-1329—Kirk Kerkorian/United Artists Corporation's proposed acquisition of assets of MGM Entertainment Company, (R.E. Turner, UPE).	July 8, 1986.
(15) 86-1336—Royal Dutch Petroleum Company, through its subsidiary Shell Oil Company's proposed acquisition of assets of Phillips Petroleum Company.	Do.
(16) 86-1369—Chevron Corporation's proposed acquisition of assets of LTV Steel Company Inc., (LTV Corporation, UPE).	Do.
(17) 86-1378—American Bakeries Company's proposed acquisition of voting securities of TL Enterprises, INC., (Richard A. and Iby Rouse, UPE's).	Do.
(18) 86-1389—Health Care Property Investors, Inc.'s proposed acquisition of assets of Health Care Investors, II.	Do.
(19) 86-1299—Gulf & Western, Inc.'s proposed acquisition of voting securities of Trans-Lux Connecticut Corporation, Trans-Lux Ridgeway Corporation, Trans-Lux Danbury Corporation, Trans-Lux Greenwich Corporation, Trans-Lux Avon Corporation, Trans-Lux Candlewood Corporation, Trans-Lux Palace Corporation, Trans-Lux Trumbull Corporation, Trans-Lux Oklahoma Corporation, and TLE Theater Corporation, (Trans-Lux Corporation, UPE).	July 9, 1986.
(20) 86-1360—Dart & Kraft, Inc's proposed acquisition of assets of Mocari Produce.	Do.
(21) 86-1286—Borden's Inc.'s proposed acquisition of voting securities of Jay Foods, Inc.	July 10, 1986.
(22) 86-1343—Borden, Inc.'s proposed acquisition of voting securities of Doxsee Food Corporation.	July 11, 1986.
(23) 86-1348—LLC Corporation's proposed acquisition of voting securities of NL Industries, Inc.	Do.

Transaction	Waiting period terminated effective
(24) 86-1352—"The 1964 Simmons Trust's" proposed acquisition of voting securities of NL Industries, Inc.	Do.
(25) 86-1360—Superior Care, Inc.'s proposed acquisition of voting securities of Kimberly Services, Inc., (Pritchard Services Group PLC, UPE).	Do.
(26) 86-1361—Merrill Lynch & Co., Inc.'s proposed acquisition of voting securities of Fruehauf Corporation.	Do.
(27) 86-1390—Veba Aktiengesellschaft's proposed acquisition of voting securities of Delta Distributors, Inc.	Do.
(28) 86-1393—American Express Company's proposed acquisition of voting securities of South Atlantic Financial Corp.	Do.
(29) 86-1410—Beverly Investment Properties, Inc.'s proposed acquisition of assets of Beverly Enterprises; Beverly Enterprises—Florida, Inc.; Beverly Enterprises—Texas, Inc.; Beverly Enterprises—Wisconsin, Inc.; Beverly Enterprises—Indiana, Inc.; Beverly Enterprises—Arkansas, Inc.; Beverly Enterprises—Kansas, Inc.; and Beverly Enterprises—California, Inc.	Do.
(30) 86-1412—Palmer G. Lewis Co., Inc's proposed acquisition of voting securities of Western American Forest Products Incorporation.	Do.
(31) 86-1417—Farm House Foods Corporation's proposed acquisition of voting securities of Economy Dry Goods, Inc., (Michael Ginsburg, UPE).	Do.
(32) 86-1418—Farm House Foods Corporation's proposed acquisition of voting securities of Economy Dry Goods, Inc., (Robert Ginsburg, UPE).	Do.
(33) 86-1278—LeRoy A. Pesch, M.D.'s proposed acquisition of voting securities of Republic Health Corporation.	July 15, 1986.
(34) 86-1350—Staveley Industries' PLC proposed acquisition of voting securities of National Controls Corporation Inc.	Do.
(35) 86-1416—Canadian Occidental Petroleum Ltd.'s proposed acquisition of voting securities of Cities Service Netherlands Petroleum Corporation, Cities Service (U.K.) Ltd., North Cities Service Petroleum Corporation, (Occidental Petroleum Corporation, UPE).	Do.
(36) 86-1419—Aaron Spelling's proposed acquisition of voting securities of E. Duke Vincent Productions, Inc., (E. Duke Vincent, UPE).	Do.
(37) 86-1420—Aaron Spelling's proposed acquisition of voting securities of Douglas Cramer Productions, Inc., (Douglas S. Cramer, UPE).	Do.
(38) 86-1391—Arbor Drugs, Inc.'s, (Eugene Applebaum, UPE) proposed acquisition of assets of Sentry Drug Stores, Inc.	July 16, 1986.
(39) 86-1399—The Times Mirror Company's proposed acquisition of voting securities of The A.S. Abell Company.	Do.
(40) 86-1404—Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership, II's proposed acquisition of voting securities of MRC Acquisition Corp., (Forstmann Little & Co., UPE).	Do.
(41) 86-1408—Cooper Industries, Inc.'s proposed acquisition of voting securities of Wheatley Pump and Valve, Inc., (Moorco International, Inc., UPE).	Do.
(42) 86-1409—Masco Industries, Inc.,'s proposed acquisition of voting securities of Creative Industries Group, Inc.	Do.
(43) 86-1415—Convergent Technologies, Inc.'s proposed acquisition of voting securities of Display Data Corporation.	Do.
(44) 86-1351—James R. McManus's proposed acquisition of voting securities of Ally & Gargano, Inc.	July 17, 1986.
(45) 86-1382—Panhandle Eastern Corporation's proposed acquisition of assets of Lachmar, a partnership.	Do.
(46) 86-1411—Pacific Corporation's proposed acquisition of assets of Card Key Systems Division of VSI Corp. and voting securities of certain foreign subsidiaries from Fairchild Industries, Inc.	Do.
(47) 86-1356—Panhandle Eastern Corporation's proposed acquisition of voting securities of Pantheon, Inc., (General Dynamics Corporation, UPE).	July 18, 1986.
(48) 86-1357—Panhandle Eastern Corporation's proposed acquisition of voting securities of Morgas, Inc., (Moore McCormack Resources, Inc., UPE).	Do.
(49) 86-1373—General Accident Fire & Life Assurance's proposed acquisition of voting securities of Oregon Automobile Insurance Co., (Armco, Inc., UPE).	Do.
(50) 86-1424—"The 1964 Simmons Trust's" proposed acquisition of voting securities of NL Industries, Inc.	July 21, 1986.
(51) 86-1425—"The 1964 Simmon's Trust's" proposed acquisition of voting securities of NL Industries, Inc.	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of the Commission.

Phyllis A. Johnson,

Acting Secretary.

[FR Doc. 86-19918 Filed 9-3-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Public Workshop; Acellular Pertussis Vaccines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop to discuss acellular pertussis vaccines.

DATE: The workshop will be held on September 22 through 24, 1986, 8:30 a.m.

ADDRESS: The workshop will be held at the Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Charles R. Manclark, Center for Drugs and Biologics (HFN-869), Food and Drug Administration, 800 Rockville Pike, Bethesda, MD 20205, 301-496-5564.

SUPPLEMENTARY INFORMATION: The workshop is being sponsored by the United States Public Health Service Interagency Group to monitor vaccine development, production, and usage. Topics will include: licensing considerations; design and evaluation of clinical trials; development, testing and characterization of acellular pertussis vaccines; manufacturing methods; epidemiology of pertussis; experience with acellular pertussis vaccines in various countries..

The meeting will be open to the public. Space is limited, and persons planning to attend should contact Charles Manclark (address above).

Dated: August 28, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-19876 Filed 9-3-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement for Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Bureau of Health Professions, Health Resources and Services Administration, announces the acceptance of applications for Grants for Residency Training and Advanced Education in the General Practice of Dentistry for Fiscal Year 1987, authorized under the authority of section 786(b) of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 786(b) of the Act authorizes the Secretary of Health and Human Services to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

For purposes of implementing section 786(b), an approved residency or advanced educational program in the general practice of dentistry means a residency program or advanced educational program in general dentistry which has received accreditation by the Commission on Dental Accreditation.

The Administration's budget request for Fiscal Year 1987 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely

fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

To receive support, programs must meet the requirements of final regulations at 42 CFR Part 57, Subpart L.

Questions regarding grants policy should be directed to:

Grants Management Officer (D–30)
Bureau of Health Professions
Health Resources and Services Administration
5600 Fishers Lane, Rm. 8C–22
Rockville, Maryland 20857
Telephone: (301) 443–6857

To obtain specific information concerning programmatice aspects of the grant program, contract:

Dental Health Branch
Division of Associated and Dental Health Professions
Bureau of Health Professions
Health Resources and Services Administration
5600 Fishers Lane, Rm. 8C–15
Rockville, Maryland 20857
Telephone: (301) 443–6837

The standard application form and specific instructions for this program have been approved by the Office of Managment and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is December 12, 1986. Applications will be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private matered postmarks shall not be acceptable as proof of timely mailing.

In accordance with section 786(b) of the Act, three distinct categories of program development can be supported. Applications must address at least one of these categories.

Category 1: Program Initiation

An applicant may request support for up to one year of program planning and development, followed by two years of program operation. For this purpose an applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1 of the current fiscal year). Before a second year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

Category 2: Program Expansion

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum and/or facilities to enhance the quality of the program.

In recognition of the continued importance of increasing the number of advanced training opportunities in the general practice of dentistry, the follwing funding preferences will be used in making Fiscal Year 1987 awards for Grants for Residency Training and Advanced Education in the General Practice of Dentistry: new programs (Category 1), followed by expanding programs (Category 2), and then program improvements (Category 3); and within Category 1, first funding will be for approved applications designed to establish programs in States in which no nonfederally supported residency or advanced educational programs in general dentistry are currently in operation.

In all categories, special consideration will be given to programs with components that address significant national, regional or local dental health problems, such as increasing dental services to underserved and geriatric populations, and increasing minority resident and trainee participation in advanced general dentistry training.

There is no funding preference between residency training programs and advanced educational programs in general dentistry.

This program is listed at 13.897 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 42 CFR Part 100.

Dated: August 5, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86–19916 Filed 9–3–86; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–06–4990–11–6001; W–96687]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

August 25, 1986.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–96687 for lands in Sweetwater County, Wyoming was timely filed and was accompanied by all the required rentals accruing for the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–96687), effective November 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–19868 Filed 9–3–86; 8:45 am]

BILLING CODE 4310–22–M

[CO–940–86–4420–10; C–44206]

Proposed Withdrawal; Opportunity for Public Hearing

August 26, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed application for withdrawal of approximately 278 acres of National Forest System lands for location and entry under the United States mining laws only for protection of recreational values at Keystone, Colorado. The area proposed for withdrawal is within the boundaries of the Arapaho National Forest. This notice segregates the land for a period of two years during which

time the Forest Service will do the necessary studies to determine whether this site should be recommended to be withdrawn for 100 years. The land will continue to be open to all uses other than mining laws.

DATE: Comments or requests for hearing should be received on or before December 3, 1986.

ADDRESS: Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (301) 236–2100.

The Department of Agriculture proposes that the National Forest System lands identifed below be withdrawn from location and entry under the United States mining laws only, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Arapaho National Forest, Sixth Principal Meridian

T. 5 S., R. 76 W.,
- Sec. 19, lots 5, 6, 7, 8, 39, NW¼NE¼NE¼, NE¼NW¼NE¼ and all that portion of M.S. 20778 Schoolmarm within the NE¼ of sec. 19 comprising proposed lots 52, 53, and 54;
- Sec. 20, lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, and all those portions of M.S. 20778 Schoolmarm and M.S. 20686B Des Moines Mill Site within the NW¼ of sec. 20 comprising proposed lots 36 thru 41, inclusive.

T. 5 S., R. 77 W.,
- Sec. 22, W½NE¼SW¼, SE¼NW¼SW¼, E½SW¼SW¼, and SE¼SW¼;
- Sec. 23, S½N½NW¼;
- Sec. 27, W½NW¼NE¼, SE¼SW¼NE¼, NW¼NE¼SE¼, and NE¼NW¼SE¼.

The areas described aggregate 277.91 acres in Summit County, Colorado.

Effective on date of publication, these lands are segregated from operation of the United States mining laws. The lands remain open to mineral leasing and to Forest Service management.

The segregative effect of this pending application will terminate 2 years from the date of this publication unless final withdrawal action is taken or the application is terminated prior to that date. Notice of any action will be published in the **Federal Register.**

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed withdrawal application may present their views in writing to the Colorado State Office.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on this proposed action must submit a written request for a hearing to the Colorado State Director within 90 days from the date of this publication. If it is determined that a public hearing should be held, the hearing will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. The authorized officer will undertake negotiations with the applicant agency to assure that the area sought is the minimum essential to meet the applicant's needs, to provide for the maximum current utilization of the land for purposes other than the applicant's, and to reach an agreement on the concurrent management of the land and its resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on this application will be published in the **Federal Register.**

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-19697 Filed 9-3-86; 8:45 am]

BILLING CODE 4310-JB-M

[OR-030-06-4332-02; GP6-355]

Vale District Advisory Council; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of Meeting, Vale District Advisory Council.

SUMMARY: Notice is given in accordance with Pub. L. 92–463, that the Vale District Advisory Council will conduct a field tour of the Trout Creek Mountains on September 24 and 25, 1986. The tour will leave the Vale District Office at 8:00 a.m. September 24 and return at 6:00 p.m. September 25. The purpose of the tour is to discuss a Multiple Case Activity Plan that is proposed to be prepared for the area.

The public is invited to attend the tour, but must provide their own transportation.

For further information contact Barry Rose, Bureau of Land Management, Vale District, P.O. Box 700, Vale, OR 97918.

David Lodzinski,

Acting District Manager.

[FR Doc. 86-19691 Filed 9-3-86; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1248, Block 161, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on August 26, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD's available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 27, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-19890 Filed 9-3-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5050, Block 50, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on August 22, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 26, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-19887 Filed 9-3-86; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Mines

Advisory Committee on Mining and Mineral Research; Meeting

This notice is issued in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I) and Office of Management and Budget Circular No. A63, Revised.

The Advisory Committee on Mining and Mineral Research will meet from 8 a.m. to 5 p.m. (or completion of business) on Wednesday, October 15, 1986, in room 7000 A and B, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

The proposed agenda is:

1. Welcome by Secretary.
2. Election of co-chairman.
3. Approval of the minutes of the meeting of August 16, 1985.
4. Approval of the 1986 grant awards program.
5. Status of congressional action on Mineral Institutes 1987 budget.
6. Review of the eligibility of the present Mineral Institutes.
7. Application of Columbia University to become the designated Mineral Institute of the State of New York.
8. Revision of National Plan for research in mining and mineral resources.
9. Proposal of the Mississippi Mineral Resources Institute for the establishment of an underwater mining technology center.
10. New business.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come, first-served basis. Written statements concerning the subjects are welcome.

In order to be admitted to the building, visitors who expect to attend should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, Mail Stop 1020, 2401 E Street, NW., Washington, DC 20241, phone (202) 634-1328, no later than noon, Tuesday, October 14.

Dated: August 28, 1986.

Robert C. Horton,

Director.

[FR Doc. 86-19869 Filed 9-3-86; 8:45 a.m.]

BILLING CODE 4310-53-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 23, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 19, 1986.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Diego County

San Diego, *Burnham—Marston House*, 3563 Seventh Ave.

COLORADO

Dolores County

Beaver Creek Massacre Site

GEORGIA

Decatur County

Brinson, *Brinson Family Historic District*, Bainbridge, Wainhurst and Leon Sts.

INDIANA

Boone County

Lebanon, *Boone County Courthouse*, Courthouse Square

Thorntown, *Thorntown Public Library*, 124 N. Market St.

Delaware County

Muncie, *Old West End Historic District*, Roughly bounded by Liberty & Washington Sts., the White River, Kilgore & Howard Sts., & Orchard Pl.

Elkhart County

Elkhart, *Buescher Band Instrument Company Building*, 224 E. Jackson Ave.

Marion County

Indianapolis, *Heier's Hotel*, 10-18 S. New Jersey St.

Indianapolis, *North Meridian Street Historic District*, 4000-5694 and 4001-5747 N. Meridian

Ripley County

Versailles, *Taylor, Fernando G., House*, NE corner of Main & Tyson Sts.

Sullivan County

Sullivan, *Sherman Building*, 2-4 S. Court St.

Warrick County

Boonville, *Boonville Public Square Historic District*, Bounded roughly by First, Sycamore, Fourth, and Walnut

IOWA

Des Moines County

Burlington, *Forney, James M., House*, 401 Cedar

Henry County

Mount Pleasant, *Brazel House Hotel*, 100 N. Main St.

KANSAS

Marshall County

Marysville, *Pusch—Randell House*, Elm St.

LOUISIANA

Grant Parish

Pollock, *Walker Store*, Main St.

NEW MEXICO

Bernalillo County

Albuquerque, *National Humane Alliance Animal Foundation*, 815 Virginia Ave., SE

NEW YORK

Cattaraugus County

Franklinville, *Park Square Historic District*, Park Square Roughly bounded by N. Main, Pine, Chestnut, S. Main, Elm, & Church Sts.
Gowanda, *Gowanda Village Historic District*, 37, 39, 41–45, 47–49, & 53 W. Main St.

Nassau County

Roslyn Harbor, *Cedarmere—Clayton Estates*, Bryant Ave. & Northern Blvd.
Roslyn, *Eastman Cottage (Roslyn Village MRA)*, 130 Mott Ave.
Roslyn, *Hicks Lumber Company Store (Roslyn Village MRA)*, 1345 Old Northern Blvd.
Roslyn, *Roslyn Grist Mill (Roslyn Village MRA)*, 1347 Old Northern Blvd.
Roslyn, *Roslyn National Bank & Trust Company Building (Roslyn Village MRA)*, 1432 Old Northern Blvd.
Roslyn, *Roslyn Savings Bank Building (Roslyn Village MRA)*, 1400 Old Northern Blvd.
Roslyn, *Roslyn Village Historic District (Roslyn Village MRA)*, Roughly bounded by Old Northern Blvd., Vernon & E. Broadway Sts., Main, Glen Ave. & Tower St.
Roslyn, *Titus, Willet, House (Roslyn Village MRA)*, 1441 Old Northern Blvd.
Roslyn, *Trinity Church Complex (Roslyn Village MRA)*, 1347 Old Northern Blvd.
Roslyn, *Worner, Samuel Adams, House (Roslyn Village MRA)*, 1 Railroad Ave.

New York County

New York, *R&S Building*, 492 First Ave.

Queens County

Far Rockaway, *Russell Sage Memorial Church*, 1324 Beach 12th St.

Suffolk County

Southhampton, *Balcastle (Southampton Village MRA)*, NW corner of Herrick & Little Plains Rds.

Suffolk County

Southampton, *Beech Road Historic District (Southampton Village MRA)*, Between Shinnecock & Halsely Neck Rds. on Beach Rd. at Barrier Beach
Southampton, *Cooper, Capt. Mercator, House (Southampton Village MRA)*, 81 Windmill Ln.
Southampton, *Goodale, Capt. C., House (Southampton Village MRA)*, 300 Hampton Rd.
Southampton, *North Main Street Historic District (Southampton Village MRA)*, N. Main St. near CR 39 & Railroad Station Plaza
Southampton, *Southampton Village Historic District (Southampton Village MRA)*, Roughly bounded by Hill, Windmill Ln., Hampton Rd., N & S Main St., Old Town Rd., Atlantic Ocean, Coopers Neck Lane, Great Plains & Ox Pasture Rds.
Southampton, *Wesley, Dr. Bowers, House (Southampton Village MRA)*, Beach Rd.
Southampton, *Wickapogue Road Historic District (Southampton Village MRA)*, Both sides of Wickapogue Rd. between Narrow Lane & Cobb Rd.

Westchester County

New Rochelle, *Lispenard—Rodman—Davenport House*, 180 Davenport Ave.

NORTH DAKOTA

Grand Forks County

Grand Forks, *Clifford, George B., House*, 406 Reeves Dr.

PENNSYLVANIA

Allegheny County

Pittsburg, *Allderdice, Taylor, High School (Pittsburgh Public Schools TR)*, 2409 Shady Ave.
Pittsburg, *Allegheny High School (Pittsburgh Public Schools TR)*, 810 Arch St.
Pittsburg, *Arsenal Jr. High School (Pittsburgh Public Schools TR)*, Butler and Fortieth Sts.
Pittsburg, *Baxter High School (Pittsburgh Public Schools TR)*, Baxter St. & Brushton Ave.
Pittsburg, *Boyard School (Pittsburgh Public Schools TR)*, 4830 Hatfield St.
Pittsburg, *Bedford School (Pittsburgh Public Schools TR)*, 910–918 Bingham St.
Pittsburg, *Beechwood Elementary School (Pittsburgh Public Schools TR)*, Rockland Ave. near Sebring Ave.
Pittsburg, *Beltzhoover Elementary School (Pittsburgh Public Schools TR)*, Cedarhurst and Estrella Sts.
Pittsburg, *Birmingham Public School (Pittsburgh Public Schools TR)*, 118–128 S. Fifteenth St.
Pittsburg, *Boggs Avenue Elementary School (Pittsburgh Public Schools TR)*, Boggs & Southern Aves.
Pittsburg, *Colfax Elementary School (Pittsburgh Public Schools TR)*, Beechwood Blvd. & Phillips Ave.
Pittsburg, *Connelly, Clifford B., Trade School (Pittsburgh Public Schools TR)*, 1501 Bedford Ave.
Pittsburg, *Conroy Jr. High School (Pittsburgh Public Schools TR)*, Page & Fulton Sts.
Pittsburg, *Dilworth Elementary School (Pittsburgh Public Schools TR)*, St. Marie & Collins Sts.
Pittsburg, *Fort Pitt Elementary School (Pittsburgh Public Schools TR)*, 5101 Hillcrest St.
Pittsburg, *Foster School (Pittsburgh Public Schools TR)*, 286 Main St.
Pittsburg, *Frick, Henry Clay, Training School for Teachers (Pittsburgh Public Schools TR)*, 107 Thackeray St.
Pittsburg, *Fulton Elementary School (Pittsburgh Public Schools TR)*, Hampton & N. Saint Clair Sts.
Pittsburg, *Greenfield Elementary School (Pittsburgh Public Schools TR)*, N of Greenfield Ave. at E end of Alger St.
Pittsburg, *Knoxville Jr. High School (Pittsburgh Public Schools TR)*, Charles & Grimes Aves.
Pittsburg, *Langley High School (Pittsburgh Public Schools TR)*, Sheraden Blvd. & Chartiers Ave.
Pittsburg, *Larimer School (Pittsburgh Public Schools TR)*, Larimer Ave. at Winslow St.
Pittsburg, *Latimer School (Pittsburgh Public Schools TR)*, Tripoli & James Sts.
Pittsburg, *Lawrence Public School (Pittsburgh Public Schools TR)*, 3701 Charlotte St.
Pittsburg, *Lemington Elementary School (Pittsburgh Public Schools TR)*, 7060 Lemington Ave.
Pittsburg, *Letsche Elementary School (Pittsburgh Public Schools TR)*, 1530 Cliff St.
Pittsburg, *Liberty School #4, Friendship Building (Pittsburgh Public Schools TR)*, 5501 Friendship Ave.
Pittsburg, *Lincoln Elementary School (Pittsburgh Public Schools TR)*, Lincoln & Frankstown Ave.
Pittsburg, *Linden Avenue School (Pittsburgh Public Schools TR)*, 739 S. Linden Ave.
Pittsburg, *Madison Elementary School (Pittsburgh Public Schools TR)*, Milwaukee & Orion Sts.
Pittsburg, *McCleary Elementary School (Pittsburgh Public Schools TR)*, Holmes St. & McCandless Ave.
Pittsburg, *Mifflin Elementary School (Pittsburgh Public Schools TR)*, Mifflin Rd. at Lincoln Pl.
Pittsburg, *Morrow, John, Elementary School (Pittsburgh Public Schools TR)*, 1611 Davis Ave.
Pittsburg, *Morse, Samuel F.B., School (Pittsburgh Public Schools TR)*, 2418 Sarah St.
Pittsburg, *Oakland Public School (Pittsburgh Public Schools TR)*, Dawson St. near Edith Pl.
Pittsburg, *Oliver, David P., High School (Pittsburgh Public Schools TR)*, Brighton Rd. & Island Ave.
Pittsburg, *Park Place School (Pittsburgh Public Schools TR)*, S. Braddock & Brashear Aves.
Pittsburg, *Perry High School (Pittsburgh Public Schools TR)*, Perrysville Ave. & Semicir St.
Pittsburg, *Prospect Jr. High and Elementary School (Pittsburgh Public Schools TR)*, Prospect Ave. near Southern Ave.
Pittsburg, *Schenley High School (Pittsburgh Public Schools TR)*, Bigelow Blvd. & Centre Ave.
Pittsburg, *Schiller Elementary School (Pittsburgh Public Schools TR)*, 1018 Peralta St.
Pittsburg, *South Side High School (Pittsburgh Public Schools TR)*, 900 E. Carson St.
Pittsburg, *Springfield Public School (Pittsburgh Public Schools TR)*, Smallman & Thirty-first Sts.
Pittsburg, *Sterrett Sub District School (Pittsburgh Public Schools TR)*, 339 Lange Ave.

Pittsburg, *Washington Vocational School (Pittsburgh Public Schools TR)*, 169 Fortieth St.
Pittsburg, *Westinghouse High School (Pittsburgh Public Schools TR)*, 1101 N. Murtland St.
Pittsburg, *Wightman School (Pittsburgh Public Schools TR)*, 5604 Solway St.
Pittsburg, *Woolslair Elementary School (Pittsburgh Public Schools TR)*, Fortieth St. & Library Ave.

VIRGINIA

Richmond (Independent City)

Ginter Park Historic District, Roughly bounded by Claremount, North, Moss Side & Noble Aves., Brookland Park Blvd., & Brook Rd.

[FR Doc. 86-19855 Filed 9-3-86; 8:45 am]
BILLING CODE 4310-70-M

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan Canal National Heritage Corridor Commission will be help September 10, 1986, beginning at 10 a.m. at the Illinois and Michigan Canal National Heritage Corridor Commission Headquarters at 30 North Bluff Street, Joliet, Illinois 60431.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corrdor Act of 1984, 98 Stat. 1456, 16 U.S.C. 461 to implement and support the conceptual plan.

Matters to be discussed at the meeting will include FY 87 budget considerations, review of locally produced film depicting the Illinois and Michigan Canal National Heritage Corridor Commission, and discussion of the report on sites of geological significance in the Illinois and Michigan Canal National Heritage Corridor.

The meeting will be open to the public. Interested persons may submit written statements to the oficial listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha Nebraska 68102, telephone 402-221-3481 (FTS 864-3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: August 21, 1986.
Randall R. Pope,
Acting Regional Director, Midwest Region.
[FR Doc. 86-19856 Filed 9-3-86; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[332-237]

Annual Reports on Imports Under Items 806.30 and 807.00 of the Tariff Schedules of the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: The Commission instituted the investigation, No. 332-237, on its own motion under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) to prepare and publish reports on an annual basis presenting and analyzing statistical data on imports under items 806.30 and 807.00 of the Tariff Schedules of the United States. The reports will be similar in format to these published in the past by the Commission but not issued pursuant to a specific statutory authority. The first report will be published in December 1986 and will cover the period 1982-85. Subsequent reports will be published in December of each year.

EFFECTIVE DATE: August 19, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela J. McGuyer, General Manufactures Division, U.S. International Trade Commission, Washington, DC 20436 (tel. (202) 724-1746.

SUPPLEMENTARY INFORMATION: Since the late 1960s, the Commission has published various reports dealing with TSUS items 806.30 and 807.00 trade. In the past few years, the Commission has intermittently published the report by the same title as this 332 report. Past reports presented historical import data for 806.30 and 807.00 provisions and analyzed the most current four-year period for which data were available on a commodity specific and sector-by-sector basis. An addition to the forthcoming reports is the inclusion of a "Highlights of Major Trends" section. The purpose of this section is to present information and analyses of economic growth, product diversification, and significant shifts in the composition of imports under these special provisions.

Written submission: No public hearing has been scheduled in this investigation. Interested persons are invited to submit written statements concerning the investigation at any time; however, written statements should be received by the close of business on September 15, 1986. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.
Issued: August 22, 1986.
Kenneth R. Mason,
Secretary.
[FR Doc. 86-19949 Filed 9-3-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-228]

Certain Fans With Brushless DC Motors

AGENCY: U.S. International Trade Commission.

ACTION: Review and affirmance of the presiding administrative law judge's initial determination finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

SUMMARY: On July 9, 1986, the presiding administrative law judge (ALJ) issued her final initial determination (ID) in the above-captioned investigation. The ID found that there was no violation of section 337 because the claims in issue of the patent in controversy were invalid pursuant to 35 U.S.C. 102(b) or 35 U.S.C. 103. The Commission has determined to review and affirm a portion of the ID and to not review the remainder of the ID.

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202-523-0074.

SUPPLEMENTARY INFORMATION:
Background—On September 4, 1985, complainant Rotron Incorporated

(Rotron) filed a complaint with the Commission alleging that respondents Matshshita Electric Industrial Company, Ltd. (MEI) and Matsushita Electric Corporation of America (MECA) were violating section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Specifically, complainant Rotron alleged that respondents were infringing claims 1–4 and 6–12 of U.S. Letters Patent 4, 494,028 (the '028 patent) owned by Rotron. The Commission instituted the present investigation on October 9, 1985 (50 FR 41228)..

On July 9, 1986, following an evidentiary hearing before the ALJ, the ALJ issued an ID that found that the respondents are not violating section 337 because the claims at issue of the '028 patent are invalid. The ID found that claims 1, 6, and 8 of the '028 patent were anticipated and hence invalid pursuant to 35 U.S.C. 102(b). The ID found the remaining claims to be invalid pursuant to 35 U.S.C. 103 because they would have been obvious to a person having ordinary skill in the relevant art at the time of the claimed invention.

Statutory Authority—This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

Public Inspection—Copies of the nonconfidential version of the ID, the Commission's Action and Order, the nonconfidential version of the Commission's Opinion (when it becomes available), and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street, NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: August 28, 1986.

Kenneth R. Mason,

Secretary

[FR Doc. 86–19944 Filed 9–3–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–229]

Certain Nut Jewelry and Parts Thereof; Commission Decision Extending the Time For Determining Whether to Review Final Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Extension of deadline for deciding whether to review final initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to extend until September 22, 1986, the deadline by which it must decide whether to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0261.

SUPPLEMENTARY INFORMATION: On July 30, 1986, the presiding ALJ issued his final ID finding that there is a violation of section 337 in the unauthorized importation and sale of certain nut jewelry and parts thereof by reason of inadequate designation of country of origin when the jewelry is sold with certain labels, with the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1377) and §§ 201.14(b) and 210.53(h) of the Commission's Rules of Practice and Procedure (19 CFR 201.14(b), 210.53(h)).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: August 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–19945 Filed 9–13–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–247]

Certain Sickle Guards; Commission Decision Not to Review Initial Determination Granting Motion to Amend The Complaint; Termination of Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination granting with prejudice the motion of complainant National Standard Corporation (National) to amend the complaint to delete allegations of patent infringement.

SUMMARY: Notice is hereby given that the Commission has determined not to review an initial determination (ID) (Order No. 7) granting with prejudice the motion to complainant National to amend the complaint to delete allegations of patent infringement. The effect of this amendment is to terminate respondent Herschel Corporation from the investigation.

FOR FURTHER INFORMATION CONTACT: Carolyn E. Galbreath, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0143.

SUPPLEMENTARY INFORMATION: The authority for disposition of the matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in Commission rule 210.53(h) (19 CFR 210.53(h)).

On May 21, 1986, the Commission instituted the above-captioned section 337 investigation. Complainant National charged the named respondents, including Herschel Corporation (Herschel), and their associated U.S. distributors with unfair methods of competition and unfair acts in the importation and/or sale of certain sickle guards for use on agricultural mowing machines. The allegations underlying the complaint are direct, contributory, and induced infringement, common-law trademark infringement, passing off, and false designation of origin. The original complaint charged respondent Herschel only with patent infringement.

On June 27, 1986, the complainant filed a motion to amend the complaint to delete all portions of the complaint relating to the allegations of patent infringement (Motion No. 247–2). The complainant's motion is based upon information that came to light during discovery that affects the validity of its patent. As a result, the complainant moved to amend the complaint to delete the allegations of patent infringement, the consequence of which is to dismiss all the unfair acts alleged against respondent Herschel.

On July 2, 1986, the Commission investigative attorney filed a response supporting the complainant's motion to amend, provided the amendment is granted with prejudice.

On July 17, 1986, the administrative law judge (ALJ) issued an ID granting with prejudice the complainant's motion to amend. The Commission did not

receive any petitions for review of the ID or any Government agency or public comments.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary , U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contracting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: August 25, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–19946 Filed 9–3–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–231]

Certain Soft Sculpture Dolls Popularly Known as "Cabbage Patch Kids" Related Literature and Packaging Therefor; Commission Decision To Review Portions of an Initial Determination Finding a Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: The U.S. International Trade Commission has determined to review portions of an initial determination (ID) finding a violation of section 337 in the above-captioned investigation. The portions of the ID that will be reviewed are the presiding administrative law judge's (ALJ's) determination regarding (1) the country of origin marking requirements, (2) the scope of the domestic industry, (3) substantial injury to the domestic industry, and (4) tendency to substantially injure the domestic industry.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0421.

SUMMARY: On July 11, 1986, the presiding ALJ issued an ID finding a violation of section 337 by reason of the unauthorized importation and sale in the United States of certain soft sculpture dolls, popularly known as "Cabbage Patch Kids". In making his determination, the ALJ held, *inter alia*, (1) that the imported products did not violate the country of origin marking requirements, and, even if they did, such violation did not constitute an unfair act under section 337, (2) that the licensing program for the various copyrights owned by complainants and infringed by respondents was part of a domestic industry under section 337, an issue specifically left open by the Commission in *Certain Products with Gremlin Character Depictions*, Inv. No. 337–TA–201, (3) that the domestic industry was substantially injured based in part upon sales of unauthorized imports during a period in which there was no idle domestic capacity and imported products sold for higher prices than the domestic products, and (4) that the unfair acts would have the tendency to cause substantial injury in the future because "gray market" imports were likely to continue in the future.

No petition for review or agency comments were received.

Having reviewed the record, the Commission has determined that the following issues warrant review:

(1) Whether respondents' unauthorized imports violate the country of origin marking statute (19 U.S.C. 1304) and, if so, whether such violation constitutes an unfair act under section 337.

(2) Whether the ALJ's determination of the scope of the domestic industry was correct. In this regard, the Commission is especially interested in (a) whether licensing activity in combination with production activity can constitute a domestic industry under section 337 and (b) whether operating profits are properly included in a value-added computation for the purpose of determining whether there is a domestic industry under section 337.

(3) Whether the unfair acts of respondents have the effect of substantially injuring the relevant domestic industry. The Commission is especially interested in the question of whether substantial injury can be found during a period when there is no idle domestic capacity and when imported products sold for higher prices than domestic products.

(4) Whether the unfair acts of respondents have the tendency to substantially injure the domestic industry.

No other issue will be reviewed.

SUPPLEMENTARY INFORMATION: If the Commission finds that a violation of section 337 has occurred, it may issue an order that could result in the exclusion of the subject articles from entry into the United States and/or cease and desist orders that could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions addressing the form of relief, if any, that should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates that some form of relief is appropriate, it must consider the effect that the relief would have upon the public health and welfare, competitive conditions in the U.S. economy, the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and U.S. consumers. The Commission is, therefore, interested in receiving written submissions concerning the effect, if any, that granting a remedy would have on the public interest.

If the Commission finds that a violation of section 337 has occurred and orders permanent relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is, therefore, interested in receiving written submissions concerning the amount of bond that should be imposed.

Written Submissions

The parties to the investigation and interested Government agencies are encouraged to file written submissions on the issues under review, and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed remedial order or orders for the Commission's consideration. Persons other than the parties and government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding.

Written submissions on the issues under review must be filed not later than the close of business on September 10, 1986. Written submissions on remedy, the public interest, and bonding must be filed not later than the close of business on September 17, 1986. Reply briefs on all issues must be filed not later than the close of business on September 24, 1986.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with the final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original

document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any persons desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the ALJ. All such requests should be directed to the Secretary and must include a full statement of the reasons why the Commission should grant confidential treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.55 (19 CFR 210.55).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: August 28, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–19947 Filed 9–3–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-341 through 346 (Preliminary)]

Tapered Roller Bearing and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Hungary, Italy, Japan, The People's Republic of China, Romania, and Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–341 through 346 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Hungary (inv. No. 731–TA–341), Italy (inv. No. 731–TA–342), Japan (inv. No. 731–TA–343), the People's Republic of China (inv. No. 731–TA–344), Romania (inv. No. 731–TA–345), and Yugoslavia (inv. No 731–TA–346) of tapered roller bearings and parts thereof, provided for in Tariff Schedules of the United States (TSUS) items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, provided for in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, provided for in item 692.32 or elsewhere in the TSUS, all of which are alleged to be sold in the United States at less than fair value. Products subject to the outstanding dumping order covering certain tapered roller bearings from Japan (T.D. 76–227, 41 FR. 34974) are not included within the scope of investigation No. 731–TA–343 (Preliminary). As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 9, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 25, 1986.

FOR FURTHER INFORMATION CONTACT: Maria Papadakis (202–523–0439), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on August 25, 1986 by the Timken Company, Canton, Ohio.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on September 16, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Maria Papadakis (202–523–0439) not later than September 12, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may sumit to the Commission on or before September 19, 1986, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope

and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: August 27, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-19948 Filed 9-3-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-234]

Certain Upper Body Protector Apparatus for Use in Motosports; Commission Decision

AGENCY: U.S. International Trade Commission.

ACTION: Decision not to review initial determinations terminating the above-captioned investigation as to three respondents and decision to review initial determination as to one respondent.

SUMMARY: The Commission, on August 26, 1986, determined not to review the initial determinations (IDs) (Orders Nos. 14 and 24) of the presiding administrative law judge (ALJ) terminating the investigation as to respondent Torsten Hallman Racing, Inc., on the basis of a settlement agreement, and as to respondents Jim O'Neal Distributing, Inc. and One Up S.r.1. on the basis of withdrawal of the complaint. The Commission further determined to review the ID (Order No. 24) terminating the investigation as to respondent Stilmotor on the basis of a settlement agreement. Order No. 24 is being reviewed because the motion to terminate the investigation as to Stilmotor failed to include a statement concerning the existence of other agreements as required by § 210.51(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.51(b)).

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION: On July 2, 1986, complainants J.T. Racing, Inc. and John R. Gregory filed a motion (Motion No. 234-12) to terminate the investigation as to respondents Torsten Hallman Racing, Inc. and Stilmotor on the basis of a settlement agreement. In addition, complainants filed on July 2, 1986, a motion (Motion No. 234-11) to terminate the investigation as to the two remaining respondents—Jim O'Neal Distributing, Inc. and One Up S.r.1.

The presiding administrative law judge issued IDs granting the motions on July 24, 1986 (Order No. 24, and Order No. 14 issued previously and recertified on that date). The Commission investigative attorney filed statements in support of termination of all four respondents. No petitions for review were filed and no comments were received from Government agencies or the public.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission:

Issued: August 27, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-19950 Filed 9-3-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-292 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from the People's Republic of China of certain welded carbon steel pipes and tubes,[2] which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective April 28, 1986, following a preliminary determination by the Department of Commerce that imports of certain welded carbon steel pipes and tubes from the People's Republic of China were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 14, 1986 (51 FR 17682). The hearing was held in Washington, DC, on July 8, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 25, 1986. The views of the Commission are contained in USITC Publication 1885 (August 1986), entitled "Certain Welded Carbon Steel Pipes and Tubes from the People's Republic of China: Detemrination of the Commission in Investigation No. 731-TA-292 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigjation."

By order of the Commission.

Issued. August 26, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-19951 Filed 9-3-86; 8:45 am]

BILLING CODE 7020-02-M

[TA-503(a)-13 and 332-238]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on August 15, 1986, of a request from the U.S. Trade Representative made in part at the

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For purposes of this investigation, the term "certain welded carbon steel pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States (Annotated). These products are commonly referred to in the industry as standard pipes and tubes.

direction of the President, the Commission instituted investigation No. TA–503(a)–13 and 332–238 under sections 503(a) and 131(b) of the Trade Act of 1974 (19 U.S.C. 2463(a) and 2151(b)) and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(1) pursuant to sections 503(a) and 131(a) of the Trade Act, and the authority of the President delegated to the U.S. Trade Representative by sections 4(c) and 8 (c) and (d) of Executive Order 11846, as amended, to advise the President, with respect to each article listed in Part A of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the U.S. Generalized System of Preferences (GSP). In providing its advice, the USTR requested the Commission to assume that benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the "competitive need" limitations specified in section 504(c) of the Act.

(2) pursuant to section 332(g) of the Tariff Act and at the direction of the President—

(A) to advise the President, with respect to each article listed in Parts B and C of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers: (a) Of the removal of articles in Part B from eligibility for duty-free treatment under the GSP, (b) of the removal of the GSP duty-free status from articles in Part C of the list which are imported from the respective countries specified which currently receive GSP duty-free treatment, and (c) the redesignation for GSP duty-free treatment for articles in Part C of the list which are imported from a specified country which does not currently receive GSP duty-free treatment for the article;

(B) in accordance with section 504(c)(3)(A)(i) of the Trade Act, to advise the President on whether any industry in the United States is likely to be adversely affected by waiving the competitive need limits for the Republic of the Philippines with respect to the article listed in Part D of the attached Annex; and

(C) to advise the President, with respect to whether products like or directly competitive with those described in Part A of the attached Annex were being produced in the United States on January 3, 1985, for purposes of section 504(d) of the Trade Act.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. David Ingersoll (202–724–0068).

(2) Chemical products, Mr. John Gersic (202–523–0451).

(3) Textiles and apparel, Mr. Reuben Schwartz (202–523–0114).

(4) Minerals and metals, Mr. Larry Brookhart (202–523–0275).

(5) Machinery and equipment, Mr. Aaron Chesser (202–523–0353).

(6) Miscellaneous manufactures, Mr. Walter Trezevant (202–724–1719).

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–523–0487.

SUPPLEMENTARY INFORMATION:

Background: The USTR announced the items which have been sent to the Commission for probable effects advice in the **Federal Register** of July 18, 1986 (51 FR 26088), July 25, 1986 (51 FR 26784), and July 28, 1986 (51 FR 26966).

Public Hearing: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, DC 20436, beginning at 9:30 a.m. on September 29 and 30, and October 1, 1986 as required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, DC 20436, not later than noon, September 16, 1986.

Written Submissions: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on September 22, 1986. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: August 28, 1986.

Kenneth R. Mason,

Secretary.

Annex

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

145.18, 145.46, 146.30, 146.40, 148.96, 170.40, 170.45, 315.35, 402.56, 403.45 (pt.), [1] 404.16, 405.44, 406.39 (pt.), [2] 409.78, 409.82, 410.28, 425,9960, 533.30, 533.64, 540.27, 632.46, 681.0410, 715.62, 715,841

B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.

402.12, 409.3410, 532.22, 610.84, 610.8413, 610.8415, 610.8416, 610.8421, 610.8424, 610.8428, 610.86, 688.32, 732.3875

C. Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences.

252.75 (Brazil, Mexico)
256.9044 (Brazil, Mexico)
256.9052 (Brazil, Mexico)
256.9080 (pt.) (Brazil) [3]
410.72 (Turkey)
421.06 (Taiwan)
428.52 (Taiwan)
647.03 (Taiwan)
56.00 (Singapore, Taiwan)
654.06 (Mexico)
725.46 (pt.) (Korea, Taiwan) [4]
727.23 (Thailand)
727.29 (Singapore, Yugoslavia)
727.35 (Singapore Taiwan, Yugoslavia) [5]
727.40 (Taiwan, Yugoslavia) [5]
727.70 (Taiwan) [5]
735.0970 (Korea, Taiwan) [6]
737.9536 (Korea, Taiwan) [6]
751.2015 (Taiwan)
772.06 (pt.) (Taiwan) [6]
772.90 (pt.) (Taiwan) [7]

D. Articles being considered for waiver of competitive-need limit for a product on the list of eligible articles.

465.05 (Rep. of the Philippines)

[FR Doc. 86–19952 Field 9–3–86; 8:45 am]
BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket Nos. 30900 and 30900 (Sub. No. 1)]

Railroad Acquisition by CSX Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of application and petition for exemption.

[1] Benzyl alcohol.

[2] N-(tert-Butyl) benzothiazole sulfenamide (Orgacel T).

[3] Paper and textile paint strainers and filters.

[4] Electric guitars.

[5] Commission advice requested on the effect of redesignation of GSP duty-free treatment for these articles from Taiwan which does *not* currently receive such treatment.

[6] Melamine tableware.

[7] Melamine serving trays.

SUMMARY: In the matter of joint application of CSX Corporation and Sea-Land Corporation under 49 U.S.C. 11321 and CSX Corporation for control of Sea-Land Freight Service, Inc. and Intermodal Systems, Inc.

The Commission has received: (1) An application under 49 U.S.C. 11321 (the Panama Canal Act) for approval of the proposed acquisition of control by CSX Corporation of Sea-Land Corporation; and (2) a petition for an exemption under 49 U.S.C. 11343(e) to enable CSX Corporation to acquire control of two motor carrier subsidiaries of Sea-Land Corporation without formal Commission approval under 49 U.S.C. 11343–45. The Commission will receive public comments, including evidence and argument, regarding whether the application and exemption should be granted. Comments may also address whether the acquisition by CSX Corporation of Sea-Land Corporation (a) requires Commission approval under 49 U.S.C. 11343–45, or (b) would have any adverse environmental or energy impacts.

DATES: An original and 15 copies of comments must be filed on or before October 6, 1986. An original and 15 copies of applicants' replies to the comments must be filed on or before November 3, 1986.

ADDRESSES: Comments and replies referring to Finance Docket Nos. 30900 and 30900 (Sub-No. 1) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

One copy of comments should be sent to each of applicants' representative named below:

G. Paul Moates, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006
Mark G. Aron, CXS Corporation, One James Center, Richmond, VA 23219
Charles C. Rettburg, Jr., CXS Transportation, 100 North Charles Street, Baltimore, MD 31201
Peter M. Klein, Sea-Land Corporation, 10 Parsonage Road, Edison, NJ 08818

Applicants must serve their reply on all parties who file comments.

The application may be inspected at the Commission's office in Washington, DC. Copies are also available from applicants' counsel, G. Paul Moates, at the above address.

FOR FURTHER INFORMATION CONTACT:
Donald J. Shaw, Jr., (202) 275–7245
or
Thomas Gire, (202) 275–1723

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403. Specify Decision No. 2 in Finance Docket No. 30900.

The proposed transactions initially appear to have no significant effects on the human environment or energy conservation, but any comments concerning environmental or energy effects will be considered.

Decided: August 26, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley commented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 86–20021 Filed 9–3–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant To The Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Scientific Coating., Inc.*, Civil Action No. 85–3799D, has been lodged in the United States District Court for the District of New Jersey on August 17, 1986.

The proposed consent decree concerns violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos codified at 40 CFR 61.20, *et seq.* (1983) and the Clean Air Act, 42 U.S.C. 7401, *et seq.* during the renovation of a hospital in Paterson, New Jersey. The proposed decree requires the defendant to comply with the Clean Air Act and the asbestos NESHAP regulations. The proposed decree requires payment of a $4,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Scientific Coating Co., Inc.*, D.J. Ref No. 90–5–2–1–829.

The proposed consent decree may be examined at the Office of the United States Attorney, 502 Federal Building, 970 Broad Street, Newark, New Jersey 07102, and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division, Department of Justice,

[FR Doc. 86–19871 Filed 9–3–86; 8:45 am]

BILLING CODE 4410-1-M

Antitrust Division

National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 (the "Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on August 6, 1986 disclosing changes in the membership of COS, and a change of name of a present party to COS. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On June 25, 1986, the following entities became parties to COS:

ADC Telecommunications
Aetna Life and Casualty
General Electric Company
GTE Service Corporation—Telephone Operations
Motorola, Inc.
Network Systems Corporation
The Equitable
Visa International

Timplex, Inc., identified in COS' original notice, 51 FR 21260 (June 11, 1986), as a party to COS, at no time has been, and currently is not, a party to COS.

The name of GTE Telenet Communications Corporation has been

changed to Telenet Communications Corporation.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-19957 Filed 9-3-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-36]

Felix H. Ocko, M.D. Berkeley, CA; Hearing

Notice is hereby given that on April 9, 1986, the Drug Enforcement Administration, Department of Justice, issued to Felix H. Ocko, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on February 6, 1986, for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Thursday, September 18, 1986, in the U.S. Tax Court Courtroom, Room 2041, 450 Golden Gate Avenue, San Francisco, California.

Dated: August 18, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-19921 Filed 9-3-86; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before October 6, 1986.

ADDRESSES: Send comments to Mrs. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) or Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Mrs. Ingrid Foreman, National Endowment for the Humanities, Administrative Service Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) The agency form number, if applicable; (3) How often the form must be filled out; (4) Who will be required or asked to report; (5) What form will be used for; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Reinstatement.

Title: NEH Challenge Grant Administrative Regulations

Form Number: 3136-0063

Frequency of Collection: 1 per year from each respondent

Respondents: Challenge Grant recipients

Use: Administration of Challenge Grant Awards

Estimated Number of Respondents: 160 per year

Estimated Hours for Respondents to Provide Information: 100 hours per respondent annually: includes completing the Certification of Matching Gifts Form, writing an annual narrative report, writing a final report, and fulfilling annual record keeping requirements.

D. Ray Gleason,

Acting Director of Administration.

[FR Doc. 86-19877 Filed 9-3-86; 8:45 am]

BILLING CODE 7536-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on September 24, 1986 from 9:00 a.m.—8:00 p.m.; and on September 25, 1986, from 9:00 a.m.—6:00 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

If time permits, a portion of this meeting will be open to the public on September 25, from 4:00 p.m.—6:00 p.m. for a discussion of policy issues.

The remaining sessions of this meeting on September 24, from 9:00 a.m.—8:00 p.m. and on September 25, from 9:00 a.m.—4:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne Sabine,

Acting Committee Management Officer, National Endowment for the Arts.

[FR Doc. 86-19892 Filed 9-3-86; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Presenters Section) to the National Council on the Arts will be held on September 22, 1986 from 9:00 a.m.—8:00 p.m.; and on September 23, 1986, from 9:00 a.m.—6:00 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

If time permits, a portion of this meeting will be open to the public on September 23, from 4:00 p.m.—6:00 p.m. for a discussion of policy issues.

The remaining sessions of this meeting on September 22, from 9:00 a.m.—8:00 p.m. and on September 23, from 9:00 a.m.—4:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance

under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne Sabine,

Acting Committee Management Officer, National Endowment for the Arts.

[FR Doc. 86–19894 Filed 9–3–86; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Dance/Inter-Arts/State Programs Presenting/Touring Initiative) to the National Council on the Arts will be held on September 21, 1986 from 10:00 a.m.—5:00 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 21, from 3:30 p.m.—5:00 p.m. for a discussion of guidelines and policy issues.

The remaining sessions of this meeting on September 21, from 10:00 a.m.—3:30 p.m. are the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682/5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne Sabine,

Acting Committee Management Officer, National Endowment for the Arts.

[FR Doc. 86–19893 Filed 9–3–86; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Music Festivals Section) to the National Council on the Arts will be held on September 24, 1986 from 9:00 a.m.—7:30 p.m. and on September 25, 1986 from 9:00 a.m.—6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 25, from 1:00 p.m.—3:00 p.m. for a discussion of guidelines and policy issues.

The remaining sessions of this meeting on September 24, from 9:00 a.m.—7:30 p.m. and on September 25, 9:00 a.m.—1:00 p.m. and 3:00 p.m.—6:00 p.m. are the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682/5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne Sabine,

Acting Committee Management Officer, National Endowment for the Arts.

[FR Doc. 86–19895 Filed 9–3–86; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 23–24, 1986, from 9:00 a.m.—5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for dicsussion will be the Five-Year Plan and other policy issues.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne Sabine,

Acting Committee Management Officer, National Endowment for the Arts.

[FR Doc. 86–19898 Filed 9–3–86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 17, 1986, the National Science Foundation published a notice in the

Federal Register of permit applications received. On August 25, 1986 permits were issued to:

Mark A. Chappell
Arthur L. DeVries
Robert B. Dunbar
William M. Hamner
Gerald L. Kooyman
Anna C. Palmisano
Donald B. Siniff
James T. Staley
Lowell E. Starr & John Kelmelis
Wayne Z. Trivelpiece

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 86-19678 Filed 9-3-86; 8:45 a.m.]
BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Responses to Safety Recommendations; Availability of

Recommendation No.	Respondent	Date	Subject
M-85-67	USCG	Jan. 8, 1986	Resume research into characteristics of small vessels to develop stability standards for fishing vessels.
M-85-68	...do	...do	Seek legislative authority to require the licensing of captains of fishing vessels.
M-85-69	...do	...do	Promote the preparation of crew lists
M-85-70	...do	...do	Promote the development of contingency plans by the fishing industry to reduce delays in alerting Coast Guard search and rescue forces.
M-85-71	...do	...do	Urge commercial fishing vessels to schedule frequent radio communications.
M-85-72	...do	...do	Modify the search and rescue computer program to include the draft of a heavily ballasted life raft.
M-85-73	...do	...do	Develop a keyword list for use by the USCG to screen emergency messages.
M-85-74	...do	...do	Incorporate human factors affecting seach operations into search and rescue mission planning.
M-85-75	...do	...do	Development guidelines for retaining recovered lifesaving equipment for examination by investigators.
M-85-7	Mobile Oil Corp	Jan. 14, 1986	Require more stringent supervision and inspection of maintenance and repair/renewal work conducted on ship's steering systems.
M-85-8	...do	...do	Inform ship's personnel on vessels with steering gear of the accident involving the MOBIOIL.
M-85-10	...do	...do	Direct that the vessels in the fleet which do not meet the International Maritime Organization and Coast Guard steering gear standards for new vessels man the steering gear space with a qualified person in communication with the bridge.
M-85-11	...do	...do	Issue instructions to its fleet that require that personnel assigned to the anchor detail be stationed at the anchor windlass controls.
M-85-92	Chevron	Jan. 27, 1986	Safe use of natural gas on offshore drilling platforms.
M-85-83	USCG	Jan. 30, 1986	Require that insulation used on dry exhaust pipe installations on small passenger vessels be removable.
M-85-84	...do	...do	Require more stringent inspection of dry exhaust piping installations on small passenger vessels.
M-85-85	...do	...do	Require on small passenger vessels that emergency air shutdown controls on diesel engines be remotely operable from outside the engine compartment.
M-85-86	...do	...do	Require that fire protection equipment on small passenger vessels be maintained, assembled, and ready.
M-85-87	...do	...do	Conduct a survey during the next inspection of small passenger vessels of life preserver stowage.
M-85-88	...do	...do	Amend 46 CFR 180.10 to require that the primary lifesaving equipment carried on small passenger vessels be adequate to support 100% of the passengers and crew.
M-85-89	...do	...do	Requuire that small passenger vessels install a placard near the radio transmitter containing information necessary for emergency broadcasts.
M-85-94	USCG	...do	Publish information directed to commercial fishermen concerning the adverse effects on the stability of a vessel operating in heavy seas without outriggers up.
M-85-103	Zapata Off-Shore Co	...do	Relocate the telephone at the gumbo box aboard the ZAPATA LEXINGTON and any similar installation aboard other company drilling rigs to a more protected area.
M-85-104	...do	...do	Develop a device to separate and vent gas from return drilling fluids to the atmosphere.
M-85-103	Zapata Off-Shore Co	Feb. 7, 1986	Relocate the telephone at the gumbo box aboard the ZAPATA LEXINGTON and any similar installation aboard other company drilling rigs to a more protected area.
M-85-104	...do	...do	Develop a device to separate and vent gas from return drilling fluids to the atmosphere.
M-85-105	...do	...do	Establish a danger zone aboard company drilling rigs, during well control operations when flammable gas may be present, and prohibit all nonessential personnel from entering the zone.
M-85-106	...do	...do	Upgrade the quality of the fire drills and the instructions given in firefighting procedures aboard company drilling rigs.
M-85-4	Alaska Ocean, Inc	Feb. 21, 1986	Require a stability test on each new vessel unless a deadweight survey confirms that the stability from a sister vessel may be used.
M-85-5	...do	...do	Require a stability test or deadweight survey and amended stability information when major modifications are made.
M-85-6	...do	...do	Require your vessel operators to comply strictly with the provisions of vessel stability booklets.
M-85-7	...do	...do	Provide training for your fishing vessel captains in vessel stability and the use of this information to establish safe loading conditions.
M-85-116	Dept. of Labor	Mar. 7, 1986	Establish safety regulations which set forth lifesaving and firefighting equipment requirements to protect workers on uninspected self-elevating liftboats.
M-85-102	USCG	Mar. 10, 1986	Amend Coast Guard regulations for MODUs to include a requirement that pneumatically operated valves on the suction side of fire pumps remain open during a loss of air pressure.
M-86-1	North Pacific Fishing Vessel Owners Association.	Mar. 14, 1986	Recommend that your members require a stability test on each new vessel unless a deadweight survey confirms that the stability data from a sister vessel may be used.
M-86-2	...do	...do	Recommend that your members require a stability test or deadweight survey and amended stability information when major modifications are made.
M-86-3	...do	...do	Recommend that your members require vessel operators in their employ to comply with the provisions of vessel stability letters and booklets.
M-85-108	USCG	Apr. 3, 1986	Seek authority to require manufacturers of USCG approved safety equipment to notify distributors and purchases of any alterations because of defects.
M-85-109	...do	...do	Conduct tests to determine the adequacy of current adult-sized exposure suits when worn by smaller adults.
M-85-110	...do	...do	Require USCG boarding personnel to notify masters and owners of noncomplying uninspected commercial fishing vessels.

Recommendation No.	Respondent	Date	Subject
M-85-120	USCG	Apr. 8, 1986	Publish the circumstances of the sinking of the CELTIC and CAPE RACE and emphasize that towing vessels should have a way to release their barges remotely from the pilothouse.
M-85-121	....do	....do	Encourage the operators of uninspected commercial vessels which operate beyond the limits of coastal harbors to carry EPIRBs.
M-86-11	USCG	Apr. 17, 1986	Seek legislative authority to require that stability tests be conducted and that stability information be provided to captains of commercial fishing vessels.
M-85-111	USCG	5/7/86	Require junior officers to complete a training program before being assigned as commanding officers of Coast Guard patrol boats.
M-85-112	....do	....do	Using the authority of the Outer Continental Shelf Lands Act, establish stability criteria for self-elevating lift boats that engage in outer continental shelf activities.
M-85-113	....do	....do	Seek legislative authority to license persons-in-charge of miscellaneous vessels which are engaged in outer continental shelf activities.
M-85-114	....do	....do	Include in CGD84-098 a requirement for operating manuals which set forth the operating limitations of lift boats engaged in outer continental shelf activities.
M-85-115	....do	....do	Include in CGD84-098 an upgrading of the lifesaving equipment for self-elevating lift boats engaged in outer continental shelf activities.
M-81-82	DOT	May 15, 1986	Consolidate the position data on U.S. ships so similar information is not coded and stored on separate computers.
M-81-83	....do	....do	Extend the requirement that all U.S.-flag merchant vessels of 1,000 gross tons or more engaged on foreign voyages submit departure, arrival, and 48-hour position reports on domestic voyages.
M-82-50	....do	....do	Install a fixed halon fire protection system in the engineroom of the training ship BAY STATE.
M-82-52	....do	....do	Repair or replace the diesel fire pumps on the BAY STATE.
M-82-53	....do	....do	Conduct a study to determine what improvements are necessary to facilitate safe evacuation of personnel from the engineroom of the BAY STATE in case of an emergency.
M-82-54	....do	....do	Make such improvements as are found to be feasible and necessary to facilitate safe, effective evacuation of the number of personnel that may be in the engineroom of the BAY STATE.
M-82-56	....do	....do	Pending possible relocation of the high presure fuel oil strainer in the engineroom of the BAY STATE.
M-77-7	....do	....do	Establish guidelines to provide for the use of MRIT and CAS by vessels that are navigating by radar on inland waters.
M-81-86	....do	....do	Develop a model simulator training program to reduce ship collisions caused by vital control system failure.
M-77-37	....do	....do	Expedite completion of firefighting training curriculum and program for merchant marine officers and seaman.
M-78-69	....do	....do	Develop a survival and rescue training course to provide instruction in sea rescue methods.
M-86-20	Intern'tl. Assocation of Classification Societies.	May 13, 1986	Urge its member societies to amend the Rules for Building and Classification of MODUs to include a requirement for the certification and inspection of crude oil burners.
M-86-21	....do	....do	Urge its member societies to require that compressed air supplied to crude oil burners and well test equipment on MODUs be supplied from a dedicated, separate compressed air source.
M-85-177	Offshore Marine Service Association	May 22, 1986	Recommend to member companies which operate self-elevating lift boats in offshore areas that they provide vessel masters with operating manuals.
M-86-32	Northern Mariana Islands	May 27, 1986	Adopt comprehensive legislation addressing the problem of alcohol-involved recreational boating accidents.
M-86-39	Canaveral Seafoods	June 4, 1986	In cooperation with fishing vessel captains and a naval architect establish a safe loading for all fishing vessels.
M-82-44	Massachusetts Maritime Acad	June 11, 1986	Conduct a study prior to the next Training cruise to determine the maximum number of persons that could be safely evacuated from the engineroom of the BAY STATE in the event of an emergency.
M-82-48	....do	....do	Develop standing orders for cadet engineering watches in the engineroom on the training ship.
M-82-49	....do	....do	Develop standing orders for licensed engineer officer watches on the training ship.
M-84-1	DOT	June 11, 1986	Install a lighted range at Point Vivien.
M-84-3	....do	....do	Take St. Lawrence River current direction and velocity measurements and provide them to various marine interests.
M-85-104	Zapata off shore Co.	June 13, 19 86	Develop a device to separate and vent gas from return drilling fluids to the atmosphere.
M-85-105	....do	....do	Establish a danger zone aboard company drilling rigs, during well control operations when flamable gas may be present.
M-86-18	USCG	June 16, 1986	Amend USCG regulations for MODUs to include a requirement for the inspection of crude oil burners and their component parts.
M-86-19	....do	....do	Require that compressed air supplied to crude oil burners and well test equipment on existing MODUs be supplied from a dedicated, separate, compressed air source.
M-86-37	FCC	June 18, 1986	Require a simple-to-install spare radio antenna on oil and product tankers whose radio antennas extend over cargo tanks.
M-86-27	USCG	July 22, 1986	Require that ocean operators of all inspected radar equipped, mechanically propelled passenger vessels under 300 gross tons be qualified as radar obeservers.
M-85-28	....do	....do	Publish a reminder to the operators of small vessels that operate offshore in the Gulf of Mexico of the importance of sounding proper signals while underway or at anchor during limited periods of visibility.
M-85-116	USCG	July 30, 1986	Establish safety regulations which set forth lifesaving and firefighting equipment requirements to protect workers on uninspected self-elevating liftboats.

BEST COPY AVAILABLE

Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Monica Revelle,

Alternate Federal Register Officer.

August 27, 1986.

[FR Doc. 86-19879 Filed 9-3-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-416]

Mississippi Power & Light Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, for operation of the Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi.

The proposed amendment would make the following changes in the Technical Specifications; add specifications in Table 3.3.3-1, "Emergency Core Cooling System (ECCS) Actuation Instrumentation" and Table 3.3.3-2, "Emergency Core Cooling System Actuation Instrumentation Setpoints" to incorporate interlock instrumentation which is designed to prevent inadvertent overpressurization of low design pressure emergency core cooling systems by the reactor coolant systems, and make associated changes in Table 3.3.3-3, "ECCS Response Times" and Surveillance Requirement 4.5.1 regarding response times of ECCS injection systems, Table 4.3.3.1-1, "ECCS Actuation Instrumentation Surveillance Requirements" Surveillance Requirement 4.4.3.2.2, "Reactor Coolant System Operational Leakage," Table 3.4.3.2-2, "Reactor Coolant System Interface Valves Pressure Monitors Alarm," and Table 3.4.3.2-3 "Reactor Coolant System Interface Valves Pressure Interlocks." These proposed changes were requested in Item 13 of the attachment to the licensee's letter dated August 12, 1985, as amended September 25, 1985 and supplemented October 5 and October 22, 1985 and May 30, 1986. The changes requested in Item 12 of the August 12, 1985 letter were previously noticed and issued as Amendment No. 7 to GGNS Unit 1 License No. NPF-29 on November 8, 1985.

This notice supersedes a previous notice published in the **Federal Register** on August 28, 1985 (50 FR 34994). The previous notice was based on the licensee's initial application for amendment dated August 12, 1985. During its safety review of proposed changes to Technical Specifications for the ECCS injection valve interlocks the staff noted the licensee's proposed deletion of tests of response times for starting the ECCS systems associated with the injection valves, because the system response with valve interlocks would vary, depending on the rate of depressurization during a loss of coolant accident. The presently specified system response time (40 seconds) includes 10 seconds for starting an emergency diesel generator and 30 seconds for opening the injection valve in the system. In response to staff questions, regarding surveillance tests of injection valve opening, the licensee proposed by letter dated September 25, 1985 to include surveillance tests of the time for injection valves to move from the closed position to the open position (29 seconds). Surveillance tests of emergency diesel generator starting times (10 seconds) are presently included in Technical Specification 4.8.1.1.2. This notice is based on the revised application from that initially noticed which results in greater assurance that the ECCS injection valves will open within the design time. Appropriate changes to the initial notice regarding ECCS injection valve response time have been incorporated in this notice.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The license has made an analysis of significant hazards considerations using the standards of 10 CFR 50.92 and has concluded that the proposed amendment does not involve a significant hazards consideration. The NRC staff has made a preliminary review of licensee's analysis and associated bases. Staff's dicussion of the proposed amendment as it relates to the three standards follows.

The addition to the Technical Specifications of interlock instrumentation on pressure isolation valves, is needed to implement a design change required by a license condition. The present compensatory requirement for leak tests of low pressure core spray (LPCS) and low pressure coolant injection (LPCI) check valves would be deleted. The design change would result in an increase of 51°F in calculated peak cladding temperature to 2149°F during a postulated loss of coolant accident because of a longer time required for LPCS and LPCI injection valves to start to open. The required response for LPCS and LPCI injection valves to move from the closed to the open position (29 seconds) will be slightly faster than the required response time defined in present Technical Specifications (30 seconds). The calculated peak cladding temperature of 2149°F is still below the limiting 2200°F required by 10 CFR 50.46, so the safety margin is not affected. The design change will be performed in accordance with appropriate regulatory and industry codes and standards, the GGNS quality assurance program, and applicable requirements of the GGNS, FSAR. Therefore, the design change will be consistent with the licensing basis. Because these changes will add requirements not presently included in the Technical Specifications which more than offset the removal of the compensatory leak test requirement, and because the change would result in the performance of the ECCS safety function without affecting the safety margin, this change does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, not does it involves a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of

publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By October 7, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petition in the proceeding, and how the interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petition's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Walter R. Butler, Director, BWR Project Directorate No. 4, Division of BWR Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Lieberman, Cook, Purcell, and Reynolds, 1200 17th Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 12, 1985 as amended September 25, 1985 and supplemented October 5 and October 22, 1985 and May 30, 1986 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 28th day of August 1986.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86–20018 Filed 9–3–86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Decay Heat Removal Systems; Meeting; Revision

The Federal Register published Friday, August 22, 1986 (51 FR 30145) contained notice of a meeting of the ACRS Subcommittee on Decay Heat Removal Systems to be held on Tuesday, September 9, 1986, 1:00 P.M., room 1046, 1717 H Street, NW., Washington, DC. To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information. All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 29, 1986.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 86–19956 Filed 9–3–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Aeronautical Policy Review Committee; Reestablishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), it is hereby determined that the reestablishment of the Aeronautical Policy Review Committee is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, Office of Science and Technology Policy, by the Presidential Science and Technology Advisory Organization Act of 1976 and other applicable law. This determination follows consultation with the General Services Administration, pursuant to section 9(a)(2) of the Federal Advisory Committee Act and the GSA Interim Rule on Federal Advisory Committee Management (48 FR 19324, April 28, 1983).

1. *Name of group:* Aeronautical Policy Review Committee.

2. *Purpose:* The purpose of the Aeronautical Policy Review Committee is to advise the Director, Office of Science and Technology Policy (OSTP), on the implementation of national aeronautical research and technology policy. The Committee will address specific implementation strategies for achieving the National Aeronautical R&D Goals, proposed by the Committee in 1985, and shall concern itself with other specific issues assigned by the Director, OSTP, as well as keep him informed of changing perspectives in the aeronautical community.

3. *Effective date of establishment and duration:* The reestablishment of the Aeronautical Policy Review Committee is effective upon filing of the charter with the Director, OSTP, and with the standing committees of Congress having legislative jurisdiction over the Office of Science and Technology Policy. The Aeronautical Policy Review Committee will terminate on January 8, 1988, unless sooner extended.

4. *Membership:* Members of the Aeronautical Policy Review Committee will be appointed by the Director, Office of Science and Technology Policy. That appointment shall be subject to review every 365 days unless earlier terminated. The Committee shall consist of no more than 17 members. Additional technical experts will be utilized as needed to constitute panels and study groups.

5. *Advisory group operation:* The Aeronautical Policy Review Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463), GSA Interim Rule on Federal Advisory Committee Management (48 FR 19324), and other directives and instructions issued in implementation of the Act.

Jerry D. Jennings,

Executive Director.

Office of Science and Technology Policy

Charter—Aeronautical Policy Review Committee

1. *Committee's Official Designation:* Aeronautical Policy Review Committee (APRC)

2. *Objectives and Scope of Activities and Duties:*

• The purpose of the Aeronautical Policy Review Committee is to review for the Director, Office of Science and Technology Policy (OSTP), the implementation of national aeronautical research and technology policy. The Committee will address specific implementation strategies for achieving the National Aeronautical R&D Goals proposed by the Committee in 1985 in concert with the goals and technical objectives of the National Aeronautics and Space Administration, the Department of Defense, the Federal Aviation Administration, and the aeronautical industry.

•The Committee shall advise on specific aeronautical issues assigned by the Director, OSTP, and keep him informed of changing perspectives in the aeronautics community.

• The Committee shall report annually the results of this review to the Director, OSTP.

3. *Duration:* The duration of this Committee shall be for two years from date of approval unless terminated sooner.

4. *Official to whom the Committee Reports:* The Aeronautical Policy Review Committee will report to the Director, OSTP.

5. *Agency Responsible for Providing Necessary Support for this Board:* Office of Science and Technology Policy.

6. *Description of Duties:* The duties of the Committee are solely advisory and are stated in paragraph 2 above.

7. *Costs:* The estimated annual operating cost of the Committee is $0.

8. *Estimated Number and Frequency of Meetings:* The Aeronautical Policy Review Committee shall meet semi-annually and at such other times as may be called by the Chairman.

9. *Subgraphs:* Subgroups may be formed to conduct studies on specific issues assigned by the Director, OSTP.

10. *Members:* Committee members will be appointed by the Director, OSTP. That appointment shall be subject to review every 365 days unless terminated earlier. The Committee shall consist of no more than 17 members. *The Director, OSTP, shall appoint a Chairman and Vice Chairman from the members of the Committee.*

The Committee shall utilize additional technical experts as needed to constitute its panels and study groups. *These technical experts shall be appointed by the Director, OSTP, and shall be for the duration of the panel upon which the assigneee serves or 365 days, whichever is sooner, unless terminated eorlier by the Director.*

This Charter for the Advisory Committee named above is hereby approved on:

Dated: January 21, 1986.

Jerry D. Jennings,

Committee Management Officer.

Date filed: August 26, 1986.

[FR Doc. 86–19898 Filed 9–3–86; 8:45 am]

BILLING CODE 3170-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25–8, Auxiliary Fuel System Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY. This notice announces the issuance of Advisory Circular (AC) 25–8, Auxiliary Fuel System Installations.

Advisory Circular 25–8 sets forth acceptable means, but not the only means, by which compliance may be shown with the requirements of the Federal Aviation Regulations (FAR) pertaining to the installation of auxiliary fuel systems in transport category airplanes.

DATE: Advisory Circular 25–8 was issued by the Northwest Mountain Region, Aircraft Certification Division on May 2, 1986.

How to obtain copies: A copy of AC 25–8 may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or from any of the Government Printing Office bookstores located in major cities throughout the United States. Identify the publication as AC 25–8, Auxiliary Fuel System Installations, Stock Number 050–007–00741–8. The cost of AC 25–8 is $3.00. Send check or money order with your request, made payable to the Superintendent of Documents. Orders for mailing to foreign countries should include an additional 25 percent of the total price to cover handling. No C.O.D. orders are accepted.

Issued at Seattle, Washington, on August 11, 1986.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 86–19864 Filed 9–3–86; 8:45 a.m.]

BILLING CODE 4910–13–M

[Summary Notice No. PE–86–15]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 23, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington , DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 28, 1986.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
22709	40-Mile Air, Ltd.	14 CFR 135.261 (b) and (c)	To allow petitioner to conduct operations under the provisions of § 135.267 relating to pilot flight time limitations and rest requirements in scheduled operations, in lieu of the more stringent requirements of § 135.261 (b) and (c).
25019	Maxair, Inc.	14 CFR 135.159 (a), (b), and (c)	To allow petitioner to operate its helicopters without the gyroscopic rate of turn indicator combined with a slip-skid indicator, the gyroscopic bank and pitch indicator, and the gyroscopic direction indicator required when carrying passengers under VFR at night.
25018	Air Puerto Rico Airlines	14 CFR 121.343, 121.359, and 121.360	To allow petitioner to conduct operations under Part 121 for 180 days with airplanes that are not equipped with approved flight recorders, cockpit voice recorders, and ground proximity warning-glide slope deviation alerting systems. Petitioner states that within the 180-day period, it will achieve compliance with all of the applicable requirements of Part 121.
20583	Tenneco Aviation, Inc.	14 CFR 61.58(c)	Extension of exemption No. 3106 to allow pilots of petitioner to complete a 24-month pilot-in-command check in a Federal Aviation Administration (FAA)-approved flight simulator.
23178	Tenneco Aviation, Inc.	14 CFR 91.169(a)	Extension of Exemption No. 3691 to allow petitioner and its related companies to continue to utilize the continuous inspection program under § 91.169(a) for its turbine-engine-powered Bell 206B and Bolkow BO–105/C/S series helicopters.
25029	Rosenbalm Aviation Inc.	14 CFR 121.371 and 121.378	To allow petitioner to utilize Scandinavian Airlines System to perform a complete airframe overhaul (C check and D check) on its DC–8–63 aircraft at the SAS overhaul facility in Stockholm (Arlanda), Sweden.
25036	Florida Express, Inc.	14 CFR 121.371 and 121.378	To allow petitioner to use certain engines, components, and spare parts that have been manufactured, repaired/overhauled, or inspected by persons outside of the United States, who may not hold U.S. airman certificates, on petitioner's English-built BAC 1–11 aircraft. Petitioner would use original equipment manufacturers; DAN-AIR Services, Ltd., Manchester Airport England; and Lasham Airfield, England, to inspect, repair, and overhaul the BAC 1–11 aircraft, engines, components, and parts.
24441	Northern Pacific Transport, Inc.	14 CFR 91.31(a)	Reconsideration or amendment of Exemption No. 4666 to allow petitioner to operate four leased McDonnell Douglas DC–6A aircraft, S/N 44644, 44649, 44660, and 44675, at a 5 percent increased zero fuel and landing weight for the purpose of hauling fish of the Alaskan fishing industry, fuel, and private carriage of property. Petitioner seeks the removal of the geographic limitation of Exemption No. 4666.
13418	Sierra Academy of Aeronautics	14 CFR 63.39(b)(2)	Extension of Exemption No. 2095H to allow petitioner and any other similarly situated flight engineer school or operator to allow applicants they are training in preparation for the flight engineer practical test to take the normal procedures portion of the practical test prescribed in § 63.39(b)(2) in an appropriate simulator instead of in an airplane in flight.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
25059	Pan Am Corp. on behalf of Pan Am Shuttle	14 CFR 93.123	To permit petitioner to conduct 12 additional operations at LaGuardia Airport in excess of the number of air carrier operations permitted under the High Density Traffic Airport Rule.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
24981	Pegasus Flight Center	14 CFR 141.65	To allow petitioner to hold examining authority for flight instructor and airline transport pilot written tests. *Granted Aug. 12, 1986.*
18855	Helicopter Association International	14 CFR 135.99(b), 135.159 (a), (b), (c), 135.173(a).	To permit operations without performing certain aircraft modifications, hiring additional required pilots, and without complying with certain performance, operational, and maintenance requirements. *Granted Aug. 15, 1986.*
24905	Omniflight Helicopters	14 CFR 43.3(g)	To allow appropriately trained and certified pilots to perform certain maintenance functions. *Partial grant Aug. 1, 1986.*
20549	Boeing Commercial Airplane Co	14 CFR 25.1301(a) and 21.601	To permit type certification of the Model 747-21AC airplane with the location of the flap position indicator in the lower left-hand corner of the pilot's center instrument panel and with the servo altimeter configured with dial markings at 50 ft. increments rather than at 20 ft. *Granted Aug. 6, 1986.*
24875	Shoukat Ali Shah	14 CFR 65.91 C(1) and C(2)	To allow petitioner to take the written test for the issuance of inspection authorization without having to wait 3 years. *Denied Aug. 12, 1986.*
22539	Air Methods, Inc	14 CFR 43.3(h)	To allow petitioner to permit its appropriately trained and certificated pilots to remove, check, and reinstall magnetic chip detector plugs installed on Allison 250 series turbine engines, transmissions, and tail rotor gearboxes of the Bell 206L-1/L-3 series helicopters operated by them in or en route to remote areas subject to stipulated conditions. Air Method also requested that the Lycoming LTS 101-750 series engines, and the tail rotor gearbox on the Bell 222 helicopter be included in the amended exemption. *Granted Aug. 4, 1986.*
24326-1	Hawaiian Airlines	14 CFR 91.303	To allow petitioner to operate an additional Stage 1 DC-8 aircraft in the Pacific Basin until hush kits are installed. *Granted Aug. 5, 1986.*
24656	Concord Promotions	14 CFR 91.307	To allow petitioner to operate a Stage 1 BAC 1-11 replacement aircraft under the provisions § 91.307 until 1/1/88. *Granted Aug. 5, 1986.*
21015	Ransome Airlines	14 CFR 135.63(c)	To permit petitioner during scheduled passenger-carrying operations conducted under Part 135, to takeoff with a load manifest lacking the identification of crewmembers and their crew position assignments, subject to certain conditions. *Granted July 31, 1986.*
22560	Markair, Inc	14 CFR 121.311(e)(2)	To allow petitioner to operate its Lockheed L-382 airplanes without being equipped, at each flight deck station, with a combined safety belt and shoulder harness that meets the requirements. *Granted July 30, 1986.*
12638	Air Transport Association/Trans World Airlines	14 CFR 121.351(a)	To amend Exemption No. 2081 to allow TWA to be included in the provisions which allows dispatch with a single HF on certain oceanic routes between the Northeastern United States and the San Juan ARTCC. *Granted July 29, 1986.*
24143	United Airlines	14 CFR Part 121, Appendix H	To allow petitioner to conduct a test program during which initial training and checking for 50 pilots would be accomplished in an FAA-approved Phase II B-727 simulator, using the existing Phase III FAA-approved training program. *Denied July 29, 1986.*
21145	Air Transport Association	14 CFR 121.424	To allow petitioners members to eliminate the requirement that at least one takeoff and one landing during training must be accomplished at night by pilots undergoing upgrading training from second in command (SIC) to pilot in command in the same airplane type and by SIC's who are transitioning to other airplane types as SIC's. *Denied July 29, 1986.*
23854	Airline Training Institute	14 CFR 61.157(d)(1), 61.63(d) (2) and (3)	To allow trainees of petitioner to complete a practical test for the issuance of a type rating to be added to any grade of pilot certificate by substituting for the flight test required by § 61.63(d)(2) the test requirements in Appendix A, subject to specific conditions and limitations. *Granted July 29, 1986.*
23455	Reeve Aleutian Airways, Inc	14 CFR 121.574	To permit petitioner to carry and operate aboard petitioner's aircraft oxygen storage, generating, and dispensing equipment for medical use by patients requiring emergency medical attention and being carried as passengers when the oxygen equipment is furnished and maintained by hospitals, clinics, or city/village emergency medical services, within the State of Alaska, subject to certain conditions and limitations. *Granted July 29, 1986.*
25046	A.T.M. Inc	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 1 BAC 1-11: HZ-HRI serial number 081; *Denied July 31, 1986.*
24940	American Trans Air, Inc	14 CFR 121.3	To allow petitioner to operate a limited number of "subservice" or "wet-lease" flights on behalf of scheduled U.S. or foreign air carriers as supplemental flights, under Part F of its domestic and flag operations specifications (ops specs), without further amendment of its authority. In the alternative, to the extent the FAA may require some form of ops specs amendment for any of its subservice operations, petitioner requests an exemption to permit these amendments to be made to Part H of its ops specs without the procedures of formally adding these flights to Part C, necessitating placement of manuals, training of ground personnel, inspection of stations, and further steps. *Denied July 23, 1986.*
24306	Peninsula Airways, Inc	14 CFR 135.243(d)(2)	To allow Messrs. Norman Tibbetts and George Tibbetts to serve as pilots in command for on-demand air carrier operations without holding instrument ratings. *Denied July 21, 1986.*
24941	The Perris Valley Skydiving Society, Inc	14 CFR 105.43	To allow foreign parachutists to participate in parachute jumps without complying with the parachute equipment and packing requirements. *Granted July 18, 1986.*
23771	Cessna Aircraft Co	14 CFR 91.213 and 91.31	Extension of Exemption No. 4050 to allow the operation by one pilot without a second in command, of Cessna Models 550, S550, and 552, subject to certain conditions and limitations. *Partial grant July 16, 1986.*
224459	Embraer, S.A	14 CFR 135.157(c)(2)	To allow petitioner to comply with the oxygen supply requirements o § 121.333(a) (1) and (2) instead of § 135.157(b)(2). *Denied Aug. 21, 1986.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
24818	Piedmont Airlines	14 CFR 121.308	To allow petitioner to use a lavatory trash receptacle without installing a self-contained fire agent bottle internally on its F28-1000 aircraft. *Denied Aug. 18, 1986.*
24881	G.L. Capps Co.	14 CFR 145.57	To allow petitioner to continue its operations without the availability of a current manufacturer's manual. *Denied Aug. 20, 1986.*

[FR Doc. 86-19857 Filed 9-3-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Liquidations

The following is a list of companies formerly holding Certificates of Authority as acceptable sureties on Federal bonds. Their Certificates were terminated on the dates so noted. These Companies are currently in liquidation. Information follows relative to the respective companies:

1. State of Incorporation;
2. Date of the Termination of their Treasury Certificate of Authority;
3. Effective Date of Liquidation;
4. Date of Which Liabilities are Fixed; and
5. Last Date for Filing a Claim.

	American Druggists' Ins. Co.	American Fidelity Fire Ins. Co.	Allied Fidelity Ins. Co.	Heritage Ins. Co. of America	Midland Ins. Co.
State of Inc.	OH	NY	IN	IL	NY
Term of Cert. of Author	1/3/85	6/9/85	1/4/86	3/30/85	5/31/85
Effect. Date of Liquid.	4/30/86	3/26/86	7/15/86	2/25/86	4/3/86
Date Liab. Fixed	5/31/86	4/17/86	8/14/86	3/28/86	5/4/86
Last date to file claim	10/30/87	3/26/87	See below	2/26/87	4/3/87

In regard to the final date for filing of claims against Allied Fidelity Insurance Company, the Indiana Insurance Department will be finalizing this information by mid-September. A **Federal Register** Notice will follow to inform Federal bond-approving officers of this date.

All persons having claims against these Companies must file their claims by the dates so noted, or be barred from sharing in the distribution of assets. All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal claimants who have not yet filed their claims should do so, in writing to: Commercial Litigation Branch, Civil Division, Department of Justice, P.O. Box 875, Ben Franklin Station, Washington, DC 20044-0875, Attn: Sandra P. Spooner, Deputy Director.

The above office will be consolidating any and all claims against the listed companies on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202/FTS) 724-7194.

Government agencies involved in Federal surety bonding operations where third parties such as subcontractors, materialmen, and suppliers may have a claim against one of these Companies are requested to use their best efforts to notify such third parties of the liquidations, assist them in filing claims, and inform them of their priority status based on section 3713 of Title 31 of the United States Code.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, telephone (202) 634-2381.

Dated: August 28, 1986.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 86-19882 Filed 9-3-86; 8:45 am]
BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 1985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Dark Caves, Bright Visions" (see list [1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between various foreign lenders and the American Museum of Natural History. I also determine that the temporary exhibition or display of the listed exhibit objects at the American Museum of Natural History, New York, New York, beginning on or about September 1, 1986, to on or about March 31, 1987, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 26, 1986.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 86-19880 Filed 9-3-86 8:45 am]
BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) the department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Jill Cottine, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joe Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 28, 1986.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Appointment of Veterans Service Organization as Claimant's Representative
3. VA Form 23–22
4. On occasion
5. Individuals or households
6. 325,000 responses
7. 54,166 hours
8. Not applicable

Extension

1. Department of Veterans Benefits
2. Apprenticeship and On-the-Job Training Agreements and Standards and Employer's Application to Provide Training
3. VA Form 22–8863, 22–8864 and 22–8865
4. On occasion
5. State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; and Small businesses or organizations
6. 440 responses
7. 330 hours
8. Not applicable

[FR Doc. 86–19913 Filed 9–3–86; 8:45 a.m.]

BILLING CODE 8320–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 26 August 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on U.S. Strategic Defense Initiative.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 11, 1986.

[FR Doc. 86–19964 Filed 9–3–86; 12:00 noon]

BILLING CODE 3810–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 171
Thursday, September 4, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Commodity Futures Trading Commission	1-12
Federal Election Commission	13
Federal Reserve System	14
International Trade Commission	15, 16
Merit Systems Protection Board	17
Nuclear Regulatory Commission	18

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 5, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-20001 Filed 9-2-86; 11:11 am]
BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 12, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-20002 Filed 9-2-86; 11:11 am]
BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., September 16, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the New York Mercantile Exchange for designation as a contract market in Crude Oil Options
Application of the New York Mercantile Exchange for designation as a contract market in Heating Oil Options
Application of the Chicago Board of Trade for designation as a contract market in options on wheat futures
Application of the Chicago Mercantile Exchange for designation as a contract market in options on pork bellies futures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-20003 Filed 9-2-86 11:11 am]
BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., September 19, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Reviews
Registration Review

CONTACT PERSON FOR INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-20004 Filed 9-2-86; 11:11 am]
BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., September 19, 1986.

PLACE: 2033 K Street, NW, Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-20005 Filed 9-2-86; 11:11 am]
BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 19, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-20006 Filed 9-2-86; 11:12 am]
BILLING CODE 6351-01-M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., September 23, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Floor Broker Registration—Final Rules.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-20007 Filed 9-2-86; 11:12 am]
BILLING CODE 6351-01-M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., September 23, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-20008 Filed 9-2-86; 11:12 am]
BILLING CODE 6351-01-M

9

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 30, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–20009 Filed 9–2–86; 11:12 am]

BILLING CODE 6351–01–M

10

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., September 30, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Commodity Exchange, Inc. for designation as a contract market in the Stock Index futures

Application of the New York Futures Exchange for designation as a contract market in the NYSE Beta Index futures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–20010 Filed 9–2–86; 11:13 am]

BILLING CODE 6351–01–M

11

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 30, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 20011 Filed 9–2–86; 11:13 am]

BILLING CODE 6351–01–M

12

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., September 30, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 20012 Filed 9–2–86; 11:13 am]

BILLING CODE 6351–01–M

13

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 9, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, September 11, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Final audit report—Mondale for President Committee, Inc.
Proposed Final Rules: Standards of Conduct for agency employees, 11 CFR Part 7
Draft Advisory Opinion 1986–29: Honorable Fortney H. Stark.
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86–20036 Filed 9–2–86; 2:58 pm]

BILLING CODE 6715–01–M

14

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 8, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–19953 Filed 8–29–86; 4:43 pm]

BILLING CODE 6210–01–M

15

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, September 8, 1986 at 9:30 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: .

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain garment hangers (Docket Number 1337).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

August 25, 1986.

[FR Doc. 86–19941 Filed 8–29–86; 4:28 pm]

BILLING CODE 7020–02–M

16

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, September 10, 1986 at 1:45 p.m.

PLACE: Room 331, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Petitions and Complaints:
   Certain patented cryogenic microtome apparatus (Docket Number 1339).
2. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

August 25, 1986.

[FR Doc. 86–19942 Filed 8–29–86; 4:29 pm]

BILLING CODE 7020–02–M

17

MERIT SYSTEMS PROTECTION BOARD.

TIME AND DATE: 1:00 p.m. Friday, September 5, 1986.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW. Washington, DC 20419.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. *Simmons* v. *Office of Personnel Management,* MSPB Docket No. DC831L80A0132–1.
2. *Obremski* v. *Office of Personnel Management,* MSPB Docket No. DC08318010336 ADD.
3. *Kent* v. *Office of Personnel Management,* MSPB Docket No. DC0831L85A0330.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: September 2, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86–20101 Filed 9–2–86; 4:41 pm]

BILLING CODE 7400–01–M

18

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 1, 8, 15, and 22, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 1

Wednesday, September 3

2:00 p.m.
Briefing on IAEA Chernobyl Meeting (Public Meeting)

Thursday, September 4

3:30
Affirmation/Discussion and Vote (Public Meeting)
a. Comanche Peak Construction Permit Extension (*Postponed* from August 6)
b. Denial of Petition for Rulemaking Concerning the Need and Safety of Shipments of Spent Nuclear Fuel

Friday, September 5

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Perry–1 (Public Meeting)
2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Week of September 8—Tentative

Wednesday, September 10

10:00 a.m.
Discussion/Possible Vote on Kerr-McGee Sequoyah Facility (Public Meeting)

Thursday, September 11

10:00 a.m.
Briefing on International Nuclear Safety Conventions (Closed—Ex. 1)
2:00 p.m.
Meeting with the Advisory Committee on Reactor Safeguards on Standardization Policy Statement (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Promulgation of Final Fee Rule Required by the Consolidated Omnibus Budget Reconciliation Act of 1986

Week of September 15—Tentative

Thursday, September 18

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of September 22—Tentative

Thursday, September 25

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

August 28, 1986.

[FR Doc. 86–19955 Filed 8–29–86; 5:06 pm]

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VOL
51

ISS
1
7
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federal register

Thursday
September 4, 1986

Part II

Department of the Interior

Bureau of Land Management

Decertifying the Alabama Subregion of the Southern Appalachian Federal Coal Production Region and Opening the Area for Leasing by Application; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-970-06-4121-02-2410]

Decertifying the Alabama Subregion of the Southern Appalachian Federal Coal Production Region and Opening the Area for Leasing by Application

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) Eastern States Director is considering a proposal from Alabama Governor George C. Wallace that the Alabama Subregion of the Southern Appalachian Federal Coal Production Region be decertified and opened to lease by application. Public comment is being requested on the proposal.

DATE: Written comments will be accepted on or before October 6, 1986.

ADDRESSES: Comments should be addressed to District Manager, Jackson District Office, BLM, P.O. Box 11348, Delta Station, Jackson, Mississippi 39213, or Dave Traudt, Coal Coordinator, Branch of Fluid and Solid Minerals, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Ed Roberson, Jackson District Office, (601) 965-4405, or Dave Traudt, Eastern States Office, (703) 274-0142.

SUPPLEMENTARY INFORMATION: On November 9, 1979, the BLM established the Alabama Subregion of the Southern Appalachian Federal Coal Production Region for the management of Federal coal (44 FR 65196-65197). The subregion originally included Fayette, Tuscaloosa, and Walker Counties and the western portion of Jefferson County. On March 10, 1982, the BLM announced the deletion of Jefferson County from the subregion and opened the county to leasing by application (47 FR 10295-10296).

The leasing of Federal coal resources in the Alabama Subregion has been the subject of two regional Environmental Impacts Statements (EIS's). The first was finalized in January 1981 and resulted in a first round leasing effort. In that effort, three separate coal sales were held over a 15-month period which resulted in the leasing of 13 separate tracts and about 39 million tons of recoverable Federal coal. (The sales were held in June 1981, December 1981, and September 1982.)

The second round effort was commenced following the last first round sale in September 1982. The *Southern Appalachian Coal Region Final Environmental Impact Statement—II* was filed with the Environmental Protection Agency in December 1983. A decision on a second round lease sale was suspended by then Secretary Clark in early 1984. Former Secretary Clark suspended Federal coal leasing (except for emergency leasing and processing of Preference Right Lease Applications) pending a review of the Federal coal leasing program and the development of an EIS supplement for the program. In October 1985, the Federal Coal Management Program Final EIS Supplement was completed, and on February 21, 1986, Secretary Hodel decided to resume the Federal coal leasing program as modified by several program changes adopted as a result of the coal program review.

During 1982, the Alabama coal industry was rapidly expanding to meet the anticipated demands for coal. Production peaked at 27.5 million tons. Industry interest in the Federal coal leasing program was strong. The next year (1983) saw a worldwide depressed coal market. Alabama coal production dropped to 22.7 million tons. The interest in acquiring additional reserves began to wane. During 1984 and 1985, the coal market began recovering, but production was still far below the earlier projections. In 1986, with the price of oil dropping to a 10 to 12 year low, the market for coal has not improved. At this time, only one company has shown interest in leasing Federal coal in the Alabama Subregion.

In light of the soft market conditions described above, the Governor of Alabama proposed that the Eastern States Director convert the region to lease by application procedures as soon as possible. Governor Wallace also requested that public input be considered prior to making the recommendation to the Director of the BLM. Finally, the Governor requested that the State of Alabama be retained as a member of the Federal-State Coal Advisory Board. If the decision is implemented the Federal coal reserves in the Alabama Subregion will be open to lease by application.

Under this system a party interested in leasing Federal coal in Alabama would submit an application to the BLM Eastern States Office at the address given in **ADDRESSES.** The District Manager prepares an environmental assessment (EA) for the lands that are proposed for lease. Where appropriate the EA will be based on the two previously completed EIS's. The analysis will be supplemented where necessary. The Governor will be given 30 to 60 days to review the document and provide comments; the public will be able to review and provide comment during the process; and there will be a public hearing before any leasing decision.

Pieter J. VanZanden,

Acting State Director.

[FR Doc. 86-19884 Filed 9-3-86; 8:45 am]

BILLING CODE 4310-GJ-M

Federal Register

Thursday
September 4, 1986

Part III

Department of Education

34 CFR Part 614

Postsecondary Education; College Housing Program; Notice of Proposed Rulemaking

VOL 51 ISS 171 SE 4 1986 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 614

Postsecondary Education; College Housing Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to amend the regulations governing discounted prepayments of loans under the College Housing Program. The amendments would provide the Secretary with additional flexibility in determining the amount of a discount that may be offered for prepayment of a College Housing loan as authorized by section 402(c)(8) of the Housing Act of 1950, as amended. These amendments would allow the Secretary, in determining the amount of a discount in any given case, to consider the yield on outstanding marketable obligations of the United States that have maturities comparable to the loans in question, as well as the market value of the loans, based on commercial and investment practices, and other circumstances then prevailing, that are determined to have a bearing on the financial advisability of providing a discount and the amount of any discount

DATE: Comments must be received on or before October 6, 1986.

ADDRESS: All comments concerning these proposed regulations should be addressed to Samuel J. Weaver, Chief, Institutional Receivables Branch, U.S. Department of Education, L'Enfant Plaza, P.O. Box 23471, Washington, DC 20024. Telephone: (202) 472–9300.

FOR FURTHER INFORMATION CONTACT: Samuel J. Weaver. Telephone (202) 472–9300.

SUPPLEMENTARY INFORMATION: Based on the Secretary's experience in administering current program regulations (34 CFR Part 614) for the discounted prepayment of College Housing loans, the regulatory provisions, which set forth the basis for determining the amount of a discounted prepayment, need to be amended to provide the Secretary greater flexibility in determining this discount for those institutions which wish to buy back their loans from the Department and to ensure that such prepayments are exercised in a manner which is in the best financial interest of the Federal government. The Department's review indicates that the price at which these loans will sell on the open market would be less than the net present value of the loans as calculated under the current regulation. It appears that a considerable number of schools may be interested in prepaying their loans if adjustments are made to the current regulation by relating discounts to market value in addition to the net present value formula. Market value is defined as the amount the Secretary receives from nongovernmental investors if the notes were purchased by such investors on the open market.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by the regulations are small institutions of higher education. These amendments are beneficial to the postsecondary institutions affected and provide greater flexibility in the administration of the College Housing Program. Applications for prepayment discounts are voluntary and thus institutions applying for discounts will be the only entities affected by the proposed amendments to the regulations.

Paperwork Reduction Act of 1980

The proposed regulations do not contain any information collection requirements and are, therefore, not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) which govern such requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. All comments submitted in response to these proposed regulations will be available for inspection, during and after the comment period, in Room 3669, Regional Office Building #3, 7th & D Streets, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except for Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether their may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Intergovernmental Review

This program is listed in other regulations promulgated by the Secretary (34 CFR Part 79) as subject to the intergovernmental review requirements under Executive Order 12372 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 614

Colleges and Universities, Education, Housing, Loan Programs—housing and community development.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.141—College Housing Program)

Dated: August 28, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 614 of Title 34 of the Code of Federal Regulations as follows:

PART 614—COLLEGE HOUSING PROGRAM

1. The authority citation for Part 614 continues to read as follows:

Authority: 12 U.S.C. 1749–1749d, unless otherwise noted.

2. In § 614.63, paragraphs (b)(3) and (d) are removed; paragraphs (b)(4), (b)(5), and (b)(6) are redesignated as paragraphs (b)(3), (b)(4), and (b)(5), respectively, and redesignated

paragraph (b)(4) and paragraph (c) are revised to read as follows:

§ 614.63. Discounted prepayment of a loan.

* * * * *

(b) * * *

(4) The prepayment is in an amount determined in accordance with paragraph (c) of this section; and

* * * * *

(c) The Secretary determines the amount of a prepayment for a college housing loan based on—

(1) Current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid;

(2) Current fair market value of outstanding marketable obligations that are of comparable quality to that of the loan to be prepaid;

(3) Current and anticipated administrative costs incurred by the Secretary in servicing the loan to be prepaid; or

(4) Current net proceeds that the Secretary would receive from nongovernmental investors, if the loan to be prepaid were purchased by such investors on the open market.

(Authority: 12 U.S.C. 1749a(c)(8))

[FR Doc. 86-19930 Filed 9-3-86; 8:45 am]
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VOL
51
ISS
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FEDERA
31089-3
31309-3
31605-3

Reader Aids

Federal Register

Vol. 51, No. 171

Thursday, September 4, 1986

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308.....2
31309-31604.....3
31605-31756.....4

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5519.....31309
5520.....31311

7 CFR

226.....31313
301.....31605
1065.....31133
1068.....31133
1079.....31133
1475.....31316

Proposed Rules:
1137.....31340

8 CFR

Proposed Rules:
214.....31637

9 CFR

Proposed Rules:
92.....31637

10 CFR

477.....31316

Proposed Rules:
2.....31340
50.....31341

14 CFR

21.....31317
39.....31089, 31090, 31607, 31608
71.....31097
75.....31097
91.....31098
95.....31319
97.....31322

Proposed Rules:
21.....31644
23.....31644
39.....31133-1137, 31342, 31343, 31647
71.....31138, 31648

17 CFR

Proposed Rules:
150.....31648

18 CFR

Proposed Rules:
37.....31651

21 CFR

81.....31323
175.....31098
178.....31099
193.....31324
510.....31100

26 CFR

1.....31610, 31613
602.....31610, 31613

30 CFR

Proposed Rules:
733.....31139

32 CFR

199.....31100
205.....31325
286g.....31103
706.....31103-31112

Proposed Rules:
40.....31651

33 CFR

117.....31112, 31113
165.....31113, 31114

34 CFR

Proposed Rules:
614.....31754

36 CFR

13.....31619
800.....31115
1254.....31617

39 CFR

10.....31325
233.....31328

Proposed Rules:
111.....31673

40 CFR

52.....31125, 31127, 31129
261.....31330
271.....31618

Proposed Rules:
261.....31340

41 CFR

Proposed Rules:
201-33.....31674

42 CFR

405.....31454
412.....31454

43 CFR

36.....31619

44 CFR

64.....31330
65.....31635

Proposed Rules:
67.....31675, 31678

47 CFR

0.....31303
1.....31303
2.....31303

VOL 51 ISS 171 SE 4 1986 UMI

13.....31303
21.....31303
22.....31335
63.....31303
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303

Proposed Rules:
15.....31147
67.....31149
68.....31149
76.....31147
80.....31306

48 CFR

5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
32.....31194
45.....31196
47.....31424
48.....31197, 31424
50.....31424
52.....31194, 31197
914.....31335
933.....31335
952.....31335
970.....31335

Proposed Rules:
515.....31344
538.....31344
552.....31344
1317.....31687
1352.....31687

49 CFR

Proposed Rules
391.....31150

50 CFR

17.....31412
20.....31430
23.....31130
36.....31619

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 27, 1986

VOL
51
ISS
1
7
1
SE
4
1986
UMI

VOL
51
ISS
1
7
2
SE
5
1986
UMI

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9-5-86
Vol. 51 No. 172

federal register

Friday
September 5, 1986

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VOL
51
ISS
1
7
2
SE
5
1986
UMI

9-5-86
Vol. 5
Pages

9-5-86
Vol. 51 No. 172
Pages 31757-31924

federal register

Friday
September 5, 1986

Briefings on How to Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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VOL
51
ISS
172
SE
5
1986
UMI

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 25; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Doris Tucker 202–523–3419

Contents

Federal Register
Vol. 51, No. 172
Friday, September 5, 1986

Agricultural Marketing Service
RULES
Milk marketing orders:
Great Basin, 31759
Oranges (Valencia) grown in Arizona and California, 31758
Pork promotion, research, and consumer information, 31898

Agriculture Department
See also Agricultural Marketing Service; Cooperative State Research Service; Forest Service; Soil Conservation Service
RULES
Organization, functions, and authority delegations:
Marketing and Inspection Services, Assistant Secretary, et al., 31757

Commerce Department
See International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration; National Technical Information Service

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 31880

Cooperative State Research Service
NOTICES
Grants; availability, etc.:
Competitive research grants program, 31914

Customs Service
RULES
Customs brokers:
Single license, separate permits, grounds for suspension or revocation, monetary penalty, etc.
Correction, 31760

Defense Department
RULES
Acquisition regulations:
Ammunition and explosives contracts; safety precautions—
Correction, 31785
NOTICES
Meetings:
Wage Committee, 31794

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation applications:
Petro-Canada Hydrocarbons Inc., 31797
Spot Market Corp., 31797
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
Basic American Foods, 31798
Power Developers, Inc., 31799
Santa Clara, CA, 31799

Education Department
NOTICES
Meetings:
Continuing Education National Advisory Council, 31794

Employment and Training Administration
NOTICES
Adjustment assistance:
BASF Corp., 31851
Bethlehem Steel Corp. et al., 31851
BJM Drilling & Exploration, Inc., 31851
Trojan Luggage Co., 31852

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 31852

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Environmental statements; availability, etc.:
Lewiston, NY, 31795

Environmental Protection Agency
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Methanol-fueled motor vehicles and engines; emission standards
Correction, 31783
Hazardous waste:
Land disposal restrictions
Data availability, 31783
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region IX, 31835, 31836
(3 documents)
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 31836
Weekly receipts, 31837
Reporting and recordkeeping requirements, 31838

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 31880

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Empresa Brasileira De Aeronautica S.A., 31779

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 31880, 31881
(3 documents)

Federal Emergency Management Agency
PROPOSED RULES
National Environmental Policy Act; implementation; categorical exclusions, 31788

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Generic determination of rate of return on common equity for public utilities, 31781
NOTICES
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp. et al., 31800
Phillips Petroleum Co. et al, 31800
Wisconsin Gas Co., 31803

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Charleston and Berkeley Counties, SC, 31878

Federal Maritime Commission
NOTICES
Agreements filed, etc., 31838
Meetings; Sunshine Act, 31882

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Mitsubishi Trust & Banking Corp., 31839
Saban S.A. et al, 31839
Meetings; Sunshine Act, 31882
(2 documents)

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Salinomycin, roxarsone, and bacitracin zinc, 31763
Food additives:
Adjuvants, production aids, and sanitizers—
Alpha-sulfo-omega-(dodecyloxy)poly(oxethylene) ammonium salt, 31760
Human drugs:
Anthelmintic drug products (OTC); final monograph Correction, 31763
NOTICES
Food for human consumption:
Tomato products, canned; defect action levels; guide availability, 31840

Forest Service
NOTICES
Environmental statements; availability, etc.:
San Isabel National Forest, CO, 31790
Meetings:
Mono Basin National Forest Scenic Area Advisory Board, 31790

Health and Human Services Department
See also Food and Drug Administration; Public Health Service
NOTICES
Agency information collection activities under OMB review, 31840

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
Cases filed, 31803
Decisions and orders, 31804–31809
(3 documents)
Special claim procedures; implementation, 31810

Housing and Urban Development Department
RULES
Slum clearance and urban renewal:
Rental rehabilitation program, 31764

Immigration and Naturalization Service
NOTICES
Applications and petitions; direct mail to Regional Adjudications Centers:
Lincoln, NE, 31850

Indian Affairs Bureau
NOTICES
Agency information collection activities under OMB review, 31841
(2 documents)

Interior Department
See Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau

International Trade Administration
NOTICES
Applications, hearings, determinations, etc.:
Lutheran Institute of Human Ecology et al.; correction, 31791

Interstate Commerce Commission
NOTICES
Rail carriers:
Cost of capital; limited revenue adequacy proceeding, 31847
Railroad operation, acquisition, construction, etc.:
Norfolk & Western Railway Co. et al., 31847

Justice Department
See also Immigration and Naturalization Service
PROPOSED RULES
Privacy Act; implementation, 31781
NOTICES
Pollution control; consent judgments:
Moore, OK, et al., 31849
Phelps Dodge Corp., 31849
Privacy Act; systems of records, 31847

Labor Department
See Employment and Training Administration; Employment Standards Administration

Land Management Bureau
RULES
Rights-of-way:
Mineral Leasing Act—
Reimbursement of costs, 31784
PROPOSED RULES
Rights-of-way:
Mineral Leasing Act—
Rental determination procedures, 31886
NOTICES
Alaska Native claims selection:
Paug-Vik Inc., Ltd., 31841
Closure of public lands:
Idaho, 31841

Nevada and California, 31842
Environmental statements; availability, etc.:
Capitol Reef Reservoir Maintenance, UT, 31842
Mt. Ellen/Blue Hills wilderness study area, UT, 31842
New Mexico wilderness study areas, 31842
Management framework plans, etc.:
Colorado, 31843
Meetings:
Boise District Grazing Advisory Board, 31843
Cedar City District Advisory Council, 31844
Lakeview District Grazing Advisory Board, 31844
Oil and gas leases:
Wyoming, 31844
Opening of public lands:
Nevada, 31844
Realty actions; sales, leases, etc.:
Wyoming, 31844
Survey plat filings:
Colorado, 31845
Withdrawal and reservation of lands:
Alaska; correction, 31845

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Chevron U.S.A. Inc., 31845
(2 documents)

National Bureau of Standards
NOTICES
Laboratory Accreditation Program, National Voluntary:
Construction testing services, 31791
Food service equipment testing, 31792

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 31882

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Seat belt assemblies, 31765

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic mackerel, squid, and butterfish, 31774, 31775
(2 documents)
Pacific Coast groundfish, 31776
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 31792
New England Fishery Management Council, 31792
North Pacific Fishery Management Council, 31792
Pacific Fishery Management Council, 31793
Permits:
Marine mammals, 31793

National Park Service
NOTICES
Management and land protection plans; availability, etc.:
Golden Gate National Recreation Area, CA, 31845

National Technical Information Service
NOTICES
Patent licenses, exclusive:
American Home Products Corp., 31794
Arizona State University, 31794

National Transportation Safety Board
NOTICES
Aircraft accidents; hearings, etc.:
Grand Canyon, AZ; Grand Canyon Airlines, Inc., et al., 31853

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 31853
Environmental statements; availability, etc.:
Arizona Public Service Co. et al., 31853
Commonwealth Edison Co., 31854
Rocky Mountain Energy Co., 31855
UNC Teton Exploration Drilling, Inc., 31856
Petitions; Director's decisions:
Arizona Public Service Corp., 317857
Applications, hearings, determinations, etc.:
Louisiana Power & Light Co., 31857

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 31883

Public Health Service
See also Food and Drug Administration
PROPOSED RULES
Grants; availability, etc.:
Disadvantaged health professions students, 31920

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Westlands Water District, Drainage Disposal Project, CA, 31846

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 31859
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 31859
Depository Trust Co., 31861
Midwest Securities Trust Co., 31863
Midwest Stock Exchange, Inc., 31862
Municipal Securities Rulemaking Board, 31864
National Association of Securities Dealers, Inc., 31865
Pacific Clearing Corp., 31865
Pacific Securities Depository Trust Co., 31866
Pacific Stock Exchange, Inc., 31867
Philadelphia Depository Trust Co., 31868
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 31869
Applications, hearings, determinations, etc.:
HOME MAC Mortgage Securities Corp., 31869
Sentry Life Insurance Co. et al., 31871
Swiss Bank Corp. et al., 31874
Travelers Mortgage Services, Inc., 31875

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Clarksville Memorial Hospital, TN, 31790

White Oak Creek Watershed, TN, 31790

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Articles eligible for duty-free treatment, etc.; petitions in annual review, 31858

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration
NOTICES
Agency information collection activities under OMB review, 31876
Aviation proceedings:
Manila International Airport, Philippines; security measures determination, 31877
Meetings:
Commercial Space Transportation Advisory Committee, 31877

Treasury Department
See also Customs Service
NOTICES
Agency information collection activities under OMB review, 31878
Notes, Treasury:
L-1991 series, 31879

Veterans Administration
PROPOSED RULES
Vocational rehabilitation and education:
Veterans education—
Entitlement charges for refresher, remedial and deficiency courses, 31782

Separate Parts In This Issue

Part II
Department of the Interior, Bureau of Land Management, 31886

Part III
Department of Agriculture, Agricultural Marketing Service, 31898

Part IV
Department of Agriculture, Cooperative State Research Service, 31914

Part V
Department of Health and Human Services, Public Health Service, 31920

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
2 31757
908 31758
1136 31759
1230 31898

14 CFR
Proposed Rules:
39 31779

18 CFR
Proposed Rules:
37 31781

19 CFR
111 31760
171 31760
178 31760

21 CFR
178 31760
357 31763
369 31763
558 31763

24 CFR
511 31764

28 CFR
Proposed Rules:
16 31781

38 CFR
Proposed Rules:
21 31782

40 CFR
Proposed Rules:
86 31783
260 31783
261 31783
262 31783
264 31783
265 31783
268 31783
270 31783
271 31783

42 CFR
Proposed Rules:
57 31920

43 CFR
2880 31764
Proposed Rules:
2800 31886
2880 31886

44 CFR
Proposed Rules:
10 31788

48 CFR
223 31765
228 31765
242 31765
252 31765

49 CFR
571 31765

50 CFR
655 (2 documents) 31774, 31775
663 31776

Rules and Regulations

Federal Register
Vol. 51, No. 172
Friday, September 5, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegation of Authority

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by delegating to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Agricultural Marketing Service (AMS), the authority to administer the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); Watermelon Research and Promotion Act (7 U.S.C. 4901–4916); Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4531–4538); Floral Research and Consumer Information Act (7 U.S.C. 4301–4319); Section 213 of the Tobacco Adjustment Act of 1938, as amended, (7 U.S.C. 511r); and Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended by sec. 121 of the Food Security Act of 1985 (7 U.S.C. 4501–4513; 4531–4538).

The Secretary of Agriculture believes that these programs can be conducted most effectively under the jurisdiction of AMS.

EFFECTIVE DATE: September 5, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Hooper, Financial Management Division, Agricultural Marketing Service, Department of Agriculture, Washington, DC (202) 447–6981.

SUPPLEMENTARY INFORMATION: The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) authorizes the Secretary of Agriculture to establish a national pork promotion, research, and consumer information order.

The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916) authorizes the Secretary of Agriculture to issue an order which authorizes the collection of assessments on watermelons and the use of such funds to cover cost of research, development, advertising and promotion with respect to watermelons.

The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612) provides for a nationally coordinated, industry financed research, promotion and consumer information program designed to expand the markets for honey products.

The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319) provides for a nationally coordinated, industry financed research, consumer, and producer education and promotion program for cut flowers, potted plants, and foliage plants.

Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538) provide for a nationally coordinated, industry financed dairy products promotion, research, and nutrition education program and a National Dairy Research Endowment Institute.

Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r) requires all tobacco, except cigar tobacco and oriental tobacco, imported into the United States to be inspected, insofar as practicable, for grade and quality and requires flue-cured and burley tobacco imported into the United States to be certified by the importer that such tobacco does not contain residues from any pesticides banned from U.S.-grown tobacco.

The Secretary of Agriculture believes that these programs can be conducted most effectively under the jurisdiction of AMS. This document amends the delegations of authority of the Department of Agriculture in 7 CFR Part 2 by delegating to the Assistant Secretary for Marketing and Inspection Services, and the Administrator, AMS, the responsibility and the authority for administering the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); Watermelon Research and Promotion Act (7 U.S.C. 4901–4916); Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612); Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538); Floral Research and Consumer Information Act (7 U.S.C. 4301–4319); and section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12291. Finally, this subject is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, 7 CFR Part 2 is amended as follows:

1. The authority citation for Part 2 continues to read.

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953 unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding new paragraphs (a)(3)(xxxviii) through (xliii) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

(a) * * *
(3) * * *

(xxxviii) The Pork Promotion, Research and Consumer Information Act of 1985 (7 U.S.C. 4801–4819).

(xxxix) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916).

(xl) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612).

(xli) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538).

(xlii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319).

(xliii) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.50 is amended by adding new paragraphs (a)(3) (xxxix) through (xliv) and by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a) * * *

(3) * * *

(xxxix) The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819).

(xl) The Watermelon Research and Consumer Information Act (7 U.S.C. 4901–4616).

(xli) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612).

(xlii) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538).

(xliii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319).

(xliv) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

* * * * *

(b) * * *

(1) Taking final action on regulations under section 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A)); section 12(a) of the Cotton Research and Promotion Act (7 U.S.C. 2111(a)); section 311(a) of the Potato Research and Promotion Act (7 U.S.C. 2620(a)); section 118(a) of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4509(a)); section 1625(a) of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4814), section 1650(a) of the Watermelon Research and Promotion Act (7 U.S.C. 4909), section 10(a) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4609(a)), section 14(a) of the Egg Research and Consumer Information Act (7 U.S.C. 2713(a)), and section 1714(a) of the Floral Research and Consumer Information Act (7 U.S.C. 4313(a)).

(2) Issuing, amending, terminating, or suspending any marketing agreement or order or any provision thereof under the Agricultural Marketing Agreement Act of 1937; the Cotton Research and Promotion Act; the Potato Research and Promotion Act; Subtitle B and C of the Dairy Production Stabilization Act of 1983, as amended; the Pork Promotion, Research, and Consumer Information Act of 1985; the Beef Research and Information Act, as amended; the Watermelon Research and Promotion Act; the Honey Research, Promotion, and Consumer Information Act; or the Floral Research and Consumer Information Act.

* * * * *

Dated: August 29, 1986.

For Subpart C.

Peter C. Myers,

Acting Secretary, Secretary of Agriculture.

For Subpart F.

Alan T. Tracy,

Deputy Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 86–20064 Filed 9–4–86; 8:45 am]

BILLING CODE 3410–02–M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 379]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 379 establishes the quantity of California-Arizona Valencia oranges that may be shipped to market during the period September 5–11, 1986. The regulation is needed to balance the supply of fresh Valencia oranges with market demand for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 379 (§ 908.679) is effective for the period September 5–11, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on September 2, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges continues to improve.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act.

Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been

notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Agricultural Marketing Service, Marketing agreements and orders, Oranges, Valencias.

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 908.679 is added to read as follows:

§ 908.679 Valencia Orange Regulation 379.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 5, 1986 through September 11, 1986 are established as follows:

(a) District 1: 460,000 cartons;
(b) District 2: 540,000 cartons;
(c) District 3: Unlimited cartons.

Dated: September 3, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–20180 Filed 9–4–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1136

Milk in the Great Basin Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues a prior suspension of the requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pool status under the Great Basin Federal milk order. The continuing action was requested by Western General Dairies, Inc., a cooperative association representing most of the producers supplying the market.

The suspension is based on information received at a public hearing held March 18–20, 1986, in Salt Lake City, Utah. The hearing was held to consider a proposal to merge the Great Basin and Lake Mead milk orders. Provisions of the proposed merged order would alleviate the pooling problems experienced by the cooperative for approximately the past year. A further suspension of the Great Basin order's requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining the plant's pool status is warranted until the hearing proceeding has been completed. Such interim action is needed to provide a continuation of the orderly and efficient handling of the supplies of milk surplus to the fluid needs of the market while the proceeding is under consideration.

EFFECTIVE DATE: September 5, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing: Issued February 6, 1986; published February 11, 1986 (51 FR 5070).

Notice of Proposed Suspension: Issued July 29, 1986; published August 4, 1986 (51 FR 27866).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Great Basin marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 4, 1986 (51 FR 27866) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the continued suspension were received.

After consideration of all relevant material including the proposal in the notice, comments received, and testimony and evidence in the hearing record, it is hereby found and determined that the suspension, which applied to milk marketed through the end of July 1986, should be extended and continued until the hearing proceeding on a proposed merger of the Great Basin and Lake Mead orders has been completed and that the following provisions of the current order do not tend to effectuate the declared policy of the Act:

In § 1136.7(a), the language "or diverted therefrom as producer milk to a nonpool plant pursuant to §1136.13."

Statement of Consideration

This action is based on the record of a public hearing held on March 18–20, 1986, at Salt Lake City, Utah, to consider a proposed merger of the Great Basin and Lake Mead orders. The Great Basin order now requires that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pooling under the order. The order provides that a certain percentage of a distributing plant's receipts in each month be disposed of as route disposition if the plant is to be qualified for pooling. In addition to fluid milk products physically received at the plant, diversions of producer milk to nonpool plants are included as part of the receipts of which a particular percentage must be disposed of on routes.

Continuation of the suspension was requested by Western General Dairies, Inc., a cooperative association that supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies. Western General also operates pool distributing plants and manufacturing plants in the Great Basin marketing area. The cooperative based its request for continued suspension on the record of a public hearing held March 18–20, 1986, in Salt Lake City, Utah, to consider its proposal to merge the Great Basin and Lake Mead orders.

Data introduced at the hearing show that producer milk pooled under the Great Basin order in 1985 increased by 33 percent over 1984. Over the same period, Class I sales by Great Basin handlers increased by only 6 percent. The percentage of producer milk used in Class I in 1985 was 48.38 percent, as compared with 59.34 percent in 1984. Testimony received at the hearing indicated that increasing volumes of milk production are expected to be eligible for pooling under the Great Basin order in the near future. Given these conditions, it is likely that some distributing plants whose principal business is supplying fluid milk products to the markets will fail to distribute the proportion of their total milk supplies on routes required to maintain their pool status. The order requires that a fluid milk plant dispose of 50 percent of its receipts, including diversions to nonpool plants, on routes during the months of

September through February, 45 percent in March and April, and 40 percent during the months of March through August. As the actual percentage of producer milk used in Class I declines to about the same percentage of pooled handler's receipts that must be disposed of as route dispositions, it becomes more likely that some fluid milk plants will fail to qualify for pooling, or will have to omit some of their suppliers of producer milk from the marketwide pool. Either situation would tend to create disorderly marketing conditions in the Great Basin area.

Western General's proposed merged order would continue to include diversions of producer milk to nonpool plants in the receipts from which pool plant qualifications would be calculated. However, the proposed order also includes as a pool plant a manufacturing plant operated by a cooperative association within the marketing area. Such a definition would cause milk delivered by Western General to its own manufacturing plant to be considered deliveries to pool plants, thereby removing such milk from the receipts to be included in pool plant qualification computations. In post-hearing briefs, two proprietary handlers supported the omission of diverted milk from receipts to be used in computing pool plant qualifications in the proposed merged order. The handlers explained that if diverted milk were to be considered a receipt for such purpose, they would experience difficulty in pooling all of the milk shipped by their nonmember producers.

Gossner Foods, Inc., a proprietary handler regulated under the order, filed comments supporting the proposed suspension. No comments in opposition to the proposed action were received.

An extension of the current suspension is warranted on the basis of the foregoing information. The extension will enable Western General and other handlers to handle their reserve milk supplies efficiently and assure that the milk of dairy farmers who supply the fluid needs of the market will continue to be pooled until such time as the hearing proceeding is completed.

It is hereby found and determined that thirty day's notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing problems that provide the basis for this action were explored fully at a public hearing held on March 18–20, 1986, where all interested parties had an opportunity to testify concerning the proposals. Also, notice of proposed rulemaking was given interested persons and they were afforded opportunity to file written data, views of arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1136

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following language in § 1136.7(a) of the Great Basin order is hereby suspended for the month of August 1986 and continuing until the rulemaking proceeding relating to the merger of the Great Basin and Lake Mead Federal milk orders has been completed:

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for 7 CFR Part 1136 continues to read follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; U.S.C. 601–674.

§ 1136.7 [Amended]

2. In § 1136.7(a) the language "or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13" is suspended.

Effective date: September 5, 1986.

Signed at Washington, D.C., on: September 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–20067 Filed 9–4–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 111, 171, and 178

[T.D. 86–161]

Customs Regulations Amendments Relating to Customs Brokers

Correction

In FR Doc. 86–19256 beginning on page 30336 in the issue of Tuesday, August 26, 1986, make the following corrections:

1. On page 30337, first column, first complete paragraph, the third, fourth and fifth lines should have read as follows: "recorded in an alternate method in addition to maintenance of the original documents.".

2. On page 30339, first column, seventh line, "should" should have read "would".

§ 111.28 [Corrected]

3. On page 30343, first column, in § 111.28(c), ninth line, "of" should have read "to".

§ 111.95 [Corrected]

4. On page 30346, first column, in § 111.95, fourth line, "to" should have read "of".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 80F–0498]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt as an emulsifier in the manufacture of coatings for paper and paperboard intended for food-contact use. This action responds to a petition filed by Polysar Limited.

DATES: Effective September 5, 1986; objections by October 6, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration. Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1981 (46 FR 10542), FDA announced that a petition (FAP 9B3443) had been filed by Polysar Limited, Sarnia, Ontario, Canada N7T 7M2, proposing that the food additive regulations be amended to provide for the safe use of styrene-butadiene copolymers containing *N*-methylolacrylamide as a polymer component and *alpa*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt as an emulsifier in the

manufacture of paper and paperboard intended for food-contact use.

In the **Federal Register** of January 9, 1986 (51 FR 881), the agency published as a partial response to the petition, a final rule to provide for the safe use of *N*-methylolacrylamide as a minor monomer in styrene-butadiene copolymers that are used in the manufacture of paper and paperboard. The January 1986 final rule also made clear that FDA had not completed its review of the safety of the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt in paper and paperboard. The agency stated that action on this salt would be the subject of a future **Federal Register** document. FDA has now completed its review of the safety of this additive.

FDA, in its evaluation of the safety of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt, reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt has not been found to cause cancer, it may contain minute amounts of ethylene oxide and 1,4-dioxane as byproducts of its production. These chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids are commonly found as contaminants in all chemical products, including most food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H. Rept. 2284, 85th Cong., 2d Sess. 4. (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the food additive amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has approved the use of other color additives and food additives on the same basis. FDA fully explained the scientific, legal, and policy underpinning for those decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, published in the **Federal Register** of April 2, 1982 (47 FR 14464).

The agency now believes that the Delaney or anticancer clause is applicable only when the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt will result in extremely low levels of exposure to the additive. The agency has calculated an estimated daily intake of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt based on considerations such as the maximum possible migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles that contain this substance. The estimated daily intake for the additive is 0.14 milligram per day (48 parts per billion in the diet) for a 60-kilogram person.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and has not required such testing here. Because *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt has not been shown to cause cancer, the anticancer clause does not apply to it.

FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in the additive. Based on its evaluation of all the available data on this additive including the results of the testing that was done, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in its evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities that may be present in this food additive, ethylene oxide and 1,4-dioxane, has two aspects: (1) assessment of the worst case exposure to the impurities from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing *alpha*-sulfo-*omega*(dodecyloxy)poly(oxyethylene) ammonium salt, as well as the level of 1,4-dioxane that may be present in the additive (Ref. 5), FDA estimated the hypothetical worst case exposure to 1,4-dioxane from the use of this additive to be 0.1 nanogram per person per day. The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to

estimate the upper bound level of lifetime human risk from exposure to 1,4-dioxane stemming from the proposed use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt. The results of the bioassay on 1.4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to 1,4-dioxane stemming from the proposed use of *alpha*-sulfo-*omega*-(dodecyloxy)poly (oxyethylene) ammonium salt could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the food additive. Based on a worst case exposure of 0.1 nanogram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to 1,4-dioxane from the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt is 4×10^{-12} or less than 1 in 250 billion. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that results from the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt.

B. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt, as well as the level of ethylene oxide that may be present in the additive (Ref. 5), FDA estimated the hypothetical worst case exposure to ethylene oxide from the use of this additive to be 0.1 nanogram per person per day. The agency used data in a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, West Germany (Ref. 3), to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of *alpha*-sulfo-*omega*-(dodecyloxy)poly (oxyethylene) ammonium salt. The results of the bioassay on ethylene oxide demonstrated that this material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas of the forestomach and carcinoma in situ of the glandular stomach.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that this information on ethylene oxide supported the findings of carcinogenicity. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to ethylene oxide could be made from the bioassay.

Based on a worst case exposure of 0.1 nanogram per person per day, FDA estimates using a linear proportional model that the upper bound limit of individual lifetime risk from potential exposure to ethylene oxide from the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt is 2×10^{-12} or less than 1 in 5 billion. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to ethylene oxide that results from the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt.

C. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of the ethylene oxide and 1,4-dioxane impurities in the food additive. The agency finds that a specification is not necessary for two reasons: (1) Because of the levels at which ethylene oxide and 1,4-dioxane are used in production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure, even under worst case assumptions, is very low, less than 1 in 250 billion for 1,4-dioxane and less than 1 in 5 billion for ethylene oxide.

D. Conclusion on Safety

FDA has evaluated the available toxicity data and the exposure calculation for the additive and has determined that the additive is safe for its proposed use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?," Committee on

Agriculture, Nutrition, and Forestry, United States Senate, July 1979, p. 59.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" presented at the "Second International Conference on Safety Evaluation and Regulation of Chemicals," October 24, 1983, Cambridge, MA.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated February 13, 1986, from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, "Exposure to Ethylene Oxide (EO) and 1,4-Dioxane (DX)."

Any person who will be adversely affected by this regulation may at any time on or before October 6, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3400 is amended in paragraph (c) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.3400 Emulsifiers and/or surface-active agents.

* * * * *

(c) * * *

List of substances	Limitations
* * * * *	
.*Alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt (CAS Reg. No. 30174-67-5).	For use only as an emulsifier at levels not to exceed 0.3 percent by weight of styrene-butadiene copolymer coatings for paper and paperboard complying with § 176.170 of this chapter.
* * * * *	

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Dated: August 28, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-19998 Filed 9-4-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 357 and 369

[Docket No. 79N-0378]

Antihelmintic Drug Products for Over-the-Counter Human Use; Final Monograph

Correction

In FR Doc. 86-17180, beginning on page 27756, in the issue of Friday, August 1, 1986, make the following correction:

On page 27759, third column, after § 357.180, "Part 396" should read "Part 369".

BILLING CODE 1505-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Roxarsone, and Bacitracin Zinc

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by International Minerals & Chemical Corp., providing for safe and effective use of previously approved salinomycin, roxarsone, and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds. The feeds are used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency.

EFFECTIVE DATE: September 5, 1986.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: International Minerals & Chemical Corp., P.O. Box 207, Terre Haute, IN 47808, filed NADA 139–190 providing for combining the following previously approved Type A articles: Bio-Cox® containing 30 grams of salinomycin sodium per pound with 3-Nitro® containing 10, 20, 50, or 80 percent roxarsone, and Baciferm® containing 10, 25, 40, or 50 grams of bacitracin zinc activity per pound. The Type A articles are combined to make Type C broiler feeds containing salinomycin at 40 to 60 grams per ton, roxarsone at 34.1 grams per ton (0.00375 percent), and bacitracin zinc at 10 to 50 grams per ton. The feeds are used for prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and increased rate of weight gain and improved feed efficiency. The NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.550 is amended by adding new paragraph (b)(1)(ix) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(b) * * *

(1) * * *

(ix)(*a*) *Amount per ton.* Salinomycin 40 to 60 grams with roxarsone 34.1 grams and bacitracin zinc 10 to 50 grams.

(*b*) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for increased rate of weight gain and improved feed efficiency.

(*c*) *Limitations.* Feed continuously as sole ration. Use as sole source of organic arsenic. Do not feed to layers. May be fatal if accidentally fed to adult turkeys or horses. Withdraw 5 days before slaughter. Roxarsone as provided by No. 017210 and bacitracin as provided by No. 012769 in § 510.600(c) of this chapter.

* * * * *

Dated: August 28, 1986.

Richard H Teske,

Acting Associate Director for Veterinary Medicine.

[FR Doc. 86–19997 Filed 9–4–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 511

[Docket No. R–86–1302; FR–2254]

Rental Rehabilitation Program; Announcement of Effective Date for Revisions to Mandatory Deobligation of Grant Amounts and Other Miscellaneous Revisions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY. This notice announces the effective date for a final rule published in the **Federal Register** on August 11, 1986 (51 FR 28703). The current regulations require that HUD deobligate any rental rehabilitation grant amounts that are not committed to specific local projects within two years of receipt by the grantee (three years, if a State distributed the grant amount to State recipients), or are not expended for eligible costs within four years of receipt by the grantee (five years, if a State distributed the grant amount to State recipients). This rule provides that, on a case-by-case basis, HUD may extend for one year any of these time periods. This revision is intended to avoid deobligation of grant amounts in situations where the grantee's overall administrative performance has been sound and the amounts are likely to be used by the original grantee within the extended period.

The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.** The purpose of this notice is to announce the effective date of that final rule.

DATE: The effective date for the final rule published August 11, 1986 (51 FR 28703), is October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Acting Director, Rental Rehabilitation Division, Office of Urban Rehabilitation, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 755–5970. (This is not a toll-free telephone number.)

Dated: August 29, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86–19995 Filed 9–4–86; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[AA–330–4211–02NCPF–2410; Circular Nos. 2550 and 2557]

Rights-of-Way Under the Mineral Leasing Act; Amendment Relating to Reimbursement of Costs

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking reaffirms and clarifies the authority of the Department of the Interior to recover costs from Alyeska Pipeline Service Company for monitoring Alyeska's operation, maintenance and eventual termination of its right-of-way for the Trans-Alaska Pipeline System and ensure the enforcement of the various environmental stipulations agreed to by Alyeska.

EFFECTIVE DATE: August 3, 1984.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Theodore Bingham, (202) 343–5441.

SUPPLEMENTARY INFORMATION: A temporary final rulemaking and a proposed rulemaking, both of which amended 43 CFR Part 2880, were published in the **Federal Register** on August 3, 1984 (49 FR 31208, 31094). Even though the temporary final rulemaking was effective upon publication, the proposed rulemaking provided 60 days within which the public was requested to comment on the amendment made by the proposed rulemaking. During the comment period, comments were received from two sources, both from the oil industry.

Neither of the comments questioned the authority of the Secretary of the Interior to recover costs incurred in connection with the monitoring of Alyeska's operation, maintenance and eventual termination of its right-of-way for the Trans-Alaska Pipeline System, but they suggested changes in the procedure provided by the amendment. One of the comments expressed the view that the Trans-Alaska Pipeline System had benefitted the public and that the costs of monitoring the operation, maintenance and eventual termination of that system should be spread to a much broader base. This comment has not been adopted by this final rulemaking because section 28 of the Mineral Leasing Act (30 U.S.C. 185), authorizes the Secretary of the Interior to collect all administrative and other costs of processing an application for a right-of-way or temporary use permit under the authority of the Mineral Leasing Act. The other comment on the temporary final rulemaking raised questions about the authority of the Secretary of the Interior to recover all costs in connection with a right-of-way

granted under the provisions of the Mineral Leasing Act and suggested that the temporary final rulemaking be withdrawn and that the cost reimbursement regulations being developed under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), be made applicable to rights-of-way issued under the Mineral Leasing Act. This comment has not been adopted by the final rulemaking because the provision for the recovery of costs in section 28 of the Mineral Leasing Act authorizes the Secretary of the Interior to recover all administrative and other costs of processing of an application, while the Federal Land Policy and Management Act provides for the recovery of reasonable administrative and other costs. Therefore, the Department of the Interior, in compliance with the differing statutory authorities contained in the two Acts, is promulgating regulations which provide for the differences in the recoverable costs permitted by the two statutes for the different types of right-of-way grants or temporary use permits.

Finally, during the period since the issuance of the temporary final rulemaking, there has been no challenge to the provisions of the temporary final rulemaking and Alyeska, the only entity affected by the temporary final rulemaking, has paid the assessments of recoverable costs made pursuant to the temporary final rulemaking.

No changes have been made in the temporary final rulemaking and it is hereby adopted as a final rulemaking.

The principal author of this final rulemaking is Mark D. Etchart, Division of Rights-of-Way, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The amendment made by this final rulemaking will impact only one entity, the Alyeska Pipeline Service Company, which is a large entity.

There are no additional information collection requirements in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2880

Administrative practice and procedure, Common carrier, Oil and gas industry, Pipelines, Public lands—rights-of-way.

Under the authority of section 28 of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 185), section 203 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 95–153) and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), the provisions of the temporary final rulemaking published in the **Federal Register** on August 3, 1984 (49 FR 31208), as changed by the final rulemaking published in the **Federal Register** of January 10, 1985 (50 FR 1308), are hereby adopted without change.

J. Steven Griles,

Assistant Secretary of the Interior.

August 12, 1986.

[FR Doc. 86–20037 Filed 9–4–86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF DEFENSE

48 CFR Parts 223, 228, 242 and 252

Department of Defense Federal Acquisition Regulation Supplement; Safety Precautions for Ammunition and Explosives; Correction

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comment; correction.

SUMMARY: This document corrects an interim rule which was published August 13, 1986 (51 FR 28943) and corrected on August 15, 1986 (51 FR 29231). This action is necessary to correct a typographical error in Part 252 and to reflect removal of a clause from Part 252.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

The Department of Defense is correcting amendatory language to read as follows:

252.223–7002 [Corrected]

1. The introductory paragraph in section 252.223–7002 is corrected by changing the letter "(b)" to read "(c)".

252.228–7007 [Removed]

2. Section 252.228–7007 is removed.

[FR Doc. 86–20013 Filed 9–4–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 46]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection and Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice responds to eight petitions for reconsideration of several of the amendments to Standard No. 208, *Occupant Crash Protection,* that appeared in the **Federal Register** of Friday, March 21, 1986. In response to the petitions, the agency is modifying the test dummy positioning procedures. However, so as not to affect compliance testing done using the old procedures, the agency is permitting manufacturers to use either the old or new procedures for a one year period. Beginning September 1, 1987, the new procedures would be mandatory. This notice denies a request to extend the September 1, 1989 effective date for dynamic testing of manual lap/shoulder belts in the front seat of passengers cars. (The dynamic test requirement would go into effect on that date only if the automatic restraint requirement is rescinded.) A response to four petitions asking the agency to reinstate certain of the test requirements of Standard No. 209, *Seat Belts Assemblies,* for dynamically-tested manual lap/shoulder belts, and to revise the current exemption for automatic belts, will be addressed separately at a later date.

DATES: The amendments made by this notice are effective on September 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street, SW., Washington, DC 20590 (202–426–2264).

SUPPLEMENTARY INFORMATION: On March 21, 1986 (51 FR 9800), NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection.* Subsequent to publication of the amendments, eight interested parties timely filed petitions asking the agency to reconsider some of the amendments adopted in that final rule. This notice responds to those petitions.

Test Procedures

The March notice adopted several changes to the test dummy positioning procedures of the standard. Ford Motor Company (Ford) said that the revised test procedures were not objective because of what it termed ambiguities, inconsistencies, and subjective elements in the test procedure provisions. Each of Ford's specific objections are discussed below, in the order that Ford raised them.

Positioning of Manual Belts for Dynamic Testing

Ford noted that the standard provides that in the dynamic test for manual belts, the lap/shoulder belt is to to be placed around the test dummy after the dummy's arms and hands have been positioned. Ford said it is impracticable to position properly a lap/shoulder belt on a driver test dummy whose hands are on the steering wheel or on a passenger test dummy whose palms are in contact with its thighs. Ford noted that the agency's New Car Assessment Program (NCAP) test procedures provide for positioning the arms and hands after the safety belt has been positioned.

Ford is correct that the NCAP test procedure provides that the safety belts are to be placed on the test dummy before the arms and hands are placed in their final positions. To eliminate possible safety belt positioning problems, NHTSA is amending the Standard No. 208 positioning requirements to adopt the NCAP requirement.

Positioning of Automatic Belt for Dynamic Testing

Ford also noted that the safety belt positioning procedure applies only to manual belts and asked the agency to specify at what stage during the positioning of the test dummy, automatic belts are to be deployed. Ford also asked what adjustment procedures the agency would use with automatic belts.

In NCAP testing, NHTSA has finally positioned both automatic and manual safety belts after the test dummy has been settled in its specified position and before the hands are placed in their final position. The agency has used this procedure because it is simpler than having to position the hands first and then move them in order to place the safety belt on the test dummy. NHTSA is therefore modifying the title of the safety belt positioning procedure to indicate that it applies to the positioning of both manual and automatic safety belts.

In the Agency's NCAP testing, the only adjustment NHTSA has made to an automatic belt once it has been deployed on the test dummy is to ensure that the belt is lying flat on the test dummy's shoulder when the belt is in its final position. The agency is adopting the same procedure for the Standard No. 208 compliance test. In addition, as discussed immediately below, the agency will also adjust an automatic belt with a tension-relieving device that can be used to introduce slack in the belt system in accordance with the manufacturer's instructions provided in the vehicle owner's manual. For automatic belts that do not have devices that can be used to introduce slack in the belt system, it should not be necessary to make any further adjustments, other than ensuring the belt is flat on the test dummy's shoulder.

Adjusting Belt Slack

Ford noted that S7.4.2 of the standard requires automatic belts and dynamically-tested manual lap/shoulder belts to be tested with the maximum amount of slack recommended by the manufacturer. It said that the standard does not, however, prescribe a procedure for adjusting the slack of automatic belts with tension-relieving devices.

The purpose of S7.4.2 of the standard is to ensure that automatic and dynamically-tested manual belt systems will perform adequately when they are adjusted to the maximum amount of belt slack recommended by the vehicle manufacturer. S7.4.2(b) of the standard specifically requires manufacturers that use tension-relieving devices to provide information in their owner's manual describing how the tension-reliever works. In addition, the owner's manual must inform vehicle owners of the maximum amount of safety belt slack recommended by the vehicle manufacturer. In conducting its crash tests, the agency will adjust any safety belt tension-relieving devices in accordance with the instructions provided by the vehicle manufacturer in the owner's manual.

Belt Tension Loading

Ford noted that the safety belt positioning procedure specifies applying a 2 to 4 pound tension load to the lap belt of a lap/shoulder belt, but does not specify how the load is to be applied or how the tension is to be measured. Ford asked the agency to clarify the procedure, particularly with regard to whether the load is to be applied to the lap portion of the belt or whether an increasing load is to be placed on the shoulder portion of the belt until the required amount of tension has been reached in the lap portion of the belt.

NHTSA does not believe that the area of application of the belt tension load should have a significant effect on the subsequent performance of the belt in a dynamic test. However, to promote uniformity in application of the load, the agency is amending the standard to provide that the load will be applied to the shoulder portion of the belt adjacent to the latchplate of the belt. If the safety belt system is equipped with two retractors (one for the lap belt and one for the upper torso belt), then the tension load will be applied at the point the lap belt enters the retractor, since the separate lap belt retractor effectively controls the tension in the lap portion of a lap/shoulder belt. The amount of tension will also be measured at the location where the load is applied. Finally, the agency is amending the standard to provide that after the tension load has been applied, the shoulder belt will be positioned flat on the test dummy's shoulder. This will ensure that if the belt is twisted during the application of the tension load, it will be correctly positioned prior to the crash test.

Test Dummy Settling and Leg Positioning

Ford said that it was particularly concerned about the repeatability of the leg placement obtained using the new test procedures. Ford said that the positioning procedures provide for the placement of the test dummy's legs before the test dummy is settled. Ford said that the settling procedure usually results in movement of the test dummy's legs, but the new procedure does not call for readjustment of the leg positions after the test dummy has been settled. Ford requested that the procedure be changed by providing that after test dummy settling and placement of the arms and hands, the test dummy's feet and knees should be repositioned, if necessary. As an alternative approach, Ford suggested that the procedure provide that the test dummy settling be performed prior to adjustment of the legs.

NHTSA agrees that the procedures should be changed to minimize the possibility of inadvertent leg movement during the settling procedure. The agency is therefore adopting Ford's suggestion that the test dummy's feet and legs should be repositioned, if necessary, after the test dummy has been settled and its hands and arms have been positioned.

Initial Knee Spacing for the Driver

Ford and Nissan Motor Company, Ltd. (Nissan) expressed concern that NHTSA

had misinterpreted comments made by General Motors Corporation (GM) and Honda Motor Company, Ltd. (Honda) concerning one of the proposed changes to the test dummy positioning procedures in the April 1985 NPRM. In that notice, NHTSA proposed a test dummy initial knee spacing of 14.5 inches for both the driver and passenger test dummies. In their comments on the April 1985 notice, GM and Honda requested that the proposed initial spacing of the passenger test dummy knees be changed from 14.5 inches to 11.75 inches, which would mean that the passenger test dummy legs would be parallel. In the March 1986 final rule, NHTSA adopted the 11.75 inch initial knee spacing change for both the driver and the passenger test dummy.

In their petitions for reconsideration, Ford and Nissan said that they support the change sought by GM and Honda for the initial placement of the passenger's knees. Thus, they requested the agency to apply the 11.75 inch requirement only to the spacing of the passenger's knees and retain the former 14.5 inch requirement for the driver's knees. Ford noted that an 11¾ initial knee spacing for the driver is not compatible with the requirement to position the driver's right foot on the accelerator pedal and keep the leg in a vertical plane.

NHTSA misinterpreted GM and Honda's suggested change and therefore believed that the commenters were seeking a change to the initial knee spacing requirement for both the driver and the passenger. NHTSA agrees that a change should not have been made to the initial knee spacing for the driver's knees, since the smaller initial knee spacing requirement is not compatible with the positioning requirement for the driver's right foot. The agency is therefore reinstating the 14.5 inch initial spacing requirement for the driver.

NHTSA emphasizes that, as it stated in the notice adopting the test dummy positioning procedures on July 5, 1977 (42 FR 34301), the knee spacing requirements apply only to the *initial* placement of the knees. The final spacing of the knees depends on the specific configuration of the vehicle's occupant compartment and may vary due to the positioning of the test dummy's feet to accommodate such differing design features as protruding wheelwells, foot rests, and ventilating system ducts. Thus, the agency recognizes that the initial spacing may have to be modified to ensure that the legs and feet are correctly positioned.

Driver Right Leg Positioning

Ford objected to the requirement in S10.1.1(b) that the driver's right leg be placed so that the upper and lower leg centerlines fall, as close as possible, in a vertical longitudinal plane. Ford said the requirement that the legs be in a vertical longitudinal plane is not compatible with the requirement that the driver's foot be placed on the accelerator pedal. Ford said that "in many passenger cars the accelerator pedal is further inboard than the pivot point of the driver's right femur and therefore not in the same longitudinal plane as the dummy's upper leg." Ford further said that requiring the leg to remain in a vertical plane is incompatible with the knee spacing requirement. Ford suggested that a leg position specification is unnecessary since specifying the positions of the foot and knee would adequately define the position of the right leg.

NHTSA recognizes that the initial knee spacing requirement and the requirements on foot placement help to maintain the right leg in a consistent position. However, because of the numerous variations in passenger car interior designs, it may not be possible to maintain the initial knee position and thus a further control is needed to maintain proper placement of the right leg. NHTSA recognizes it may be particularly difficult to place the right leg so that it is in a longitudinal plane, since as Ford pointed out, the right leg may have to be moved to place the foot on the accelerator. On reconsideration, the agency believes that simply requiring the leg to remain in a vertical plane after the right foot has been positioned (instead of a vertical longitudinal plane) should be sufficient to ensure consistent placement of the right leg.

Foot Placement on the Accelerator Pedal

Ford noted that S10.1.1(b) provides that if the driver's right foot can not be placed on the accelerator pedal, it is to be placed as far forward as possible in the direction of the "geometric center" of the pedal. Ford said that a formula is needed to guide technicians in determining the geometric center of an asymmetrically-shaped accelerator pedal.

The agency agrees with Ford's underlying point that it is unnecessary to place the foot in the "geometric center" of the accelerator pedal to ensure proper foot placement. The intent of the requirement, which is to provide for consistent placement by different testing organizations, can be achieved by simplifying the requirement by providing that the centerline of the foot is to be placed, as close as possible, in the same plane as the centerline of the pedal.

Driver Left Foot Placement

Ford said it was concerned about the requirements of S10.1.1 for the placement of the driver's left foot in vehicles which have wheelwells that project into the passenger compartment. Ford agreed that in the case of the passenger test dummy, it "may be desirable to avoid placing the passenger dummy's right foot on the wheelwell because such placement can result in head contact with the dummy's knee, but head-to-knee contact is virtually impossible on the driver's side of the vehicle because the steering wheel would block any potential contact. In addition, placement of the driver's left foot is complicated by the presence of brake and clutch pedals, and therefore placement of the driver's left leg to avoid the brake and clutch pedals may have to take precedence over avoiding the wheelhouse projections."

Ford also said that it is not clear from the text of the standard whether the driver's left foot is to be placed inboard of a wheelwell projection. In addition, Ford said that S10.1.1(c) does not clearly specify where the driver's left leg should be positioned in such cases. Ford said "it is unclear whether the foot should be placed perpendicular to the tibia with the heel resting on the floor pan and the sole resting on one end of the brake pedal, or whether the foot may be pivoted around the axis of the tibia to eliminate contact with a brake pedal. It is also unclear whether the entire foot (and leg) may be moved laterally to miss the brake and clutch pedals."

NHTSA agrees with Ford that avoiding the positioning of the passenger's right foot on the wheelwell is more of a concern, since if there is floor buckling, the passenger's right knee can be pushed upward and strike the head. Although the agency has not seen as much floor buckling on the driver's side of the car in its NCAP tests, such buckling can happen. Although the positioning procedures for the driver's left foot and leg and the passenger's right foot and leg are the same as far as the final positioning of those parts, Ford is correct that the standard does not specifically state that the driver's left foot should not be placed on the wheelwell. To correct this, the agency has amended the standard to specifically provide that the driver's left foot is not to be placed on the wheelwell.

NHTSA has not experienced in its NCAP testing the difficulty mentioned by Ford in placing the driver test dummy's left foot in the vicinity of the clutch or brake pedals. However, to

provide for a consistent positioning if there is pedal interference, the agency is making a minor amendment to the foot positioning procedure. The amendment provides that if there is pedal interference, the driver's left foot should be rotated about the tibia to avoid contact with the pedal. This simple action should avoid most problems. If that is not sufficient, the procedure provides that the left leg should be rotated about the hip in the outboard direction.

Driver Left Leg Placement

Ford noted that the agency did not adopt the requirement proposed in the April 1985 notice that the driver test dummy's left leg be placed in a vertical and longitudinal plane. Instead, in the March 1986 final rule, the agency provided that the driver's left leg need only be placed in a vertical plane. Ford said that if the leg is placed in a vertical plane with the knee 5.9 inches from the midsagittal plane, as called for in the initial knee spacing requirement for the driver, the leg will still be in a vertical longitudinal plane. Ford said it was unclear whether the agency intended the leg to remain in a vertical longitudinal plane or whether the 5.9 inch dimension is no longer appropriate.

The requirements are not inconsistent. As emphasized earlier in this notice, the requirement for the knee spacing is an *initial* setting. The agency recognizes that this initial placement will result in the driver's left leg being in a vertical longitudinal plane. However, to accommodate differences in vehicle designs, that spacing can be modified to achieve the other leg and foot placement requirements. The agency is retaining the requirement adopted in the March 1986 final rule that when the driver's left leg is in its final position it must be in a vertical plane.

Foot Rests

Ford said that its new Taurus/Sable models have a driver's foot rest, which is a flat area located low on the wheelwell projection. Ford said that placing the driver test dummy's left foot on the foot rest would mean that the dummy's left heel would be no higher than its right heel. Thus, Ford said that its foot rest is apparently different from the Honda foot rest discussed by NHTSA in the March 1986 notice. Ford asked the agency to clarify whether S10.1.1 of the standard would result in the driver test dummy's foot being placed on the Ford-type foot rest or whether the knee spacing and leg positioning requirements specified elsewhere in S10.1.1 would be controlling.

The foot rest positioning requirement adopted in the March 1986 final rule states that if the foot rest "does not elevate the left foot above the level of the right foot," then the left foot should be placed on the foot rest. If as it appears, the Ford foot rest does not elevate the left foot above the right foot, then the left foot should be placed on the foot rest.

Restraint Use During Testing

Ford said that the provisions of S10 regarding the restraint of the test dummy are inconsistent with the provisions of S4.1.2.1 for the testing of vehicles equipped both with automatic restraints and with manual Type 2 safety belts. The agency has modified S10 to make it consistent with S4.1.2.1. In brief, the new language provides that if a seating position in a vehicle is equipped with an automatic restraint to meet the frontal crash requirement and a manual safety belt to meet the lateral and rollover protection requirements, then the vehicle is subjected to two tests. First, the vehicle must pass a test in which the test dummy is restrained solely by the automatic restraint. In addition, the vehicle must pass a second test in which the test dummy is restrained by the automated restraint and the manual safety belt as well. To reduce unnecessary testing costs for vehicles equipped with driver-only, non-belt automatic restraint systems, the agency is providing manufacturers with the option of using a passenger test dummy during the Standard No. 208 compliance test.

Placement of the Test Dummy on the Seat

Ford said that the wording of S10.1 is unclear regarding the placement of a test dummy in a seat whose centerline is not positioned in the vertical longitudinal plane of the vehicle. Ford said that in its Econoline van-type vehicles, the centerline of the front passenger's seat is "oriented a few degrees outboard to comfortably accommodate occupants by avoiding the intrusion of the engine cover on foot placement space. It is unclear whether, in compliance testing, the dummy would be placed in the vertical longitudinal plane passing through the center of the seat cushion, as implied by the wording of S10.1. This would place the dummy's torso out of alignment with the seat back, and such a position may be unstable. Alternatively, it is unclear whether the dummy would be placed in the vertical longitudinal plane passing through the seating reference point. Or would the dummy's torso be centered in the seat and only the legs placed in vertical longitudinal planes."

The positioning procedures have two purposes; to ensure consistency in dummy placement and to have the test dummy reasonably simulate the posture of a human in the seat. As Ford noted, the seats in its Econoline vehicles are oriented only a few degrees outboard of the vehicle's centerline. Thus, regardless of how the test dummy is positioned, the few degrees difference in orientation should not make a significant difference. It appears unlikely that many persons would even notice a few degrees difference in the seat orientation and it thus would be natural for a person to sit so they are centered in the seat. The agency is modifying the positioning requirements to provide that the test dummy is centered with the centerline of the seat cushion.

Subjective Phrases

Ford said that many of the test dummy positioning requirements contained subjective phrases, such as "to the extent permitted," and "except as prevented." Ford said that these phrases make the procedures ambiguous and can lead to varying interpretations by different testers.

As discussed previously, manufacturers use a wide variety of interior design configurations and the agency has established a positioning procedure that attempts to accommodate those differing configurations. The purpose of such phrases as "to the extent permitted" is to permit reasonable, minor adjustments in the positioning requirements so that a test dummy can be positioned in a vehicle with design features which may make it impossible to position the test dummy in absolute conformance to the test procedure. By allowing for minor, necessary adjustments, the test procedure can be used in all vehicles, regardless of their differing design features.

Test Dummy Upper Torso Rocking

Ford said that the provisions of S10.4.4 are unclear as to how much force is to be applied to the test dummy's lower torso while the test dummy is being positioned in a seat. Ford asked whether the initial force application of 50 pounds is to be reduced only long enough to allow the test dummy to slide down the seat back into contact with the seat cushion and whether that force is to be maintained until the test dummy's arms and hands are positioned. Ford recommended that the agency specify one specific force and provide that this

VOL 51 ISS 172 SE 5 1986 UMI

force should be maintained during the upper torso force application.

The purpose of permitting testers to reduce the horizontal force on the test dummy during the settling procedure is to accommodate seats with differing frictional properties. In a vehicle with "slick" material, the test dummy may easily slide down the seat back without reducing the horizontal force much, if at all. If the seat has high friction material, the horizontal force must be reduced considerably to allow the test dummy to slide down the seat back. NHTSA, however, agrees with Ford that providing for use of a specific force should eliminate another possible source of test variability. NHTSA is thus modifying the settling procedure to provide that a force of 10 to 15 pounds of horizontal rearward force will be applied to the test dummy during the final upper torso positioning procedures (S10.4.4 and S10.4.5).

Test Dummy Position Fixture

Ford also asked the agency to specify the test dummy positioning fixture that will be used in accordance with the requirements of S10.4.2 to position the test dummy. Although the NCAP test procedures specify the use of a specific test positioning fixture, the agency does not believe it is necessary to specify such a device here. NHTSA believes that manufacturers should be permitted the option of devising their own positioning fixtures. This results in a more performance-oriented standard. Thus, the agency is not adopting Ford's recommendation for a specific test procedure but is making a minor change to S10.4.2 to delete any reference to a "dummy positioning fixture."

Arm and Hand Placement

Ford noted that S10.5 calls for placement of the test dummy's arms and hands prior to settling and asked that the requirements be changed to provide for arm and hand placement after settling. Ford also noted that the reference in S10.5 to the arm and hand placement requirements are incorrect.

NHTSA agrees with Ford that the procedure should be changed to provide for arm and hand placement after the test dummy has been settled. The agency has made the necessary change and has also corrected the references in the positioning procedure.

Vehicle Test Attitude

Ford said that the requirements of S8.1.1(d) require the cargo load to be centered over the longitudinal centerline of the vehicle. Ford said that the "longitudinal centerline of the vehicle marks the lateral center of the vehicle, and centering of the cargo on the longitudinal centerline of the vehicle only determines its lateral (side-to-side) position, but not its fore-and-aft position." Ford asked the agency to specify that the cargo be centered over the longitudinal centerline of the vehicle and at the longitudinal center of the cargo area.

Ford also asked the agency to clarify how to determine the longitudinal center of the cargo area in a station wagon or hatchback with a second seat that can be folded down to form a cargo area or in a multipurpose passenger vehicle with readily-removable rear seats.

NHTSA agrees with Ford that cargo should be centered on the vertical longitudinal centerline of the vehicle and in the center of the cargo area. In the case of vehicles with a folddown seat or with a readily-removable seat, the agency will consider the cargo area as the area that is available with a folddown seat in its upright position and a readily-removal seat anchored at its position. The agency will then determine the center of that position and place the cargo there.

Effective Date for New Test Procedures

Ford and the Automobile Importers of American (AIA), asked the agency to reconsider its decision to implement the test dummy positioning procedure changes prior to September 1, 1986. AIA said that while some manufacturers wanted the new procedures to go into effect as soon as possible, the 45 day effective date placed an unreasonable burden on other manufacturers that are currently producing automatic restraints. AIA said that the short effective date did not provide enough time for a manufacturer to determine whether the test procedure changes affect the compliance of its current vehicles. AIA asked the agency to allow the optional use of the test procedures now and set a later mandatory effective date.

By adoption a 45 day effective date, the agency did not intend to jeopardize the compliance testing that has already been done by manufacturers. NHTSA is adopting AIA's suggestion to allow the use, at the manufacturer's option, of either the old or new test procedure during the first year of the phase-in. Beginning September 1, 1987, the use of the new test procedure will become mandatory.

Revisions to Standard No. 210

Ford asked the agency to clarify the revision made to the safety belt anchorage location requirements of S4.3 of Standard No. 210, *Seat Belt Assembly Anchorages*. The March 1986 notice exempted anchorages for automatic belts and dynamically-tested manual belts from the anchorage location requirements of Standard No. 210. Ford asked whether a manufacturer must provide two sets of anchorages in vehicles with dynamically-tested manual lap/shoulder belts that have the anchorages located outside the zone specified in S4.3—one set of anchorages for Type 2 manual belt systems located within the anchorage zone set out in S4.3 of the standard, and the other set of anchorages for the dynamically-tested Type 2 manual belt systems.

NHTSA has recently responded to a petition from GM raising the same issue. In a letter of April 14, 1986, the agency explained that anchorages for Type 2 manual belt systems must be included for vehicles that have automatic or dynamically-tested manual belts located outside of the zone. (The agency's letter is available in the Standard No. 210 interpretation file in the NHTSA docket section). The agency did, however, grant GM's petition to amend the requirement, saying that GM had raised a number of reasons why the requirements of Standard No. 210 should be changed. NHTSA will shortly issue a notice of proposed rulemaking on this subject.

Labeling of Dynamically-Tested Safety Belts

Ford objected to the adoption, in Standard No. 209, *Seat Belt Assemblies*, of a requirement that dynamically-tested belts have a label identifying the vehicles in which it can be used. Ford said that the required label does not specifically identify the safety belt as a dynamically-tested belt and the label does not suggest that the belt may be safely used only in specific vehicles at specific seats. Ford asked the agency to rescind the labeling requirement.

Ford suggested that the intent of S4.6(b) could be accomplished by requiring the safety belt installation instruction required by S4.1(k) of the standard to specify both the vehicles for which the belt system is to be used and the specific type of seating position for which it is intended.

NHTSA still believes that it is important that a dynamically-tested safety belt be labeled to ensure that it is installed only in the type of vehicle for which it is intended. NHTSA agrees with Ford that providing the information in the installation instructions would address most of the problem of possible misuse. However, there still may be instances where the instruction would be lost. In addition, the installation instruction requirements apply only to aftermarket belts. There can be

VOL 51 ISS 172 SE 5 1986 UMI

situations where a safety belt may be taken from one vehicle and transferred to another. Given these considerations and the importance of alerting motorists that a safety belt may have been designed for use in one particular make and model vehicle, the agency has decided to retain the labeling requirement.

In response to Ford's comment, NHTSA believes that the statement appearing on the label should be changed to require a manufacturer to specify the specific vehicles for which the safety belt is intended and the specific seating position (e.g., "right front") in which it can be used.

Exemption of Dynamically-Tested Safety Belts

The March 1986 rule adopted a requirement that the manual lap/shoulder belts in the front seats of passenger cars must meet a dynamic crash test. The requirement would go into effect for those manual belts on September 1, 1989, if the automatic restraint requirements of the standard are rescinded. Three petitioners, the American Seat Belt Council (ASBC), the Narrow Fabrics Institute (NFI), and Phoenix Trimming Company, asked the agency to reconsider its decision to exempt dynamically-tested manual safety belts from the webbing width and breaking strength requirements of Standard No. 209, *Seat Belt Assemblies*. On August 4, 1986, ASBC petitioned the agency to rescind the current Standard No. 209 exemption for automatic safety belts. The three petitions for reconsideration on dynamically-tested manual safety belts and the new petition for rulemaking on automatic safety belts raise similar issues, which the agency is currently reviewing. The agency will respond to those petitions at a later date.

Effective Date for Dynamic Testing of Manual Lap/Shoulder Belts

Nissan asked the agency for a two year postponement, from September 1, 1989, to September 1, 1991, of the effective date of the dynamic test requirement for front seat manual lap/shoulder belts in passenger cars. The dynamic test requirement for passenger car manual belts will go into effect only if the automatic restraint requirement for passenger cars is rescinded. Nissan said that if a decision to rescind the automatic restraint requirements is not made until the end of March 1989, it will have only six months in which to develop a manual belt which can meet the dynamic test requirement. Nissan also said that having to develop a dynamically-tested manual safety belt prior to March 1989, places an unreasonable burden on manufacturers since they would have to be simultaneously developing both automatic restraints and dynamically-tested manual belts.

The agency has previously denied, in the March 21, 1986, final rule, a similar request from American Motors Corporation (AMC) for such an extension. In denying AMC's request, the agency noted that most of the vehicle components in passenger cars necessary for injury reduction are the same for automatic restraint vehicles and dynamically-tested manual belt vehicles. In addition, the agency noted that the New Car Assessment Program results show that approximately 40% of current model passenger cars can meet the injury criteria of Standard No. 208 in 35 mph crash tests, which involve 36 percent more crash energy than the 30 mph crash test used in Standard No. 208. Nissan has not provided any new data that would justify changing the agency's prior decision and therefore, Nissan's request for an extension of the effective date is denied.

Due Care Defense

The Center for Auto Safety (CFAS) and Ford petitioned the agency to reconsider its decision to adopt a due care defense in Standard No. 208. CFAS said that adoption of the defense contravenes the noncompliance notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act. In additon, CFAS said that the due care defense is not a standard for motor vehicle performance as required by the Vehicle Safety Act and is too broad to accomplish its intended purpose. Ford said that adoption of the due care defense does not sufficiently address its concerns about the objectivity and practicability of the standard's requirements. It urged the agency to adopt a design to conform requirement in the standard.

The agency is still reviewing the issues raised by CFAS and Ford about the due care defense. Because the automatic restraint phase-in requirement is imminent, NHTSA has decided to retain the due care provision for the first year of the phase-in, pending the agency's final decision on this issue. The agency will expedite its review of these issues.

To clarify its interpretation of the due care defense, the agency does want to address one issue raised by the CFAS. In its comments, CFAS offered an example of what it believed was a problem with the due care defense. The CFAS said:

> Consider, for example a scenario in which the agency's compliance test reveals a very high HIC score. The manufacturer's tests show complying results. It turns out that the manufacturer received from a supplier a shipment of poor quality restraint system components that resulted in the poor figure in the agency's test and would cause similarly poor results for most vehicles containing the components from that shipment. The poor quality components were not caught in the manufacturer's quality control program. Perhaps this failure to catch the poor quality component is because their problems only show up in dynamic crash testing. (The due care defense surely will not require manufacturers to crash test a vehicle containing components from each shipment.) Or perhaps the manufacturer's quality control by chance checked only some of the few units in the shipment that were of good quality. Under the due care exemption these vehicles could not be recalled for noncompliance despite clear evidence of a specific problem that will cause high HIC levels.

As stated in the preamble to the March 21, 1986 final rule, the due care defense is meant to address an instance where there is an isolated apparent failure and the manufacturer can demonstrate that it made a good faith effort in designing its vehicles and instituted adequate quality control measures. NHTSA considers the example used by CFAS as an instance in which the agency would *not* accept a due care defense and the vehicles would be subject to the noncompliance notification and remedy provisions of the Vehicle Safety Act. Clearly, the CFAS's shows there is a significant flaw in the manufacturer's quality control process which affects a widespread number of vehicles. Manufacturer's are capable of instituting quality control measures that will adequately test the performance of individual components without having to subject a vehicle containing that component to a crash test. Likewise, quality control measures are available so that manufacturers can statistically check a sufficient number of components to ensure that nearly all of the components of a particular shipment are of the required quality. For these reasons, the agency would *not* accept a due care defense in the example posed by CFAS.

Belt Contact Force Test Procedure

The March 21, 1986 notice renumbered the test dummy positioning procedure for the belt contact force test of the safety belt comfort and convenience requirements. In making that amendment, the following sentence was inadvertently left out, "Close the vehicle's adjacent door, pull 12 inches of belt webbing from the retractor and then

release it, allowing the belt webbing to return to the dummy's chest."

Nissan has recently wrtten the agency containing the deletion of the sentence. Nissan said that if the deletion was inadvertent and the requirement was reinstated, then the Agency should slightly modify the requirement. Nissan said that in systems where it is not possible to pull out 12 inches of belt webbing, the requirement should provide for pulling out the maximum available length of the belt webbing.

Nissan pointed out that, as stated by the agency in the April 12, 1985 notice proposing amendments to the comfort and convenience requirement, one purpose of pulling out the webbing is to reduce belt drag in the belt guide components prior to measuring the belt contact force. It further said that maintaining the 12 inch requirement would necessitate a complete redesign of some of the belt systems for its vehicles.

NHTSA agrees that the purpose of the belt webbing pull requirement can be adequately met by pulling out the maximum allowable amount of the belt, when the belt has less than 12 inches of available additional webbing. Pulling the belt in this way will ensure that the belt retractor is working and webbing drag is reduced. Thus, the agency is changing the requirement to provide that prior to measuring the belt contact force the agency will pull out 12 inches of webbing or the maximum amount of webbing available when the maximum amount is less than 12 inches.

The agency recognizes that manufacturers may have relied, in good faith, on the version of the belt contact force test procedure and based their certification of compliance on tests conducted according to that procedure. So as not to invalidate those compliance tests, the agency is amending the standard to allow the manufacturers to conduct the belt contact force test either with or without first pulling the webbing. Beginning September 1, 1987, the old test procedure will become mandatory.

Typographical Errors

The amendments made on March 21, 1986, contained a typographical error which is being corrected in this notice. In S4.1.3.2.2(b), the word "car" is corrected to read "cars."

Costs and Benefits

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a full regulatory evaluation is not required.

The amendments adopted by this notice made some minor clarifying changes to the test dummy positioning procedures. In addition, the agency is providing increased flexibility to manufacturers by allowing them to use one of two sets of test procedures for a one year period. Use of either set of test procedures should have only minimal impact on a manufacturer's testing costs.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a full regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities and the test procedure changes made by this notice are minimal. Small organizations and governmental units should not be significantly affected since the costs, if any, associated with the test procedure changes should be minimal.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Paperwork Reduction

The information collection requirements of this notice are being submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Effective Date

NHTSA has determined that it is in the public interest to amend, upon publication of this final rule, the requirement of Standard No. 208 since the test dummy positioning options adopted by this notice affect manufacturer's plans for the 1987 model year.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, Part 571.208 of Title 49 of the Code of Federal Regulations is amended as follows:

The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 Standard No. 208, Occupant crash protection. [Amended]

1. In S4.1.3.2.2(b), the word "car" is amended to read "cars."

2. S10 through S10.9 is revised to read as follows:

S10 *Test dummy positioning procedures.* For vehicles manufactured before September 1, 1987, position a test dummy, conforming to Subpart B of Part 572 (49 CFR Part 572), in each front outboard seating position of a vehicle as specified in S10 through S10.9 or, at the manufacturer's option, as specified in S12 through S12.2.3.2. For vehicles manufactured on or after September 1, 1987, position a test dummy, conforming to Subpart B of Part 572 (49 CFR Part 572), in each front outboard seating position of a vehicle as set forth below in S10 through S10.9. Regardless of which positioning procedure is used, each test dummy is restrained during the crash tests of S5 as follows:

(a) In a vehicle equipped with automatic restraints at each front outboard designated seating position that is certified by its manufacturer as meeting the requirements of S4.1.2.1 (a) and (c)(1), each test dummy is not restrained during the frontal test of S5.1, the lateral test of S5.2 and the rollover test of S5.3 by any means that requires occupant action.

(b)(1) In a vehicle equipped with an automatic restraint at each front outbound seating position that is certified by its manufacturer as meeting the requirements of S4.1.2.1 (a) and (c)(2), each test dummy is not restrained during one frontal test of S5.1 by any means that require occupant action. If the vehicle has a manual seat belt provided by the manufacturer to comply with the requirements of S4.1.2.1(c), then a second frontal test is conducted in accordance with S5.1 and each test dummy is restrained both by the automatic restraint system and the manual seat belt, adjusted in accordance with S10.9.

(2) In a vehicle equipped with an automatic restraint only at the driver's designated seating position, pursuant to S4.1.3.4(a)(2), that is certified by its manufacturer as meeting the requirements of S4.1.2.1(a) and (c)(2), the driver test dummy is not restrained

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during one frontal test of S5.1 by any means that require occupant action. If the vehicle also has a manual seat belt provided by the manufacturer to comply with the requirements of S4.1.2.1(c), then a second frontal test is conducted in accordance with S5.1 and the driver test dummy is restrained both by the automatic restraint system and the manual seat belt, adjusted in accordance with S10.9. At the option of the manufacturer, a passenger test dummy can be placed in the right front outboard designated seating position during the testing required by this section. If a passenger test dummy is present, it shall be restrained by a manual seat belt, adjusted in accordance with S10.9.

(c) In a vehicle equipped with a manual belt at the front outboard designated seating positions that is certified by its manufacturer to meet the requirements of S4.6, each test dummy is restrained by the manual safety belts, adjusted in accordance with S10.9, installed at each front outboard seating positions.

S10.1 *Vehicle equipped with front bucket seats.* Place the test dummy's torso against the seat back and its upper legs against the seat cushion to the extent permitted by placement of the test dummy's feet in accordance with the appropriate paragraph of S10. Center the test dummy on the seat cushion of the bucket seat and set its midsagittal plane so that it is vertical and parallel to the centerline of the seat cushion.

S10.1.1 *Driver position placement.* (a) Initially set the knees of the test dummy 14½ inches apart, measured between the outer surfaces of the knee pivot bolt heads, with the left outer surface 5.9 inches from the midsagittal plane of the test dummy.

(b) Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the lower leg and place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan. Except as prevented by contact with a vehicle surface, place the right leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical plane without inducing torso movement.

(c) Place the left foot on the toeboard with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toeboard and the floor pan and not on the wheelwell projection. If the foot cannot be positioned on the toeboard, set it initially perpendicular to the lower leg and place it as far forward as possible with the heel resting on the floor pan. If necessary to avoid contact with the vehicle's brake or clutch pedal, rotate the test dummy's left foot about the lower leg. If there is still pedal interference, rotate the left leg outboard about the hip the minimum distance necessary to avoid the pedal interference. Except as prevented by contact with a vehicle surface, place the left leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical plane. For vehicles with a foot rest that does not elevate the left foot above the level of the right foot, place the left foot on the foot rest so that the upper and lower leg centerlines fall in a vertical plane.

S10.1.2 *Passenger position placement.*

S10.1.2.1 *Vehicles with a flat floor pan/toeboard.* (a) Initially set the knees 11¾ inches apart, measured between the outer surfaces of the knee pivot bolt heads.

(b) Place the right and left feet on the vehicle's toeboard with the heels resting on the floor pan as close as possible to the intersection point with the toeboard. If the feet cannot be placed flat on the toeboard, set them perpendicular to the lower leg centerlines and place them as far forward as possible with the heels resting on the floor pan.

(c) Place the right and left legs so that the upper and lower leg centerlines fall in vertical longitudinal planes.

S10.1.2.2 *Vehicles with wheelhouse projections in passenger compartment.* (a) Initially set the knees 11¾ inches apart, measured between the outer surfaces of the knee pivot bolt heads.

(b) Place the right and left feet in the well of the floor pan/toeboard and not on the wheelhouse projection. If the feet cannot be placed flat on the toeboard, initially set them perpendicular to the lower leg centerlines and then place them as far forward as possible with the heels resting on the floor pan.

(c) If it is not possible to maintain vertical and longitudinal planes through the upper and lower leg centerlines for each leg, then place the left leg so that its upper and lower centerlines fall, as closely as possible, in a vertical longitudinal plane and place the right leg so that its upper and lower leg centerlines fall, as closely as possible, in a vertical plane.

S10.2 *Vehicle equipped with bench seating.* Place the test dummy's torso against the seat back and its upper legs against the seat cushion, to the extent permitted by placement of the test dummy's feet in accordance with the appropriate paragraph of S10.1.

S10.2.1 *Driver position placement.* Place the test dummy at the left front outboard designated seating position so that its midsagittal plane is vertical and parallel to the centerline of the vehicle and so that the midsagittal plane of the test dummy passes through the center of the steering wheel rim. Place the legs, knees, and feet of the test dummy as specified in S10.1.1.

S10.2.2 *Passenger position placement.* Place the test dummy at the right front outboard designated seating position so that the midsagittal plane of the test dummy is vertical and longitudinal, and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the test dummy at the driver's position. Place the legs, knees, and feet of the test dummy as specified in S10.1.2.

S10.3 *Initial test dummy hand and arm placement.* With the test dummy at its designated seating position as specified by the appropriate requirements of S10.1 or S10.2, place the upper arms against the seat back and tangent to the side of the upper torso. Place the lower arms and palms against the outside of the upper legs.

S10.4 *Test dummy settling.*

S10.4.1 *Test dummy vertical upward displacement.* Slowly lift the test dummy parallel to the seat back plane until the test dummy's buttocks no longer contact the seat cushion or until there is test dummy head contact with the vehicle's headlining.

S10.4.2 *Lower torso force application.* Apply a rearward force of 50 pounds against the center of the test dummy's lower torso in a horizontal direction. The line of force application shall be 6½ inches above the bottom surface of the test dummy's buttocks.

S10.4.3 *Test dummy vertical downward displacement.* Remove as much of the 50 pound force as necessary to allow the test dummy to return downward to the seat cushion by its own weight.

S10.4.4 *Test dummy upper torso rocking.* Apply a 10 to 15 pound horizontal rearward force to the test dummy's lower torso. Then apply a horizontal forward force to the test dummy's shoulders sufficient to flex the upper torso forward until its back no longer contacts the seat back. Rock the test dummy from side to side 3 or 4 times so that the test dummy's spine is at any angle from the vertical in the 14 to 16 degree range at the extremes of each rocking movement.

S10.4.5 *Test dummy upper torso force application.* While maintaining the

VOL 51 ISS 172 SE 5 1986 UMI

10 to 15 pound horizontal rearward force applied in S10.4.4 and with the test dummy's midsagittal plane vertical, push the upper torso back against the seat back with a force of 50 pounds applied in a horizontal rearward direction along a line that is coincident with the test dummy's midsagittal plane and 18 inches above the bottom surface of the test dummy's buttocks.

S10.5 *Belt adjustment for dynamic testing.* With the test dummy at its designated seating position as specified by the appropriate requirements of S8.1.2, S8.1.3 and S10.1 through S10.4, place and adjust the safety belt as specified below.

S10.5.1 *Manual safety belts.* Place the Type 1 or Type 2 manual belt around the test dummy and fasten the latch. Pull the Type 1 belt webbing out of the retractor and allow it to retract; repeat this operation four times. Remove all slack from the lap belt portion of a Type 2 belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times so that the excess webbing in the shoulder belt is removed by the retractive force of the retractor. Apply a 2 to 4 pound tension load to the lap belt of a single retractor system by pulling the upper torso belt adjacent to the latchplate. In the case of a dual retractor system, apply a 2 to 4 pound tension load by pulling the lap belt adjacent to its retractor. Measure the tension load as close as possible to the same location where the force was applied. After the tension load has been applied, ensure that the upper torso belt lies flat on the test dummy's shoulder.

S10.5.2 *Automatic safety belts.* Ensure that the upper torso belt lies flat on the test dummy's shoulder after the automatic belt has been placed on the test dummy.

S10.5.3 *Belts with tension-relieving devices.* If the automatic or dynamically-tested manual safety belt system is equipped with a tension-relieving device, introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer for normal use in the owner's manual for the vehicle.

S10.6 *Placement of test dummy arms and hands.* With the test dummy positioned as specified by S10.4 and without inducing torso movement, place the arms, elbows, and hands of the test dummy, as appropriate for each designated seating position in accordance with S10.6.1 or S10.6.2. Following placement of the arms, elbows and hands, remove the force applied against the lower half of the torso.

S10.6.1 *Driver's position.* Move the upper and the lower arms of the test dummy at the driver's position to their fully outstretched position in the lowest possible orientation. Push each arm rearward permitting bending at the elbow, until the palm of each hand contacts the outer part of the rim of the steering wheel at its horizontal centerline. Place the test dummy's thumbs over the steering wheel rim and position the upper and lower arm centerlines as close as possible in a vertical plane without inducing torso movement.

S10.6.2 *Passenger position.* Move the upper and the lower arms of the test dummy at the passenger position to the fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the upper arm contracts the seat back and is tangent to the upper part of the side of the torso, the palm contacts the outside of the thigh, and the little finger is barely in contact with the seat cushion.

S10.7 *Repositioning of feet and legs.* After the test dummy has been settled in accordance with S10.4, the safety belt system has been positioned, if necessary, in accordance with S10.5, and the arms and hands of the test dummy have been positioned in accordance with S10.6, reposition the feet and legs of the test dummy, if necessary, so that the feet and legs meet the applicable requirements of S10.1 or S10.2.

S10.8 *Test dummy positioning for latchplate access.* The reach envelopes specified in S7.4.4 are obtained by positioning a test dummy in the driver's seat or passenger's seat in its forwardmost adjustment position. Attach the lines for the inboard and outboard arms to the test dummy as described in Figure 3 of this standard. Extend each line backward and outboard to generate the compliance arcs of the outboard reach envelope of the test dummy's arms.

S10.9 *Test dummy positioning for belt contact force.*

S10.9.1 *Vehicles manufactured before September 1, 1987.* To determine compliance with S7.4.3 of this standard, a manufacturer may use, at its option, either the test procedure of S10.9.1 or the test procedure of S10.9.2. Position the test dummy in the vehicle in accordance with the appropriate requirements specified in S10.1 or S10.2 and under the conditions of S8.1.2 and S8.1.3. Fasten the latch and pull the belt webbing three inches from the dummy's chest and release until the webbing is within one inch of the test dummy's chest and measure the belt contact force.

S10.9.2 *Vehicles manufactured on or after September 1, 1987.* To determine compliance with S7.4.3 of this standard, position the test dummy in the vehicle in accordance with the appropriate requirements specified in S10.1 or S10.2 and under the conditions of S8.1.2 and S8.1.3. Close the vehicle's adjacent door, pull either 12 inches of belt webbing or the maximum available amount of belt webbing, whichever is less, from the retractor and then release it, allowing the belt webbing to return to the dummy's chest. Fasten the latch and pull the belt webbing three inches from the test dummy's chest and release until the webbing is within one inch of the test dummys chest and measure the belt contact force.

3. A new section S12 is added to read as follows:

S12 *Optional position procedures for the Part 572, Subpart B test dummy.* The following test dummy positioning procedures for the Part 572, Subpart B test dummy may be used, at the option of a manufacturer, until September 1, 1987.

S12.1 *Dummy placement in vehicle.* Anthropomorphic test dummies are placed in the vehicle in accordance with S12.1.1 and S12.1.2.

S12.1.1 *Vehicle equipped with front bucket seats.* In the case of a vehicle equipped with front bucket seats, dummies are placed at the front outboard designated seating positions with the test device torso against the seat back, and the thighs against the seat cushion to the extent permitted by placement of the dummy's feet in accordance with the appropriate paragraph of S12.1. The dummy is centered on the seat cushion of the bucket seat and its midsagittal plane is vertical and longitudinal.

S.12.1.1.1 *Driver position placement.* At the driver's position, the knees of the dummy are initially set 14.5 inches apart, measured between the outer surfaces of the knee pivot bolt heads, with the left outer surface 5.9 inches from the midsagittal plane of the dummy. The right foot of the dummy rests on the undepressed accelerator pedal with the rearmost point of the heel on the floorpan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, it is set perpendicular to the tibia and placed as far forward as possible in the direction of the geometric center of the pedal with the rearmost point of the heel resting on the floorpan. The plane defined by the femur and tibia centerlines of the right leg is as close as possible to vertical without inducing torso movement and except as prevented by contact with a vehicle surface. The left foot is placed on the toeboard with the rearmost point of the

heel resting on the floorpan as close as possible to the point of intersection of the planes described by the toeboard and the floorpan. If the foot cannot be positioned on the toeboard, it is set perpendicular to the tibia and placed as far foward as possible with the heel resting on the floorpan. The femur and tibia centerlines of the left leg are positioned in a vertical plane except as prevented by contact with a vehicle surface.

S12.1.1.2 *Passenger position placement.* At the right front designated seating position, the femur, tibia, and foot centerlines of each of the dummy's legs are positioned in a vertical longitudinal plane. The feet of the dummy are placed on the toeboard with the rearmost point of the heel resting on the floorpan as close as possible to the point of intersection of the planes described by the toeboard and the floorpan. If the feet cannot be positioned flat on the toeboard they are set perpendicular to the tibia and are placed as far forward as possible with the heels resting on the floorpan.

S12.1.2 *Vehicle equipped with bench seating.* In the case of a vehicle which is equipped with a front bench seat, a dummy is placed at each of the front outboard designated seating positions with the dummy torso against the seat back and the thighs against the seat cushion to the extent permitted by placement of the dummy's feet in accordance with the appropriate paragraph of S12.1.1.

S12.1.2.1 *Driver position placement.* The dummy is placed at the left front outboard designated seating position so that its midsagittal plane is vertical and longitudinal, and passes through the center point of the plane described by the steering wheel rim. The legs, knees, and feet of the dummy are placed as specified in S12.1.1.1.

S12.1.2.2 *Passenger position placement.* The dummy is placed at the right front outboard designated seating position as specified in S8.12.1.1.2, except that the midsagittal plane of the dummy is vertical, longitudinal, and the same distance from the longitudinal centerline as the midsagittal plane of the dummy at the driver's position.

S12.2 *Dummy positioning procedures.* The dummy is positioned on a seat as specified in S12.2.1 through S12.2.3.2 to achieve the conditions of S12.1.

S12.2.1 *Initial dummy placement.* With the dummy at its designated seating position as described in S12.1 place the upper arms and palms against the outside of the thighs.

S12.2.2 *Dummy settling.* With the dummy positioned as specified in S10.1, slowly lift the dummy in the direction parallel to the plane of the seat back until its buttocks no longer contact the seat cushion or until its head contacts the vehicle roof. Using a flat, square, rigid surface with an area of 9 square inches and oriented so that its edges fall in longitudinal or horizontal planes, apply a force of 50 pounds through the center of the rigid surface against the dummy's torso in the horizontal rearward direction along a line that is coincident with the midsagittal plane of the dummy and 5.5 inches above the bottom surface of its buttocks. Slowly remove the lifting force.

S12.2.2.1 While maintaining the contact of the force application plate with the torso, remove as much force as is necessary from the dummy's torso to allow the dummy to return to the seat cushion by its own weight.

S12.2.2.2 Without removing the force applied to the lower torso, apply additional force in the horizontal, forward direction, longitudinally against the upper shoulders of the dummy sufficient to flex the torso forward until the dummy's back above the lumbar spine no longer contacts the seatback. Rock the dummy from side to side three or four times, so that the dummy's spine is at an angle from the vertical of not less than 14 degrees and not more than 16 degrees at the extreme of each movement. With the midsagittal plane vertical, push the upper half of the torso back against the seat back with a force a 50 pounds applied in the horizontal rearward direction along a line that is coincident with the midsagittal plane of the dummy and 18 inches above the bottom surface of its buttocks. Slowly remove the horizontal force.

S12.2.3 *Placement of dummy arms and hands.* With the dummy positioned as specified in S12.2.2 and without inducing torso movement, place the arms, elbows, and hands of the dummy, as appropriate for each designated seating position in accordance with S12.2.3.1 or S12.2.3.2. Following placement of the limbs, remove the force applied against the lower half of the torso.

S12.2.3.1 *Driver's position.* Move the upper and the lower arms of the dummy at the driver's position to the fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the palm of each hand contacts the outer part of the rim of the steering wheel at its horizontal centerline. Place the dummy's thumbs over the steering wheel rim, positioning the upper and lower arm centerlines as close as possible in a vertical plane without including torso movement.

S12.2.3.2 *Passenger position.* Move the upper and the lower arms of the dummy at the passenger position to the fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the upper arm contacts the seat back and is tangent to the upper part of the side of the torso, the palm contacts the outside of the thigh, and the little finger is barely in contact with the seat cushion.

§ 571.209 Standard No. 209, Seat belt assemblies.

1. S4.6(b) of § 571.209 is revised to read as follows:

(b) A seat belt assembly that meet the requirements of 4.6.1 of Standard No. 208 of this part (§ 571.208) shall be permanently and legibly marked or labeled with the following statement:

"This dynamically-tested seat belt assembly is for use only in (insert specific seating position(s), e.g., "front right") in (insert specific vehicle make(s), and model(s))."

Issued on August 29, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-20065 Filed 9-3-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 60107-6045]

Atlantic Mackerel, Squid, and Butterfish Fisheries Management

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of squid specification increase.

SUMMARY: NOAA issues this notice to increase the Initial Optimum Yield (IOY) specification for *Illex* squid, making 2,500 metric tons (mt) available for Joint Venture Processing (JVP) and 1,000 metric tons (mt) available for total allowable level of foreign fishing (TALFF). Regulations governing the squid fisheries require publication of any specification adjustments, with reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for the Atlantic mackerel, squid and butterfish fisheries (FMP) by creating benefits for the U.S. fishing industry.

DATES: This notice is effective September 2, 1986. Comments must be

received on or before September 17, 1986.

ADDRESSES: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, 2 State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments on *Illex* Specifications 1986."

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600 ext. 273.

SUPPLEMENTARY INFORMATION: Under § 655.22, final initial annual specifications for squid were published on May 9, 1986 (51 FR 17191) for the fishing year April 1, 1986 to March 31, 1987. Following the publication of these specifications, Amendment 2 to the FMP was implemented, changing the fishing year for squid to begin on January 1, 1986. On July 9, 1986, proposed adjustments to the final initial annual specifications were published (51 FR 24881) for the transitional squid fishing year ending December 31, 1986. The regulations at § 655.21(b)(1)(v) further provide that these final initial annual specifications may be adjusted by the Regional Director, NMFS, after consultation with the Mid-Atlantic Fishery Management Council.

Joint venture applications were reviewed by the Mid-Atlantic and New England Fishery Managment Councils (Councils) for foreign vessels to participate in the *Illex* fishery for fishing year 1986. Both Councils recommended that these applications be approved.

In accordance with § 655.22(f) notice is hereby given that the IOY for *Illex* squid of 14,340 mt is increased by 3,500 mt to total 17,840 mt. This allows the JVP to be increased from 2,500 mt to 5,000 mt and TALFF to be increased from 90 mt to 1,090 mt. The proposed specifications for the transitional fishing year mentioned above are likewise adjusted by 3,500 mt. Public comments are invited for 15 days after the effective date of this adjustment on whether this adjustment should be continued, modified, or rescinded. Timely and relevant comments on the adjustment will be considered and the results published in the **Federal Register** as soon as practicable.

Other Matters

This action is taken under 50 CFR Part 655 and is in compliance with Executive Order 12291.

In view of the need to avoid disruption of domestic and foreign fisheries, the Agency has determined that delaying the effective date of this notice is impractical, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–19968 Filed 9–2–86; 10:46 am]

BILLING CODE 3510–22–M

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50 CFR Part 655

[Docket No. 60107–6045]

Atlantic Mackerel, Squid, and Butterfish Fisheries; Management

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of squid specification increase.

SUMMARY: NOAA issues this notice to increase the Initial Optimum Yield (IOY) specification for *Loligo* squid by making 800 metric tons (mt) available for joint venture processing. Regulations governing the squid fisheries require publication of any specification adjustments, with reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) by creating benefits for the U.S. fishing industry.

DATES: This notice is effective September 2, 1986. Comments are invited until September 17, 1986.

ADDRESSES: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, 2 State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments on Squid Specifications 1986."

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600 ext. 273.

SUPPLEMENTARY INFORMATION: Under § 655.22, final initial annual specifications for squid were published on May 9, 1986 (51 FR 17189) for the fishing year April 1, 1986 to March 31, 1987. Following the publication of these specifications, Amendment 2 to the FMP was implemented, changing the fishing year for squid to begin on January 1, 1986. On July 9, 1986, proposed adjustments to the final initial annual specifications were published (51 FR 24880) for the transitional squid fishing year ending December 31, 1986. The regulations at § 655.21 (b)(1)(v) further provide that these final initial annual specifications may be adjusted by the Regional Director after consultation with the Mid-Atlantic Fishery Management Council.

Two joint venture proposals were received. One between Unionpesca, an Italian fishing industry group, and International Seafood and Trading Company, a U.S. company, and one between Anavar, a Spanish fishing group, and Stonovar Trading, Inc., a U.S. company. These were presented to the Mid-Atlantic and New England Fishery Management Councils (Councils) for their recommendation. The proposals requested authorization for joint venture purchase "over-the-side", of 1,500 mt of *Loligo* squid by Italian processing vessels and 300 mt by Spanish processing vessels. Both Councils recommended approval for the amount of *Loligo* squid requested. The permits were approved. However, the entire amount of *Loligo* squid was not released to the joint venture operations in order for the Regional Director to retain the maximum amount of flexibility in real-locating squid should the joint ventures fail for lack of squid abundance.

The joint venture operations have been monitored and amounts of squid have been released as both joint venture partners have continued to perform. To date, the joint venture processing has been allocated 1,825 mt.

The joint ventures continue to perform and are reasonably expected to continue to perform successfully for some time, given the relatively good abundance of *Loligo* squid. Consultations with the Councils confirm their intent to grant 800 mt over and above their original recommendations, in order to keep the joint venture operations active. Additional releases of *Loligo* squid require adjustments to the annual specifications. After a review of the squid abundance, prevailing market conditions, and the circumstances of the joint venture, the Regional Director has determined that an increase in the IOY for *Loligo* squid to allow additional amounts to be released to the joint ventures will produce maximum net benefits to the United States.

In accordance with § 655.22(f) notice is hereby given that the IOY for *Loligo* squid of 24,057 mt is increased by 800 mt to total 24,857 mt. This allows the DAH to be increased from 23,950 mt to 24,750 mt, which will provide for an increase in the JVP amount from 1,825 mt to 2,625. The proposed specifications for the transitional fishing year mentioned above are likewise adjusted by 800 mt.

A prior opportunity for public comment before making this adjustment is not possible without delaying the release of the additional 800 mt of *Loligo*

squid which would bring the joint venture operations to a halt and disadvantage some U.S. harvesters. However, prior to this adjustment this issue was broadly debated before the Mid Atlantic Council. Public comments are invited, however, for 15 days after the effective date of this adjustment as to whether this adjustment should be continued, modified, or rescinded. Responses to public comments will be published in the **Federal Register** as soon as practicable.

Other Matters

This action is taken under the authority of 50 CFR Part 655 and is in compliance with Executive Order 12291.

In view of the need to avoid disruption of domestic and foreign fisheries, the Agency has determined that delaying the effective date of this notice is impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 29, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-19967 Filed 9-2-86; 10:46 am]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 51192-5219]

Pacific Coast Groundfish Fishery Management

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restriction and request for comments; and technical corrections.

SUMMARY: NOAA issues this notice modifying restrictions on fishing for the *Sebastes* complex of rockfish caught north of Coos Bay, Oregon and seeks public comment on this action. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and supersedes those provisions published on December 31, 1985, for these species. The intended effect is to allow fishing at levels that will achieve the harvest goal for 1986 and extend the fishery as long as possible throughout the year.

DATES: Effective 0001 hours (Pacific Daylight Time) August 31, 1986, until modified, superseded, or rescinded. Comments will be accepted through September 22, 1986.

ADDRESSES: Submit comments on this action to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, E. Charles Fullerton at 213-514-6196, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: Implementing regulations at 50 CFR 663.22 and 663.23 for the Pacific Coast Groundfish Fishery Management Plan (FMP) provide for inseason adjustments of fishing levels by notice published in the **Federal Register**. The Pacific Fishery Management Council (Council) reviewed the progress of the groundfish fishery at its July 1986 meeting in Portland, Oregon, and recommended increasing the trip limit for the *Sebastes* complex of rockfish (all species of rockfish in the Scorpaenidae family except widow, Pacific ocean perch *(S. alutus)*, shortbelly *(S. jordani)*, and *Sebastolobus* species of rockfishes). This action supersedes those provisions in the **Federal Register** notice published December 31, 1985 (50 FR 53325), which limited landings of the *Sebastes* complex.

The Council's recommendations, actions taken by the Secretary on those recommendations, and technical revisions are presented below.

Council Recommendation: The Council recommended that the weekly trip limit for the *Sebastes* complex north of Coos Bay, Oregon, should be increased from 25,000 pounds, containing no more than 10,000 pounds of yellowtail rockfish, to 30,000 pounds, containing no more than 12,500 pounds of yellowtail rockfish. The biweekly and twice-weekly trip limit options are adjusted so that 60,000 pounds of *Sebastes* containing no more than 25,000 pounds of yellowtail rockfish may be landed once every two weeks, or 15,000 pounds of *Sebastes* containing no more than 6,500 pounds (rounded up from 6,250 pounds) of yellowtail rockfish may be landed twice in one week. As in the past, there are no restrictions on landings of the *Sebastes* complex less than 3,000 pounds and the trip limit south of Coos Bay remains at 40,000 pounds per trip with no limit on the number of trips. Except as noted below as technical corrections, no other changes are made.

Rationale: The fishery for the *Sebastes* complex of rockfish north of Coos Bay, Oregon, is managed by trip limits designed to produce landings close to the annual harvest goal ("harvest guideline") of 10,200 metric tons (mt), the sum of the 1986 estimates of acceptable biological catch (ABC) for the species in the complex. Data available in July indicate that landings are lower than expected. Under current trip limits, landings for the year of the *Sebastes* complex caught north of Coos Bay are projected to be from 11 to 25 percent below the harvest guideline, and landings for the year of yellowtail rockfish may be 7 to 31 percent below its ABC. Accordingly, the trip limits are increased by 20 percent for the *Sebastes* complex and 25 percent for yellowtail rockfish so that the harvest guideline and ABC may be achieved in 1986. Proportional increases also appear in the biweekly and twice-weekly trip limit options.

Technical Corrections: Three technical corrections also are made. First, the coordinate given for Coos Bay is more precisely determined at the north jetty and is changed from 43°22' N. latitude to 43°21'34" N. latitude in paragraph (2)(c). Second, an office was listed mistakenly as the proper place for fishermen to notify the State of Oregon of their choice of biweekly or twice-weekly trip limits. Accordingly, the phone numbers for the Coos Bay office are deleted from paragraph (3)(b). These phone numbers still are appropriate for notifications of operating both north and south of Coos Bay during a fishing trip, however, and so are included in paragraph (5). Third, confusion surfaced over whether or not notification to the State of Oregon is required from a fisherman who, during a fishing trip, fishes on one side of the Coos Bay boundary and possesses or lands those fish on the other side. The language in paragraph (5)(a) is clarified to confirm the intent of the Council that such notification is required.

Secretarial Action: The Secretary concurs with the Council's recommendations and, therefore, adjusts the trip limit provisions published in the **Federal Register** on December 31, 1985 (50 FR 53325) by increasing the poundage limits for the *Sebastes* complex and yellowtail rockfish in paragraphs (3)(a) (weekly trip limit), (3)(b) (biweekly trip limit), and (3)(c) (twice-weekly trip limit). The technical corrections outlined above are made to paragraphs (2)(c), (3)(b) and (5)(a). All other provisions in these paragraphs remain unchanged.

Because the vast majority of groundfish caught off Washington,

Oregon, and California are taken from the fishery conservation zone (FCZ) 3–200 nautical miles offshore, all groundfish taken in ocean waters off Washington, Oregon, and California and retained or landed in violation of these restrictions will be treated as though they were taken in the FCZ, the same as in 1984 and 1985.

For the convenience of the public, the complete text of the December 31, 1985, notice is repeated here, unchanged except in those specific paragraphs discussed above.

(1) Definitions

(a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch *(Sebastes alutus)*, widow rockfish *(S. entomelas)*, shortbelly rockfish *(S. jordani)*, and *Sebastolobus* species of rockfish (which includes idiot rockfishes).

(b) "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time.

(c) "Two-week period" means 14 consecutive days beginning at 0001 hours Sunday and ending 2400 hours Saturday, local time.

(d) All weights are round weights of the whole fish.

(2) General

(a) These restrictions apply to all fish of the *Sebastes complex taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.*

(b) There is no limit on the number of landings under 3,000 pounds of the *Sebastes* complex allowed per week.

(c) It will be presumed that all fish of the *Sebastes* complex which are possessed or landed north of the north jetty at Coos Bay, Oregon (43°21'34" N. latitude), hereafter referred to as Coos Bay, were caught north of Coos Bay unless compliance with paragraph (5) can be demonstrated.

(3) Restrictions on the Sebastes Complex Caught North of Coos Bay

(a) Weekly trip limit. Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 30,000 pounds of the *Sebastes* complex, including no more than 12,500 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period north of Coos Bay. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one week period.

(b) Biweekly trip limit. If the appropriate agency is notified as required by this paragraph, up to 60,000 pounds of the *Sebastes* complex, including no more than 25,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a two-week period north of Coos Bay. Having so notified the appropriate agency, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that two-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to use the biweekly trip limit and must use only the biweekly trip limit unless rescinded in writing.

The State of Oregon or California must receive a written notice declaring intent to use the biweekly limits before the first day of the first two-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the two-week period in which this rescission is to occur. The State of Washington must receive written notice declaring intent to use the biweekly limits postmarked at least seven days before the first day of the first two-week period in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur.

Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515; 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501.

(c) Twice weekly trip limit. If the appropriate agency is notified as required by this paragraph, up to 15,000 pounds of the *Sebastes* complex, including no more than 6,500 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip north of Coos Bay. Having so notified the appropriate agency, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to use the twice weekly trip limit and must use only the twice weekly trip limit unless rescinded in writing.

The State of Oregon or California must receive a written notice declaring intent to use the twice weekly limits before the first day of the first one-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the week in which this rescission is to occur. The State of Washington must receive a written notice declaring intent to use the twice-weekly limits postmarked at least seven days before the first day of the first week in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur. Notifications must be submitted to the same addresses given in paragraph (3)(b) of this section for biweekly trip limits.

(4) Restrictions on the Sebastes Complex Caught South of Coos Bay

No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed, per vessel per fishing trip south of Coos Bay. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Coos Bay.

(5) Operating both North and South of Coos Bay on a Fishing Trip

(a) Unless compliance with the notification requirements of this paragraph (5) can be demonstrated, no person fishing for any groundfish species during a single fishing trip may fish both north and south of Coos Bay, or fish in one area and possess or land fish in the other area, if more than 3,000 pounds of the *Sebastes* complex is landed from that fishing trip. The vessel owner or operator must notify the State of Oregon of intent to fish both north and south of Coos Bay, or to fish in one area and possess or land fish in the other area. Unless compliance with paragraph (5)(c) can be demonstrated, this notification must be given before leaving port on the fishing trip. If fishing is conducted both north and south of Coos Bay or if fish are caught north of Coos Bay and possessed or landed south of Coos Bay during the fishing trip, then the restrictions on the *Sebastes* complex caught north of Coos Bay apply.

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(b) This notification, submitted by telephone or in writing, should be made to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; or 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462.

(c) A vessel owner or operator at sea who has not made notification under this paragraph and who wishes to do so, or who wants to change the notification for the current fishing trip, may do so by radio telephone (which must be confirmed in writing immediately on return to port). In this event, the provisions in paragraph (3) for the *Sebastes* complex caught north of Coos Bay will apply to all of the *Sebastes* complex taken in that trip, no matter where the fish are caught.

Other Fisheries

These limits for the *Sebastes* complex apply to vessels of the United States, including those vessels delivering groundfish to foreign processors. Retention of these species by foreign processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions except as may be otherwise specified in the permits.

Landings of groundfish in the pink shrimp and spot and ridgeback prawn fisheries are governed by regulations at § 663.28. If fishing for groundfish and spot or ridgeback prawns in the same fishing trip, the groundfish regulations in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice in the **Federal Register** in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. If current fishing rates continue, the harvest guideline for the *Sebastes* complex and ABC for yellowtail rockfish will not be reached by the end of 1986. Prompt action to increase those fishing rates is necessary to allow fishermen the opportunity to achieve the harvest guideline for these species in 1986. Consequently, further delay of this action is impracticable and contrary to the public interest, and this action is taken in final form effective August 31, 1986.

The public has had opportunity to comment on this action at meetings of the Council and its advisory bodies in July 1986. Further public coments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Morine Fisheries Service.

[FR Doc. 86–19969 Filed 9–2–86; 10:57 am]

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Proposed Rules

Federal Register
Vol. 51, No. 172
Friday, September 5, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-27-AD]

Airworthiness Directives; Empresa Brasileira De Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action supplements a notice proposing to adopt a new Airworthiness Directive (AD), applicable to EMBRAER Models EMB-110P1 and EMB-110P2 (up to Serial number 110467 inclusive) airplanes. The notice would require: (1) Inspections for jamming or seizure, and replacement as necessary, of certain bearings in the flight control system, (2) installation of a dual control rod assembly in the elevator trim tab system, (3) inspections for cracks in the left elevator front spar, and (4) installation of reinforcement angles in the left elevator front spar or repair, as appropriate, to preclude excessive vibration in the elevator, aileron and/or rudder, which could eventually result in loss of control of the airplane. It was published in the Federal Register on August 5, 1985 (50 FR 31609). Subsequent to the notice, the manufacturer extensively revised the service bulletins relating to the installation of the dual control rod assembly to the aileron and rudder trim tab control systems. The FAA has determined that the revised instructions, changes in part numbers and airplane serial number applicability covered by these revisions should be incorporated on all applicable airplanes. Therefore, the notice, as supplemented, includes these latest revisions.

DATE: Comments must be received on or before October 25, 1986.

ADDRESSES: Embraer Service Bulletins (S/B) 110-27-036, Revision 02, dated December 3, 1981; S/B 110-027-0060, Revision 02, dated July 3, 1986; and S/B 110-027-0068, Revision 02, dated April 9, 1986, applicable to this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343-CEP, 12.200, Sao Jose dos Campos, Sao Paulo Brazil, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this supplemental notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Supplemental Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been four incidents of excessive vibration caused by failure or disconnection of the elevator tab rod on EMBRAER Models EMB-110P1 and EMB-110P2 airplanes. The failures were attributed to jamming or seizure of the rod end bearings. Also, one case of excessive free-play resulted in vibration severe enough to cause cracks on the elevator spar doubler. As a result, Empresa Brasileira de Aeronautica S.A. (EMBRAER) has revised S/B No. 110-027-0068 through Revision 02, dated April 9, 1986, which requires: (1) On those certain airplanes not yet modified with dual elevator trim tab control rods, an inspection of the left front elevator spar for cracks in the elevator trim actuator support attachment area and repair, if required, the installation of dual elevator trim tab control rod assembly and modification of the front and rear elevator spars including the replacement of the elevator trim tab actuator support attachment angles, replacement of the elevator trim tab rod assembly support, replacement of the elevator trim tab actuator rod connection, and the addition of lead balance weight and re-balance of the elevator, and (2) on those certain airplanes previously modified or with factory installed dual elevator trim tab control rods, replacement of the elevator trim tab actuator support, replacement of the interconnecting rod clamps, applying corrosion-inhibiting sealant, verification that one of the rod ends has a left hand thread, replacement of this rod if not so installed, and inspection of actuator to trim tab attachment point alignment. The reason for the service bulletin revision was to change the part number of the elevator trim tab control rod assembly and add instructions for the replacement of actuator support and rework of the old rod assembly. In addition, the test on the rods installation is altered extensively, so as to facilitate accomplishment of the service bulletin. Because of adverse service experience on the elevator, EMBRAER issued S/Bs No. 110-27-036, Revision 02, dated

December 3, 1981, and No. 110-27-060, Revision 01, dated August 29, 1984, which provide for inspection and replacement respectively of the bearings in the aileron and rudder control system. Subsequently, EMBRAER revised S/B No. 110-027-0060 through Revision 02, dated July 3, 1986, to: extend the airplane serial number applicability, change the control rod part number, rework the aileron and rudder trim tabs, and require balancing the rudder and left aileron. The Centro Technico Aeroespacial (CTA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Brazil has classified these service bulletins and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Brazilian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of CTA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of the EMBRAER service bulletins mentioned above and the mandatory classification of these service bulletins by Centro Technico Aeroespacial Airworthiness Directive (AD) dated February 7, 1985. The FAA issued a Notice of Proposed Rulemaking which was published in the **Federal Register** (50 FR 31609) on August 5, 1985. It proposed inspections and replacement of certain bearings in the flight control system, inspection for cracks and installation of reinforcement angles in the left elevator front spar, and installation of a dual control rod in the elevator trim tab assembly. Subsequently, the FAA has determined that the revised instructions and details, the new trim tab control rod assembly part numbers, rework of the aileron and rudder trim tabs, the rebalancing of the rudder and left aileron and the extended airplane serial number applicability specified in the revised EMBRAER service bulletins should be incorporated on all airplanes, by including these revised service bulletins in this supplement to the previously published Notice of Proposed Rulemaking. Based on the foregoing, the FAA considers that the conditions addressed by these service bulletins are unsafe conditions that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD as supplemented, would require inspections for jamming of the control rod bearings and for cracks in the left elevator front spar and modification as necessary, replacement of malfunctioning bearings in the flight control system, and installation of dual rods in the elevator trim tab assembly on EMBRAER Models EMB-110P1 and EMB-110P2 airplanes.

The normal comment period of 120 days to permit the foreign manufacturer EMBRAER and the foreign civil airworthiness authority the Centro Technico Aeroespacial (CTA) time to respond has been reduced to 45 days since the manufacturer and the CTA in effect agree with the proposed action by having already issued appropriate service bulletins and an Airworthiness Directive (AD).

The FAA has determined there are approximately 127 airplanes affected by the proposed AD. The cost of modifying, inspecting these airplanes as required by the proposed AD is estimated to be $2677 per airplane or an estimated total cost of $339,979 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action has been placed in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. By adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (Embraer): Applies to Models EMB-110P1 and EMB-110P2 (Serial Numbers 110001 through 110467 inclusive) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To preclude excessive vibration in the flight control surfaces and possible loss of control of the airplane accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, visually inspect for jamming or seizure of all bearings installed in the aileron trim tab bellcrank, actuator eyelets and the terminals of control rods for the elevator, rudder and aileron trim tab control systems in accordance with Section 2, "ACCOMPLISHMENT INSTRUCTIONS" of Embraer Service Bulletin (S/B) 110-27-036, Change 02, dated December 3, 1981. If a jammed or seized bearing is found, prior to further flight;

(1) Remove and replace the defective part with a serviceable part of the same Part Number (P/N), or

(2) Modify, inspect, replace and/or repair as required.

(i) The aileron and rudder trim tab control systems in accordance with paragraph (c)(1) of this AD, and

(ii) The elevator trim tab control system in accordance with paragraph (c)(2) of this AD.

(b) When the modifications and actions specified in paragraph (a)(2) of this AD have been accomplished, the actions required by paragraph (c) of this AD are no longer required.

(c) Within the next 250 hours time-in-service, after the effective date of this AD,

(1) Modify the aileron and rudder trim tab control systems in accordance with Section 2. "ACCOMPLISHMENT INSTRUCTIONS" of Embraer S/B 110-027-0060, Change 02, dated July 3, 1986.

(2) Modify, inspect, replace and/or repair the elevator trim tab control system and elevator

(i) on airplanes without dual control rods as described in Section 2. "ACCOMPLISHMENT INSTRUCTIONS", paragraphs 2.1 through 2.1.18 of Embraer S/B 110-027-0068, dated April 9, 1986, or;

(ii) on airplanes with dual control rods installed as described in Section 2, "ACCOMPLISHMENT INSTRUCTIONS", paragraphs 2.2 through 2.2.10 of Embraer S/B 110-027-0068, dated April 9, 1986.

(d) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; telephone (404) 763-7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Empresa Brasileira de Aeronautica S.A. (Embraer), P.O. Box 343—CEP 12.200 Sao Jose dos Campos, Sao Paulo, Brazil, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 26, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-19959 Filed 9-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM86-12-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Staff Submittal

August 29, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking staff submittal.

SUMMARY: On July 21, 1986, the Commission issued a notice of proposed rulemaking involving the generic determination of rate of return on common equity for public utilities (51 FR 27050, July 29, 1986). By memorandum dated August 28, 1986, the Commission staff has placed in the record (1) A table of rates of return on common equity allowed by the Commission in fully adjudicated electric rate cases since 1977; and (2) Moody's and Standard and Poor's bond ratings for utility companies, appearing in First Boston's "Electric Utility Industry: Credit and Equity Analysis," for June 1981, June 1982, June 1983, May 1984 and May 1985.

DATES: These documents were made available August 29, 1986.

ADDRESS: Copies of these documents are available for inspection and copying through the Commission's Public Reference Branch, Room 1000, 825 North Capitol St., NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357-8400.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-20069 Filed 9-4-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 16-86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed Rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8); (f) and (g) of the Privacy Act, 5 U.S.C. 552a. This system is the "United States Trustee Program Case Referral System, JUSTICE/UST-004." Records contained in this system relate to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

DATE: Submit any comments by November 4, 1986.

ADDRESS: Address all comments to J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272-6474.

SUPPLEMENTARY INFORMATION: In the notice section of today's Federal Register, the Department of Justice provides a description of the "United States Trustee Program Case Referral System, JUSTICE/UST-004."

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, it is proposed to amend 28 CFR Part 16 by adding § 16.77 as set forth below.

Dated: August 18, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.77 to read as follows:

§ 16.77 Exemption of United States Trustee Program System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g):

(1) United States Trustee Program Case Referral System, JUSTICE/UST-004.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) since an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsection (d) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interest of effective law enforcement, it is appropriate to retain all information that may aid in

establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement because the subject of the investigation would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) From subsections (e)(4) (G) and (H) because this system of records is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k).

(8) From subsection (e)(8) because the individual notice requirement of this subsection could present a serious impediment to law enforcement in that this could interfere with the U.S. Attorney's ability to issue subpoenas.

(9) From subsections (f) and (g) because this system has been exempted from the access provisions of subsection (d).

[FR Doc. 86-19988 Filed 9-4-86; 8:45 am]
BILLING CODE 4410-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Entitlement Charges for Refresher, Remedial and Deficiency Courses

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: Current regulations do not state how to charge entitlement when a veteran or eligible person is pursuing some courses for which entitlement is charged concurrently with refresher, remedial or deficiency courses for which no charge is made against entitlement. This has led to confusion as to how entitlement should be charged in such situations. This proposal eliminates this confusion and ensures that veterans or eligible persons enrolled in the same courses will receive the same charge against their entitlement.

DATE: Comments must be received on or before October 6, 1986.

ADDRESSES: Send written comments to: Administrator of Veterans' Affairs (217A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until October 15, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 389-2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.1045(a)(4) provides that veterans, spouses and surviving spouses will not be charged entitlement while pursuing refresher, remedial or deficiency courses. 38 CFR 21.1045(b)(8) provides that these students will be charged entitlement for other courses. Confusion sometimes arises when, for example, a veteran enrolls in six credit hours of deficiency courses and nine credit hours of other courses. Sometime a charge is made against entitlement at the three-quarter-time rate on the grounds that nine credit hours is three-quarter-time according to 38 CFR 21.4270. Sometimes a charge is made against entitlement at the half-time rate because only six credit hours of nondeficiency training has to be added to the six credit hours of deficiency training in order to reach the full-time requirement of 12 credit hours contained in 38 CFR 21.4270. This proposal amends 38 CFR 21.1045(b) to show that the latter procedure is correct.

The Veterans Administration (VA) has determined that this proposal does not contain a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The proposal will not cause a major increase in cost or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs certifies that this amended regulations, if promulgated, will not have a significant economic impact on substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b) this proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.This certification can be made because the proposal will affect only the entitlement of individuals to educational assistance allowance. It will have no effect at all on small entities.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation is 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 18, 1986.

Thomas K. Turnage,
Administrator

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended by revising the introductory portion of § 21.1045(c)(1) and by adding new paragraph (c)(3), so that the revised and added material reads as follows:

§ 21.1045 Entitlement charges.

* * * * *

(c) * * *

(1) For all other courses, after making any adjustments required by paragraph (c)(3) of this section, the VA will make a charge against entitlement

* * * * *

(3) When a veteran or eligible person enrolls concurrently in refresher, remedial or deficiency courses for which paragraph (a)(4) requires that no charge against entitlement be made, and courses for which paragraph (b) of this section requires that a charge be made against entitlement, the VA will

(i) Determine the training time of the veteran, spouse or surviving spouse using the provisions of §21.4270, and

(ii) Determine what the training time of the veteran, spouse or surviving spouse would be if it were based on the enrollment in his or her refesher, remedial or deficiency courses along, and

(iii) Subtract the training time determined in paragraph (c)(3)(ii) of this section from the training time determined in paragraph (c)(3)(i). The charge against entitlement is based on the resulting training time, using the provisions of paragraph (c)(1) of this section. For the purpose of making the calculations described in this

subparagraph, the VA will treat training which is less than one-half time training but more than one-quarter time training as though it were one-quarter time training.

(Authority: 38 U.S.C. 1661, 1677(b), 1691; Pub. L. 96-466)

[FR Doc. 86-20039 Filed 9-4-86; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 2947-5]

Standards for Emissions From Methanol-Fueled Motor Vehicles and Motor Vehicle Engines

Correction

In FR Doc. 86-19493 beginning on page 30984 in the issue of Friday, August 29, 1986, the equations appearing on pages 30987 and 30988 were reversed. The two equations on page 30987 should have appeared on page 30988 and the two equations on page 30988 should have appeared on page 30987.

BILLING CODE 1505-01-M

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

[SWH—FRL-3072-6]

Hazardous Waste Management System; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of Data on Land Disposal Restrictions and Request for Comments.

SUMMARY: On January 14, 1986, EPA proposed a regulatory program to implement the land disposal prohibitions (51 FR 1602), pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA). During and following the comment period for the proposed rule, the Agency received data that will be considered in the development of the final rule. Therefore, the Agency is announcing the availability of additional treatment and capacity data, descriptions of statistical methodologies that will be used to analyze that data, and a treatability variance procedure that may be included in the final rule. By way of this Notice of Availability, the Agency is seeking comments on the data entered in the public docket for this Notice, and on the Agency's analysis of the data. The information and comments we receive will be used to aid the Agency in the final rulemaking.

DATES: Comments on this notice should be submitted on or before October 6, 1986.

ADDRESS: The public must send an original and two copies of their comments to: EPA RCRA Docket (S-212) (WH-562), 401 M Street SW., Washington, DC 20460.

Place the docket #F-86-LDR3-FFFFF on your comments. For additional details about the OSW docket see the "OSW Docket" section on "SUPPLEMENTARY INFORMATION."

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 382-3000 locally.

For information on specific aspects of this Notice contact: Stephen R. Weil, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. OSW Docket

The OSW docket is located at: EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460.

The docket is open from 9:30 a.m. to 3:30 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call Mia Zmud at 475-9327 or Kate Blow at 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

Background

The Hazardous and Solid Waste Amendments of 1984 (HSWA) prohibits the land disposal of a particular group of hazardous wastes beyond specified dates if the Agency has not established treatment standards under section 3004(m) for such wastes or granted a case specific petition. On January 14, 1986, the Agency proposed a framework for a regulatory program to implement land disposal restrictions under sections 3004 (d), (e), and (g) of HSWA. In addition, this action proposed treatment standards under section 3004(m) and associated effective dates for the F001-F005 solvent wastes and F020-F023 and F026-F028 dioxin-containing wastes.

Since the proposed rule was published in the **Federal Register**, the Agency has obtained additional data and has received a number of comments which include information pertinent to the development of a regulatory approach to prohibit land disposal of hazardous wastes. Furthermore, several statistical analysis techniques that may be used in establishing the technology-based levels (based on Best Demonstrated Available Technology, or BDAT) which were not included in the proposed rule are presented in today's notice. Discussions of the specific components of this Notice of Availability are presented below.

A. Statistical Methods for Establishing BDAT

The Agency proposed a general methodology for developing treatment standards under section 3004(m) of HSWA for wastes subject to the land disposal provisions. The proposed treatment standards for hazardous wastes were established by developing technology-based levels and screening levels. In addition, the Agency proposed specific technology-based treatment levels consistent with this methodology for spent solvent hazardous waste listed in Subpart D of Part 261 as F001 through F005.

Commenters on the proposed rule stated that the Agency. (1) Did not account for process variability in developing the treatment standards, (2) did not explain how they would assess whether a treatment system was well designed and operated even though EPA stated this was a requirement for data to be incorporated into the treatment standards, and (3) did not explain how the Agency would determine treatment standards where more than one technology applied to a waste.

In response to these comments, the Agency is considering using three statistical analyses not included in the proposal. Section III of this notice contains a description of each statistical method and an example of how each would be applied.

B. Database Modifications

In order to respond to comments on capacity estimates, the Agency is augmenting its original database by using the results of the 1986 National Screening Survey to identify commercial facilities and subsequently obtain additional information on their capacity. The Agency has contacted specific types of facilities identified by the National Screening Survey by telephone to gather information pertinent to capacity estimates. Also, the Agency is using data on fuel substitution developed for the Waste-As-Fuel tedhnical standards. A more thorough discussion of this data is included in Section III of this Notice.

The Agency is giving notice of several changes in the database used to derive

BDAT standards. These are: (1) Additional data on the treatment of methylene chloride in the pharmaceutical industry, (2) data from conducting the Toxicity Characteristic Leaching Procedure (TCLP) on the residual ash from 10 incinerators, and (3) a change in the data analysis used to establish BDAT levels. In addition, the Agency is giving notice of (1) data on the quantities of solvent wastes from Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) activities to be considered in making capacity determinations, and (2) information collected to revise and update the "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981" (see reference #116 in the January 14, 1986, 51 FR 1602–1766).

The Agency is also including a North Atlantic Treaty Organization (NATO) publication in the docket to request public comment. The document in the docket (an appendix to the NATO publication) includes design capacity parameters for incineration facilities.

C. Variance From a Treatment Standard

Some commenters argued that, due to interfering waste characteristics, some treatment residues might be unable to meet the 3004(m) standards for hazardous constituents, regardless of the treatment method applied to the waste. The commenters recommended that the Agency provide a procedure for a person to petition for a variance from the treatment standard. Such a procedure is presented in Section III below.

III. Availability of Information

A. Statistical Methods for Establishing BDAT

To develop treatment standards by BDAT, the Agency is considering the use of three statistical methods that were not included in the proposed rule. These three methods are:

1. Variability Factor Calculation—to account for variability in performance of well-designed and well-operated systems.

2. Outlier Test—to determine whether a data point within a data set is representative of that data set.

3. Analysis of Variance—to measure whether differences between data sets are statistically discernable or homogeneous.

More detailed discussions of these methods follow below.

Variability Factor Calculation

The Agency is considering incorporation of a variability factor in the development of BDAT standards. To obtain the BDAT standard, the Agency would multiply the long term average treatment performance value by the variability factor. Variability in performance principally arises from inherent mechanical limitations in maintaining control parameters at the optimum setting.

An example would be an automatic pH control system used to maintain the proper pH range for precipitation of a toxic metal. In this system, a pH sensing device provides a signal to the controller that the pH is not at the set point (i.e., the optimum design point). The controller then changes (either pneumatically or electrically) the position of the valve that supplies the reagent(s) used to adjust pH. The Agency would consider such a system to be well-operated provided that it is properly designed, calibrated, and maintained. Nevertheless, this system cannot be operated without any variation in the level of performance. Control valves are not manufactured in such a way that they can precisely add the exact amount of reagent needed to be at the set point; either too much or too little reagent will be added. Also there is a lag time between the time that the sensing device detects a problem and the time the controller adjusts the position of the valve to correct the problem. Additionally, there can be process upsets that require greater changes to the system with corresponding greater variations in performance. Another, lesser source of variability, will be due to analysis of treatment samples; even EPA approved methods will have some variability in test results for the same samples. All of the above variations can occur even at well designed and operated treatment facilities.

The Agency may use the statistical calculation described below the account for these changes. This analysis is the same as has been used for the development of numerous regulations in the Effluent Guidelines Program.

$$VF = \frac{C_{99}}{\text{Mean}}$$

where:

VF—Estimate of maximum variability factor determined from a sample population of data

C_{99}—Estimate of performance values which 99 percent of the observations will be below. C_{99} is calculated using the following equation—

$$C_{99} = \text{Exp}(y + 2.33Sy)$$

Where y and Sy are the mean and standard deviation, respectively, of the logtransformed data.

Mean—Arithmetic average of the individual performance values.

Setting standards based on such a variability factor should not be viewed as "relaxing" BDAT requirements. Rather, it accommodates the normal variability of the processes. A plant will have to be designed to meet the mean achievable treatment level in order to be assured of not being out of compliance when the Agency samples the treatment residues.

Consistent with the reasoning in the discussion above, EPA is considering the use of the 99th percentile in developing the variability factor. The 99th and 95th percentiles are the two most common percentile values used in developing variability factors. The 95th percentile inherently represents a value that even well designed and operated facilities may not achieve 5% of the time. The Agency believes it would be more appropriate to use the 99th percentile in order to reduce the number of false positives I(i.e., the sampling events that incorrectly show noncompliance).

The equations for calculating the value for which 99% of the observations will be below (C_{99} above) when data form a lognormal distribution can be found in most statistical texts (see for example: *Distributions in Statistics—Volume 1* by Johnson and Kotz, 1970, John Wiley Publications, NY).

An example of the variability factor calculation is shown below for the 99th and 95th percentiles.

EXAMPLE

Influent (μg/l)	Effluent (μg/l)	ln (influent)	ln (effluent)
1,050.00	22.00	6.96	3.09
5,200.00	68.00	8.56	4.22
5,000.00	50.00	8.52	3.91
1,720.00	37.00	7.45	3.61
1,560.00	27.00	7.35	3.30
1,300.00	24.00	7.17	3.18
450.00	15.00	6.11	2.71
1,600.00	38.00	7.38	3.64
600.00	17.00	6.40	2.83
700.00	19.00	6.62	2.94
Sample size: 10	10	10	10
Mean	31.7		3.34
Standard deviation			.49

Variability factor: 99th Percentile—2.79; 95th Percentile—1.99.

By setting the variability factor at 2.79 (99th percentile), 99 out 100 sampling events will show compliance for a well designed and operated facility.

Outlier Test

An outlier in a data set is an observation (or data point) that is significantly different from the other data. The measure of difference is determined by the statistical method known as a Z-score. The Z-score is calculated by dividing the difference between the data point and the average of the data set by the standard deviation. For data that is normally distributed, 95.5 percent (or two standard deviations) of the measurements will have a Z-score between −2.0 and 2.0. A data point outside this range is not considered to be representative of the population from which the data is drawn. A more thorough discussion of this statistical method can be found in many statistics texts (see, for example, *Statistical Concepts and Methods* by Bhattacharyya and Johnson, 1977, John Wiley Publications, NY).

An example of the outlier test is shown below for methylene chloride data from a plant producing chlorine and chlorinated products.

EXAMPLE

Influent	Effluent	Logeff	Z-value
1,550	10	2.30	−.44
1,290	10	2.30	−.44
1,640	10	2.30	−.44
1,450	10	2.30	−.44
4,600	10	2.30	−.44
1,760	10	2.30	−.44
2,400	10	2.30	−.44
4,800	10	2.30	−.44
1,210	10	2.30	−.44
5,100	12	2.48	−.33
1,400	985	6.89	2.10
1,380	1,120	7.02	2.17

Twelve pairs of data points (influent and effluent) were used. The data are assumed to be a sample from a population that has a lognormal distribution. Because the outlier test assumes data to be normally distributed, it was necessary to transform the data by computing the logarithm of each data point. The mean, standard deviation and Z-values of the transformed effluent data were computed. The computed value of the mean was 3.093, with a standard deviation of 1.806. The results showed that the logarithms of the two effluent values (985 and 1,120) are more than two standard deviations from the mean and hence are outliers.

EPA may use this statistical method to confirm that certain data do not represent treatment by a well-operated system. The Agency envisions the use of this method only in cases where data on the design and operation of a treatment system are limited. This method is a commonly used technique for "cleaning up" data sets.

Analysis of Variance

EPA is considering the use of the statistical method known as analysis of variance in determining the level of performance that represents BDAT. This method provides a measure of the differences between data sets. If the differences are not statistically discernable, the data sets are said to be homogeneous.

This method may be used in two cases. The first case is where more than one technology can be used to treat a waste. In this case, the analysis of variance method would be used to determine whether BDAT would represent a level of performance achieved by only one technology or represent a level of performance achievable by more than one or all of the technologies.

If the Agency found that the levels of performance for one or more technologies are not statistically discernable, (i.e., the data sets are homogeneous), we would average the long term performance values achieved by each technology and then multiply this value by the largest veriability factor associated with any of the acceptable technologies. If we found that one technology performs significantly better (i.e., the data sets are not homogeneous), BDAT would be the level of performance achieved by the best technology multiplied by its variability factor.

The second case where the analysis of variance may be used is where different wastes with common constituents are treated with the same technology. We could use this statistical method to determine whether separate BDAT values should be established for each waste or whether the levels of performance are homogeneous and, therefore, amenable to a single concentration level for a given constituent.

To determine whether any or all of the treatment data sets are homogeneous using the analysis of variance method, it is necessary to compare a calculated "F value" to what is known as a "critical value". These critical values are available in most statistics texts (see for example, *Statistical Concepts and Methods* by Bhattacharyya and Johnson, 1977, John Wiley Publications, NY).

Where the F value is less than the critical value, all treatment data sets are homogeneous. If the F value exceeds the critical value it is necessary to perform a "pair wise F" test to determine if any of the sets are homogeneous. The "pair wise F" test would be done for all of the various combinations of data sets using the same method and equation as the general F test.

The F value is calculated as follows:

(1) All data needs to be logtransformed.

(2) The sum of the data points for each data set are computed (Ti).

(3) The statistical parameter known as the sum of the squares between data sets (SSB) is computed—

$$SSB = \sum_{i=1}^{k} \frac{Ti^2}{n_i} - \frac{T^2}{N}$$

where—

k = number of treatment technologies
n_i = number of data points for technology i
N = number of data points for all technologies
T = sum of data points for all technologies

(4) The sum of the squares within data sets (SSW) is computed.

$$SSW = \sum_{i=1}^{k} \sum_{j=1}^{n_i} x_{i,j}^2 - \sum_{i=1}^{k} \frac{Ti^2}{n_i}, \text{ where}$$

$x_{i,j}$ = the observations (j) for treatment technology (i)

(5) The degrees of freedom corresponding to SSB and SSW are calculated. For SSB, the degrees of freedom is given by k-1. For SSW, the degrees of freedom is given by N–k.

(6) Using the above parameters, the F value is calculated as follows:

$$F = \frac{MSB}{MSW},$$

where

MSB = SSB/(k-1) and
MSW = SSW/(N-k).

A computational table summarizing the above parameters is shown below.

COMPUTATIONAL TABLE FOR THE F VALUE

Source	Sum Of Squares	Degrees Of Freedom	Mean Square	F
Between	SSB	k-1	$MSB = \frac{SSB}{k-1}$	$\frac{MSB}{MSW}$
Within	SSW	N-k	$MSW = \frac{SSW}{N-k}$	

Below are two examples of the Analysis of Variance statistical method. The BDAT values are illustrative only; they are not based on available data.

EXAMPLE 1

Steam stripping				Biological treatment			
Influent (μg/l)	Effluent (μg/l)	ln (influent)	ln (influent)	Influent (μg/l)	Effluent (μg/l)	ln (influent)	ln (influent)
1,550.00	10.00	7.35	2.30	1,960.00	10.00	7.58	2.30
1,290.00	10.00	7.16	2.30	2,568.00	10.00	7.85	2.30
1,640.00	10.00	7.40	2.30	1,817.00	10.00	7.50	2.30
5,100.00	12.00	8.54	2.48	1,640.00	28.00	7.40	3.26
1,450.00	10.00	7.28	2.30	3,907.00	10.00	8.27	2.30
4,800.00	10.00	8.43	2.30				
1,760.00	10.00	7.47	2.30				
2,400.00	10.00	7.78	2.30				
4,800.00	10.00	8.48	2.30				
12,100.00	10.00	9.40	2.30				
Sample size: 10	10	10	10	5	5	5	5
Mean	10.2		2.32		13.2		2.49
Standard deviation			.06				.43
Variability factor	1.14				2.48		

ANALYSIS OF VARIANCE

Source	D.F.	Sum of squares	Mean squares	F ratio
Between Groups (SSB)	1	.0996	.0996	1.7032
Within Groups (SSW)	13	.7603	.0585	

Critical value equals 4.67: Since the computed F value is less than the critical value the means are not significantly different (i.e., they are homogeneous).
Treatment Standard equals average of the mean values for both treatments times largest variability factor equals 10.2 plus 13.2 times 2.48 divided by 2 equals 29 μg/l.

EXAMPLE 2

Steam stripping				Biological treatment			
Influent (μg/l)	Effluent (μg/l)	ln (effluent)	ln (effluent)	Influent (μg/l)	Effluent (μg/l)	ln (influent)	ln (effluent)
1650	11	7.41	2.40	1400	410	7.24	6.02
5200	22	8.56	3.09	6000	490	6.70	6.19
5000	19	8.52	2.94	4200	380	8.34	5.94
1720	16	7.45	2.77	1300	200	7.17	5.30
1560	14	7.35	2.64	1200	170	7.09	5.14
4000	20	8.29	3.00	2000	210	7.60	5.35
2400	17	7.78	2.83	5000	320	8.52	5.77
800	9	6.68	2.20	3000	190	8.01	5.25
Sample size:	8	8	8	8	8	8	8
Mean:	16		2.73		296.25		5.62
Standard deviation:			.31				.41
Variability factor:	1.97				2.40		

ANALYSIS OF VARIANCE

Source	D.F.	Sum of squares	Means squares	F ratio
Between Groups	1	33.28	33.28	255.37
Within Groups	14	1.82	0.13	

Critical value = 4.60: Since the computed F value is larger than the critical value the means are significantly different (i.e., they are not homogeneous).
BDAT = Lowest Mean value × Variability Factor = (16) (1.97) = 31.52 μg/l.

B. Database Modifications

Capacity

To improve the Agency's capacity estimates, EPA contacted and obtained information from facilities that (1) offer commercial tank treatment for solvents, (2) offer commercial incineration, or (3) accept hazardous waste from off-site to burn as fuel. These facilities were identified by the 1986 National Screening Survey. Information obtained on the type of commercial service and the facility capacity is compiled in the document entitled "Telephone Verification Survey of Commercial Facilities that Manage Solvents", August 1986, and included in the docket for this Notice. Our preliminary analysis (which is subject to change before the final rule) indicates; (1) An increase in fuel substitution treatment capacity, (2) no significant change in incineration capacity, and (3) an increase in wastewater treatment capacity (however, the increase does not change the proposed evaluation that there is insufficient capacity for wastewater treatment). It should be noted that

distillation and inorganic sludge treatment were not surveyed. Because some of the information is designated as confidential business information (CBI), the document contains two sections. Section I presents the non-CBI information and is available in the docket. Section II presents the CBI information, and consequently, access is restricted by the CBI confidentiality rules.

The Agency is using new data on fuel substitution that was developed for the Waste-As-Fuel technical standards. This data is presented in the "Regulatory Analysis for Waste-As-Fuel Technical Standards", August 1986. This document is also available in the docket.

The Agency may use the data available in an appendix to a publication entitled "NATO–CCMS Pilot Study on Disposal of Hazardous Wastes" to analyze the capacity of incinerators. The Agency is giving Notice of this information to request public comments. The appendix is entitled "ANNEX V Commercially Available Hazardous Waste Incinerators in the United States (as of August 1979)," and is included in the docket.

BDAT Standards

(a) Methylene Chloride. The Agency also is considering additional data on the treatment of methylene chloride in the pharmaceutical industry. In the comment submitted by the Chemical Manufacturers Association (CMA) (Comment #LDR–2–085, included in the docket), it was pointed out that the Agency had not considered all available data. Our preliminary evaluations of these data show that it may be appropriate to raise the treatment standard for methylene chloride for certain pharmaceutical wastewaters. The data referred to by CMA is contained in the document entitled "Data for Stream Stripping of Methylene Chloride in the Pharmaceuticals Industry" also included in the docket.

(b) Incineration Data. Subsequent to proposal, the Agency completed the analysis of residual TCLP ash leachate data from 10 incinerators. These data are being evaluated to establish final BDAT standards. These data, as well as information on the type of waste incinerated, type of incineration, and operating conditions are summarized in the document entitled "Characterization of Hazardous Waste Incineration Residuals" which is included in the docket.

(c) Change in Data Analysis. Since the January 14, 1986, proposed rule was published, the Agency has made a change in the use of data to derive BDAT standards. In the proposed rule, the Agency eliminated treatment values where the constituent in the influent was less than the screening level (generally about 2.0 ppm). We are now using data where influent treatment values are less than the proposed screening levels, provided that removal is demonstrated. While the inclusion of these values tends to lower the treatment standards, the reduction is more than offset by the variability factor.

CERCLA Wastes

In the proposed rule, the Agency stated that the impact of CERCLA wastes on capacity determinations would be assessed for the final rule. Data on the quantities of these CERCLA wastes are therefore included in the docket for this Notice. These data provide estimates of waste quantities that are projected to be sent off-site to commercial incinerators annually. Wastes from both removal and remedial action CERCLA sites are included in this analysis. Since the proposed rule included no estimate of the quantity of these CERCLA wastes, the quantities presented in this Notice are anticipated to reduce the available incineration capacity for F001–F005 solvent wastes not generated by CERCLA activities.

Survey of Selected Facilities

The "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981" was the primary source of data used to estimate the quantities of restricted wastes for the proposed rule. The Agency has since performed follow-up inquiries to several facilities which had responded to this survey in order to confirm descriptions of the physical/chemical forms of the wastes reported. While the physical/chemical forms of many of the wastes were confirmed, some large volume wastes were also determined to be solvent-water mixtures rather than organic liquids and/or sludges as previously believed. The Agency intends to utilize this information to reassess capacity requirements for F001 through F005 solvent wastes. The changes in physical/chemical forms from organic liquids and/or sludges to solvent-water mixtures are anticipated to reduce the overall quantities of wastes directed to incineration and to increase those directed to wastewater treatment. A collection of the contractor's telephone records of these conversations has been entitled "Follow-up Survey of Selected Facilities," and has been included in the docket for this Notice.

C. Variance From a Treatment Standard

Several commenters noted the need for a procedure to obtain variances from treatment standards in cases where the treatment levels set under section 3004(m) cannot be achieved for a particular waste stream. This variance may be necessary because a waste is not treatment to the level specified in the performance standard due to the particular composition of the waste stream, though the technology used to set the performance standard is appropriate, or because the treatment standard is based on inappropriate technology given the particular waste matrix. Such a variance would essentially set different performance standards for the particular waste stream, though still based on the performance achievable by the application of BDAT to the particular waste.

The Agency is not proposing to issue a regulation governing the processing of petitions for a variance from the treatment standards. Such a petition is in essence a request to the Agency to modify its regulations based on new data submitted by the petitioner. The Agency has authority to consider such petitions under section 7004(a) of RCRA, which states that "any person may petition the Agency for promulgation, amendment, or repeal of any regulation under this Act".

The Agency would expect that, at the minimum, the following information would be included in a petition for the variance in order to help the Agency decide whether the particular treatment technology is well-operated and appropriate for the applicant's waste stream and whether or not the BDAT standards are actually achievable:

(1). At least one representative analysis (including information on who conducted the testing, where and when the testing took place, and on the analytical methods used) of both the waste and the treatment residue (if treated),

(2) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the above samples.

(3) A description of the waste (such as composition, concentration of constituents, pH, viscosity, specific gravity, and boiling point) and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration.

(4) A detailed description of the treatment system used to treat the petitioner's waste (if treated), including process design and operating conditions and performances achievable by that system, and

(5) A description of alternative treatment technologies investigated (if any) and performances achievable by those technologies.

(6) A discussion of why the differences in the waste prevent the achievement of BDAT.

(7) A discussion of any relevant factors that support the petitioner's request for a variance.

Copies of the following data and comments on the January 14, 1986, proposed rule discussed in this Notice are available for inspection in the public docket:

Database Modifications

1. "Telephone Verification Survey of Commercial Facilities that Manage Solvents," August 1986; compiled by Pope-Reid Associates Inc., St. Paul, Minnesota and Radian Corporation, McLean, Virginia.

2. Comment on the proposed rule for the Chemical Manufacturers Association, 2501 M Street NW., Washington, DC; refer to pages III–25, 26, and 28

3. "Data for Stream Stripping of Methylene Chloride in the Pharmaceuticals Industry," excerpted from "Development Document for Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Point Source Category," EPA 440/1–83/084, September 1983

4. EPA, "Characterization of Hazardous Waste Incineration Residuals," June 1986, prepared by Acurex Corporation, Contract #68–03–3241

5. "Regulatory Analysis of Waste-As-Fuel Technical Standards," prepared by Industrial Economics, Inc.

6. "Analysis of the Quantity of Waste from CERCLA Actions," raw data supplied by Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

7. "Follow-up Survey of Selected Facilities," prepared by Radian Corporation, McLean, Virginia

8. "ANNEX V Commercially Available Hazardous Waste Incinerator in the United States (as of August 1979)", an appendix to "NATO–CCMS Pilot Study on Disposal of Hazardous Wastes", presented by the NATO Committee on the Challenges of Modern Society, Brussels (Belgium), 1981

Variance From a Treatment Standard

1. Comments on the proposed rule from the Chemical Manufacturers Association, 2501 M Street NW., Washington, DC; refer to pages III–45 to 50.

2. Comments on the proposed rule from Western Research Institutes, University Station, Laramie, Wyoming; refer to page 10.

Dated: August 26, 1986.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 86–19711 Filed 9–2–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

[Docket No. FEMA–GEN–10]

Environmental Considerations, Categorical Exclusions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) has determined that community-wide exceptions for floodproofed residential basements should be continued and also added to the specific category of exclusions from the preparation of environmental impact statements and environmental assessments.

DATE: Comments must be received on or before November 4, 1986.

ADDRESS: Send comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Associate General Counsel, FEMA 500 C Street, SW., Washington, DC 20472. Telephone (202) 646–4100.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 10.8(d), the Federal Emergency Management Agency (FEMA) proposes to amend its regulations to expand the list of categorical exclusions, actions which are not subject to the application of 44 CFR Part 10 of FEMA's regulations. That part implements the National Environmental Policy Act of 1969 and the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508).

In the March 28, 1986, proposed rule published by FEMA in the **Federal Register**, FEMA included supplemental information on "Exceptions for Floodproof Residential Basements." The decision to cover that topic resulted from the Agency's careful review of procedures, data and requests from communities to make exceptions for ordinances for floodproofed residential basements. FEMA concluded that certain exceptions for floodproofed residential basements should be part of the categorical exclusions from the preparation of environmental impact statements and environmental assessments. Part 10 will be revised accordingly.

The National Flood Insurance Program (NFIP) regulations require that all new construction and substantial improvements of residential structures have their lowest floor, including the basement, elevated to or above the base flood elevation unless the community has been granted an exception to permit construction of floodproofed basements below the elevation [see § 60.3(c)(2)]. Under § 60.6(b), the Administrator of the Federal Insurance Administration (FIA), may grant an exception to the NFIP criteria where, "because of extraordinary circumstances, local conditions may render the application or certain standards the cause for severe hardship and gross inequity for a particular community."

FEMA reviewed the exception procedures used by communities, the numbers of exceptions granted (46) and a 1977 FIA study entitled, "Manual for the Construction of Residential Basements in Non-Coastal Flood Environs." That research enabled FEMA to determine that basements can be adequately and economically floodproofed under certain types of flooding conditions with minimal increases in flood damages and no increases in threats to public safety. However, this determination does not cover flood plains which are subject to significant depths of flooding, high velocity flood waters, or flash flooding conditions where there is insufficient time to ensure that residents receive warning of impending floods.

For the latter cases, the proposed rule would retain the requirement that a community obtain approval from FEMA prior to permitting the construction of residences with floodproofed basements below the base flood elevation, but would create a new category of exception at Paragraph (c) of § 60.6 (as noted in the March 28, 1986 **Federal Register**). For this new category of basement exception requests, the decision to grant or deny the exception would be based solely on a technical review by FEMA of flooding

characteristics in the community to determine if the community met criteria in § 60.6(c) of the proposed rule. If a community met the criteria set forth in the proposed rule at 44 CFR 60.6(c), no finding would be required that there would be severe hardship or gross inequity of the exception were denied and no special environmental clearance (environmental assessment or Environmental Impact Statement) would be prepared. The requirement for the environmental clearance can be eliminated because the decision would be based solely on the technical review referenced above. The elimination of the special environmental clearance is also based on the 46 environmental assessments prepared for basement exceptions. They have all concluded that there would be no significant effect on the human environment if the exception to permit basements were granted. In addition, these new procedures would substantially reduce the current administrative burdens on FEMA and communities.

This regulation is not a major rule within the meaning of the term in Executive Order 12291 nor will it have a significant economic impact in a substantial number of small entities. Hence, no regulatory impact statements have been prepared. Also there are no information collection requirements needing clearance under § 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 10

Environmental impact statements.

Accordingly, it is proposed to amend Part 10, Chapter 1, Subchapter A of Title 44 as follows:

PART 10—ENVIRONMENTAL CONSIDERATIONS—[AMENDED]

1. The authority citation for Part 10 continues to read:

Authority: 42 U.S.C. 4321 et seq. E. O. 11514 as amended by E. O. 11991; Reorganization Plan No. 3 of 1978, E. O. 12127, E. O. 12148.

§ 10.8 [Amended]

2. Section 10.8 is amended by adding a new paragraph (c)(2)(ix) to read as follows:

* * * * *

(c) * * *

(2) * * *

(ix) Community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program.

* * * * *

Dated: August 28, 1986.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-20000 Filed 9-4-86; 8:45 am]

BILLING CODE 6718-01-M

Notices

Federal Register
Vol. 51, No. 172
Friday, September 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Quail Mountain Winter Sports Site, San Isabel National Forest, Lake and Chaffee Counties, CO; Notice of Intent To Prepare an Environmental Impact Statement

The Forest Service, Department of Agriculture, and the Bureau of Land Management (BLM), Department of the Interior, in cooperation with other Federal, State, and local agencies will prepare an Environmental Impact Statement concerning development of the proposed Quail Mountain Winter Sports Site.

Twin Lakes Associates, Inc. proposes to develop an Alpine Skiing area with attendant facilities on both public and private lands. The area proposed for development, identified as Quail Mountain in the *Land and Resource Management Plan* for the Pike and San Isabel National Forests, is located south of Twin Lakes Reservoir about thirteen miles south of Leadville and sixteen miles north of Buena Vista, Colorado west of U.S. Highway 24. Upon completion, the proponent indicates the area could accommodate 14,000 skiers-at-one-time (SAOT) and would be served by a system of 17 chairlifts. The base area as proposed is located immediately adjacent to the skiing access lifts on private land. The base area would include lodging/residential development, retail, and other commercial facilities.

Two Federal actions are to be considered. First, the Forest Service will determine whether or not to allow skiing development on National Forest System land, amend the *Land and Resource Management Plan* to include certain other adjacent National Forest System lands in the area proposed for development, and issue a special use permit to authorize development. Second, the Bureau of Land Management must determine whether or not to amend the *Royal Gorge Management Framework Plan* to permit certain land tenure adjustments. Also, certain BLM lands located in the vicinity of the proposed Quail Mountain Development must be evaluated to determine their suitability for lease, sale, or exchange.

The alternatives of no action and of permitting development as proposed will be analyzed. Additional alternatives may be identified as the result of scoping and analyzed as appropriate. The environmental analysis of the proposal is being assisted and coordinated by a joint review committee. The Forest Service and Bureau of Land Management; State of Colorado; Lake and Chaffee Counties, Colorado; and Twin Lakes Associates, Inc. are participants on the Joint Review Committee.

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.

This process is called scoping. On September 17, 18, and 19, 1986, the Forest Service and the Bureau of Land Management will hold public scoping meetings in the towns of Salida, Leadville, and Buena Vista respectively, to identify issues and concerns related to the proposal. Times and places are as follows: Salida, 7:00 p.m., Chaffee County Bank Building; Leadville, 7:00 p.m., Public Library; Buena Vista, 7:00 p.m., Coummunity Center.

Jack A. Weissling, Supervisor, Pike and San Isabel National Forests, is the responsible official. The draft Environmental Impact Statement is expected to be available for public review in June 1987. The final Environmental Impact Statement is scheduled to be filed by January 1988. Records of Decision will be issued by the Forest Service and the Bureau of Land Management when the final Environmental Impact Statement is released. If the decisions allow development, construction could begin during the summer of 1988, at the earliest.

Questions about the proposed action and the Environmental Impact Statement should be directed to Gene Eide, District Ranger, Leadville Ranger District, San Isabel National Forest, P.O. Box 970, Leadville, Colorado 80461; phone (303) 486-0752.

Dated: August 26, 1986.

Jack A. Weissling,

Forest Supervisor.

[FR Doc. 86-19963 Filed 9-4-86; 8:45 am]

BILLING CODE 3410-11-M

Inyo National Forest; Cancellation of Meeting of Mono Basin National Forest Scenic Area Advisory Board;

The Mono Basin National Forest Scenic Area Advisory Board meeting, scheduled for September 11, 1986 (51 FR 29678), has been cancelled. It has been tentatively rescheduled for October 24, 1986. Notice of new meeting date will be published at a later date.

Dated: August 28, 1986.

Dennis W. Martin,

Forest Supervisor and Chairman.

[FR Doc. 86-20074 Filed 9-4-86; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Clarksville Memorial Hospital Flood Prevention, RC&D Measure, Tennessee; Finding of No Significant Impact.

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Clarksville Memorial Hospital Flood Prevention RC&D Measure, Montgomery County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203, telephone (615) 736-5471.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant

local, regional or natioinal impacts on the environment. As a result of these findings, Donald C. Bivens, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for flood prevention and flood water disposal at the Clarksville Memorial Hospital. The planned works of improvement include construction of a small (3.5 ac. ft.) impoundment, installation of two (2) 30-horsepower electric pumps and 2,550 feet of discharge conduit.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald C. Bivens.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Dated: August 25, 1986.

Billy K. Benson,

Deputy State Conservationist.

[FR Doc. 86-20019 Filed 9-4-86; 8:45 am]

BILLING CODE 3410-16-M

White Oak Creek Watershed, TN, Environmental Statement Availability

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the White Oak Creek Watershed, Chester, Hardin, Henderson and McNairy Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203, telephone (615) 736-5471.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Donald C. Bivens, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for accelerated land treatment or erosion control and water quality maintenance. The planned works of improvement include conservation tillage systems, crop rotation, stripcropping, grassed waterways and outlets, tree planting, critical area treatment and accelerated technical assistance for land treatment).

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald C. Bivens.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the consultation with state and local officials.)

Dated: August 25, 1986.

Billy K. Benson,

Deputy State Conservationist.

[FR Doc. 86-20020 Filed 9-4-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry Electron Microscopes

Correction

In FR Doc. 86-19621 appearing on page 30894 in the issue of Friday, August 29, 1986, make the following correction in the second column, first complete paragraph, fourth line: "BE" should read "EM".

BILLING CODE: 1505-01-M

National Bureau of Standards

[Docket No. 60855-6155]

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of decision regarding a construction testing services laboratory accreditation program.

SUMMARY: The National Bureau of Standards (NBS) has decided to postpone indefinitely the development, under the National Voluntary Laboratory Accreditation Program (NVLAP), of a laboratory accreditation program (LAP) for laboratories that perform construction testing services. The decision is in response to a recommendation made by a Conference on Accreditation of Construction Materials Testing Laboratories.

FOR FURTHER INFORMATION CONTACT: Harvey W. Berger, Manager, Laboratory Accreditation, National Bureau of Standards, Admin A531, Gaithersburg, MD 20899, (301) 921-3431.

SUPPLEMENTARY INFORMATION:

Background

NVLAP currently has a laboratory accreditation program to accredit laboratories that test freshly mixed concrete (Concrete LAP). In a letter dated September 23, 1985, STS Consultants Ltd., Vienna, Virginia, requested that the Concrete LAP be merged into a more broadly defined Construction Testing Services LAP to include, but not be limited to, test methods for concrete, soils, asphalt, and geotextiles. An October 8, 1985, **Federal Register** notice (50 FR 40987-40989) published by NBS announced the LAP request and the opportunity for comment on the LAP on or before December 9, 1985.

In response to several written requests, NBS extended the comment period. On January 3, 1986, NBS published a **Federal Register** notice (51 FR 239) inviting additional comments until June 30, 1986.

On May 14-15, 1986, a Conference on Accreditation of Construction Materials Testing Laboratories was held under the sponsorship of the: American Society for Testing and Materials (ASTM Committee C-1 on Cement and ASTM Committee C-9 on Concrete and Concrete Aggregates), American Association of State Highway and Transportation Officials (AASHTO), American Concrete Institute, American Council of Independent Laboratories,

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and Florida Concrete and Products Association.

One of the recommendations of the Conference was that "NVLAP should not move forward to establish an independent laboratory accreditation program for construction materials but, instead, NVLAP officials should enter the dialogue with sponsors of this Conference and help develop a coordinated laboratory accreditation system."

NBS has decided to postpone indefinitely the development of a construction materials testing laboratory accreditation program in response to the Conference recommendation. NVLAP staff will participate in any further ASTM sponsored deliberations on this subject and will seek industry participation in a cooperative laboratory accreditation program. NBS will announce establishment of a LAP at such time as there is appropriate industry support for that action.

Documents in Public Record

Copies of the comment letters are available for review and copying at the NBS Records Inspection Facility in the Administration Building, Room E106, Gaithersburg, Maryland.

Dated: August 19, 1986.

Ernest Ambler,

Director.

[FR Doc. 86-19970 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-13-M

National Voluntary Laboratory Accreditation Program; Public Workshop

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Bureau of Standards will host an informal workshop on October 15, 1986, to provide interested parties an opportunity to participate in the development of the scope of accreditation for laboratories that perform food service equipment testing.

DATE: The workshop will be held on October 15, 1986, from 9:00 a.m. to 4:30 p.m.

PLACE: The workshop will be held at the National Bureau of Standards, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Sidney Fischler, Associate Manager, Laboratory Accreditation, National Bureau of Standards, ADMIN A531, Gaithersburg, MD 20699; (301) 921-3431, no later than October 3, 1986, if you plan to attend the meeting.

SUPPLEMENTARY INFORMATION: On June 19, 1985, the National Bureau of Standards published in the **Federal Register** (50 FR 25440) a request to establish a laboratory accreditation program (LAP), under the Procedures of the National Voluntary Laboratory Accreditation Program (NVLAP), to accredit laboratories that test food service equipment. Based upon public comments the Director of NBS, on September 3, 1985, determined that there is a need to establish the LAP and approved its development.

The following have been established for the workshop:

1. Purpose: The purpose of the workshop is to provide all interested persons with an opportunity to participate in the development of the scope of accreditation to be offered to laboratories that perform food service equipment testing.

2. Procedure: The workshop will be an informal nonadversarial meeting. The presiding NBS chairman shall allocate the time available for discussion of each issue to be addressed, and exercise such authority as may be necessary to insure the equitable and efficient conduct of the workshop and to maintain order. National Sanitation Foundation (NSF) and other pertinent standards will be reviewed and recommended for inclusion in the LAP. Generic tests required by the selected standards will be defined and specific test methods (NSF, ASTM, UL, etc.) that should be used to perform those tests will be identified.

3. Provisions: This workshop will be open to the public.

Documents in Public Record

Summary minutes of the meeting will be prepared and made available for inspection and copying in the Freedom-of-Information Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland.

Dated: August 28, 1986.

Raymond Kammer,

Acting Director.

[FR Doc. 86-20063 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Information pertaining to the location of the Gulf of Mexico Fishery Management Council's public meeting (September 10-11, 1986), as published August 12, 1986, on page 28860 of the **Federal Register**, has been changed. The Council meeting will take place *only* at the Fort Brown Motor Hotel, 1900 East Elizabeth Street, Brownsville, TX, and not at the Stokley Hall location. All other information remains unchanged. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL (813) 228-2815.

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20025 Filed 9-4-86; 8:45 am]

BILLING CODE: 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Kings Grant Inn, Danvers, MA, to discuss reports of the foreign fishing, salmon, large pelagics, surf clams/ocean quahog, and gear conflict oversight committees, as well as to discuss other fishery management and administrative matters. The public meeting will convene September 9, 1986, at 10 a.m. and will adjourn at approximately 6:30 p.m. If circumstances warrant, the meeting may be extended to the morning of September 10. For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20026 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will convene separate public meetings September 22-26, 1986, at the Sheraton Anchorage Hotel in Anchorage, AK, as follows:

Council—will convene September 24 at 9 a.m. to elect officers for the coming year, to receive status of stocks reports for groundfish in the Gulf of Alaska and the Bering Sea/Aleutian Islands, and to make initial apportionments for domestic and foreign fisheries for 1987. Final approval of harvest levels will be made in December. The Council meeting will continue through at least the morning of September 26.

The Council also will consider approval of Amendment 15 to the Gulf of Alaska Groundfish Fisheries Management Plan (FMP) and Amendment 10 to the Bering Sea/Aleutian Islands Groundfish FMP.

Results of the 1986 Bering Sea/Aleutian Islands crab survey will be presented and the Council will discuss its future role in king and Tanner crab management off Alaska. The Council will convene an executive session once during the week (not open to the public) to review ongoing litigation and foreign affairs.

SSC and AP—will convene September 22 at 9 a.m. at the Sheraton, and will continue through at least September 23. The SSC and AP agendas will be generally the same as that of the Council.

Other plan team and workgroup meetings may be convened on short notice during the week.

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20027 Filed 9-4-86; 8:45am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory bodies will convene separate public meetings, September 15-18, 1986, at the Metro Center, 2000 SW. First Avenue, Portland, OR, as follows:

Council—will convene at 9 a.m., September 17 with an executive session (not open to the public) to discuss litigation and personnel matters. The subsequent general session (open to the public) will convene at 10 a.m. to consider administrative matters, including the election of a chairman and vice chairman for FY 87; appointment of a member to fill the vacancy on the Council's Scientific and Statistical Committee (SSC), and discussion of the National Oceanic and Atmospheric Administration's "Fishery Management Study". The Council also will hear reports on the 1986 groundfish fishery and the preliminary 1987 estimates of groundfish acceptable biological catch, optimum yield, harvest guidelines, preliminary estimates of domestic annual harvest, domestic annual processing, and total allowable level of foreign fishing. A report on the National Marine Fisheries Service's study of groundfish alternative management studies will be presented also. The Council will adopt the second amendment to the groundfish fishery management plan (FMP) and conduct a "scoping" session for further possible amendments to the FMP. There will will be a public comment period at 4 p.m.

On September 18 the Council will hear reports on the 1986 ocean salmon fisheries, adopt the seventh amendment to the salmon FMP, conduct a "scoping" session for further possible amendments to the FMP, and hear a report on habitat matters.

SSC—will convene at 1 p.m., September 15 to consider matters on the Council's agenda. On September 16 the SSC will reconvene at 8 a.m.

Budget Committee—will convene at 4 p.m., September 16 to review the new budget format for the Council's FY 87 budget request.

Habitat Committee—will convene at 5 p.m., September 16 to consider habitat matters including the format for the habitat section in the FMPs.

Salmon Plan Development Team—will convene at 1 p.m., September 17 to consider matters on the Council's agenda.

Detailed agendas for all of the above meetings will be available to the public on September 5. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland OR 97201; telephone: (503) 221-6352.

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20028 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-22-M

Application for Marine Mammal Permit: Dr. William A. Watkins (P70C)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Dr. William A. Watkins.

b. Address: Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543.

2. Type of Permit: Scientific research.

3. Name and Number of Marine Mammals: Sperm whale (Physeter catodon), 25.

4. Type of Take: Five (5) sperm whales will be tagged and tracked with high-frequency sonar transponder and radio tags. Twenty (20) of the whales will be inadvertently harassed during the tagging process.

5. Location of Activity: Southeast Caribbean, Grenada Basin, west of Dominica Island.

6. Period of Activity: One year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue, NW, Washington, DC

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930, and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St Petersburg, Florida 33702

Dated: August 29, 1986.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86-20029 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; American Home Products Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to American Home Products Corporation through its Wyeth Laboratories Division, having a place of business in Philadelphia, PA 19101, an exclusive right in the United States to make, use, and sell the vaccine disclosed and claimed in U.S. Patent Application Serial Number 6-769,074, "Vaccine Against Rotavirus Diseases." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified sixty-day period and should be addressed to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-19961 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Arizona State University

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Arizona State University, having a place of business in Tempe, Arizona 85287, an exclusive right in the United States to practice the invention embodied in U.S. Patent 4,306,071, "1,4-Bis (2-Haloethyl)-1,4-Diazabicyclo (2.2.1)-Heptane Dihydrogen Dimaleate and Selected Salts." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified 60-day period and should be addressed to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-19962 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, September 2, 1986; Tuesday, September 9, 1986; Tuesday, September 16, 1986; Tuesday, September 23, 1986; and Tuesday, September 30, 1986; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 8, 1986.

[FR Doc. 86-19965 Filed 9-2-86; 12:32 pm]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Meeting of the National Advisory Council on Continuing Education

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 17-19, 1986.

ADDRESS: Ramada Renaissance Hotel 1143 New Hampshire Ave., NW. Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Dr. George J. Nolfi, Executive Director Designate, National Advisory Council on Continuing Education, 2000 L Street,

NW., Suite 560, Washington, DC 20036. Telephone: (202) 634–6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) the preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The Council will meet from 9:00 A.M. to 5:00 P.M. on September 17, 9:00 A.M. to 4:00 P.M. on September 18, and from 9:00 to 12:00 Noon on September 19, 1986.

The Executive Committee will meet from 6:30 P.M. to 9:00 P.M. on September 16, 1986.

The proposed agenda includes:

—Review of the Council's Future Budget and personnel plans
—Discussion of 1986 Report
—Discussion and selection of issues to be priorities for Council work in 1987
—Assessment of Options for use of telecommunications-based meeting modes in lieu of travel
—Council Chairman's and Executive Director's Reports and recommendations regarding miscellaneous Council business.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, DC.

Signed at Washington, DC, on August 25, 1986.

George J. Nolfi,

Executive Dir. Designate.

DEPARTMENT OF ENERGY

Office of Secretary

Record of Decision for Remedial Actions at the Niagara Falls Storage Site, Lewiston, NY

AGENCY: Department of Energy.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1505) implementing the procedural provisions of the National Environmental Policy Act (NEPA) and the Department of Energy's (DOE) guidelines for compliance with NEPA (45 FR 20694, March 28, 1980), the Office of Assistant Secretary for Nuclear Energy of DOE is issuing a Record of Decision for remedial actions at the Niagara Falls Storage Site (NFSS), described in the "Final Environmental Impact Statement, Long-Term Management of the Existing Radioactive Wastes and Residues at the Niagara Falls Storage Site," (DOE/EIS–0109F).

Decision: For the radioactive wastes at the NFSS, the DOE has selected long-term in place management consistent with the guidance provided in the Environmental Protection Agency (EPA) regulation for uranium mill tailings (40 CFR 192). For the radioactive residues at the NFSS, it is the DOE intent to provide for long-term in place management consistent with future applicable EPA guidance. If future analyses show that in place management cannot meet EPA guidance, long-term in place management of the residues would need to be replaced by another option which meets EPA guidance and is environmentally acceptable. Further NEPA review is anticipated subsequent to additional design of the long-term in place management project for the radioactive residues.

Background

The Niagara Falls Storage Site (NFSS) is located in the Town of Lewiston, Niagara County, New York, about 19 miles north of Buffalo. The current site is part of a former Manhattan Engineer District (MED) site, which in turn was part of the former Lake Ontario Ordnance Works. Beginning in 1944, the MED used the site for storage of radioactive residues that resulted from the processing of uranium ores during development of the atomic bomb. Additional residues were brought to the site for several years after World War II. The contaminated materials at the site consist of 15,000 cubic yards of "residues" from the processing of uranium ores (total radium-226 inventory of 871 curies) and 240,000 cubic yards of "wastes," mostly very slightly contaminated soils (total radium-226 inventory of 7.8 curies).

The Department initiated interim remedial actions in the 1982 to consolidate and safely store all radioactive materials on the site and on adjacent properties. When interim remedial actions are completed in the fall of 1986, all the radioactive residues and wastes will be consolidated within the interim waste containment areas in the southwest corner of the site. The residues are located within a reinforced concrete structure within the interim facility. The interim facility, with a service life of 25–50 years, will safely contain the radioactive wastes and residues until the long-term management alternative is implemented. The interim facility cap is designed to retard radon emissions and minimize water infiltration into and consequent leaching of radioactive contaminants from the wastes and residues. The clay dike and below-grade clay cutoff wall surrounding the wastes are designed to minimize lateral migration of contaminants. The cutoff wall is keyed into a natural layer of low permeability clay. The interim facility is described in detail in "Design Report for the Interim Waste Contaminant Facility at the Niagara Falls Storage Site," DOE/OR/20722–21, May 1986.

Both a performance monitoring system and environmental monitoring system will go into effect when the interim facility is completed. The objective of the performance monitoring system will be early detection of trends that could indicate weaknesses developing in the containment structures so that corrective actions could be taken. This system is described in detail in "Report on the Performance Monitoring System for the Interim Waste Containment at the Niagara Falls Storage Site," DOE/OR/20722–71, May 1986. The enviornmental monitoring system will include sampling and analyses of ground and surface water, sediments and air. Proposed monitoring locations and planned sampling frequencies and parameters to be measured are detailed in "Environmental Monitoring Plan for the Niagara Falls Storage Site and the Interim Waste Containment Facility," DOE/OR/20722–86, April 1986.

Project Description

The purpose of the project is to provide for in place long-term management of the radioactive wastes and residues at NFSS. To do this, a long-term multilayered engineered cap will be constructed over the interim waste containment area. The long-term cap will be designed to minimize infiltration over a long period of time and to impede inadvertent intrusion into the residues and wastes. The design of the long-term cap will result in enlargement of the interim waste containment area and will necessitate relocation of the central drainage ditch. The long-term waste containment area will be 302 meters

long, 137 meters wide and 8.9 meters high, with a side slope of 1 vertical to 5 horizontal. The DOE intends to manage only NFSS material at the site. The DOE will retain ownership and control of the waste containment area, plus a small buffer zone and service area. Thus, approximately 150 acres of the 190-acre site will be released for other uses.

Design options for the containment cell and for the waste form of the residues will be selected after consultation with EPA. Such options could include but are not limited to physical or chemical modification of the residues and the addition of a concrete top to the concrete structure that holds the residues. Selection from these and other options will be made after a full consideration of any future EPA standards (such as 40 CFR 193) and/or guidance that could be applicable to the residues.

Description of Alternatives

The following alternatives were considered in detail by DOE in reaching its decision for long-term management of the residues and wastes at the Niagara Falls Storage Site (NFSS).

1. No Action

This alternative consists of performing no additional remedial actions and continuing to store the radioactive residues and waste as they will be at the end of the interim remedial actions in the fall of 1986. This alternative does not meet the passive design requirements of 40 CFR 192.

2. Decontamination of the NFSS, transport, and long-term management of the radioactive wastes and residues at the DOE site in Hanford, Washington

Both the residues and the wastes will be excavated from the containment area at NFSS and transported on trucks to a waste-management site on the DOE Hanford Reservation near Richland, Washington. The residues will be packaged in large metal boxes and transported either on flatbed trailers or in shielded vans. The wastes are classified as nonradioactive under current transportation regulations and will be shipped in large dump trucks. About 16,000 truckloads will be needed to transport all 250,000 yd^3 of wastes and residues. Major interstate highway systems will be followed through 11 States, over a distance of approximately 2500 miles. Following transport of all wastes and residues to the Hanford site, the excavated areas will be filled and regraded, and NFSS will be released for other use.

At Hanford, the contaminated materials will be buried in trenches in a manner similar to current practices for other types of solid radioactive wastes on the Hanford Reservation. Burial of the NFSS wastes and residues will require approximately 42 trenches. The waste management site at Hanford will cover about 140 acres, including 95 acres in the actual waste containment area.

3. Decontamination of the NFSS, transport, and long-term management of the radioactive wastes and residues at a DOE site in Oak Ridge, Tennessee

The NFSS wastes and residues will be excavated and transported by truck to the Pine Ridge Knolls site on the DOE Oak Ridge Reservation near Oak Ridge, Tennessee. Approximately 16,000 truckloads will be transported over major interstate highway systems, crossing five States, and covering approximately 750 miles. Following transport of all wastes and residues to the Oak Ridge site, excavated areas as NFSS will be filled and regraded and NFSS will be released for other use.

The wastes and residues will be stabilized in several mounds on top of the knolls at the Pine Ridge Knolls site. The mounds will be covered with a long-term cap similar to that described for NFSS. A total of 60 acres will be needed at the Oak Ridge site, including 29 acres for the actual waste containment area. A major technical uncertainty in implementing this alternative is whether or not there will be enough space on top of the knolls.

4. Removal, transport, and long-term management of the radioactive residues at Hanford, Washington, and long-term management of the radioactive wastes at NFSS

The residues will be excavated, packaged, and transported to Hanford in 1600 truck trips. The packages will be buried in 10 trenches. About 53 acres, including 23 acres for the actual waste containment area, will be required at Hanford.

The wastes will remain at NFSS and will be covered with a long-term cap.

5. Removal, transport, and long-term management of the radioactive residues at Hanford, Washington, and removal and ocean disposal of the radioactive wastes

The residues will be removed, packaged, and transported to Hanford as described in alternative 4 above. All remaining wastes will be excavated, transported in bulk in dump trucks to a dock in the New York/New Jersey harbor area, loaded onto barges, and transported to the 106-mile Ocean Waste Disposal Site (Site 106) for disposal.

Following excavation and removal of all wastes and residues from NFSS, the excavated areas will be filled and graded and the site will be released for other use. A potential institutional obstacle to implementation of this alternative is the need to obtain an ocean dumping permit from the U.S. EPA and the uncertainty as to how the wastes will be classified for ocean disposal purposes.

6. Removal, transport, and long-term management of the radioactive residues at Oak Ridge, Tennessee, and long-term management of the radioactive wastes at NFSS

The residues will be shipped to Oak Ridge, Tennessee, stabilized in one or two large mounds on the knolls at the Pine Ridge Knolls site, and covered with a long-term cap. About 33 acres of land will be needed, including 6.7 acres for the actual waste containment area. The procedures for managing the remaining contaminated wastes at NFSS will be identical to those described for alternative 4 above.

7. Removal, transport, and long-term management of the radioactive residues at Oak Ridge, Tennessee, and removal and ocean disposal of the radioactive waste

The residues will be removed, packaged, and transported to Oak Ridge, Tennessee, stabilized in one or two large mounds on the knolls at the Pine Ridge Knolls site, and covered with a long-term cap. About 33 acres of land will be needed, including 6.7 acres for the actual waste containment area. The radioactive wastes will be excavated, transported in bulk in dump trucks to a dock in the New York/New Jersey area, loaded onto barges, and transported to the 106-mile Ocean Waste Disposal Site for disposal. Following excavation and removal of all wastes and residues from NFSS, the excavated areas will be filled and graded and the site will be released for other sites. A potential institutional obstacle to implementation of this alternative is the need to obtain an ocean dumping permit from the U.S. EPA and the uncertainty as to how the wastes will be classified for ocean disposal purposes.

Basis for Decision

Consistent with the waste management guidance in DOE Order 5820.2, DOE is using the EPA standard 40 CFR 192 as guidance for long-term management of the radioactive wastes at the NFSS on land. These wastes are contaminated with naturally occurring radionuclides, and we conclude that the

EPA standard developed for disposal of uranium mill tailings on land, 40 CFR 192 is the relevant standard. For the radioactive residues, there is no applicable EPA standard. Compliance with future applicable requirements is uncertain until those requirements are known and compared with the in place management design.

Long-term management in place has less environmental impacts for the action alternatives for (1) transportation and occupational injuries and deaths, and (2) additional imputed radiological health effects during the action period to the general public and workers. For the long term, several of the alternatives, including in place management at NFSS, have less projected health effects than the other alternatives. Considering the action period and long term in toto, in place management at NFSS is the environmentally perferable alternative. Further, in place long-term management at NFSS is shown in the EIS to be far less costly than the other alternatives.

Considerations in the Implementation of the Decision

The DOE is cognizant of potential environmental and health impacts which could result in implementing the decision. These impacts will be minimized or avoided through strict compliance with applicable Federal, State, and local regulations.

Near the time of implementation of the decision, DOE will evaluate design options for long-term in-place management of the wastes and residues. DOE will consult with EPA on the selection of the specific on-site containment option and provide EPA with assurance that the selected option will meet applicable standards and/or guidance and will be environmentally acceptable. Detailed engineering plans and environmental health and safety operations plans, as well as long-term maintenance and monitoring plans, will be developed consistent with the selected option. The appropriate NFPA review will be conducted. The existing maintenance and environmental monitoring programs will be modified as necessary, to reflect the monitoring experience gained during the intrim waste containment period and to reflect any additional monitoring necessitated by disturbance of the residues.

Subject to the requirements of the selected option, the following are representative measures which will be employed to avoid or minimize impacts during the remedial action:

• *Mitigation of contaminate exposure and release through air and land pathways*—The release of contaminated particulates will reduced by dampening contaminated material with water and/or dust suppressants, by stopping contaminated material-handling operations during adverse weather conditions, and by using equipment designed and/or selected to minimize particulate releases.

The inadvertent off-site transportation of radioactively contaminated material will be controlled by the use of decontamination facilities (e.g., truck wash stations) to clean trucks and other vehicles before leaving the site. Human exposure to residual radioactive material will be reduced by restricting access, and by providing the monitoring and protective equipment and training programs necessary for use by the remedial action workers. Radon, in and around the site, will be monitored as part of the process to minimize exposure.

• *Mitigation of contaminate release through water pathways*—To prevent possible off-site migration of contaminated water during excavation and handling of the contaminated material, protective dikes isolating the distrubed material from surface-water systems will be installed. The construction of collecting and settling basins will permit the collection and treatment of waste-water resulting from washing vehicles and equipment. All effluent water will be monitored and treated to meet water-quality release criteria before being discharged. Sediment from sedimentation basins will be stabilized and disposed of in the Waste Containment Cell.

Issued in Washington, DC on August 27, 1986.

This long-term management project at the NFSS is expected to be implemented in the next 5 to 10 years based on the availability of funds and other priorities within the Surplus Facilities Management Program. In the meantime, the interim waste containment facility to be completed in the fall of 1986 will contain the radioactive material and protect the public health and safety.

A. David Rossin,

Assistant Secretary for Nuclear Energy.

[FR Doc. 86-20103 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-11-NG]

Order Approving Authorization To Import Natural Gas; Petro-Canada Hydrocarbons Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Approving Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order to Petro-Canada Hydrocarbons Inc. granting authorization to import up to 20,500 Mcf per day of Canadian natural gas, not to exceed a total of 150 Bcf, over a 20-year period beginning on the date of first delivery. All of the gas imported pursuant to the authorization will be resold directly to the United States Borax & Chemical Corporation for use at Borax's sodium borate ore processing facilities at or near Boron, California.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 26, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-20047 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-38-NG]

Spot Market Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Spot Market Corporation (SMC) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 86-38-NG authorizes SMC to import up to 50 Bcf per year over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, August 27, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-20102 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-53; OFP Case No. 61056-9296-01,02-12]

Acceptance of Petition From Basic American Foods for Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance.

SUMMARY: On August 12, 1986, Basic American Foods (Basic) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" of "the Act") based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum for two (2) auxillary boilers to be located at its proposed American I Cogeneration Project in King City, California. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation (MFBI) consisting of a boiler. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the exemption based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum are found at 10 CFR 503.32

The project for which the exmption is requested is an auxillary boiler system consisting of two (2) oil/gas fired boilers, each capable of 110,000 pounds per hour steam peak rating.

ERA has determined that the petition for exemption is sufficient to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3 and 501.63. ERA retains the right, however, to request additional relevant information from Basic any time during the proceeding as circumstances may require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before October 20, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket ERA-C&E-86-53 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-076, Washington, D.C. 20585, Telephone: (202) 252-9506.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone: (202) 252-6947.

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or petroleum in new MFBI's that consist of a boiler unless an exemption for such use has been granted by ERA. Basic has filed a petition with ERA requesting a permanent exemption to permit the use of natural gas or No. 2 fuel oil as the primary energy source of an auxillary boiler steam system proposed for its American I Cogeneration Project in King City, California, in order to provide an alternative steam supply during unscheduled outages of the congeneration plant and during certain periods of the year when it is uneconomical to produce power.

Exemption Petition

Section 212(a)(1)(A)(ii) of the Act and 10 CFR § 503.32 provide for a permanent exemption for lack of alternate fuel supplies at a cost which does not substantially exceed the cost of using imported petroleum. In accordance with the requirements of § 503.32(c), Basic's petition includes the following evidence in order to make the demonstration required by this section:

(1) The unit will be operated less than 1500 full load hours annually;

(2) Use of mixtures is not feasible, as required under § 503.9 of these regulations; and

(3) Environmental certifications, as required under § 503.13(b) of these regulations.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for lack of alternate fuels for units operated less than 1500 hours, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Basic has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by Basic pursuant to 10 CFR § 503.13, together with other relevant information. Unless it appears during the proceeding on Basic's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that Basic is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on August 25, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulotory Administration.

[FR Doc. 86-20104 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-04; OFP Case No. 66017-9266-01-23]

Exemption Petition; Power Developers, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Extension of Decision Period on Petition for Exemption by Power Developers, Inc. for a Proposed Facility Near Scottsdale, Arizona.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by forty-five (45) days to October 4, 1986, the Decision Period within which to either grant or deny the request for a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act) filed by Power Developers, Inc. for its proposed electric power production facility to be located near and east of Scottsdale, Arizona.

Section 501.68(a)(2) of 10 CFR Part 501—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a specified date by publishing such notice in the **Federal Register** and stating the reasons for such extension.

This extension by ERA of the decision period to grant or deny the petition is necessary to properly consider issues associated with this case.

Issued in Washington, DC, on August 28, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-20048 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-46; OFP Case No. 67043-9280-21-22]

Order Granting the City Santa Clara, CA, Proposed Peaking Facility, Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting Exemption.

SUMMARY: On June 5, 1986, the City of Santa Clara, California (Santa Clara), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), which (1) prohibit the use of petroleum and natural gas as a primary enegy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

Santa Clara requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation with a net design capacity of 28.1 MW, together with generator auxiliaries and associated facilities. The proposed unit is to be installed in the northwest portion of the City of Santa Clara, California. The powerplant will utilize natural gas as its primary fuel with distillate fuel serving as a back-up emergency fuel.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to Santa Clara a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine installation at the facility in the City of Santa Clara, California.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on November 4, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Office, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-093, Washington, DC 20585, Telephone: (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. Santa Clara has filed a petition for a permanent peakload powerplant exemption to use natural gas as a primary fuel source with distillate fuel as a backup emergency fuel in its proposed simple-cycle combustion turbine installation in Santa Clara, California.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this unit in the **Federal Register** on June 24, 1986 (50 FR 22967), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of Santa Clara's petition to the Environmental Protection Agency (EPA) for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments or requesting a public hearing closed August 8, 1986. No comments were received and no hearing was requested.

Santa Clara certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric generating unit must be "a powerplant, the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

Santa Clara certified that the facility will be operated as a peakload powerplant, with its annual operation not to exceed 28,100 MW hours.

Santa Clara has also certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(i') for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a

concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that Santa Clara has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants Santa Clara a permanent exemption for a peakload powerplant to be installed at its facility in the City of Santa Clara, California, permitting the use of natural gas or petroleum as a primary energy source in the unit.

Pursuant to section 702(c) of the Act and 10 CFR § 501.69, any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC, on August 27, 1986.

Robert L. Davies,

Director, Coal and Electricity Office, Economic Regulatory Administration.

[FR Doc. 86-20049 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP83-8-006 and CP84-441-017]

Columbia Gas Transmission Corp. v. Tennessee Gas Pipeline Co.; a Division of Tenneco, Inc.; Complaint and Motion for Summary Disposition or Alternatively Request for Hearing

September 2, 1986.

Take notice that on July 28, 1986, Columbia Gas Transmission Corporation (Columbia) tendered for filing a Complaint And Motion For Summary Disposition Or Alternatively Request For Hearing Against Tennessee Gas Pipeline Company (Tennessee). Columbia, pursuant to the terms of the stipulation and agreements (Stipulations) filed May 2, 1984 in Docket No. RP83-8-000, *et al.* and February 5, 1985 in Docket No. CP84-441-000, *et al.*, hereby complains and objects to the take-or-pay costs recovered under those Stipulations which are purportedly detailed in the reports filed by Tennessee pursuant to said Stipulations.

In particular, Columbia hereby protests that Tennessee's take-or-pay costs recovered under those Stipulations which are purportedly detailed in the reports filed by Tennessee pursuant to said Stipulations.

In particular, Columbia hereby protests the Tennessee's take-or-pay costs recovered under those Stipulations are unjust, unreasonable and imprudently incurred, and that Tennessee's related gas reserve acquisitions and purchase practices are also imprudent. Pursuant to the terms of the Stipulations, Columbia hereby requests the Commission to summarily find that said take-or-pay costs have been imprudently incurred and should be refunded. Alternatively, Columbia requests the Commission to establish procedures for examining the reasonableness and prudence of Tennessee's take-or-pay payments and to determine whether refunds of payments made by Columbia to Tennessee related to such take-or-pay is required.

Any person desiring to be heard to to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before October 2, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the July 28, 1986, shall also be due on or before October 2, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20071 Filed 9-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2640-001 et al.]

Phillips Petroleum Co. et al.; Applications for Abandonment and Blanket Limited-Term Certificate With Pre-Granted Abandonment Authorization

September 2, 1986.

Take notice that each of the applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service or for a blanket limited-term certificate with pre-granted abandonment authorization to sell natural gas in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
G-2640-001, B, Aug. 20, 1986	Phillips Petroleum Co., 336 Home Savings & Loan Bldg., Bartlesville, OK 74004.	United Gas Pipe Line Co., Carthage Field, Panola County, TX.	([2])	
CI86-690-000, A, Aug. 20, 1986	....do	....do [5]		
CI86-686-000, B, Aug. 20, 1986	Franks Petroleum Inc., *et al., KP.O. Box 7665, Shreveport, LA 71137-7665* [6].	United Gas Pipe Line Co., Sibley Field, Webster Parish, LA [6].	([4])	
CI86-687-000, B, Aug. 20, 1986	....do [7]	United Gas Pipe Line Co., Castor Field, Bienville Parish, LA [8].	([4])	
CI86-694-000, B, Aug. 21, 1986	....do [9]	United Gas Pipe Line Co., Driscoll Field, Bienville Parish, LA [10].	([4])	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [9]	Pressure base
CI86-697-000, B, Aug. 22, 1986 [11].	Reading & Bates Petroleum Co., 3200 Mid-Continent Tower, Tulsa, OK 74103.	ANR Pipeline Co., Block 504, West Cameron Area, offshore Louisiana.	([12])	
CI86-685-000, B, Aug. 19, 1986 [13].	Richard B. Nelson, 401 Edward Street, Suite 2100, Shreveport, LA 71101-3140.	Arkla Energy Resources, a Division of Arkla, Inc., Ada and Sibley Fields, Bienville and Webster Parishes, LA [14].	([15])	
CI86-172-004, B, Aug. 11, 1986 [16].	Sun Exploration & Production Co., *et al.*,[17] P.O. Box 2880, Dallas, TX 75221-2880.	Texas Gas Transmission Corp., MIOGYP RA SU B, Trahan No. 1 well, Maurice Field, Lafayette Parish, LA.	([18])	
CI86-644-000, A, Aug. 11, 1986	do	do [19]		
CI86-663-000, B, Aug. 12, 1986 [20].	M.H. Marr, 2500 Republic National Bank Building, Dallas, TX 75201, James M. Forgotson, 1200 Slattery Building, Shreveport, LA 71101.	United Gas Pipe Line Co., M.H. Marr King Estate Unit No. 1 well, W/2 Section 17-T21N-R4W, and Amoco Production Co. Clements No. 1 Well, Section 21-T21N-R4W, Lisbon Field, Claiborne Parish, LA.	([21])	

[1] Not used.

[2] Applicant requests authorization for a limited-term abandonment for a 2-year period of a sale of gas to United Gas Pipe Line Co. covered under contract dated Feb. 25, 1983, and Applicant's FERC Gas Rate Schedule No. 13. Applicant states that all the wells subject to the contract have been shut-in since June 1986, and that the situation involves substantially reduced takes without payment. Applicant states that the maximum lawful price is the interstate rollover price, and that the wells and volumes attributable to its interest are as follows:

Well name	Monthly volume (Mcf)
Ashton No. 1	408
Beasley No. 1	310
Callow No. 1	200
Naomi No. 1	563
Panola No. 1	230
Daniels A No. 1	285
Panola No. 1-C	238
Total	2,234

Applicant states that it expects to make sales in the interstate spot market and has therefore filed for a blanket certificate in Docket No. CI86-690-000.

[3] Applicant requests authorization in Docket No. CI86-690-000 for a limited-term blanket certificate with pre-granted abandonment to make sales for resale in interstate commerce of gas subject to the limited-term abandonment requested in Docket No. G-2640-001. Applicant requests that the terms be for a two year period to run concurrently with Applicant's requested limited-term abandonment. Applicant also states that it will file any rate schedules required by the order granting the certificate, however Applicant requests a reporting requirement in lieu thereof.

[4] Applicant states that this temporary abandonment is requested for all parties for whom Applicant operates including Osias Biller, L.R. Brammer, Jr., John C. Ellis, G.E. Huggs, Hurley Oil & Gas Co., William Jarratt, LPC Energy, Inc., Wanda L. McIntyre, Petrofunds, Inc., White Parrino Resources, Herman Williamson, Jr., James C. Galbraith, 1984 Galbraith Ltd. Partnership, Sinbad Oil & Land Co., Ed H. Stevens, Agnes E. Stevens, W.G. Anderson, H.E. Anderson, H.H. Alford, IV, Marjorie Alvord, Jack S. Coussons, Drovia Oil Corp., Robert A. Flynt, Frank J. Hall, William H. Hendrick, M&V Oil Co., Carl R. Corley, Fred H. Plitt, Randal Lewis, A.T. Dickerson and John Franks.

[5] Applicant requests authorization to abandon a sale of gas for a 3-year period to United Gas Pipe Line Co. Applicant states that by letter dated June 11, 1986, United informed Applicant that it would not purchase gas until further notice from wells covered by their Aug. 21, 1971, contract (United Contract No. 5129). Applicant states that the wells and their current deliverability are as follows:

Well name	NGPA classification	Current deliverability Mcf/d
HOSS B SUB; Bodcaw No. 1	104 Flowing—Small Producer	480
HOSS A SUB; Bodcaw No. 2	104 Post 1974	500
HOSS A SUN; Burson No. 1-D	104 1973-74 biennium	110
HOSS A SUO; P.V. Smith No. 1	104 1973-74 biennium	Shut-in
HOSS B SUC; Crichton No. 1	104 Flowing—Small Producer	575
HOSS A SUC; Crichton No. 1-D	104 Flowing—Small Producer	225
HOSS A SUA; Crichton No. A-1	104 Flowing—Small Producer	180
HOSS B SUP; Crichton No. B-1	104 Flowing—Small Producer	360
HOSS A SUH; Fogle No. 1 and 1-D	104 1973-74 biennium	450
HOSS B SUI; Irene Gray No. 1	104 1973-74 biennium	Shut-in
HOSS A SUI; Irene Gray No. 1-D	104 1973-74 biennium	800
HOSS A SUG; La. Meth. Orph No. 1-D	104 Flowing—Small Producer	Shut-in
HOSS B SUE; Reed No. A-1	104 Flowing—Small Producer	240
HOSS A SUE; Reed No. A-1-D	104 Flowing—Small Producer	320
HOSS B SUD; Reed No. B-1	104 Flowing—Small Producer	600
HOSS B SUF; Sims No. 1	104 Flowing—Small Producer	550
HOSS B SUJ; Effie Smith No. B-1	104 1973-74 biennium	450

Applicant states that United is not paying for gas not taken. Applicant also states that the term of the contract expires June 1, 1991, but that it has given United written notice of cancellation effective concurrent with any issuance of a certificate of temporary abandonment herein. Applicant plans to market the gas to another purchaser.

[6] Applicant operates under a small producer certificate in Docket No. CS71-1014.

[7] Applicant states that this temporary abandonment is requested for all parties for whom Applicant acts as operator including Herschel M. Downs, Robert P. Evans, 1975 Galbraith Ltd. Partnership, T.L. James & Co., Inc., LPC Energy, Inc., Louisiana-Hunt Petroleum, Placid Oil Co., Rosewood Resources, SWEPCO Fuel Group, Wheless Industries, Inc., Tensas Delta Land Co., White-Parrino Resources Partnership, William Beasely, Jr., Carl R. Corley, Fred H. Plitt and John Franks.

[8] Applicant requests authorization to abandon a sale of gas for a 3-year period to United Gas Pipe Line Co. Applicant states that United has ceased taking gas from the wells covered by their Dec. 8, 1977, contract (United Contract No. 6278). Applicant states that the wells and their current deliverability are as follows:

Well name	NGPA classification	Current deliverability Mcf/d
PET RA SUA; Bodcaw No. C-1	104 Post 1974	150
FLA RA SUB; Pardee Co., No. A-1	104 Post 1974	73

Applicant states that United is not paying for gas not taken. Applicant also states that the term of the contract expires Dec. 9, 1987, but that it has given United written notice of cancellation effective concurrent with issuance of temporary abandonment herein. Applicant plans to market the gas to another purchaser.

[9] Applicant states that this temporary abandonment is requested for all parties for whom Applicant acts as Operator including Osias Biller, G.E. Huggs, Kelly Oil Acquisition Venture, LPC Energy, Inc., Petrofunds, Inc. and John Franks.

[10] Applicant requests authorization to abandon a sale of gas for a 3-year period to United Gas Pipe Line Co. Applicant states that by letter dated June 11, 1986, United informed Applicant that it would not purchase until further notice gas from wells covered by their June 22, 1966, contract (United Contract No. 4630). Applicant states the wells and their current deliverability are as follows:

Well name	NGPA classification	Current deliverability Mcf/d
HOSS SUU; Con Can No. C-1	104 Flowing—Small Producer	62
HOSS SUI; Davis Bros. Lumber Co. No. 1	104 Flowing—Small Producer	244
U PET SUQ; Davis Bros. Lumber Co. No. B-1	107 Prod. Enhancement	78
U PET SUH; Davis Bros. Lumber Co. No. F-1	104 Flowing—Small Producer	224
U PET SUE; Davis Bros. Lumber Co. No. 1-1	104 Flowing—Small Producer	80
U PET SUJ; Davis Bros. Lumber Co. No. C-1 Alt	107 Prod. Enhancement	328
HOSS SUE; Holland No. 1	104 Flowing—Small Producer	540
HOSS SUN; Smelly No. 1	107 Prod. Enhancement	1,537
U PET SUN; Smelly No. 1-O	107 Prod. Enhancement	364
HOSS SUO; W.G. Smelly No. A-1	104 Recomp. Small Producer	1,162
U PET SUP; Williams No. A-1	104 Prod. Enhancement	84

Applicant states that United is not paying for gas not taken. Applicant also states that the term of the contract expires Jan. 1, 1990, but that it has given United written notice of cancellation effective concurrent with any issuance of a certificate of temporary abandonment herein. Applicant plans to market the gas to another purchaser.

[11] Additional information received Aug. 27, 1986.

[12] Applicant, a small producer certificate holder in Docket No. CS71-522, requests a limited-term abandonment, for a period of three years of excess gas not taken by ANR Pipeline Co. from Applicant's 30 pct interest in certain wells located in Block 504, West Cameron Area, offshore Louisiana, that are subject to an Oct. 27, 1977, contract. Applicant states actual takes for the last 12 months have been far below contract requirements, and the purcheser indicates that this trend will continue and therefore has provided Applicant an excess release agreement for those quantities of surplus gas that the purchaser is unable to take. Applicant states ANR is not paying for gas volumes not being taken. Applicant proposes to sell the abandoned volumes on the spot market to Hadson Gas Systems, Inc. and/or Seagull Energy Corp. The wells involved are shown below:

Well name	NGPA category	Approximate deliverability from 30 pct interest (Mcf/d)	Approximate volumes during 3-year period (Mcf)
A-1D	104 Post-1974	630	689,850
A-3	104 Post-1974	750	821,250
A-6	102(d)	450	492,750
Total		1,830	2,003,850

[13] Additional information filed August 26, 1986.

[14] Applicant requests authorization for permanent abandonment of a sale of gas to Arkla, from certain existing wells and any wells hereafter drilled in the acreage covered under three contracts dated Mar. 5, 1975, Apr. 4, 1979, and Aug. 1, 1978. Applicant states that by letter egreement dated July 9, 1986, Arkla and Applicant permanently released each other from all further obligations under these contracts, and Applicant has agreed to waive any accrued take-or-pay liability on the part of Arkla. Applicant states that Arkla is not paying for gas not taken, and that because of Arkla's take situation, the sales cannot be economically maintained. Applicant states that the wells are as follows:

Well name	Estimated deliverability	NGPA pricing (last effective rate)
Coussins No. 1	1,500 Mcf/day	Section 104 ($2.18).
Dons White No. 1	300 Mcf/day	Section 104 ($2.18).
Archie Davis No. 1	150 Mcf/day	Section 106(a) ($0.958).
Bates No. 1	400 Mcf/day	Section 106(a) ($0.958).
Bates No. 1-D	100 Mcf/day	Section 106(a) ($0.958).

Applicant plans to sell the gas into the spot market in the short term, and it is still negotiating for potential customers.

[15] Applicant holds a small producer certificate in Docket No. CS71-960.

[16] Additional information received Aug. 22, 1986.

[17] *Et al.* parties are Thelma Bauerdorf and Constance Cartwright TTS UW George Bauerdorf, Glen Hamner, A.M. Jackson, Marcel D. Landry, Estate of Gordan M. Mace, Laura & Felicia C. Trahan, Ralph T. Anderson, George C. Francisco III and Tom T. Moore.

[18] Applicant requests a 2-year limited-term abandonment authonzation to Texas Gas from the MIOGYP RA SU B of tha Trahan No. 1 well, Maurice Field, Lafayette Parish, LA, in order to seek other markets. Involved is NGPA section 104 minimum rate gas, and Applicant states the well has not produced since Jan. 13, 1981. However for the 90-day penod prior to temporary abandonment of the subject well, the subject zone produced an average of 435 Mcf/d. Applicant states it plans to rework the MIOGYP RA SU B of the Trahan No. 1 well, but the current contract price is not enough to justify such work. Applicant estimates that the deliverability from the well, after enhancement work, will be approximately 5,000 Mcf/d. Applicant states it will be facing a most difficult situation with the NGA gas that could be made available to tne marketplace but will not be taken by Texas Gas over the next 2 years, and that Applicant will suffer a significant loss of cash flow that might otherwise be used to fund additional exploration and production activities. Applicant states Texas Gas has agreed to release the gas available from the subject well for a 2-year penod and has agreed to support its application.

[19] Applicant requests expeditious consideration for a 2-year blanket limited-term certificate to make sales to other markets for resale in interstate commerce of volumes of gas which Texas Gas agreed to release and are subject to the limited-term abandonment in Docket No. CI66-172-004. Applicant states without expeditious consideration, Applicant would be unable to move these reserves and would be suffering a loss of cash flow.

[20] Additional information received Aug. 27, 1986.

[21] M.H. Marr, small producer certificate holder in Docket No. CS71-671, and James M. Forgotson, small producer certificate holder in Docket No. CS75-372 request permanent abandonment of certain sales to United that are covered under a gas purchase contract dated Feb. 22, 1982. Applicant states United has advised Applicants it intends to suspend all purchases of NGA gas covered by the contract as of Aug. 14, 1986, the date the contract expires. Applicants state United has not paid for that portion of the annual minimum quantity which United has failed to take during any contract year dunng the term of the contract. The wells involved are shown below:

Well name	NGPA category	Approximate deliverability (Mcf/d)
M.H. Marr King Estate Unit No. 1	104—recompletion	280
Amoco Production Co. Clements No. 1	104 Post-1974	92
Total		372

Applicants state they do not yet have a commitment for the sale of the gas from said wells, however they have contacted Mid-Con Services Corp. for possible sale of the subject gas in the intrastate market. Applicants state that in view of the fact that United has advised Applicants that they are precluded from making any deliveries to United from the subject wells, Applicants will suffer a severe economic hardship by being required to shut-in the subject wells, and, therefore, request expeditious consideration of their abandonment application.

Filing Code: A—Initial Service. B—Abandoment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial succession.

[FR Doc. 86-20072 Filed 9-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM83-71-040 and RM83-71-041]

Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions; Order Granting Rehearing For Purpose of Further Consideration

Issued August 25, 1986.

Before Commissoners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On June 30, 1986, the Commission issued Order No. 380-E, [1] in the captioned proceeding, on remand from *Wisconsin Gas Co. v. FERC.* [2] In its order, the Commission reiterated its position that § 154.111 of its regulations [3] bars a downstream pipeline from passing through upstream pipeline minimum commodity bill charges in its own minimum commodity bill charges. On July 24, 1986, Midwestern Gas Transmission Company (Midwestern) and Indiana Gas Company, Inc,. (Indiana Gas) filed request for rehearing of Order No. 380-E pursuant to Rule 713 of the Commission's Rules of Practice and Procedure. [4] Midwestern requests that the Commission grant rehearing and permit it to pass such upstream charges through its minimum commodity bill. Indiana Gas seeks rehearing to the extent that Order No. 380-E precludes consideration, in individual downstream pipeline rate cases, of the type of fixed-costs and the appropriate methodology for allocating such costs in the downstream pipeline's rates.

In order to afford additional time to consider the respective requests for rehearing, it is necessary to grant rehearing solely for the limited purpose of further consideration.

The Commission orders: Rehearing of Order No. 380-E is granted solely for the limited purpose of further consideration. As provided in Rule 713(d) [5] of the Commission's Rules of Practice and Procedure, no answers to the respective requests for rehearing are permitted.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20070 Filed 9-4-86; 8:45 a.m.]

BILLING CODE 6717-01-M

[1] 35 FERC ¶ 61,348 (1986).
[2] 770 F.2d 1144 (D.C. Cir. 1985).
[3] 18 CFR 154.111 (1985).
[4] 18 CFR 385.713 (1986).
[5] 18 CFR 713(d) (1985).

Office of Hearings and Appeals

Cases Filed the Week of August 1 Through August 8, 1986

During the Week of August 1 through August 8, 1986 appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director Office of Hearings and Appeals.

August 27, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 1 through Aug. 8, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 4, 86	Molo Oil Company, Dubuque, IA	KEE-0060	Exception to the Reporting Requirements. If Granted: Molo Oil Company would not be required to file Form EIA-782B, "Resellers/Retailers Monthly Petroleum Product Sales Report."
Aug. 7, 86	Nourse & Associates, P.S., Seattle, WA	KFA-0040	Appeal of an information request denial. If Granted: the July 17, 1986 Freedom of Information Request Denial issued by the Office of Management Services would be rescinded and Nourse & Associates, P.S. would receive access to documents concerning the Fort Peck-Havra 230/KV transmission line, Contract No. DE-AC65-84WP 15857 with American Line Builders, Inc.
Aug. 7, 86	Texaco, Inc., White Plains, NY	KRZ-0043	Interlocutory. If Granted: The July 9, 1986 Special Report Order issued to Texaco, Inc. (CAS No KRX-0016) would be rescinded.
Aug. 5, 86	Empire Gas Corp. Washington, DC	KEF-0048	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the January 6, 1986 Consent Order entered into with Empire Gas Corporation.

REFUND APPLICATIONS RECEIVED

7/31/86	Gulf/Eddie's Gulf	RF40-3227
7/31/86	Gulf/Rudy's Gulf	RF40-3228
7/31/86	Gulf/Cloverdale Gulf	RF40-3229
7/31/86	Gulf/Don's Service Center	RF40-3230
7/31/86	Gulf/Eva Lindsay Gulf Service	RF40-3231
7/31/86	Gulf/Van Meter's Grocery	RF40-3232
7/31/86	Gulf/Graymart, Inc.	RF40-3233
7/31/86	Gulf/Riggs Gulf Service	RF40-3234
7/31/86	Gulf/Bob's Holiday Gulf Service	RF40-3235
7/31/86	Gulf/Parrish Gulf Service	RF40-3236
7/31/86	Gulf/Fairmont Gulf Service	RF40-3237
7/31/86	Gulf/Holmes Gulf Station	RF40-3238
7/31/86	Gulf/Perry's North Main Gulf	RF40-3239
7/31/86	Gulf/Jerry's Gulf	RF40-3240
7/31/86	Gulf/Nazionale Gulf Station	RF40-3241
7/31/86	Gulf/Plagens Gulf Station	RF40-3242

REFUND APPLICATIONS RECEIVED—Continued

7/31/86	Gulf/Knight Gulf Station	RF40-3243
7/31/86	Gulf/Baker's Walkwick Gulf	RF40-3244
7/31/86	Gulf/Leighty's Gulf	RF40-3245
7/31/86	Gulf/Benben's Gulf	RF40-3246
7/31/86	Gulf/Bryant Enterprises, Inc.	RF40-3247
7/31/86	Gulf/Alamo Gulf Service	RF40-3248
7/31/86	Navajo/Atchison, Topeka & Santa Fe Railroad.	RF203-8
8/4/86	Gulf/Hendricks Oil Co., Inc.	RF40-3250
8/4/86	APCO/Atchison, Topeka & Santa Fe.	RF83-150
8/4/86	Beacon/Automatic Gasoline Systems.	RF238-68
8/4/86	Beacon/Westside Beacon	RF238-69
8/4/86	Beacon/Gas-O-Teria	RF238-70
8/4/86	Beacon/Don Rose Oil Co., Inc.	RF238-71

REFUND APPLICATIONS RECEIVED—Continued

8/4/86	Elm City/Ultramar Petroleum, Inc.	RF255-2
8/4/86	Gulf/United Illuminating Co.	RF40-3249
8/4/86	Amoco/Public Service Co., of Indiana.	RF21-12622, RF21-12623
8/4/86	Amoco/Rosebud Sioux Tribe	RF21-12624, RQ21-321
8/4/86	Gulf/Farrell Lines	RF40-3251
8/4/86	Marine/Maffitt Oil Co.	RF257-1
8/4/86	Marine/Len Theoele Service	RF257-2
8/5/86	Sid Richardson/Boyd's, Inc.	RF26-47

REFUND APPLICATIONS RECEIVED—Continued

8/1/86 thru 8/8/86	Marathon Refund Applications	RF250-832 thru RF250-936
8/1/86 thru 8/8/86	Mobil Refund Applications	RF225-9894 thru RF225-10032

[FR Doc. 20050 Filed 9-4-86; 8:45 am]
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Issuance of Decisions and Orders; Week of July 7 through July 11, 1986

During the week of July 7 through July 11, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Notural Resources Defense Council, 7/11/86; KFA-0031

The Natural Resources Defense Council (NRDC) filed an appeal from a partial denial by the Nevada Operations Office of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the appeal, the DOE found that the Nevada Operations Office had adequately searched for the requested document. In addition, the DOE found that the NRDC's request for a waiver of search and copying fees should be granted. Important issues that were considered in the Decision and Order were (i) the adequacy of the search, and (ii) whether the sale of a publication derived from the information gained through a FOIA request bars a request for a fee waiver.

Remedial Order

Texoco Inc., 7/9/86; BRO-1467

Texaco Inc. objected to a Proposed Remedial Order in which the Office of Special Counsel for Compliance (OSC) alleged that Texaco violated the refiner price rules contained in Part 212, Subpart E in sales of motor gasoline to the Office of General Services (GS), an agency of the State of New York. The PRO alleged that Texaco overcharged GS by $260,147 as a result of Texaco's improper class of purchaser assignment of GS. The PRO stated that during the audit period, Texaco charged GS prices for motor gasoline which were established for a bulk plant operated by a Texaco consignee-distributor even though GS did not receive gasoline from that bulk plant. During the course of the proceeding, OSC argued further that, even if the gasoline delivered to GS passed through the bulk plant owned by the Texaco consignee distributor, Texaco was obligated to assign GS to a class of purchaser at the Texaco bulk plant from which the gasoline was initially lifted. In rejecting the OSC arguments, the DOE found that OSC failed to support its contention that GS received deliveries directly from a Texaco bulk plant during the audit period. The DOE also found that Texaco's assignment of GS to a class of purchaser at the consignee-distributor's bulk plant was reasonable and in accord with DOE Regulations. Accordingly, the Texaco Statement of Objections was sustained and the Proposed Remedial Order issued to Texaco on August 6, 1981 was rescinded.

Vanderbilt Energy Corp., 7/9/86; HRO-0080

Vanderbilt Energy Corporation objected to a Proposed Remedial Order which the Southwest Regional Office of the Economic Regulatory Administration issued to the firm on June 28, 1982. In the Proposed Remedial Order, the Economic Regulatory Administration found that the firm had improperly certified as stripper well properties four properties which it operated. These certifications were based upon the firm's use of sales data rather than production data to calculate the average daily production (ADP) for the properties. After considering the firm's Statement of Objections, the DOE concluded that the allegations with respect to one of the four properties should be withdrawn based upon a calculation of ADP using production data from a 12-month period not previously considered. The DOE concluded that the Proposed Remedial Order with respect to the other three properties, should be issued as a final Order. In doing so, the DOE found that ADP for purposes of determining eligibility for the stripper well exemption must be calculated using available production data, not sales data. The DOE also found that the firm had not shown sufficient recoupment of down days during the measuring year to qualify the properties for the stripper well exemption.

Supplemental Order

Texaco Inc., 7/9/86; KRX-0016

As an administrative convenience to the Economic Regulatory Administration, a Deputy Director of the Office of Hearings and Appeals issued a Special Report Order (SRO) to Texaco Inc. The SRO concerns Texaco's sales of middle distillates and motor gasoline to customers that purchased those products on or before May 15, 1973 pursuant to variable-priced contracts. The SRO requires that Texaco identify those customers and, with respect to each customer, provide the following information: (i) The May 15, 1973 selling price that Texaco assigned to the customer for the product in question; (ii) the price that Texaco charged the customer for that product in an actual sale on or before May 15, 1973; and (iii) the volume of the product sold to the customer in sales in which Texaco used a May 15, 1973 selling price other than that set forth in item ii. The SRO does not request information for customers that are the subject of *Texoco Inc.*, 14 DOE ———, No. HRO-0272 (July 23, 1986).

Implementation of Special Refund Procedures

Port Oil Co., Inc., 7/9/86; HEF-0153

The DOE issued a Decision and Order implementing a plan for the distribution of $20,965.53, plus accrued interest, received as the result of a consent order entered into by Port Oil Company, Inc. and the DOE. The DOE determined that the Port settlement fund should be distributed to customers that were injured as a result of purchases of motor gasoline from Port during the period April 1, 1979 through December 31, 1979. The Decision discusses specific information to be included in refund applications.

Refund Applications

Boyside Fuel Oil Depot Corp., v. Sovino Oil & Heoting Co., Inc., 7/11/86; RF244-1

The DOE issued a Decision and Order concering an Application for Refund in the Bayside Fuel Oil Depot Corp. special refund proceeding. The applicant was a reseller whose purchases of No. 2 heating oil from Bayside rendered it eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the application under the standards specified in *Bayside Fuel Oil Depot Corp.*, 13 DOE ¶ 85,139 (1985). The refund granted totals $2,667, representing $1,938 in principal and $729 in interest.

Breckenridge Gasoline Co., Warren Petroleum Co., E.I. Du Pont De Nemours & Co., 7/9/86; RF60-1, RF60-2

Warren Petroleum Company filed an Application for Refund seeking a portion of funds remitted by Breckenridge Gasoline Company pursuant to a consent order that Breckenridge entered into with the DOE. Warren purchased 31,427,430 gallons of natural gas liquid products from Breckenridge during the consent order period. The DOE found that for a major portion of the NGLPs that Warren purchased, Warren was charged prices below the average market price levels. As a result, Warren obtained a substantial cost benefit. Considering the competitive advantage that Warren enjoyed from its purchases from Breckenridge, the DOE limited the refund to Warren to an amount equal to the number of gallons that Warren purchased at above market prices multiplied by the per gallon refund rate. The total amount of refund granted to Warren was $120,490.00 which includes $88,294.11 in principal and $32,195.89 in accrued interest.

E.I. du Pont de Nemours & Co. also filed an Application for Refund in the Breckenridge refund proceeding on the basis that it purchased the Breckenridge products from Warren. Du Pont used the Breckenridge products in its petrochemical production process. Since Du Pont was an end-user, the DOE determined that the firm should receive a refund in proportion to the volume that the firm purchased without a detailed showing of injury. The amount of refund granted to Du Pont was $4,620.60 in principal and $1,685.40 in accrued interest.

Conoco, Inc., Consumers, Inc., 7/10/86; RF34-33

The DOE issued a Decision and Order concerning an Application for Refund filed on the basis of the procedures outlined in *Office*

of Special Counsel, 11 DOE ¶ 85,226 (1984) (Conoco). Consumers, Inc., applied for a refund based on purchases averaging less than 50,000 gallons per month, and was presumed to have been injured as a result of the alleged overcharges. After examining the evidence and supporting documentation, the DOE determined that the applicant's claim was meritorious, and that the firm should be granted a refund. The total amount of the refunds granted in this decision was $6,333 including interest.

Earth Resources Co., Chevron U.S.A., Inc., 7/9/86; RF-239-15

The DOE issued a Decision and Order concerning an Application for Refund filed by Chevron U.S.A. Inc. The firm applied for a refund based on the procedures outlined in *Earth Resources Company*, 13 DOE ¶ 85,384 (1984), governing the disbursement of settlement funds received from Earth Resources pursuant to a 1981 consent order. In its Application, Chevron claimed a refund based on a single purchase of Earth Resources product. The DOE initially determined that Chevron was a spot purchaser of Earth Resources product and, under the spot purchaser presumption, should be presumed not to have been injured by the alleged overcharges. Chevron attempted to rebut that presumption by demonstrating that its purchase was at a price above the market average for the relevant product. However, the DOE found that Chevron had failed to prove injury, since the firm could not show that it subsequently sold the Earth Resources product at a loss. Chevron's application was therefore denied.

Eastern of New Jersey, Inc., Atlantic Highlands Real Estate et al., 7/7/86; RF232-107 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 50 applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds granted total $38,383, representing $23,972 in principal and $14,411 in interest.

Eastern of New Jersey, Inc., Bogen Division et al., 7/7/86; RF232-1 et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 49 applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶85,364 (1986). The refunds granted total $32,331, representing $20,191 in principal and $12,140 in interest.

Eastern of New Jersey, Inc., Joseph Teshon & Co. et al., 7/7/86; RF232-160 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceedings. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 50 applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶85,364 (1986). The refunds granted total $39,377, representing $24,841 in principal and $14,936 in interest

Eastern of New Jersey, Inc., Liberty Provision et al., 7/7/86; RF232-52 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 50 applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶85,364 (1986). The refunds granted total $51,872, representing $32,393 in principal and $19,479 in interest.

Gulf Oil Corp., Florida Public Utilities Co., 7/11/86; RF40-3197

In this Decision and Order, the Office of Hearings and Appeals (OHA) rescinded a $7,539 refund from the Gulf Oil Corporation escrow account which had been granted to Florida Public Utilities Company (FPUC) in an April 17, 1986 Decision. The prior determination had been based on the assumption that FPUC had been the ultimate consumer of the Gulf propane which it had purchased during the Gulf consent order period. When the OHA subsequently learned the FPUC had resold the propane, it requested that the firm make the showing of injury required of all reseller claimants in the Gulf special refund proceeding. After FPUC informed the OHA that it was unable to make the required injury showing, the OHA issued the present determination which requires the firm to return the $7,539 to the DOE.

Gulf Oil Corp., Glades Road Gulf Service, Foshee Service, 7/10/86; RF40-3150, RF40-3162

The DOE issued a Decision and Order concerning the Applications for Refund filed by Glades Road Gulf Service and Foshee Service, both retailers of Gulf petroleum products. The claimants applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examning the evidence and supporting documentation submitted by the applicants, the DOE concluded that the claimants should received a total of $2,579 ($2,140 principal plus $439 interest).

Gulf Oil Corp., Ledesma's Gulf Service, 7/7/86; RF 40-02830

The DOE issued a Decision and Order concerning an Application for Refund filed by Ledesma's Gulf Service, a retailer of Gulf Oil Corporation petroleum products. The firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, Ledesma's argued that a decline in its annual sales volumes between 1974 and 1975 constituted evidence that it absorbed Gulf's increased prices in an amount greater than its refund claim. In examining Ledesma's application, however, the DOE found that the firm's sales volume did not decrease substantially and, moreover, the small decline that did occur was almost entirely due to decreases in two months. Consequently, the DOE concluded that Ledesma's had not submitted data which convincingly demonstrated cost absorption or injury, and the firm's Application for Refund was denied.

Gulf Oil Corp., South Mississippi Electric Power Association Cooperative, 7/11/86; RF40-3161

The DOE issued a Decision and Order concerning an Application for Refund filed by South Mississippi Electric Power Association Cooperative, an end-user of Gulf petroleum products. The claimant applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation submitted by the applicant, the DOE concluded that the claimant should receive a total of $170 ($141, principal plus $29 interest) based upon a total volume of 115,538 gallons of Gulf product purchases.

Gulf Oil Corp., Thrasher Trucking Co. et al, 7/10/86 RF40-2948 ET A.

The DOE issued a Decision and Order concerning Applications for Refund filed by three end-users of refined petroleum products purchased from Gulf Oil Corporation. In accordance with the procedures established in the Gulf special refund proceeding, the DOE determined that each applicant should receive a refund based on its purchase volumes of Gulf refined petroleum products during the Gulf consent order period. The total amount of refunds approved in this Decision and Order is $3,321 ($2,756 principal plus $565 interest).

Marathon Petroleum Co., Grimm's Diversified Services Corp., 7/9/86; RF250-0001

The DOE issued an order concerning an Application for Refund filed by Grimm's Diversified Services Corp. for a portion of the consent order funds remitted to the DOE by Marathon Petroleum Company. Grimm's substantiated purchases of 1,046,883 gallons of Marathon product, and was therefore granted a refund consisting of $440 principal and $13 interest.

Northwest Pipeline Corp., Arex, Inc., 7/09/86, RF116-1

Arex, Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Northwest Pipeline Corporation. The DOE found that Arex demonstrated that it purchased Northwest natural gasoline during the consent order period and that Arex was injured by those purchases. Using a three-step competitive disadvantage methodology, the DOE calculated a range of Arex's competitive disadvantage. A refund of $12,775.06 was found to compensate Arex for any harm experienced as a result of Northwest's alleged overcharges. In addition, the firm

VOL 51 ISS 172 SE 5 1986 UMI

received accrued interest of $5,826.15 for a total refund of $18,601.21.

Northwest Pipeline Corp., Delgodo Oil Co. Inc., 7/09/86, RF116-4

Delgado Oil Company, Inc. filed an Aplication for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered with Northwest Pipeline Corporation. The firm claimed a refund on the basis of its purchases of natural gasoline from Northwest during the period August 1, 1980 through December 31, 1980. Since that product was decontrolled effective January 1, 1980, the firm was not eligible for a refund, and the request for refund was denied.

Dismissals

The following submissions were dismissed:

Name and Case No.

Ashland Oil, Inc.—HEE-0150
BHP Petroleum Co., Inc.—KRS-0250
Buskrud Oil Company—KEE-0052
Chandler Trailer Convoy—RF153-26
Chandler Trailer Convoy—RF154-23
Chandler Trailer Convoy—RF154-26
Commonwealth Refining Co.—HEG-0011, HEE-0004
Empire Gas Corp.—HRO-0250
Etheridge Oil Company—KEE-0046
Five Points West Gulf—RF40-3160
Jack B. Kelly—RF40-2952
Pickens-Bond Construction—RF153-29
Rogers Gulf—RF40-3163
Scruggs Energy Co., W.W. Scruggs, Donald W. Guillory—KRO-0280
Shreve City Gulf—RF40-3148
Stott & Davis Motor Express—RF40-2955
University Gulf—RF40-3149
Wigwam Gulf Service—RF40-3164

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

August 22, 1986.

[FR Doc. 86-20051 Filed 9-4-86; 8:45 am]

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Issuance of Decisions and Orders; Week of July 14 Through July 18, 1986

During the week of July 14 through July 18, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Minahan, Shapiro & Eggemeyer, P.C., 7/15/86, KFA-0041

The law firm of Minahan, Shapiro & Eggemeyer, P.C., on behalf of Gary Tripp, filed an Appeal from a partial denial of access to records under the Freedom of Information Act (FOIA) by the Assistant Administrator for Management Services, Western Area Power Administration. The Assistant Administrator had partially denied access to records pertaining to the selection of an applicant for a position of Apprentice Electrician, including the SF-171's and Supplemental Qualifications Statements of all the applicants, except Mr. Tripp, and the ratings given to the applicants by the OPM. The DOE determined that the information concerning the unsuccessful applicants was properly withheld pursuant to Exemption 6 of the FOIA, since such applicants had a significant privacy interest in the materials. The DOE further determined that the public interest in ensuring that government hiring regulations were followed outweighed the minimal privacy interest which the successful applicant had in his application materials and OPM rating. Accordingly, the DOE ordered the release of the successful applicant's SF-171, with certain purely private material deleted.

Remedial Order

Getty Oil Company/Economic Regulatory Administration, 7/17/86, HCX-0091, HRR-0074

During the period January 1974 through January 1976 Getty Oil Company (Getty) and the Standard Oil Company (Sohio) engaged in crude oil transactions in which Getty transferred to Sohio price-controlled domestic crude oil and Sohio transferred equal volumes of higher-priced foreign crude oil to Getty. During the three months prior to January 1974 similar transactions occurred, except that BP Trading Ltd. rather than Sohio transferred foreign oil to Getty. In an October 7, 1977 Decision on an appeal from a Remedial Order issued to Getty, the Office of Hearings and Appeals (OHA) found that the Getty-Sohio transactions were constituted an exchange for the entire period, that the value of the foreign oil Getty received therefore was consideration for the domestic oil it transferred, and that the difference between the respective values of the expensive foreign and price-controlled domestic oil constituted overcharges by Getty. *Getty Oil Co.*, 1 DOE ¶ 80,102 (1977). After reviewing this Decision, the United States District Court for the District of Delaware held that the DOE's determination was correct with respect to the period beginning January 1974, but remanded two issues: (i) Whether Getty overcharged Sohio during the months October 1973 through December 1973, and (ii) whether certain per-barrel cash differentials specified in the 1973 contracts between the firms, which amounted to a discount on the price Getty paid for the foreign crude oil, constituted additional overcharges during the period January 1974 through January 1976.

In accordance with the remand order, the Economic Regulatory Administration (ERA) filed a motion to modify OHA's 1977 Remedial Order decision. In its motion, ERA alleged that the economic substance of the October-December 1973 transactions was the same as that of later transactions, and contended that the benefit of the cash differentials Getty received during the period January 1974 through January 1976 constituted additional overcharges. After considering the firm's responses to these contentions, OHA concluded that a new Remedial Order should be issued based upon the allegations advanced in ERA's motion. The decision found that Getty had made additional overcharges of more than $24 million, and directed the firm to remit that amount, plus more than $60 million in accrued interest, to the DOE for restitution in a special refund proceeding conducted under 10 CFR Part 205, Subpart V. OHA also determined that this Decision may not be reviewed by FERC, because it is based on a pre-1977 Notice of Proposed Violation, and any appeal must be taken in the United States District Court for the District of Delaware.

Motion for Discovery

Rodgers Hydrocarbon Corp., Ray V. Rodgers, 7/15/86, HRD-1098, HRH-0298

Rodgers Hydrocarbon Corporation and Ray V. Rodgers (RHC) filed Motions for Discovery and Evidentiary Hearing in connection with the firm's Statement of Objection to a Proposed Remedial Order (PRO) issued to it by the Economic Regulatory Administration on March 29, 1985. In the Discovery Motion, RHC sought administration record and contemporaneous construction discovery concerning the regulatory definition of crude oil. In considering the Motion, the DOE found that RHC had failed to show the unusual factual or legal circumstances necessary to warrant expanded administrative record discovery. Furthermore, the DOE found that RHC had not demonstrated that the crude oil regulation was ambiguous and that it had been interpreted inconsistently. Accordingly, contemporaneous construction discovery was also denied. FInally, the DOE denied RHC's Motion for Evidentiary Hearing, finding that RHC's request, which sought to demonstrate that the firm sold something other than crude oil, concerned a legal, not factual issue, and thus did not present any appropriate issues for an evidentiary hearing.

Implementation of Special Refund Procedures

H.C. Lewis Oil Company, 7/15/86, HEF-0115

The DOE issued a Decision and Order implementing a plan for the distribution of $40,000 recieved as a result of a consent order entered into between the DOE and H.C. Lewis Oil Company (H.C. Lewis) on March 19, 1981. The DOE determined that the H.C. Lewis settlement fund should be distributed to both the identified and as yet unidentified customers who purchased motor gasoline fuel from H.C. Lewis during the period April 1 through December 20, 1979. The specific information to be included in a refund application is set forth in the Decision.

Refund Applications

Aminoil U.S.A., Inc., John Bogle Propane Company, 7/18/86, RF139–154

On July 18, 1986, the Department of Energy issued a Supplemental Order to a Decision and Order issued on June 20, 1986, *Aminoil U.S.A., Inc./William L. Bonnell Company, Inc.*, in which the DOE granted refunds to 15 applicants in the Aminoil special refund proceeding. The Supplemental Order modified the Appendix to the June 20 determination to correct an error in the total refund amount ordered disbursed to John Bogle d/b/a John Bogle Propane Company. Although the principal ($5,000) and accrued interest ($3,212) amounts specified were correct, the total amount of refund payable to Bogle was incorrectly stated. The Supplemental Order authorized disbursement of the corrected total of $8,212 to the firm.

Amtel, Inc./Virgle's Freeway, 7/14/86, RF46–56

Virgle's Freeway, a retailer of motor gasoline, applied for a refund from the Amtel, Inc. consent order fund. In accordance with the procedures for small claims established in *Amtel, Inc.*, 12 DOE ¶ 85,073 (1984), the firm was granted a refund of $1,362 ($696 principal plus $666 interest) based upon its purchase of 686,780 gallons of Amtel motor gasoline during the consent order period.

Beacon Oil Company/Beacon Station 3–398, 7/14/86, RF238–5

The DOE issued a Decision and Order concerning an application for refund filed by Beacon Station 3–398, a retailer of Beacon Oil Company motor gasoline. The applicant filed its application under the procedures established in *Beacon Oil Company*, 14 DOE ¶ 85,011 (1986), governing the disbursement of settlement funds received from Beacon pursuant to a 1979 consent order. The applicant sought a refund based upon a credit memorandum earmarked for the applicant under the provisions of the Beason consent order, but which was never paid to the applicant because of the deregulation of petroleum products in January 1981. The applicant presented material showing that it had never received the benefit of any other previous credit received from Beacon pursuant to the consent order, since it had been consistently reducing its own prices to pass through the credit to its own customer. Following the *Beacon Oil Company* special refund procedures, the DOE therefore approved a $8,637 refund for the firm ($5,000 principal plus $3,637 accrued interest).

Champlain Oil Company, Inc./Jerry's Citgo et al., 7/18/86, RF187–3 ET AL

The DOE granted two Applications for Refund filed in the Champlian special refund proceeding. *Champlian Oil Co.*, 13 DOE ¶ 85,119 (1985). The applicants are resellers whose purchases of Champlain motor gasoline made them eligible for a refund below the $5,000 small claims threshold. The refunds granted total $4,186, representing $2,269 in principal and $1,917 in interest.

Conoco Inc./First Colony Oil Co., Inc., et al., 7/18/86, RF220–20 et al.

The DOE issued a Decision and Order concerning twenty-five Applications for Refund filed in the Conoco refund proceeding. Each of the applicants had purchased refined petroleum products from Conoco Inc., and each sought a portion of the settlement fund obtained by the DOE through a consent order with Conoco. All of the twenty-five firms applied for refunds based upon the procedures for filing small claims outlined in *Conoco Inc.*, 13 DOE ¶ 85,318 (1985). After examining the applications, the DOE concluded that each of the twenty-five firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted was $33,494.

Eastern of New Jersey, Inc./Mother's Food Products, Inc. et al., 7/17/86, RF232–281 et al.

The DOE issued a Decision and Order concerning 66 Applications for Refund filed in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern made them eligible to receive refunds below the $5,000 small claims threshold. In its Decision, the DOE granted 66 refunds under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds totalled $53,714—$33,544 in principal and $20,170 in interest.

Eastern of New Jersey, Inc./Sears, Roebuck, & Co., et al., 7/17/86, RF232–227 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern made them eligible to receive refunds below the $5,000 small claims threshold. In its Decision, the DOE granted 50 refunds under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds totalled $73,305—representing $45,778 in principal and $27,527 in interest.

Gulf Oil Corporation/Belzoni Butane Co., 7/15/86, RF40–3200.

In a July 15, 1986 Decision, the DOE granted Belzoni's Application for Refund. The DOE noted that the Application for Refund filed by the firm that had supplied Belzoni Butane with Gulf propane had been denied, and that Belzoni Butane had maintained cost banks large enough to support the refund claimed. Accordingly, Belzoni Butane was granted a refund of $4,121.

Gulf Oil Corporation/Everready Company, et al., 7/18/86, RF40–76 et al.

The DOE issued a Decision and Order concerning 24 Applications for Refund filed in the Gulf special refund proceeding. The applicants were end-users of petroleum products purchased directly from Gulf. In its Decision, the DOE granted the 24 applications under the standards specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refund granted total $125,715, representing $104,334 in principal and $21,381 in interest.

Gulf Oil Corporation/Florida Power Corporation, 7/18/86, RF40–3205

The DOE issued a supplemental Decision and Order concerning a June 27, 1986 Decision and Order. *Gulf Oil Corp./Florida Power Corp.*, 14 DOE ¶ 85,301 (1986). The DOE determined that the June 27 Decision had granted too small a refund to Florida Power because the Decision understated the total amount of the firm's purchases from Gulf Oil Corporation. Accordingly, the DOE granted Florida Power an additional refund of $39,690 in accordance with the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984).

Gulf Oil Corporation/Look Oil Co., Inc. et al., 7/16/86, RF40–00021, et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed by resellers and retailers of Gulf petroleum products. The firms applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each firm demonstrated that it would not have been required to reduce its selling prices by the amount of the refund claimed during the consent order period, August 1973 through January 1976. The DOE therefore approved refunds to the ten firms totalling $16,184.

Mobil Oil Corporation/A.W. Peters et al., 7/16/86, RF225–7734 et al.

The DOE issued a Decision granting 81 Applications for Refund from the Mobil Oil Corporation escrow account filed by 48 retailers and resellers of Mobil refined petroleum products. Each retailer or reseller of motor gasoline elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Those applicants who purchased products other than motor gasoline received refunds based on the small claims presumption. The DOE granted refunds totalling $75,457.

Mobile Oil Corporation/Action Mobil et al., 7/15/86, RF 225–821 et al.

The DOE issued a Decision granting 81 Applications for Refund from the Mobile Oil Corporation escrow account filed by 60 retailers and resellers of Mobil refined petroleum products. Each retailer or reseller of motor gasoline elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Those applicants who purchased products other than motor gasoline received refunds based on the small claims presumption. The DOE granted refunds totalling $25,906.

Mobil Oil Corporation/Aggers Mobil et al., 7/16/86, RF 225–1190 et al.

The DOE issued a Decision granting 64 Applications for Refund from the Mobil Oil Corporation escrow account filed by 48 retailers of Mobil refined petroleum products. Each retailer of motor gasoline elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Those

applicants who purchased products other than motor gasoline received refunds based on the small claims presumption. The DOE granted refunds totaling $19,042.

Mobil Oil Corporation/Arthur Bidlingmeyer et al., 7/18/86, RF225–1782 et al.

The DOE issued a Decision granting 58 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $19,715 ($16,788 principal plus $2,927 interest).

Mobil Oil Corporation/Bobba's Service Center et al., 7/18/86, RF225–43 et al.

The DOE Issued a Decision granting five Applications for Refund from the Mobil Oil Corporation escrow account filed by resellers and retailers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $2,390 ($2,037 principal plus $353 interest).

Mobil Oil Corp./Georgia Pacific Corp. et al., 7/16/86, RF225–215 et al.

The DOE granted 56 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $37,665: $32,076 in principal plus $5,589 in interest.

Mobil Oil Corp./Kern County Fire Dept. et al., 7/14/86, RF225–1047 et al.

The DOE granted 48 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $8,070: $6,870 in principal plus $1,200 in interest.

Quaker State Oil Refining Corp., Jack's Auto Supply, 7/18/86, RF213–57 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed by ten resellers and one end-user of Quaker State Oil refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products from Quaker State during the consent order period. The resellers' claims were all at or below the $5,000 threshold amount. According to the methodology set forth in the *Quaker State* Decision, 13 DOE ¶ 85,211 (1985), each applicant was found to be eligible for a refund from the Quaker State consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved in the Decision totalled $43,813.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Christiansen LP Gas Service, 7/18/86, RF26–44

The DOE issued a Decision and Order granting a refund from the Sid Richardson Carbon and Gasoline Company and Richardson Products Company deposit fund escrow account to Christiansen LP Gas Service, a reseller-retailer of Sid Richardson propane. Because the applicant claimed purchases below the small claims thereshold level of 720,000 gallons of annual purchases, the DOE did not require the firm to submit a detailed showing of injury. The refund to the applicant totalled $28,182 ($14,723 principal plus $13,459 interest).

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/MFA Oil Company, 7/17/86, RF26–34

The DOE issued a Decision and Order granting in part an Application for Refund filed by MFA Oil Company (MFA), an agricultural cooperative located in Columbia, Missouri, that purchased Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Richardson) propane on the spot market. In accordance with the procedures set forth in *Sid Richardson Carbon and Gasoline Company*, 10 DOE ¶85,056 (1983), MFA was not required to demonstrate that it was injured by the alleged Richardson overcharges in order to receive a refund based on that portion of spot market propane purchased from Richardson and sold to the cooperative's members. However, MFA was not granted a refund based on that portion of spot market propane purchased from Richardson and sold to non-members because MFA elected not to demonstrate that it was unable to pass through the alleged oversharges associated with such purchases. Consequently, MFA was eligible to receive a refund based on purchases of 777,718 gallons. The total refund approved in this Decision is $9,342 ($4,893 principal plus $4,449 interest).

Standard Oil Company (Indiana)/Utah, 7/14/86, RQ21–288

The DOE issued a Decision approving in part the second-stage refund plan submitted by Utah for use of $161,376, a portion of the money available to the state from the Standard Oil Company (Indiana) escrow account. The DOE approved Utah's plan to use $75,000 for Utah LIFT, a computerized rideshare matching service. The DOE rejected the state's proposal to fund a training program for Salt Lake City employees who operate municipal fleet vehicles and also rejected proposed fuel-economy training for school bus drivers and mechanics.

Tipperary Corporation/Warren Petroleum Co./E.I du Pont de Nemours & Co., 7/18/86, RF56–1, RF56–2

Warren Petroleum Company filed an Application for Refund, seeking a portion of funds remitted by Tipperary Corporation pursuant to a consent order that Tipperary entered into with the DOE. Warren purchased 1,803,178 gallons of natural gas liquid products from Tipperary during the consent order period. The firm would be eligible for a refund of $1,548.93 on a volumetric allocation basis. Since this amount is below the threshold level of $5,000, the DOE granted Warren the volumetric allocation amount plus accrued interest of $837.07.

E.I du Pont de Nemours & Co. also filed an Application for Refund in the Tipperary refund proceeding on the basis that it purchased the Tipperary products from Warren. The DOE stated that in approving the refund to Warren, it used the presumption of injury method, and that it did not ascertain whether any portion of the alleged overcharges was passed through to Warren's customers. The DOE stated that it was equitable to approve claims filed by downstream purchasers on the full volumetric basis. Du Pont was therefore granted a refund of $63.65 in principal and $34.40 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Admiral Folding Box, Inc., RF225–3006
Brinks, Inc., RF21–12618
Bristol-Myers Products, RF225–3220
C.O. Thompson Petroleum Co., RF40–2584
Camp Georgetown, RF225–3379, RF225–3380
Car-Graph, Inc., RF225–3235
Detroit Free Press, RF225–3218
Eagle Electric Mfg. Co., Inc., RF225–3314
Equipment Service Company, RF225–3364
F. Ray Moore Oil Co., Inc., KEE–0040
Ft. Worth Star Telegram, RF225–3241
Gibbons Oil Co., RF250–165, RF250–166
Hood Goldsberry, Goldsberry Operating Co., Inc., KRS–0004
John Valone's Gulf Service, RF40–1101
J–C Products Corp., RF225–3239
Jersey City Welding & Machine Work, Inc., RF225–3228
Kinney Chevrolet-Olds, RF225–8892
Krauskopf Bros., Inc., RF225–3286
Lukens Steel Co., RF225–2969
Maple School District, RF225–3125
Marco-Gruen Printers, RF225–3230
Marwais Steel Co., RF225–3233
Midaco Corp., RF225–2973
Mite Corp., RF225–3259
Ormet Corp., RF225–3231
Peerless of America, Inc., RF225–3358
Sacramento Municipal Utility District, RF225–3224
San Diego Gas & Electric, RF40–1585
Schaible Oil Co., RF225–4446
SKF Industries, Inc., RF225–3217
Sno-Dak Oil Company, RF225–7874
Southwestern Precision Co., RF225–3362
Standard Locknut and Lockwasher, Inc., RF225–3234
Texakota Oil Co., HRO–0213
The Davey Company, RF225–3228
Toolcraft Products, Inc., RF225–3237
Valeron Corp., RF225–3232
Vernitron Corp., RF225–3227
W.S. Reichenbach, RF225–8263, RF225–8265
Welded Tubes, Inc., RF225–3221
Wescal Wire & Chain, RF225–3346

Whirltronics, Inc., RF225–3001

Copies of the full text of these decisions and others are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

August 21, 1986.

[FR Doc. 86–20052 Filed 9–4–86; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of July 28 Through August 1, 1986

During the week of July 28 through August 1, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Natural Resources Defence Council, Inc.; 07/03/86; HFA–0262

Natural Resources Defense Council, Inc. filed an Appeal from the Office of Classification's denial of its Freedom of Information Act (FOIA) request. The DOE upheld the Office of Classification's determination that the DOE cannot confirm or deny the existence of the information requested because such confirmation or denial would in itself reveal classified informtion. The DOE also upheld the Office of Classification's determination that if the information existed it would be properly classified and withheld pursuant to Exemptions 1 and 3 of the FOIA. Accordingly, the Appeal was denied.

Remedial Order

Consolidated Materials, Inc.: 08/01/96; HRO–0107

Consolidated Materials, Inc. objected to a Proposed Remedial Order issued to it and its predecessors and affiliates by the Economic Regulatory Administration. In the PRO, the ERA alleged that in one sale of No. 2 diesel fuel, Consolidated's predecessor, Stonewalk Corporation, violated the regulations pertaining to the resale of petroleum products at 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subparts F and H. In concluding that the PRO should be rescinded, the DOE found that since the ERA had failed to demonstrate that its selection of a nearest comparable outlet for purposes of the "new item rule" was a reasonable one, it did not carry its burden of showing that Stonewalk Corporation's price was improper.

Supplemental Order

Texaco Inc.; 08/01/86; KRX–0019

As an administrative convenience to the Economic Regulatory Administration, a Deputy Director of the Office of Hearings and Appeals issued a Special Report Order to Texaco Inc. The SRO concerns Texaco's sales of middle distillates, motor gasoline, and propane to certain customers that purchased those products on or before May 15, 1973. The SRO requires that Texaco identify those customers and, with respect to each customer, provide the following information: (i) The May 15, 1973 selling price that Texaco assigned to the customer for the product in question, (ii) the price that Texaco charged the customer for that product in an actual sale on or before May 15, 1973, and (iii) the volume of the product sold to the customer in sales in which Texaco used a May 15, 1973 selling price other than that set forth in item ii. The SRO also requires that Texaco identify customers to whom Texaco sold propane on or before May 15, 1973 pursuant to written contracts that provided that Texaco would be responsible for delivery of the product. The SRO requires that, with respect to each of those customers, Texaco identify certain information including the current costs that were incurred in delivering the propane to the customer, and the extent to which such costs were passed through to the customer.

Refund Applications

Earth Resources Co./Highway Oil, Inc.; 07/29/86; RF239–4

The DOE issued a Decision and Order concerning an Application for Refund filed by Highway Oil, Inc. (Highway) in the Earth Resources Company (ERC) special refund proceeding. Since Highway's purchases of ERC products were sporadic and occurred in only 13 of the 89 months of the consent order period, the DOE determined that the firm was a spot purchaser. According to the procedures outlined in *Earth Resoruces Company*, 13 DOE ¶ 85,384 (1986), spot purchasers are presumed not have been injured by ERC's alleged overcharges. In order to receive a refund, a spot purchaser must rebut this presumption of non-injury. Since Highway submitted no information to rebut the spot purchaser presumption, its Application for Refund was denied.

Gulf Oil Corp./Al Cook & Son Gulf et al; 08/01/86 RF40–437 et al

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation consent order escrow fund to nine purchasers of Gulf refined petroleum products. Each of the refund applicants demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. The total amount of refunds granted was $25,394, representing $21,076 in principal and $4,318 in interest.

Husky Oil Co./Westport Energy Corp.: 07/31/86; RF161–0089

The DOE granted an application for Refund submitted on behalf of Westport Energy Corporation and its predecessor, Huntsman Chemical & Oil (collectively known as Westport) in connection with the Husky Oil Company refund proceeding. Westport, which is the subject of an ongoing DOE enforcement action, sought a volumetric refund of $142. The DOE approved the claim for $142 in principal and $64 in interest, and noted that the sum was too small to warrant holding it in escrow until the conclusion of the DOE enforcement action against Westport.

Marathon Petroleum Co./Lakeside Oil Co., Inc.: 07/28/86; RF250–437

The DOE issued a Decision and Order concerning the Application for Refund filed by Lakeside Oil Company, Inc., a purchaser of middle distillates and motor gasoline covered by a consent order that the agency entered into with Marathon Petroleum Company. Lakeside demonstrated the volume of its Marathon purchases. Lakeside did not attempt to demonstrate that it suffered a disproportionate overcharge, nor did it attempt to demonstrate that it fully absorbed the alleged overcharges. Consequently, under the 35 percent presumption, Lakeside was granted a refund equal to 35 percent of its allocable share, or $6,599 (44,889,858 gallons x $.00042 x .35 = $6,599). Lakeside was also granted $224 in interest accrued on that principal.

Marathon Petroleum Co./Lane & Sons: 08/01/86; RF250–105 et al

The DOE issued a Decision and Order concerning 6 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $4,248 in principal and $138 in interest.

Mobil Oil Corp./International Salt Co. et al: 08/01/86; RF225–510 et al

The DOE granted 50 applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. The total amount of the refunds granted was $7,011, consisting of $5,957 in principal plus $1,054 in interest.

Northwest Pipeline Corp./Thriftway Co.: 07/30/86; RF116–2

Thriftway Company (Thriftway) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a Consent Order entered into with Northwest Pipeline Corporation (Northwest). The DOE found that Thriftway demonstrated that it purchased Northest butane and natural gasoline during the consent order period and that Thriftway was injured by those purchases. Using a three-

step competitive disadvantage methodology, the DOE calculated a range of Thriftway's competitive disadvantage. The Doe found that the firm's maximum allocable share of the volumetric refund level would equitably compensate Thriftway for any harm experienced as a result of Northwest's alleged overcharges. Accordingly, the DOE approved a refund of $142,622.27, representing $97,380.14 in principal and $45,242.13 in accrued interest.

Finally, the DOE found that it would not be appropriate to issue the refund directly to Thriftway at the present time since the firm is a respondent in an enforcement proceeding currently pending before the Office of Hearings and Appeals. Accordingly, the DOE determined that the refund of $142,622.27 should be held in a separate interest-bearing escrow account on behalf of Thriftway, pending the outcome of the enforcement proceeding.

Standard Oil Co. (Indiana)/Wisconsin Electric Power Co. Georgia Power Co.: 07/31/86; RF21-12584; RF21-12585

The DOE approved Applications for Refund submitted by two public utilities in the *Standard Oil Company (Indiana) (Amoco)* special refund proceeding. In accordance with the procedures established for public utility applicants in the *Amoco* Decision and Order, 10 DOE ¶ 85,048 (1982), each firm submitted purchase volume data and an explanation of the manner in which the refunds would be passed through to its customers. Each firm was granted a refund equal to 100 percent of the volumetric refund amount multiplied by the number of gallons of covered products purchased directly from Amoco during the Amoco Consent Order period. The total amount of refunds granted was $15,442, consisting of $9,738 in principal and $5,704 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Chevron U.S.A., Inc., RF204-7
George H. Numes, RF238-40

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guildelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 27, 1986.

[FR Doc. 86-20053 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

Special Claim Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Special Claim Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing claims to receive a portion of a fund of $1,186,866.94 currently held in escrow by the registry of the United States District Court for the Northern District of Texas and other monies.

DATE AND ADDRESS: Claims must be postmarked by 30 days from issuance of the Decision and Order, should conspicuously display a reference to case number HCX-0100 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes, among other things, the procedures that the Department of Energy will use to conduct the fact-finding necessary to advise the United States District Court for the Northern District of Texas as to the manner in which to distribute $1,186,866.94 currently held in an escrow account in the registry of the district court. The Texas district court created the escrow account during the course of pending litigation between Oasis Petroleum Corporation (Oasis) and Research Fuels, Inc. (RFI). The litigation principally concerned the proper application of the DOE allocation regulations to a series of agreements executed in October 1978 by RFI and Oasis. On February 9, 1984, the district court ordered the Office of Hearings and Appeals to resolve all issues of fact and law presented in the Oasis/RFI litigation, including the proper remedy to be applied in the case. The Decision and Order set forth below resolves the underlying controversies pertaining to the dispute between RFI and Oasis and establishes a process pursuant to which a determination will be made with respect to the disposition of the escrow monies and any other monies that Oasis may be required to disgorge.

The Office of Hearings and Appeals has identified the following firms as potential recipients of the escrow monies and any other monies that may be disgorged by Oasis: Research Fuels, Inc.; Lucky Stores, Inc.; Encorp. Inc.; National Convenience Stores; Reeder Distributing Company; Texas Gas & Oil; Trans-Texas Petroleum; Gleason Oil Company (formerly Winn Oil Company); Consolidated Sales Corporation; Globe Oil Company (d/b/a U-Save); Delta Petroleum; Fuel Distributors, Inc.; Lamar Refining Company; Tiger Petroleum Company; Thorton Oil Company; H.S.&L.; Sigmor Corporation; Southeast Oil Company; Munford, Inc.; Martin Oil Company; Patriot Petroleum Company; Mitchell Oil Company; Baldridge Oil Company. Any of the above-listed firms may file a claim in this proceeding by sending its claim to the address set forth at the beginning of this notice. All claims must be filed within 30 days from issuance of the decision and order and must be filed in duplicate. The filing deadline for claims may be extended upon a showing of good cause. *See* 10 C.F.R. 205.6. All claims will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW, Washington, DC 20585.

Dated: August 22, 1986.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Petition for Special Redress

August 22, 1986.

Name of Petitioners: Lucky Stores, Inc., Research Fuels, Inc.;

Dates of Filing: January 6, 1983, March 27, 1984, July 23, 1986;

Case No.: HEG-0031, KEX-0017, KEX-0018.

This decision relates to three matters that are pending before the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE): a Petition for Special Redress, a Motion for Show Cause Order and a consolidated case remanded to OHA by the United States District Court for the Northern District of Texas. All of the above matters pertain to a protracted dispute between two resellers of motor gasoline, Research Fuels, Inc. (RFI) and Oasis Petroleum Corporation (Oasis), formerly Oasis Petro Energy Corporation, and a wholesale purchaser of motor gasoline, Lucky Store, Inc. (Lucky). The controversy among the parties stems primarily from a series of agreements entered into by RFI and Oasis in 1978 and generally relates to the proper

application of the DOE Allocation Regulations that were in effect until January 28, 1981 to those agreements.

The special redress petition filed by Lucky in this proceeding, Case No. HEG–0031, pertains to an action pending before the United States District Court for the Middle District of Florida, *Lucky Stores, Inc.* v. *Oasis Petroleum Corporation*, No. 81–383 Civ–T–H (M.D. Fla. filed April 27, 1981). Lucky submitted its Petition for Special Redress pursuant to the terms of an order issues by the Florida district court on December 6, 1983. In that order, the court stayed the action pending before it to permit either Oasis or Lucky or both to apply to the DOE for an administrative determination of certain issued raised by Lucky in its court pleaings. The Petition for Special Redress filed by Lucky in this proceeding requests OHA to determine (1) whether Oasis was required to supply Lucky with its base period allocation of motor gasoline and proportionate share of surplus product during the months of March 1979 through April 1980, excluding October 1979, and (2) whether Oasis violated the DOE regulations at 10 CFR Parts 210 and 211 during the same period.

The other matter that is the subject of this proceeding, Case No. KEX–0018, relates to two actions currently pending before the United States District Court for the Northern District of Texas, *Oasis Petro Energy Corp.* v. *DOE*, No. CA3–79–0778–F (N.D. Tex. filed June 19, 1979) and *Research Fuels, Inc.* v. *Oasis Petroleum Corporation*, No. CA3–80–1353–F (N.D. Tex. filed July 11, 1980). Most of the regulatory issues pertaining to the former action were considered by OHA six years ago when the Texas district court requested OHA to issue an administrative ruling concerning one of the issues in dispute in that case. In order to adequately respond to the court's request, OHA found it necessary to consider several issues which were not submitted to it for resolution but which were inextricably intertwined with the one issue referred to it. Accordingly, in response to the court's request, OHA issued a comprehensive analysis of the regulatory rights and obligations of the various parties involved in the Texas litigation. *Oasis Petroleum Corporation*, 5 DOE 82,559 (1980). On review, the district court declined to follow most of OHA's findings and conclusions, on the ground that OHA had not been directed to address any issues other than the single one referred to address any issues other than the single one referred to it. *Oasis Petroleum Corporation* v. DOE, No. CA3–79–0778–F, slip. op. (N.D. Tex. Nov. 22, 1982). The Temporary Emergency Court of Appeals (TECA) reversed the district court's determination, finding that the court should have entrusted the entire matter to the agency under the doctrine of primary jurisdiction, and remanded the case with instructions to refer the matter back to OHA. *Oasis Petroleum Corporation* v. *DOE*, 718 F.2d 1558 (Temp. Emer. Ct. App. 1983). On February 16, 1984, the district court remanded Case No. CA3–79–0778–F to OHA and consolidated with it certain issues in a related case, *Research Fuels, Inc.* v. *Oasis Petroleum Corporation*, No. CA3–80–1353–F. (N.D. Tex. filed July 11, 1980).

On April 30, 1984, OHA opened the record for the submission of additional evidence relevant to the issues remanded by the Texas court and consolidated, for briefing purposes only, Lucky's special redress petition with the Texas remand cases. *Research Fuels, Inc.*, 12 DOE 82,511 (1984). Just prior to the issuance of the above-described decision, RFI sought to interpose the issue of misrepresentation into this proceeding by filing a Motion for Show Cause Order, Case No. KEX–0017. As later supplemented, the show cause motion charges that Oasis made material misrepresentations of fact before the DOE and federal courts in connection with four issues relevant to the instant proceding. For six months following the issuance of OHA's April 30 decision, the parties filed their briefs, reply briefs and a myriad of requests and motions in connection with the special redress petition, the remand order and RFI's Motion for Show Cause Order.

After thoroughly reviewing the record in this case, OHA determined that several relevant and material factual issues remained in dispute, including one of the issues identified by RFI in its Motion for Show Cause Order. *Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE 82,549 (1985). To aid it in resolving these factual disputes, OHA decided to convene an evidentiary hearing. The hearing, convened on OHA's own motion and trifurcated to accommodate the parties and witnesses, lasted seven days and generated an 1158 page transcript.

In this decision, we will address only one issue relating to Lucky's Petition for Special Redress, *viz.*, whether Oasis, as base period supplier or by virtue of its control over the supply of motor gasoline from Marathon Oil Company (Marathon) and Cities Service Company (Cities), was required to supply Lucky with its base period entitlement and proportionate share of available product during each month of the relevant period except October. [1] In addition, we will consider *de novo* all of the issues remanded to OHA from the district court in connection with *Oasis Petro Energy Corp.* v. *DOE*, No. CA3–79–0778–F (N.D. Tex. filed June 19, 1979) and examine for the first time the issues raised in connection with *Research Fuels Inc.* v. *Oasis Petroleum Corporation*, No. CA3–80–1353–F. (N.D. Tex. filed July 11, 1980). Moreover, this decision will address one of the issues raised in RFI's Motion for Show Cause Order, namely, whether Oasis made misrepresentations before the DOE regarding the manner in which the firm disposed of the motor gasoline that it acquired as the result of its purchase of 84 retail gasoline outlets from RFI. Finally, since this office made a determination earlier in this proceeding to defer consideration of the remedial aspect of this case pending a determination on the merits of the case, the instant decision will only resolve the underlying controversies among the parties. *See Research Fuels, Inc.*, 12 DOE 82,511 at 85,040 (1984). This decision will, however, establish the procedure to be followed in connection with the remedy phase of this proceeding.

I. Factual Background

A. History of RFI's Motor Gasoline Operations Prior to its Sale of Service Station Rights and Assets to Oasis

RFI begfan selling motor gasoline in 1969, the year in which it was incorporated under the laws of the State of Texas. AR–0331.[2] By the end of 1972, RFI was operating 88 retail motor gasoline outlets, the majority of which were operated in conjunction with discount retail stores. AR–0955–56 (hereinafter these 88 retail outlets, or any portion thereof, will be referred to as the RFI stations). Effective May 1, 1972, RFI entered into a Marketing Development Agreement with Cities under which RFI subleased certain of its

[1] OHA has dismissed all of the other issues raised by Lucky in its Petition for Special Redress. *See* Letter from Thomas O. Mann, Deputy Director, OHA; to Jack Caolo, Counsel for Lucky. (October 28, 1984).

[2] Due to the volminous record in this proceeding, we will abbreviate citations to the District Court record in *Oasis Petro Energy Corp.* v. *DOE*, Civil Action No. CA3–79–0778–F (N.D. Tex. filed June 19, 1979) by the following perfixes: "AR" (administrative record), "PL" (pleadings), "TR" (transcripts) and "DP" (depositions). Those prefixes will be followed by the appropriate page number in each of the respective categories. All other filings in this proceeding will be identified by the title and date of the filing and the appropriate page number.

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service station facilities to Cities. AR–0383. The Marketing Development Agreement provided that Cities would supply the gasoline sold at the service stations and RFI would operate the stations while selling the gasoline on Cities' behalf. *Id.* The Agreement also provided that Cities would pay RFI a fixed amount per gallon of gasoline sold and a management fee which was based upon the volume of gasoline sold. *Id.* With respect to retail outlets located outside the area covered by the Cities Marketing Development Agreement, RFI purchased gasoline as needed from various wholesale distributors or refiners in the areas in which the stations were located. AR–0960.

Effective January 1, 1973, RFI entered into a Joint Venture and Asset Purchase Agreement with the Zayre Corporation and Zayre's wholly-owned subsidiary, Strathmex, Inc. AR–0377. Under the Joint Venture Agreement, the three firms formed a general partnership, Remex, Inc., in which Strathmex and RFI each held a 50 percent interest. *Id.* Pursuant to the Joint Venture Agreement, Zayre agreed to sublease its operating service stations to Remex. AR–0963. RFI agreed to serve as the managing agent of Remex, operating existing and future Remex service stations and procuring a supply of gasoline for sale at the Remex stations through the Marketing Development Agreement with Cities.

AR–0964–65. The Marketing Development Agreement was amended on December 7, 1972 to reflect this arrangement. AR–0965.

Effective December 10, 1976, RFI purchased substantially all of the retail gasoline and convenience store assets of Span Oil Company, Inc. AR–0331. The assets included Span's general partnership interest in 16 limited partnerships which owned and operated 43 retail gasoline stations located in Louisiana and Texas, and Span's interest in 22 other gasoline stations which Span leased or operated. *Id.* (Hereinafter, these 66 retail gasoline outlets, or any portion thereof, will be referred to as the Span stations).

In October 1977, RFI purchased Strathmex's fifty percent interest in Remex effective as of July 2, 1977. AR–0332.[3] In addition, RFI assumed the lease obligations relating to the existing Remex stations. RFI continued to sell gasoline at the stations on a consignment and management fee basis for Cities until January 1978, at which time the Marketing Development Agreement between RFI and Cities was terminated and the parties entered into a three-year Branded Distributor Agreement. *Id.*[4] In addition, on December 16, 1977, Remex and Marathon entered into a Wholesale Division Product Sales Agreement (Product Sales Agreement) under which Marathon agreed to supply Remex with motor gasoline.

RFI began to engage in the wholesale marketing of motor gasoline upon the formation of Remex on January 1, 1973. AR–0856.[5] The traditional source of gasoline supply for the Zayre units was replaced by the RFI/Cities marketing arrangement, and RFI received permission from Zayre to purchase and resell at wholesale the available gallonage which had been replaced by the Marketing Development Agreement. *Id.* Between 1973 and 1977 RFI's wholesale marketing activities became a major part of the frim's business. AR–0858.[6]

As of July 1, 1978, RFI sold gasoline through approximately 220 retail outlets, including 84 RFI stations, 84 Remex stations, and 52 Span stations. AR–0866. RFI also sold gasoline to approximately 36 wholesale customers. *Id.* By September 1978, RFI was in dire financial straits, due in part to a number of unprofitable acquisitions.[7] In addition, the firm was heavily indebted to its three principal gasoline suppliers: Cities, Marathon and Champlin Petroleum Corporation (Champlin). Marathon and Cities has suspended all sales of gasoline to RFI and demanded immediate payment of all outstanding debts before resuming delivery. It was in an effort to raise funds to replenish its working capital and to avert bankruptcy that RFI decided to sell a portion of its assets.

B. The Sale by RFI of 84 Retail Outlets to Oasis

In September 1978, RFI entered into negotiations with Oasis for the sale of 84 of its retail outlets, consisting of 82 Remex stations and two RFI stations. By agreement dated September 27, 1978, Oasis agreed to purchase the 84 outlets form RFI for a total consideration of $1.8 million. Under the terms of the September 27 Agreement for Purchase of Service Station Rights and Assets (Original Asset Purchase Agreement), Oasis was to purchase each of the 84 stations ad seriatim, in a series of closings. The Original Asset Purchase Agreement also provided that, in addition to the retail outlets, RFI would transfer to Oasis all of RFI's rights to, and allocation of, gasoline supplies for the retail outlets. The agreement further stated that RFI would convey to Oasis all of RFI's right, title and interest in and under certain supply contracts with Cities and Marathon.

Following the execution of the Original Asset Purchase Agreement, Oasis withdrew from the agreement because of inadequate assurances from Cities and Marathon regarding the assignment of gasoline formerly delivered to RFI. Further negotiations ensued and on October 24, 1978, Oasis and RFI executed an Amendment to the Agreement for Purchase of Service Station Rights and Assets (Amended Asset Purchase Agreement). Pursuant to the Amended Asset Purchase Agreement, RFI agreed to sell to Oasis all of its right, title, and interest in (a) 82 Remex stations and all buildings, improvements and equipment at those locations on September 1, 1978; (b) two fee owned RFI stations located in Chicago, Illinois; (c) the Branded Distributor Agreement between Cities and RFI dated January 17, 1978 and the Product Sales Agreement between Marathon and RFI dated December 16, 1977 and (d) a leased office located in Atlanta, Georgia. The amendment, among other things, reduced the total consideration paid by Oasis by $250,000 and provided for the sale of the 84 stations as a group. The amendment

[3] As of July 2, 1977, Remex was operating 88 retail gasoline stations. AR–0403. (Hereinafter, these 88 retail outlets or any portion thereof, will be referrerd to as the Remex stations).

[4] The Branded Distributor Agreement differed from the Marketing Development Agreement in three material respects. First, the Branded Distributor Agreement obligated Cities to sell RFI 96 million gallons of gasoline annually. This arrangement contrasts with the arrangement under the Marketing Development Agreement where Cities agreed to consign to RFI up to 235 million gallons of gasoline per year. Second, the Branded Distributor Agreement required RFI to purchase gasoline from Cities for resale. In contrast, the Marketing Development Agreement involved a consignment arrangement. Third, under the Branded Distributor Agreement, RFI had to finance operations between the time it paid Cities for the gasoline and the time it received receipts form the resale of that gasoline. Under the Marketing Development Agreement, however, RFI was able to use the "float" on Cities' accounts receivable between the time RFI received the revenues from the sales of Cities' gasoline and the time it was required to transfer those receipts to Cities.

[5] From the inception, RFI's wholesale activities were handled through RFI's accounts rather than Remex's accounts. AR–0856–57.

[6] During the fiscal year ending July 2, 1977, 58% of RFI's gross revenues were derived from wholesale gasoline sales. AR–1272.

[7] RFI claims that the termination of the marketing Development Agreement with Cities radically altered RFI's cash flow position and contributed to its financial decline. As explained in footnote 4 *supra*, RFI no longer had the use of any "float" under the agreement which replaced the Marketing Development Agreement. See RFI's Response to Lucky and Oasis' Briefs dated August 13, 1984 at 17.

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also partially reflected arrangements for the payment of RFI's indebtedness to its three principal suppliers: Cities, Marathon and Champlin.[6] Contemporaneously with, and as a part of the asset acquisition, the following documents were executed on October 24, 1978:

(1) A Substitute Supplier Agreement among RFI Oasis and Marathon which purported to terminate the supplier/purchaser relationship between Marathon and RFI and to establish that same relationship between Marathon and Oasis (Substitute Supplier Agreement);

(2) A Three Party Agreement among RFI, Oasis and Cities under which RFI and Cities agreed to terminate their supplier/purchaser relationship in accordance with the provisions of 10 C.F.R. 211.9(a)(2)(i) and Cities agreed to supply Oasis with the base period allocation of motor gasoline that RFI had from Cities (Three Party Agreement);

(3) A Distributor Agreement between Cities and Oasis whereby Oasis agreed to purchase from Cities a minimum of 86,400,000 gallons and a maximum of 96,000,000 gallons of motor gasoline annually (Distribution Agreement);

(4) An "Acknowledgement of Transfer of Title and Management Control" by RFI and Oasis (Acknowledgement of Transfer);

(5) A Mutual Cancellation and General Release between Cities and RFI providing for the termination of the parties' business relationship and the cancellation of the 1978 Branded Distributor Agreement (Mutual Cancellation and General Release);

(6) A Mutual Cancellation and Release between Marathon and RFI providing for the termination on the parties' business relationship and the cancellation of the 1977 Product Sales Agreement (Mutual Cancellation and Release);

(7) A Sales Agreement between RFI and Oasis whereby RFI agreed to purchase from Oasis up to 10,500,000 gallons of motor gasoline during the period October 1978, at a price to be determined by reference to "Cities price to supplier at terminal." (Sales Agreement)

The Amended Asset Purchase Agreement and the seven documents executed contemporaneously with that agreement will be referred to, from time to time, as the "October 1978 Agreements."

As correctly noted in the respective documents, the Three Party Agreement and the Substitute Supplier Agreement required the express written approval of the DOE before the base period supplier/purchaser wholesale-reseller relationship between Cities and Marathon, on the one hand, and RFI on the other hand, could be effectively terminated. See 10 CFR 211.9(a)(i) To this end, on November 8, 1978 Cities submitted the Three Party Agreement together with a cover letter to Mr. Alan Lockard, the Director of Fuels Allocation for the ERA for approval.[9] In its cover letter, Cities explained the manner in which the 97,679,000 gallons of motor gasoline referenced in the Three Party Agreement was allocated among DOE Regions I through VI.

On November 27, 1978, the ERA responded to Cities' letter of November 8, 1978, and enclosed a copy of instructions explaining the necessary actions required for the approval of the Three Party Agreement. Specifically, the ERA informed Cities that the firm must provide separate documentation for each of the 84 retail outlets covered by the Three Party Agreement before the agency could take any action concerning the agreement. Rather than immediately furnishing the agency with the requested information, Cities instead chose to submit to the ERA revised annual adjusted base period volume figures for the 84 retail outlets, once again by DOE region. This time, however, Cities allocated the 97,679,000 gallons of motor gasoline among seven DOE regions, DOE Regions I through VII. *See* Letter dated December 18, 1978 from R. L. Fluckiger, Allocation Coordinator, Cities; to Alan Lockard, ERA.

Meanwhile, on November 20, 1978 RFI had sent a letter to Cities with a copy to Mr. Lockard advising that Cities remained the base period supplier for 21 RFI retail outlets. *See* Letter dated November 20, 1978 from Larry Minx, Vice President, RFI; to R. L. Fluckiger, Allocation Coordinator, Cities at Appendix I, Volume I, Exhibit 20 of Lucky's May 7, 1984 Brief in Support of Petition for Special Redress (hereinafter cited as Lucky's May 7, 1984 Brief). RFI explained at that time that the 21 stations identified in the November 20, 1978 letter were not part of the 84 stations sold to Oasis, that those 21 stations had an annual base period allocation entitlement of 7,800,000 gallons and that that 7,800,000 gallon figure was not included in the 97,679,000 gallon figure reflected in the Three Party Agreement. *Id.*

On January 17, 1979, Cities transmitted to RFI for the latter's execution seven documents, each entitled "Termination of Supplier/Purchaser Relationship" (Termination Agreements) and each reflecting the purported adjusted annual base period allocation for the 84 stations by DOE region. The total base period volume encompassed by the Termination Agreements was 97,679,000 gallons.

On February 16, 1979, RFI informed Cities that it would execute the Termination Agreements provided that those documents were amended to effectuate two substantive changes. *See* Letter dated February 16, 1979 from Larry Minx, Vice-President, RFI; to R.L. Fluckiger, Allocation Coordinator, Cities at Appendix B, Volume II, Exhibit 50 of Lucky's May 7, 1984 Brief. First, RFI indicated that the Termination Agreements should be changed to include a statement that Cities remained the base period supplier for certain RFI retail outlets which were not sold to Oasis. Second, RFI asserted that the documents must be modified to reflect a 9,805,000 gallon reduction in the base period volume of gasoline transferred from RFI to Oasis. To justify the 9,805,000 gallon reduction, RFI asserted that the 97,679,000 figure set forth in the Three Party Agreement inadvertently included 9,805,000 gallons of gasoline attributable to 20 RFI retail stations which were not sold to Oasis.[10]

On February 28, 1979, Cities advised RFI that it was in receipt of RFI's February 16 letter. *See* Lucky's May 7, 1984 Brief at Appendix I, Volume II, Exhibit 39. Without acknowledging the existence of any dispute with regard to the accuracy of the base period volume total set forth in the Three Party Agreement, Cities informed RFI that it was forwarding the Three Party

[6] On October 24, 1978, RFI executed a promissory note in the principal amount of $3,059,453.00 payable to the order of Cities, Marathon and Champlin, jointly. The note is not referenced in the Amended Asset Purchase Agreement or any of the documents ancillary thereto.

[9] Based on the record before us, it appears that the Substitute Supplier Agreement was never submitted to the DOE for approval.

[10] RFI does not explain why it departed from the position that it announced in its November 20, 1978 letter to Cities with respect to this very matter. We note that the 20 retail outlets listed by RFI in its February 16, 1979 letter to Cities are identical to 20 of the 21 outlets listed by RFI in its November 20, 1978 letter to Cities. (RFI Unit #172, a retail outlet in Pascagoula, Mississippi is the one outlet included in RFI's November 20 letter which does not appear in RFI's February 16 letter). Curiously, RFI stated in its November 20 letter that the 21 outlets for which Cities allegedly remained the base period supplier had an annual adjusted base period volume of 7,800,000. At that time, RFI contended that the 7,800,000 gallons were not included in the 97,679,000 gallons reflected in the Three Party Agreement. In its February 20, letter, however, RFI claimed that those same 21 outlets less one had an annual base period volume of 9,805,000 gallons and that the 9,805,000 gallon figure was included in the 97,679,000 figure reflected in the Three Party Agreement.

Agreement and properly executed FEO–17 forms to the DOE for processing.[11] *Id.* On March 1, 1979, Cities, on behalf of Oasis, submitted seven separate FEO–17 forms to seven different DOE regional offices. Each FEO–17 form set forth the adjusted base period supply volume relating only to the DOE region to which it was submitted. All of the FEO–17 forms reflected that Cities' base period supply obligation to the listed retail stations was zero. *See* Lucky's May 7, 1984 Brief at Appendix I, Volume II, Exhibit 57. In addition, each FEO–17 form had attached to it the following information: 1) station-by-station breakdown of the retail outlets located in the region to which the form was submitted, 2) the addresses of those outlets, and 3) a monthly and annual adjusted base period allocation for each outlet.

Just as the dispute regarding the precise volumes of gasoline transferred from RFI to Oasis by means of the Amended Asset Purchase Agreement began to fully emerge, a new concern arose as of March 1, 1979. Effective March 1, 1979, the DOE amended its motor gasoline allocation regulations by updating the base period from calendar year 1972 to the period July 1977 through June 1978. 44 Fed. Reg. 11202 (February 28, 1979). At that time, as will be discussed more fully below, the wholesale customers of RFI for the first time acquired a regulatory right to obtain gasoline from RFI based on their purchase volumes during the new base period. This regulatory change triggered a dispute between Oasis and RFI concerning their respective rights to receive gasoline from Cities and Marathon and their obligation to supply the wholesale customers which had received gasoline from RFI. RFI asserted that it was obligated to supply the wholesale customers under the amended DOE allocation regulations and that Oasis was entitled to receive from Cities and Marathon the volumes of motor gasoline that the 84 retail outlets which were sold to Oasis had received during each corresponding month of the updated base period. Oasis contested RFI's claim to any allocation of gasoline from either Cities or Marathon, arguing that RFI had assigned to Oasis its entire interest in the Cities and Marathon supplies when it entered into the Amended Asset Purchase Agreement and documents ancillary thereto.

[11] A form FEO–17 was a form issued by DOE's predecessor, the Federal Energy Office, which served as the mechanism by which a firm could request, *inter alia*, an assignment of supplier or an assignment or adjustment of base period supply volumes.

During the month of March 1979, the national supply of motor gasoline became increasingly tight. Because of the dispute between Oasis and RFI and uncertainties as to whether Oasis or RFI was the appropriate party to supply, Marathon and Cities became reluctant to permit either purchaser to obtain product from their terminals. These uncertainties seriously disrupted deliveries to RFI's wholesale customers [12] and to both RFI's and Oasis' retail outlets.

II. Procedural History

On March 21, 1979, Oasis filed suit in the 17th Judicial District of Tarrant County, Texas seeking to enjoin RFI from interfering with its contractual rights under the October 1978 agreements. *See Oasis Petro Energy Corp.* v. *Research Fuels, Inc., et al.*, Case No. 17–54365–79 (Dist. Ct. Tarrant County, Tex., filed March 21, 1979). Although the court refused to enter a preliminary injunction against RFI, it did grant Oasis a temporary restraining order against the firm. On March 27, 1979, Oasis filed an Application for Temporary Stay (Case No. DST–0042) with OHA requesting that (i) the application of the updated allocation regulations be stayed pending a resolution of its dispute with RFI; (ii) the regional offices of the DOE be enjoined from issuing any temporary assignment orders regarding the volumes of gasoline involved in the Oasis/RFI controversy; and (iii) if necessary, Oasis be ordered to supply RFI's wholesale customers pending resolution of the dispute. At or about the same time, BLT and Trans-Texas filed with OHA Applications for Exception, Stay and Temporary Stay requesting that Cities be ordered to supply the firms directly rather than through RFI. *BLT, Inc.*, Case Nos. DST–, DES–, DEE–3430 (filed April 5, 1979); *Trans Texas Petroleum Corp.*, Case Nos. DST–, DES–, DE–2942 (filed March 26, 1979).

On April 12, 1979, Oasis and RFI signed a Settlement Agreement which provided that Oasis would receive all motor gasoline that either Oasis or RFI was entitled to obtain from Cities and Marathon pursuant to supply contracts or the DOE allocation regulations, regardless of changes in supply or market conditions or the base period regulations. PL–0120–0133. In addition, the agreement obligated Oasis to sell to RFI, 36 million gallons of gasoline annually in three million gallon increments per month at a price to be determined by reference to the actual cost paid by Oasis to either Marathon or Cities for the gasoline. Oasis expressly conditioned the supply of the three million gallons per month upon RFI's assumption of all supply obligations and responsibilities to its wholesale customers. Oasis and RFI presented the Settlement Agreement to the state court which had issued the temporary restraining order against RFI and based on that agreement, the court dismissed with prejudice all the claims made by both parties in the Case No. 17–54365–79. *See Oasis Petro Energy Corp.* v. *Research Fuels, Inc., et al., supra*, slip. op. (Dist. Ct. Tarrant County, Tex., May 17, 1979) at PL–0134. On June 5, 1979, Oasis amended the Application for Temporary Stay which it had filed with OHA on March 27, 1979, to request that an order be issued formally validating the allocation rights and obligations which Oasis and RFI had established in the April 12, 1979 Settlement Agreement.

Since the disputes between Oasis and RFI during the period March through May 1979 seriously disrupted the orderly delivery of gasoline to RFI and Oasis and to RFI's wholesale customers, several of RFI's wholesale customers sought various forms of relief through the regional offices of the ERA. For example, on March 22, 1979 and again on May 24, 1979, ERA Region VI issued temporary assignment orders requiring Marathon to supply product to Lucky. *See* Lucky's May 7, 1984 Brief at Appendix E, Volume II, Exhibit 25 and Volume III, Exhibit 50. In light of the April 12 Settlement Agreement, Oasis, Cities and Marathon next requested the ERA to cease issuing these orders and to rescind the orders that had been issued.

In an effort to resolve the dispute between Oasis and RFI and problems caused by conflicting temporary assignment orders issued by the ERA regional offices Alan Lockard, National Director of Fuels Allocation for the ERA, convened a hearing on June 12, 1979. At that hearing, Mr. Lockard heard oral argument from Oasis, RFI, Cities, Marathon, and Champlin. RFI's wholesale customers were specifically excluded from attending or otherwise participating in the hearing. Mr. Lockard subsequently issued a memorandum dated July 5, 1979 to the Director of Fuels Regulations of ERA Region VI in which he concluded, in part, that the October 1976 Purchase Agreement and ancillary documents did not relieve Cities and Marathon of their base period supply obligation to RFI. According to the memorandum, RFI should be considered the base period supplier to

[12] Lucky, BLT, Inc. (BLT) and Trans-Texas Petroleum Corporation, (Trans-Texas) were among those wholesale customers affected by the disruption in deliveries described above.

the wholesale customers and Oasis only has the right to a base period allocation for Cities and Marathon for the 84 retail outlets it purchased.[13] The memorandom stated that where necessary the ERA regional offices should issue assignment orders directing Cities, Marathon, and other base period suppliers of RFI to supply the wholesale customers directly until RFI re-established itself as a financially viable supplier. On June 19, 1979.

Oasis commenced an action in the United States District Court for the Northern District of Texas seeking affirmative relief against RFI and seeking to enjoin the DOE, Marathon, Cities, Lucky and others from taking any action which would prevent Oasis from obtaining the entire allocation of motor gasoline from Cities and Marathon set forth in the Amended Asset Purchase Agreement and the April 12, 1979 Settlement Agreement. *See Oasis Petro Energy Corp.* v. *DOE, supra.* In addition, as a result of the continuing financial difficulties that had been severely exacerbated by the protracted dispute with Oasis, RFI filed a voluntary petition under Chapter XI of the Bankruptcy Act in the United States District Court for the Southern District of Texas on June 27, 1979. *See Research Fuels, Inc.*, No. HS-79-443 (Bankr. S.D. Tex., filed June 27, 1979).[14] On August 3, 1979, the District Court for the Northern District of Texas granted Oasis' request for a preliminary injunction prohibiting the DOE from issuing any orders which would have the effect of diverting any Cities or Marathon gasoline from Oasis or requiring Cities or Marathon to supply RFI or RFI's customers directly. As an interim measure, the court ordered Marathon and Cities to supply Oasis with gasoline and Oasis to escrow all profits from sales of disputed gasoline to wholesale purchasers. Those profits are still held in an escrow account in the registry of the district court in Dallas, Texas.

After the issuance of the August 3 preliminary injunction two of RFI's wholesale customers, BLT, and Trans-Texas complained that the price and credit terms offered to them by Oasis were more stringent than those historically imposed by RFI. These customers alleged that the prices and terms of sales established by Oasis constituted violations of the DOE's allocation and price regulations. In response to these complaints, several ERA regional offices issued temporary assignment orders directing Champlin and Foremost Petroleum Corporation, (Foremost) two base period suppliers of RFI, to supply motor gasoline directly to BLT and Trans-Texas. RFI and Champlin appealed these orders to OHA. *See Research Fuels, Inc., Corp.*, Case No. DEA-0661 (filed September 27, 1979); Champlin Petroleum Case Nos. DEA-0644 through 0646 (filed September 14, 1979). In addition, RFI filed a Petition for Special Redress requesting OHA to enjoin the ERA regional offices from issuing any further assignment orders which would direct its prime suppliers to supply its wholesale customers directly. *Research Fuels, Inc.*, Case No. DSG-0071 (filed September 27, 1979). OHA stayed the orders issued to Champlin and Foremost pending a final determination on RFI's and Champlin's appeals. *See Champlin Petroleum Co.*, 4 DOE 82,029 (1979); *Research Fuels, Inc.*, 4 DOE 82,035 (1979).

On November 14, 1979 the District Court for the Northern District of Texas entered a memorandum opinion which, in part, stated that the August 3 preliminary injunction had not resolved the issue of the effect, if any, under the DOE regulations of the April 12, 1979 Settlement Agreement between Oasis and RFI. On January 9, 1980, the district court issued an order with reference to the November 14 memorandum opinion which specified that "the Office of Hearings and Appeals should determine the validity and effect if any, under Department of Energy regulations of the April 12 Settlement Agreement." In response to the January 9, 1980 order, OHA convened a hearing on February 21, 1980 at which all interested parties were permitted to present evidence and oral argument on issues relevant to their allocation rights and obligations. *See* Transcript of Proceedings, *Oasis Petroleum Corporation*, Case No. DST-0042 (February 21, 1980).

On April 11, 1980, OHA issued a decision which set forth a comprehensive analysis of the regulatory rights and obligations of the parties arising out of the 1978 agreements and the effect of the April 12, 1979 Settlement Agreement on those rights and obligations. *Oasis Petroleum Corp.*, 5 DOE 82,559 (1980). In addition, the decision discussed the issues of whether BLT or Trans-Texas had presented evidence of pricing or credit violations by RFI or Oasis and whether BLT, Trans-Texas or Lucky should be permitted to purchase product directly from Cities and other suppliers of RFI rather than from RFI or Oasis. Briefly, OHA concluded in its April 11, 1980 decision that while the October 1978 agreements did in fact transfer the allocation entitlements of the 84 outlets to Oasis, those agreements did not alter any other supplier/purchaser relationship between RFI and its suppliers under the DOE allocation regulations. With respect to April 12 Settlement Agreement, OHA found that the agreement was merely a private contract which, in the absence of DOE approval, could not permanently alter any regulatory rights and obligations with respect to RFI's wholesale customers. As for the issues presented by BLT and Trans-Texas, OHA determined that the resolution of those issues was outside the scope of the OHA proceeding.[15]

On review, the Texas district court declined to follow most of OHA's findings and conclusions, on the ground that OHA had not been directed to address any issue other than the April 12 Settlement Agreement. *Oasis Petroleum Corp.* v. *DOE*, No. CA3-79-0778-F, slip op. (N.D. Tex. Nov. 22, 1982).[16] On appeal, TECA reversed the district court's determination, finding that the court should have entrusted the entire matter to the agency under the doctrine of primary jurisdiction, and remanded the case with instructions to refer the matter to OHA. *Oasis Petroleum Corp.* v. *DOE, 718 F.2d 1558 (Temp. Emer. Ct. App. 1983).*

On February 9, 1984, the district court remanded Case No. CA3-79-0778-F to

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[13] The record in this proceeding indicates that none of the 84 retail outlets purchased by Oasis were located in DOE Region VI. On June 19,

[14] Cities, Marathon and Champlin had filed suit against RFI on June 1, 1979 in the 153rd Judicial District, Tarrant County, Texas, seeking to foreclose on RFI's business assets, all of which had been pledged as security for the note referenced in footnote 8 *supra*. See. Lucky's May 7, 1984 Brief at Appendix H, Volume IV, Exhibit 23.

[15] In express recognition of the district court's preliminary injunction and January 9 order, OHA's April 11, 1980 decision was not issued as a final administrative order.

[16] In its November 22, 1982 Memorandum Order, the district court made the following determinations:

(1) OHA's determination that the settlement agreement was void was supported by substantial evidence, and was neither arbitrary nor capricious.

(2) Since OHA was not directed by the district court to address any issues other than the validity of the settlement agreement, all of OHA's other findings and conclusions were purely advisory.

(3) DOE lacked authority to disapprove the amended asset purchase agreement; DOE had a presumption favoring approval of such agreements. The agreement [Amended Asset Purchase Agreement] was therefore entitled to de facto approval, and was valid.

(4) DOE lacked authority to retroactively apply the order changing the base year so as to invalidate the rights and obligations of the parties under the amended asset purchase agreement.

(5) Alternatively, DOE approval of the amended asset purchase agreement was not required for it to be valid.

(6) Under the Amended Asset Purchase Agreement, Oasis was entitled to the escrowed funds.

OHA, and consolidated with it certain issues in a related case, *Research Fuels Inc.*, v. *Oasis Petroleum Corp.*, No. CA3–80–1353–F.[17] In remanding the two cases, the court stated that the cases were being remanded for a "full and complete determination of all issues of fact and law, including the appropriate remedy that is consistent with those findings of fact and conclusions of law." The court additionally stated that the determination to be issued by OHA must be in the form of a final agency action, reviewable by the Texas district court.

On January 6, 1984, Luckly filed a Petition for Special Redress with OHA pursuant to an order which the U.S. District Court for the Middle District of Florida had issued on December 6, 1983 in connection with the pending case, *Lucky Stores, Inc.* v. *Oasis Petroleum Corp.*, No. 81–383 Civ.–T–H. (M.D. Fla. filed April 27, 1981). In that order, the district court granted a request filed by Oasis to stay the entire action that had been commenced by Lucky in that court in order to permit either party or both to apply to the DOE for a determination of certain issues raised by Lucky in its complaint. In its January 6 Petition for Special Redress, Lucky requested OHA to find that Oasis was required, either as base period supplier or by virtue of its actual control over supplies of gasoline from Marathon and Cities, to supply Lucky with its base period entitlement to motor gasoline. In that same petition, Lucky also asked OHA to adjudicate a number of other issues which we ultimately determined to be enforcement related and hence initially subject to the ERA's prosecutorial discretion. Accordingly, by determination letter dated October 26, 1984, OHA dismissed all of the issues presented by Lucky in its January 6 Petition except the issue relating to the base period supply obligations, if any, running from Oasis to Lucky.[18]

On February 16, 1984, RFI filed a motion requesting OHA to resume the proceeding that had been the subject of our decision in *Oasis Petroleum Corp.* v. *DOE, 5 DOE* 82,559 (1980). At that time RFI also asked OHA to consolidate Lucky's January 6 Special Redress Petition with the proceeding it sought to resume. By Decision and Order dated April 30, 1984, OHA granted RFI's Motion to Resume the Special Redress Proceeding and consolidated with it, for briefing purposes only, Lucky's January 6 Special Redress. *See Research Fuels, Inc.*, 12 DOE 82,511 (1984). That decision also provided for the bifurcation of this proceeding.[19]

Meanwhile, on March 27, 1984, RFI filed a Motion for Show Cause Order alleging that Oasis had made material misrepresentations of fact in prior proceedings before the DOE and federal courts in connection with the controversy that is the subject of this proceeding. The motion, as supplemented on May 14, 1984, focused on four issues that allegedly had been tainted by Oasis' purported misrepresentations. To remedy Oasis' alleged misdeeds, RFI requested that OHA order Oasis 1) to controvert the allegations advanced by RFI in its Show Cause Motions, 2) to require a knowledgeable corporate official of Oasis to certify to the veracity of all future factual representations in this proceedings, and 3) to provide a full accounting of all its financial activities as well as the financial activities of its affiliated companies since 1979.

On September 27, 1984, Lucky filed a second Petition for Special Redress with OHA in which it alleged that Oasis had violated the Mandatory Petroleum Pricing Regulations at 10 CFR Part 212. OHA dismissed Lucky's September 27 Special Redress Petition in a letter determination dated October 26, 1984. As stated in that letter, OHA decided not to exercise jurisdiction over Lucky's Petition because the office determined that another more appropriate avenue might be available for the disposition of Lucky's enforcement related claims, *viz.*, a proceeding under Subpart O of 10 CFR Part 205.[20]

On February 12, 1985, OHA issued a decision which considered all of the pending motions and requests filed by the three parties in connection with this proceeding, including RFI's Motion for Show Cause Order. *Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE 82,549 (1985). In that decision, OHA found, *inter alia*, that RFI had not met its burden of establishing an action predicated on misrepresentation for three of the four issues which RFI alleged were affected by Oasis' representations. With respect to the fourth issue, *viz.*, the manner in which Oasis disposed of the volumes of gasoline which it acquired pursuant to the Amended Asset Purchase Agreement and collateral documents, OHA decided that the matter required additional scrutiny. At the same time, OHA identified four relevant and material issues which remained in factual dispute. To aid it in effectively making findings of fact with respect to the four disputed issues and to further investigate one of the issues raised in RFI's Show Cause Motion, OHA decided *sua sponte* to convene an evidentiary hearing. The five issues which OHA designated for consideration at the hearing were the following:

(1) Whether Oasis sold, transferred, exchanged, traded or otherwise made available to Apex Oil Company, (Apex) its subsidiaries, or assigns motor gasoline at any time from March 1, 1979 to January 28, 1981?

(2) Whether RFI intended to transfer its wholesale business to Oasis at the time it executed the Amended Asset Purchase Agreement and documents ancillary thereto?

(3) Whether RFI went out of business entirely at the wholesale level of distribution and/or abandoned that wholesale business at the time it executed the Amended Asset Purchase Agreement and documents ancillary thereto or at any time thereafter?

(4) Whether the 1972 base period volume figure of 97,679,000 gallons of gasoline that s reflected in the Three Party Agreement executed by RFI, Oasis and Cities is associated with only the 84 retail gasoling stations that RFI sold to Oasis pursuant to the Amended Asset Purchase Agreement and documents ancillary thereto?

(5) Whether RFI intended to transfer allocation entitlements associated with

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[17] The subject of Case No. CA3–1353–F is a counterclaim in which RFI alleges that Oasis violated the Economic Stabilization Act of 1970, 12 U.S.C. 1904 note, as incorporated into the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 754(a)(1) (1976). Specifically, RFI claims that Oasis diverted large quantities of gasoline for sale in the spot market at unconscionable profits. RFI contends that Oasis sold the gasoline in the spot market not only to reap huge profits but to avoid obligations imposed upon it by law. As a result of these violations, RFI claims damages in the amount of $10,963,896.74.

[18] In dismissing certain issues raised in Lucky's Petition for Special Redress OHA first characterized those issues as enforcement related and then stated that a Subpart O proceeding was the more appropriate vehicle for the deposition of those claims. Subsequently, on November 20, 1984 OHA transmitted Lucky's Petition for Special Redress to the ERA pursuant to 10 CFR 205.236(b)(1). The ERA is that part of the DOE which is responsible for investigating alleged violations of the DOE regulations and initiating, if necessary, enforcement actions against the alleged violators. See Letter dated November 20, 1984 from Thomas O. Mann, Deputy Director, OHA; to Milton Lorenz, Office of Special Counsel, ERA.

[19] In that decision, OHA decided that the underlying controversies in this proceeding must be resolved before OHA would entertain any arguments pertaining to the appropriate remedy, if any, to be applied in this case. See Research Fuels, Inc., 12 DOE 82,511 at 85,040 (1984).

[20] Even though OHA dismissed Lucky's September 27, 1984 Special Redress Petition *in toto*, the office did transmit that Petition to the ERA pursuant to 10 CFR 205.236(b)(1).

more than 84 retail gasoline stations at the time it executed the Amended Asset Purchase Agreement and documents ancillary thereto?

OHA then invited RFI, Oasis and Lucky to submit the names of proposed witnesses whose testimony they desired to present at the evidentiary hearing. In a series of orders following our February 12 decision, OHA approved two witness nominations submitted by RFI, four by Oasis and three by Lucky. *Oasis Petroleum Corporation, et al.*, 13 DOE 82,506 (1985); *Oasis Petroleum Corporation, et al.*, 13 DOE 82,510 (1985). OHA also considered requests from each party that the evidentiary hearing be convened in its entirety in three different locations. OHA finally determined that the most equitable manner to resolve the problem regarding the location for the evidentiary hearing would be to bifurcate the hearing. We decided to hold the first stage of the hearing in Dallas, Texas to accommodate RFI, the debtor in bankruptcy and to resume the second stage of the hearing in Washington, D.C.

OHA conducted the first stage of the evidentiary hearing on June 27, 1985, at which time, we heard the testimony of RFI's two witnesses, John Sterling and Larry Minx. Subsequently, Oasis and Lucky filed requests that OHA issue subpoenas to compel the attendance of three witnesses at the second stage of the evidentiary hearing. OHA granted both parties' requests and on July 9, 1985, OHA issued subpoenas to Richard Heinzelmann, Robert Mills and Richard Lindgren.[21] Prior to the commencement of the second stage of the evidentiary hearing, Mr. Heinzelmann filed a "Motion to Quash Administrative Subpoena" in the United States District Court for the Northern District of Oklahoma. Before the district court acted on Mr. Heinzelmann's motion, Mr. Heinzelmann agreed to comply with OHA's subpoena. However, because Mr. Heinzelmann was scheduled to be out of the country on the date on which he was required to testify before OHA, he requested that OHA provide an alternative date for his testimony. To accommodate Mr. Heinzelmann, OHA decided to trifurcate the evidentiary hearing and convene a third stage of the hearing in September 1985. *See* Letter dated August 15, 1985 from Thomas O. Mann, Deputy Director, OHA to Richard Heinzelmann. Shortly thereafter, Richard Lindgren requested that his testimony be postponed so that he could fulfill a previously scheduled commitment. OHA granted Mr. Lindgren's request and modified the subpoena issued to him to reflect his obligation to appear before OHA in September 1985.

On August 19, 20, 21, and 22, 1985, OHA convened the second stage of the evidentiary hearing. At that time, we heard the testimony of three of Oasis' witnesses, Tariq Kadri, Parker Anderson and Herbert Stevens and one of Lucky's witnesses, Robert Mills. On September 5, 1985, Lucky requested that OHA rescind the subpoena that we had issued to Mr. Lindgren. OHA granted Lucky's request and on September 10, 1985 rescinded the subpoena issued to Mr. Lindgren. *See* Letter dated September 10, 1985 from Thomas O. Mann, Deputy Director, OHA; to Jack P. Caolo, Counsel for Lucky. Finally, on September 12, 1985, OHA convened the third stage of the evidentiary hearing to hear the testimony of Richard Heinzelmann. A hearing for oral argument culminated this proceeding on September 13, 1985.

III. Regulatory Framework

The DOE allocation regulations which are relevant to the resolution of the controversy *sub judice* were set forth at 10 CFR Part 211. The general provisions relating to all allocated products were located in Subpart A of Part 211 (10 CFR 211.1–211.29) while provisions specifically applicable to motor gasoline were found in Subpart F of the same part (10 CFR 211.101–211.110). Section 211.101 of Subpart F stated that "unless otherwise specified in, or inconsistent with, this subpart, the provisions of sections 211.9–211.13 . . . apply to this subpart. Where inconsistent with the provisions of Subpart A of this part, the provisions of this subpart shall prevail." In addition, Subpart B of Part 211 (10 CFR 211.51) contained general definitions applicable to the entire part.

Section 211.9(a)(1) of the general allocation provisions required each supplier [22] of an allocated product to supply all wholesale purchaser-resellers [23] and all wholesale purchaser-consumers [24] which had purchased or obtained that allocated product from that supplier during the base period. The base period for motor gasoline was set forth at 10 CFR 211.102. From 1974 through February 28, 1979 the motor gasoline base period was defined as the month of 1972 corresponding to the current month. On February 22, 1979 the DOE issued Activation Order No. 1 which updated the base period, effective March 1, 1979, to the corresponding month of the period July 1, 1977 through June 30, 1978. 44 FR 11202 (February 28, 1979). The DOE subsequently changed the base period, effective May 1, 1979 to the corresponding month of the period November 1977 through October 1978. 44 FR 26712 (May 4, 1979) [25]

Section 211.9(a)(2)(i) of the DOE regulations provided that:

> Unless otherwise provided in this part or directed by [DOE], the supplier/wholesale purchaser/reseller relationships defined by specific dates or base periods or otherwise imposed pursuant to this part shall be maintained for the duration of the Mandatory Petroleum Allocation Program and may not be waived or otherwise terminated without the express approval of [DOE].

Thus, under § 211.9(a) of the allocation regulations, a base period supplier was obligated to continue to offer product to each of its base period purchasers. As § 211.9(a)(2)(i) indicated, a supplier/purchaser relationship established by the regulations generaly could not be terminated without DOE approval. Section 211.9(a) was primarily intended to guarantee to customers at each level of distribution access to product from their base period suppliers.

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[21] OHA issued two subpoenas to Richard Heinzelmann, one upon the request of Lucky, and the other upon the request of Oasis. Both Lucky and Oasis had sought and been granted permission to call Mr. Heinzelmann as a witness at the evidentiary hearing. *See Oasis Petroleum Corporation, et al.*, 13 DOE 82,506 (1985); *Oasis Petroleum Corporation, et al.*, 13 DOE 82,510 (1985).

[22] The term "supplier" was defined at 10 CFR 211.51 as "any firm or any part or subsidiary of any firm other than the Department of Defense which presently, during the base period, or during any period between the base period and the present supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated product or crude oil to wholesale purchasers or end-users, including, but not limited to, refiners, natural gas processing plants or fractionating plants, importers, resellers, jobbers and retailers.

[23] The term "wholesale purchaser-consumer" meant any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which either (a) purchased or obtained more than 20,000 gallons of that allocated product for its own use in agricultural production in any completed calendar year subsequent to 1971; (b) purchased or obtained more than 50,000 gallons of that allocated product in any completed calendar year subsequent to 1971 for use in one or more multi-family residences; or (c) purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971. 10 C.F.R. 211.51.

[24] Section 211.51 of Subpart B also defined the term "wholesale purchaser-reseller." The term denoted "any firm which purchases receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchases without substantially changing its form."

[25] Wholesale purchaser-resellers which did not have a base period supplier were required to apply to the DOE for assignment of a supplier and a base period volume. 10 CFR 211.9(d)(1), 211.12(e)(2)(ii).

The allocation regulations did, however, recognize that a supplier/purchaser relationship might need to be modified or terminated under certain circumstances. Thus, a base period purchaser's right to receive its allocation entitlement was dependent upon its "conduct of an ongoing business or maintenance of an established end use." 10 CFR 211.11(a). Section 211.11(c) further provided that "wholesale purchasers and end-users which have gone out of business shall not be eligible for allocations based on volumes received or purchases made prior to going out of business." Additionally, § 211.11(d) provided that:

> The right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going business or established end use. The right to an allocation shall be deemed to have been transferred only when the entire business or activity of the firm is transferred to a successor firm.

The allocation regulations generally defined the term "firm" to include "the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls." 10 CFR 211.10(a)(2), 211.11(b)(2), 2111.51. As noted above, Subpart F contained additional provisions which specifically applied to motor gasoline. In particular, § 211.106 of the allocation regulations provided an exception to this definition in the case of retail outlets which sold gasoline. That section stated:

> Each firm or part of a firm which operates an ongoing business at a retail sales outlet shall be considered a separate firm with respect to each such outlet for purposes of this subpart and, therefore, shall be a separate wholesale purchaser-reseller. The entity which merely holds a real property interest in a retail sales outlet on which another entity operates the ongoing business shall not be considered the wholesale purchaser-reseller with respect to that outlet.

10 CFR 211.106(b)

Since each gasoline retail outlet was considered a separate firm and a separate wholesale purchaser-reseller for allocation purposes, the regulations provided that a supplier's obligation to provide motor gasoline be determined separately for each retail sales outlet without distinguishing between retail sales outlets operated by the supplier and retail sales outlets not operated by the supplier. 10 CFR 211.106(b)(3)(i).

Section 211.106 also contained provisions for the loss of an allocation entitlement where a retail outlet ceased its operations. Specifically, § 211.106(c)(1) provided that a wholesale purchaser-reseller which operated a retail sales outlet "shall be deemed to have gone out of business with respect to that outlet for purposes of § 211.11 if it vacates the site on which it conducts such business." Section 211.106(e) further provided that, whenever a wholesale purchaser-reseller was deemed to have gone out of business in accordance with § 211.106(c)(1),

> The right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to its successor on the site, provided such successor established the same ongoing business on the site within a reasonable period of time, as determined by [DOE], after its predecessor vacates the premises.

When the operator of a retail outlet went out of business under § 211.106(c)(1), the supplier was required to remove the amount of the allocation entitlement of the outlet from its supply obligation unless the right to the allocation had transferred to a successor wholesale purchaser-reseller under § 211.106(e). Thus, the transfer of a retail outlet to a new owner automatically transferred the right to an allocation of motor gasoline for that outlet to the new owner. The transfer of ownership did not change the base period supplier to the outlet, the new owner became entitled to receive the existing allocation entitlement of the outlet from the existing base period supplier. 10 CFR 211.106(d)(2).

The volumes of motor gasoline that a base period supplier was obligated to offer to retail outlets and other base period purchasers was determined according to 10 CFR 211.10, 211.107(b). In general, each purchaser was entitled to receive an amount of an allocated product which corresponded to the amount received during the base period. If a supplier did not have access to sufficient product to meet its total monthly supply obligations, he was required first to supply all purchasers which fell into certain defined priority categories. In order to supply its other purchasers, the supplier than determined "allocation fraction," which, in general, was equal to its remaining allocable product divided by its total supply obligation. The use of an allocation fraction insured that all base period purchasers in the same priority category were offered the same percentage of their base period volumes from the supplier.

IV. Analysis

The factual and legal findings pertaining to this case will be divided its two relevant time periods, those relating to the period October 1978 to March 1, 1979 and those relating to the period subsequent to March 1, 1979. While the rights and obligations of the parties under the October 1978 Agreements were superseded on March 1, 1979 by the updating of the base period, it is important to examine the parties' pre-March 1979 status in order to determine their post-March 1979 rights and obligations under the operative agreements.

A. Rights and Obligations of the Parties under the October 1978 Agreements prior to March 1, 1979

1. The Allocation Entitlements Transferred as a Consequence of the October 1978 Agreements.

As recounted in Section I above, shortly after the parties executed the October 1978 Agreements, a dispute arose between RFI and Oasis as to the precise allocation entitlements that RFI had transferred to Oasis in conjunction with the sale of the 84 retail gasoline stations. In order to unravel the complex dispute which has developed with regard to this matter, we will first discuss the divergent factual and legal positions advanced by the two parties on this issue. We will then make the appropriate factual findings with respect to the matter. Finally, we will apply the pertinent DOE allocation regulations to resolve the dispute between the parties.

a. Factual Dispute. Throughout this proceeding, Oasis has consistently maintained that the language contained in the Amended Asset Purchase Agreement and ancillary documents clearly established that RFI intended to transfer its right to all gasoline supplied to it by Cities, *viz.*, the 97,679,000 gallons set forth in the Three Party Agreement. Oasis' July 16, 1984 Brief at 12. RFI, on the other hand, while admitting that a certain amount of confusion existed among the parties to the October 1978 agreements as to the exact base period volumes to be transferred pursuant to the Amended Asset Purchase Agreement and collateral documents, has contended that it never evidenced an intent to transfer allocation entitlements associated with more than the 84 stations which it sold to Oasis. RFI's August 13, 1984 Brief at 33–38.

After reviewing the October 1978 Agreements, OHA determined earlier in this proceeding that the language contained in the operative documents was ambiguous and subject to several possible interpretations. *Oasis Petroleum Corporation et al.*, 13 DOE 82,559 (1985). In reaching this conclusion, OHA made the following observations. First, since RFI owned more than 84 retail gasoline outlets at the time it entered into the relevant agreements with Oasis, the 97,679,000 gallons of motor gasoline reflected in the

Three Party Agreement might represent the annual adjusted base period volume for more outlets than the 84 outlets conveyed to Oasis. This possibility, noted OHA, is supported by the language in the Three Party Agreement which suggests that RFI intended to convey its entire base period allocation of motor gasoline from Cities even though that allocation may have exceeded the allocation that was attributable to the 84 retail gasoline outlets sold to Oasis. On the other hand, OHA observed that when the Amended Asset Purchase Agreement is read in conjunction with the Three Party Agreement, it appears that the 97,679,000 gallons of gasoline at issue might be associated only with the 84 retail stations transferred to Oasis. OHA found that Exhibits "C" and "D" to the Amended Asset Purchase Agreement supported this interpretation. Another possible interpretation of the October 1978 Agreements offered by OHA is that RFI attempted to convey, through the subject documents, only a portion of the 97,679,000 gallons of gasoline. Specifically, RFI might have intended to transfer only volumes sufficient to supply the 84 retail gasoline stations that it sold to Oasis. Support for this interpretation can be gleaned from the Three Party Agreement where there is no indication as to the number of outlets to which the 97,679,000 gallons in question pertain.

Because of the confusion concerning the precise allocation entitlements transferred by RFI to Oasis and the divergent positions taken by the parties in connection with the issue, OHA decided that further investigation was warranted to resolve this matter.[26] Therefore, OHA set forth the following two issues to be addressed at the evidentiary hearing:

(4) Whether the 1972 base period volume figure of 97,679,000 gallons of gasoline that is reflected in the Three Party Agreement executed by RFI, Oasis and Cities is associated with only the 84 retail gasoline stations that RFI sold to Oasis pursuant to the Amended Asset Purchase Agreement and documents ancillary thereto?

(5) Whether RFI intended to transfer allocation entitlements associated with more than 84 retail gasoline stations at the time it executed the Amended Asset Purchase Agreement and documents ancillary thereto?

At the evidentiary hearing, several witnesses testified concerning the two issues set forth above. Those witnesses included Larry Minx, former Vice-President, Secretary and Director of RFI; John Sterling, RFI's former outside corporate counsel; Tariq Kadri, former Secretary and General Counsel of Oasis and Richard Heinzelmann, former Manager of the Plans and Evaluation Department of Cities.

From the evidence adduced at the hearing, it is clear that at the time the parties executed the October 1978 Agreements, neither RFI nor Oasis knew the precise volume that represented the allocation entitlement associated with the 84 stations. In this regard, John Sterling testified that RFI lacked the requisite documentation to identify the base period volumes attributable to the 84 stations. Transcript of June 27, 1985 Hearing at 206–209, *Oasis Petroleum Corporation*, Nos. HEG–0031, HCX–0100 (hereinafter cited as June 27 Tr.).[27] As a consequence, stated Mr. Sterling, RFI had to rely on Cities to provide that information. *Id.* Mr. Sterling further testified that RFI had reservations concerning the accuracy of the 97,679,000 gallon figure claimed by Cities as its' base period supply obligation to RFI. June 27 Tr. at 208. Mr. Sterling stated that, notwithstanding the firm's reservation, RFI agreed to consummate the transaction because Cities had agreed to certify the base period volumes to be transferred to Oasis in the Three Party Agreement. *Id.*

Mr. Kadri who testified on behalf of Oasis stated that Oasis also did not independently verify the accuracy of the 97,679,000 gallon figure contained in the Three Party Agreement but instead chose to rely on Cities and RFI with respect to this matter. Transcript of August 20, 1985 Proceedings at 347, *Oasis Petroleum Corporation*, Nos. HEG–0031, HCX–0100 (hereinafter cited as August 20 Tr.) When questioned whether Oasis knew at the time of the execution of the October 1978 Agreements that RFI had some reservation concerning the accuracy of the base period volume figure, Mr. Kadri responded negatively. August 20 Tr. at 252. He then added that had Oasis known that RFI questioned the accuracy of the 97,679,000 gallon figure, Oasis would not have proceeded with the transaction. *Id.*

After the testimony of Messrs. Sterling and Kadri, it appeared that only Cities was in a position to explain how it computed the adjusted base period volume figure attributable to the 84 stations. On this matter, the testimony of Richard Heinzelmann proved insightful.[28] Mr. Heinzelmann explained that under the Branded Distributor Agreement that was in effect at the time the October 1978 Agreements were executed, Cities supplied terminals and not individual retail outlets. Transcript of September 12, 1985 Proceedings at 966, *Oasis Petroleum Corporation*, Nos. HEG–0031, HCX–0100 (hereinafter cited as September 12 Tr.). Mr. Heinzelmann stated that he understood Cities' obligation to RFI to be an undifferentiated one (i.e. none of the Cities' gasoline was earmarked for any particular retail outlet). Furthermore, Mr. Heinzelmann asserted that everyone associated with Cities who was involved in the October 1978 transaction understood that 100% of Cities' undifferentiated obligation to RFI was being transferred to Oasis. September 12 Tr. at 916.

We surmise that there may have been some misunderstanding between RFI and Cities prior to the execution of the October 1978 Agreements as to what allocation entitlements were to be transferred pursuant to those agreements. The following colloquy between Thomas O. Mann, Deputy Director, OHA; and Mr. Heinzelmann illustrates that point.

Mr. MANN: Do you think it's possible that Mr. Minx might have asked you the wrong question. He might have asked you question A, which is, what is Cities' allocation obligation to RFI, instead of question B, what are the allocation obligations to the 84 stations? Do you think he could have confused the difference between those two questions?

THE WITNESS: Yes, it's possible.

MR. MANN: And if he had you wouldn't have recognized it at the time, would you?

THE WITNESS: No, I wouldn't have.

September 12 Tr. at 991.

Despite the above exchange, Mr. Heinzelmann maintained that there was no misunderstanding on RFI's part as to what allocation entitlements were to be transferred by means of the October 1978 Agreements. He insisted that RFI

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[26] In its February 12, 1985 Decision, OHA advised that the resolution of the factual issues concerning the precise volumes of gasoline that RFI transferred to Oasis pursuant to the October 1978 Agreements might be irrelevant to a determination of the rights and obligations of the parties to this proceeding. Such a result would obtain, explained OHA, if the office determines that the Three Party Agreement is ineffective for want of DOE approval. OHA concluded, however, that it must examine the above-described issues in order to evaluate whether DOE properly exercised its discretion in refusing to approve the relevant agreements. Oasis Petroleum Corporation/Research Fuels, Inc., 12 DOE 82,549 85,272 (1985).

[27] Larry Minx also testified on behalf of RFI and explained that Cities certified the base period allocation volumes associated with the 84 retail outlets because RFI did not have "access to . . . each particular stations' allocation." June 27 Tr. at 46.

[28] Mr. Heinzelmann testified at the evidentiary hearing in his individual capacity and not as the representative of Cities.

intended to transfer all its supply entitlements from Cities, regardless of whether those entitlements were tied to the 84 stations. September 12 Tr. at 993. To support this contention, Mr. Heinzelmann recounted a conversation that he had with Mr. Minx subsequent to the execution of the Three Party Agreement and the Mutual Cancellation and General Release. Mr. Heinzelmann testified that he asked Mr. Minx how Minx intended to obtain a future supply of gasoline for RFT's remaining business now that Cities and Marathon would no longer be supplying RFI with gasoline. September 12 Tr. at 903. Mr. Minx purportedly responded to this inquiry by stating that with his experience, knowledge and relationships in the industry, he considered it a matter of personal confidence to be able to secure all necessary gasoline supplies from sources other than Cities and Marathon. *Id.*

At the evidentiary hearing, Mr. Minx declared that the dicourse related above was generally true. June 27 Tr. at 74.[29] However, he added that at the time he responded to Mr. Heinzelmann's question, he still believed that only allocation entitlements attributable to the 84 stations had just been transferred pursuant to the October 1978 Agreements. June 27 Tr. at 75. In an effort to reconcile Mr. Minx's seemingly inconsistent positions, counsel for RFI asked Mr. Minx the following question at the evidentiary hearing:

> Q. Was it your understanding at the time [you engaged in the conversation with Mr. Heinzelman] that you could have an entitlement—allocation from the company [Cities] but still not be able to lift that entitlement due to credit problems?

June 27 Tr. at 76.

Mr. Minx responded affirmatively to the above question.

Based on our review of the voluminous record in this proceeding, particularly the transcripts containing the testimony of Messrs. Minx, Sterling, Kadri and Heinzelmann, we make the following findings. First, RFI's precarious financial situation in October 1978 mandated that the firm divest itself of some of its assets as expeditiously as possible. RFI realized, however, that the three principal suppliers to which the firm was heavily indebted would play a crucial role in that divestment process. Cities had already foiled an earlier attempt by RFI to sell the 84 retail outlets to Oasis when it refused to provide adequate assurances regarding its base period obligations to the 84 stations. The testimony of Mr. Sterling revealed that RFI questioned the accuracy of the 97,679,000 gallon figure claimed by Cities as its base period supply obligation to RFT's outlets. Mr. Sterling testified that RFI believed at the time the October 1978 Agreements were executed that even if the 97,679,000 gallon figure correctly reflected Cities' allocation obligation to the 84 stations, then Cities had additional allocation obligations to RFI.[30] June 27 Tr. at 209. Based on Mr. Sterling's testimony, it appears that RFI intended to transfer only the allocations attributable to the 84 retail outlets which it sold to Oasis. Unfortunately, because RFI did not know precisely what allocation entitlements were associated with the stations, and because Cities in good faith believed that its only supply obligation to RFI was an undifferentiated one, it is easy to understand how the present controversy developed. Further complicating the situation was Mr. Minx's statement concerning his ability to procure supply for the remaining RFI stations once Marathon and Cities were no longer supplying RFI. Presumably had Mr. Minx responded in a different fashion to Mr. Heinzelmann's inquiry, Cities might have ascertained that the two firms had differing expectations with respect to one of the crucial aspects of the October 1978 Agreements. On the other hand, RFI may have decided not to challenge Cities' volume figures anticipating that any subsequent dispute regarding this matter could be dealt with after RFI had received its desperately needed cash infusion.

Second, with respect to Oasis, we find that the firm probably believed at the time it executed the October 1978 Agreements that it had bargained to purchase 84 retail gasoline outlets and 97,679,000 gallons of gasoline. Mr. Kadri testified that prior to the firm's execution of the subject agreements, Oasis was never advised by RFI or Cities that there was a possible disagreement between those two parties as to the volume of gasoline to be transferred in conjunction with the 84 stations. August 20 Tr. at 252.

Third, as far as Cities was concerned, it desired principally to secure repayment of the trade debt owed to it by RFI. As a secondary matter, Cities was eager to sever its business relationship with RFI. Cities thought it had accomplished these dual objectives through the Three Party Agreement, the Substitute Supplier Agreement and the Mutual Cancellation and General Release. Although there is some confusion in Mr. Heinzelmann's testimony concerning whether Cities knew in October 1978 that its base period supply obligations to the 84 retail outlets differed from its base period supply obligations to the terminals from which RFI drew its supply, it appears that Cities earnestly believed that RFI intended to transfer 100% of the supply obligations to Oasis. Since Mr. Minx appeared to confirm Cities' belief in this regard by his response to Mr. Heinzelmann's inquiry described above, Cities had no reason to suspect that an amount less than RFI's entire allocation was being transferred to Oasis. In fact, even after Cities received RFI's November 8, 1978 letter apprising it that Cities still had base period obligations to RFT's remaining stations, Cities was unconvinced that any problem existed. Rather, as Mr. Heinzelmann testified, when Cities received RFI's November 1978 letter, the firm thought RFI was experiencing difficulty in locating a supplier. September 12 Tr. at 913. According to Mr. Heinzelmann, Cities believed that RFI was attempting to recapture a supply entitlement which it had sold to Oasis in October 1978. *Id.*

In sum, it appears that RFI, Oasis and Cities each thought that it was bargaining for something different when

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[29] Mr. Heinzelmann had previously recounted his conversation with Mr. Minx during a deposition taken in connection with the Florida litigation involving Lucky and Oasis. It was possible, therefore, to inquire of Mr. Minx about this matter at the first stage of the evidentiary hearing and to re-question Mr. Heinzelmann about the conversation during the third stage of the hearing.

[30] While RFI has taken the position in this proceeding that Cities' additional 1972 base period obligation ran to those RFI stations not sold to Oasis, it appears that Cities' additional allocation obligation actually ran to RFI. RFI, in turn, appears to have used the Cities' gasoline to supply wholesale purchasers. This conjecture is supported by portions of an Opinion Letter dated September 11, 1978 from Wynne and Jaffe to RFT's Board of Directors at AR-1271-77. In that Opinion Letter, Wynne and Jaffe state:

> We understand that the portion of the gasoline under the Cities Service and Marathon contracts that would no longer be available to the Company after the sale of the retail stations to Oasis is not used by the Company; *the remaining retail stations are supplied from other sources.* In addition, we understand that because of credit limitations placed upon the Company by Cities Service Company, the Company as a practical matter is unable to purchase more than 36,000,000 gallons a year under that contract and, absent the proposed sale to Oasis, the Company would probably have to utilize such 36,000,000 gallons to service the retail gasoline proposed to be sold. Accordingly, the net effect of the proposed transaction relating to assignment of these two major supplier contracts is to assure to the Company a source of gallonage for resale by the Company in the *wholesale market which might not otherwise be available to the Company.* As noted above, two fiscal years of the Company, wholesale marketing has been the only profitable operation of the Company. (emphasis added).

Id at 1273.

The fact that RFI may have used volumes allocated to its remaining outlets to sell to its wholesale customers would not affect the obligation of RFT's suppliers to furnish product to the firm.

it executed the Amended Asset Purchase Agreement and Collateral documents.[31] RFI thought it was conveying 84 retail outlets and whatever allocation entitlements were associated with those stations. In addition, RFI thought that Cities would remain the base period supplier for RFI's remaining retail outlets.[32] Oasis thought it was purchasing 84 retail outlets and supply contracts for no less than 97,679,000 gallons of gasoline. Oasis further appears to have believed that Cities' supply obligation of 97,679,000 gallons of gasoline ran directly to the 84 stations. In addition, Oasis apparently believed that Cities had terminated its supplier/purchaser relationship with RFI. Cities also thought it had effectuated a termination of its supplier/relationship with RFI. However, Cities believed that it had an undifferentiated supply obligation to RFI and that the 97,679,000 gallons of gasoline set forth in the Three Party Agreement was not tied to any of the 84 gasoline outlets individually.[33]

b. Regulatory Resolution of Factual Dispute. At the time RFI and Oasis entered into the October 1978 Agreements, each of the 84 outlets which RFI transferred to Oasis constituted a separate wholesale purchaser-reseller for purposes of the DOE allocation regulations. *See* 10 CFR 211.102, 211.106. Moreover, each of those outlets possessed an allocation entitlement based on its 1972 purchase volumes. (*Id.*)

Pursuant to the October 1978 Agreements, RFI terminated its operations at the 84 retail outlets and vacated those sites. Accordingly, for purposes of 10 CFR 211.11(c) and 211.106(d), RFI "went out of business with respect to" those 84 outlets. Since Oasis immediately established the "same ongoing business" at the sites of the 84 outlets, under §§ 211.106 (c) and (e) of the DOE allocation regulations, Oasis automatically succeeded to the allocation of gasoline attributable to each of the 84 outlets. Inasmuch as the transfer of allocation entitlements associated with each of the 84 retail stations occurred by operation of law, there was no need for the DOE to approve that allocation transfer. In this regard, 10 CFR 211.11(d) specifically provided that:

> The right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going business or established end-use. The right to an allocation shall be deemed to have been transferred only when the entire business or activity of the firm is transferred to a successor firm.

As stated above, section 211.11(d) tied the "right to an allocation" to a "firm." Under the allocation regulations specifically applicable to motor gasoline, a "firm" was defined as a single retail outlet. 10 CFR 211.106(b). the October 1978 Agreements transferred 84 retail outlets to Oasis. For regulatory purposes, the "entire business or activity" of 84 separate "firms" was transferred to Oasis under 10 CFR 211.11(d). That same section automatically transferred the allocation entitlements of each of the 84 "firms" ot Oasis.

To the extent that Cities, Marathon, RFI or any other firm had supply obligations to the 84 outlets in 1972, those firms remained the supplier(s) for those outlets after Oasis acquired them.[34] This result follows from 10 CFR 211.106(d). That section provided that the identity of the base period supplier is not altered when the right to an allocation with respect to a retail sales outlet is transferred to a successor which establishes the same activity or business on the site of the outlet. As stated above, this is precisely the situation which occurred with respect to the 84 retail outlets.

With respect to the factual dispute regarding the precise allocation entitlements that were transferred to Oasis by means of the October 1978 Agreements, the regulations explicitly stated that the "right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going business." 10 CFR 211.11(d). That section continued by stating that the right to an allocation "shall be deemed to have been transferred only when the entire businessor activity of the firm is transferred." The record clearly reflects that RFI owned a large number of retail stations in addition to the 84 stations that it sold to Oasis. It further appears from the record that Cities had been supplying several of RFI's remaining retail outlets prior to October 1978.[35] As stated above, the October 1978 Agreements effectuated a transfer of only 84 retail outlets. Since § 211.11(d) of the DOE allocations regulations prohibited the asignment of allocation rights separate from the ongoing business with which they were associated, (i.e. the individual retail stations), it was impossible for the October 1978 Agreements ot transfer entitlements automatically for any RFI retail outlets other than the 84 stations. Accordingly, to the extent that Cities and Marathon had base period supply obligations to stations in addition to the 84 sold to Oasis, those two firms remained the suppliers to those stations after the execution of the October 1978 Agreements.

While the regulations expressly prohibited the transfer of allocation entitlements without the sale of underlying retail stations, the allocation regulations did recognize that situations might arise where a supplier/purchaser relationship might need to be modified or terminated under certain circumstances. 10 CFR 211.9(a). Under § 211.9(a)(2)(i) of the DOE regulations, the supplier/purchaser-reseller relationship established by the

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[31] During the evidentiary hearing, Mr. Sterling testified that continuous negotiations spanning three days and nights preceded the execution of the October 1978 Agreements. June 27 Tr. at 209. He further testified that various factions representing different parties convened in different rooms while the principal negotiations occurred in a large conference room in the law offices of Wynne & Jaffe. June 27 Tr. at 212. The picture painted by Mr. Sterling of that marathon meeting was one punctuated by confusion with small clusters of interested parties caucusing in separate rooms and intermittently communicating with others who were memorializing the agreement in the large conference room. Given the environment in which the October 1978 Agreements were negotiated and executed, it is not surprising that a complete "meeting of the minds" never occurred.

[32] It is unclear from the record whether RFI actually articulated this belief of Cities, Marathon or Oasis prior to the execution of the October 1978 Agreements. However, because we found Mr. Sterling to be a very candid and knowledgeable witness, we will accept his uncontroverted testimony that RFI believed that Cities would remain the base period supplier for the outlets which were not sold to Oasis.

[33] Despite our factual findings with regard to the intent of the parties to the October 1978 Agreements, it is important to remember that firms involved in the petroleum industry such as Oasis, RFI and Cities had an affirmative obligation to remain aware of those provisions of the federal regulatory programs which affected their business operations. See J.D. Streett & Company, Inc., 13 DOE 84,018 (1985); see e.g. Cool Fuel Inc., 9 DOE 84,033 (1982); Woodyard Drilling Co., 3 DOE 83,007 (1979); Carlos R. Leffler, 2 FEA 80,640 (1975), aff'd sub nom. *Carlos R. Leffler, Inc.* v. *FEA*, 455 F. Supp. 623 (D.D C. 1978).

[34] The record does not clearly establish the identity of the 1972 base period supplier or suppliers to the 84 retail outlets. This matter is irrelevant, however, since the parties' rights and obligations during the 1972 base period were superseded by the rights and obligations established during the 1977–78 base period.

[35] The FEO–17 forms submitted to DOE by Cities on behalf of Oasis indicate that Cities had a supply obligation to 117 retail outlets owned by RFI. See Lucky's May 7, 1984 Brief at Appendix I, Volume II, Exhibit 40. It is uncontested that of the 117 stations, those stations located in Region VI (Texas and Louisiana), were not included among the 84 stations sold to Oasis. September 12 Tr. at 971. RFI has asserted that of the 117 stations listed on the FEO–17 forms, 81 were Remex stations sold t Oasis, 23 were stations owned or operated by RFI following the October 24 sales, two were Remex stations closed prior to the October 1978 sale and 11 were RFI stations closed or sold by RFI prior to October 1978. AR–2041–42.

Mandatory Petroleum Allocation Program could be waived or terminated through the express written approval of DOE. The requirement of written DOE approval was intended to protect customers who were downstream in the distribution system and who were entitled ot a base period allocation of a product. If the DOE were to permit a supplier and a wholesale purchaser-reseller to alter their regulatory base period relationship at will, supplies of product to subsequent customers in the chain of distribution, including ultimate consumers, would be disrupted. The requirement set forth in § 211.9(a)(2)(i) that DOE approval be obtained prior to termination of a base period relationship between a supplier and a wholesale purchaser-reseller is contrasted with the provisions of contained in 10 CFR 211.9(a)(2)(ii). The latter provisions permitted the termination of base period relationships between suppliers and wholesale purchaser-consumers by the mutual consent of both parties. Since a wholesale purchaser-consumer is an ultimate consumer of a petroleum product (10 CFR 211.51), there was no downstream purchasers who would be adversely affected by termination of the base period relationship. Consequently, a wholesale purchaser-consumer was permitted to bargain away its regulatory right to purchase an allocated product from a base period supplier.

In the instant case, RFI was a wholesale purchaser-reseller for purposes of the DOE allocation regulations. Accordingly, any permanent alteration in the existing base period relationship between RFI and its suppliers required DOE's approval. Both Cities and Marathon sought to permanently terminate their supplier/purchaser relationship with RFI. For the reasons set forth below, we find that neither party successively accomplished its objective.

While it is questionable whether a supplier/purchaser relationship existed between Cities and RFI during the 1972 base period, Cities nonetheless sought to sever whatever regulatory relationship it had with RFI by means of the Three Party Agreement. In so doing, Cities did recognize, however, that the Three Party Agreement required the approval of the DOE to be effective. During the course of this seven year controversy, no one has ever disputed that the DOE did not approve the Three Party Agreement as required by the provisions of 10 CFR 211.9(a)(2)(i).[36] We must find, therefore, that the Three Party Agreement merely constituted a private contractual arrangement among RFI, Cities and Oasis which was ineffective for purposes of terminating any base period supplier/purchaser relationship that may have existed between Cities and RFI or establishing a new base period relationship between Cities and Oasis.

Marathon, on the other hand, has admitted that it had a supplier/purchaser relationship with RFI during the 1972 base period. In correspondence with the OHA in 1980, Marathon indicated that its 1972 base period obligation ran directly to RFI and not to any of RFI's retail outlets. *See* Letter dated March 5, 1980 from Warren E. Connolly, Counsel for Marathon; to Melvin Goldstein, Director, OHA at AR-1925. Marathon explained in its submission to OHA that it sold motor gasoline to RFI F.O.B. Marathon's terminals and RFI then arranged for delivery of the product. *Id.* Based on the information provided by Marathon, it is clear that for regulatory purposes Marathon was RFI's "supplier" and RFI was in turn a "supplier" to the 84 outlets. Against this factual backdrop, we can now examine the document utilized by Marathon in an attempt to sever its supplier/purchaser relationship with RFI, viz., the Substitute Supplier/ Agreement.

At the outset, we note that a Substitute Supplier Agreement, by its very terms, could not permanently alter existing base period relationships. Rather, it was a vehicle by which one supplier permitted another supplier to assume its supply obligations to its customers. Section 211.25(a) of the DOE Allocation Regulations is the provision that permitted supplier substitution.[37] That provision was intended to reflect the DOE's recognition that the continuing supply obligations mandated by 10 CFR Part 211 could in some situations create difficulties for suppliers that had altered their marketing and distribution systems since the base period. Section 211.25 provided a means by which a firm could arrange to meet its supply obligations through a substitute supplier in order to alleviate such difficulties, and thus provided a measure of flexibility in the allocation program. While the regulations permitted a substitute supplier to assume the primary duty of providing supplies to the original supplier's customers, they also provided that the original supplier would retain its base period supply obligation to its customers during the pendency of the substitute supplier arrangement.

After reviewing the Substitute Supplier Agreement, it appears that the agreement was designed to achieve a result different from that envisioned by the regulatory section sanctioning supplier substitution, i.e. the permanent removal of Remex (RFI) as the intermediate supplier of the 84 stations. As discussed above, the only way to permanently terminate a supplier/purchaser relationship under the DOE regulations was to obtain the express written approval of the DOE. As a practical matter, this objective was accomplished by the submission to the DOE of an agreement similar to the Three Party Agreement. The DOE, after reviewing such an agreement would then decide whether to approve the permanent change in the base period supplier/purchaser relationship. In this case, even if we were to recharacterize Marathon's ill-fated Substitute Supplier Agreement as a three party agreement, we would be compelled to find the agreement ineffective for want of DOE approval.

In conclusion, we hold that the Substitute Supplier Agreement, under any construction, was ineffective for purposes of terminating the base period supplier/purchaser relationship between Marathon and RFI or establishing a new base period relationship between Marathon and Oasis.

2. RFI's Wholesale Business

Throughout this proceeding, Oasis has consistently alleged that RFI effectively transferred its wholesale business to Oasis when it assigned its Cities and Marathon supplies to Oasis in October 1978 and simultaneously ceased its wholesale sales. Oasis' July 16, 1984 Brief at 25. In response to this allegation, RFI has maintained that it neither intended to sell, nor sold any wholesale business to Oasis in October 1978. To support this assertion, RFI has cited two opinion letters from its counsel which assert that RFI's wholesale business was not among the assets sold to Oasis in October 1978. RFI's August 13, 1984 Brief at 29. In order to fully explore the intent of the parties with respect to RFI's wholesale business, OHA decided to examine this issue at an evidentiary hearing.

Before discussing the evidence adduced at this hearing, we first observe

[36] Later in this decision, we will discuss the issue of whether the DOE abused its discretion in not approving the Three Party Agreement.

[37] Section 211.25(a) provided as follows: Any supplier may arrange to supply any purchaser which is entitled to receive an allocation from it through another supplier or suppliers in accordance with normal business practices. The purchaser shall, however, be entitled to receive the same amount of an allocated product from the substituted supplier that it would receive if it were directly supplied by the original supplier using that supplier's allocation fraction.

that as of October 1978 RFI had no base period supply obligation to any of its wholesale purchasers, including BLT, Trans-Texas and Lucky. Since RFI did not begin its wholesale business until after the 1972 base period, no base period supplier/purchaser relationship between RFI and its wholesale customers had been created under § 211.9(a)(1) of the DOE allocation regulations. Nor had the DOE or its predecessor agencies ever issued an order under 10 CFR 211.12(e)(3) assigning RFI as the base period supplier to any of the wholesale purchasers. Consequently, at the time of the October 1978 Agreements, there existed no base period supply obligation with regard to the wholesale purchasers which could be transferred to Oasis.

While the application of the allocation regulations definitely resolves the factual dispute regarding the issue of whether RFI transferred its wholesale business to Oasis in October 1978, we note that there is no contractual basis to find otherwise.[38] Our examination of the Amended Asset Purchase Agreement and ancillary documents reveals that RFI's wholesale business was not even alluded to in any of those documents. Moreover, Oasis has admitted in its pleadings that the operative agreements do not expressly mention RFI's wholesale customers. Oasis' July 16, 1984 Brief at 36. Therefore, even assuming *arguendo* that the parties' contractual arrangements were not subject to regulatory restrictions, there is no evidence on the face of the conveyance agreements that would compel the conclusion that RFI sold its wholesale business to Oasis.

Furthermore, testimony adduced at the evidentiary hearing convened by OHA in this proceeding convinces us that RFI did not intend to transfer its wholesale business to Oasis at the time it executed the October 1978 Agreements. At the hearing, John Sterling testified that during the negotiations preceding the execution of the Original Asset Purchase Agreement and the Amended Asset Purchase Agreement, no discussion occurred concerning the sale of RFI's wholesale business. June 27 Tr. at 233. According to Mr. Sterling, the October 1978 Agreements were not intended to reflect the sale of the wholesale business. *Id.* Mr. Sterling's testimony is consistent with the position taken by his law firm several weeks prior to the execution of the Amended Asset Purchase Agreement. On September 11, 1978, the law firm of Wynne and Jaffe issued an opinion letter to RFI's Board of Directors regarding the issue of whether the sale of assets from RFI to Oasis required the authorization or approval of RFI's shareholders. AR-1271-77. In that opinion letter, the law firm stated the following:

> We have been advised that after the proposed Oasis transactions, the Company intends to continue to operate its approximately 140 remaining retail gasoline stations and to *continue in the business of selling gasoline at wholesale*, and in furtherance of this intention that the proceeds of the sale will be used, among other things, to solve severe cash flow problems that, if left uncorrected, may place the Company in the position of being unable to meet its debts and other obligations as they mature. (emphasis added). (AR-1273.)

Mr. Sterling also noted for the record that in the Form 8-K filed with the SEC for the month of October 1978, there is no mention of the sale of RFI's wholesale business under the caption, "Acquisition and Disposition of Assets." (*Id.* at 234) [39]

Mr. Kadri also testified at the evidentiary hearing concerning the issue of whether RFI intended to sell its wholesale business to Oasis. In his testimony, Mr. Kadri intimated at first that, indeed, RFI did intend to sell its wholesale business to Oasis. When questioned as to whether he personally had any discussions with RFI prior to the signing of the October 1978 Agreements regarding the sale of RFI's wholesale business, he responded as follows:

> Yes, RFI wanted to sell us the whole company, they talked about the various parts of it. Insofar as those discussions took place, the wholesale business, I'm sure, was mentioned. I don't specifically recall any isolated discussion of it (August 20 Tr. at 351.)

However, when RFI's counsel inquired of Mr. Kadri whether he had given any indication to RFI that Oasis was interested in purchasing anything other than the 84 retail outlets and the supply contracts (i.e. the wholesale business), Mr. Kadri testified as follows:

> We were interested in purchasing the supply contracts and the 84 stations. We told them we might be interested in buying other assets, but not at the time. (*Id.*)

Later, Mr. Kadri testified that at the time Oasis purchased the 84 stations and the supply contracts, "we thought that all the gasoline was attributable to the stations and it was our intention to use the gasoline in the gas stations, not to go permanently into the wholesale business with that volume." (*Id.* at 352-53.)

We believe that the last statement accurately reflects Oasis' views at the time the October 1978 Agreements were executed. Oasis did not believe that it was purchasing RFI's wholesale business in October 1978. Rather, Oasis was concerned principally with obtaining adequate supplies of gasoline to channel through the 84 retail outlets.[40] As will be discussed below, it was only when the base period changed and RFI's wholesale customers obtained a regulatory right to receive motor gasoline that Oasis first asserted its rights to supply RFI's wholesale customers.

Based on the testimony recounted above, we find no justification for concluding that the parties intended to transfer any additional assets other than those that were expressly referenced in the operative documents. In sum, we have determined that the record now adequately supports the factual finding that RFI did not intend to transfer its wholesale business to Oasis at the time it executed the Amended Asset Purchase Agreement and ancillary documents.

B. The Effect of Standby Activation Order No. 1 on the Rights and Obligations of the Parties under the October 1978 Agreements

As noted above, on February 22, 1979, the ERA issued Activation Order No. 1 which changed the motor gasoline base period from the corresponding month of 1972 to the corresponding month of the period July 1977 through June 1978. 44 FR 11,202 (February 28, 1979). The Order was effective for the three-month period beginning on March 1, 1979 and was based on a determination that there was a significant possibility of gasoline shortages and resulting dislocations in the industry during the period March through May 1979. The updating of the allocation base period was considered necessary to prevent disruptions in the gasoline distribution system which would occur during a shortage situation if an allocation system based upon distribution patterns in effect seven years ago were used. Effective May 1, 1979, the ERA issued an Interim Final Rule which designated the period November 1977 through October 1978 as the base period. 44 FR 26,712 (May 4,

[38] A discussion of the contractual aspect of this issue will illuminate an issue to be discussed later in this decision, viz., whether RFI abandoned its wholesale business entirely at the time it executed the October 1978 Agreements or at any time thereafter

[39] The above-referenced 8-K Form is located in the record at DP-0581.

[40] Later in this decision, we will discuss RFI's contention that Oasis never intended to channel gasoline through the 84 retail outlets but instead sought to and did divert that gasoline on the spot market.

1979). On July 15, 1979 the ERA issued a final rule which permanently established November 1977 through October 1978 as the base period for motor gasoline. 44 FR 42,549 (July 19, 1979). In addition, beginning in May 1979 a retail sales outlet, wholesale purchaser-consumer, or bulk purchaser of motor gasoline was permitted to substitute as its volume for any base period month its average monthly purchases during the period October 1978 through February 1979 if that average was ten percent greater than its purchases during the particular base period month. (10 CFR 211.104.)

Before considering the regulatory impact of the updated base period on the contractual agreements between RFI and Oasis, we must first consider the DOE's authority to issue and apply Standby Activation Order No. 1 to this or any other controversy. Then, we will briefly discuss the prospective application of Order No. 1 to pre-existing contractual arrangements in general. We are examining these two matters pursuant to TECA's request. TECA, in reviewing the decision issued by the Texas district court in connection with the controversy presently before OHA, discussed the court's finding that the DOE lacked authority to "retroactively" apply Standby Agreement. *Oasis Petroleum Corp. v. DOE*, 718 F.2d 1558, 1565 (1983). While TECA expressed its views concerning the court's findings in this matter, it explicitly stated that, upon remand, no significance should be accorded to any issue addressed by that reviewing body except the issue of primary jurisdiction. TEC did opine, however, that the question of the effect, if any, of Standby Activation Order No. 1, on the Amended Asset Purchase Agreement is one of policy and authority. TECA further stated with regard to this matter that "the DOE [OHA] should be given the opportunity to explain and apply its policy and regulations . . ." (*Id.*)

1. Authority of the DOE to Establish an Updated Base Period to Determine Base Period Volumes and Supplier/Purchaser Relationships

On October 17, 1973, Congress passed Pub. L. 93–159, the Emergency Petroleum Allocation Act of 1973 (EPAA) which granted the President broad authority to issue allocation regulations designed to accomplish nine general objectives.[41]

[41] Section 4(b)(1) of the EPAA, 15 U.S.C. 753(b), set forth those nine objectives as follows:

(1) protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating, such as individual homes, apartments and similar occupied dwelling units), and the national defense.

(2) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or

(3) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(4) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded indpendent marketers;

(5) the allocation of suitable types, grades, and quality of crude oil to refiners in the United States to permit such refineries to operate at full capacity.

(6) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(7) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of—

(i) fuels, and

(ii) minerals essential to the requirement of the United States and for required transportation related thereto;

(8) economic efficiency; and

(9) minimization of economic distortion, inflexibility, and unncessary interference with market mechanism. the EPAA, the

Section 4(c)(2) and (3) of the EPAA specifically provided that the President could require an adjustment in allocations with respect to the 1972 base period if such adjustment was necessary to accomplish the objectives of the Act. In the Conference Report that accompanied local government or authority, and including transportation facilities and services which serve the public at large);
Congress explained its intent with respect to the above-stated provisions as follows:

> In meeting the objectives of Section 4(b) the President may find it most convenient to rely on historical use and supply patterns. The conferees wish to emphasize, however, that the President need not base allocations on a historical period. The President is intended to have full flexibility in devising the most effective and efficient means of meeting the priority needs of the American people identified in Section 4(b).

House Conference Report No. 93–628 (November 10, 1973), *reprinted in* U.S. CODE CONG. & AD. NEWS 2582, 2689 (1973). Congress further stated that:

> It should be noted that allocations are to be based on a corresponding period in calendar year 1972. The President is intended to have discretion to select within the calendar year the appropriate period or periods. Thus, the corresponding period of 1972 could be the entire calendar year or the President could divide the year into quarters, months or weeks. Moreover, it should be emphasized that the President is intended to have flexibility to depart from the calendar year 1972 altogether if it would be inconsistent with the Congressionally stated objectives to continue to rely on the base period. In such event the President would be expected to select some other mechanism or procedure for allocation which would be more suited to the accomplishment of the objectives of the Act. (*Id.* at 1690.)

On December 4, 1973, the President issued Executive Order No. 11748 pursuant to which he established the Federal Energy Office (FEO) and delegated to the Administrator of that agency all of the authority vested in him by the EPAA, including the authority of promulgate regulations providing for the mandatory allocation of petroleum products. 38 FR 33,575 (December 6, 1973). The FEO promulgated the Mandatory Petroleum Allocation and Price Regulations, 10 CFR Parts 210, 211 and 212 in accordance with the directive set forth in Section 4(a) of the EPAA, 15 U.S.C. 753(a).

As stated above, the EPAA clearly afforded the President or his delegate the flexibility of departing from the calendar year 1972 in determining the appropriate base period to be utilized in conjunction with the various provisions of the Mandatory Petroleum Allocation and Price Regulations. Therefore, when the DOE issued Activation Order No. 1 which updated the base period, effective March 1, 1979, to the corresponding month of the period July 1, 1977 through June 30, 1978, there existed ample statutory authority for such action. Moreover, this action was undertaken in an attempt to attain one of the broad objectives set forth in Section 4(b)(1) of the EPAA, viz, the preservation of an economically sound and competitive petroleum industry and the need to restore and preserve the competitive viability of all segments of the industry.

2. Prospective Application of Activation Order No. 1 to Pre-existing Contractual Arrangements In General

There is no question that Standby Activation Order No. 1 changed the applicable base period on a prospective basis. When Activation Order No. 1 became effective on March 1, 1979, *from that date forward* the change in base periods altered allocation rights and obligations. The regulation itself explicitly stated that "the principal effect of these changes [updating base periods] is that, *beginning in March 1979*, the motor gasoline allocation base period for each month will be the corresponding month of the period beginning July 1, 1977 and ending June

30, 1978. (44 FR 11,204 (February 28, 1979).)

3. Specific Application of Activation Order No. 1 to the Controversy under Consideration

With respect the impact of Standby Activation Order No. 1 on the Amended Asset Purchase Agreement, we observe that the parties to that agreement were on notice as of Julay 10, 1978—three and one-half month before they executed the subject documents—that the ERA had proposed the establishment of an updated base period.[42] Irrespective of that fact, we find that the parties have no cause to complain that Standby Activation Order No. 1 interfered with their expectations of the October 1978 Agreements. First, we note that TECA has previously upheld constitutional challenges to DOE's crude oil allocation regulations when those regulations pre-empted contractual relationships. In *Condor Operating Co.* v. *Sawhill,* 514 F.2d 351, 361 (Temp. Emer. Ct. App. 1975), *cert denied,* 421 U.S. 976 (1975), TECA held that "the regulation of future action based on rights previously acquired by the person regulated is not *per se* prohibited by the constitution" *citing Fleming* v. *Rhodes,* 331 U.S. 100, 67 S.Ct. 1140, 91 L.Ed. 1368 (1947). The court further explained that reasonable and practical regulation which are generally fair and equitable, although not necessarily so as applied to a particular person, are not unconstitutional when general regulations are necessary to accomplish an appropriate congressional purpose. *Id.* In addition, TECA has also upheld the legality of DOE regulations incorporating base period concepts. For example, in *Basin Inc.* v. *FEA,* 534 F.2d 324, (Temp. Emer. Ct. App. 1976), *cert. denied,* 434 U.S. 821 (1977), TECA held that "sales made after the effective date of the EPAA were not beyond the reach of the Act because they occurred in performance of agreements entered into before the Act's effective date." *Id* at 326. The above-referenced cases stand for the proposition that lawfully issued regulations must prevail in instances where they conflict with the terms of a private contract. Therefore, to the extent that the October 1978 Agreements are inconsistent with the DOE allocation regulations, those agreements must yield to the regulations.

a. *Allocation Entitlements Associated with the 84 Stations Sold to Oasis.* With respect to the 84 outlets purchased by Oasis pursuant to the October 1978 Agreements, we find that the updating of the base period pursuant to Activation Order No. 1 did not affect the fact that the allocation entitlements associated with those outlets were transferred to Oasis in October 1978. However, Activation Order No. 1 did alter the amount of allocated volumes attributable to each outlet as of March 1, 1979. As of that date, each of the 84 outlets was entitled to purchase an amount of motor gasoline based on the amount it purchased during the new base period rather than the amount it purchased during the 1972 base period. In addition, those suppliers which had actually supplied the outlets during the updated base period became obligated to supply those outlets effective March 1, 1979. (See 10 CFR 211.9(a)(1)).) In this regard, we find that the updating of the base period resulted in the establishment of a supplier/purchaser relationship between Cities and RFI.[43] This result occurs because the Branded Distributor Agreement apparently provided for the distribution of motor gasoline to RFI at terminal points and not to the individual retail outlets. September 12 Tr. at 975. Therefore, for purposes of the DOE regulations, RFI was considered the "supplier" to the 84 outlets as of March 1, 1979. In that capacity, RFI had the right to receive from Cities that volume of motor gasoline which Cities had previously been supplying to the outlets.[44]

b. *Allocation Entitlement Acquired by RFI's Wholesale Purchasers.* Effective March 1, 1979, those wholesale purchasers which had purchased motor gasoline from RFI during the updated base period acquired a regulatory right to obtain gasoline based on their purchase volumes during the new base period. Almost immediately after the implementation of Activation Order No. 1, a dispute arose between RFI and Oasis as to which firm had the regulatory obligation to supply RFI's wholesale customers. Each party advanced several arguments to support its respective claim that it was the proper supplier of the wholesale customers. Earlier in this decision, we found that there was neither a regulatory nor constructual basis to support Oasis' contention that RFI's wholesale business was transferred to Oasis by virtue of the October 1978 Agreements.[45] We will now examine the issue of whether RFI abandoned that wholesale business and the effect, if any, of Activation Order No. 1 on Oasis' claim that it was the supplier of RFI's wholesale customers.

i. Factual Dispute. Oasis has argued that it acquired the obligation to supply certain wholesale distributor customers of RFI during the new base period because RFI abandoned its wholesale business. Oasis' July 16, 1984 Brief at 25. To support its contention, Oasis refers to the 10Q Form which FRI filed with the Securities and Exchange Commission. (SEC). According to Oasis, the 10Q Form which covers the three month period ending March 31, 1979 purportedly indicates the RFI ceased its wholesale operations in October 1978 because of its inability to purchase a sufficient quantity of gasoline for wholesale distribution. *Id.* at 13. Further, Oasis states that the 10Q Form indicates that as of March 31, 1979, RFI had not reestablished its wholesale business and evidenced no intent to do so. *Id.* at 36–37. In addition, Oasis contends that RFI's contractual transfer or allocated volumes of motor gasoline from Marathon and Cities to Oasis left RFI without and assured surplus of product which it could resell to its wholesale customers. *Id.* at 36–37. Oasis also notes that with the sole exception of several sales made pursuant to the April 12 Settlement, FRI never made another wholesale sale even though it has

[42] On July 10, 1978, notice was published in the **Federal Register** that the ERA had proposed special rules pertaining to, among other things, the allocation and pricing of refined petroleum products. 43 FR 29,565 (1978). According to the notice, the proposed special rules would remain in standby status until a significant interruption in the supply of crude oil or refined products occurred, at which time they could be activated. The notice identified the establishment of an updated base period as the most significant possible change to the existing allocation program. In this regard, the notice explained: The base period year, necessary to determine the purchasers to which a supplier is obligated to provide product, and the amount of supply obligation, could be changed by the Administrator under the special rule to be the 12-month period ending with the second full month prior to the month in which the Administrator issues an order effectuating the special rule, or such other 12-month period as the Administrator should consider appropriate. (*Id.* at 29,570.)

[43] As stated in footnote 34 *supra*, the record is unclear as to whether Cities was a 1972 base period supplied to the 84 retail outlets. In the event that Cities did have a supplier/purchaser relationship with RFI under the 1972 base period, Cities' obligation would have run directly to the 84 outlets under the Marketing Development Agreement.

[44] There is no evidence in the record to suggest that Marathon's base period obligation to RFI changed during the updated base period. Therefore, as stated in Section IV. A. 1. above, Marathon remained RFI's "supplier" and RFI, in turn, furnished motor gasoline to the retail outlets.

[45] In Section IV. A.2. above, we found that as a regulatory matter RFI could not have transferred the base period supply obligations associated with its wholesale customers because no such base period obligation existed in October 1978. As a contractual matter, we observed that the October 1978 Agreements could not have conveyed RFI's wholesale business to Oasis because the agreements failed to mention the wholesale business. In addition, we concluded that based upon the testimony of certain witnesses at the hearing that RFI did not intend to transfer its wholesale business to Oasis.

product available to it from numerous other suppliers. (*Id.* at 37–38.)

In rebuttal, RFI contends that in no filing with the SEC or otherwise is there any indication that RFI intended to permanently abandon its wholesale business. RFI's August 13, 1984 Brief at 96. RFI states that the clearest indication of its intention to continue its wholesale business is the April 12 Settlement Agreement whereby Oasis agreed to supply RFI with three million gallons of motor gasoline per month for its wholsesale business. *Id.* Moreover, FRI attributes its temporary cessation of its wholesale business to its inability to obtain sufficient supplies to meet its wholesale obligations. In this regard RFI states that since its wholesale business was its most profitable activity, it should be abundantly clear that RFI always intended to resume this business when market conditions changed. *Id.* RFI also offers as evidence of its intent to continue in the wholesale business a letter dated September 20, 1978 from B. Mills of RFI to RFI's wholesale customers. *Id.* at 30–31. That letter stated that RFI would notify its wholesale customers in the future as to the resumption of its wholesale transactions.

OHA determined earlier in this proceeding that a genuine factual dispute existed regarding the issue of whether FRI abandoned its wholesale business and/or "went out of business" entirely at the wholesale level of distribution at the time it executed the October 1978 Agreements or at any time thereafter.[46] *Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE 82,549 85,271 (1085). Accordingly OHA framed that issue for consideration at the evidentiary hearing.

At the evidentiary hearing, John Sterling testified that the 10Q Forms upon which Oasis relies for the proposition that RFI abandoned its wholesale business do not in fact support that proposition. June 27 Tr. at 236–38. Mr. Sterling stated that the statement contained in the 10Q Form under the caption "Three Months and Nine Months Ended March 31, 1979, *vs.* Three Months and Nine Months Ended April 1, 1978" [47] is an explanation of why RFI's financial data varied so substantially from one period to another. *Id.* at 237. Mr. Sterling noted that the relevant statement indicates only that RFI was unable to wholesale gasoline during one portion of the then current reporting period. *Id* at 238. Further, Mr. Sterling emphasized that the phrase "discontinuance of wholesale functions" does not denote the cessation of wholesale operations. *Id.* Rather, he argued that the term "functions" is descriptive of the attempt to reduce overhead and personnel associated with the wholesale operations. (*Id.*)

Larry Minx also testified at the evidentiary hearing about this issue. With respect to the letter dated September 20, 1978 from Bob Mills, Manager Whilesale-Operations, RFI, addressed to "All Wholesale Customers" Mr. Minx stated that at the time RFI sent the letter, it was the firm's intent to resume wholesale operations when it was financially able to do so. June 27 Tr. at 88.[48] The letter which has been utilized by both Oasis and RFI, either in part or in whole, to support their opposing positions reads as follows: [49]

> Effective September 25, 1978 Research Fuels Inc. will discontinue all wholesale sales activities. We at Research Fuels, Inc. have enjoyed and appreciated your business in the past and in the future when we are able to continue wholesale sales you will be notified.

In further explaining why RFI had sent the September 20 letter to its wholesale customers, Mr. Minx stated that RFI had decided at the time to temporarily suspend its sales of gasoline to its wholesale customers in order to purchase product for its retail units. *Id.* at 88. Mr. Minx explained that RFI had difficulty meeting the needs of its retail operations due to developing gasoline shortages and liquidity problems. It appears from Mr. Minx's testimony that the combination of these factors caused the margins on wholesale operations to be too low during most of the period prior to March 1, 1979 to justify sale to wholesale customers. [50]

Mr. Minx further testified that RFI entered into negotiations with several firms during October 1978 to April 1979 in an attempt to sell all of RFI's remaining business activities including its wholesale activities. *Id.* at 92. According to Mr. Minx, shortly after the negotiations with these firms terminated unsuccessfully, RFI entered into a Temporary Supplier Substitution Agreement with Encorp, Incorporated for the purpose of reactivating RFI's wholesale business sales. (*Id* at 94.)

The testimony recounted above combined with the fact that the April 12, 1979 Settlement Agreement provided that Oasis would supply RFI with three million gallons of gasoline per month for the express purpose of permitting RFI to supply its former wholesale customes convinces us that RFI did not attend to abandon its wholesale business at the time thereafter. We will now examine the DOE allocation regulations to determine if RFI "abandoned" its wholesale business for regulatory purposes.

Section 211.106(d) of the allocation regulations which specifically governs motor gasolina activity states that:

> A wholesale purchaser-reseller which operates a retail sales outlet shall be deemed to have gone out of business with respect to that outlet for purposes of 211.11 [51] if it vacates the site on which it conducts such business. Notwithstanding the foregoing, an independent marketer shall not be deemed to have gone out of business if (1) the independent marketer vacates the site on which it formerly operated a retail sales outlet, (2) the independent markter that occupied the former site, within a reasonable period of time, as determined by ERA, reestablished another retail sales outlet at another location serving substantially the same customers or market that was served by the former site and (3) at the time the former operator satsifies subparagraph (d)(2) of this section the former site is closed as a retail sales outlet or is operated as such by a firm that is not an independent markter.

The regulations also require that:

> Whenever a wholesale purchaser-reseller is deemed to have gone out of business in accordance with paragraph (c) of this section, the right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to its successor on the site, provided such successor established the same ongoing business on the site within a

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[46] TECA explicitly requested OHA, on remand, to address the issue of whether RFI abandoned its wholesale business within the context of relevant DOE regulations and rulings. See *Oasis Petroleum Corp.* v. *DOE*, 718 F.2d 1558, 1566 (Temp. Emer. Ct. App. 1983).

[47] The statement under the above-stated caption reads as follows: the fluctuations between the years, in all areas, it [sic] attributable to the sale and/or closing of retail operations and the discontinuance of all wholesale functions.

[48] Mr.Minx testified that he supervised Mr. Mills in the wholesale area during their tenure at RFI and that he was aware of the September 20, 1978 letter at the time it was drafted. June 27 Tr. at 87–8.

[49] The letter is located in the record at Appendix D, Volume I, Exhibit 3 to Lucky's May 7, 1984 Brief.

[50] Mr. Minx's specific response to the question, "What was your intent in having Mr. Mills issue this notice?" was as follows:

> A. Well, at this particular point in time, we were trying to conserve as much cash as we possibly could to take care of purchasing product for our own units and felt like that the margin of profit on wholesale customers versus the risk of having a bad debt was not a very good business decision. So, we decided at that particular point in time to temporarily, at least, discontinue the sales to other jobbers. (*Id* at 88.)

[51] Section 211.11(d) of the general allocation regulations provides that: The right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going business or established end use. The right to an allocation shall be deemed to have been transferred only when the entire business or activity of the firm has been transferred to a successor firm.

reasonable period of time as determined by DOE, after its predecessor vacates the premises unless the allocation has been reassigned by the former operator to one or more of its locations under suparagraph (c)(1) of the section. [10 CFR 211.106(e)]

Section 211.11(c) of the general allocation regulations mandates that wholesale purchasers and end-users which have gone out of business shall not be eligible for allocations based on volumes or purchases made prior to going out of business. Against this regulatory background we will examine three arguments advanced by Oasis to support its claim that it succeeded to the allocation entitlements associated with RFI's wholesale business under 10 CFR 211.11(d).

Oasis first argues that RFI transferred its "entire activity" to Oasis upon the occurrence of two events; 1) the sale from RFI to Oasis of the 84 retail outlets and the Marathon and Cities contracts and 2) the simultaneous termination by RFI of its wholesale business. Oasis' July 16, 1984 Brief at 25. Oasis next maintains that the October 1978 Agreements transferred RFI's Remex subsidiary to Oasis. According to Oasis, the Remex subsidiary constituted a "significant severable portion of the transferor's total business operations" and under the case of *Fisher's Fuel Inc.*, 3 FEA 80,501 (1976), Oasis automatically acquired the right to receive all allocations of gasoline from Cities and Marathon when it purchased RFI's entire Remix gasoline business, it became the Substitute Supplier to RFI's wholesale customers. Oasis' July 16, 1984 Brief at 45. For the reasons set forth below, we find all three of the arguments advanced by Oasis are flawed and lack any regulatory basis.

Earlier in this decision, we observed that in October 1978, RFI operated a number of retail outlets in addition to the 84 sold to Oasis. as a consequence, we found that RFI did not forefeit its eligibility to any allocations other than for the 84 retail outlets sold to Oasis. We also determined in this decision that RFI never intended to permanently cease its wholesale operations in October 1978. From the record before us, we find that the principal reasons why RFI was unable to resume sales to its wholesale customers after October 1978 was that it was unable to obtain supply. In this connection, we note that Marathon and Cities had incorrectly believed that the October 1978 Agreements had vested in Oasis all of RFI's former allocation entitlements from those two firms and accordingly had refused to supply motor gasoline to RFI. In addition, RFI's precarious financial situation impeded RFI's efforts to locate other suppliers. Notwithstanding these two impediments, RFI attempted to ensure that its wholesale customers obtained supplies by first entering into the Temporary supplier Substitution Agreement with Encorp, Incorporated and later by entering into a Marketing Agreement with Delta Oil Company. We turn now to Oasis' first argument which will be evaluated with reference to precedent established by TECA on the matter.

TECA has previously addressed the issue of what constitutes "going out of business" for purpose of 10 CFR 211.11(c) and 211.106(c). In *Zahir v. Shell Oil Company, et al.*, 718 F.2d 1567 (1983), TECA reached the following conclusion:

> Shell argues that even if Zahir had a right to be supplied by Shell, he lost that right when he went out of business sometime in July 1979. *See* 10 CFR 211.11(c) and 211.106(c). But if Zahir stopped operating the station in July only because he was unable to obtain gasoline from Shell, he did not lose his right to that gasoline by "going out of business" within the meaning of those regulations. To hold otherwise would enable Shell to turn its branch of its duty into a lawful act by reason of its almost inevitable effect. A gasoline station cannot operate sucessfully without gasoline. And in time of shortage, a station operator who is cut off by his supplier has little chance, if any, to obtain gasoline elsewhere.

We also observe that an interpretation of the predecessor section to 211.11(c) compels the same conclusion. FEO Ruling 1974–3 [CCH] Energy Mgt., 16,013 (February 1, 1974) explicitly stated that:

> A purchaser does not lose his right to an allocation from his base period supplier unless, since the base period, the purchaser has abandoned his ongoing business entirely or transferred his entire ongoing business to a third party.
>
> [u]nless the historical purchaser has *completely abandoned* his original business or conveyed it to a third party, he continues to have the right to an allocation from his historical supplier even though (1) the supplier ceased supplying the purchaser since the base period, (2) the supplier terminated a franchise or lease agreement with the purchaser since the base period, or (3) the purchaser has moved the location of his ongoing business to other premises since the base period. Ruling 1974–3 at 16,515,516 [52]

[52] In *Texaco, Inc.*, 2 FEA 83,781 at 81,197 (1975), the FEA determined that Arrow Petroleum Company (Arrow) had "not gone out of business" for purposes of the Mandatory Petroleum Allocation Regulations. Arrow has previously operated a distribution business pursuant to a Consignment Agreement with Texaco during the 1972 base period year. It subsequently terminated the arrangement with Texaco and ceased its distribution business. The FEA found that Arrow had continued to operate as a reseller to outlets from gasoline supplied by suppliers other than Texaco and as a result could not be charged with "going out of business."

Consistent with TECA's holding in *Zahir*, we find that RFI's temporary cessation of its wholesale business as the result of supply shotages can not justify the conclusion that RFI had entirely abandoned all its business operations for purposes of 10 CFR 211.11(c). Accordingly, Oasis' first argument in support of its claim of succession to RFI's wholesale allocations must fail.

Oasis' second argument, viz., that it purchased the entire business of Remex, a firm totally separate from RFI, and, as a consequence, succeeded to the allocation entitlements attributable to Remex, is devoid of both a factual and legal basis. First, the record reflects that the Remex Gasoline Company joint venture was dissolved in 1977 when RFI acquired 100% ownership of the venture. From that time forward, Remex became a devision of RFI. AR–1090. For regulatory purposes, then, Remex was considered part of the single RFI firm. See 10 CFR 211.10(a)(2) and 211.11(b)(2) As such, Remex was never vested with any allocation entitlements to gasoline separate from RFI's entitlements. In addition, before the joint venture dissolved in 1977, RFI's wholesale operations were never conducted through Remex, but instead, were consistently treated as part of RFI's operations. AR–0956. Therefore, even if Remex were not part of the RFI firm, it possessed no allocation entitlements attributable to RFI's wholesale customers which could have been transfereed to Oasis.

Since we have already determined that Remex was not a separate entity distinct from RFI, we need not address Oasis' contention that its purchase of the Remex gasoline business caused it to become the substitute supplier to RFI's wholesale customers.

In conclusion, based on the foregoing considerations, we find that there is no factual or regulatory basis to support Oasis' claim that it succeeded to the allocation entitlements attributable to RFI's wholesale business.

C. The Effect of the April 12 Settlement Agreement on the Rights and Obligations of the Parties under the October 1978 Agreements

On April 12, 1979, Oasis and RFI entered into an agreement which was intended to resolve the dispute between them regarding the right to receive supplies of gasoline from Cities and Marathon. Under the terms of the agreement, the parties agreed that Oasis would receive all gasoline which either Oasis or RFI was entitled to receive from Marathon or Cities "under contract

or under relevant DOE regulations in effect now or effective prior to or after the date hereof, regardless of changes in supply or market conditions or in the base period or other government regulations." The parties also agreed that Oasis would sell to RFI, at Oasis' net cost, three million gallons of gasoline per month from a combination of Marathon and Cities sources. Oasis' obligation to supply this volume to RFI was conditioned upon RFI's assumption of all supply obligations to all RFI wholesale customers arising out of the allocation regulations.

As previously discussed in this decision, effective March 1, 1979, RFI became the base period supplier to the wholesale purchasers which had purchased or obtained product from RFI during the updated base period. As a supplier, RFI was required to calculate the volumes to be offered to its wholesale customers in accordance with § 211.10 of the allocation regulations. Sections 211.9(2)(i) of the DOE regulations provided that the supplier/wholesale purchaser-reseller relationships defined by specific dates or base periods or otherwise may not be terminated without the express written approval of the DOE. The Settlement Agreement, by its very terms provided for the alteration of the supplier/wholesale purchaser-reseller relationships that had been established by the DOE regulations. Since the DOR did not approve the Settlement Agreement, the agreement could not have altered either the existence of RFI's supply obligation to its wholesale customers or the volumes which RFI was required to offer its customers. For the same reasons, the agreement could not have terminated any base period supply obligations which Marathon and Cities had to RFI or transfer those obligations to Oasis. At most, the Settlement Agreement might be considered a substitute supplier arrangement. However, as previously discussed in this decision, such an arrangement could not permanently alter the rights and obligations of the parties as dictated by the DOE allocation regulations. Therefore, it is clear that the Settlement Agreement neither affected RFI's regulatory right to receive gasoline from Marathon and Cities after March 1, 1979 nor the firm's regulatory obligation to supply the wholesale customers after the same date.

D. DOE's Refusal to Approve the Three Party Agreement

TECA, in reviewing the decision issued by the Texas district court in connection with the controversy presently before OHA, expressed the desire OHA evaluate the DOE's exercise of discretion in not approving the Three Party Agreement. *See Oasis Petroleum Corporation v. DOE*, 718 F.2d 1558, 1565, (1983). After reviewing the factual circumstances surrounding this matter, we find that the DOE was completely justified in not approving an agreement which 1) was submitted in the incorrect format; 2) contained incorrect data; 3) projected the false impression that more outlets had been sold to Oasis than actually had been and 4) was contested by one of the parties to the agreement.

Cities first submitted the Three Party Agreement to DOE for approval on November 8, 1978. In the cover letter that accompanied the Three Party Agreement, Cities set forth data for the 84 retail outlets in an aggregated format, rather than a station-by-station format as required by DOE. It was not until March 1, 1979 that Cities provided any FEO-17 forms or any station-by-station data to DOE. By that time, however, the change in base periods had occurred and the 1972 base period volumes used in the Three Party Agreement were no longer relevant to the changed regulatory circumstances. Moreover, the station-by-station data which Cities finally submitted to each DOE region on March 1, 1979 indicated that the 1972 base period volumes which it had been obligated to supply to RFI and which it wished to transfer to Oasis were associated not only with 84 stations but rather with 117 stations.[53] Moreover, Cities submitted FEO-17 forms together with station-by-station data to DOE Region VI requesting that Cities be assigned as Oasis' supplier for certain RFI stations located in Region VI. The record is clear, however, that none of the retail outlets sold to Oasis were located in Region VI.

Throughout this proceeding, Oasis has asserted that the DOE had no reason to disapprove the Three Party Agreement. Oasis' July 16, 1984 Brief at 31. Oasis has contended further that the DOE had adopted a presumption in favor of approving three party agreements at the time Cities submitted its Three Party Agreement to the DOE. Oasis therefore argues tha the agency abused its discretion in not approving the Three Party Agreement. We find that Oasis' arguments are devoid of merit.

As a threshold matter, we find that the problems inherit in the documentation submitted to the DOE provided the agency with sufficient cause of withhold its approval of the Three Party Agreement. First, Cities failed to provide essential information to the DOE when it first submitted the Three Party Agreement to the agency for approval, viz., station-by-station allocation entitlements data for each of the 84 stations. Second, when Cities finally complied with the DOE procedures on March 1, 1979, it submitted incorrect information on its FEO–17 forms. In particular, the forms contained base period allocation information for the 1972 base period instead of the updated base period and incorrectly implied that 117 retail gasoline outlets had been sold to Oasis instead of 84 outlets. Second, we find that the concerns voiced by RFI regarding the propriety of Cities' attempt to terminate all its supply obligations to RFI further justified the DOE's refusal to approve a procedurally and substantively defective agreement.

Oasis bases its argument that the DOE abused its discretion in not approving the Three Party Agreement on the contention that DOE routinely approved such agreements. Specifically, Oasis argues that the DOE had adopted a presumption in favor of approving such agreements.

On this matter, we will defer to TECA. In *Oasis Petroleum Corp.*, v. *DOE*, 718 F.2d 1588, 1565 (1983) TECA ruled that:

> A presumption is not a rule. Congress has entrusted the DOE with the task of approving or disapproving these agreements. Surely, this matter lies within the special area of the agency's expertise and discretion.

While the DOE may have routinely approved agreements such as the Three Party Agreement, it did so only after reviewing the information submitted in conjunction with such agreements. Under the DOE regulations, [54] the DOE was charged with the task of examining three party agreements to ascertain if approval of those documents would be consistent with the objective of the EPAA. Therefore, it is incorrect to imply, as Oasis does, that the DOE blindly approved three party agreements. Quite to the contrary, had the DOE chosen to approve the Three Party Agreement in the instant case in spite of the procedural and substantive deficiencies inherent in the agreement, the agency

[53] Because each DOE regional office only received station-by-station data for the retail outlets located in its region, it was not readily apparent to any of those regional offices that the total number of stations to which the 97,879,000 gallons figure pertained was 117 instead of 84. While the regional DOE office may not have been able to detect this problem the national office had been alerted to the situtation because RFI had sent the DOE copies of the letters that it had forwarded to Cities advising that the gallonage figure reflected in the Three Party Agreement might be incorrect.

[54] The criteria for evaluating assignment applications is set 205.35(b). That criteria is co-extensive with the objectives of the EPAA.

might have abused its discretion in so doing.

In conclusion, we have determined that the evidence compels the finding that the DOE did niot abuse its discretion in refusing to approve the Three Party Agreement.[55]

E. Misrepresentation

Earlier in this proceeding, OHA decided that one of the issues raised by RFI in its Motion for Show Cause Order and supplement thereto required further consideration at an evidentiary hearing. The issue designated by OHA for further scrutiny at the hearing concerned whether Oasis made misrepresentations before the DOE regarding the manner in which the firm disposed of the motor gasoline that it acquired pursuant to the Three Party Agreement.

The allegations of misrepresentation raised by RFI in its Motion for Show Cause Order are premised entirely on its contention that Oasis diverted gasoline destined for its 84 retail outlets and RFI's wholesale customers to Apex. According to RFI, Oasis repeatedly misled the DOE by representing that it would be unable to adequately supply gasoline to its 84 retail outlets if it were required to furnish gasoline to RFI's wholesale customers. RFI's Motion for Show Cause Order dated March 27, 1979 at 20. To support this allegation, RFI refers to several assertions made by Oasis in connection with the Application for Temporary Stay which it filed with OHA on March 26, 1979.[56] In this connection, RFI contends that Oasis never informed the DOE that it was selling gasoline to Apex on the spot market when it requested relief from the updated base period regulations. In this context, Oasis purportedly represented to OHA that denial of its Application for Temporary Stay would result in serious supply disruptions rendering it impossible for Oasis to fulfill its commitments to the 84 stations. In fact, according to RFI, Oasis was intentionally shutting down these stations in order to free more gasoline for spot market sales to Apex.

Prior to the evidentiary hearing, the record in this proceeding contained sufficient circumstantial evidence to establish a pattern of motor gasoline diversion by Oasis to Apex. For example, the record reflected that Apex loaned Oasis $1.7 million to purchase the 84 retail outlets from RFI. *See* Deposition of Finn Moller taken in connection with *Lucky Stores, Inc., d/b/a "Kash n' Karry"* and *"Kwik Pep"* v. *Oasis Petroleum Corporation* on May 18, 1983 at 74, 75, 80. According to the deposition testimony of Tariq Kadri, the $1.7 million was a prepayment by Apex to Oasis on account for gasoline to be delivered later. *See* Deposition of Tariq Kadri taken in connection with *Lucky Stores, Inc., d/b/a "Kash n' Karry"* and *"Kwik Pep"* v. *Oasis Petroleum Corporation* on May 18, 1983 at 181. The record further indicated that Oasis did indeed sell a considerable volume of motor gasoline to Apex even though Apex did not have an allocation entitlement to that gasoline. *See* TR-1986-89; 1944-45; 1997-2000; 2011; 2013; 2015-17.[57] According to the record, Oasis began selling gasoline to Apex in November 1978 via pipeline from the Lake Charles, Louisiana terminal. *See* Lucky's May 7, 1984 Brief at Appendix C, Volume I, Exhibit 6. Then, on December 18, 1978, Apex executed Purchase Order No. 2937 in which it agreed to purchase from Oasis 100,000 barrels of motor gasoline per month for a one year time period commencing on February 1, 1979. *Id.* at Exhibit 6. The price stated in the purchase order was ".005 per gallon less than the Platt's Oilgram Gulf Coast Waterborne Posting on the day of lifting, but never to be less than the Cities Service Co.'s rack posted price less one percent discount." Moreover, the record demonstrated that at least some of the gasoline Oasis sold to Apex was supplied by Cities. *See* Id. at Exhibit 6.[58] In addition, deposition testimony in the record suggested that Oasis may have kept a second set of books to conceal profits obtained from the firm's spot sales of gasoline to Apex. *See* Deposition of John C. Smith taken in connection with *Lucky Stores, Inc., d/b/a "Kash N' Karry"* and *"Kwik Pep"* v. *Oasis Petroleum Corporation*, No. 81-383-Civ.-T-H. (M.D. Fla.) at 89; Deposition of Brian O'Rourke taken in connection with *Champlin Petroleum Company* v. *Frank Kell Cahoon*, No. E-29,219 (Dist. Ct. Midland County, TX) at DP-2770. Other evidence in the record suggested that Oasis recorded its "actual margins" in sales to Apex on a paper that looked like a ledger sheet. According to RFI and Lucky, those "actual margins" allegedly differed from the margins calculated on the basis of the prices set forth in the Apex invoices. *See* Lucky's May 7, 1984 Brief at Appendix C, Volume II, Exhibit 15.[59] While much of the information described above was introduced into the record by Lucky in May 1984 and augmented in October 1984, Oasis chose not to rebut any of this information or the charges lodged by RFI in its March 1984 motion for Show Cause Order until OHA issued an interlocutory order in February 1985. *See Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE 82,549 (1985). In that February 1985 decision, OHA stated that from the record before it, the office was inclined to believe RFI's allegations of misrepresentation absent any countervailing evidence from Oasis. *Id* at 85,267. OHA then opined that because the accusation of misrepresentation is a serious allegation, it would extend Oasis the opportunity to explain its position at an evidentiary hearing, if it so desired.[60] Oasis chose to seize that opportunity.

At the evidentiary hearing, Oasis presented the testimony of Parker Anderson to rebut RFI's allegation that Oasis intentionally shut down most of the 84 stations that it purchased from RFI in order to sell the gasoline allocated to those stations to Apex on the spot market. At all times relevant to this proceeding, Mr. Anderson was Oasis' vice president of construction and development. According to Mr. Anderson, approximately 70 of the 84 retail outlets were remodeled in some

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[55] We view the question of whether the DOE abused its discretion in not approving the Substitute Supplier Agreement as a nonissue because the agreement was never submitted to the DOE for approval.

[56] In its Application for Temporary Stay, Oasis requested that (i) the application of the updated allocation regulations be stayed pending a resolution of its dispute with RFI; (ii) the regional offices be enjoined from issuing any temporary assignment orders regarding the volumes of gasoline involved in the Oasis/RFI controversy; and (iii) if necessary, Oasis be ordered to supply RFI's wholesale customers pending resolution of the dispute. OHA dismissed Oasis' Application without prejudice on July 2, 1980. *See Oasis Petroleum Corporation et al*., 8 DOE 82, 523 (1980).

[57] The referenced transcript pages contain invoices evidencing pipeline sales of motor gasoline from Oasis to Apex for the period November 1978 to October 1979. These transcripts are subject to a Protective Order issued by the U.S. District Court for the Northern District of Texas on November 20, 1979.

[58] Not all of the invoices contained in Exhibit 6 to Lucky's May 7, 1984 Brief indicate that Apex purchased Cities gasoline from Oasis. We believe that only those invoices which reflect an AXK Batch designation were ultimately destined for Apex. Mr. Robert Mills testified at the evidentiary hearing that the designation "AX" was the nomenclature used by the Colonial Pipeline to indicate Apex as the recipient of certain pipeline shipments. August 21 Tr. at 578-79.

[59] While any one of the actions or information described above by itself may not have been sufficient to establish diversion on Oasis' part, the combination of all those actions and other relevant information clearly establishes a pattern of diversion by Oasis to Apex.

[60] OHA was under no procedural compulsion to afford Oasis the opportunity to rebut the misrepresentation allegations at an evidentiary hearing. In fact, OHA generally does not permit firms to present testimony at an evidentiary hearing without first demonstrating that the presentation of documentary evidence would be insufficient to establish disputed facts. *See, e.g.*, Rodgers Hydrocarbon Corp., 14 DOE 84,011 (1986); Mapco International, Inc. 13 DOE 84,003 (1985).

manner after Oasis acquired them. August 19 Tr. at 14. In addition, Mr. Anderson testified that of the 84 stations, 10 were closed permanently after Oasis acquired them. *Id.* at 24. 12. Of the remaining 74 stations, Mr. Anderson testified that 60% of them were closed for remodeling immediately after their acquisition. *Id* at 27. Mr. Anderson claimed that those stations which were completely remodeled were closed for a period between 100 and 150 days. Under cross-examination, however, Mr. Anderson was unable to refute documentary evidence which indicated that 24 retail outlets were in fact closed for 11 months or more during the period March 1979 through February 1980 or that 11 outlets were closed for six month increments during the same period. *Id.* at 56.[61] Throughout Mr. Anderson's testimony, we noted that Mr. Anderson was able to outline in considerable detail information concerning some of the problems that Oasis encountered in the renovation of certain stations yet when questions directly impacting the diversion issue were posed to him, he appeared to have convenient memory lapses. In this connection, Mr. Anderson offered explanations as to why 10 of the 84 retail outlets never reopened after Oasis closed them. However, he had no knowledge of where the gasoline allocations attributable to the closed stations went. In addition, some of Mr. Anderson's testimony appeared to be self-serving. For example, while he testified that he did not know what happened to the gasoline allocated to the retail outlets when those outlets were closed, he readily opined that some of the gasoline was undoubtedly exchanged. *Id* at 28. On the whole, Parker Anderson's testimony was more enlightening for what it *didn't* say rather than for what it did say. Furthermore, we did not find Mr. Anderson's testimony to be probative on the issue of whether Oasis intentionally closed down its retail outlets in order to sell the gasoline attributable to those outlets to Apex on the spot market. Accordingly, we will not accord much weight to his testimony.

Oasis presented two witnesses to testify with regard to the allegations that Oasis maintained a double set of books and figures reflecting "actual margins" versus "invoice margins". The first of the two witnesses who testified concerning this matter was Tariq Kadri, Oasis' former General Counsel. Mr. Kadri explained on direct examination that Oasis and Apex orally amended the price term of their December 18, 1978 contract in order to avoid violating DOE allocation regulations. *See* August 20 Tr. at 273. Mr. Kadri's best recollection of the contract amendment was that Oasis had agreed to limit its margin on sales of gasoline to Apex to 8 to 8 per gallon above Cities' invoice to Oasis. Mr. Kadri explained that Oasis decided to "track" the difference in price between that which it was required to charge pursuant to the DOE regulations and that which it would have been able to charge under the original December 1978 contract absent DOE regulations. *Id.* at 361. According to Mr. Kadri, the information which Oasis obtained through its "tracking system" regarding price differentials were used by Oasis as a negotiation tool with Apex. *Id.* At the hearing, Mr. Kadri revealed that:

> We had a lot of different ongoing business with Apex and we needed favors from them from time to time in connection with our fuel oil sales and things like that and in connection with transportation of fuel oil and other purchases of other products. It [the spot prices] was [sic] tracked from time to time so that when Finn Moller went to negotiate with Tony Novelly he could point out to him that Oasis was, because of the regulations, not taking a bath but losing an opportunity that they could have had if the regulations weren't enforced. (*Id.*)

Counsel for RFI questioned Mr. Kadri about notations set forth on a letter dated February 13, 1979 from R.G. Gramlich of Cities to Jeff Morgan of Oasis.[62] The letter indicated that 2,100,126 net gallons of regular gasoline had been shipped to Apex on February 8, 1979 at a price of .442 less a discount of $9,282.56. The handwritten notations on the bottom of the letter state the following:

Oasis Cost	Apex (8)	Apex (actual)
	2,100,126	2,100,126
	.5175	.595
	1,086,815.20	1,249,057

As an aside, we note that the figure .595 listed under Apex (Actual) is .005 below Platt's Oilgram Gulf Coast Waterborne's lowest Posting for February 5, 1979 and February 15, 1979. The figure listed under Apex (8) is .0755 above Cities' invoice price of .442.

Mr. Kadri testified that the term "actual" noted on the bottom of the February 8 letter did not indicate that Oasis actually received that amount of money in the given transaction. *Id.* at 365. He reiterated that "Apex (Actual)" probably reflected the amount of money payable by Apex to Oasis under the terms of the original contract, as unamended. *Id.* Mr. Kadri stated that Oasis routinely compiled such calculations on a schedule that resembled a ledger. *Id.* at 366.[63] Mr. Kadri speculated that a low level employee at Oasis may have seen Oasis' tracking schedules and misinterpreted them as a "second set of books" *Id.* at 367.

There are several reasons why we are unable to accord much weight to Mr. Kadri's testimony on this matter. First, with regard to Mr. Kadri's contention that Oasis orally amended the price term of its December 18, 1978 contract with Apex, we observe that this contention conflicts with a stipulation which Oasis entered into in connection with the Florida litigation commenced by Lucky. In the Pre-Trial Stipulation submitted on November 2, 1983 to the United States District Court for the Middle District of Florida in connection with the pending case, *Lucky Stores, Inc.* v. *Oasis Petroleum Corporation*, No. 81–383–Civ–T–H (M.D. Fla. filed April 27, 1981), Oasis stipulated that "Apex Purchase Order No. 2937 was in effect for a one year period from February 1, 1979 through January 3, 1980. All sales by Oasis to Apex during that period were made pursuant to Apex Purchase Order No. 2937." *See* Lucky's May 7, 1984 Brief at Appendix J, Volume I. There is no stipulation that Apex Purchase Order No. 2937 was orally amended to prevent Oasis from violating the DOE regulations. We further observe that Mr. Kadri offered no testimony at the evidentiary hearing to the effect that the Pre-Trial Stipulation did not accurately reflect Oasis' arrangement with Apex. Furthermore, we observe that Mr. Kadri, unlike Mr. Mills, did not personally "track" the so-called price differentials for Mr. Moller. Therefore, his opinion concerning the notations on the letter from Mr. Gramlich at Cities to Jeff Morgan at Oasis appears to be purely conjectural. Finally, Mr. Kadri's

[61] The documentary evidence consisted of a multi-page summary showing the base period allocations for each of the 84 retail outlets and the volumes of motor gasoline actually supplied to each outlet during the relevant period. The summary was identified as RFI Exhibit No. 3 at the August 19, 1985 hearing and was previously introduced into the record by Lucky in its October 15, 1984 Brief in Support of Petition for Special Redress at Appendix M, Volume I, Exhibit 2. The gasoline

[62] The letter was identified at the hearing as RFI Exhibit No. 20. The letter was previously introduced into the record by Lucky in conjunction with its Brief in Support of its Special Redress Petition and is located in Appendix C, Volume II, Exhibit 15 to that brief.

[63] An example of Oasis' tracking schedule is located in the record at Appendix C, Volume II, Exhibit 14 of Lucky's May 7, 1984 Brief.

speculation that a low level employee at Oasis may have seen Oasis' tracking schedules and misinterpreted them as a "second set of books" does not explain why Brian O'Rourke, former manager of sales accounting and inventory control at Oasis, could have mistaken the tracking system for a second set of books. Mr. O'Rourke had previously testified that Oasis maintained two sets of books to disguise unusually high margins on wholesale gasoline transactions. DP–2771. Mr. O'Rourke also stated under oath that the second set of books were deliberately concealed from Oasis' independent auditors. *Id.*

The second witness who testified at the hearing concerning Oasis' alleged maintenance of a second set of books was Robert Mills. Mr. Mills was involved in the wholesale gasoline marketing division of Oasis during the time periods relevant to this proceeding. At the evidentiary hearing, Mr. Mills testified that he tracked various cost information for Oasis' President, Finn Moller upon the latter's request. According to Mr. Mills, the information which he charted for Mr. Moller included Oasis' cost of a given batch of Cities' gasoline, the firm's charge to Apex for the same product and the Gulf Coast spot pipeline posting on the date of movement of the gasoline. August 22, Tr. at 714.[64] Under cross-examination, Mr. Mills admitted that he was the scrivener of the notations contained on the February 8, 1979 letter referred to above. While Mr. Mills presumably was the best person to provide us with an explanation of the meaning of the word "actual" in the context in which it was used, he testified that "he was unsure what the word meant in its context." *Id* at 723.

We are deeply troubled by Mr. Mills' inability to recollect the circumstances surrounding his writing of a notation which tends to support the theory that Oasis maintained a second set of books to disguise alleged ill-gained profits. Since Mr. Mills' recollection of his participation in Oasis' "tracking" activity is so vague, we cannot accord much weight to his testimony. Based on the record before us, including the testimonial evidence of Messrs. Kadri and Mills, we find that Oasis has failed to present sufficient evidence to rebut the allegations that the firm maintained a second set of books for purposes of disguising ill-gained profits.

[64] Appendix C, Volume II, Exhibit 17 of Lucky's Petition for Special Redress contains an example of the tracking information that Mr. Mills provided to Mr. Moller.

Based on the foregoing considerations, we have determined that Oasis has not adequately rebutted RFI's allegations that Oasis improperly diverted motor gasoline to Apex. We find, therefore, that the record contains a preponderance of evidence to support RFI's allegation that Oasis diverted motor gasoline to Apex in contravention of the spirit of the DOE allocation regulations. Oasis' regulatory violation stems from the fact that its sales to the non-allocated purchaser, Apex, created a disruption in the supply of motor gasoline. By its actions, Oasis took advantage of its upstream supplier situation to deprive the 84 stations and other downstream customers of their regulatory entitlement to motor gasoline. Since RFI's allegations of misrepresentation against Oasis were contingent upon a finding that Oasis diverted gasoline to Apex in circumvention of the DOE regulations, we will now address the issue of misrepresentation.

As discussed in one of the numerous supplemental orders issued in connection with this proceeding, the tort of misrepresentation consists of a representation that 1) is false; 2) is material; 3) is intentionally or negligently made; 4) is justifiably relied on; and 5) results in damages. *Oasis Petroleum Corporation Fuels, Inc.*, 12 DOE 82,549 (1985), *citing*, W. Prosser, The Law of Torts 106–108, 110 (5th ed. 1984); 37 C.J.S. *Fraud* 1 *et seq.* (1977); 37 Am. Jur. *Fraud & Deceit*, 1–20 (1968). With regard to Oasis' representations to the DOE that the firm would not be able adequately to supply gasoline to its 84 retail outlets if it were required to furnish gasoline to RFI's wholesale customers, we find that the firm's representations were false, material and intentionally or negligently made. However, we cannot find that the DOE justifiably relied on those representations since the relief sought by Oasis each time it made those representations to the DOE was denied. Accordingly, we will dismiss the one remaining issue presented by RFI in its Motion for Show Cause Order and Supplement thereto.

F. The Disposition of Certain Portions of Case No. CA3–80–1353–F

As previously stated, the Texas district court consolidated Case No. CA3–80–1353–F with Case No. CA3–79–0778–F when it remanded the latter action to OHA. Case No. CA3–80–1353–F concerns a counterclaim, cross-claim and third party action filed by RFI in the district court. Before we discuss the claims advanced by RFI in Case No. CA3–80–1353–F we will briefly examine the origin of that proceeding.

On July 11, 1980, RFI filed with the Texas district court a Motion for Leave to File three pleadings in connection with the pending case, *Oasis Petroleum Corporation* v. *DOE et al*, Case No. CA3–79–0778–F. Those three pleadings consisted of an Original Counterclaim against Oasis, a Cross Claim against Marathon and Cities, and a Motion to Join Apex Oil Company, J.L. Goodhue and Richard Heinzelmann to Case No. CA3–79–0778–F. In each of its three pleadings, RFI alleged that the above-named firms and individuals had violated the DOE allocation regulations and the federal antitrust laws. On September 17, 1980, the court granted RFI's Motion for Leave to File the three pleadings but decided that the matter should be stayed and deferred pending trial on Oasis' complaint in Case No. CA3–79–0778–F and upon further order of the court.

On February 3, 1982 and June 2, 1982, the court entered Agreed Orders of Dismissal of all claims against the Defendants, Marathon, Cities, Goodhue and Heinzelmann. Subsequently, RFI filed a Motion to Amend Original Counterclaim, Cross Claim and Joinder of Parties and Motion for Dissolution of Stay and Re-Consolidation of Actions. RFI's amendments sought to dismiss the allegations of violations of the federal antitrust laws and to dismiss Champlin as a defendant. Later, RFI filed a Motion to Limit the Dissolution of Stay and Re-Consolidation of Actions to allegations of non-willful violations of DOE regulations. On February 8, 1984, the Court granted RFI's Motion to Amend Original Counterclaim, Cross Claim and Joinder of Additional Parties and dissolved its September 17, 1980 stay only with respect to RFI's allegations of non-willful violations of DOE regulations by Oasis. On February 9, 1984 the court remanded to OHA Case No. CA3–79–0778–F and consolidated with it those portions of Case No. CA3–80–1353–F which pertain to allegations of non-willful violations of the DOE allocation regulations by Oasis.

The gravamen of the allegations contained in RFI's counterclaim is that Oasis violated the DOE allocation regualations by (1) depriving RFI of gasoline supplies and (2) by diverting large supplies of gasoline from the 84 retail outlets and RFI's wholesale customers for sale in the spot market during time periods of gasoline shortage. After reviewing RFI's counterclaim against Oasis, we have determined that only portions of paragraphs 7, 13, 16 and

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20 of that pleading [65] potentially involve allegations of non-willful violations of the DOE allocation regulations by Oasis.[66]

RFI charges in paragraphs 7, and 20 of its counterclaim that Oasis and others diverted gasoline from the 84 retail outlets for sale in the spot market. In paragraph 7, RFI explains that Oasis and Apex entered into an agreement whereby Apex agreed to advance funds to Oasis for the purchase of the 84 retail outlets. RFI alleges in that same paragraph that Oasis, in exchange for a loan from Apex, agreed to divert motor gasoline to Apex at a reduced cost per gallon.

We have already enumerated in Section IV. E. above, the evidence which establishes a pattern of motor gasoline diversion by Oasis to Apex. In that same section, we found that Oasis failed to produce sufficient evidence to rebut the diversion allegations. Accordingly, we determined that there is a preponderance of evidence to support a finding that Oasis improperly diverted motor gasoline to Apex in contravention of the intent of the DOE allocation regulations. Based on our findings set forth in Section IV. E. we recommend that the allegations set forth in paragraph 7 of RFI's counterclaim be sustained.

We regard to the allegations contained in paragraphs 16 and 20, we have determined that there is insufficient evidence in the record to support RFI's claim that Oasis approached RFI's customers in an attempt to persuade them to request supplies directly from Oasis or that Cities, Marathon and Champlin acted in concert with Oasis to divert motor gasoline during time periods of gasoline shortage. Accordingly, we cannot sustain RFI's claims as set forth in paragraphs 16 and 20 of its counterclaim.

Lastly, RFI alleges in paragraph 13 of its counterclaim that Oasis deprived RFI of gasoline supplies. According to RFI, Oasis caused this deprivation by asserting the unfounded position that it was entitled to RFI's gasoline allocations under the updated base periods. While RFI's contention regarding this matter is somewhat unclear, we assume that RFI is alleging that Oasis instituted litigation in state and federal courts to prevent RFI from obtaining control of the disputed gasoline allocations. While this decision clearly holds that RFI (1) had the regulatory right to receive gasoline from Cities and Marathon after March 1, 1979 as the "supplier" to the 84 retail outlets and (2) had the regulatory obligation to supply its wholesale customers after that date, these holdings, in and of themselves, do not warrant a finding in favor of RFI with regard to its counterclaim. There is just not sufficient evidence in the record to substantiate RFI's claim that Oasis commenced its lawsuits in the 17th Judicial District in Tarrant County, Texas and in the United States District Court for the Northern District of Texas in order to deprive RFI of gasoline supplies. Therefore, we are unable to sustain the claims set forth in paragraph 13 of RFI's counterclaim.

Based on the foregoing considerations, it is our recommendation that the district court dismiss paragraphs 13, 16 and 20 of RFI's Counterclaim, Cross-Claim and Third Party Action and sustain paragraph 7 of that same pleading.

G. Disposition of Lucky's Special Redress Petition

During the updated base period, November 1977 through October 1978, Lucky's predecessor, Tampa Wholesale owned and/or operated 34 retail outlets in west central Florida. *See* Lucky's May 7, 1984 Brief at 11. Lucky maintains that during this period RFI furnished approximately 10,045,988 gallons, or 27.44% of its motor gasoline supplies. *Id* at 12.

As stated in the procedural history section of this decision, OHA retained for disposition, only one of the issues advanced by Lucky in its January 6, 1984 Petition for Special Redress. That issue is the following:

> Whether, as base period supplier or by virtue of its actual control over the supplies of gasoline from Marathon and Cities Service, Oasis was required to supply Lucky Stores its base period entitlement (based on Lucky's purchases of gasoline from RFI during the base period) and proportionate share of available product ("surplus product") each month of the relevant period, excluding October.

We have already determined earlier in this decision that RFI and not Oasis was Lucky's base period supplier after March 1, 1979. We will now examine whether Oasis had the regulatory obligation to supply Lucky with product by virtue of its control over the supplies of motor gasoline from Marathon and Cities after March 1, 1979.

As an initial matter, we find that there was no provision in the DOE allocation regulations that would have automatically created a supplier/purchaser relationship between Oasis and Lucky during the time when Oasis purportedly controlled the supplies of gasoline from Marathon and Cities. The regulations do, however, provide a mechanism whereby a wholesale purchaser such as Lucky could obtain product when its base period supplier, was unable to supply it with that product. *See* 10 CFR 205.31, 205.39. In this case, Lucky's base period supplier, RFI, was unable to obtain product because RFI's suppliers had refused to recognize RFI as having retained the regulatory right to received motor gasoline from them after October 1978. Oasis' control of product stemmed from Marathon and Oasis' erroneous recognition of Oasis as the successor-in-interest to RFI's regulatory entitlements.

Part 205, Subpart C of the DOE regulations established the vehicle by which a firm could request an assignment of supplier on a temporary or permanent basis. Clearly, in the situation where RFI was unable to supply sufficient amounts of allocated product to Lucky, Lucky's recourse was to petition the DOE for assignment of a different supplier. Lucky did avail itself of this regulatory safeguard and obtained three separate temporary assignment orders from the DOE. The

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[65] The relevant portions of paragraphs 7, 13, 16 and 20 of RFI's counterclaim are the following:

Paragraph 7: Prior to the purchase of the stations, RFI alleges upon information and belief that Oasis and Apex had entered into an agreement whereby Apex would advance the money to Oasis to make the purchase of the 84 stations in return for and agreement by Oasis to divert gasoline from the 84 stations to Apex at a reduced cost per gallon.

Paragraph 13: Oasis began to assert the unfounded position that it was entitled to both RFI's gasoline allocations under the superseded base period and the new 1978 base period. Thus, by this concert of action, the Defendant[s] succeeded in depriving RFI of the gasoline supplies upon which it relies for its survival.

Paragraph 16. Following the execution of the April 12, 1979 Settlement Agreement, Oasis began to approach RFI customers in an attempt to persuade them to request Oasis to supply them directly with gasoline in an attempt to undermine RFI's relationship with its wholesale customers.

Paragraph 20. Upon information and belief, RFI alleges that Oasis, Cities, Marathon and Champlin participated in further meetings during this time period wherein either express or tacit agreement was reached to permit Oasis to divert gasoline from both these original 84 retail gasoline stations and RFI's wholesale gasoline allocations for sale in the spot market during time periods of gasoline shortage. Through such diversions of gasoline and sales in the spot market, Oasis, Apex and others have reaped unconscionable profits to the detriment of RFI, RFI's wholesale customers, the retail gasoline station operators and the gasoline consuming public.

[66] We note that the Amended Counterclaim on its face does not distinguish between Oasis' alleged willful and non-willful violations. In addition, none of the parties have identified for OHA those portions of RFI's pleading which pertain to the non-willful violations. In fact, during the two years of briefing and hearings that preceded this decision, none of the parties have alluded to Case No. CA3-80-1353-F. Moreover, to, the extent that the parties have filed any briefs in the district court concerning RFI's Amended Counterclaim, none were submitted to OHA for its review.

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first assignment order was issued on March 23, 1979 and directed Marathon to supply Lucky with its March 1979 and April 1979 entitlements. *See* Lucky's May 7, 1984 Brief at Appendix E, Volume II, Exhibit 26. The second assignment order was issued on May 23, 1979 and provided that Marathon supply Lucky with motor gasoline for the months of May and June 1979.[67] The third and final assignment order was issued on July 17, 1979 and directed Marathon to supply Lucky with product for the months of July, August and September 1979. *See* Lucky's May 7, 1984 Brief at Appendix E, Volume III, Exhibit 72. On August 3, 1979, the Texas district court enjoined the DOE, Lucky and others from interfering with Oasis' receipt of motor gasoline supplies. At the same time, the court ordered Oasis to supply Lucky and other designated wholesale purchaser-resellers with motor gasoline and to escrow the profits derived from those sales.

From the date of the injunction issued by the Texas court until its dissolution, Oasis had an affirmative duty to supply Lucky with its base period entitlement of motor gasoline and proportionate share of available product. That duty does not arise from the DOE allocation regulations but rather from the court order. For the period March 1979 through August 3, 1979, we find that Oasis was under no regulatory obligation to supply Lucky with motor gasoline as a consequence of its control over the product. As explained above, Subpart C of the regulations provided Lucky with the vehicle by which it could obtain those supplies that RFI was unable to furnish the firm. In assessing Lucky's request for assignment of supplier, the DOE could have ordered Oasis to supply Lucky with product during the period March 1979 through July 1979. It chose instead to order one of RFI's suppliers to assume that obligation.

Despite the above findings, we recognize that Oasis' conduct may have injured Lucky and other similarly situated wholesale customers. It is also possible that 10 CFR Subpart C may not have mitigated the injury caused by Oasis' conduct. Therefore, using equitable principles as a guide, we will permit Lucky and other wholesale purchasers of RFI to demonstrate injury resulting from Oasis' diversion activities and entitlement to a portion of the escrowed funds and any other monies that may be disgorged by Oasis.

[67] In addition, from late April to early May 1979, Lucky purchased approximately 868,867 gallons of gasoline from RFI. That gasoline was lifted at the Marathon Tampa terminal and was provided to RFI by Oasis pursuant to the April 12 Settlement Agreement. See Lucky's May 7, 1984 Brief at 16.

V. Summation

In summation, OHA has made the following determinations with respect to the controversies presented in these proceedings. The first group of the factual findings that we made pertained to the dispute between RFI and Oasis as to the precise allocation entitlements that RFI had transferred to Oasis in conjunction with the sale of the 84 retail gasoline stations. On this matter, OHA concluded that RFI, Oasis and Cities each thought it was bargaining for something different when it executed the October 1978 Agreements. RFI thought it was conveying 84 retail outlets and whatever allocation entitlements were associated with those stations. In addition, RFI thought that Cities would remain the base period supplier for RFI's remaining retail outlets. Oasis, on its part, thought that it was purchasing 84 retail outlets and supply contracts for no less than 97,679,000 gallons of gasoline. Oasis further appears to have believed that Cities' supply obligation of 97,679,000 gallons of gasoline ran directly to the 84 stations. In addition, Oasis apparently believed that Cities had terminated its supplier/purchaser relationship with RFI. Cities also thought it had effectuated a termination of its supplier/purchaser relationship with RFI. However, Cities believed that it had an undifferentiated supply obligation to RFI and that the 97,679,000 gallons of gasoline set forth in the Three Party Agreement was not tied to any of the 84 gasoline outlets individually.

As a regulatory matter, OHA found that for the period prior to March 1, 1979, Oasis automatically succeeded to the allocation of gasoline attributable to each of the 84 outlets which it purchased from RFI. We further found that to the extent Cities, Marathon, RFI or any other firm had supply obligations to the 84 outlets in 1972 that those firms remained the supplier(s) for those outlets after Oasis acquired them. Next, we found that it was impossible for the October 1978 Agreements to have transferred entitlements automatically for any RFI retail outlets other than the 84 stations. Accordingly, we found that to the extent that Cities and Marathon had base period supply obligations to stations in addition to the 84 sold to Oasis, those two firms remained the suppliers to those stations after the execution of the October 1978 Agreements.

We next examined the Three Party Agreement executed by RFI, Oasis and Cities and the Substitute Supplier Agreement executed by RFI and Marathon. We determined that neither of those agreements effectively terminated any base period supplier/purchaser relationship between Cities and RFI, on the one hand, and Marathon and RFI on the other hand, or established a new base period relationship between Oasis and Cities and Oasis and Marathon. We also determined that the DOE did not abuse its discretion in refusing to approve the Three Party Agreement.

Another factual finding that we made related to RFI's wholesale business. As a contractual matter, we observed that the October 1978 Agreements could not have conveyed RFI's wholesale business to Oasis because the agreements did not even allude to that business. In addition, we concluded that RFI did not intend to transfer its wholesale business to Oasis. Furthermore, we found that as a regulatory matter RFI could not have transferred the base period supply obligations associated with its wholesale customers to Oasis because no such obligations existed in October 1978.

Before considering the regulatory impact of the updated base period on the contractual agreements between RFI and Oasis, OHA next discussed DOE's authority to establish an updated base period to determine base period volumes and supplier/purchaser relationships. We then held that the updating of the base period pursuant to Activation Order No. 1 did not affect the fact that the allocation entitlements associated with the 84 retail outlets were transferred to Oasis in October 1978. However, we found that Activation Order No. 1 did alter the amount of allocated volumes attributable to each outlet as of March 1, 1979. As of that date, each of the 84 outlets was entitled to purchase an amount of motor gasoline based on the amount it purchased during the new base period rather than the amount it purchased during the 1972 base period. In addition, we found that those suppliers which had actually supplied the outlets during the updated base period became obligated to supply those outlets effective March 1, 1979. Specifically, we determined that as of March 1, 1979, Marathon and Cities were RFI's "suppliers" and that RFI was the "supplier" to the 84 retail outlets.

We also held that effective March 1, 1979, those wholesale purchasers, including Lucky, which had purchased motor gasoline from RFI during the updated base period acquired a regulatory right to obtain gasoline based

on their purchase volumes during the new base period. We further determined that during the updated base period RFI and not Oasis had the regulatory right to supply motor gasoline to all of RFI's historical wholesale customers, including Lucky. In making this determination, we found that RFI had not abandoned its wholesale business at the time it executed the October 1978 Agreements or at any time thereafter.

OHA further concluded that the April 12, 1979 Settlement Agreement entered into by RFI and Oasis did not affect RFI's regulatory right to receive motor gasoline from Marathon and Cities after March 1, 1979, or RFI's regulatory obligation to supply wholesale customers after that date.

With respect to the Motion for Show Cause Order and Supplement filed by RFI on March 27, 1984 and May 14, 1984 respectively, OHA decided that the motion and supplement must be dismissed because one of the elements of the tort of misrepresentation was lacking. Even though OHA dismissed RFI's pleadings, it did find, as a threshold matter, that there is a preponderance of evidence in the record to support RFI's allegations that Oasis engaged in a practice to divert motor gasoline from purchasers with allocation entitlements to Apex.

OHA also evaluated those allegations of non-willful violations of the DOE regulations contained in the pending Counterclaim, Cross-Claim and Third Party Action styled, *Research Fuels, Inc.* v. *Oasis Petroleum Corporation,* No. CA3–80–1353–F (N.D. Tex. filed July 11, 1980). It is OHA's recommendation that the district court dismiss paragraphs 13, 16 and 20 of the above-referenced pleading and sustain paragraph 7 of that same document.

Finally, with respect to the Petition for Special Redress filed by Lucky in this proceeding, we found that Oasis was under no regulatory obligation to supply Lucky with its entitlement of motor gasoline from RFI and a proportionate share of its available product during the period, March 1979 through August 3, 1979. OHA did determine, however, that Oasis was obligated to supply Lucky with product after August 3, 1979 pursuant to the terms of an order issued on August 3, 1979 by the United States District Court for the Northern District of Texas. OHA further concluded that Lucky and similarly situated wholesale purchasers of RFI probably incurred injury as a result of Oasis' diversion activities and therefore should be permitted to demonstrate their injuries and prove entitlement to a portion of the escrow money and any other monies that may be disgorged by Oasis.

VI. Remedy

Now that we have resolved the underlying controversies in this case, we are prepared to commence the remedial phase of this proceeding. In previous cases, OHA has stated that the DOE has considerable latitude in fashioning remedies to compensate firms injured by [DOE] violation[s] and to disgorge benefits from firms which have violated the regulations. *See Koch Industries, Inc.*, 8 DOE 83,024 (1981), *citing. Koch Industries, Inc.*, 2 FEA 80,580 (1975).

A. Distribution of Escrow Funds

In the instant case, we have determined that the most appropriate manner in which to distribute the monies currently held in escrow [68] by the registry of the district court is to utilize a process similar to that employed in refund proceedings convened pursuant to 10 C.F.R. Part 205, Subpart V. The Subpart V refund process is used primarily by the DOE to identify and compensate persons for injuries incurred as a result of actual or alleged violations of the DOE regulatory program. *See* 44 Fed. Reg. 8,562 (1979). ("The new subpart provides a general framework pursuant to which the DOE Office of Hearings and Appeals may order refunds to be made to *injured* persons from funds remitted by regulated firms. . . ") (emphasis added).

Account name	Amount	Date of balance
Oasis Petroleum Corp v. DOE.	$321,370.35	May 23, 1986.
Baldridge	192,810.28	Do.
Kash N' Karry	464,910.12	Do.
Sigmor	207,776.19	Do.

From the record before us, we can readily identify those firms that were potentially injured by Oasis' violations of the DOE allocation regulations. Those firms are RFI, Lucky and the other 21 wholesale customers[69] who were identified by the Texas court as firms that Oasis was required to supply in accordance with the court order entered on August 3, 1979. The chief focus of the remedial phase of this proceeding, then, will be on whether the firms identified as potential claimants to portions of the escrow monies and any other monies that Oasis may be required to disgorge can demonstrate that they were economically injured as a result of Oasis' unlawful regulatory practices. In order to prove injury, a claimant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of the injury which was sustained by the claimant. We expect that the typical claimant will submit evidence of its base period allocation entitlement of motor gasoline during the updated base period; the volumes of gasoline, if any, supplied by Oasis as putative base period supplier to the firm; evidence indicating whether the firm, if deprived of product by Oasis, was able to obtain surplus motor gasoline at marketable prices to replace the gasoline which Oasis failed to supply and evidence indicating that the firm, if it secured higher priced motor gasoline to replace product which Oasis refused to supply was unable to pass all of the costs on to its customers. Although, we will not engage in a time-consuming legal and factual analysis leading to a precise measure of damages, we wish to emphasize that the burden of establishing eligibility for a portion of the escrow monies and any other monies rests on the claimant.

We realize that in the case of small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the value of any expected refund as well as any analytic benefits to be derived. Consequently, without simplified procedures, some potential claimants could be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need to submit and analyze extensive, detailed proof of the result of the impact of Oasis' regulatory violations. Under the small claims presumption, a claimant will not be required to submit any additional evidence of injury except 1) evidence of its base period allocation entitlement during the updated base period; 2) evidence showing that Oasis did not supply it with its entire allocation entitlement and 3) evidence that it was unable to obtain that supply from other sources. The small claims presumption will apply to all claimants that are seeking a refund in the amount of $5,000 or less. This threshold amount has been deemed reasonable in previous Subpart V proceedings. *See Texas Oil & Gas Corp.*, 12 DOE ¶85,069 at 88,210

[68] As of the end of May 1986, the escrow fund totalled $1,186,866.94. We have been advised by the financial department of the Texas district court that four separate accounts have been set up in connection with Case No. CA3–79–0778–F. The four accounts and the respective amount of money in each account as of the specified dates are as follows:

[69] The 21 firms are the following: Encorp, Inc., National Convenience Stores, Reeder Distributing Company, Texas Gas & Oil, Trans-Texas Petroleum, Gleason Oil Company (formerly Winn Oil Company), Consolidated Sales Corporation, Globe Oil Company (d/b/a U-Save), Delta Petroleum, Fuel Distributors, Inc., Lamar Refining Company, Tiger Petroleum Company, Thornton Oil Company, H. S.& L., Sigmor Corporation, Southeast Oil Company, Munford, Inc., Martin Oil Company, Patriot Petroleum Company, Mitchell Oil Company and Baldridge Oil Company.

(1984); *Office of Special Counsel*, 11 DOE ¶85,226 (1984), and case cited therein.

Once OHA has concluded that an allocation claim is meritorious, we will make our determination of the refund amount taking into consideration the equitable factors present in each particular case. Among the equitable factors we will consider are whether the violation has a significant deleterious impact on the claimant and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action.

1. Claim Procedure

In order to receive a portion of the escrow monies or any other monies that Oasis may be required to disgorge, each claimant must file a claim within 30 days of the issuance of this decision. This filing deadline may be extended upon a showing of good cause. *See* 10 C.F.R. § 205.6. Each claimant will be required to submit evidence of its base period allocation entitlement during the updated base period evidence showing that Oasis did not supply it with its entire allocation entitlement and evidence that it was unable to obtain that supply from other sources. A person claiming injury of more than $5,000 shall also include specific information concerning the ecomomic impact of Oasis' actions on its business operations. A claimant must also indicate whether it has previously received a refund, from any source, with respect to Oasis' regulatory violations. Each claimant must also state whether there has been a change in ownership of the firm since August 1979. If there has been any change in ownership, the claimant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the claimant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a portion of the escrow monies or any other monies that Oasis may be required to disgorge. Finally, a claimant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the claimant should furnish a copy of any final order issued in the matter. If the action is still in progress, the claimant should briefly describe the action and its current status. The claimant must keep OHA informed of any change in status while its claim is pending.

B. Calculation of Additional Monies to Be Disgorged by Oasis

In one of the numerous interlocutory orders issued in connection with this case, OHA stated that if Oasis diverted motor gasoline to Apex from wholesale customers with base period entitlements Oasis profited by the amount of money attributable to the Apex sales while the escrow account was depleted by that same amount. *Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE ¶ 82,549 at 85,266 (1985). Since we have found in this decision that there is a preponderance of evidence to establish that Oasis did divert motor gasoline from customers with base period entitlements to Apex, we must now attempt to quantify the amount by which the escrow fund has been depleted. In this connection, we note that Lucky has already submitted to OHA considerable documentation on this very point. For example, Lucky has provided OHA with information concerning Oasis' sales to Apex showing total sales of Cities product to Apex during the period, March 1979 to April 1980, of 46,340,658 gallons. The firm has also furnished OHA with a comparison of Oasis' profits on sales to Apex based on two variables: the terms of the Apex Purchase Order showing an average profit of 20.9 cents/gallon, and the terms stated in Oasis' invoices to Apex, showing an average profit of 9.5 cents/gallon. *See* Lucky's May 7, 1984 Brief at Appendix C, Exhibits 19 and 24. In its submission, Lucky stated that if the DOE desires to audit the firm's summaries, Lucky will make its workpapers and source documents available upon request. At this time, we request that Lucky provide OHA and Oasis with the material which supports the information contained in Appendix C to Lucky's May 7, 1984 Brief. We further request that this material be submitted within 30 days from the issuance of this decision. We invite Oasis to submit any information that it desires to challenge the accuracy of Lucky's documentation concerning the profits which Oasis allegedly reaped as the result of its diversion activities. Oasis may submit its evidence within 15 days of its receipt of the materials that Lucky provides it. Absent any evidence by Oasis to the contrary, we will rely on Lucky's material to determine how much money Oasis will be required to disgorge. Any monies that Oasis disgorges will be distributed in accordance with the procedures set forth in section VI. A. above.

It Is Therefore Ordered That:

(1) The one remaining issue presented by Research Fuels, Inc. in its Motion for Show Cause Order and Supplement thereto, Case No. KEX–0017, which were filed on March 27, 1984 and May 14, 1984 respectively be and hereby is dismissed.

(2) The underlying controversies presented in the consolidated case remanded to the Office of Hearings and Appeals by the United States District Court for the Northern District of Texas, Case No. KEX–0018, be and hereby are decided as set forth in the foregoing decision.

(3) The sole issue retained for adjudication by the Office of Hearings and Appeals in connection with the Petition for Special Redress filed by Lucky Stores, Inc. on January 6, 1984, Case No. HEG–0031, be and hereby is decided as set forth in the foregoing decision.

(4) Within thirty days of issuance of this Decision and Order, Research Fuels, Inc, Lucky Stores, Inc. and any of the other 21 wholesale purchasers identified in this decision may submit a claim, as outlined in the foregoing decision, to Thomas O. Mann, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

(5) Within thirty days of issuance of this Decision and Order, Lucky Stores, Inc. shall provide the Office of Hearings and Appeals and Oasis Petroleum Corporation with workpapers and source documents which support the information contained in Appendix C to its May 7, 1984 Brief in Support of Petition for Special Redress. Oasis Petroleum Corporation may submit any evidence that it desired to challenge the accuracy of the documentation provided by Lucky pursuant to this Decision and Order within fifteen days of its receipt of that documentation.

(6) This is a final order of the Department of Energy.

Dated: August 22, 1986.

Richard W. Dugan,

For Director, Office of Hearings and Appeals.

[FR Doc. 86–20054 Filed 9–4–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[A–9–FRL–3074–9]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Stanislaus Waste Energy Co. (EPA Project Number SJ 86–03)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 11, 1986, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct

a resource recovery facility to be located in Stanislaus County, California. The permit is subject to certain conditions, including allowable emission rates as shown below:

	The more stringent of:	
	lbs/hr or	ppm (dry, at 12 percent CO_2)
For SO_2:		
(3-hour average)	35.6	42
(24-hour average)	33.3	40
For NO_x:		
(3-hour average)	107	175
(24-hour average)	100	165
For CO:		
(3-hour average)	33.3	400

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of combustion controls, ammonia injection, a dry scrubber system and a fabric filter baghouse.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 4, 1986.

Dated: August 26, 1986.

Thomas W. Rarick,

Acting Director, Air Management Division Region 9.

[FR Doc. 86–20033 Filed 9–4–86; 8:45 am]

BILLING CODE 6560–50–M

[A–9–FRL–3075–1]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Pacific Gas & Electric Co. (EPA Project Number SFB 86–01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 25, 1986, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 49.9 MW gas-fired cogeneration facility to be located at the existing Station T facility in San Francisco, California. The permit is subject to certain conditions, including an allowable emission rate for NO_x (as NO_2) at the more stringent of 63 lbs/hr or 25 ppmv at 15% O_2, dry (3-hour average.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of a steam injection system to reduce emissions of NO_x and an oxidizing catalyst system for the control of CO emissions.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 4, 1986.

Dated: August 27, 1986.

Thomas W. Rarick,

Acting Director Air Management Division Region 9.

[FR Doc. 86–20034 Filed 9–4–86; 8:45 am]

BILLING CODE 6560–50–M

[A–9–FRL–3074–8]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Rio Bravo Refining Co. (EPA Project Number SJ 85–07)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 19, 1986, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 36 MW circulating fluidized bed cogeneration system (TEORCO Project) to be located in the Jasmin Oil Field, Kern County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: SO_2 at 14.0 lbs/hr, NO_x at 38.9 lbs/hr, and CO at 105.1 lbs/hr .

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements for SO_2 include the use of limestone injection into the fluidized bed at Ca/S molar ratio of 1.6 to 1 (with an emission limit of 20 ppm SO_2 at 3% O_2) BACT for NO_x includes the use of selective non-catalytic reduction (ammonia injection) at temperature range 1,500–1,700 °F at a minimum NH_3/NO_x ratio of 6.1 to 1 on a weight basis (with an emission limit of 78 ppm NO_x at 3% O_2).

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 4, 1986.

Dated: August 26, 1986.

Thomas W. Rarick,

Acting Director Air Management Division Region 9.

[FR Doc. 86–20035 Filed 9–4–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3075–6]

Environmenal Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 18, 1986 through August 22, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (FISs) was published in **Federal Register** dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. DR–AFS–J61067–CO, Rating EC2, Wolf Creek Valley Ski Area Development, Special Use Permit, CO. Summary: EPA is primarily concerned with water quality impacts related to sediment increases and temporary exceedence of acute water quality criteria for toxic pollutants resulting from changes in existing land uses. Additional mitigation prescriptions are suggested to reduce water quality impacts.

ERP No. D–BLM–K70002–CA, Rating EC2, Arcata Resource Area Wilderness Recommendations, Eden Valley and Thatcher Ridge Wilderness Study Areas, Wilderness or Non-Wilderness Designation, CA. Summary: EPA expressed its concern that mitigation measures for potential impacts to water quality and beneficial uses were not fully addressed, and that management practices for the Middle Fork of the Wild and Scenic Eel River be fully compatible with the corridor

management plan scheduled for completion in 1987.

ERP No. DS–COE–F90004–MI, Rating EO2, Upper Saginaw River, Dredged Material Disposal Facility, Revised Recommended Plan, Confined 52 Acre Island, Construction, Crow Island State Game Area, Northwest Unit, MI. Summary: EPA's review resulted in concerns regarding the potential for significant adverse impacts on human health and the environment from contaminants located at the site. EPA's concerns are related to an inadequate evaluation of sediment contamination and the structure and pollution containment capability of the proposed confined disposal facility.

ERP No. D–COE–G28010–TX, Rating LO, Stacy Reservoir, Dam and Pump Station, Municipal and Industrial Water Supply Development, Colorado River Basin, Permit, 10 and 404 Permit, TX. Summary: EPA expressed no objection to the proposed action. Implementation of this project as an alternate water supply source would be a viable solution to existing groundwater public water supply problems within the project vicinity.

ERP No. D–IBR–K39027–NV, Rating EO2, Newlands Project, Operating Criteria and Procedures, Adoption, (possible 404 permit), Carson River Basin, Truckee Carson Rivers Water Diversion, NV. Summary: EPA expressed concerns that the draft EIS did not fully discuss: (1) Water quality impacts in the Lower Truckee River Basin, and (2) the unmitigated loss of Lahontan Valley wetlands and possible degradation of water quality due to reduced flows. EPA requested that a new alternative be analyzed that would mitigate or offset the loss of wetlands and adverse water quality impacts while still meeting the areas agricultural and domestic water needs.

ERP No. D–SCS–H36096–00, Rating LO, Upper Locust Creek Watershed, Protection/Flood Prevention, MO and IA. Summary: EPA has no objections to the project and did not have any specific comments on the draft EIS.

Final EISs

ERP No. F–CDB–F89026–MI, Oakland Technology Park Development, CDB Grant, MI. Summary: EPA feels that impacts of the project have been satisfactorily minimized and mitigated. Potential concerns with wetlands impacts from future highway development have been addressed by a commitment in the final EIS to further coordinate as detailed design plans become available. EPA has requested that the Record of Decision reflect this commitment.

ERP No. F–COE–E35080–AL, Mallard-Fox Creek Area, Waterfront Development and Use; Navigation Channel Improvements (Adoption from TVA final EIS 800367, filed 5–13–80), AL. Summary: EPA made no formal comments. EPA has no objections to the subject EIS or the COE adoption of same.

ERP No. F–TVA–A82115–00, Gypsy Moth Suppression and Eradication on Federal and Non-Federal Lands in the United States (TVA adopted AFS/APHIS final supplemental EIS, filed 3/1985), US. Summary: EPA has no objections to adoption by TVA of the final EIS prepared by the USDA for gypsy moth suppression. We recommend that site-specific environmental review be done for proposed eradication projects.

Regulations

ERP No. R–NRC–A22107–00, 10 CFR Part 60, Disposal of High-Level Radioactive Wastes in Geological Repositories, Conforming Amendments (51 FR 22288). Summary: EPA made some minor suggestions for clarifying NRC's proposal.

Amended Notices

The following reviews should have appeared in the **Federal Register** Notice published on August 29, 1986.

ERP No. D–COE–D39022–WV, Rating EC2, Kanawha River Navigation Study, Winfield Locks and Dam, Lock Replacement, WV. Summary: EPA identified environmental concerns regarding fisheries and wetlands, and the proposed measures to mitigate impacts to these resources. Further detailed comments will be provided upon receipt of data from the Fish and Wildlife Service and the EPA Region III Kanawha Valley Integrated Environmental Management Program (IEMP) study (due September 30, 1986). EPA has requested a cooperative session with the Huntington COE to review this new data.

ERP No. F–BLM–J36039–UT, West Desert Pumping Project, Great Salt Lake Flood Control Construction, Right-of-Way Permit, Grant, 404 Permit, UT. Summary: EPA did not identify significant environmental concerns in its review of the draft and final EIS.

Dated: September 2, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–20096 Filed 9–4–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3075–5]

Environmental Impact Statements; Notice of Availability of Weekly Receipts

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed August 25, 1986 through August 29, 1986, pursuant to 40 CFR 1506.9.

EIS No. 860349, Final, COE, TT, Kwajalein Atoll Causeway Dredge and Fill Material Discharge Project, Permit, Republic of the Marshall Islands, Due: October 6, 1986, Contact: Michael T. Lee (808) 438–9258.

EIS No. 860350, DSuppl, COE, AL, MS, Tombigbee River and Tributaries, Luxapalila Creek, Phase 2 Channel Modifications, Due: October 20, 1986, Contact: Howard Danley (205) 694–3833.

EIS No. 860351, Draft, CDB, CA, Anaverde Retention Basin, Construction, Flood Control Project, Los Angeles County, Due: October 20, 1986, Contact: N.C. Datwyler (213) 226–8111.

EIS No. 860352, DRevised, BLM, NM, New Mexico Statewide Wilderness Study, Wilderness Study Areas Recommendations, Wilderness Designation, December 12, 1986, Contact: Joe Sovick (505) 988–6565.

EIS No. 860353, Final, COE, MI, Great Lakes Connecting Channels and Harbors Improvement, Chippewa County, Due: October 6, 1986, Contact: Jim Galloway (313) 226–7590.

EIS No. 860354, Final, FHW, CA, "D" Street Extension, Construction, Mytle Street/Soto Road to Second Street, Alameda County, Due: October 6, 1986, Contact: David Eyres (916) 440–3541.

EIS No. 860355, DSuppl, IBR, UT, Bonneville Unit, Central Utah Project, Municipal and Industrial Water System, Construction and Modifications, Updated Information, Due: October 28, 1986, Contact: Jay Henrie (801) 379–1172.

EIS No. 860356, Draft, FRC, ID, Salmon River Basin, Fifteen Hydroelectric Power Projects, Construction, Operation and Maintenance, Licenses, Due: October 20, 1986, Contact: John Staples (202) 376–9084.

EIS No. 860357, Draft, FRC, ID, Japanese Salmon Fishery, 1987 through 1991, Incidental Take of Dall's Porpoise, Permit Issuance, Due: October 20, 1986, Contact: Robert Brumsted (202) 673–5351.

EIS No. 860358, Draft, USN, CA, Target Ranges R–2510 (West Mesa) and R–2512 (East Mesa), Range Safety Zones, Land Aquisition and Land

Management on Non-Federal Lands, Naval Air Facility, El Centro, Imperial County, Due: October 20, 1986, Contact: Dana Sakamoto (415) 877-7590.

EIS No. 860359, DSuppl, USN, CA, Treasure Island Naval Station, San Francisco Bay Region Ship Homeporting, Basing Additional Ships and Constructing Support Facilities, San Francisco County, Due: October 20, 1986, Contact: Dana Sakamoto (415) 877-7590.

EIS No. 860360, Draft, USN, FL, MS, AL, LA, TX, Gulf Coast Strategic Homeporting Action, Dredging, Construciton, Operation and Maintenance, Due: October 27, 1986, Contact: Laurens Pitts (803) 743-3864.

EIS No. 860361, DRevised, AFS, NV, Sierra National Forest, Land and Resource Management Plan, Fresno, Madera and Mariposa Counties, Due: October 20, 1986, Contact: James Boynton (209) 487-5155.

Amended Notices

EIS No. 860227, Draft, BLM, UT, San Juan Resource Area, Resource Management Plan, San Juan County, Due: November 3, 1986, Published FR 6-20-86—Review period extended.

EIS No. 860245, Draft, AFS, CA, Los Padres National Forest, Land and Resource Management Plan, Due: October 30, 1986, Published FR 7-3-86-Review period extended.

Dated: September 2, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-20095 Filed 9-4-86; 8:45 am]

BILLING CODE 6560-50-M

[SW-FRL-3075-7]

Recordkeeping Requirement

This is to notify interested parties that EPA's Office of Emergency and Remedial Response is directing its current Superfund Remedial and Removal contractors to microfilm, in the regular course of business, supporting documentation for removal actions and remedial investigations, feasibility studies, designs and any additional related activities (including financial and cost accounting records) undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq*. The microform copying is being done in accordance with the technical regulations concerning micrographics of Federal Government records (36 CFR § 1230 *et seq*.) and EPA records management procedures (EPA Order 2160). The original documents will be microfilmed periodically in the regular course of business and disposed of upon EPA approval. No document destruction will begin until 30 days after this notice appears in the Federal Register. This notification does not modify the retention requirements for EPA contractor or subcontractor records set forth in 41 CFR 1-20.000 *et seq*.

FURTHER INFORMATION CONTACT: David Huber, Remedial Actions and Contracts Branch (WH-548E), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202/475-6706.

Dated: August 22, 1986.

Walter W. Kovalick, Jr.,

Acting Director, Office of Emergency & Remedial Response.

[FR Doc. 86-20032 Filed 9-4-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Martime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this seciton before communicating with the Commission regarding a pending agreement.

Agreement No. 202-000050-043.

Title: Pacific/Australia-New Zealand Conference.

Parties:

Blue Star Line, Ltd
Columbus Line
Pacific Australia Direct Line

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No. 202-006200-026.

Title: U.S. Atlantic & Gulf/Australia-New Zealand Conference.

Parties:

Columbus Line
Pacific America Container Express

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No. 202-008090-027.

Title: Mediterranean North Pacific Coast Freight Conference.

Parties:

"Italia" di Navigazione S.p.A/d'Amico Societa de Navigazione per Azioni (Joint Service)
United Yugoslav Lines
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No. 202-009236-016.

Title: Greece/ United States Atlantic and Gulf Conference.

Parties:

Farrell Lines, Inc.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No. 212-009847-015.

Title: U.S. Atlantic Coast/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritime Netumar
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend until December 31, 1986 previously approved adjustments necessitated by the integration of alternate coast service into the pooling arrangements and would add to the list of commodities which are excluded from the pool.

Agreement No. 212-009848-017.

Title: U.S. Gulf Ports/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend until December 31, 1986 previously approved adjustments necessitated by the integration of alternate coast service into the pooling arrangements and would add to the list of commodities which are excluded from the pool.

Agreement No. 213-009975-011.

Title: Five Lines' Atlantic Coast Space Charter and Sailing Agreement.

Parties:

Japan Line, Ltd.
Mitsui O.S.K. Lines, Ltd. (Mitsui)
Nippon Yusen Kaisha (NYK)
Yamashita-Shinnihon Steamship Co., Ltd. (Y-S Line)

Synopsis: The proposed amendment reflects the withdrawal of Kawasaki Kisen Kaisha from the agreement and makes other changes necessitated by the overlap in the operations of Mitsui, NYK and Y–S Line under this agreement and their new space charter agreement which became effective August 30, 1986.

Agreement No. 212–010320–013.

Title: Brazil/U.S. Gulf Ports Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro

Companhia Maritima Nacional

United States Lines (S.A.) Inc.

Empresa Lineas Maritima Argentina S.A.

A. Bottacchi S.A. de Navegacion C.F.I.I.

Transportacion Maritima Mexicana S.A.

Synopsis: The proposed amendment would extend until December 31, 1986 previously approved adjustments necessitated by the integration of alternate coast service into the pooling arrangements.

Agreement No. 204–010986.

Title: United States/Peru Equal Access Agreement.

Parties:

Compania Peruana de Vapores

Lykes Bros. Steamship Co., Inc.

Naviera Neptuno, S.A.

Coordinated Caribbean Transport, Inc.

Synopsis: The proposed amendment would establish equal access between the parties to cargoes in the U.S./Peru trade. The agreement covers the total import and export cargo in the trade and requires that the parties be members of the respective conferences covering the agreement trades. The parties may discuss, and agree upon, vessel schedules and service frequency, and may exchange statistical data and cargo information. Cargo carried under Agreement No. 217–010467 (Latin American Common Carrier Charter Agreement) would count as cargo covered by the agreement.

Dated: September 2, 1986.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86–20098 Filed 9–4–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Mitsubishi Trust and Banking Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or umfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Mitsubishi Trust and Banking Corporation*, Tokyo, Japan; to engage *de novo* through its subsidiary, MTBC Finance, Inc., New York, New York in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the United States and Canada.

Board of Governors of the Federal Reserve System, August 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–19993 Filed 9–4–86; 8:45 am]

BILLING CODE 6210–01–M

Saban S.A., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 26, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Saban S.A.*, Panama City, Republic of Panama; to acquire 3.58 percent of the voting shares of Republic New York Corporation, New York, New York, and thereby indirectly acquire Republic National Bank of New York, New York, New York. Comments on this application must be received by September 18, 1986.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 8th Street, Philadelphia, Pennsylvania 19105:

1. *Nicholson Voting Trust Agreement*, Forest City, Pennsylvania; to acquire 53 percent of the voting shares of The First

National Bank of Nicholson, Nicholson, Pennsylvania.

C. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *The Central Bancorporation, Inc.*, Cincinnati, Ohio; to merge with Oberlin Bancshares, Inc., Oberlin, Ohio, and thereby indirectly acquire The Oberlin Bank Company, Oberlin, Ohio.

Board of Governors of the Federal Reserve System, August 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-19994 Filed 9-4-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 29, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

Office of the Assistant Secretary for Health

Subject: 1987 National Medical Expenditure Survey (Round 1 of Household Survey and Survey of American Indians and Alaska Natives; Phase I of Institutional Population Component)—Revision—(0937-0163)
Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

National Institutes of Health

Subject: St. George, Utah Cancer Screening and Detection Project—New
Respondents: Individuals or households

Food and Drug Administration

Subject: Produce License Application for the Manufacture of Anti-Human Globulin Sera—Revision—(0910-0065)
Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Subject: Notice of Availability of Sample Electronic Product—Revision—(0910-0048)
Respondents: Businesses or other for-profit; Small businesses or organizations

Centers for Disease Control

Subject: Epidemic Investigations—Extension (0920-0008)
Respondents: Individuals or households
Subject: Update Survey of Areas Closed or Otherwise Restricted Because of Toxic Substance—New
Respondents: State or local governments
Subject: Fluoridation Census, 1985 (Concept Clearance)—New
Respondents: State or local governments
Subject: National Disease Surveillance Program—I. Case Reports—Revision—(0920-0009)
Respondents: State or local governments

Health Resources and Services Administration

Subject Indian Health Service, Hospital Dental and Other Contract Health Service Reports—Revision—(0915-0020)
Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Subject: Grants for the Development and Operation of Facilities and Services—Extension—(0915-0045)
Respondents State or local governments

Alcohol, Drug Abuse & Mental Health Administration

Subject: Drug Abuse Warning Network—Revision (0930-0078)
Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions
Subject: Determination of Current American Attitudes Toward "Drug Use"—New
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)
Subject: Representative Payee Report—Revision—(0960-0068)
Respondents: Individuals or households
Subject: Application for Benefits Under a U.S. International Social Security Agreement—New
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh
Subject: Worksheet for Integrated AFDC, Food Stamp and Medicaid Quality Control Reviews—Extension—(0960-0176)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

ATTN: (name of OMB Desk Officer)

Dated: August 27, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant, Secretary for Management, Analysis and Systems.

[FR Doc. 86-19904 Filed 9-4-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 81D-0148]

Defect Action Levels for Canned Tomato Products; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is confirming the defect action level (DAL) for catsup contaminated with mold and deletion of criteria for rot fragment counts for all tomato products, as announced in the **Federal Register** of April 8, 1985 (50 FR 13880).

ADDRESS: Written comments on these defect action levels and requests for single copies of Compliance Policy Guide 7114.30 are available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1985 (50 FR 13880), FDA announced the availability of FDA Compliance Policy Guide 7114.30 which revised the defect action level for

catsup by raising the mold count criterion from 35 to 55 percent based on examination of six subsamples. Also in that Federal Register notice, FDA announced that the revised Compliance Policy Guide 7114.30 eliminated the limit for rot fragment count for all tomato products.

In accordance with established procedure, the agency invited interested persons to submit, within a year, any relevant data and information showing why the action level should be changed. No comments, data, or information were submitted to FDA in response to the Federal Register notice announcing the revision of Compliance Policy Guide 7114.30. Therefore, FDA concludes that the defect action level for tomato catsup and the elimination of the criterion for rot fragments for all tomato products announced in Compliance Policy Guide 7114.30 will remain in effect without change.

Dated: August 28, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-19999 Filed 9-14-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Agency Information Collection Activities for OMB Review

The proposal for the collection of information listed has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirements and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the OMB Interior Desk Officer at (202) 395-7340.

Title: 25 CFR Part 41, Subchapter E—Tribally Controlled Community Colleges and Navajo Community Co11ege Annual Report, Pub. L. 95-471.

Abstract: Information generated by the annual report from the Tribally Controlled Community Colleges will be compiled for program evaluation and statistical data. This information will be used as the basis for reports to Congress.

Frequency: Annually.

Description of Respondents: Indian/Alaskan Native students applying for admission to postsecondary schools.

Annual Response: 20.

Annual Burden Hours: 800 hours.

Bureau Clearance Officer: Anne Bolton (202) 343-3577.

Henrietta Whiteman,

Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 86-19971 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-02-M

Submission of Agency Information Collection Activities for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirements and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the OMB Interior Desk Officer at (202) 395-7340.

Title: 25 CFR, Subchapter E, Part 41—Grants to Tribally Controlled Community Colleges and Navajo Community College, Grants Application.

Abstract: The collection of information is necessary to provide financial assistance to the Tribally Controlled Community Colleges and Navajo Community College.

Frequency: Annually.

Description of Respondents: Tribally Controlled Community Colleges, and the Navajo Community College Indian students.

Annual Response: 20.

Annual Burden Hours: 60 hours.

Bureau Clearance Officer: Anne Bolton (202) 343-3577.

Henrietta Whiteman,

Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 86-19972 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-6680-H]

Alaska Native Claims Selection; Paug-Vik Inc., Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Paug-Vik Incorporated, Limited, for approximately 0.36 acre. The lands involved are in the vicinity of Naknek, Alaska.

U.S. Survey No. 6074, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 6, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-19973 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-JA-M

[ID-040-06-4331-12]

Closure of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of vehicle closure for the Chief Tendoy Cemetery located on public lands in Lemhi County, Idaho. The Cemetery will be closed to vehicles except for the authorized access road to the monument.

DATE: The closure will commence October 16, 1986.

SUMMARY: The Chief Tendoy Cemetery will be closed to vehicular traffic except for the authorized access road to the monument. The land is a 40 acre parcel located in T.19N., R.24E., B.M., Section 28: NE¼SW¼ and was reserved for an Indian Cemetery on October 1, 1907, by a Secretarial decree. This vehicle closure is necessary to ensure the protection of the Cemetery and the associated Native American burials.

SUPPLEMENTARY INFORMATION: For more information concerning this closure

contact the Salmon District Manager at Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467.

Jerry W. Goodman,

District Manager.

[FR Doc. 86-20076 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-06-4333-11; NV5-86-37]

Temporary Closure of Certain Public Lands in the Las Vegas District and the California Desert District for Management of the Frontier 500 Off Highway Vehicle (OHV) Race

August 27, 1986.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Temporary closure of certain Public Lands in the Las Vegas District, Clark County, Nevada and the California Desert District, San Bernardino County, California, on and adjacent to the Frontier 500 OHV race course, on September 6 and 7, 1986. Access will be limited to race officials, entrants, law enforcement and emergency personnel, licensed permittees and right-of-way grantees. The entire California portion of the course will be restricted to a 30 mph speed limit starting on August 28, 1986 and ending September 5, 1986.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada and the California Desert District, San Bernadino County, California will be temporarily closed to public access from 0001 hours September 6, 1986 to 0600 hrs September 7, 1986 to protect persons, property, and public land resources on and adjacent to the 1986 Frontier 500 OHV race course. Traffic will be restricted to a 30 mph speed limit for the entire portion of the course within California, on the Stateline Pass Road, from 0001 hrs. August 28, 1986 to 2400 hrs September 5, 1986. These temporary closures and restrictions are made pursuant to 43 CFR 8364.

The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1986 Frontier 500 OHV race course. The following lands restricted or closed are described as: T. 24 S., R. 60 E., all of sections 22, 27, 30 and 31; T. 24 S., R. 59 E., all of sections 25, 35 and 36; T. 25 S., R. 59 E., all of sections 1, 2, 3, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 35, and 36; T. 25 S., R. 58 E., all of sections 1, 12, 13, 24, 25, and 36; T. 25 S., R. 57 E., all of sections 1, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36; T. 26 S., R. 59 E., sections 1, 4 (west of Interstate 15) and 5; T. 26 S., R. 60 E., all of sections 3, 4, 5, and 6 and T. 25 S., R. 60 E., all of sections 33, 34 and 35. The above legal land descriptions are for public lands within Clark County, Nevada.

The following closed and restricted areas apply to the Frontier 500 course on public lands within San Bernardino County, California and are described as: T. 18 N., R. 13 E., all of sections 1, 2, 12, 13, 24,; T. 18 N., R. 14 E., all of sections 18, 19, 20, 21, 27, 28, 33, 34, and 35; T. 17 N., R. 14 E., all of sections 1 and 2; and T. 17 N., R. 15 E., the SE¼ of section 6 and all of section 7.

A map showing specific areas closed to public access is available from the following BLM offices: the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126 (702) 388-6403; the Stateline Resources Area Office, P.O. Box 7384, Las Vegas, Nevada 89125, (702) 388-6627 and the Needles Resource Area Office, 901 Third St., Needles, CA 92363, (619) 326-3896.

Any person who fails to comply with this closure order issued under 43 CFR 8364 may be subject to the penalities provided in 43 CFR 8360.7.

Charles Frost,

Acting District Manager.

[FR Doc. 86-19974 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-HC-M

[UT-050-06-4410-08]

Capitol Reef Reservoir Maintenance

AGENCY: Bureau of Land Management, Richfield, Utah, Interior.

ACTION: Final EA preparation on project in Wilderness Study Area.

SUMMARY: A final EA has been prepared and is available for public inspection.

The final environmental analysis and decision for the Capitol Reef Reservoir and Spring Maintenance Proposal in a National Park Service proposed wilderness area is available for public inspection at the Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 for 15 days after the printing of this Notice in the **Federal Register**. For additional information, contact Roy Edmonds, Environmental Coordinator at the above address or call (801) 896-8221.

August 25, 1986.

Donald L. Pendleton,

District Manager.

[FR Doc. 86-19975 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-DQ-M

[UT-050-06-4410-08]

Final Decision for the Tercero Trespass Road in the Mount Ellen/Blue Hills Wilderness Study Area (WSA)

AGENCY: Bureau of Land Management, Richfield, Utah, Interior.

ACTION: On November 14, 1985, a decision was issued to resolve the problems associated with a road built by the Tercero Corporation across the Mount Ellen/Blue Hills WSA. This decision was later rescinded because of new policy. The decision has now been reaffirmed.

SUMMARY: The decision is to accept the Ceja/Tercero Corporation's offer to relinquish 166 allocated grazing AUMs in the Sawmill Basin Allotment as mitigation in exchange for a temporary right-of-way on their trespass road sections in the Mt. Ellen/Blue Hills Wilderness Study Area. The BLM's State of Utah Wilderness Environmental Impact Statement will document the need for an amendment to the All Wilderness Alternative to the effect that the Mt. Ellen/Blue Hills WSA boundary be modified so that the potential wilderness boundary line follows the north side of the trespass road sections (this would eliminate about 5 acres from the WSA). The AUMs offered by Ceja/Tercero Corporation will be placed in reserve for use by the Henry Mountain bison herd. If Congress accepts the proposal, and the boundary is modified as proposed, the AUMs would remain reserved for bison use and a permanent right-of-way would be issued to Ceja/Tercero Corporation for the road segments. If Congress rejects the proposal and includes the disturbed lands as part of a wilderness area, then the AUMs would still be held in reserve for bison use. The BLM would then accept full liability for any rehabilitation work required by the mitigation measures in this EA, or subsequent rehabilitation that might be required by wilderness enabling legislation.

August 25, 1986.

Donald L. Pendleton,

District Manager.

[FR Doc. 86-19976 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-DQ-M

[DES 86-36]

Revised Draft Environmental Impact Statement; New Mexico Statewide Wilderness Study; Availability and Notice of Public Hearings

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability of the Revised Draft Environmental Impact (DEIS) Statement and Public Hearings.

SUMMARY: Pursuant to sections 202 and 603 of the Federal Land Policy and Management Act of 1976 and section 102 of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Revised DEIS for the New Mexico Statewide Wilderness Study.

ADDRESS: Copies of the Revised DEIS are available upon request from the New Mexico State Office, NM (912), Bureau of Land Management, P.O. Box 1449. Comments on the Revised DEIS should be sent to this same address.

FOR FURTHER INFORMATION CONTACT: Joe Sovcik, EIS Team Leader, New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, (505) 988–6565.

SUPPLEMENTARY INFORMATION: The Revised DEIS for the New Mexico Statewide Wilderness Study analyzes 46 Wilderness Study Areas (WSA's) which encompass 943,356 acres of public land in New Mexico. The purpose of this study is to determine the suitability or nonsuitability of these WSA's for recommended inclusion in the National Wilderness Preservation System.

Alternatives evaluated include an all wilderness alternative, an alternative which emphasizes manageability, a proposed action, a conflict resolution alternative and a no wilderness alternative.

The Revised DEIS contains four volumes. Volume 1 is the Statewide overview which analyzes the Statewide environmental consequences for each alternative. Volumes 2, 3, and 4, the appendices, provide a detailed analysis for each of the 46 WSA's.

Written comments should be directed to State Director, NM (912), New Mexico State Office, Bureau of Land Management P.O. Box 1449, Santa Fe, NM 87504–1449. Written comments on the Revised DEIS must be received by close of business December 12, 1986.

Public hearings have been scheduled for the following dates, times and locations:

October 21, 1986, 3 and 7 p.m., High Mesa Inn, 3347 Cerrillos Road, Santa Fe, NM

October 22, 1986, 3 and 7 p.m., Albuquerque Convention Center, 401 Second St., NW, Albuquerque, NM

October 23, 1986, 3 and 7 p.m., Branigan Library, 200 E. Picacho, Las Cruces, NM

Monte G. Jordan,

Acting State Director.

August 22, 1986.

[FR Doc. 86–19593 Filed 9–4–86; 8:45 am]

BILLING CODE 4310–FB–M

[CO–050–06–4212–08]

Availability of the Royal Gorge Resource Area Management Framework Plan Realty Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: The Royal Gorge Management Framework Plan Realty Amendment/ Environmental Assessment for the Royal Gorge Resource Area, Canon City District, Colorado.

SUMMARY: In accordance with 43 CFR Part 1600 and Pub. L. 94–579, Section 202, the Bureau of Land Management (BLM), Canon City District, Colorado has completed an amendment to the Royal Gorge Resource Area Management Framework Plan. This amendment clarifies plan decisions concerning land tenure adjustments within a three-township area in Park County, Colorado. The preferred alternative identifies the following: five parcels of public land comprising approximately 4,280 acres as suitable for disposal only through exchange, boundary adjustment with the Forest Service, or through the Recreation and Public Purposes Act; twenty-one additional parcels, comprising approximately 2,760 acres, meet the criteria for sale under Section 203 of the Federal Land Policy and Management Act; however, Exchange and Recreation and Public Purposes Act disposals will be given priority consideration. A 30-day protest period is provided.

DATE: The protest period ends October 5, 1986.

ADDRESS: Protests should be sent to BLM Director, Bureau of Land Management, 18th and C Streets NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dennis Zachman, Realty/Minerals Staff Leader, Bureau of Land Management, Royal Gorge Resource Area Office, P.O. Box 1470, Canon City, Colorado 81212, telephone 303/275–7578.

SUPPLEMENTARY INFORMATION: The document is available from the Royal Gorge Resource Area Office at the above address. Persons who have participated in this planning process and have interests that may be adversely affected may protest approval of the plan in accordance with the planning regulations, 43 CFR 1610.5–2. Protests should be made in writing to the BLM Director (760) in Washington. The protest should include the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts being protested.
4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.
5. A concise statement explaining why the proposed decision is believed to be wrong.

Ralph Smith,

Action State Director.

[FR Doc. 86–19977 Filed 9–4–86; 8:45 am]

BILLING CODE 4310–JB–M

[ID–010–06–4322–02]

Boise District Grazing Advisory Board

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Boise District, Idaho, Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given that the Boise District Grazing Advisory Board will meet on October 1 and 2, 1986 from 9:00 a.m. to 4:00 p.m.

SUPPLEMENTARY INFORMATION: The meeting will begin at 9:00 a.m. each day in the lower conference room at the Bureau of Land Management, Boise District Office, at 3948 Development Avenue in Boise, Idaho. A public comment period is scheduled from 2:00 p.m. to 3:00 p.m. each day. The agenda includes the following topics:

—Election of Officers
—Update on Jarbidge and Cascade Resource Area Planning Efforts
—Report of Range Betterment (8100) Expenditures for FY–85, 86
—Proposed FY–87 8100 Projects
—Future Distribution of Range Betterment (8100) Funds

FOR FURTHER INFORMATION CONTACT: Further information is available from the Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582. Minutes of the meeting will be

available for public inspection at the District Office.

J. David Brunner,

District Manager.

August 28, 1986.

[FR Doc. 86-20075 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-GG-M

[UT-040-06-4830-12]

Cedar City District Advisory Council; Meeting.

Notice is hereby given in accordance with Pub. L. 92-463, that a field tour/meeting of the Cedar City District Advisory Council will be held October 3 and 4, 1986.

The meeting will begin at 9:30 a.m. Oct. 3rd, at the BLM's Bryce Canyon field camp. For specific directions contact the address given below. The agenda will include: update on Alton coal field activity; land treatments in the Paria drainage; Upper Valley oil field management; and the proposed CO_2 EIS in the Boulder area. On Oct. 4th the council will depart Escalante at 8 a.m. and spend the day in the Escalante River drainage. The topic will be the proposed Escalante Recreation Area Management Plan and its correlation with other resources in the area.

All Advisory Council meetings are open to the public. Since the two day meeting will be entirely in the field, anyone wishing to participate must have transportation and make arrangements for meals and lodging.

Interested persons may make oral statements at 9:30 a.m. at the BLM's Bryce Canyon field camp or may submit written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager, P.O. Box 724, Cedar City, Utah 84720 by Sept. 30, 1986. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

Dated: August 29, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86-19978 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-010-06-4310-33; GP6-320]

Lakeview District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Federal Register Notice.

Notice is hereby given, in accordance with Pub. L. 92-463 that the Lakeview District will hold a meeting on October 2, 1986. The meeting and tour will begin at 9:00 a.m. at the Gerber Guard Station at Gerber Reservoir. A short meeting will follow the morning tour. Public comments will be accepted between 2:00-3:00 p.m. The agenda will center on forage allocation, Beatty's Butte Wildhorse Fertility Study, and range improvements. Other topics will be discussed if time allows.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the board is requested to contact the District Manager at the above address before September 25, 1986. Summary minutes of the meeting will be available for review within 30 days following the meeting.

Dated: August 28, 1986.

Robert G. Bolton,

Acting District Manager.

[FR Doc. 86-19979 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-33-M

[WY-920-06-4090-11-6001; W-88237]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-88237 for lands in Crooks County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lessee as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-88237 effective October 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarabis,

Chief, Leasing Section.

[FR Doc. 86-19980 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-06-4212-11; Nev-047245]

Opening of Public Lands; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Order providing for opening of public lands.

SUMMARY: Pursuant to the Act of June 14, 1926 (43 U.S.C. 869), as amended, the following described lands have been reconveyed to the United States:

Mount Diablo Meridian, Nevada

T. 36 N., R. 38 E.,
Sec. 8, NW¼NW¼, N½SW¼NW¼.

The lands are located in Humboldt County approximately 1½ miles north of the City of Winnemucca. Slopes are moderate and soils are sandy loams supporting big sage and cheatgrass.

DATES: Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the above-described lands are hereby opened to application, petition, location, and selection including location under the United States mining laws. All vaild applications received prior to 10:00 a.m. by October 6, 1986. Shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

FOR FURTHER INFORMATION CONTACT: District Manager, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445.

Dated: August 28, 1986.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86-19981 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-HC-M

[WY-010-06-4212-11:W-0310463]

Wyoming Realty Action, Lease of Public Land for Recreation and Public Purposes in Hot Springs County; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of realty action, lease of public land for recreation and public purposes in Hot Springs County.

In the Federal Register, Volume 51, No. 159, appearing on page 29523 in the issue of Monday, August 18, 1986, please make the following correction under Item 1, concerning existing rights:

1. Wind River Partnership Placer Mining Claim Dome No. 5. Wind River Partnership, the owner and lessor, and Wyo-Ben Inc., the lessee, have agreed to the use for which this lease is proposed, only for the 1.875 acres occupied by the

existing frame school residence, for the remaining term of Recreation and Public Purposes Lease W-0318463, expiring January 31, 1992.

Chester E. Conrad,

District Manager.

[FR Doc. 86-20077 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-22-M

[CO-942-06-4520-12]

Colorado; Filing of Plats of Survey

August 26, 1986.

The official filing of the following described plat is hereby stayed, pending adjudication by the Interior Board of Land Appeals, of an appeal. The plat will not be officially filed until further notice. It was originally to be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 A.M., September 5, 1986.

The plat representing the dependent resurvey of a portion of the Tenth Standard Parallel North (south boundary, T. 41 N., R. 12 W.), the survey of Private Land Claims, and a Public Land Tract, and the independent resurvey of the east boundary, T. 40 N., R. 12 W., New Mexico Principal Meridian, Colorado, Group No. 738, was accepted June 20, 1986.

Jack A. Eaves,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-19983 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-JB-M

[F-85316]

Alaska; Notice of Proposed Withdrawal and Opportunity for Public Meeting

Correction

In FR Doc. 86-16434, appearing on page 26311, in the issue of Tuesday, July 22, 1986, make the following corrections:

1. In the second column, under "Kateel River Meridan", twenty-first line, after "Noatak" insert "National".

2. In the second column, under "Kateel River Meridan", twenty-third line, "T.30 N., R. 13 E.," should read "T. 30 N., R. 14 E.,".

BILLING CODE 1505-01-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1241, Block 52, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on August 27, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: August 27, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-19984 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3336, Block 35, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on August 27, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

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Dated: August 29, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-19985 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Park Service Golden Gate National Recretation Area; Notice of Public Hearing

Section 460bb-2(i) of the legislation establishing the Golden Gate National Recreation Area ("GGNRA"), 16 U.S.C. 460bb-2(i), prescribes limitations on new construction or development at the Presidio of San Francisco, which is located entirely within the boundaries of the GGNRA. The legislation also

requires that a public hearing conducted by the Secretary of the Interior or his designated representative be held in connection with any proposed new construction or development.

Accordingly, notice is hereby given that a public hearing will be conducted by the Superintendent of the GGNRA on Monday October 6, 1986, in order to present to the public and solicit its views on seven new construction projects currently proposed to be undertaken by the U.S. Army at the Presidio. The hearing will commence at 7:00 p.m. at the Golden Gate Community Center, Building 135 of the Presidio, located near the intersection of Sheridan Avenue and Infantry Terrace at the Presido of San Francisco, California.

This development proposal, consisting of seven new construction projects, as currently planned and sited, is the result of a settlement agreement reached by the U.S. Army and Postal Service and the Sierra Club, following litigation brought by the Sierra Club challenging portions of the original proposed development plan.

The projects which are proposed to be built by the Army are listed below:

Project No., Name, ond Location Description

1. Enlisted Barracks with Dining, Operations and Supply Facilities—Proposed site is in the vicinity of Thompson Hall at the northwest corner of the intersection of Lincoln Boulevard and Girard Road, and/or south of Lincoln Boulevard east of the Main Post Gymnasium, on Funston Avenue.
2. Child Support Service Center—Proposed site is presently an athletic field, west of the library, south of Moraga Avenue and east of Infantry Terrace.
3. Medical Enlisted Barracks—Proposed site is adjacent to and slightly overlaps an existing parking lot at the northwest corner of the intersection of Edie Road and Girard Road.
5. Commissary—Proposed site is a paved surface which was formerly a motor pool complex on the south side of Old Mason Street, west of the Main Post Exchange and north of Doyle Drive.
6. Bowling Center—Proposed site encompasses an existing parking lot, and soon-to-be-vacated building, southeast of the intersection of Sheridan Avenue and Montgomery Street, and northeast of the Post Theater.
8. Main Post Exchange Expansion—This single-story addition will be south of the southern curb of Old Mason Street, and west of the existing Exchange building.
9. Branch Exchange/Convenience Store—The proposed site is presently a parking lot south of Doyle Drive and south of the interesection of Gorgas and Marshall Streets.

The Postal Service Facility, originally project number 4 and at this point a partially completed structure on Crissy Field, will be demolished as part of the settlement agreement. For the present, postal service and other mail-related functions will remain in the structures where they are presently housed. Construction of a Fast Food Service Facility at a location north of Old Mason Street on the Crissy Field area of the Presidio, originally project number 7, has been cancelled.

A map indicating the locations of each of the currently proposed projects by the project number is on file for review by the public at the office of Mr. Michael Feinstein, Staff Assistant, GGNRA, Building 201, Fort Mason, San Francisco, California, 94123. Copies of such a map may be obtained by writing to Mr. Feinstein at the above address or by telephoning (415) 556–4484.

For each of these seven projects, there is available a fact sheet describing the proposed project and its location; how the project relates to the mission of the Army at the Presidio; any buildings which have been or are to be demolished to compensate for the proposed construction; whether the project provides for an expansion of an existing use or activity; and where and under what conditions the use or activity to be accommodated by the proposed construction project is now housed. For the Child Support Service Center (project number 2), there also are available: (a) A Record of Environmental Consideration of the project; (b) a map of the area outlining the project site and actual construction boundaries; and (c) a sketch, drawing, or photograph showing the approved or conceptual design and appearance of the proposed project. Copies of these documents, together with copies of the written settlement agreement signed by the Army/Postal Service and the Sierra Coub, may be obtained by writing to or telephoning Mr. Feintein at the address or telephone number specified above.

According to the terms of the Army/Postal Service-Sierra Club settlement agreemnt, none of the projects addressed by the settlement other than the Child Support Service Center may be authorized until the Army has prepared for each project an environmental assessment plus the map and sketch, drawing or photograph described above, and has made such documents available to the public at least 30 days prior to a public hearing held in connection with that project. Thus there will be subsequent public hearings on Project Numbers 1, 3, 5, 6, 8, and 9.

Finally, an additional item on the agenda for the October 6, 1986 hearing is the proposed construction by the Golden Gate Bridge, Highway and Transportation District of East Parking Lot Public Restrooms at the Golden Gate Bridge. This proposed construction project is not a part of the Army/Postal Service-Sierra Club settlement agreement. Information available with respect to this project includes an Initial Environmental Study and a Project Decription, and may be obtained by contacting Mr. Feinstein at the address or telephone number provided above.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public meeting. Those not wishing to appear in person may submit written statements to the General Superintendent on the Presidio settlement agreement. Statements will be accepted until October 20, 1986.

This meeting will be recorded for documentation and transcribed for dissemination.

Dated: August 29, 1986.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 86–20024 Filed 9–4–86; 8:45 am]

BILLING CODE: 4310-70-M

Bureau of Reclamation

[INT FES 86–25]

Availability of Final Environmental Impact Statement; Contingency Program For Westlands Water District Drainage Disposal Project, California

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a Final Environmental Impact statement addressing contingency plans to ensure the continued cessation of subsurface agricultural drainage flows from Westlands Water District (WWD) into the San Luis Drain and Kesterson Reservoir. The proposed action is long-term plugging of a portion or all of the subsurface drainage collector system within the 42,000 acres of the Westlands Water District.

The proposed action would be undertaken only if WWD fails to continue to comply with its obligations under the April 3, 1985, Agreement with the Department of the Interior to eliminate drainage flows into the San Luis Drain. All subsurface agricultural flows from the WWD into the San Luis Drain ceased during the week of June 9, 1986. WWD is thus presently in full compliance with the April 3, 1985, Agreement.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room

7429, 18th & C Streets, NW., Washington, DC 20240, Telephone: (202) 343-4991

Division of Acquisition and Property Management, Document Systems Management Branch, Library Section, Code 823, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303 236-6963

Chief, Environmental Compliance Branch, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento, CA 95825, Telephone: (916) 978-5130

Fresno Office, Bureau of Reclamation, 1130 "O" Street, Fresno, CA 93721; Telephone: (209) 487-5137

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, the Sacramento Office or the Fresno Office, at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

Dated: September 2, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-20040 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 464]

Railroad Cost of Capital, 1985; Notice of Proceeding

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1985 cost of capital.

SUMMARY: The Commission is instituting a proceeding to determine the railroad industry's cost of capital rate for 1985. The decision solicits comments on: (1) The railroads' 1985 current and embedded cost of debt capital; (2) the railroads' 1985 current and embedded cost of preferred stock equity capital; (3) the railroads' 1985 cost of common stock equity capital; (4) the 1985 capital structure mix of the railroad industry on both a book value and market value basis; and (5) the amount of the railroads' 1985 accumulated deferred tax reserve. The decision also seeks comments on a proposed procedure to permit a more timely cost of capital finding by the Commission in the future.

DATES: Notices of intent to participate due September 15, 1986. Statements of railroads due October 24, 1986. Statements of other interested parties due November 24, 1986. Rebuttal statements by railroad due December 15, 1986.

ADDRESSES: Send an original and 15 copies of comments and an original and one copy of the notice of intent to participate to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact of a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: August 26, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee

Secretary.

[FR Doc. 86-20022 Filed 9-4-86; 8:45 am]

BILLING CODE 7035-0-M

[Finance Docket No. 30874]

Norfolk and Western Railway Co.; Filing of Exemption To Operate Properties of Interstate Railroad Co. and Virginia and Southwestern Railway Co.

Norfolk and Western Railway Company (NW), Southern Railway Company (Southern), Interstate Railroad Company (Interstate), and Virginia and Southwestern Railway Company (VSW) have filed a joint notice of exemption for NW to operate certain properties of Interstate and VSW. NW and Southern are common carriers controlled by Norfolk Southern Corporation, a holding company. Interstate and VSW are common carriers owned by Southern. Southern currently operates all of VSW's properties. NW operates most of Interstate's properties. Under this notice of exemption, by contract, NW will operate most of VSW's properties and all of Interstate's properties.

Interstate's properties and the involved VSW properties are located in the coal fields of southwestern Virginia. They are the Interstate agency operations at Norton and Andover, Andover Yard, the Interstate line segment between Andover (MP IN 2.4) and Appalachia (MP IN 6.0, MP O.OT), VSW's St. Charles Branch between Appalachia (MP O.OT, MP 1.7T) and St. Charles (MP 23.OTB), including all related branches, and that portion of VSW's Appalachia-Big Stone Gap line between MP O.OT and MP 3.36T necessary for NW to serve the St. Charles Branch and the coal transloader at Appalachia, VA.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the transaction shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979). This will satisfy the requirements of 49 U.S.C. 10505(g)(2).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: August 25, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-20023 Filed 9-4-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 15-86]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Executive Office for United States Trustees, publishes a new system of records entitled "United States Trustee Program Case Referral System, JUSTICE/UST-004."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on the routine uses of a system; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit any written comments to J. Michael Clark, Assistant

Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 9002, 601 D Street, NW., Washington, DC 20530 by November 4, 1986.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: August 18, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/UST-004

SYSTEM NAME:

United States Trustee Program Case Referral System, JUSTICE/UST-004.

SYSTEM LOCATION:

Executive Office for United States Trustees (EOUST), United States Department of Justice, Room 812, 320 First Street, NW., Washington, DC 20530. Records may also be located in the various field offices. (See Appendix identified as JUSTICE/UST-999.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system encompasses entities and individuals involved in the bankruptcy process who are suspected of having engaged in criminal conduct or of having violated other Federal laws, and whose activities have been reported by the U.S. Trustees or EOUST to a U.S. Attorney pursuant to 18 U.S.C. 3057, or to other law enforcement authorities for investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of any information about a case filed under Title 11 of the U.S. Code which is the subject of, or is associated with, a referral to law enforcement authorities. Records will consist of any information pertaining to the subject of the referral who may be the debtor himself, or any other individual associated with the bankruptcy case who is suspected of having engaged in criminal conduct or having violated other Federal laws. The information may include the subject's name, address, date of birth, or social security number; a chronological account of the incident(s); the source of the information; names and addresses of witnesses; the law enforcement agency to whom the referral is made; and the status or final disposition of the referral. The system may also contain information about the bankruptcy case with which the subject of the referral is associated. Such information may include the debtor's name, address, social security number; case number and case chapter; the trustee's name, address and phone number; the judge assigned to the case; and such other case data as may be filed in the records of the court or of the U.S. Trustee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 586, 18 U.S.C. 3057.

PURPOSE(S):

The purposes of this system are to assist the U.S. Trustees: (1) In supervising the administration of cases and trustees in cases filed under Chapters 7, 11 and 13 of Title 11, U.S. Code, as codified by Title I of the Bankruptcy Reform Act of 1978 (11 U.S.C. 101, *et seq.*); (2) in carrying out their congressional mandate "to serve as bankruptcy watch-dogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena" (H.R. Rep. No. 595, 95th Cong., 2d Sess. 88 (1978)); and (3) in complying with 18 U.S.C. 3057 which directs trustees to report for investigation any instance where there are reasonable grounds for believing that there has been a violation of Federal laws relating to insolvent debtors or reorganization plans. The U.S. Trustees and EOUST will inform the appropriate law enforcement authorities when fraud or other violations of Federal law are suspected or discovered in a bankruptcy case and will maintain records thereof described under "Categories of Records in the System." The data will be used for program-wide evaluation purposes, for statistical purposes, and to track the number, type, and outcome of cases referred for investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy or would impede an ongoing law enforcement proceeding.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual to whom the records pertain.

These records may be disclosed to members of the judicial branch of the Federal Government where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local or foreign, for investigation of suspected violations of Federal or State laws. Records may also be disclosed to these law enforcement authorities to assist in ongoing investigations. These records may be disclosed to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under the authority of Title 44 of the U.S. Code.

These records may be disclosed to a trustee in a case filed under Chapter 7, 11 or 13 of Title 11, U.S. Code, when the U.S. Trustee determines that the release of information is necessary to enable the trustee to properly administer the case and to perform the duties and responsibilities of a case trustee set forth in Title 11 and in 18 U.S.C. 3057.

These records may be disclosed, except when the bankruptcy court has moved to protect an entity as provided in 11 U.S.C. 107, in a proceeding before a court or adjudicative body or any proceeding relevant to the administration of a case filed under Title 11 in which the U.S. Trustee is authorized to appear when (a) the U.S. Trustee, or (b) any employee of the U.S. Trustee in his or her official capacity, or (c) any employee of the U.S. Trustee in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or (d) the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the U.S. Trustee to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM. STORAGE:

All records are stored in paper folders in cabinets. All records are also stored on computer disks.

RETRIEVABILITY:

Computerized records will be retrievable by using any one or various combinations of the assigned case referral number, the judicial district or U.S. Trustee's field office from which the referral is generated, the date of the referral, the debtor's name, the case chapter, the name, social security or employer identification number and date of birth of the individual who is the subject of the referral, the subject's relationship to the debtor, the general nature of the charges and/or the status of the referral. Records stored in paper

folders will be filed chronologically by the case referral number.

SAFEGUARDS:

Paper folders are stored in a file cabinet which is located inside a room with a bolt lock. The computer disks are located in the same room. Only those persons with a need to know have access to the records.

RETENTION AND DISPOSAL:

A detailed records retention plan and disposal schedule is being developed by NARA and EOUST.

SYSTEM MANAGER AND ADDRESS:

Deputy Director for Legal Services, Executive Office for United States Trustees, United States Department of Justice, Room 812, 320 First Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

RECORDS ACCESS PROCEDURE:

Make all requests for access to records from this system in writing to the system manager and clearly mark both the letter and the envelope "Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the request, and a return address.

CONTESTING RECORD PROCEDURES:

Make all requests to correct a record in writing to the system manager. The request must identify the particular record in question, state the correction sought and set forth the justification for correcting or contesting it. These procedures are in accordance with Department regulations (28 CFR 16.50) **Federal Register**, March 29, 1984, page 12258.

RECORD SOURCE CATEGORIES:

The records will contain information obtained by or furnished to the U.S. Trustee or EOUST (1) from Federal or State court records; (2) from debtors or debtors' principals, agents or representatives; and (3) from informants and interested third parties.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 86-19989 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act; Moore, OK

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on August 13, 1986 a proposed Consent Decree in *United States* v. *City of Moore and State of Oklahoma,* Civil Action No. 84-618(E) (W.D. Okla.) was lodged with the United States District Court for the Western District of Oklahoma. The complaint filed by the United States alleged numerous violations of the Clean Water Act, various administrative orders, and the NPDES permit for the City of Moore's wastewater treatment facility. The complaint sought injunctive relief against the City to halt the violations and to impose a compliance schedule, as well as to impose civil penalties. The proposed Consent Decree requires the City of Moore to undertake extensive remedial measures and develop and implement a local pretreatment program, and imposes civil penalties of $52,500.00 for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *City of Moore and State of Oklahoma,* Civil Action No. 84-618(E) (W.D. Okla.), D.J. No. 90-5-1-1-2068.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 4434, U.S. Courthouse and Federal building, Oklahoma City, Oklahoma 73102 and at the Region VI Office of the Environmental Protection Agency, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-19986 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act; Phelps Dodge Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 28 , 1986, a proposed Consent Decree in *United States* v. *Phelps Dodge Corp.*, Civil Action No. 85-507-GLO-WDB, was lodged with the United States District for the District of Arizona. In May, 1985, the United States filed the present action against Phelps Dodge Corporation, the owner and operator of the Morenci mine complex, under the Clean Water Act for its unpermitted discharges of mine overburden and acidic mine drainage into Chase Creek and Gold Gulch, navigable waters of the United States. The proposed consent decree resolves the litigation by requiring Phelps Dodge to construct flood control systems in Chase Creek and Gold Gulch, to divert Chase Creek around the active mining areas and to pay a one million dollar penalty for its past violations of the Act. The Decree also prohibits Phelps Dodge from discharging pollutants from the flood control systems into downstream waters of the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Phelps Dodge Corp.*, D.J. Ref. 90-5-1-1-2392.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Arizona, 4000 U.S. Courthouse, 230 N. First Avenue, Phoenix, Arizona, 85025 and at the office of the Regional Counsel, Region IX, Environmental Protection Agency, 215 South Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of

the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-19987 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

Direct Mail of Applications and Petitions to the Regional Adjudications Center in Lincoln, NE

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of change of location where applications and petitions are filed.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633-3048.

For Specific Information: Lloyd Sutherland, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I street, NW., Washington, DC 20536. Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service has four regional adjudications centers (RACs). These centers originally adjudicated various petitions and applications under delegated authority from district directors; on October 15, 1985, specific authority to adjudicate was extended to the directors of the four RACs (8 CFR 103.1(s)). Work required by the Service to be adjudicated at RACs is currently filed with district offices and shipped from there to the RACs. Believing this to be inefficient and a cause of delays, the Service initiated a test program in the Eastern Region on January 6, 1986 to evaluate the feasibility of requiring the public to mail applications and petitions directly to RACs. In conducting this test, the Service was able to use and test its newly developed automated fee accouting and receipt entry system (FAFES). Under the test program, the public was asked to mail in specified districts directly to the Eastern Region RAC. District directors in the affected offices were authorized to accept those applications and petitions only in cases of genuine emergencies.

The test included the following petitions and applications from the districts of New York and Washington, DC:

I-129B—Temporary Worker Petition

I-506—Application to Change Nonimmigrant Status (when changing to H or L status)

I-539—Application for Extension of Stay (when filed with an I-129B petition)

The direct mail test has been an unqualified success. Average processing time has been reduced by over 50% for all cases filed by direct mail. One of the key features of this new initiative has been an automated receipt mailed to each applicant one day after the case was received at the RAC. This automated receipt has assured applicants that the case has been received, has provided specific information on when a decision would be made, and has eliminated a considerable amount of status inquiries. Direct mail has almost entirely eliminated emergency requests. It has also allowed affected districts to devote more resources to casework which requires interviews, such as applications for asylum or naturalization and cases involving fraud.

Letters were sent to selected applicants seeking reaction to the direct mail initiative. Ninety-seven percent of responses recommended expansion of direct mail. Based on the overall efficiency of this initiative and the enthusiastic response from the public, the direct mail initiative in the Eastern Region was expanded to include certain additional applications and petitions and all districts in the Eastern Region.

Effective October 1, 1986, except in cases of genuine emergency, the following petitions and applications shall no longer be filed at districts within the Northern Region, but shall be mailed directly to the Northern Adjudications Center, Federal Building and U.S. Courthouse, Room 393, 100 Centennial Mall North, Lincoln, Nebraska 68508:

Applications and Petitions

I-129B—Temporary Worker Petition.

I-129F—Finance Petition

I-140—Petition for Third or Sixth Preference Classification (except when Form I-140 is filed with an I-485, Application for Adjustment of Status)

I-506—Application for Change of Nonimmigrant Status (when changing to H or L)

I-539—Application for Extension of Stay (when filed with an I-129B petition)

District Offices

Detroit, Michigan

Jurisdiction over the State of Michigan.

Chicago, Illinois

Jurisdiction over the State of Illinois, Indiana, and Wisconsin.

St. Paul, Minnesota

Jurisdiction over the State of Minnesota, North Dakota, and South Dakota.

Kansas City, Missouri

Jurisdiction over the State of Kansas and Missouri.

Seattle, Washington

Jurisdiction over the State of Washington and over the following counties in the State of Idaho: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone.

Denver, Colorado

Jurisdiction over the State of Colorado, Utah, and Wyoming.

Cleveland, Ohio

Jurisdiction over the State of Ohio.

Omaha, Nebraska

Jurisdiction over the State of Iowa and Nebraska.

Helena, Montana

Jurisdiction over the State of Montana and all counties in Idaho, except Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone.

Portland, Oregon

Jurisdiction over the State of Oregon.

Anchorage, Alaska

Jurisdiction over the State of Alaska.

This notice constitutes authority for the Northern Adjudications Center Director to accept filing fees for the petitions and applications listed above.

Dated: September 2, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-19988 Filed 9-4-86; 8:45 am]

BILLING Code 4410-10-M

DEPARTMENT OF LABOR
Employment and Training Administration
[TA-W-17,572]

BASF Corp. Chemicals Division Hawthorne, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 23, 1986 in response to a petition which was filed by the Oil, Chemical and Atomic Workers International Union, Local 8–328, on behalf of workers at BASF Corporation, Chemicals Division, Hawthorne, New Jersey.

The petitioner has requested, in a letter dated July 17, 1986, that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of July 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc 86–20059 Filed 9–4–86; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; Bethlehem Steel Corp. et al.

Petitions have been filed with the Secretary of labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 15, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 15, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 25th day of August 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bethlehem Steel Corp. (IAMAW)	Beaumont, TX	8/15/86	8/8/86	TA-W-17,871	Offshore oil rigs.
LTV Steel Co. (USWA)	Cleveland, OH	8/7/86	7/31/86	TA-W-17,872	Flat rolled steel.
Hanford Foundry Co. (USWA)	San Bernardino, CA	8/7/86	7/31/86	TA-W-17,873	Direct pump castings in steel alloys, castings for cement mills, and oil tools.
Lilliston Corp. (workers)	Albany, GA	8/8/86	8/8/86	TA-W-17,874	Farm equipment—rolling cultivator, peanut harvesting equipment and grain drills.
Clark Material Systems Technology Co. (Co.)	Georgetown, KY	8/11/86	7/31/86	TA-W-17,875	Fork lift trucks.
Gambles, Inc. (workers)	Minneapolis, MN	8/11/86	8/7/86	TA-W-17,876	Distributor of hardware goods.
Herman Shoe, Inc. (workers)	Scarborough, ME	7/31/86	7/25/86	TA-W-17,877	Leather shoes and boots.
Bay Bee Shoe Co. (workers)	Dresden, TN	8/12/86	8/7/86	TA-W-17,878	Childrens and mens boots.
American Bag Corp. (company)	Stearns, KY	8/12/86	8/8/86	TA-W-17,879	Sleeping bags.
M.F. Machen Contractor (workers)	Midland, TX	8/21/86	8/13/86	TA-W-17,880	Build foundations (locations) for oil drilling.
Southwestern Portland Cement Co. (workers)	Odessa, TX	8/15/86	7/28/86	TA-W-17,881	Cement for oil drilling.
Petroleum Information Corp. (workers)	San Antonio, TX	8/19/86	7/21/86	TA-W-17,882	Produces and updates maps and ownership leases for oil and gas exploration.
Highland Fashions, LTD (ACTWU)	Northampton, PA	8/7/86	8/4/86	TA-W-17,883	Ladies skirts and blouses.
Duluth Missabe & Iron Range Ry Co. (Brotherhood of Maintenance of Way).	Duluth, MN	8/18/86	8/11/86	TA-W-17,884	Transports taconite and iron ore from mines to ships.
Cambridge Tile Manufacturing Co. (ABSGW)	Cincinnati, OH	8/14/86	8/11/86	TA-W-17,885	Ceramic floor and wall tiles.
ASARCO, Inc., Amarillo Copper Refinery (workers)	Amarillo, TX	8/18/86	8/15/86	TA-W-17,886	Refined copper cathodes.
J.I. Case Company (UAW)	Racine, WI	8/18/86	8/15/86	TA-W-17,887	Agriculture wheel tractors (farm tractors).
Levi Strauss (workers)	Blackstone, VA	8/11/86	8/8/86	TA-W-17,888	Mens blue jeans.
Harbor Electronics Co. (company)	Aransas Pass, TX	8/5/86	7/28/86	TA-W-17,889	Sale and servicing electronic equipment on vessels.
Xerox Corporation, IDP (workers)	Lewisville, TX	8/13/86	8/4/86	TA-W-17,890	Personal computers.
Statesville Sportswear (ILGWU)	Statesville, NC	8/12/86	8/6/86	TA-W-17,891	Men's sport shirts.
Bethlehem Steel Corp., Burns Harbor Plt (USWA)	Chesterton, IN	8/5/86	8/1/86	TA-W-17,892	Steel plate strip and sheet.
Keystone Lamp (USWA)	Slatington, PA	8/5/86	8/1/86	TA-W-17,893	Lamps.
Dawn Mining Co. (workers)	Ford, WA	8/11/86	8/3/86	TA-W-17,894	Uranium mining.
Petco Fishing & Rental (workers)	Corpus Christi, TX	8/7/86	7/29/86	TA-W-17,895	Rental tools for oilfield drilling and workover rigs.
Miller Picking Corp. (USWA)	Johnstown, PA	8/5/86	8/1/86	TA-W-17,896	Air conditioners.

[FR Doc. 86–20060 Filed 9–4–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–17,722]

BJM Drilling & Exploration, Inc., Midland, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 4, 1986 in response to a worker petition received on July 25, 1986 which was filed on behalf of the workers at BJM Drilling and Exploration, Incorporated, Midland, Texas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–17,427). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 13th day of August 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–20061 Filed 9–4–86; 8:45 am]

BILLING CODE 4510–30–M

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[TA-W-17,766]

Trojan Luggage Co., Memphis, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 28, 1986 in response to a worker petition received on May 5, 1986 which was filed by the United Furniture Workers of America on behalf of workers at the Trojan Luggage Company, 2070 Channel Avenue and 508 East Bodley Avenue, Memphis, Tennessee.

With respect to the workers of the Trojan Luggage plant located at 2070 Channel Avenue, an active certification covering the petitioning group of workers remains in effect (TA–W–15,376). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

With respect to the workers of Trojan Luggage plant located at 508 East Bodley Avenue, a negative determination applicable to the petitioning group of workers was issued on June 11, 1985 (TA–W–15,807). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 11th day of August 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–20062 Filed 9–4–86; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

	Decisions	Pages
Volume I		
Florida	FL86–17 (Jan. 3, 1986)	145
Massachusetts	MA86–1 (Jan. 3, 1986)	347–352
Massachusetts	MA86–2 (Jan. 3, 1986)	362–366
Massachusetts	MA86–3 (Jan. 3, 1986)	375–377
		380
Maryland	MD–86–1 (Jan. 3, 1986)	386
Maryland	MD–86–2 (Jan. 3, 1986)	391
Maryland	MD–86–15 (Jan. 3, 1986)	420
New York	NY86–2 (Jan. 3, 1986)	646, 659b
New York	NY86–10 (Jan. 3, 1986)	727
West Virginia	WV86–2 (Jan. 3, 1986)	1117–1118
		1128
Volume II		
Iowa	IA86–5 (Jan. 3, 1986)	46
Iowa	IA86–7 (Jan. 3, 1986)	56
Iowa	IA86–9 (Jan. 3, 1986)	60
Illinois	IL86–2 (Jan. 3, 1986)	88–100
Louisana	LA86–5 (Jan. 3, 1986)	360
Michigan	MI86–18 (Jan. 3, 1986)	487a
Minnesota	MN86–8 (Jan. 3, 1986)	536
Missouri	MO86–1 (Jan. 3, 1986)	540–557a
New Mexico	NM86–1 (Jan. 3, 1986)	654
Texas	TX86–2 (Jan. 3, 1986)	845
Texas	TX86–4 (Jan. 3, 1986)	852
Texas	TX86–7 (Jan. 3, 1986)	860–861
Texas	TX86–17 (Jan. 3, 1986)	889
Volume III		
Idaho	ID86–1 (Jan. 3, 1986)	133, 140
Oregon	OR86–1 (Jan. 3, 1986)	257–259
Washington	WA86–2 (Jan. 3, 1986)	328–329
Washington	WA86–3 (Jan. 3, 1986)	339–340
Washington	WA86–7 (Jan. 3, 1986)	362
Washington	WA86–8 (Jan. 3, 1986)	365b
Washington	WA86–9 (Jan. 3, 1986)	365f

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

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(GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th day of August 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–19954 Filed 9–4–86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Grand Canyon, Arizona Aircraft Accident

In connection with its investigation of the accident involving a Grand Canyon Airlines, Inc., deHavilland DHC–6 and Helitech Bell 206 helicopter over the Grand Canyon, Arizona, on June 18, 1986, the National Transportation Safety Board will convene a public hearing at 1:00 p.m. local time on September 17, 1986, in the Navajo Room of the Squire Inn, Grand Canyon, Arizona. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Ave., SW., Washington, DC 20594, telephone (202) 382–6605.

Ray Smith,

Federal Register Liaison Officer.

August 29, 1986.

[FR Doc. 86–19990 Filed 9–4–86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provision of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission; new, revision, or extension: New.

2. The title of the information collection: Questionnaire Regarding the Tennessee Valley Authority's Nuclear Safety Review Staff.

3. The form number if applicable: Not applicable.

4. How often the collection is required: One time.

5. Who will be required or asked to report: Current and former TVA and NRC employees.

6. An estimate of the number of responses: 200.

7. An estimate of the total number of hours needed to complete the requirement or request: 100.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: Congressman John Dingell has requested information concerning reports prepared by TVA's Nuclear Safety Review Staff. NRC has prepared a questionnaire to gather the requested information.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 29th day of August 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86–20041 Filed 9–4–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50–528 and STN 50–529]

Arizona Public Service Co. et al.; Environmental Assessment and Finding of No Significant Impact.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of 10 CFR 50.71(e)(3)(i) to the Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Public Service Company of New Mexico, Southern California Edison Company, Los Angeles Department of Water and Power, and Southern California Public Power Authority (the licensees) for the Palo Verde Nuclear Generating Station, Units 1 and 2, located at the licensees' site in Maricopa County, Arizona.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e) to submit an updated Final Safety Analysis Report (UFSAR) for Units 1 and 2 of the Palo Verde Nuclear Generating Station within 24 months of the issuance of the operating licenses. Operating licenses were issued for Palo Verde Units 1 and 2 on December 31, 1984 and December 9, 1985 respectively. By letter dated January 30, 1986, supplemented by letter dated March 18, 1986, the licensees requested an exemption to 10 CFR 50.71(e) which would defer submittal of the UFSAR for Palo Verde Units 1 and 2 until one year following receipt of a low-power operating license for Palo Verde Unit 3 on the basis that the present FSAR applies to all three units. It has been updated on April 28, 1986 and will continue to be updated twice a year until Palo Verde Unit 3 is licensed.

The Need for the Proposed Action

10 CFR 50.34 requires that, until Palo Verde Unit 3 receives an operating license, the information contained in the FSAR docketed with the operating licenses application be maintained current. Hence, if an extension to the submittal date for the UFSAR is not granted, the licensees would be required to maintain current both the present FSAR as well as the UFSAR until Palo Verde Unit 3 is licensed. Maintaining two versions of the same document for the three Palo Verde units would cause a hardship, could lead to ambiguities or confusion and would serve no useful purpose if the existing FSAR is maintained up-to-date until Unit 3 is licensed.

Therefore an extension is needed to eliminate the hardship of maintaining two versions of the same document. Until Unit 3 receives an operating license, the licensees have committed to maintain the present FSAR current for all three units by amending the document twice a year.

Environmental Impact of the Proposed Action

The proposed exemption affects only the required date for submitting the UFSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require an earlier date for submittal of the UFSAR. Such an action would not enhance the protection of the environment and would result in unnecessary hardship of maintaining two versions of the same document.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Palo Verde Nuclear Generating Station, Units 1, 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated January 30, 1986 and March 18, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Bethesda, Maryland, this 29th day of August, 1986.

For the Nuclear Regulatory Commission.

E. A. Licitra,

Acting Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 86-20042 Filed 9-4-86; 8:45 am]

BILLING CODE 7590-01-M

License No. SNM-1945; Docket No. 70-3013

Commonwealth Edison Co., Will County, IL; Finding of No Significant Impact From Issuance of Special Nuclear Materials

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1945 to the Commonwealth Edison Company for the Braidwood Nuclear Generating Station, Unit 2, located in Will County, Illinois.

Environmental Assessment

Identification of Proposed Action.

The proposed action would authorize the applicants to receive, possess, inspect, and store special nuclear materials in the form of unirradiated fuel assemblies. In addition, the license would also authorize the applicants to receive, possess, inspect, and use other radioactive materials in the form of post-accident neutron monitoring detectors. Because the neutron detectors are sealed and contain only small amounts (gram quantities) of nuclear material, storage and use of these materials will pose no threat to the environment. Therefore, the discussion below will be limited to assessing the potential for environmental impacts resulting from the handling and the storage of new fuel at Braidwood, Unit 2.

The Need for the Proposed Action

The proposed license will allow the applicants to receive and store fresh fuel prior to issuance of the Part 50 operating license in order to inspect the fuel and to finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license.

Environmental Impacts of the Proposed Action

A. Nuclear Criticality and Radiation Safety

Once at Braidwood, Unit 2, the new fuel may be temporarily stored in shipping containers in the receiving area of the Fuel Handling Building prior to placement in their designated storage locations: the new fuel storage area and the spent fuel pool. The shipping container array to be utilized at Braidwood, Unit 2, has been analyzed for nuclear criticality safety under all degrees of water moderation and/or reflection and found to be safe.

Upon removal of the fuel assemblies from the shipping containers, they are inspected and surveyed for any external contamination. Assuming no contamination is found, the assemblies are transferred to their designated storage location. Criticality safety of the storage locations (new fuel and spent fuel racks) is maintained by limiting the interaction between adjacent fuel assemblies. This is accomplished in the new fuel storage racks such that 3 groups of 44 assemblies, in 2 rows per group, have a center-to-center spacing of 21 inches. In the spent fuel storage racks, the fuel assemblies will be stored in a checkerboard pattern; the four adjacent storage locations to each fuel assembly are vacant. The staff has confirmed the nuclear criticality safety of the specified storage arrays under all degrees of water moderation and/or reflection.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For low-enriched uranium fuel (<percent U-235 enrichment), the exposure level to an individual standing 1 foot from the surface of the fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. In addition, the applicants are committed to establishing a program for maintaining general public exposure as low as reasonably achievable. Therefore, the staff has concluded that the applicants' requested operations can be carried out with adequate radiation protection of the public and environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated packaged material) is expected to be generated as a result of fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

B. Transportation

In the event that an assembly (either within or outside its shipping container) is dropped during transfer, fuel cladding is not expected to rupture. Even if the fuel rod cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release of UO_2 aerosol is unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

C. Conclusion

The environmental impacts associated with the handling and storage of new fuel at Braidwood, Unit 2, are expected to be insignificant. Essentially, no effluents, liquid or airborne, will be released and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternative to the Proposed Action

The principal alternative would be to deny the requested license. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at Braidwood, Unit 2. Although denial of the Special Nuclear Materials License for Braidwood, Unit 2, is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved to the satisfaction of regulatory authorities involved.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG–1026) dated June 1984 related to this facility.

Agencies and Persons Consulted

The Commission's staff reviewed the applicant's request of June 8, 1984, and its supplements dated September 18, and November 19, 1984, and June 7, July 31, and November 14, 1985, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commisison has prepared an Environmental Assessment related to the Issuance of Special Nuclear Materials License No. SNM–1945. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Assessment. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301)427–4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Silver Spring, Maryland, this 15th day of August 1986.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 86–20043 Filed 9–4–86;8:45am]

BILLING CODE 7590–01–M

[Docket No. 40–8697]

Rocky Mountain Energy Co.; Draft Finding of No Significant Impact Regarding Termination of Source Material License SUA–1338 for the Reno Creek R&D In Situ Leach Facility Located in Campbell County, Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Draft Finding of No Significant Impact.

(1) *Proposed Action.* The U.S. Nuclear Regulatory Commission (the Commission) is proposing to terminate Source Material License SUA–1338 for the Rocky Mountain Energy Company's Reno Creek R&D in situ leach facility located in Campbell County, Wyoming.

(2) *Reasons for the Draft Finding of No Significant Impact.* The Commission's Uranium Recovery Field Office has reviewed the Rocky Mountain Energy Company's decommissioning report which was prepared in accordance with the Rocky Mountain Energy Company's decommissioning plan. The plan was approved by the Commission on May 2, 1985 and the report was submitted to the USNRC on August 13, 1986. Based on the decommissioning report, the Commission has determined that no significant impact will result from the proposed action, and therefore, an environmental impact statement is not warranted.

The following statements support the finding of no significant impact and summarize the contents of the decommissioning report:

(a) Two test patterns were utilized in the Reno Creek R&D project. Lixiviant consisted of sodium bicarbonate with hydrogen peroxide as the primary oxidant. Test Pattern II was operated for three months in 1980. Restoration of Test Pattern II was completed and approved by the Commission on April 12, 1982 after utilizing ion exchange and ground-water sweep methods.

Test Pattern I was operated for nine months in 1979 and was restored with a ground-water sweep. Restoration was completed and approved by the Commission on February 24, 1986. Post restoration stability monitoring was performed for twelve months prior to the Commission's approval of restoration of both test patterns.

(b) The decommissioning report addressed well abandonment, the removal of process equipment, evaporation reservoir removal, contamination surveys, soil sampling and environmental monitoring.

The wells from Patterns I and II were abandoned in accordance with the Wyoming State Engineer's Office permit requirements. Following cementation, each well casing was cut two feet below the ground surface. The tops were capped and the area was backfilled and seeded.

All process tanks, columns, pipes and associated equipment as well as the evaporation reservoir were removed and disposed of at a nearby licensed tailings impoundment. Area gamma surveys indicated contaminated soil which was subsequently removed and disposed of in the licensed tailings impoundment.

Soil samples were collected to a 15-centimeter depth from each former well pattern site and the evaporation reservoir site. Radium-226 concentrations did not exceed the limits specified in 40 CFR Part 192. Environmental monitoring for airborne radionuclides and direct gamma radiation continued through the decommissioning process with results well below the respective maximum permissible concentrations for unrestricted areas.

(c) Final decontamination tasks were completed in June of 1986. Utilities were disconnected, remaining buildings were cleaned and final radiation surveys were performed. Independent verification of site cleanup was

performed by the USNRC on August 15, 1986.

Accordingly, the Commission's Uranium Recovery Field Office has determined that the proposed action i.e., termination of Source Material License SUA–1338, will not have a significant effect on the quality of the human environment. This determination is based on the fact that all contamination has been cleaned up and removed from the site.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a Draft Finding of No Significant Impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**. Comments should be addressed to the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225.

This finding, together with the decommissioning report setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 25th day of August, 1986.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief Licensing Branch 2 Uranium Recovery Field Office Region IV.

[FR Doc. 86–20017 Filed 9–4–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8728]

UNC Teton Exploration Drilling, Inc.; Draft Finding of No Significant Impact Regarding Termination of Source Material License SUA–1373 for the Teton Leuenberger R&D In Situ Leach Facility Located in Converse County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Draft Finding of No Significant Impact.

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(1) Proposed Action

The U.S. Nuclear Regulatory Commission (the Commission) is proposing to terminate Source Material License SUA–1373 for the UNC Teton Exploration Drilling, Inc. (UNC Teton) facility located in Converse County, Wyoming.

(2) Reasons for the Draft Finding of No Significant Impact

The Commission's Uranium Recovery Field Office has reviewed the UNC Teton's decommissioning report which was prepared in accordance with the UNC Teton decommissioning plan. The plan was approved by the Commission on May 13, 1985 and the report was received at the USNRC on August 14, 1986. Based on the decommissioning report, the Commission has determined that no significant impact will result from the proposed action, and therefore, an environmental impact statement is not warranted.

The following statements support the finding of no significant impact and summarize the contents of the decommissioning report:

(a) One test pattern was utilized in the N ore zone formation (220–270 feet deep.) Lixiviant consisted of sodium bicarbonate. This test pattern was operated during the first six months of 1980. Restoration of this test pattern was completed in November of 1980 after performing a ground-water sweep. Fourteen months of post restoration stability monitoring was performed prior to the Commission's approval of restoration which occurred on February 28, 1983.

(b) Three test patterns were operated in the M ore zone formation (320–390 feet deep) during eleven months in 1980 and the first two months in 1981. Restoration methods utilized included filtration of recovered solutions, ion exchange, reverse polarity electrodialysis and reinjection of diluted solution. Post restoration stability monitoring was performed for nine months prior to the Commission's approval of the restoration which occurred on February 22, 1983.

(c) The decommissioning report addressed well abandonment, the removal of process equipment, evaporation pond removal, contamination surveys, disposal methods, soil sampling and environmental monitoring.

The wells from the four test patterns were abandoned in accordance with the Wyoming State Engineer's Office permit requirements. Each well casing was cut two feet below the ground surface. Plugging material consisted of bentonite with a top layer and cap of cement.

All process tanks, columns, pipes and associated equipment as well as the two evaporation ponds were removed and disposed of at several nearby licensed tailings impoundments. Area gamma surveys indicated contaminated soil which was subsequently removed and disposed of in these licensed tailings impoundments.

Soil samples were collected to a 15-centimeter depth from each former well pattern site, the evaporation pond sites and other locations as indicated by the area gamma surveys. Radium-226 concentrations did not exceed the limits specified in 40 CFR Part 192. Environmental monitoring for airborne radionuclides continued throughout the decommissioning process with results well below the respective maximum permissible concentrations for unrestricted areas.

(c) Final decontamination tasks were completed in June of 1986. Utilities were disconnected, the remaining building was cleaned and final radiation surveys were performed. The entire project site was recontoured, covered with topsoil and reseeded. Independent verification of site cleanup was performed by the USNRC on June 17, 1986.

Accordingly, the Commission's Uranium Recovery Field Office has determined that the proposed action i.e., temination of Source Material License SUA–1373, will not have a significant effect on the quality of the human environment. This determination is based on the fact that all contamination has been cleaned up and removed from the site.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a Draft Finding of No Significant Impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**. Comments should be addressed to the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225.

This finding, together with the decommissioning report setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 29th day of August, 1986.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief, Licensing Branch 2, Uranium Recovery Field Office Region IV.

[FR Doc. 86–20044 Filed 9–4–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-528, 50-529, 50-530]

Arizona Public Service Corp. (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated July 16, 1986, Barbara Bush, Lyn McKay and Myron Scott, on behalf of the Coalition for Responsible Energy Education (CREE), has requested that the Director of Inspection and Enforcement consider a request for action under 10 CFR 2.206. The petition alleges that Arizona Public Service Corp., et al. (Licensees) have knowingly violated the provisions of 10 CFR 50.7 by requiring certain employees to submit to polygraph testing as a means of discouraging employees from reporting unsafe conditions at the Palo Verde facility. Relief requested against Licensees includes: (1) Imposing a stringent civil penalty; (2) Requiring the posting of notices to employees regarding protection afforded under 10 CFR 50.7 and the Energy Reorganization Act; (3) Requiring the posting of a public apology by Licensees for the alleged violation of 10 CFR 50.7 and the Energy Reorganization Act; and (4) Denying or revoking all Palo Verde licenses. A decision will be made on CREE's request within a reasonable time.

Copies of the petition are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555 and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Bethesda, Maryland this 28th day of August, 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-20045 Filed 9-4-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382, License No. NPF-38, EA 86-60]

Louisiana Power & Light Co.; Waterford Steam Electric Station Unit 3; Order Imposing Civil Monetary Penalty

I

Louisiana Power & Light Company (the licensee) is the holder of Operating License No. NPF-38 (the license) issued by the Nuclear Regulatory Commission (the NRC or the Commission). The license authorizes the licensee to operate the Waterford Steam Electric Station, Unit 3 in accordance with the conditions specified therein.

II

A safety inspection of the licensee's activities under its license was conducted from January 1-31, 1986. The results on this inspection indicated that the licensee had not concluded its activities in full compliance with the Technical Specifications in its license. The results of this inspection were discussed with licensee representatives during an enforcement conference on March 5, 1986.

A written Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was subsequently served upon the licensee by letter dated April 16, 1986. This NOV stated the nature of the violations, the license conditions that were violated, and the amount of civil penalty proposed for one of the violations. An answer dated May 16, 1986 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation of the proposed civil penalty or reclassification of the severity level of Violation I contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violation occurred as stated and the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 295), and 10 CFR 2.205, it is hereby ordered that

The licensee pay the civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, the 27th day of August 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

APPENDIX

On April 6, 1986, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during a routine NRC safety inspection. Louisiana Power and Light responded to the NOV on May 16, 1986. Only Violation I in the NOV was assessed a civil penalty and, accordingly, was reconsidered in response to the licensee's requests for reclassification of the violation to Severity Level IV and for mitigation of civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Restatement of Violation

Technical Specification (TS) 3.6.2.1 requires that two independent containment spray systems be *OPERABLE* with each spray system capable of taking suction from the RWSP on a containment spray actuation signal and automatically transferring suction to the safety injection system sump on a recirculation actuation signal. This applies to *MODES* 1, 2, 3, and 4.

TS 3.0.4 requires that entry into an *OPERATIONAL MODE* or other specified condition shall not be made unless the conditions of the limiting condition for operation are met without reliance on provisions contained in the *ACTION* requirements.

Contrary to the above, on December 16, 1985, the plant entered Mode 3 while relying on the *ACTION* requirements of TS 3.6.2.1 in that Train B of the Containment Spray system was

inoperable due to a closed discharge header valve (CS–111B).

This is Severity Level III violation (Supplement I). (Civil Penalty—$50,000)

Summary of Licensee's Response

The licensee admits the violation but requests reduction in its severity level. The licensee believes that the characteristics of a Severity Level III violation as described in 10 CFR Part 2, Appendix C, Supplement I are more severe than those of the subject violation. The licensee points out that while no specific example in Supplement I deals with a violation of TS 3.0.4, it should be noted that TS 3.6.2 allows a single Containment Spray System (CSS) train to be inoperable for up to 72 hours and that prompt action on the part of the licensee personnel restored operability of CSS Train B in approximately 15 hours. In addition, similar Severity Level III examples in Supplement I involve a safety system not being able to perform its safety function. The redundant CSS train in this case was available to perform its intended safety function throughout the time in question. Thus, the licensee believes the violation should be classified as a Severity Level IV since it is more similar to the Severity Level IV examples given in 10 CFR Part 2, Appendix C, Supplement I.

The licensee also requests mitigation of the proposed civil penalty based on prompt identification and reporting, and its corrective action to prevent recurrence. The licensee feels it identified the problem with the closed valve (CS–111B) which made Train B of the CSS inoperable some 15 hours after the action statement of TS 3.6.2.1 was entered. The TS action statement can be relied on for 72 hours if no mode change is made. The licensee feels that the operations staff, considering the level of plant activity, performed quickly and professionally in identifying the problem of the disconnected reach rod to CS–111B and subsequent reporting of the TS violation to the NRC. Furthermore, the licensee indicates that a detailed corrective action plan has been implemented as outlined in the Appendix to its letter of May 16, 1986. Corrective actions were implemented to prevent recurrence as well as longer term in-depth actions to assure that remote operators would be considered as essential components of plant equipment. The licensee states that "All corrective actions were implemented on its initiative, independent of NRC's inspection activities." These actions were promnpt and effective in preventing recurrence of a similar situation.

Evaluation of Licensee's Response

After a thorough review of the licensee's response and its request for reduction of the severity level of the violation, the NRC has determined that the classification at a Severity Level III is appropriate. The licensee argues that a safety system (all redundant trains) not being able to perform its safety function is a Severity Level III violation. The staff disagrees. Where this condition exists it may represent a Severity Level II violation (Supplement I, B.1). Inoperability of one train of a system may be a Severity Level III violation (Supplement I, C.2). In this case, although only one train of the CSS was inoperable, a number of factors led to the inoperability of CSS Train B that indicate a significant lack of attention to detail and that a Severity Level III classification of the violation is warranted. Improper maintenance of plant equipment, inaccurate procedures, and a misleading annunciator window were causes of the violation. The Shift Supervisor made a decision to change modes in violation of Technical Specification requirements based on the assumption that there was only a valve electrical indication problem, yet he did not thoroughly investigate nor verify that assumption. As discussed in Inspection Report 50–382/86–02, it also appeared that at the time of the valve lineup, licensee personnel other than those performing the lineup knew valve reach rods were disconnected yet no corrective action had been initiated. These factors reflected significant weaknesses in the operation of the Waterford facility that are cause for significant concern and that resulted in the inoperability of CSS Train B for 15 hours. Therefore, a reduction in the Severity Level of the violation is not appropriate.

In evaluating the licensee's request for mitigation, the NRC considered the factors addressed in the licensee's response, and in each instance, found that mitigation was not appropriate. Although the NRC staff recognizes that the licensee reported the event, implicit in prompt reporting is the necessity to provide an accurate report of the event. In this case, the report of the event did not address the fact that valve CS–117B was found to have a disconnected reach rod, that an annunciator window had been poorly labeled, and that an annunciator response procedure had been mislabeled. It is also misleading in that it referred to the white annunciator window as an "annunciator green light." Because of these errors and omissions in reporting, mitigation on the basis of prompt identification and reporting is not considered appropriate.

The NRC staff also recognizes that prompt short-term corrective actions were taken. However, the actions taken by the licensee would normally be expected in response to such an event. Furthermore, the NRC staff believes that not all corrective actions were taken independent of NRC inspection activities. NRC inspectors identified deficiencies in the reporting of the event and some of the corrective actions were subsequently generated as a result of the NRC inspectors' questions in this area. The inspectors were concerned that the licensee's corrective actions failed to address timely response to actuated annunciators per approved procedures, to address proper and timely identification of out-of-service plant equipment including disconnected reach rods, and whether other annunciators were also ambiguous. The NRC expects licensees to vigorously pursue root causes of abnormal plant conditions so that prompt and effective corrective actions can be taken. The licensee failed to identify the root causes of the event and provide comprehensive corrective actions to preclude recurrence. Therefore, an adequate basis has not been provided for mitigating the civil penalty.

NRC Conclusion

Neither an adequate basis for a reduction of the severity level of Violation I nor for mitigation of the civil penalty associated with Violation I was provided by the licensee. Consequently, the proposed civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 86–20046 Filed 9–4–86; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Notice Concerning Review of Petitions in the 1986 Annual Review

On July 18, 1986 notice was published (51 FR 26088) listing petitions accepted for review in the 1986 annual review of the Generalized System of Preferences (GSP) Program. The purpose of this notice is to provide notification that our review of Case No. 86–35 has been terminated, at the request of the petitioner.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86–19991 Filed 9–4–86; 8:45 am]
BILLING Code 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from Securities and Exchange Commission, Office of Consumers Affairs, Washington, D.C. 20549.

Extension:

Rule 17a-1–File No. 270–244
Rule 17a-7–File No. 270–147
Rule 19h-1(a), (c)-(e), (g)–File No. 270–242

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted the following rules for extension of OMB approval:

Rule 17a-9–Recordkeeping rule for national securities exchanges and national securities associations
Rule 17a-7–Records of non-resident broker-dealers
Rule 19h-1(a), (c)-(e), (g)–Notice of self-regulatory organization of proposed admission to or continuance in membership or participation or association

Submit comments to OMB Desk Officer: Ms. Sheri Fox, (202) 395–3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Jonathan G. Katz,
Secretary.
August 28, 1986.
[FR Doc. 86–20079 Filed 9–4–86; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34–23573; File Nos. SR-Amex–86–15, Amex–86–23]

Self-Regulatory Organizations; American Stock Exchange, Inc. Order Approving Proposed Rule Change and Granting Accelerated Approval of Proposed Rule Change

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Commission on May 30, 1986, and August 11, 1986, respectively, proposed rule changes to list and trade a broad-based market index option contract, tentatively titled the Institutional Index Option ("XII" or "Index") and to extend the Exchange's AUTO–EX rapid order execution system to XII options. SR–Amex–86–15 was noticed in Securities Exchange Act Release No. 23311 (June 9, 1986), 51 FR 21815 (June 16, 1986). No comments were received on the proposal.

II. Description of Proposal

The XII is a capitalization or market-weighted index [3] composed of the seventy-five stocks most favored by institutional investors, as determined by the dollar value of shares held by such investors. The stocks comprising the Index represent approximatley 22 distinct industry groups, including oil, automotive, retail, electronics, and telecommunications concerns. As of June 30, 1986, the total market capitalization of the Index was $932 billion.[4] The New York Stock Exchange ("NYSE") is the primary market for the stocks comprising the XII.

The Amex proposes to select stocks for inclusion in the XII by reviewing reports submitted to the Commission by institutional investment managers pursuant to Section 13(f) of the Act and Rule 13f–1 thereunder ("13(f) reports")[5] and selecting those stocks which meet certain screening criteria developed by the Amex. These criteria provide that each stock initially included in the Index must be held by at least 200 of the reporting institutions, and must have traded a minimum of 7 million shares per quarter in both the current and preceding calendar quarters. Stocks meeting both of these requirements will then be ranked on the basis of dollar value of shares held by the institutions, and the 75 stocks with the highest dollar value of shares held shall be included in the Index. The Amex has indicated that the minimum requirement of 200 institutional holders is intended to screen out stocks which are dominated in ownership by a relatively small number of institutions. The trading requirement is intended to screen out stocks which, although widely held by institutions, are relatively inactive.

The Amex will review summaries of the 13(f) reports on a quarterly basis to ensure that the component stocks in the Index continue to meet the criteria outlined above. In the event that a stock(s) does not meet these criteria, the Exchange shall replace it, pursuant to the following guidelines: (1) A component stock shall be replaced if it trades less than 7 million shares in each of the preceding two calendar quarters; and (2) in order to replace a current, component stock which is no longer among the 75 largest dollar holdings of the reporting institutions, the dollar holdings of the replacement stock must exceed those of the component stock by at least 5%.[6] In the event this latter requirement is not met, no replacement will be made. The Amex believes that the application of these guidelines will help avoid repeated replacements of stocks in the Index which are only marginally more liquid or widely-held.[7]

The XII will be a European-style [8] option, exercisable only at the time of the option's expiration.[9] The Amex

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[1] 15 U.S.C. 78s(b) (1982).
[2] 17 CFR 240.19b–4 (1985).

[3] In a capitalization-weighted index, the current (daily) market price of each component stock is multiplied by its total number of shares outstanding, and the sum of these products is divided by a divisor selected by the Exchange.

[4] Letter from Nathan Most, Vice President, New Products Development, Amex, to Holly Hasley Smith, Attorney, Divison of Market Regulation, dated July 3, 1986.

[5] Section 13(f) requires institutional investment managers that exercise investment discretion over accounts holding equity securities in excesss of $100 million, to file quarterly reports with the Commission identifying, among other things, the issuer, number of shares or principal amount, and aggregate fair market value of each security held in the account. These reports, which are made available to the public, presently are filed by approximately 800 institutional investment managers. For purposes of Section 13(f), the term "institutional investment manager" includes any person (other than a natural person) buying or selling securities for its own account, and any person exercising investment discretion concerning the account of any other person.

[6] The Commission understands that, in addition to these criteria, the Amex also plans to require that component stocks continue to be owned by at least 200 of the 13(f) reporting institutions. The Exchange will monitor institutional share ownership on a quarterly basis and will replace component stocks that fall below the 200 institutional holder requirement. Telephone conversation on August 20, 1986, between Nathan Most, Vice President, New Products Development, Amex, and Rob Mooney, Attorney, Division of Market Regulation.

[7] The Amex proposes to announce changes in component stocks immediately after replacement stocks have been selected. Any such changes in the Index shall be made effective on the business day following the next option expiration. As a practical matter, investors may receive notification of stock substitutions only shortly prior (*e.g.*, one week) to the substitutions taking effect. In the event of any such substitutions, the divisor will be adjusted if necessary to maintain continuity in the Index value.

[8] A European option may be exercised only during a specified period (which may be as short as a single day), just before the option expires. This is in contrast to an American option which may be exercised by the holder at any time after it is purchased until it expires. The writer of a European option is subject to the assignment of an exercise only during the exercise period.

[9] The Amex proposes to amend Exchange Rules 900C and 901C to provide definitions for both American and European-style options, and to permit the Exchange to list options on stock indexes on both types of contracts.

states in its filing that the European-style feature of the contract will enable spread, straddle or combination writers to hold positions in the XII without concern that one leg of their short positions may be exercised prior to the option's expiration. The Amex further states that the contract will allow investment managers to maintain a hedged position against their portfolios for the duration of the option's life.[10]

The Amex also proposes to amend Exchange Rule 904C to provide for position limits for the XII not in excess of 15,000 contracts on the same side of the market.[11] The Amex believes that a 15,000 contract limit is appropriate because the market value of the component XII stocks is approximately equal to the current market value of the component stocks in the Chicago Board Options Exchange's ("CBOE") two broad-based index options, the Standards & Poor's 100 and 500 Indexes ("OEX" and "SPX," respectively). The position limits for both the OEX and SPX currently are effectively set at 15,000 contracts.[12]

Finally, the Exchange proposes to extend its AUTO-EX program to XII options.[13] Pursuant to the pilot, member firms may route public customers' market and marketable limit orders up to 10 contracts through the Exchange's AUTO-AMOS system [14] to be executed against the best bid or offer at the time the order is entered. The AUTO-EX system ensures that customers' orders on the book retain priority over orders in the crowd.

[10] Subsequent to the filing of its initial proposal, the Amex amended its filing to indicate that XII would trade until 4:15 p.m. each business day, so that investors in XII options who choose to hedge their risks with futures contracts on the S&P 500 can adjust their XII positions in response to price movements in the futures market during the last five minutes of futures trading. *See* letter to Eneida Rosa, Branch Chief, Division of Market Regulation, SEC, from Heidi Litt Spitzer, Senior Attorney, Amex, dated July 23, 1986.

[11] *See* text accompanying notes 15 to 17, *infra*.

[12] CBOE Rule 24.4 provides that option contracs on a market index shall be subject to a contract limitation fixed by the CBOE Board. The CBOE Board has authorized 15,000 contract limits for both OEX and SPX options. *See* letter to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, from Fredric Krieger, Assistant General Counsel, CBOE, dated March 5, 1996.

[13] Since the inception of the program, AUTO–EX has been confined to XMI options only.

[14] AUTO–AMOX is the Exchange's automatic order delivery and execution system for options that permits member firms to electronically route certain orders directly to specialists' posts for execution, and to receive back confirmation of trades by the same route. *See* Securities Exchange Act Release No. 22610, November 8, 1985, 50 FR 47480, November 18, 1985.

II. Discussion

The Amex proposal to trade options on the XII does not, for the most part, raise novel questions. The Commission previously has approved options trading on European-style contracts, among them, the CBOE's SPX, which, like the XII, is a broad-based index option.[15] In approving the CBOE proposal, the Commission recognized that there are advantages and disadvantages to both American and European-style options, with purchasers generally benefiting from American-style options and sellers from the European-style.[16] With the latter type of option, the purchaser is disadvantaged to some extent because he must rely on the continued existence of a liquid secondary market in the options in order to close out an option position before expiration. In contrast, the writer of the contract benefits from the contract's European-style exercise feature, because the writer cannot be exercised against until expiration, and accordingly, can engage in long-range planning and strategies. While the Commission recognizes that the European-style of the XII may limit the flexibility of options purchasers, we also believe that the exercise feature of the contract may facilitate certain trading strategies and prove useful to investors. The Commission also is not inclined to substitute its judgment for the business judgment of a self-regulatory organization in matters of contract design, absent regulatory concerns.

The Commission believes, however, that the unique risks associated with the exercise restrictions of European-style options mandate adequate disclosure. In this regard, the Commission notes that disclosure information pertaining to the special characteristics of European-style options recently was added to the options disclosure document prepared by the Options Clearing Corporation and the options exchanges, and distributed to all options investors.[17] Moreover, as part of its marketing efforts regarding XII, the Amex will publicize extensively the European-style exercise feature of the Index. Accordingly, investors who elect to purchase XII contracts will be alerted in a timely manner to the risks associated with European-style options.

In addition to proposing that the XII be traded as a European-style contract, Amex proposes to amend Exchange Rule 904C to provide that position limits for the XII be set at a maximum of 15,000 contracts on the same side of the market. The Commission previously approved the use of a fixed number of contracts, as opposed to a dollar value, as the basis for establishing position and exercise limits for the Amex's Major Market and Market Value Indexes ("XMI" and "XAM," respectively), and the Pacific Stock Exchange's High Technology Index. In approving position limits of 10,000 contracts for the XMI and XAM, and 15,000 contracts for the High Technology Index, the Commission found that limits expressed in number of contracts may be appropriate for broad-based index options if they are set at levels that adequately protect against disruption or manipulation of the underlying securities. Applying this standard to the proposed XII contract, we agree with the Amex's characterization of the index as broad-based,[18] and believe that a 15,000 contact limit will be appropriate for the new Index. The Commission notes that the dollar value of this number of contracts is comparable to that of the XMI,[19] and unlikely to cause disruptions either by congestion or manipulation [20] in the options or related markets.[21]

[15] At the present time, three European-style option contracts are approved for trading in the United States. *See* Securities Exchange Act Release Nos. 22471 (September 26, 1985), 50 FR 40836, approving a CBOE proposal to trade European-style foreign currency options; 22309 (August 9, 1985), 50 FR 32934, approving a CBOE proposal to convert the SPX from an American to a European-style option; and 22999 (March 12, 1986), 51 FR 9733, approving an Amex proposal to trade European-style 13-week Treasury bill options.

[16] The Commission anticipates that the premium for each kind of contract generally will reflect the differences in benefits for purchasers and writers.

[17] *See* Securities and Exchange Act Release No. 22418 (September 17, 1985), 50 FR 38732.

[18] Based upon the number of stocks included in the Index, the diversity of industries represented, and the fact that no one stock or industry dominates the Index, we conclude that the Index is representative of the market as a whole. The Commission also notes that the XII has a very high degree of correlation with the CBOE's SPX Index.

[19] At the current XII index value of 250 on June 24, 1986, the dollar value of a 15,000 contract position would be $375 million. In comparison, a 10,000 contract position in XMI on July 3, 1986, was equivalent to approximately $362 million.

[20] The Amex has not proposed any exercise limits for the XII because the contracts only can be exercised on the day prior to expiration. We note that the Amex can grant exemptions to existing position limits under certain circumstances. Accordingly, in considering exemptions for higher position limits in the XII, the Commission expects Amex to consider, among other things, whether such increased limits could have any adverse effects at expiration.

[21] The Commission notes, in this regard, that while it continues to be concerned about the volatility which has been associated with the liquidation of index arbitrage positions on the four Fridays in which both the index options and futures expire, it does not believe that the introduction of the XII Index will materially effect those developments. In any event, the Commission will continue its efforts to evaluate alternative methods of addressing Expiration Friday concerns.

The Commission notes that the Index may be updated by the Amex on a quarterly basis, with stocks that have demonstrated to be more popular with institutional investors replacing current component stocks. The Amex believes that making these substitutions will ensure that the XII closely tracks the investment portfolios of institutional money managers.

The Commission does not believe this aspect of the Amex proposal presents any particular regulatory concerns. The criterion by which the Amex proposes to make stock substitutions (7 million shares traded and dollar holdings at least 5% greater than the component stock) are objective in nature, and the information upon which substitutions will be made is filed with the Commission pursuant to specific reporting requirements of the Act, and made publicly available. Moreover, it is unlikely that investor confusion will be caused by quarterly replacement of component stocks. The Amex anticipates that quarterly changes in the Index will not exceed two or three of the lower market valued stocks. In addition, changes to the list of component stocks will be announced as soon as such changes are determined, and will not take effect until the business day following the next option expiration.[22]

Finally, the Commission believes that it is appropriate to incorporate XII options into the Exchange's AUTO–EX pilot. The Exchange has received very favorable comments from member firms participating in the AUTO–EX pilot program regarding the rapid execution and reporting of their XMI orders. The Exchange believes that extending the benefits of AUTO–EX to XII will contribute to the liquidity of the markets in XII options contracts.

IV. Conclusion

Under section 19(b)(2) of the Act, the Commission must approve a proposed rule change if it determines that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission has reviewed carefully the rules proposed by the Amex to accommodate the listing and trading of XII options, and has concluded that the rules provide for adequate and proper regulation of the proposed market. Accordingly, the Commission finds that SR–Amex–86–15 is consistent with the requirements of the Act and the rules and regulations thereunder, in particular, the requirements of Section 6.

The Exchange also requests that its proposal to use AUTO–EX for XII options, SR–Amex–86–23, be given accelerated effectiveness pursuant to section 19(b) of the Act because the Exchange has received very favorable comments from member firms participating in the AUTO–EX program regarding the rapid execution and reporting of their XMI orders. The Exchange believes that extending the benefits of AUTO–EX to XII will contribute to the liquidity of the markets in XII options contracts.

The Commission finds that SR–Amex–86–23 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving SR–Amex–86–23 prior to the thirtieth day after the date of publication of notice of filing thereof because the Exchange states that the AUTO–EX pilot already has proven beneficial to the market in XMI options by providing rapid order execution and contributing to liquidity. AUTO–EX should substantially expedite the execution and reporting of XII options contracts and in so doing should benefit the market in these securities.

V. Solicitation of Comments

Interested persons are invited to submit written data views, and arguments concerning SR–Amex–86–23. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filings also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file numbers in the caption above and should be submitted by September 26, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20080 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[22] As a separate matter, the Commission notes the federal securities laws, unlike the regulations under the Commodity Exchange Act, do not contain an explicit "economic purpose" test for new options products. Nevertheless, to approve a new options proposal the Commission must be satisfied that its introduction is in the public interest [*See* Section 6(b)(5) of the Act, 15 U.S.C. 78(f)(b)(5) (1984)]. Such a finding would be difficult with respect to an options product that served no hedging or other economic function because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the Commission believes that the XII will permit institutional money managers to efficiently hedge their investment portfolios.

[Rel. No. 34–23563; File No. SR–DTC–86–06]

Self-Regulatory Organizations; Depository Trust Company; Order Approving Proposed Rule Change (File No. SR–DTC–86–06)

The Depository Trust Company ("DTC") on June 26, 1986, filed a proposed rule change (File No. SR–DTC–86–06) under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal in the **Federal Register** on July 22, 1986, to solicit public comments.[1] No public comment was received. This Order approves the proposal. The rule change will allow DTC Participants to exercise warrant subscriptions by book-entry.

I. Description

DTC's proposal will allow DTC Participants to exercise qualifying warrant subscriptions by book-entry processing. When DTC is notified of a partial or full call for redemption of a qualifying warrant, DTC will notify Participants of the call and a cut-off date and time by which Participants must notify DTC that they will exercise the qualifying warrant. Participants wishing to exercise their warrants must submit to DTC a Warrant Subcription Instructions authorization form. Upon receipt of the authorization form, DTC will deduct the quantity of surrendered warrants from the Participant's account and add the quantity of underlying securities. DTC also will debit the

[1] Securities Act Release No. 23444 (July 16, 1986), 51 FR 26324 (July 22, 1986).

Participant's money settlement account (or securities account in the case of surrendered payment securities as permitted by the terms of the subscription) to pay for the cost of the subscription. DTC will send the authorization form, an Agent Receipt and Confirmation form and the warrants to the subscription agent for redemption. If the authorization form is submitted before 11:00 a.m. for same-day processing, the underlying securities will become available that day for the full range of DTC services, including book-entry delivery to other Participants and book-entry pledge for collateral loans.

DTC may reject a Participant's request for book-entry exercise of the warrant subscriptions if (1) the authorization form is incomplete or inaccurate; (2) the Participtant's account has insufficient position to permit the warrants to be surrendered; or (3) DTC determines that the request may result in money loss to DTC and/or Participants generally. If DTC rejects a Participant request for book-entry exercise, DTC will, ordinarily on the same day as the rejection occurs, place a telephone call to a coordinator identified on the Participant's instructions form and make available to the Participant a copy of the instructions.

DTC will notify Participants from time to time which warrants may be exercised by book-entry. A warrant ordinarily will qualify for exercise by book-entry if DTC has sufficient certificate inventory in the underlying securities issue to continue meeting expected certificate withdrawal requests pending receipt of certificate reflecting warrant exercises.

II. DTC's Rationale

DTC believes the proposal is consistent with the Act. DTC believes that the proposed rule change will provide its Participants with an economic and orderly method for exercising warrant subscriptions. DTC also believes that the proposal will allow Participants much speedier access to the underlying securities and will make it unnecessary for Participants to borrow securities or delay deliveries until the underlying securities are received.

III. Discussion

The Commission believes DTC's proposal is consistent with section 17A of the Act and therefore is approving DTC's proposal. The proposal will facilitate the prompt, safe and accurate clearance and settlement of securities transactions. Currently, DTC Participants wishing to exercise their warrants must withdraw the warrant from their DTC account and physically present it to the subscription agent along with payment. Once the underlying securities are received, they must be deposited in the Participant's DTC account to be eligible for book-entry processing. The proposal, however, is designated to reduce the movement and handling of certificates, thereby reducing the risks of loss and theft. Morever, in many cases, after exercise of the warrants, the underlying securities will be available on the same day for the full range of DTC services.

The Commission believes the proposal is consistent with DTC's obligation to safeguard funds and securities. Because the proposal would permit Participants to withdraw securities certificates reflecting exercised warranta pending issuance of related certificates in DTC's nominee name, DTC's certificate inventory could be inadequate to meet participant's withdrawal requests on a routine and prompt basis. The Commission is satisfied that DTC's proposal adequately addresses this risk; DTC will make eligible for book-entry processing only those issues in which DTC has sufficient certificate inventory of the underlying securities issue to meet anticipated Participant withdrawal requests pending DTC's receipt of certificates reflecting warrant exercise.

IV. Conclusion

On the basis of the foregoing, the Commission finds that proposed rule change (File No. SR–DTC–86–06) consistent with the Act, and more specifically, with section 17A of the Act.

Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–86–06) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 26, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20081 Filed 9–4–86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–23564; File No SR–MSE–86–5]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Incorporated Relating to Amendments to Midwest Stock Exchange's Listing Rules.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1986, the Midwest Stock Exchange, Inc. ("MSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article XXVIII, Rule 7 of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

Additions italicized—[Deletions Bracketed]

Article XXVIII—Listed Securities

Requisites for Listing on Exchange.

Rule 7. The prime requisite for listing on the Midwest Stock Exchange is the quality of the corporation. Its products and services must enjoy public acceptance and good reputation. Its management must operate the company in the public interest. Its securities must also meet the technical requirements of an auction market.

The Exchange is desirous of assisting new enterprises, as well as smaller businesses, but is not interested in purely promotional ventures or a company whose products and services do not benefit the public. Therefore, the following requirements must be met in order for the Exchange to entertain an application for listing:

A through G—No change in text.

H. Eash listed company shall establish and maintain and Audit Committee, a majority of the members of which shall be independent directors.

I. Each listed company shall maintain a minimum of two independent directors on this board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company of its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

No change in remainder of Rule 7.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The next of these statements may be

examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Midwest Stock Exchange is proposing to amend its listing rules to require: (i) that an audit committee be established comprised of a majority of directors of a listed company's board who are independent of management, and (ii) that there be a minimum of two independent directors on a listed company's board of directors. These changes are being proposed in an effort to ensure that companies whose shares are listed on the Midwest Stock Exchange will continue to maintain financial integrity and favorable reputation while meeting minimal standards necessary for the protection of investors.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

On July 12, 1985 a Notice to Members/Listed Companies (attached as Exhibit A) was issued soliciting comments on the proposed rule change. MSE received nine comments on the proposed rule change (attached as Exhibit B). All the comments generally supported the proposed rule change and several indicated that they already comply with the proposed changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by September 26, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 26, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20083 Filed 9-4-86; 8:45 am]

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[Rel. No. 34-23568; File No. SR-MSTC-85-7]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving Proposed Rule Change

I. Introduction

On November 14, 1985, the Midwest Securities Trust Company ("MSTC") filed with the Commission a proposed rule change (File No. SR-MSTC-85-7) pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act"). Notice of that proposal was published in Securities Exchange Act Release No. 22738 (December 23, 1985), 51 FR 143 (January 2, 1986). No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The proposal amends Article I, Rule 1 and Article VII, Rule 9 of MSTC's Rules to reflect recent amendments to Section 8-320 of the Illinois Uniform Commercial Code ("IUCC").[1] Those amendments recognize the validity of book-entry movements effected on the books of a domestic clearing corporation of its securities held in a fungible bulk at a "Foreign Clearing Corporation."[2] The proposal expands the definition of "Correspondent Depository" in MSTC Article I, Rule 1 to include a "Foreign Clearing Corporation" and defines "Foreign Clearing Corporation" by referring to its meaning in IUCC Article 8.[3] The proposal also amends MSTC Article VII, Rule 9 to clarify that all securities deliveries, pledges and transfers through MSTC facilities are governed by the IUCC.[4]

MSTC stated in its filing that the proposed rule change is consistent with Section 17A of the Act because it facilitates the prompt and accurate clearance and settlement of securities transactions. More specifically, MSTC represents that the proposal will conform MSTC rules to Illinois law, which will enable MSTC to construct full, efficient, "two-way" securities processing interfaces with foreign clearing corporations. MSTC believes that those interfaces will facilitate the clearance and settlement of securities transactions effected by United States broker-dealers abroad and will reduce processing costs and delays associated with those transactions.[5]

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[1] State corporate, contract and commercial law generally govern the mechanics of, and rights and liabilities of, persons effecting securities transfers and pledges. *See generally* Article 8 of the Uniform Commercial Code, entitled "Investment Securities."

[2] IUCC § 8-320, entitled "Transfer or Pledge Within a Central Depository System," recognizes that a "clearing corporation" (defined in IUCC § 8-102 as an entity registered with the Securities and Exchange Commission as a clearing agency under Section 17A of the Securities Exchange Act of 1934) can effect valid book-entry transfers and pledges of securities held by the clearing corporation, another clearing corporation, a custodian bank or a nominee subject to clearing corporation instruction. The amended version of the Section adds a "foreign clearing corporation" to the entities holding securities. *See also* IUCC 8-313(1)(g).

[3] New IUCC § 8-320(7) defines "Foreign Clearing Corporation" to be an "entity or organization in the business of holding securities outside the United States on behalf of others and with which a registered clearing corporation is permitted by the . . . Commission to maintain securities positions." New IUCC § 8-320(6) defines "Registered Clearing Corporation" for purposes of that Section as "an entity or organization registered with the . . . Commission as a clearing agency under Section 17A of the . . . Act."

[4] MSTC provided an opinion of counsel representing that book-entry movements at United States depositories of securities held in a fungible bulk at a foreign clearing corporation would be valid under the Uniform Commercial Code. *See* Letter of June 5, 1986, from Michael Wise, Associate Counsel, to Marc L. Weinberg, Branch Chief, Division of Market Regulation.

[5] In an October 23, 1985, letter, MSTC and Midwest Clearing Corporation ("MCC"), along with

Continued

III. Discussion

Foreign Clearing Corporations as MSTC Correpondent Depositories

The Commission agrees with MSTC that the proposal should facilitate the prompt and accurate clearance and settlement of international securities transactions and therefore is approving the proposal. The Commission recognizes that MSTC's proposal represents a significant step toward enabling clearing agencies to create true, "two-way" international securities processing arrangements, which, if constructed carefully, should enable routine, safe and efficient processing of transnational securities transactions. Safe, efficient processing of transnational trades has become increasingly important to investors and securities professionals because of the increase in international trading.[6] As discussed in several staff "no-action" letters [7] and Securities Exchange Act Release No. 21958,[8] processing of international securities transactions traditionally has been inefficient, labor-intensive and costly.[9]

The Commission generally does not believe that the proposal exposes MSTC to any special risks. First, the proposal conforms MSTC's rules to IUCC § 8-320; it does not authorize MSTC to take any further action, such as implementing a two-way, international clearance and settlement interface. Second, because the proposal's terms incorporate by reference the new IUCC definition of foreign clearing corporation, the proposal should ensure that any MSTC plans respecting such an interface, including the creation of essential international custodial arrangements, will be subject to prior Commission review.[10]

IV. Conclusion

On the basis of the foregoing discussion, the Commission finds that the proposal is consistent with the requirements of the Act in general and with Section 17A in particular. The Commission encourages MSTC to continue to take thoughtful and careful steps toward the creation of safe, efficient, two-way international securities processing interfaces with foreign clearing corporations.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1986.

Jonathan G. Katz,

Secretary.

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the Canadian Depository for Securities Ltd. ("CDS"), indicated that they intend to establish a full securities clearance and settlement interface for processing trades flowing through a proposed trading link between the Midwest Stock Exchange ("MSE") and the Toronto Stock Exchange ("TSE"). (For a detailed description of the trading link, *see* File No. SR-MSE-85-4 and the Commission's Order approving that linkage, Securities Exchange Act Release No. 23075 (March 28, 1986), 51 FR 11854 (April 7, 1986).) In their letter, MSTC/MCC and CDS specifically requested that the staff of the Commission's Division of Market Regulation ("the Division") not recommend that the Commission take enforcement action if CDS does not register as a clearing agency under Section 17A of the Act. The Division granted MSTC/MCC and CDS no-action relief only with respect to CDS's membership in MSTC/MCC, *i.e.*, the implementation of a "one-wy" link. *See* Letter of March 21, 1986, from Jonathan Kallman, Assistant Director, to Michael Wise, Associate Counsel, MSTC/MCC.

[6] *See generally* Securities Exchange Act Release No. 21958 (April 18, 1985), 50 FR 16302 (April 25, 1985). This Release requested comment on the issues raised by the growing internationalization of the securities markets. The Commission has approved several proposed rule changes of United States national securities exchanges that establish international trading links. *See, e.g.*, Securities Exchange Act Release Nos. 21449 (November 1, 1984), 49 FR 44575 (November 7, 1984); 21925 (April 18, 1985), 50 FR 14480 (April 12, 1985), (trading link between the Montreal Stock Exchange ("Montreal") and the Boston Stock Exchange ("BSE")); 22422 (September 20, 1985), 50 FR 39201 (September 27, 1985), (trading link between the Toronto Stock Exchange ("TSE") and the American Stock Exchange ("Amex")); and 23075 (March 28, 1986), 51 FR 11854 (April 7, 1986) (trading link between TSE and Midwest Stock Exchange ("MSE")).

[7] *See, e.g.*, Letter of November 26, 1984, from Dan W. Schneider, Deputy Associate Director, to Karen L. Saperstein, Assistant General Counsel, National Securities Clearing Corporation ("NSCC") (clearance and settlement link for trades associated with the BSE-Montreal trading link); Letter of September 20, 1985, from Jonathan Kallman, Assistant Director, to Karen L. Saperstein, Assistant General Counsel, NSCC (clearance and settlement link between NSCC and CDS in connection with the Amex-TSE link); Letter of September 12, 1985, from Jonathan Kallman, Assistant Director, to Michael Wise, Associate Counsel, MSTC/MCC (clearance and settlement link between MSTC/MCC and the Vancouver Stock Exchange Service Corporation).

[8] *See* note 6 *supra*.

[9] For example, without an automated clearance and settlement link, the U.S. broker-dealer would be unable to deliver or receive securities to or from the foreign broker-dealer by book-entry movement. Instead, the U.S. broker-dealer would have to deliver or receive physical certificates, thereby risking loss or theft of the certificates and settlement delays with attendant financing costs.

[10] Indeed, the Commission first must permit MSTC to maintain securities positions at the foreign entity, before that entity can qualify as a foreign clearing corporation.

[Rel. No. 34-23569; File No. SR-MSRB-86-11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice and Immediate Effectiveness of Proposed Rule Change; Relating to Calculations

Pursuant to section 19(b)(1) of the Securities Exhange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 25, 1986, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing an interpretation of rule G-33 on calculations (hereafter referred to as "the proposed rule change") explaining the appropriate method of calculating price from yield in transactions involving securities that have an initial non-interest paying period and then pay interest on a periodic basis until redemption. The securities which are the subject of the proposed rule change function essentially as zero coupon securities for a period of time after issuance, accuring interest for payment upon redemption. On a certain date after redemption ("the interest commencement date") the securities begin to accrue interest for semiannual payment. The proposed rule change states that prices of such securities should be computed from yields using a two-step method, employing the formulas contained in rule G-33(b)(i)(B). The full text of the proposed rule change is available for inspection and copying at the Commission's Public Reference Section and at the offices of the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Board has received inquiries on the appopriate method to be used in

the calculation of price from yield of certain types of securities which, after an initial non-interest paying period, pay interest periodically. The Board is of the view that the formulas of rule G–33(b)(i)(B) should be used to calculate the price of securities such as those described above using the method described in the proposed rule change. The Board understands that the method conforms to current industry practice, is capable of being performed using bond calculators that are widely available in the industry and produces results that are accurate within the standards of the industry. The Board also believes that use of the method will assist in standardizing price calculations of such securities, and minimize the likelihood of disputes that could arise from use of different methods of calculation.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, ("the Act") which requires and empowers the Board to adopt rules which are

> designed . . . to foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

The Board believes that the proposed rule change will further the purposes of the Act by standardizing the method by which the dollar prices on inter-dealer and customer transactions are computed for securities having an initial non-interest paying period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change would not impose any burden on competition since it merely formalizes a method of calculating price from yield in transactions involving specific types of securities. The Board also notes that the proposed rule change applies uniformly to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Chonge Received from Members, Participants, or Others

The Board solicited comments on the proposed rule change in an exposure draft of the method of calculation, published in March 1986. Five comment letters on the exposure draft were received, four of which expressed support for the proposed rule change and one of which expressed no opinion on the proposed rule change. The comment letters supporting the proposed rule change generally noted that the method of calculation proposed was the current industry practice (or yielded equivalent results), could be performed on bond calculators widely available in the industry and yielded results that were accurate within industry standards.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 26, 1986.

For the Commission by the division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20084 Filed 9–4–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23572; File No. SR-NASD-86-17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc.; Relating to Additional Regulation of Short Selling in the Over-the-Counter Market

The National Association of Securities Dealers, Inc. ("NASD") on July 10, 1986, submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to provide for additional regulation of short selling in the over-the-counter market. Article III, section 21 of the NASD's Rules of Fair Practice is being amended to require members to mark customer order tickets "long" or "short." The NASD Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities also is being amended to require a member accepting a "short" sale order from a customer to make an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on behalf of the customer for delivery by settlement date.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23446 (51 FR 26616, July 24, 1986). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Dated: August 28, 1986

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20085 Filed 9–5–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23575; File No. SR-PCC-86-02]

Self-Regulatory Organizations; Pacific Clearing Corp.; Order Approving Proposed Rule Change Allowing Comparison and Settlement of When-Issued Municipal Bonds

The Pacific Clearing Corporation ("PCC"), on June 17, 1986, filed a proposed rule change (File No. SR–PCC–

86–02) under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal in **Federal Register** on July 15, 1986, to solicit public comment.[1] No public comment was received. This Order approves the proposal. The proposal allows Participants in PCC's MuniComparison System ("MCS") to submit when-issued municipal bond trades, including syndicate takedowns, for automated comparison.[2]

I. Description

Under the proposal, Participants can submit municipal bond when-issued trade data for comparison and settlement. For a normal processing and output schedule to be followed, the proposal requires when-issued trades to be executed no later than six business days prior to the new issue's announced settlement date.

When settlement date notification is received less than six days prior to settlement, some changes to the normal processing and output schedule will be necessary. A when-issued bond should be submitted to MCS for comparison even if no settlement date has been announced as long as it has been assigned a cusip number. Compared when-issued trades are pended until settlement date, at which time the settlement figure, including accrued interest, is computed by PCC. Price figuration for when-issued trades will be made by one of two methods: dollar price or yield (basis) price. To compare a trade successfully, both sides must submit the same pricing method and their codes must be identical.

The proposal also provides for the comparison of syndicate takedown trades. The syndicate manager alone submits these trades for comparison through one-sided trade data input and compared trades are reported to the syndicate manager and syndicate members. The syndicate manager or a syndicate member may delete a compared takedown trade by using a one-sided delete on the day the compared trade appears on the contract sheet or on the next business day. For syndicate buy-backs, the syndicate manager can submit a sell-side withhold of the takedown trade, which results in a compared withhold trade reported on takedown contract sheets. Syndicate members' contracts will automatically show a purchase-withhold matching the sell-side withhold. Syndicate members will not be able to submit a purchase-withhold for takedown trades.

II. PCC's Rationale

PCC states that the proposed rule change is intended to comply with Rule G–12 of the Municipal Securities Rulemaking Board ("MSRB") which generally mandates automated clearing and book-entry settlement of dealer-to-dealer municipal bond trades. The enhancements to the MCS will keep it in step with the National Clearance and Settlement System (the "National System") and provide PCC's Participants with full automated securities processing services for their municipal securities transactions. PCC also states that it hopes the enhancements will foster cooperation and coordination within the securities processing industry and will remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions under Section 17A of the Act.

III. Discussion

The Commission agrees with PCC that the proposed rule change is consisent with the Act and should be approved. For reasons discussed in Securities Exchange Act Release No. 22004 (May 1, 1986), 50 FR 24370, (June 12, 1985) and Securities Exchange Act Release No. 22906 (February 13, 1986), 51 FR 6337 (February 21, 1985), in which the Commission approved NSCC's proposals that extended automated comparison services to when-issued and syndicate takedown transactions, the Commission believes that the proposal should facilitate the prompt and accurate clearance and settlement of municipal bond transactions. The Commission notes that with its approval of PCC's proposal (and today's approval of Pacific Securities Depository Trust Company ("PSDTC") proposal) enhanced municipal securities comparison service now are available to municipal securities brokers and dealers throughout the National Clearance and Settlement System.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and, in particular, with section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that PCC's proposed rule change (SR–PCC–86–02) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 29, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20086 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 23408 (July 9, 1986), 51 FR 25625 (July 15, 1986).

[2] PCC's proposal is substantively identical to previously approved proposed rule changes of the National Security Clearing Corporation ("NSCC"). *See* Securities Exchange Act Release No. 22906 (February 13, 1986), 51 FR 6337 (February 21, 1986) and Securities Exchange Act Release No. 22004 (May 1, 1985), 50 FR 24370 (June 12, 1985). NSCC provides municipal securities comparison services for PCC and other clearing agencies through the National Municipal Securities Comparison System.

[Release No. 34–23574; File No. SR–PSDTC–86–03]

Self-Regulatory Organizations; Pacific Securities Depository Trust Co., Order Approving Proposed Rule Change Adding Enhancements to the MuniComparison System

The Pacific Securities Depository Trust Company ("PSDTC") on June 17, 1986, filed a proposed rule change (File No. SR–PSDTC–86–03) under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal in the Federal Register on July 15, 1986, to solicit public comment.[1] No public comment was received. This Order approves the proposal. The proposal enhances PSDTC's MuniComparison System ("MCS") by adding three new features: (1) Automatic book-entry settlement of transactions between PSDTC Participants; (2) The ability to compare and settle when-issued municipal bonds, including syndicate takedowns; and (3) Extended settlement on both regular-way and when-issued transactions.[2]

I. Description

The proposal adds three new features to PSDTC's MCS. First, the proposal will make available automatic book-entry settlement for municipal bond trades on a trade-for-trade basis between PSDTC Participants. The delivering (selling) Participant only will be able to select automatic settlement. Once this is done and the settling Participants have been checked for valid depository account records by PSDTC, the trade is pended

[1] Securities Exchange Act Release No. 23409 (July 9, 1986), 51 FR 25629 (July 15, 1986).

[2] PSDTC's proposal is substantively identical to previously approved proposed rule changes of the National Securities Clearing Corporation ("NSCC"). *See* Securities Exchange Act Releases No. 22906 (February 13, 1986), 51 FR 6337 (February 21, 1986) and Securities Exchange Act Release No. 222004 (May 1, 1985), 50 FR 24370 (June 12, 1985). PSDTC's proposal incorporates the services available in NSCC's National Municipal Securities Comparison System.

for automatic settlement. On settlement date (T+5 extended), the Automatic MuniComparison Trade Settlements Report, which lists that day's settling trades, is issued to Participants, and PSDTC appropriately credits buying Participants' securities accounts and debits selling Participants' securities accounts. Money settlement respecting each day's municipal securities transactions is folded into each Participant's single daily net money settlement figure and the Participant must pay to, or receive from, PSDTC the net settlement amount at day's end.

Second, the proposal will allow PSDTC Participants to submit and compare when-issued municipal bond trades. PSDTC defines a when-issued trade as a transaction authorized for issuance which has a trade date at least six days prior to the announced settlement date. When settlement date notification is received less than six days prior to settlement, some changes to the normal processing and output schedule will be necessary. A when-issued trade should be submitted to MCS for comparison even if no settlement date has been announced as long as it has been assigned a cusip number. Compared when-issued trades will be pended until settlement date, at which time the settlement figures, including accrued interest, to the trade will be computed by PSDTC. Price figuration for when-issued trade will be made by one of two methods: dollar price or yield (basis) price. to compare a trade successfully, both sides must agree on the pricing method and their codes must be identical.

In addition to when-issued trade comparison, the proposal will allow the comparison of syndicate takedown trades. Only the syndicate manager will submit trade data input to MCS. The one-sided input will result in compared trades reported to the syndicate manager and syndicate members. The syndicate manager or syndicate member may delete a compared takeover trade by using a one-side delete on the day the compared trade appears on the contract sheet or the next business day. For syndicate buy-backs, the syndicate manager can submit a sell-side withhold trade reported on takedown contract sheets. Syndicate members' contract will automatically show a compared withhold matching the sell-side withhold. Syndicate members will not be able to submit a withhold for takedown trades.

Finally, the proposal will provide an extended settlement feature for when-issued and regular-way trades that require settlement time beyond the standard industry practice of five business days. MCS will allow up to fifteen additional business days for extended settlement date processing. The proposal does not make available extended settlement capabilities for syndicate takedown trades.

II. PSDTC's Rationale

PSDTC states that the proposed rule change is intended to comply with Rule G–12 of the Municipal Securities Rulemaking Board, which mandates automated clearing and book-entry settlement of dealer-to-dealer municipal bond trades. The enhancements to the MCS will keep it in step with the national system and provide its Participants with full services. PSDTC also states that it hopes the enhancements will foster cooperation and coordination within the seurities processing industry and will remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions.

III. Discussion

The Commission agrees with PSDTC that the proposed rule change is consistent with the Act and should be approved. For the reasons discussed in Securities Exchange Act Release No. 22906 (February 13, 1986), 51 FR 6337 (February 21, 1986) and Securities Exchange Act Release No. 22004 (May 1, 1985), 50 FR 24370 (June 12, 1985), in which the Commission approved NSCC's proposals that extended automatic comparison services to when issued, syndicate takedown and extended settlement transactions, the Commission believes that the proposal should facilitate the prompt and accurate clearance and settlement of municipal bond transactions under section 17A of the Act. The Commission notes that with its approval of PSDTC's proposal (and today's approval of a companion Pacific Clearing Corporation ("PCC") proposal) enhanced municipal securities comparison services now are available to municipal securities brokers and dealers throughout the National Clearance and Settlement System.

IV Conclusion

For the reasons stated above, the Commission finds that the proposal rule change is consistent with the requirements of the Act, and, in particular, with section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that PSDTC's proposed rule change (SR–PSDTC–86–03) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 29, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20087 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23566; File No. SR–PSE–86–18]

Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1986, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE proposes to amend Rule IX, sections 1(a) and 1(b) of the Rules of the Board of Governors, regarding the minimum price increments that will be allowed in a formal membership bid or offering. Under the proposal, formal membership bids or offerings must be in increments of fifty dollars. The purpose of the proposed rule change is to clarify the PSE's prior procedure for acceptance of a formal bid or offer for membership on the Exchange and to formalize that procedure through a rule filing.

The PSE states that this proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to foster cooperation and coordination between members of the Exchange and the Exchange's regulatory staff.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. Copies of the submission, all subsequent amendments, all written communication relating to

the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to file number SR–PSE–86–18 and should be submitted by September 26, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 27, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20088 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23578; File No. SR–PHILADEP–86–03]

Self-Regulatory Organizations; Philadelphia Depository Trust Co.; Order Approving Proposed Rule Change Establishing Bearer Municipal Bond Program

The Philadelphia Depository Trust Company ("Philadep"), on May 28, 1986, filed a proposed rule change (File No. SR–PHILADEP–86–03) under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal in the **Federal Register** on July 8, 1986, to solicit public comment.[1] No public comment was received. Initially, Philadep requested that the Commission grant accelerated effectiveness. On August 7, 1986, however, Philadep extended the time period for Commission action until August 22, 1986. This Order approves the proposal.

I. Introduction

Philadep's proposal establishes the Philadep Bearer Municipal Bond Program ("BMBP") and related service fees. Specifically, the proposal makes certain bearer municipal bonds eligible for deposit at Philadep and establishes procedures for ancillary services. The proposed procedures govern, among other things, deposits of certificates, custody, book-entry deliveries, pledges, interest collection and payment, call and maturity processing and withdrawals in bearer form.

[1] Securities Exchange Act Release No. 23380 (June 20, 1986), 51 FR 24769 (July 8, 1986).

II. Description

Under the proposal, Participants who wish to utilize BMBP must sign a Municipal Bearer Bond Participant Agreement. Participants may make deposits by delivering certificates, in good deliverable form,[2] to Philadep's Municipal Bearer Bond Window or other locations specified in the Procedures. Similarly, Participants may withdraw certificates by submitting appropriate instructions at those locations.

The proposal provides Participants with several important ancillary services. First, Philadep will provide a coupon clipping, collection and payment service. Philadep Participants will receive coupon interest payments for deposited bearer municipal bonds automatically (*i.e.*, without any Participant instruction). Participants will be provided with a due date report for each payable date. Philadep will forward clipped bond coupons to the issuers' paying agents for collection. On payment date, Philadep will pay Participants the interest payment for the deposited securities, subject to receipt of payment by Philadep in finally collected funds.

Second, Philadep will provide bond call processing services. Philadep will make a reasonable effort to monitor bond calls notices appearing in certain publications.[3] Reorganization notices will be distributed to all Participants affected by the call. For whole issue calls and redemptions, Philadep will not process deposits and withdrawals after the publication date. For partial redemptions, Philadep will use an impartial lottery to allocate the called certificates among all Participants' positions. Called securities will be forwarded to the paying agent for collection and Participants affected by the call will be paid on redemption date, subject to receipt of payment by Philadep in finally collected funds.

Third, Philadep will process maturing bonds. Reorganization notices will be sent to Participants, and as of the cut-off date (one calendar month prior to maturity date), Philadep will not process deposit and withdrawal requests. Philadep will submit maturing certificates to the appropriate paying agent. Participants will be paid on maturity date for those issues whose paying agent is located within the Third Federal Reserve District. For those issues whose paying agent is located outside the Third Federal Reserve District, Participants will be paid when the funds are collected.

Philadep's proposal includes a fee schedule for the proposed services. The fees cover, among other things, account charges,[4] book-entry movements,[5] custody services,[6] deposits [7] and withdrawals.[8] All out-of-pocket charges for the shipment of bearer bonds will be passed through to the Participant whose transaction incurs such cost.

Under an agreement between Philadep and the Federal Reserve Bank of Philadelphia (the "FRBP"), the FRBP will perform most custodial and certificate handling services for Philadep's BMBP. The FRBP at all times will maintain custody of deposited bonds and will segregate the deposited bonds from all other securities it maintains. The FRBP will collect interest, redemption and maturity payments from paying agents and will credit Philadep's FRBP account with those payments according to the Credit Availability Schedule in the Philadep/FRBP Procedures. Philadep and the FRBP will monitor their bearer municipal bond activity daily. Philadep and the FRBP each will bear the risk of damages arising out of their own acts and omissions. Where a discrepancy arises between Philadep and the FRBP regarding the amount of interest payments, redemption proceeds or such other sums received in respect of any deposited security, and the resolution is resolved in favor of Philadep, the FRBP will compensate Philadep by crediting Philadep's FRBP account with an "as of" credit of interest for the time between payment date and resolution date. The FRBP will be responsible for and will

[2] A security is in "good deliverable form" under Philadep's procedures if: (1) The issue is eligible for deposit as a bearer bond; (2) The deposit ticket is correctly completed and not altered in any way; (3) The CUSIP number is imprinted or written clearly on the certificates; (4) The par value of the certificates equals the quantity indicated on the deposit form; (5) Deposits presented on or before record date (payable date minus one month) have current and subsequent coupons attached and in correct sequence; (6) The legal opinion is imprinted on the certificate or attached; and (7) Where required, insurance papers are attached to the certificate.

[3] Philadep intends to list those publications in its Participants Procedures in the near future.

[4] Account charges are $100 per month in addition to the normal Philadep account charge and $260 per month for a sole bearer bond user.

[5] Book-entry movement fees are $1.40 per delivery or receive originated by terminal, paper or computer tape.

[6] Custody service fees are $1.35 per issue per month, plus $.80 for each issue held by a single Participant. In addition, a custody fee is imposed based on par value and ranges from $0.010 per $1000 of par value (between $0 and $0.5 billion) to $0.005 per $1000 of par value (more than $1 billion).

[7] Deposit charges are $8.00 per Cusip and $0.60 per deposit added for deposits containing certificates without printed Cusip numbers on certificates.

[8] Withdrawal charges are $10.00 per Cusip requested, maximum 50 certificates per request.

replace at equivalent value any bond or coupon lost while in its custody. Finally, to enable Philadep to comply with all federal or state laws, the FRBP has agreed to provide information and access to Philadep's appropriate federal, state and local auditors and examiners.

III. Philadep's Rationale

Philadep believes that the proposal is consistent with section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of transactions in bearer municipal securities. Philadep believes that the BMBP will provide its participants with efficient cost-effective services for eligible bearer municipal bonds. Philadep states that benefits to be derived from participation in BMBP include reduced Participant clearing costs, centralized safekeeping facilities for bearer issues, book-entry settlement of trades, reduction in risk associated with physical deliveries and centralized income collection services. Philadep also believes that the agreements between Philadep and its Participants and between the FRBP and Philadep are consistent with section 17A of the Act in that they will assure the safeguarding of municipal bonds and funds which are in Philadep's custody or control or for which it is responsible. Finally, Philadep believes that the fee schedule it proposes is consistent with section 17A(b)(3)(D) of the Act in providing for equitable allocation of reasonable dues, fees and other charges among Participants.

IV. Discussion

As discussed below, the Commission is approving Philadep's proposal. The Commission believes that the proposal promotes the prompt and accurate clearance and settlement of municipal securities transactions and is consistent with Philadep's duty to safeguard securities and funds under section 17A of the Act. The Commission also believes that the proposed fees are equitably allocated consistent with that section of the Act.

Under the proposal, Philadep will make its automated depository services available to Participants for bearer municipal bonds for the first time. Currently, Philadep Participants must process and settle their bearer municipal securities transactions outside the depository environment using labor-intensive, inefficient and costly procedures or by becoming direct or indirect participants in one of the securities depositories with a bearer municipal bond processing program.[9] Philadep's new program should enable Philadep Participants to compare and settle eligible bearer municipal securities trades in an automated, centralized system using procedures that generally are far more efficient than physical processing. Indeed, the proposed program insures that bearer municipal bonds are eligible for deposit at all National System depositories, thereby promoting further the benefits of immobilization and efficient National System processing.[10]

With respect to the safeguarding of securities and funds, the Commission believes that Philadep has chosen a subcustodian that has extensive experience safekeeping securities and processing payments related to those securities. The Commission notes, however, that Philadep's determination to utilize a subcustodian in no way releases Philadep from its responsibilities under section 17A of the Act.

Finally, the Commission believes that Philadep's proposed fees for bearer municipal securities processing services are designed to allocate equitably BMBP service costs among Philadep's Participants using that service.

V. Conclusion

On the basis of the foregoing, the Commission finds the proposed rule change (File No. SR-PHILADEP-86-03) consistent with the Act and, more specifically, with section 17A of the Act.

Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-PHILADEP-86-03) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 29, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20089 Filed 9-4-86; 8:45 am]

BILLING CODE 8010-01-M

[9] Depository Trust Company. Midwest Securities Trust Company or Pacific Securities Depository Trust Company.

[10] The proposals will promote municipal dealer compliance with Municipal Securities Rulemaking Board ("MSRB") Rules G-12 and G-15. Since February 1, 1985, those Rules have required municipal securities dealers that participate in a registered clearing agency to use that clearing agency's automated comparison and book-entry settlement services for certain transactions. *See* Securities Exchange Act Release No. 20365 (November 14, 1983) 48 FR 52531 (November 18, 1983), approving these amendments to MSRB Rules G-12 and G-15.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 29, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Rubbermaid Incorporated, Common Stock, $1.00 Par Value (File No. 7-9152)

The Chubb Corporation, Captial Stock, $1.00 Par Value (File No. 7-9153)

Occidental Petroleum Corporation, Common Stock, $0.20 Par Value (File No. 7-9154)

Caterpillar, Inc. (Delaware), Common Stock, No Par Value (File No. 7-9155)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 22, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20090 Filed 9-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15276; (File No. 812-6394)]

HOME MAC Mortgage Securities Corp. Application

August 27, 1986.

Notice is hereby given that HOME MAC Mortgage Securities Corporation (formerly HOMAC Conventional Securities Corporation and HOMAC Mortgage Securities Corporation), 1110 Vermont Avenue, NW., Suite 510,

Washington, DC 20005 ("Applicant"), an indirect wholly owned limited purpose finance subsidiary of Salomon Inc., filed an application on May 23, 1986, and an amendment thereto on July 22, 1986, for an order, pursuant to sectionf 6(c) of the Investment Company Act of 1940 ("Act") amending Applicant's prior order issued on June 28, 1985 (Investment Company Act Release No. 14604) exempting Applicant from all provisions of the Act ("Initial Application"). The Initial Application was filed under the name HOMAC Mortgage Securities Corporation. Subsequent thereto, Applicant changed its name and was granted an order under its present name. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of all applicable provisions thereof.

According to the application, Applicant is organized for the limited purposes of investing in mortgage loans and mortgage-backed securities and providing a source of funds to home builders, mortgage bankers, thrift institutions, commercial banks, insurance companies and other entities engaged in real estate and mortgage finance through the issuance of mortgage-backed securities of the type described below and more fully in the application. Under its Articles of Incorporation, Applicant is authorized only to issue and deliver bonds or other evidences of indebtedness ("Bonds"), to make loans out of the proceeds therefrom pursuant to funding agreements, to purchase or to obtain pledges of certain eligible mortgage-related collateral to secure the Bonds and to engage in activities incidental to and necessary to accomplish the foregoing. Applicant states that it is not otherwise authorized to trade or deal in securities or engage in any other acivity.

Applicant contemplates issuing one or more series of Bonds (each a "Series") and represents that each Series will be secured by collateral pledged to secure only that Series ("Bond Collateral"). Each Series will consist of one or more classes of Bonds and will be issued pursuant to an indenture between Applicant and an independent trustee ("Trustee"), as supplemented by a supplemental indenture for each Series (collectively, "Indenture").

The Bond Collateral will consist primarily of interests in some combination of the following (collectively, "Mortgage Collateral"): (a) Funding agreements entered into with certain parties (each a single purpose corporation or partnership affiliated with a home building company, mortgage banker, thrift institution, commercial bank, insurance company or other entity engaged in real estate or mortgage finance, "Financial Affiliates") and related notes ("Collateralized Notes") secured by (i) mortgage loans secured by first liens on single family (one-to-four family) residences ("Pleged Loans"), together with payments that may become due under certain related mortgage insurance and hazard insurance policies, (ii) certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), securities guaranteed by the Federal National Mortgage Association ("FNMA Certificates"), or certificates guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates', GNMA Certificates and FNMA Certificates collectively, "Guaranteed Mortgage Certificates"), or (iii) other pass-through certificates secured by first liens on single family (one-to-four family) residences ("Private Mortgage Certificates" and Guaranteed Mortgage Certificates, hereinafter collectively, "Mortgage Certificates") and (b) by Mortgage Certificates and Pledged Loans owned by Applicant. The Bond Collateral may also include certain reserve funds and other credit supports such as various types of insurance policies. The combination of Mortgage Collateral included in the Bond Collateral for a particular Series will be set forth in the prospectus supplement and supplemental indenture relating to that Series.

Applicant states that, pursuant to funding agreements between itself and each Financial Affilitate, as supplemented for each particular Series ("Funding Agreements"), (i) Applicant will make a loan from the net proceeds for the sale of such Series to the Financial Affiliates participating in that Series; (ii) each such Financial Affiliate will issue Collateralized Notes, evidencing the obligation to repay its loan; (iii) each such Financial Affiliate will pledge Mortgage Collateral to Applicant as security for its Collateralized Notes; and (iv) each such Financial Affiliate will be obligated to repay its Collateralized Notes by causing payments on the Mortgage Collateral to be made directly to the Trustee. Applicant will in turn pledge its entire right, title and interest in the Collaterialized Notes and the Mortgage Collateral to the Trustee as security for such Series. To the extent the Bonds are secured by Bond Collateral that Applicant owns, Applicant will use the proceeds of the sale of Bonds to purchase the Bond Collateral directly. Bond Collateral that is owned by Applicant will include Mortgage Collateral it has purchased in the open market or from other affiliates of Salomon Inc.

The Mortgage Collateral for each Series will have a scheduled cash flow sufficient, together with reinvestment income thereon at assumed rates acceptable to the Bonds' rating agencies, to make timely payment of Applicant's obligations to the holders of that Series ("Bondholders"). Bond Collateral, including Collateralized Notes and Mortgage Collateral, will be held by the Trustee for that Series.

Each Financial Affiliate will have the limited right to pledge new Mortgage Collateral ("Substitute Collateral") in place of up to 5% by principal amount of the Mortgage Collateral initially pledged as security for its Collateralized Notes. The Substitute Collateral will be required to have payment terms similar to, and in no event scheduled cash flows less than, those of the Mortgage Collateral it replaces. After giving effect to any such substitution, the scheduled cash flows on the Mortgage Collateral, together with the reinvestment income thereon, will be sufficient to make payments on the Bonds in accordance with their terms. It will be a further condition of any such substitution that the outstanding ratings of the Bonds not be affected. A Financial Affiliate will only be permitted to replace (i) Pledged Loans with Pledged Loans of equal or better quality, (ii) GNMA Certificates with other GNMA Certificates, (iii) FNMA Certificates or FHLMC Certificates with GNMA Certificates, FNMA Certificates or FHLMC Certificates and (iv) Private Mortgage Certificates with Private Mortgage Certificates of equal or better quality issued by the same entity.

Applicant states that it does not anticipate that substitution of Mortgage Collateral will occur frequently. Applicant asserts that the right to substitute Mortgage Collateral is an important element of the ownership of such Mortgage Collateral by the Financial Affilitate, but the restrictions outlined above make it unlikely that a Financial Affilitate would make frequent or repeated substitutions. On its own, Applicant will not have the right to substitute Mortgage Collateral in place of any Mortgage Collateral it owns and has initially pledged to secure any Series.

Applicant states that the rights of substitution will be within the sole

discretion of each Financial Affiliate. However, by virtue of the provisions of the Funding Agreements and those of the Indentures, Applicant plays a substantial role in any substitution by a Financial Affiliate. Even though only Finanical Affiliates may initiate any substitution, Applicant clearly has knowledge of and control over any substitution of Mortgage Collateral and is in a position to assure that any substitution is carried out in strict compliance with the terms of both the Funding Agreement and the applicable Indenture. In particular, Applicant has the power to refuse any substitution of Mortgage Collateral which does not meet the requirements as to value and quality set forth above. On the basis of the foregoing, Applicant submits that its procedures and standards for substitution of Mortgage Collateral form the functional equivalent of the restrictions set forth in recent section 6(c) exemptive orders.

The Bonds will not be redeemable at the option of the Bondholders. The Bonds may be subject to redemption by Applicant under circumstances set forth in the prosepctus supplement for each Series. Unless an event of default on a Series has occurred and is continuing, Bondholders will not be entitled to accelerate payment of the Bonds of that Series or otherwise to compel the liquidation of the related Bond Collateral. There will be no defeasance provisions for the Bonds.

Each Series will be sold to institutional or retail investors through one or more investment banking firms, which may include affiliates of Applicant. Indentures for each public offering will be qualified under the Trust Indenture Act of 1939, unless an appropriate exemption is available.

Applicant represents that its future securities offerings will be limited to offerings of Bonds meeting the conditions set forth below:

1. Each Series of Bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the mortgage collateral underlying the Bonds (whether owned by Applicant or pledged pursuant to collateralized obligations) will be limited to: (i) Pledged Loans; (ii) Private Mortgage Certificates; and (iii) Guaranteed Mortgage Certificates ("Mortgage Collateral").

3. If new Mortgage Collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraphs 2, 4, and 6. In addition, new Mortgage Collateral may not be substituted by any Financial Affiliate for more than 5% by principal amount of the Mortgage Collateral initially pledged. Applicant will not have the right to substitute Mortgage Collateral in place of any Mortgage Collateral owned by it and initially pledged to secure any Series of Bonds.

4. All mortgages, mortgage certificates, funds, accounts or other collateral securing a Series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405 17 CFR 230.405) of Applicant, or of the master servicer or originating lender of any mortgages that are pledged as Mortgage Collateral. If there is no master servicer, no servicer of those mortgages may be an affiliate of the custodian. The Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the Act.

6. The master servicer of any mortgages (including mortgages underlying Private Mortgage Certificates) that are pledged as Mortgage Collateral may not be an affiliate of the Trustee. If there is no master servicer, no servicer of those mortgages may be an affiliate of the Trustee. Any master servicer and servicer of such mortgages will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of such mortgages shall obligate the servicer to provide substantially the same services with respect to those mortgages as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

7. No less often than annually, an independent public accountant will audit the books and records of Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

Applicant asserts that it is not the type of entity which was intended to be regulated under the Act and that its limited activities do not require the protection of the Act. Further, Applicant submits that granting the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 19, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20091 Filed 9-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15274; File No. 812-6380]

Application and Opportunity for Hearing; Sentry Life Insurance Co. et al.

August 25, 1986.

Notice is hereby given that Sentry Life Insurance Company (the "Company"), Sentry Variable Life Account I (the "Account"), and Sentry Equity Services, Inc. (collectively, "Applicants"), at 1800 North Point Drive, Stevens Point, WI 54481, filed an application on May 14, 1986, and an amendment thereto on July 11, 1986, for an order of the Commission

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pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicants from sections 2(a)(32), 9(a), 13(a), 15(a), 15(b), 22(c), 27(c)(1) and 27(d) of the Act and Rules 22c–1, 6e–2(b)(15), 6e–3(T)(b)(12)(ii), 6e–3(T)(b)(13)(iv) and 6e–3(T)(b)(15) thereunder, to permit the deduction of a contingent deferred administrative charge in connection with the offering of flexible premium variable life insurance contracts ("Contracts"), and to permit the Account to invest in shares of Advisers Management Trust (the "Fund"), which will be sold to variable annuity and variable life insurance separate accounts of the Company and of affiliated and unaffiliated life insurance companies. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of relevant provisions.

Applicants propose to offer the Contracts through the Account. The Account, which is registered as a unit investment trust under the Act, will invest in shares of the Fund. The Fund is an open-end diversified management investment company of the series type. It is currently composed of three portfolios: Liquid Asset Portfolio, Bond Portfolio and Growth Portfolio.

Contingent Deferred Administrative Expense Charge

Applicants state that the contract is a flexible premium variable life insurance contract meeting the definition in Rule 6e–3(T)(c)(1). The Contract provides, among other items, that upon surrender, a Contingent Deferred Administrative Expense Charge (the "Charge") may be deducted. The Charge remains the same for the first five Contract Years and declines in Contract Years six through ten until it is zero. This Charge is equal to $3.50 per $1,000 on the first $100,000 of initial Specified Amount plus $1.50 per $1,000 on the excess above $100,000 of initial Specified Amount.

Applicants state that the maximum Charge is $750. Applicants represent that the Charge is reasonable, fair and not discriminatory to Contractowners of smaller Contracts. Applicants state that in the event of a full surrender, a percentage of the Charge is assessed in accordance with the following table where "Year" is the number of full Contract Years from the original Contract Date or from the Contract Anniversary on a preceding date of each increase in Specified Amount to the date of surrender.

Completed policy years	Applicable percentage
0–4	100
5	80
6	60
7	40
8	20
9+	0

Applicants state that in the event that the Contract is partially surrendered, a portion of the Charge may be assessed. The portion will be that percentage of Cash Value that the withdrawal represents.

Applicants state that in the event of an increase in Specified Amount there may be an additional Charge. The maximum additional Charge is calculated as $3.50 per $1,000 on the first $100,000 of the increase in Specified Amount plus $1.50 per $1,000 on the excess above $100,000 of the increase in Specified Amount. Applicants State that the maximum Charge is $750 for each increase in Specified Amount.

Applicants state that in conjunction with the administration of the Contract and the Account, the Company assesses each Contract a Monthly Administration Fee ("Fee") of $5 per Policy Month.

Applicants represent that the Fee is guaranteed for the life of the Contract. Applicants state that the Fee has been set at a level to cover the annual cost of contract maintenance, to reimburse the Company for first year administrative expenses, and to contribute to the surplus of the Company to the extent necessary to cover the anticipated increase in expenses in the future, thus guaranteeing this charge. Applicants represent that the Fee, in conjunction with the Charge and the manner in which it is deducted, has been designed so that the Company only recovers once its first year administrative costs. The Company represents that in establishing those charges, it did so with the intent of complying with the "at cost" requirement of Rule 6e–3(T). Thus, the Company represents that in establishing the level of the Fee, it took into account the amortization of the first year administrative expenses. Applicants state that the deduction of the Charge only upon lapse or surrender is fair to both surrendering and persisting Contractowners. They state that although the Company is willing to finance these costs out of its surplus and then recover the cost out of the Fee for Contractowners who persist, it is not possible to so recover such costs from Contractowners who lapse or surrender in the early Contract years. Applicants state that if the Company is not permitted to charge for these first year expenses in the form of a charge deducted upon lapse or surrender, it would have to deduct such a charge from all Contractowners at the time the Contract is issued, thus denying persisting Contractowners the benefit of having such costs amortized and deducted as part of the Fee. Applicants represent that the Charge does not take into account the likelihood that not all Contractowners will lapse or surrender their Contracts or that some Contractowners may redeem later than others (which would increase the charge for those surrendering or lapsing over what they would have paid had all Contractowners been required to pay this administrative charge). Applicants represent that they have set the level of the Charge to that which they believe to represent their administrative costs for contract issuance. The Charge varies according to the specified amount of the Contract. Applicants assert that this is appropriate since policy size is the primary determinant as to how much effort will be expended by the Company in underwriting a Contract, as well as how much cash outlay will be necessary. Applicants represent that the level of charges has been set at what the Company believes to be the actual initial administrative expenses.

Applicants state that because the Charge is not collected unless the Contract is terminated within the first nine years, an alternate source of expense recovery is necessary to recover the initial underwriting and issue expenses. Applicants state that it is also necessary to recover the ongoing administrative expenses. Applicants state that the Company conducted profit tests which showed that for the average anticipated Contract, a level monthly charge of $5.00 collected in all years is necessary to recover the expected high first-year expenses plus the lower, ongoing administrative expense, with no margin included for profit, in accordance with Paragraph (b)(13)(iii)(A) of Rule 6e–3T). Applicants represent that the Charge and the Fee do not take into account the time-value of money (which would increase the charges to factor in the investment cost to the Company of deferring the Charge). Applicants assert that there are various advantages to Contractowners regarding their proposed Charge. Among those advantages are: (1) Contractowners can realize an advantage of increased earnings because they have more to invest under their contracts; (2) the deductions for the cost of insurance may be lower because the net amount at risk may be less when the administrative charges are deferred rather than

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deducted up front; (3) deferring the administrative charge until surrender or lapse means that the charge is not deducted from death benefits and as a result Contractowners receive the primary benefit of the contract which is insurance protection; and (4) the deduction of the charge only upon lapse or surrender means that in many cases such a charge may not be incurred at all.

Mixed and Shared Funding

Applicants propose that the Fund offer its shares to the separate accounts that issue either variable annuity contracts or scheduled or flexible premium variable life insurance contracts. It is proposed that these separate accounts will be separate accounts of other affiliated or unaffiliated insurance companies ("Participating Insurance Companies"). The use of a common management company as the investment medium of both variable annuities and variable life insurance is referred to herein as "mixed funding." The use of a common management company as the investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding". Rules 6e–2 and 6e–3(T) under the Act provide certain exemptions from the Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e–2(b)(15), however, precludes mixed and shared funding, and Rule 6e–3(T)(b)(15) precludes shared funding. Applicants propose that the requested relief extend to a class consisting of life insurers and variable life insurance separate accounts investing in the Fund (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in the Fund by virtue of the Fund offering its shares to variable annuity separate accounts or unaffiliated separate accounts.

Applicants assert that granting the request for relief to engage in mixed and shared funding will benefit variable contractowners by: (1) Eliminating a significant portion of the cost of establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. Applicants represent that the Fund will not be managed to favor or disfavor any particular insurer or type of insurance product.

With respect to section 9(a), Applicants assert that the same policies that led the Commission to limit the provisions of section 9(a) to those employees of the insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by a fund offering mixed and shared funding. Thus, Applicants argue there is no regulatory purpose to apply the provisions of section 9(a) to the many employees of the insurance companies whose separate accounts may use the Fund as a funding medium for variable life insurance contracts. Moreover, Applicants submit that applying the requirements of section 9(a) in such cases would increase the costs of monitoring for compliance with that section, which would reduce the net rates of return realized by contractowners. Applicants state that under the relief requested, section 9 would still be in effect and insulate the Fund from those individuals who are disqualified under the Act.

In support of their request for relief, Applicants state that all variable annuity and variable life contractowners will be provided pass-through voting rights with respect to Fund shares. Because paragraphs (b)(15) of both Rule 6e–2 and Rule 6e–3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances, Applicants acknowledge that this may cause an irreconcilable conflict to develop among the separate accounts. Applicants propose to resolve these potential conflicts through certain undertakings it proposes as conditions to receipt of exemptive relief, set out *infra*. Thus, according to Applicants, if a particular insurance company's disregard of voting instructions conflicted with a majority of contractowners' voting instructions, or precluded a majority vote, the insurer may be required at the Fund's election, to withdrw its separate account's investments in the Fund. Applicants represent that the Company will vote shares for which it has not received voting instructions as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions. Applicants state that they will comply with the following conditions: (1) A majority of the Board of trustees of the Fund ("Board") shall consist of persons who are not interested persons of the Fund, as defined by the Act. (2) The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners or by contractowners of different Participating Insurance Companies; or (f) a decision by an insurer to disregard the voting instructions of contractowners. (3) Participating Insurance Companies and the Investment Adviser will report any potential or existing conflicts to the Fund's Board. Participating Insurance Companies will be responsible for assisting the Board in carrying out its responsibilities by providing the Board with all information reasonably necessary for the Board to consider any issues raised including information as to a decision by an insurer to disregard voting instructions of contractowners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all insurers investing in the Fund under their agreements governing participation in the Fund. (4) If it is determined by a majority of the Board of the Fund or a majority of its disinterested trustees that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense, take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any portfolio and reinvesting such assets in a different investment medium, including another portfolio of the Fund, or submitting the questions of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any particular group (i.e. annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of

an insuer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed against a separate account as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of contractowners.

For purposes of this condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of affected contractowners. (5) The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all Participating Insurance Companies. (6) Participating Insurance Companies shall provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act to require pass-through voting privileges for variable contractowners. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in Advisers. The Company will vote shares, for which it has not received voting instructions as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions. (7) All reports received by the Board of potential or existing conflicts, determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedied a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

Notice is further given that any interested person wishing to request a hearing on the application may not later than September 19, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20092 Filed 9-4-86; 8:45 am]

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[Release No. IC-15278; (File No. 812-6439)]

Swiss Bank Corporation and SBC Finance (Delaware) Inc.; Foreign Bank Application

August 28, 1986.

Notice is hereby given that Swiss Bank Corporation ("SBC") and its wholly owned subsidiary, SBC Finance (Delaware) Inc. ("Finance") (collectively, "Applicants"), c/o Steven M. Lucas, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036, filed an application on July 22, 1986 and an amendment thereto on August 27, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the text of the Act for the various provisions thereof.

Applicants state that SBC is one of the three major Swiss commercial banks and one of the world's principal international banks, and that its principal business is the receipt of deposits and the making of loans. In addition to the receipt of deposits and the making of loans and advances, SBC engages in other banking and bank-related activities typical of the world's major international banks, including underwriting in the Swiss and Eurocapital markets, securities portfolio management, management of mutual funds, foreign exchange and precious metals, payments and fiduciary operations. SBC states that, as a Swiss Bank, it is subject to the Swiss Federal Law Relating to Banks and Savings Banks as administered by the Federal Banking Commission and the Swiss National Bank, including mandatory annual audits, specific capital requirements and specific liquidity requirements.

The Applicants state that Finance was organized solely to provide a vehicle through which SBC may sell commercial paper to certain institutional purchasers. Finance's sole business will be the issuance of debt obligations and the provision of the proceeds thereof to SBC or its other subsidiaries, and substantially all of Finance's assets will consist of amounts receivable from SBC or its other subsidiaries. All the outstanding capital stock of Finance is owned by SBC, and Finance does not currently intend to issue any additional capital stock.

The Applicants propose that Finance will issue and sell in the United States: (1) Unsecured prime quality dollar-denominated commercial paper promissory notes in bearer form with maturities of 270 days or less and (2) intermediate term unsecured dollar-denominated promissory notes in bearer form with maturities ranging from 271 days to five years (collectively, the "Notes"). To ensure that the Notes will not be advertised or otherwise offered for sale to the general public, Applicants state that the Notes will be issued and sold in denominations no smaller than $100,000 to a dealer ("Dealer") in the United States which will reoffer the Notes as principal to institutional investors and other entities and individuals who normally purchase such Notes in the United States. Applicants state that payment of the principal, interest and premium, if any, on the Notes will be unconditionally guaranteed by SBC, and that the Notes and the guarantees thereof will rank *pari passu* among themselves and superior to the rights of shareholders.

Applicants undertake that Finance will not issue and sell the Notes until it

has received an opinion of their United States legal counsel that the Notes would be entitled to an exemption under sections 3(a)(3) or 4(2) of the Securities Act of 1933, ("1933 Act") or Regulation D thereunder. Applicants do not request Commission review or approval of their United States counsel's opinion letters regarding the availability of exemptions under sections 3(a)(3) or 4(2) of the 1933 Act or Regulation D thereunder.

Applicants, or either of them, from time to time, offer other short, medium or long term debt securities for sale in the United States (but not equity securities in reliance upon or pursuant to the order requested by the application). Applicants represent that they will not sell any such debt securities required to be registered with the Commission until a registration statement pertaining to such securities has been declared effective by the Commission. Applicants further state that such future offerings will not necessarily be subject to minimum denomination requirements or sold to sophisticated investors and that, in the case of any such offering of debt securities by Finance in the United States, SBC will provide an unconditional guarantee for the payment of principal, interst and premium (if any).

Applicants undertake to ensure that the Dealer will provide each offeree of the Notes and any future offerings of debt securities in the United States (together hereinafter referred to as "Securities") prior to purchase with a memorandum ("Offering Memorandum") which briefly describes the business of Applicants, including SBC's most recent publicly available fiscal year-end balance sheet and profit and loss statement audited in such manner as is customarily done for SBC by its statutory auditors for financial statements in its Annual Report. Such Offering Memorandum will describe material differences, if any, between the accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by banks in the United States. Applicants undertake that such Offering Memorandum and financial statements will be at least as comprehensive as those customarily used by United States bank holding companies in offering comercial paper in the United States and will be updated promptly to reflect material changes in the financial condition of SBC or Finance. Applicants undertake that, for any future offering of their debt securities made pursuant to a registration statement under the 1933 Act, they will furnish a disclosure document to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder.

Applicants represent that the issuance of Securities (not including deposits) in the United States shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that their United States counsel shall have certified that such rating has been received, provided, however, that no such rating need be attained with respect to any such issue if, in the opinion of United States counsel (such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in Rule 502 under the 1933 Act and various releases and relevant no-action letters made public by the Commission), an exemption from registration is available under section 4(2) of the 1933 Act or Regulation D thereunder.

Applicants state that they will appoint a bank or other financial institution in the United States as authorized agent to issue the Securities from time to time. In addition, they undertake to appoint either such financial institution, the Commission or a corporate entity or other United States person that normally acts in such capacity to accept service of process in any action based on the Securities and instituted by the holder of such Securities in any State or Federal court. Applicants undertake that they will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Securities have been paid by SBC. Furthermore, the application represents that the Applicants will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Securities or otherwise in connection with the Securities. Applicants consent to any order granting this application being expressly conditioned on their compliance with the undertakings set forth above.

Notice if further given that any interested person wishing to request a hearing on the application may, not later than September 22, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20093 Filed 9-4-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-741]

Application and Opportunity for Hearing; Travelers Mortgage Services, Inc.

August 28, 1986.

Notice is hereby given that Travelers Mortgage Services, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the reporting requirements of section 13 of the 1934 Act, and from the operation of section 16 of that Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person not later than September 22, 1986, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the

application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20094 Filed 9-4-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on August 28, 1986

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on August 28, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on August 28, 1986.

DOT No: 2779

OMB No: New
By: Federal Aviation Administration
Title: Back to Basics Seminar Attendance System
Form(s): None
Frequency: On occasion
Respondents: Volunteers attending safety seminars (individuals)
Need/Use: There is a need to determine the effectiveness of the Back to Basics safety seminar programs. The information collected will be analyzed to provide future direction for the FAA's Accident Prevention Program. The affected public is any FAA licensed pilot who voluntarily attends an FAA sponsored seminar which has been identified for sampling.

DOT No: 2780

OMB No: 2127-0017
By: National Highway Traffic Safety Administration
Title: Odometer Complaint Form HS-387
Form(s): HS-387
Frequency: On occasion
Respondents: Individuals
Need/Use: The information is collected from used car purchasers in sufficient detail to allow the agency to decide whether odometer fraud is likely.

DOT No: 2781

OMB No: 2120-0026
By: Federal Aviation Administration
Title: Flight Plans (Domestic/International)
Form(s): FAA Forms 7233-1, 7233-4
Frequency: On occasion
Respondents: Pilots
Need/Use: Federal Aviation Act of 1958, section 307 (49 U.S.C. 1348) authorizes regulations governing the flight of aircraft. 14 CFR Part 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide protection to aircraft in flight and persons and property on the ground.

DOT No: 2782

OMB No: 2115-0540
By: United States Coast Guard
Title: Ports and Waterways Safety (33 CFR Subchapter P)
Form(s): N/A
Frequency: On occasion
Respondents: Vessel operators, masters, pilots or owners
Need/Use: This information collection requirement is needed to evaluate and approve requests for deviation from affected regulatory requirements.

DOT No: 2783

OMB No.: 2115-0081
By: United States Coast Guard
Title: State Reports of Marine Sanitation Device Regulations Violations
Form(s): N/A
Frequency: On occasion
Respondents: State or local Governments
Need/Use: This information collection requirement is needed and used by the Coast Guard to process violations of the federal marine sanitation device regulations contained in 40 CFR Part 140. The states enforcement agreement stipulates that they will forward information concerning violations on a monthly basis. Since the states have no authority to assess fines and penalties under the Clean Water Act they forward the information to the Coast Guard for processing.

DOT No.: 2784

OMB No.: 2115-0061
By: United States Coast Guard
Title: Forecastle Card
Form(s): CG-704
Frequency: On occasion
Respondents: Owners and operators of U.S. merchant vessels
Need/Use: This information collection requirement is used in the Agency's Commercial Vessel program. It is needed so that each U.S. merchant seaman employed aboard ship under contract will have a copy of the agreement available under which they are currently bound.

DOT No.: 2785

OMB No.: 2115-0536
By: United States Coast Guard
Title: Financial Responsibility for Oil Pollution—Alaska Pipeline (33 CFR Part 131)
Form(s): CG-5358-5358-6
Frequency: On occasion

Respondents: Vessel operators
Need/Use: This information collection is used to make certain that all vessels carrying oil transported through the trans-Alaska pipeline can meet statutory liability for oil pollution. The information is used to determine the financial responsibility of vessel operators.

DOT No.: 2786

OMB No.: 2115–0527
By: United States Coast Guard
Title: Appeal Process for Requirements Under Ports and Waterways Safety Control of Vessel Operations and Cargo Transfers
Form(s): N/A
Frequency: On occasion
Respondents: Businesses
Need/Use: This information collection requirement is needed and used to allow any person directly affected by a safety zone or an order or direction issued by, or on behalf of, a Captain of the Port to appeal to the Coast Guard for relief from the requirements.

DOT No.: 2787

OMB No.: 2115–0142
By: United States Coast Guard
Title: Plan Approval and Records for Marine Engineering Systems (46 CFR Subchapter F)
Form(s): N/A
Frequency: On occasion
Respondents: Pressure vessel manufacturers, shipbuilders and shipowners
Need/Use: This information collection requires the above respondents to submit vessel, equipment or installation plans to determine if the vessels' construction, arrangement and equipment meet applicable regulations. The manufacturer's certification is needed to ensure that products, welding performance and procedure qualifications meet minimal standards and technical requirements.

DOT No.: 2788

OMB No.: 2115–0077
By: United States Coast Guard
Title: Letter of Intent
Form(s): N/A
Frequency: On occasion
Respondents: Owners/operators of marine bulk oil facilities
Need/Use: This information collection requirement is needed and used by the Coast Guard to ensure compliance with pollution prevention regulations (33 CFR Parts 154 and 156). Owners/operators of waterfront bulk oil facilities which intend to transfer oil to or from vessels must notify the Coast Guard of this intention.

DOT No.: 2789

OMB No.: 2133–0008
By: Maritime Administration
Title: Statement of Shipbuilder or Ship Operator in Compliance with Section 807 of the Merchant Marine Act, 1936
Form(s): MA–807–1 and 807–2
Frequency: On occasion
Respondents: Shipbuilders, ship operators and others presenting matters before the Maritime Subsidy Board
Need/Use: Disclosure of certain business relationships.

DOT No.: 2790

OMB No.: 2120–0518
By: Federal Aviation Administration
Title: Special Federal Aviation Regulation—Special Flight Authorizations for Noise Restricted Aircraft
Form(s): None
Frequency: On occasion
Respondents: Aircraft Operators
Need/Use: Order Part 91, beginning January 1, 1985, operations of large turbojet aircraft are prohibited at U.S. airports unless compliance with Part 36 noise levels is demonstrated. Therefore, operators (foreign, domestic, and corporate) will need a Special Flight Authorization for U.S. operations to dispose of aircraft or take them to be modified to comply.

DOT No.: 2791

OMB No.: 2127–0009
By: National Highway Traffic Safety Administration
Title: Monthly Report of Motor Vehicle Traffic Fatalities
Form(s): HS Form 251
Frequency: Monthly
Respondents: States
Need/Use: This report gives a compilation of national fatality totals involving motor vehicles.

Issued in Washington, DC on August 28, 1986.

John E. Turner,
Director of Information Resource Management.

[FR Doc. 86–19958 Filed 9–4–86; 8:45 am]
BILLING CODE 4910–62–M

Aviation Proceedings, Manila International Airport

SUMMARY: The Secretary of Transportation has now determined that Manila International Airport maintains and administers effective security measures.

Notice

By notice published at 51 FR 28792 (August 11, 1986), I announced that I had determined on August 5, 1986 that Manila International Airport, Manila, the Philippines, did not maintain and administer effective security measures. I now find that the security measures used at Manila International Airport are effective. My determination is based on a recent Federal Aviation Administration assessment which reveals that security measures used at the airport now meet or exceed the Standards and Recommended Practices established by the International Civil Aviation Organization.

I have directed that a copy of this notice be published in the **Federal Register** and that the news media be notified of my determination. In addition, as a result of this determination, the FAA will direct that signs posted in U.S. airports relating to my August 5 determination be removed, and U.S. and foreign air carriers will no longer be required to provide notice of that determination to passengers purchasing tickets for transportation between the United States and Manila Airport.

Dated: September 2, 1986.

Elizabeth Hanford Dole,
Secretary of Transportation.

[FR Doc. 86–20056 Filed 9–4–86; 8:45 am]
BILLING CODE 4910–62–M

Commercial Space Transportation Advisory Committee; Announcement of Meeting

AGENCY: Office of the Secretary of Transportation (OST); Department of Transportation (DOT).

ACTION: Commercial Space Transportation Advisory Committee; Open Meeting.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Monday, September 22, 1986, from 9:00 a.m. to 5:00 p.m. e.t., and Tuesday, September 23, 1986, from 9:00 a.m. to 12:00 noon e.t., in Room 2230 of the Department of Transportation Headquarters Building, 400 Seventh Street, SW, Washington, DC. This will be the fourth meeting of the Committee which will address the transition requirements for an emerging private sector expendable launch vehicle industry in the United States. The members of the committee are:

Lionel Alford, Vice President for Areospace, Boeing;

Joel Alper, President, Space Communications Division, Communications Satellite Corporation;
Norman Augustine, President and Chief Operating Officer, Martin Marietta Corporation;
Jonathan Conrad, Executive Vice President, Sconset Group, Inc.;
Leonard Cormier, President, Third Millennium (MMI);
Gregg Fawkes, President, Cybron Corporation;
Dr. Jerry Grey, Publisher, *Aerospace America*, American Institute of Aeronautics and Astronautics;
David Grimes, Chairman, Transpace Carriers, Inc.;
Edmund (Kip) Hawley, Vice President and Chief of Staff, Citicorp;
John Krimsky, Jr., Deputy Secretary General, United States Olympic Committee;
T. Allan McArtor, Sr. Vice President, Telecommunications Division, Federal Express Corporation;
Adolph Medica, President, Space Transportation System;
Gerald Mossinghoff, President, Pharmaceutical Manufacturers Association
William Rector, Vice president, General Dynamics Space Division;
George Robinson, Associate General Counsel, Smithsonian Institution;
Dr. Robert Roney, Sr. Vice President, Hughes Aircraft Company;
Daniel Ruskins, Vice President, Government Requirements, Lockheed Missles;
Bernard Schriever, General, United States Air Force (Retired), consultant to the aerospace industry;
Jerome Simonoff, Vice President, Citicorp Industrial Credit, Inc.;
Donald (Deke) Slayton, President, Space Services, Inc. and former astronaut.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained from the DOT Office of Commercial Space Transportation, Room 10401, 400 Seventh Street SW, Washington, DC 20590. Contact: Mary F. Couch, telephone 202–366–2934.

(**Please note:** Security procedures restrict admittance to the Department of Transportation Building. Your admittance will be facilitated if you call the telephone number above before arrival.)

Issued in Washington, DC, on September 2, 1986.

Madeline Johnson,

Director, Office of Commercial Space Transportation.

[FR Doc. 86–20055 Filed 9–4–86 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Supplemental Environmental Impact Statement; Charleston and Berkeley Counties, SC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared for fog mitigation on a proposed bridge project in Charleston and Berkeley Counties, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Rice, District Engineer, Federal Highway Administration, Suite 758, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina, 29201, Telephone: (803) 253–3386.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the South Carolina Department of Highways and Public Transportation, will prepare a supplemental environmental impact statement on the proposed I–526 bridge spanning the Cooper River between North Charleston and Berkeley County, South Carolina. The supplemental EIS will discuss the impact of fog on the proposed bridge and will prescribe the specific actions to be taken to mitigate any potential hazards due to fog.

Alternatives to be considered in the supplemental EIS will include mitigation measures which would beat promote a safe bridge and reduce the danger of fog on the bridge to a point where it does not have a significant impact on safety.

A letter of intent inviting written comments and suggestions to ensure that the full range of fog related issues are identified and addressed will be sent to appropriate Federal, state and local agencies, and to private organizations and interested citizens. A public hearing will be conducted to further involve local citizens in the process. Public notice will be given of the time and place of the hearing. The supplemental draft EIS will be available for public and agency review and comment.

To ensure that the full range of fog related issues are addressed and identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the supplemental EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 28, 1986.

Arthur A. Fendrick,

Assistant Division Administrator, Columbia, South Carolina.

[FR Doc. 86–19992 Filed 9–4–86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 29, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0384
Form Number: ATF REC 5620/2
Type of Review: Extension
Title: Airlines Withdrawing Stock from Customs Custody

OMB Number: 1512–0398
Form Number: ATF F 2093(5200.3) and ATF F 2098(5200.16)
Type of Review: Extension
Title: Application for Permit Under 26 U.S.C. Chapter 52—Manufacturer of Tobacco Products or Proprietor of Export Warehouse (ATF F 2093) *AND* Application for Amended Permit Under 26 U.S.C. 5712—Manufacturer of Tobacco Products or Proprietor of Export Warehouse (ATF F 2098)

Clearance Officer: Robert G. Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Comptroller of the Currency

OMB Number: 1557–0157
Form Number: CC–7022–12
Type of Review: Extension

Title: Conversions

Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219

OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB Number: 1545–0099
Form Number: IRS Form 1065 and Schedules D, K and K–1
Type of Review: Revision
Title: U.S. Partnership Return of Income, Gains and Losses, Partners' Shares of Income, Credits, Deductions, etc., Partner's Share of Income, Credits, Deductions, etc.

OMB Number: 1545–0128
Form Number: IRS Form 1120L
Type of Review: Revision
Title: U.S. Life Insurance Company Income Tax Return

OMB Number: 1545–0217
Form Number: IRS Form 5735 and Schedule P
Type of Review: Revision
Title: Computation of Possessions Corporation Tax Credit Allowed Under Section 936 Allocation of Income and Expenses Under Section 936(h)(5)

Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Department Reports, Management Office.

[FR Doc. 86–20016 Filed 9–4–86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 29–86]

Treasury Notes, Series L–1991

Washington, August 28, 1986.

The Secretary announced on August 27, 1986, that the interest rate on the notes designated Series L–1991, described in Department Circular—Public Debt Series—No. 29–86 dated August 20, 1986, will be 6½ percent. Interest on the notes will be payable at the rate of 6½ percent per annum.

Bart Derrick,

Acting Fiscal Assistant Secretary.

[FR Doc. 86–19960 Filed 9–4–86; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 172
Friday, September 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Consumer Product Safety Commission	1
Equal Employment Opportunity Commission	2
Federal Deposit Insurance Corporation	3, 4, 5
Federal Maritime Commission	6
Federal Reserve System	7, 8
National Credit Union Administration	9
Postal Rate Commission	10

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 3, 1986.

LOCATION: Room 456, Westwood Towers, Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. General Policy Stotement

The Commission will consider a proposed Statement of General Policy concerning the structure and workings of the Commission staff and the flow of information within the Agency.

2. Commission Structure

The Commission will consider certain Agency structural realignments initiated by the Chairman.

*The Commission by majority vote decided that Agency business required the waiving of the normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

September 2, 1986.

[FR Doc. 86-20097 Filed 9-2-86; 4:30 pm]

BILLING CODE 6355-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, September 15, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Compliance Manual Section 26, Providing Assistance to the Public
4. Proposed Compliance Manual Section 7, Withdrawals
5. Proposed Compliance Manual Section 15, Negotiated Settlement
6. Proposed Compliance Manual Section 28, Format and Content of the Investigative File
7. Revision to Cover Sheet for Section 93 of Volume I of the Compliance Manual

Closed

1. Proposed Commission Decision
2. Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: September 3, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued September 3, 1986.

[FR Doc. 86-20164 Filed 9-5-86; 8:45 am]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:30 p.m. on Thursday, August 28, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Albany State Bank, Albany, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Thursday, August 28, 1986; (2) accept the bid for the transaction submitted by United Missouri Bank of St. Joseph, St. Joseph, Missouri, an insured State nonmember bank; (3) approve the application of United Missouri Bank of St. Joseph, St. Joseph, Missouri, for consent to purchase certain assets of and assume the liability to pay deposits made in Albany State Bank, Albany, Missouri, and for consent to establish the sole office of Albany State Bank as a branch of United Missouri Bank of St. Joseph; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) adopt a resolution making funds available for (1) the payment of insured deposits made in Buena Vista Bank & Trust Company, Buena Vista, Colorado, which was closed by the State Bank Commissioner for the State of Colorado, on Thursday, August 28, 1986, and (2) for an advance payment to uninsured depositors of the closed bank equal to 20 percent of their uninsured claims; and

(C) adopt a resolution making funds available for the payment of insured deposits made in American National Bank of Eastridge, Casper, Wyoming, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, August 28, 1986; and

(D) consider a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Director C.C. Hope, Jr., (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(8), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 2, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-20147 Filed 9-3-86; 12:39 am]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, September 9, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and establish four branches:

The Islamorada Bank, Monroe County (P.O. Islamorada), Florida, an insured State nonmember bank, for consent to merge, under its charter and with the title "T.I.B. State Bank of the Florida Keys," with Florida Keys First State Bank, Key West, Florida, and for consent to establish the four offices of Florida Keys First State Bank as branches of the resultant bank.

Applications for consent to purchase assets and assume liabilities and establish branches:

Clinton Savings Bank, Clinton, Massachusetts, an insured mutual savings bank, for consent to purchase the assets of and assume the liability to pay deposits made in L.F.E. Employees Federal Credit Union, Clinton, Massachusetts, a non-FDIC-insured institution, and for consent to establish the sole office of L.F.E. Employees Federal Credit Union as a branch of Clinton Savings Bank

Peoples Bank & Trust Company, Rocky Mount, North Carolina, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Atlantic Savings and Loan Association, Inc., Wilson, North Carolina, a non-FDIC-insured institution, and for consent to establish the two offices of Atlantic Savings and Loan Association, Inc., as branches of Peoples Bank & Trust Company.

Application for consent to acquire assets and assume liabilities and establish one branch:

First-Citizens Bank and Trust Company of South Carolina, Columbia, South Carolina, for consent to acquire certain assets of and assume the liability to pay deposits made in the Lancaster Branch of Security Federal Savings and Loan Association, Columbia, South Carolina, a non-FDIC-insured institution, and for consent to establish that office as a branch of First-Citizens Bank and Trust Company of South Carolina.

Application for consent to purchase assets and assume liabilities:

AmeriTrust Company National Association, Cleveland, Ohio, for consent to purchase the assets of and assume the liability to pay deposits made in Eagle Savings Association, Cincinnati, Ohio, a non-FDIC-insured institution.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

United Bank, A Savings Bank, Tacoma, Washington, an insured stock savings bank, for consent to transfer certain assets to InterWest Savings Bank, Oak Harbor, Washington, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in the Omak Branch of United Bank, A Savings Bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,641–SR
The Crossroads State Bank, Oklahoma City, Oklahoma
Case No. 46,642–NR
Peoples National Bank of Rockland County, Ramapo (P.O. Monsey), New York

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Division of Liquidation:

Memorandum re: Loan Sales—Quarterly Report of Actions Approved Under Delegated Authority as of March 31, 1986.
Memorandum re: Loan Sales—Quarterly Report of Actions Approved Under Delegated Authority as of June 30, 1986.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Allen County Bank and Trust Company, Leo, Indiana (2518) (Memo dated August 11, 1986)
Summary Audit Report re: Auburn Savings Bank, Auburn, Iowa (2512) (Memo dated July 25, 1986)
Summary Audit Report re: The Clarksdale Bank of Clarksdale, Clarksdale, Missouri (2516) (Memo dated August 8, 1986)
Summary Audit Report re: Security State Bank, Broken Bow, Nebraska (6637) (Memo dated August 8, 1986)
Summary Audit Report re: Chester State Bank, Chester, Texas (2517) (Memo dated August 13, 1986)
Summary Audit Report re: Northshore Bank, Houston, Texas (2513) (Memo dated August 8, 1986)
Summary Audit Report re: Yellowstone State Bank-Lander, Lander, Wyoming (6626) (Memo dated July 25, 1986)
Summary Audit Report re: Knoxville Consolidated Office, Cost Center—101 (Memo dated August 8, 1986)
Summary Audit Report re: Oak Lawn consolidated Office, Cost Center—201 (Memo dated August 11, 1986)
Summary Audit Report re: Oklahoma City Consolidated Office, Cost Center—401 (Memo dated August 8, 1986)
Summary Audit Report re: San Francisco Regional Office, Cost Center—600 (Memo dated July 29, 1986)
Summary Audit Report re: Status of Auditee Corrective Actions, (Memo dated July 28, 1986)

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 2, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–20148 Filed 9–3–86; 12:39 pm]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, September 9, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(8), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's liquidation activities:

Discusson Agenda:

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Recommendation regarding the liquidation's of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re:
Abilene National Bank, Abilene, Texas (now known as MBank Abilene, National Association)

Recommendation regarding the Corporation's corporate activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 2, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–20149 Filed 9–3–86; 12:39 pm]

BILLING CODE 6714–01–M

6

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., September 10, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Agreement No. 003–010965: Island Ocean Terminal Agreement—Consideration under section 15 of the Shipping Act, 1916.

Portion closed to the public:

1. Docket No. 86–3: Modifications to the Trans-Pacific Freight Conference of Japan Agreement, the Japan-Atlantic and Gulf Freight Conference Agreement, and the Japan-Puerto Rico and Virgin Islands Freight Conference Agreement—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 86–20107 Filed 9–3–86; 8:56 am]

BILLING CODE 8730–01–M

7

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Wednesday, September 10, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on July 30, 1986.).
2. Proposals regarding the Board's internal audit function.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSONS FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–20145 Filed 9–3–86; 12:21 pm]

BILLING CODE 6210–01–M

8

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 10, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposals regarding recovery of automated clearing house float costs.
2. Proposed joint policy statement regarding basic banking services by depository institutions.
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–20146 Filed 9–3–86; 12:21 pm]

BILLING CODE 6210–01–M

9

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, September 10, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456 Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Final Rule: Deletion of Part 709, NCUA Rules and Regulations: Division of Assets, Liabilities and Capital.
6. Charter Conversion: Multi-occupational to community for IRCO Employees Federal Credit Union #17395, Phillipsburg, N.J.
7. Charter Amendment: Expansion of Field of Membership for Sidney Federal Credit Union #6011, Sidney, N.Y.

RECESS: 10:30 a.m.

TIME AND DATE: 10:45 a.m., Wednesday, September 10, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456 Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.

2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Board Briefings. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Reprogramming of Agency FY 86 Budget Funds. Closed pursuant to exemption (9)(b).
6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86–20156 Filed 9–3–86; 1:49 am]

BILLING CODE 7535-01-M

10

POSTAL RATE COMMISSION

TIME AND DATE: September 9, 1986 at 9:30 a.m.

PLACE: Conference Room, Suite 300, 1333 H Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Meet to discuss the Opinion and Recommended Decision on Docket No. MC86–2, Third-Class Mail Preparation Requirements, 1986.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86–20110 Filed 9–3–86; 9:31 am]

BILLING CODE 7715-01-M

VOL
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Friday
September 5, 1986

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2800 and 2880

Rights-of-Way; Amendment Providing Procedures for Rental Determination; Proposed Rulemaking

VOL 51 ISS 172 SE 5 1986 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800 and 2880

[AA-330-06-4211-02-NCPF-2410]

Rights-of-Way; Amendment Providing Procedures for Rental Determination

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend 43 CFR Parts 2800 and 2880 to provide a rental schedule for most linear rights-of-way granted under section 28 of the Mineral Leasing Act of 1920, as amended, and title V of the Federal Land Policy and Management Act of 1976. The rental schedule in the proposed rulemaking is based on zones of similar value and the schedule would be adjusted annually using the Gross National Product Implicit Price Deflator Index as the basis of such adjustment. The proposed rulemaking also would provide that existing linear right-of-way grants not covered by the schedule may be brought under it upon reasonable notice to the holder. In addition, the proposed rulemaking is designed to substantially reduce the need for individual appraisals of rentals for new linear right-of-way grants, establish consistent rationale for determination of rental, reduce the differences between procedures now used by the U.S. Forest Service and the Bureau of Land Management, resolve conflicts which have led to numerous appeals of rental determinations and reduce both government and industry administrative costs. Finally, the proposed rulemaking would establish procedures for competitive bidding for site type right-of-way grants, such as communication sites, where there is competitive interest, and rent in the form of a royalty or a fixed percentage of the holder's gross receipts might be appropriate.

DATE: Comments should be submitted by October 20, 1986. Comments postmarked or received after the above date may not be considered as part of the decisionmaking process on issuance of final rulemaking.

ADDRESS: Comments should be sent to: Director (140) Bureau of Land Management Room 5555, Main Interior Bldg., 1800 C Street, NW. Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ted Bingham (202) 343-5441 or Robert C. Bruce (202) 343-8735.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management administers approximately 42,000 right-of-way grants, of which about 30,000 are linear facilities for facilities such as powerlines, pipelines, roads and ditches or canals.

Section 28(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185(1)), provides specific direction that fees for right-of-way uses and grants should reflect fair market value as follows:

> The applicant for right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

The Office of Management and Budget Circular No. A-25, as amended and supplemented, requires agencies to establish user charges based on sound business management principles and, to the extent feasible, in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenue to the United States.

In 1964, the Bureau of the Budget (predecessor to the Office of Management and Budget) issued further guidelines in the *Natural Resources User Charges Study*, which provided for the use of Federal lands as follows:

> . . . the Government should recover the fair market value for the use of Federal land resources. Competitive bidding will be used to establish the fair market value in all instances where an identifiable competitive interest exists. Where a competitive interest does not exist, fees should be comparable to those charged for the use of similar private lands. Fees and charges for long-term use should be established in such a manner as will allow for periodic timely adjustment.

The 1976 enactment of the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) reinforced long-standing Congressional support for receipt of fair market value. Section 102(a) of the Act (43 U.S.C. 1701(a)) states that ". . . it is the policy of the United States that . . . the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute . . ." As to right-of-way grants, section 504(g) of the Act (43 U.S.C. 1764(g)) provides:

> The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: Provided, That when the annual rental is less than $100, the Secretary concerned may require advance payment for more than one year at a time . . . Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest.

Section 2803.1-2 of the existing regulations requires the payment in advance of the fair market rental value of the rights authorized as determined by appraisal by the authorized officer. The existing regulations further provide for review and adjustment, if warranted, of the rental at least every five years. In the past, these rental payments have been determined by individual Bureau of Land Management offices using a variety of appraisal methods.

In 1981, the Bureau of Land Management appraisers in New Mexico studied private transactions involving a payment per unit length and found that there was no apparent correlation with the underlying land value. Using this observed practice as a basis, they instituted a "going rate" method of appraising some oil and gas pipeline right-of-way grants. This "going rate" method is based on an analysis of prices paid by oil and gas companies for easements crossing private lands. The lump sum, the one-time private transaction price paid for these easements, was adjusted downward to reflect differences between a private easement and a right-of-way grant across public lands and was used as the basis for determining a rental by amortizing a one-time payment in perpetuity at an interest rate on similar investments. The "going rate" method was a departure from more traditional right-of-way appraisal methods and resulted in a substantial increase in holder rental payments. Later, the Bureau State offices in Wyoming and Colorado adopted the "going rate" method. Rentals determined under the "going rate" method resulted in the

holders appealing approximately 3,000 rental determinations to the Department of the Interior's Office of Hearings and Appeals. These cases have been remanded to the Bureau for reconsideration consistent with new regulations and procedures that would evolve from a series of reports, task force recommendations and comments received in response to the notices of intent to propose rulemaking.

The Interior Board of Land Appeals, a Board within the Department of the Interior's Office of Hearings and Appeals, suggested that in developing new regulations there must be a reasonable basis for the determination of fair market value even though the appropriate method of achieving fair market rental value is to be determined by the Secretary of the Interior. Further, it recommended that the Bureau of Land Management should develop a carefully reasoned analysis to support the new regulations and procedures. Additionally, it suggested the Bureau might prevent some problems by including the public in the development of the proper appraisal method. Public input would provide a broad basis upon which to make a reasonable final decision.

Public Participation in Developing a Proposed Rulemaking

On May 4, 1984, the Bureau of Land Management published in the Federal Register a notice of intent to propose rulemaking (49 FR 19048) requesting public comments on cost effective methods or procedures for estimating fair market rental payments. Comments were also requested concerning the application of market-derived formulas or schedules that could be applied on a State or regional basis. The notice stated that any suggested schedules or formulas should be applicable to linear right-of-way facilities crossing public lands and should result in rentals that are applied consistently for various right-of-way purposes. The notice of intent also suggested that the comments should reflect the legislative requirements established by the Federal Land Policy and Management Act and the Mineral Leasing Act, so as to reasonably estimate fair market rental value and result in cost effective implementation. The Forest Service requested similar information in a notice of intent to propose policy published in the Federal Register on April 20, 1984 (49 FR 16823).

A total of 28 comments were received in response to the notice of intent issued by the Bureau of Land Management and the Forest Service: 10 from companies related to oil and gas transportation, 6 from industry associations, 6 from electric utilities, 3 from State and other public agencies, and 1 from an individual.

In response to these comments, the Bureau of Land Management and the Forest Service cooperated on a second notice of intent to propose rulemaking which was published in the Federal Register on January 18, 1985 (50 FR 2697).

The second notice of intent described a proposed method for determining rental payments which would: (1) Use actual prices paid for similar right-of-way uses on private lands; (2) contain a reasonable adjustment to reflect differences in terms of conditions of "private" right-of-way easements and Federal right-of-way grants; (3) convert the adjusted right-of-way value to an annual rental by use of a readily obtainable market interest rate; and (4) provide a means for easily updating the information to maintain a current and usable schedule.

To gather and establish actual price data, the Bureau of Land Management and the Forest Service proposed to use market data surveys to establish right-of-way values by right-of-way type and geographic areas. To establish differences in value between the purchase of easements and a right-of-way grant across Federal lands, the Bureau of Land Management and the Forest Service indicated that they had considered three elements: (1) Annual va. one-time payments; (2) periodic adjustment of the annual payment; and (3) other terms and conditions.

The Bureau of Land Management and the Forest Service sought to determine if paying annual rentals reduced the value of the right-of-way grant when compared to the value of an easement purchased by paying a one-time price. Also considered was whether the annual payment should be adjusted to offset any loss in value.

Data are limited for comparing similar rights-of-way that were obtained by annual payments and a one-time purchase of the easement. However, analysis of the data available found that the method of payment did not affect the value of the easement to the purchaser.

Next, the Bureau of Land Management and the Forest Service looked at the effect of periodic adjustments in the annual payments for right-of-way grants on Federal lands and whether these adjustments argue for an adjustment in the annual payment. As a result of the analysis, the Bureau of Land Management and the Forest Service, using real estate financing techniques, proposed a downward adjustment of 20 percent in market value of a right-of-way grant on Federal lands to offset the effect of periodic adjustment of the annual payments.

Finally, the Bureau of Land Management and the Forest Service compared the restrictions and constraints of terms and conditions in right-of-way grants on Federal lands to those in easements purchased outright to determine the extent of adjustment in value of the Federal grant. The adjustment for the more restrictive conditions found in Federal grants was proposed as a 10 percent downward adjustment for those right-of-way grants made under the Federal Land Policy and Management Act and 15 percent for grants made under the Mineral Leasing Act.

The Bureau of Land Management and the Forest Service proposed the use of the 30-year Federal bond rate as of October 1 each year as the rate for converting the right-of-way value to an annual rental. Finally, the Bureau of Land Management and the Forest Service proposed updating the payment schedule by one of two alternatives: (1) Resampling the market data at least every five years; or (2) adjusting the schedule annually by the fluctuation in the 30-year bond rate and the Consumer Price Index.

The following illustrates how rental payments would be calculated by using this proposed method:

Formula: Annual rental payment = market value of the rights and privileges x factor for periodic adjustment of the annual payment x factor for terms and conditions x 30-year Federal bond rate.

Factors: Market value = $100; Periodic adjustment factor = 0.80 (20 percent discount); Terms and conditions factor = 0.90 (10 percent discount for Federal Land Policy and Management Act grants); 30-year Federal Bond rate = 10.85 percent.

Calculation: $100 × 0.80 × 0.90 × 0.1085 = $7.81 annual rental payment.

Analysis of Public Comments

In response to 13 requests for an extension of the comment period on the second notice of intent to propose rulemaking, the comment period was extended by publication of a notice of extension in the Federal Register on April 18, 1985 (50 FR 10998). A total of 37 comments were generated by the second notice of intent to propose rulemaking, with 19 from the oil and gas industry, 9 from the electric and phone utility industry, 4 from trade associations or ad hoc organizations, 2 from Federal sources, 2 from individuals and 1 from State or local governments.

The comments were very specific and contained recommendations applicable

to the payment calculation process proposed by the Bureau of Land Management and the Forest Service. Analysis of the comments pointed out the need for some modification of the first proposal. In developing this proposed rulemaking, both the Bureau of Land Management and the Forest Service gave careful consideration to all of the comments.

In addition, both the Department of the Interior and the Forest Service held meetings and discussions with holder and permittee representatives in and effort to seek an equitable resolution of holder's/permittee's concerns about the issues raised in the second notice of intent to propose rulemaking.

The following is a summary of the proposal contained in the second notice of intent to propose rulemaking, a summary of the comments on that notice, a summary of representative discussions, and, where applicable, a discussion of changes in the proposal set forth in the second notice of intent that resulted from consideration of the comments.

Right-of-Way Zone Determinations

The Bureau of Land Management and the Forest Service had proposed to complete a market survey to identify, if possible, zones of reasonably common purchase prices of easements. Upon determining common price zones, it was proposed to use that information to administratively select a single value for the zone by type of right-of-way and purchase price.

This proposal was discussed in most of the comments on the notice of intent to propose rulemaking. Industry comments suggested that land values be established locally by appraisers and that these values be restricted to the uses described in the Forest or Resource Management Plans, that these values then be adjusted to reflect the percentage of rights conveyed, and then that the values be reduced further by 40 to 90 percent to reflect the differences between a public grant and a private easement. This value amount then would be multiplied by 4 to 8 percent to reflect a rate of return for the lands, i.e., using a Resource Management Plan value of $100 per acre, adjusted downward by 50 percent to reflect rights conveyed, a further downward adjustment of 65 percent for the differences between a public grant and private easement, and applying a rate of return of 5 percent, the annual rental would be $0.88 an acre ($100×0.50×0.35× 0.05=$0.88).

The comments on the establishment of zones were mixed. Some of the comments preferred a "mean" price for a single zone, while other comments felt the establishment of "typical values" for specific areas would be more appropriate. The comments also were varied on the size of a zone. Many of the comments preferred large geographical zones, while other comments preferred small areas. A few of the comments recommended continuing with individual appraisals for each right-of-way grant. Most of the comments suggested that the zone values be based on land values rather than on one-time payment for purchases in the private market.

Based on these recommendations, the Department of the Interior has determined that rentals for linear right-of-way grants made by the Bureau of Land Management are to be based on the fair market value of the lands and will disregard those instances where private easements were acquired in the market in amounts exceeding the underlying land values. The Department believes the use of land values will provide a more consistent and equitable method for determining rental rates by eliminating the wide fluctuations which tend to occur with the acquisition of private easements.

Right-of-way zones presented in this proposed rulemaking are areas based on typical raw land values for the type of lands the Bureau of Land Management and Forest Service have in the past allowed and plan in the future to be occupied by linear rights-of-way. A corridor or window identified in the Management Plans, through which such uses must pass would be typical of the lands represented by the value zones.

The value of standing timber is not included in the value assigned to the zones because the timber is usually paid for separately and removed when the right-of-way grant is cleared.

A market survey was conducted by the Bureau of Land Management's State Office Chief Appraisers and their Forest Service Regional Office counterparts for the purpose of collecting data on what industry was paying for an easement. Part of the survey included estimating the land values for the lands covered by the easement. It is this information, together with additional information provided by the holder/permittee representatives that is used as a basis for establishing the right-of-way zones.

These right-of-way zones are not based on the values for urban or suburban residential areas, industrial parks, farms or orchards, recreation properties or other such types of lands. Also excluded from the zones are attractive public use areas such as lake frontage, stream frontage, scenic vista and scenic highway frontage areas because these areas are usually avoided when granting linear rights-of-way. No representation is made in this proposed rulemaking that the zones reflect the value of private lands or other ownership unless those lands are comparable with the lands typically occupied by a right-of-way grant or permit from the Bureau of Land Management or the Forest Service. Specific sites within the value zones may have actual values higher or lower than the value of the assigned zone.

The zones are established by State and County jurisdiction for administrative convenience.

The payment schedule that would be used by the proposed rulemaking is designed for use in calculating the annual rental for the majority of linear right-of-way grants made by the Bureau of Land Management and the Forest Service. However, the Agencies reserve the right to use individual appraisals or other valuation procedures to calculate rentals for those grants that have unique characteristics. As an example, right-of-way grants involving highly productive timber lands, industrial or residential development areas, developed recreational areas, lakeshore and streamside areas and areas with atypically high value (generally above $4,000 to $5,000 per acre) may be determined by the authorized officer to have unique characteristics.

Differential Adjustment

Annual vs. One-time Payment

Generally, all of the comments stated a preference for acquiring a perpetual grant by paying a one-time, lump sum payment at the time of acquisition. In support of this preference, the industry comments asserted that the cost of billing on an individual basis instead of a company basis often exceeds the amount of rental. The comments also expressed the view that the law and regulations should be changed to allow the issuance of a perpetual easement for a lump sum payment. Many of the comments requested that a discount be applied to any lump sum payment.

Existing regulations provide that when the annual rental is less than $100, the agency may require that the payment be made for a five-year or longer period. In addition, the existing regulations allow prepayment for any number of years, regardless of the amount of the annual rental, subject to the Bureau of Land Management's being able to periodically adjust the rental (generally, at five-year intervals) and collect or refund any difference in the rental. The proposed rulemaking would

continue the authority of the authorized officer to require payment of rentals of less than $100 per year in five-year increments. The proposed rulemaking also would permit a holder/permittee to pay rental up to five years in advance, with the annual rental set for that five-year period, but at the end of the five-year term, the then current rental set for use of a grant/permit in that zone would be applicable.

To assist in reducing the administrative costs of the holder's/permittee's and the United States, the Bureau of Land Management would, once the payment system contained in this proposed rulemaking is in place, provide holders/permittees of multiple right-of-way grants with a single annual billing for all such right-of-way grants within the jurisdiction of a Bureau State office.

Annual Payment Schedule Adjustment

Two methods for maintaining an updated rental payment schedule were originally proposed in the second notice of intent to propose rulemaking. One method was to resample the market data at least every five years and the other was to adjust the schedule annually by the degree of fluctuation in the 30-year bond rate and the Consumer Price Index.

A majority of the comments on the two methods expressed the view that use of the Consumer Price Index would not accurately reflect changes in the market value of land. Some of the comments suggested that a new market analysis of land values in each zone was needed every five to ten years to properly update the payment schedule. In addition, several of the comments suggested the use of the Department of Agriculture's Farm Real Estate Market Developments annual report as an alternative basis for updating the payment schedule.

A number of the comments favored periodic adjustment of rental payments, with a recommendation that the update be made at five-year or less intervals. Based on past experience with reappraisals on five-year intervals, an annual adjustment was selected in order to better maintain a payment schedule which would reflect current values and reduce administrative costs of making appraisals.

After careful review of several indexes, the proposed rulemaking would provide that the per acre rental payments in the schedule, which are a function of both land values and interest rates, will be adjusted annually by multiplying the current year per acre rental by the annual change, third quarter to third quarter, in the Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis. This index provides users protection from rising prices and eliminates wide swings in rates which often result in appeals.

To assure that the rentals accurately reflect the rental value of the lands, the basis for each of the elements used in the original formula to calculate the per acre rental values shall be reviewed when the cumulative change in the Implicit Price Deflator Index exceeds plus or minus 30 percent, or a cumulative change in the one-year Treasury securities "Constant Maturity" rate exceeds plus or minus 50 percent. This review is for the purpose of determining whether market conditions and business practices have varied sufficiently from the index to warrant a revision in the elements or the complete formula.

Under this system, the rental for the ensuing calendar year for any single right-of-way grant or temporary use permit will be the rental per acre from the payment schedule times the number of acres embraced in right-of-way rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in section 2803.1–2 of this proposed rulemaking.

Imposition of New Rates

The new rental payments provided in this proposed rulemaking would be effective for grants and permits issued subsequent to the effective date of the final rulemaking. These new rental payments would become effective for existing grants or permits when they are scheduled for review and possible payment adjustment. In the past, this generally has been on a five-year rotation. The proposed rulemaking would provide for advance notification of adjustment before any conversion to this schedule is made.

In those situations where grants or permits were issued with the annual rental subject to future determinations (section 2803.1–2(b)), the new payment schedule would be applied with an appropriate adjustment back to the date of issuance of the grant by using the index discussed earlier in this preamble. Where a previous increase in the annual rental was appealed by the holder/permittee, the application of the new rental rate would be in accordance with the final decision on the appeal.

For existing right-of-way grants, where the increase in the annual rental would exceed $100 and the increase in rental would be in excess of 100 percent, the amount of the new rental in excess of the 100 percent increase would be phased in by equal increments, plus an annual adjustment, over a three-year period. As an example of how this process would work, assume a current rental of $100 per year, a new rental of $500 per year, and an annual adjustment of plus 2 percent, then the payments would be as follows:

Year	Last year fee		First 100% increase		⅓ of increase balance		Annual adjustment		Current fee
1	$100	+	$100	+	$100	+	$0	=	$300
2	300	+	0	+	100	+	10	=	410
3	410	+	0	+	100	+	10	=	520

Other Terms and Conditions

To provide for the differences between a Federal and private right-of-way grant, the January 1985 notice of intent to propose rulemaking used a 15 percent adjustment for right-of-way grants made under the Mineral Leasing Act, and 10 percent adjustment for grants made under the Federal Land Policy and Management Act. The Mineral Leasing Act adjustment was greater than that for right-of-way grants made under the Federal Land Policy and Management Act due to additional statutory requirements, for example the common carrier provision and relocation requirements, that are not required for grants under the Federal Land Policy and Management Act. This adjustment was the greatest point of concern in the comments on the notice of intent. Some of the comments provided data based on cost of acquisition or construction by which they measured the differences between a Federal and private right-of-way grant. Most of the comments indicated that the adjustment for a Federal right-of-way grant should be not less than 40 percent; with some of the comments recommending adjustments ranging up to 100 percent for certain categories of right-of-way grants. Other comments expressed the view that there should be no adjustment made for the difference between Federal and private right-of-way grants.

Some of the comments recommended changes in the grant made by the United States in order to eliminate the perceived differences between Federal

and private right-of-way grants. The changes proposed in the comments included allowing perpetual easements, developing master permits common to both the Bureau of Land Management and the Forest Service, deletion of the requirement that a holder/permittee must relocate facilities at its expense as a result of a management decision by the agency, and permitting reassignment of permits without the Bureau of Land Management or the Forest Service being able to include new requirements.

After reviewing the comments and the Mineral Leasing Act and the Federal Land Policy and Management Act, the proposed rulemaking would make changes in the existing requirements for relocation cost to the holder/permittee and assignability of a grant or permit. Under this proposed rulemaking, the requirement for relocation at the holder's/permittee's expense would be removed and the assignment provisions would be amended to allow existing grants or permits to be assigned to qualified parties without change in terms and conditions of the grant or permit other than bonding requirements. These two changes would not be applicable to grants or permits that are exempt from the payment of fair market value rental, such as Rural Electrification Act financed facilities.

A number of comments suggested that additional requirements imposed on right-of-way grants on public lands, such as archeological studies, painting structures and seeding, are costly, unreasonable and, therefore, should be modified. Many of the requirements discussed in the comments are statutory requirements that cannot be changed through the rulemaking process and the proposed rulemaking takes no action on them.

Conclusion

The comments addressed above were primarily directed at the use of the market survey data base. The decision to change from a market survey data base to a land value base in this proposed rulemaking meets the objections raised in a majority of the comments on the intent to propose rulemaking.

The right-of-way grant and temporary use granted by the United States are not in fee ownership and the real estate market shows that, in most instances, the acquisition of a grant that is less than a fee grant make it less valuable than the granting of a fee. The real estate market is not sufficiently refined that it can accurately measure in exact dollars or percentages the value of a grant or permit that is for less than full fee. In arriving at the adjustment concept used in this proposed rulemaking, professional judgment and all available data, including comments received on the notices of intent to propose rulemaking, discussions with permittee representatives and the impact of a grant or permit on the lands and their resources.

For right-of-way grants and temporary use permits for electric transmission and distribution lines, telephone lines and similar uses, a 30 percent adjustment has been proposed. The impact on the lands and their management made by energy pipelines, ditches, canals and roads, as a whole, is more severe than it is for electrical, telephone and other similar right-of-way grants. For this latter type of right-of-way grant, a 20 percent adjustment has been proposed.

For these reasons, the Department of the Interior proposes to charge 80 percent of the zone right-of-way grants for energy pipelines, ditches, canals and roads and 70 percent for electrical transmission, electrical distribution, telephone and other similar linear right-of-way grants.

Calculation of Annual Rental from Adjusted Right-of-Way Zone Value

The January 1985 notice of intent to proposed rulemaking recommended using the 30-year Federal Bond rate as of October 1 of each year as the applicable rate for converting the right-of-way zone value to an annual rental. The comments on this proposal were varied in their view as to what rate should be used, with most of the comments opposing the use of long-term financial rates on the basis that they do not reflect periodic adjustment in rentals. Some of the comments felt a Federal bond rate would be appropriate for use if it coincided with the payment term. Other comments expressed the view that the rate of return must be drawn from the land market relevant to the right-of-way, a view that has been accepted by the proposed rulemaking. Almost all of the comments supported a range of from 4 to 8 percent as the rate that should be used.

The proposed rulemaking would use the current one-year Treasury Securities "Constant Maturity" rate as published by the Federal Reserve in the statistical release report H. 15 (519) as the basis for calculating the annual rental for a right-of-way grant. Thereafter, annual adjustments in the rental would be made using the Implicit Price Deflator Index effective at the end of the third quarter of each year.

Other Issues Raised in the Comments

Should All Utilities Be Exempt for Rentals

Several of the comments suggested that private investor owned utilities should be exempt from paying rental for right-of-way grants on Federal lands. The Federal Land Policy and Management Act provides authority for waiver of rental fees, when equitable and in the public interest, for right-of-way grants to: Federal, State or local governments or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by a profit making corporation or business entity; to holders who provide, without charge, or at a reduced charge, a valuable benefit to the public or to the programs of the Secretary of the Interior or of Agriculture; or to a holder in connection with the authorized use or occupancy of Federal lands for which the United States is already receiving compensation, including free use.

Numerous administrative appeal decisions have affirmed the position that no reduction of waiver of payments is appropriate for organizations whose principal source of revenue is customer charges. The legislative history of section 504(g) of the Federal Land Policy and Management Act reveals that the Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Several of the comments pointed out the decisions of the United States Court of Appeals for the Tenth Circuit in *Beaver, Bountiful, Enterprise* v. *Andrus*, 637 F. 2nd 749 (1980), and expressed the view that the decision exempted all municipalities and other entities, including private investor utilities, from the payment of rental because the lands and resources utilized would continue to serve the general public. This view is incorrect in that the Court ruled that the plaintiffs, as local governmental entities were exempt from paying application processing costs under the Bureau of Land Management regulations in effect at that time. The Court did not rule on the question of whether private investor utilities should be exempt from the payment of annual rental.

Several of the comments expressed the view that the Act of May 25, 1984 (98 Stat 215), which amended the Federal Land Policy and Management Act to exempt electric and telephone facilities financed under the Rural Electrification Act from the payment of rental right-of-way grants on Federal lands, also

exempted public utilities from the payment of rental. This view is not supported by the provisions of that Act which specifically provides an exemption from rental only for facilities financed under the Rural Electrification Act or extensions of those facilities. Therefore, public utilities not financed under the Rural Electrification Act are not exempt from the requirement for the payment of an annual rental.

Unauthorized Double Charge

Some of the comments expressed the view that the requirement to pay both an annual rental and the costs of processing and monitoring the right-of-way grant or temporary use permit is an unauthorized double charge on an applicant/holder and suggested that this situation should be resolved by providing for an offset in one area for payments made in the other area. Both the Mineral Leasing Act and the Federal Land Policy and Management Act provide for the collection of both the costs connected with the processing and monitoring of grants or permits and the annual rental that reflects fair market value for the use of the Federal lands covered by a grant or permit.

Cooperative Relations

The holder/permittee representatives requested that the proposed rulemaking contain a provision requiring the Bureau of Land Management and the Forest Service to maintain cooperative relations with user groups. The Bureau of Land Management agrees that it is important to maintain a cooperative relationship with users of linear right-of-way grants across Federal lands and will continue to work closely with various user groups to resolve long standing issues, reduce administrative costs and improve the efficiency of the Federal right-of-way system. However, the proposed rulemaking does not contain such a requirement.

Summary of Proposed Rental Payment Procedure

Using data from the market survey and information obtained from holders, a right-of-way value zone map has been prepared. The right-of-way zone value was adjusted downward by 20 percent for energy pipelines, ditches, canals and roads and 30 percent for all other linear right-of-way uses. This adjusted value was then multiplied by the 1-year Treasury Securities "Constant Maturity" rate to arrive at the annual per acre rental payment for each value zone. A 7.07 percent rate has been used as the interest rate. The final rulemaking will be based on the rate at the time of finalization. The following sets out the process used in calculating the rental fees used in this proposed rulemaking:

Formula: Rental payment/acre=Right-of-way zone value×differential adjustment×1-year Treasury Security rate.

Factors: Zone value=$100/acre; differential adjustment of 20 percent for energy pipelines, etc., and of 30 percent for others; 1-year Treasury Securities rate=7.07 percent (as of March 7, 1986).

Calculation.

Energy pipelines, etc.: $100/acre×0.80×.0707=$5.66/acre rental payment.

Other right-of-way grants: $100/acre×0.70×.0707=$4.95/acre rental payment.

The proposed payment schedule by State, county and type of linear right-of-way use resulting from the above formula as it applies to right-of-way zone values is shown on tables that can be obtained from the "Address section" shown at the beginning of the preamble to this proposed rulemaking.

Competitive Bidding

In considering fair market rental value, it is recognized that competitive interest may exist for such uses as communications sites, wind farms and similar type site uses where the number of potential sites is limited. The existing regulations do not contain competitive bidding procedures. This proposed rulemaking contains provisions that would develop a specific process for issuing right-of-way grants on a competitive basis. Where a competitive interest is identified through the Bureau of Land Management's land use planning system or through indications of public interest, the authorized officer would be authorized to issue a notice indicatng the availability of the lands and the proposed use, and offer a right-of-way under terms and conditions specified in the notice.

The principal author of this proposed rulemaking is Theodore Bingham, Division of Rights-of-Way, assisted by the staff of the Assistant Director, Land and Renewable Resources and the staff of the Division of Legislation and Regulatory Management, all part of the Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes that would be made by this proposed rulemaking will not, when the rental payments for all right-of-way grants and temporary use permits are considered, substantially increase the payments made by holders/permittees.

The changes that would be made by this proposed rulemaking should make the rental procedures used by the Bureau of Land Management more efficient and equitable, while more accurately assuring receipt of fair market value. The changes made by this proposed rulemaking will be equally applicable to all entities that receive right-of-way or permit grants from the Bureau of Land Management for use of the Federal lands for such right-of-way purposes.

There are no additional information collection requirements in this proposed rulemaking requiring approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

43 CFR Part 2880

Administrative practice and procedure, Common carriers, Oil and gas industry, Pipelines, Pubic lands—rights-of-way.

Under the authority of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771) and section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), it is proposed to amend Parts 2800 and 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 2800—[AMENDED]

1. The authority citation for Part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

2. Section 2803.1–2 is revised to read:

§ 2803.1–2 Rental.

(a) The holder of a right-of-way grant or temporary use permit shall pay annually, in advance, except as provided in paragraph (b) of this section, the fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices. Annual rent billing periods

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shall be set or adjusted to coincide with the calendar year by proration on the basis of 12 months; the initial month shall not be counted for right-of-way grants or temporary use permits having an anniversary date of the 15th or later in the month. Rental shall be determined in accordance with the provisions of paragraph (c) of this section; provided, however, that the minimum rental under paragaph (c)(1) shall not be less than the annual payment required by the schedule for 1 acre; provided, further, that in those instances where the annual payment if $100 or less, the authorized officer may require an advance lump sum payment for 5 years.

(b) The following officer may reduce or waive the rental payment under the following circumstances:

(1) The holder is a Federal, State or local government or agency or instrumentality thereof, except municipal utilities and cooperatives whose principle source of revenue is customer charges;

(2) The holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise;

(3) The holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary;

(4) The facilities constructed on the right-of-way are or were financed in whole or in part under the Rural Electrification Act of 1936, as amended, or are extensions from such Rural Electrification Act financed facilities;

(5) The right-of-way was or is issued pursuant to a statute that did or does not require the payment of rental;

(6) The holder holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under part 2880 of this title; and:

(i) Needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; or

(ii) Needs a right-of-way across the public lands outside the permit, lease, license or contract area in order to reach said area;

(7) With the concurrence of the State Director, the authorized officer, after consultation with an applicant/holder, determines that the requirement to pay the full rental will cause undue hardship on the holder/applicant and that it is in the public interest to reduce or waive said rental. In order to complete such consultation, the State Director may require the applicant/holder to submit data, information and other written material in support of a proposed finding that the right-of-way grant or temporary use permit qualifies for a reduction or waiver of rental; and

(8) A right-of-way involves a cost share road or reciprocal right-of-way agreement not subject to part 2812 of this title. Any fair market value rental required to be paid under this paragraph shall be determined by the proportion of use.

(c)(1)(i) Except for those linear right-of-way grants or temporary use permits that the authorized officer determines to have unique characteristics, an applicant shall, prior to the issuance of a linear right-of-way grant or temporary use permit, submit an annual rental payment in advance for such right-of-way grant or temporary use permit in accordance with the following schedule:

Zone	Rental per acre	
	Energy pipelines, roads, ditches & canals	All others
I	$2.83	$2.47
II	5.66	4.95
III	11.31	9.90
IV	16.97	14.85
V	22.62	19.80
VI	28.28	24.75
VII	33.94	29.69
VIII	56.56	49.49

A listing of rental per acre, by State and County, which will be updated annually, is available from any Bureau State or District office or may be obtained by writing: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street, NW., Washington, D.C. 20240.

(ii) The schedule will be adjusted annually by multiplying the current year's rental per acre by the annual change, from the last Friday in September to the last Friday in the following September, in the Gross National Product Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis.

(iii) At such times as the cumulative change in the index used in subparagraph (ii) of this paragraph exceeds 30 percent or the change in the interest rate exceeds plus or minus 50 percent, the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures.

(iv) Rental for the ensuring calendar year for any single right-of-way grant or temporary use permit shall be the rental per acre times the number of acres embraced in the grant or permit, rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in paragraph (b) of this section.

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder.

(ii) Where the increase in annual rental exceeds $100 and is more than a 100 percent increase over the current rental, the new annual rental in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3-year period.

(3)(i) The rental for linear right-of-way grants and temporary use permits not covered by the schedule set out above in this paragraph, including those the authorized officer determines under paragraph (c)(1) of this section to have unique characteristics, and for non-linear-right-of-way grants and temporary use permits (e.g., communications sites, reservoir sites, plant sites and storage sites) shall be determined by the authorized officer and paid annually in advance. Said rental shall be based on either a market survey of comparable rentals, or on an application of the rental from the schedule provided in this paragraph where appropriate, or on a value determination for specific parcels or groups of parcels unless such rental is reduced or waived as provided in paragraph (b) of this section. Where the authorized officer determines that a competitive interest exists for right-of-way grants such as wind farms, communications sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1–3 of this title.

(ii) To expedite the processing of any grant or permit coverd by paragraph (c)(3) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit shall be adjusted according to the final fair market rental value determination.

(4) Decisions on rental determinations are subject to appeal under subpart 2804 of this title.

(5) Upon the holder's written request, rentals may be prepaid for 5 years in advance.

(d) If the rental required by this section is not paid when due, and such default continues for 30 days after notice, action may be taken to terminate the right-of-way grant or temporary use

permit. After default has occurred, no structures, buildings or other equipment may be removed from the subservient lands except upon written permission from the authorized officer.

3. Sections 2803.1–3 and 2803.1–4 are renumbered §§ 2803.1–4 and 2803.1–5, respectively.

4. A new § 2803.1–3 is added to read:

§ 2803.1–3 Competitive bidding.

(a) Where, as a result of the land use planning process or indications of public interest, the desirability of allowing use of the public lands for right-of-way purposes or providing increased service to the public from such use of the public lands is demonstrated to the satisfaction of the authorized officer and no equities, such as prior use of the lands, warrant noncompetitive land use authorization, the authorized officer may identify a right-of-way use for the public lands and notify the public through publication of a notice of realty action as required by paragraph (b)(1) of this section that proposals for utilizing the public lands through a right-of-way will be considered. A right-of-way grant shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offer. Each bid shall be accompanied by the information required by the notice of realty action and a statement over the signature of the bidder or anyone authorized to sign for the bidder that he/she is in compliance with the requirements of the law and these regulations. A bid of less than the fair market rental value of the lands offered shall not be considered.

(b) The offering of public lands for right-of-way use under competitive bidding procedures shall be conducted in accordance with the following:

(1)(i) A notice of realty action indicating the availability of public lands for competitive right-of-way offering shall be published in the **Federal Register** and at least once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the public lands are situated or in such other publication as the authorized officer may determine. The successful qualified bidder shall, prior to the issuance of the right-of-way grant, pay his/her proportionate share of the total cost of publication.

(ii) The notice of realty action shall include the use proposed for the public lands and the time, date and place of the offering, including a description of the lands being offered, terms and conditions of the grant(s), the minimum acceptable bid for rental and/or royalty rates, bidding requirements, payment required, where bid forms may be obtained, the form in which the bids shall be submitted and any other information or requirements determined appropriate by the authorized officer.

(2) Bids may be made either by a principal or duly qualified agent.

(3) All sealed bids shall be opened at the time and date specified in the notice of realty action, but no bids shall be accepted or rejected at that time. The right to reject any and all bids is reserved. Only those bids received by the close of business on the day prior to the sale or at such other time stated in the notice of realty action and made for at least the minimum acceptable bid shall be considered. Each bid shall be accompanied by U.S. currency or certified check, postal money order, bank draft or cashier's check payable in U.S. currency and made payable to the Department of the Interior—Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice of realty action. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(4) In the event the authorized officer rejects the highest qualified bid or releases the bidder from such bid, the authorized officer shall determine whether the public lands involved in the offering shall be offered to the next highest bidder, withdrawn from the market or reoffered.

(5) If the highest qualified bid is accepted by the authorized officer, the grant form(s) shall be forwarded to the qualifying bidder for signing. The signed grant form(s) with the payment of the balance of the first year's rental and the publication costs shall be returned within 30 days of its receipt by the highest qualified bidder and shall qualify as acceptance of the right-of-way grant(s).

(6) If the successful qualified bidder fails to execute the grant form(s) and pay the balance of the rental payment and the costs of publication within the allowed time, or otherwise fails to comply with the regulations of this subpart, the one-fifth remittance accompanying the bid shall be forfeited.

§ 2803.6–3 [Amended]

5. Section 2803.6–3 is amended by removing from where it appears in the next to last sentence the phrase "plus any additional terms and conditions and any special stipulations that the authorized officer may impose" and adding at the end of the section a new sentence "The authorized officer may, at the time of approval of the assignment, modify or add bonding requirements."

6. Section 2803.6–4 is revised to read:

§ 2803.6–4 Reimbursement of costs for assignments.

(a) All filings for assignments, except as provided in paragraph (b) of this section, made pursuant to this section shall be accompanied by a nonrefundable payment of $50 from the assignor. Exceptions for a nonrefundable payment for an assignment are the same as in § 2803.1 of this title.

(b) Where a holder assigns more than 1 right-of-way grant as a single action, the authorized officer may, due to economies of scale, set a nonrefundable fee of less than $50 per assignment.

PART 2880—[AMENDED]

7. The authority citation for part 2880 continues to read:

Authority: 30 U.S.C. 185, unless otherwise noted.

§ 2881.1–1 [Amended]

8. Section 2881.1–1(g) is amended by removing the period at the end of the last sentence thereof and adding the phrase ", except that where a holder assigns more than 1 right-of-way grant as part of a single action, the authorized officer, due to economies of scale, may set a fee of less than $50 per assignment."

§ 2881.2 [Amended]

9. Section 2881.2 is amended by removing paragraph (a)(2) in its entirety and redesignating the existing paragraphs (a) (3), (4), and (5) as paragraphs (a) (2), (3), and (4), respectively.

§ 2883.1–2 [Amended]

10. Section 2883.1–2 is amended by removing from where it appears the citation "§ 2803.1–2(c)" and replacing it with the citation "§ 2803.1–2(b)".

August 18, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

Note: The following will not appear in the Code of Federal Regulations.

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Alabama: All counties	$22.62	$19.80
Arizona:		
Apache	5.66	4.95
Coconino, north of the Colorado River		
Cochise		
Gila		
Graham		
La Paz		
Mohave		
Navajo		
Pima		
Yavapai		
Yuma		
Coconino, south of the Colorado River	22.62	19.80
Greenlee		
Maricopa		
Pinal		
Santa Cruz		
Arkansas: All counties	16.97	14.85
California:		
Imperial	11.31	9.90
Inyo		
Lassen		
Modoc		
Riverside		
San Bernardino		
Siskiyou	16.97	14.85
Alameda	28.28	24.75
Alpine		
Amador		
Butte		
Calaveras		
Colusa		
Contra Costa		
Del Norte		
El Dorado		
Fresno		
Glenn		
Humbolt		
Kern		
Kings		
Lake		
Madera		
Mariposa		
Mendicino		
Merced		
Mono		
Napa		
Nevada		
Placer		
Plumas		
Sacramento		
San Benito		
San Joaquin		
Santa Clara		
Shasta		
Sierra		
Solano		
Sonoma		
Stanislaus		
Sutter		
Tehama		
Toulumne		
Trinty		
Tulare		
Yolo		
Yuba		
Los Angeles	33.94	29.69
Marin		
Monterey		
Orange		
San Diego		
San Francisco		
San Luis Obispo		
San Mateo		
Santa Barbara		
Santa Cruz		
Ventura		
Colorado:		
Adams	5.66	4.95
Arapahoe		
Bent		
Cheyenne		
Crowley		
Elbert		
El Paso		
Huerfano		
Kiowa		
Kit Carson		
Lincoln		
Logan		
Moffat		
Montezuma		
Morgan		
Pueblo		
Sedgewick		
Washington		
Weld		
Yuma		
Baca	11.31	9.90
Dolores		
Garfield		
Las Animas		
Mesa		
Montrose		
Otero		
Prowers		
Rio Blanco		
Routt		
San Miguel		
Alamosa	22.62	19.80
Archuleta		
Boulder		
Chaffee		
Clear Creek		
Conejos		
Costilla		
Custer		
Delta		
Denver		
Douglas		
Eagle		
Fremont		
Gilpin		
Grand		
Gunnison		
Hinsdale		
Jackson		
Jefferson		
Lake		
La Plata		
Larimer		
Mineral		
Ouray		
Park		
Pitkin		
Rio Grande		
Saguache		
San Juan		
Summit		
Teller		
Connecticut: All counties	5.66	4.95
Delaware: All counties	5.66	4.95
Florida:		
Baker	33.94	29.69
Bay		
Bradford		
Calhoun		
Clay		
Columbia		
Dixie		
Duval		
Escambia		
Franklin		
Gadsden		
Gilchrist		
Gulf		
Hamilton		
Holmes		
Jackson		
Jefferson		
Lafayette		
Leon		
Liberty		
Madison		
Nassau		
Okaloosa		
Santa Rosa		
Suwannee		
Taylor		
Union		
Wakulla		
Walton		
Washington		
All other counties	56.56	49.49
Georgia:		
All counties	33.94	29.69
Idaho:		
Cassia	5.66	4.95
Gooding		
Jerome		
Lincoln		
Minidoka		
Oneida		
Owyhee		
Power		
Twin Falls		
Ada	16.97	14.85
Adams		
Bannock		
Bear Lake		
Benewah		
Bingham		
Blaine		
Boise		
Bonner		
Bonneville		
Boundary		
Butte		
Camas		
Canyon		
Caribou		
Clark		
Clearwater		
Custer		
Elmore		
Franklin		
Fremont		
Gem		
Idaho		
Jefferson		
Kootenai		
Latah		
Lemhi		
Lewis		
Madison		
Nez Perce		
Payette		
Shoshone		
Teton		
Valley		
Washington		
Illinois: All counties	16.97	14.85
Indiana: All counties	28.28	24.75
Iowa: All counties	16.97	14.85
Kansas:		
Morton	11.31	9.90
All other counties	5.66	4.95
Kentucky: All counties	16.97	14.85
Louisiana: All counties	33.94	29.69
Maine: All counties	16.97	14.85
Maryland: All counties	5.66	4.95
Massachusetts: All counties	5.66	4.95
Michigan:		
Alger	16.97	14.85
Barga		
Chippewa		
Delta		
Dickinson		
Gogebic		
Houghton		
Iron		
Keweenaw		
Luce		
Mackinac		
Marquette		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—Continued

[Dollars/Acre/Year]

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—Continued

[Dollars/Acre/Year]

VOL 51 ISS 172 SE 5 1986 UMI

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—Continued

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Menominee		
Ontonagon		
Schoolcraft		
All other counties	22.62	19.80
Minnesota: All counties	16.97	14.85
Mississippi: All counties	22.62	19.80
Missouri: All counties	16.97	14.85
Montana:		
Big Horn	5.66	4.95
Blaine		
Carter		
Cascade		
Chouteau		
Custer		
Daniels		
Dawson		
Fallon		
Fergus		
Garfield		
Glacier		
Golden Valley		
Hill		
Judith Basin		
Liberty		
McCone		
Meagher		
Musselshell		
Petroleum		
Phillips		
Pondera		
Powder River		
Prairie		
Richland		
Roosevelt		
Rosebud		
Sheridan		
Teton		
Toole		
Treasure		
Valley		
Wheatland		
Wibaux		
Yellowstone		
Beaverland	16.97	14.85
Broadwater		
Carbon		
Deer Lodge		
Flathead		
Gallatin		
Granite		
Jefferson		
Lake		
Lewis and Clark		
Lincoln		
Madison		
Mineral		
Missoula		
Park		
Powell		
Ravalli		
Sanders		
Silver Bow		
Stillwater		
Sweet Grass		
Nebraska: All counties	5.66	4.95
Nevada:		
Churchill	2.83	2.47
Elko		
Esmeralda		
Eureka		
Humboldt		
Lander		
Lincoln		
Lyon		
Mineral		
Nye		
Pershing		
Washoe		
White Pine		
Clark	11.31	9.90
Carson City	28.26	24.75
Douglas		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—Continued

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Story		
New Hampshire: All counties	16.97	14.85
New Jersey: All counties	5.66	4.95
New Mexico:		
Chaves	5.66	4.95
Curry		
De Baca		
Dona Ana		
Eddy		
Grant		
Guadalupe		
Harding		
Hidalgo		
Lea		
Luna		
McKinley		
Otero		
Quay		
Rossevelt		
San Juan		
Socorro		
Torrence		
Rio Arriba	11.31	9.90
San Doval		
Union		
Bernalillo	22.62	19.80
Catron		
Cibola		
Colfax		
Lincoln		
Los Alamos		
San Miguel		
Santa Fe		
Sierra		
Taos		
Valencia		
New York: All counties	22.62	19.80
North Carolina: All counties	33.94	29.69
North Dakota: All counties	5.66	4.95
Ohio: All counties	22.62	19.80
Oklahoma:		
Beaver	11.31	9.90
Cimmaron		
Roger Mills		
Texas		
Le Flore	16.97	14.85
McCurtain		
All other counties	5.66	4.95
Oregon:		
Harney	5.66	4.95
Lake		
Malheur		
Baker	11.31	9.90
Crook		
Deschutes		
Gilliam		
Grant		
Jefferson		
Klamath		
Morrow		
Sherman		
Umatilla		
Union		
Wallowa		
Wasco		
Wheeler		
Coos	16.97	14.85
Curry		
Douglas		
Jackson		
Josephine		
Benton	22.62	19.80
Clackamas		
Clatsop		
Columbia		
Hood River		
Lane		
Lincoln		
Linn		
Marion		
Multnomah		
Polk		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—Continued

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Tillamook		
Washington		
Yamhill		
Pennsylvania: All counties	22.62	19.80
Puerto Rico: All	33.94	29.69
Rhode Island: All counties	5.66	4.95
South Carolina: All counties	33.94	29.69
South Dakota:		
Butte	16.95	14.85
Custer		
Fall River		
Lawrence		
Meade		
Pennington		
All other counties	5.66	4.95
Tennessee: All counties	22.62	19.80
Texas:		
Culberson	5.66	4.95
El Paso		
Hudspeth		
All other counties	33.94	29.69
Utah:		
Beaver	5.66	4.95
Box Elder		
Carbon		
Duchesne		
Emery		
Garfield		
Grand		
Iron		
Jaub		
Kane		
Millard		
San Juan		
Tooele		
Unitah		
Wayne		
Washington	11.31	9.90
Cache	16.97	14.85
Daggett		
Davis		
Morgan		
Piute		
Rich		
Salt Lake		
Sanpete		
Sevier		
Summit		
Utah		
Wasatch		
Weber		
Vermont: All counties	22.62	19.80
Virginia: All counties	22.62	19.80
Washington:		
Adams	11.31	9.90
Asotin		
Benton		
Chelan		
Columbia		
Douglas		
Franklin		
Garfield		
Grant		
Kittitas		
Klickitat		
Lincoln		
Okanagan		
Spokane		
Walla Walla		
Whitman		
Yakima		
Ferry	16.97	14.85
Pend Oreille		
Stevens		
Clallam	22.62	19.80
Clark		
Cowlitz		
Grays Harbor		
Island		
Jefferson		
King		
Kitsap		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—Continued

(Dollars/Acre/Year)

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Lewis		
Mason		
Pacific		
Pierce		
San Juan		
Skagit		
Skamania		
Snohomish		
Thurston		
Wahkiakum		
Whatcom		
West Virginia: All counties	22.62	19.80
Wisconsin: All counties	16.97	14.85
Wyoming:		
Albany	5.66	4.95
Campbell		
Carbon		
Converse		
Fremont		
Goshen		
Johnson		
Laramie		
Lincoln		
Natrona		
Niobrara		
Platte		
Sheridan		
Sublette		
Sweetwater		
Uinta		
Big Horn	16.97	14.85
Crook		
Hot Springs		
Park		
Washakie		
Weston		
Teton		

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Friday
September 5, 1986

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order; Final Rule

VOL 51 ISS 172 SE 5 1986 UMI

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Pork Promotion, Research, and Consumer Information Act of 1985, approved December 23, 1985 (7 U.S.C. 4801–4819), authorizes the establishment of a national, industry-funded and operated pork promotion, research, and consumer information program. On February 14, 1986, the Agricultural Marketing Service (AMS) published an invitation to submit proposals for a pork promotion, research, and consumer information order. AMS received an industry proposal which was published for public comment in the March 19, 1986, issue of the **Federal Register**. Additionally, a public meeting was held April 21, 1986, to facilitate a better understanding of the proposed order and to solicit comments on the proposal.

After evaluation of the comments, the transcript of the public meeting, and other available material, it has been determined that, with minor modifications, the proposed order and all terms and conditions thereof will assist in carrying out the Act. Accordingly, the proposed order, with minor modifications, has been adopted as a final rule.

DATES: This final rule is effective September 5, 1986, except that § 1230.71, which provides for the collection of assessments, will be effective November 1, 1986, and the collection of assessments shall begin on that date.

ADDRESS: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610–S, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Invitation to submit proposals, published February 14, 1986, (51 FR 5542).

Proposed Rule—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body, published February 21, 1986, (51 FR 6255).

Final Rule—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body, published April 4, 1986, (51 FR 11553).

Proposed Rule—Pork Promotion, Research, and Consumer Information Order, published March 19, 1986, (51 FR 9602).

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1, and is hereby classified as a nonmajor rule because the annual economic impact will be less than $100 million. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) (7 U.S.C. 4801 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand foreign and domestic markets and uses for pork and pork products. This program will be financed by assessments on domestic and imported porcine animals (swine) and on imported pork and pork products. The initial assessment rate will be 0.25 percent of the value of porcine animals or the equivalent thereof in the case of imported pork and pork products. For imported porcine animals, pork and pork products, the assessment will be collected at the time of importation. For porcine animals sold in the United States, the assessment will be collected the first time an animal is sold in each of the categories established by the Act and the order. The categories are feeder pigs, market hogs, and breeding stock. For example, a feeder pig sold by the original owner will be subject to an assessment, and the same animal will be subject to an assessment when sold for slaughter. However, if that animal were sold twice as a feeder pig, it would not be subject to an assessment for the second sale as a feeder pig. The Act also provides authority to require certain records and reports which are necessary to administer the program.

The Act specifies in detail required terms which must be included in the order. It also authorizes the Secretary to include such terms and conditions, not inconsistent with the provisions of the Act, as are necessary to effectuate the other provisions of the order. The Act is very specific in certain areas, such as the procedure for issuing an order, composition of the Delegate Body and the Board, powers and duties of the Delegate Body and the Board, source and collection of funds, level of assessment, and referendum requirements.

The Act provides that after notice and opportunity for public comment, the Secretary shall issue a pork promotion, research, and consumer information order, if the Secretary finds that the order and all terms and conditions thereof will assist in carrying out the Act.

The Act also requires the Secretary to conduct a referendum among producers and importers not earlier than 24 nor later than 30 months after the issuance of the order to determine whether a majority of those voting favor continuation of the program under the order. Prior to the approval of the continuation of the order, any person who pays an assessment and who does not support the program established under the Act may receive a full refund by making a written request to the Board within 30 days from the end of the month in which the assessment was paid. The Secretary is also authorized to conduct periodic referenda to determine whether a termination or suspension of the order is warranted.

Information available to the Department indicates that nearly all pork producers can be classified as small businesses. Additionally, a substantial number of the auction markets, dealers, order buyers, packers, and importers are considered small businesses under the RFA.

The funding of pork promotion, research, and consumer information programs by assessments is not a new concept. Thirty-eight States already have organizations conducting pork promotion, research, and consumer information programs funded by collections from producers, and the enabling legislation for a national program was initiated by the pork industry. The Act provides that this national promotion, research, and consumer information program be conducted in conjunction with existing programs, and encourages cooperation and coordination between State and national pork promotion, research, and consumer information programs and the National Pork Board established under this order. Although the Act precludes States from collecting funds from pork producers for promotion and consumer education programs while the order is in force, the Act provides that the existing

State programs shall receive a share of the assessments collected under the order.

The total estimated market value of porcine animals marketed in the United States or imported into the United States and the equivalent market value of the live animals from which imported pork and pork products were produced is about $10 billion per year. It is estimated that the promotion, research, and consumer information program will raise approximately $21 million per year, which is about two-tenths of one percent of the annual market value described above. The net impact of the national program would actually be considerably less because about $10 million is already being collected under existing State programs.

The reporting and recordkeeping requirements will not necessitate any significant additional cost or effort. Persons who collect or remit assessments are required to submit reports showing the number and value of the porcine animals subject to assessments, the amount of assessments collected, the month when collected, and the State in which the porcine animals were produced. Assessments on porcine animals sold through livestock markets will be collected and remitted by the market; for private sales, assessments will be collected and remitted by the buyer for feeder pigs and slaughter hogs, and will be remitted by the seller for breeding stock. Assessments on porcine animals slaughtered for sale by the producer will be remitted by the producer. The ordinary business records kept by these persons for other purposes will virtually always contain the required information.

Very little additional recordkeeping or reporting will be required of importers. The U.S. Customs Service will serve as the collecting agent for importer assessments. It is anticipated that an existing reporting form and procedure will be utilized to provide a one or two line entry for recording such assessments.

In determining that the research and promotion program under the order will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions were closely reviewed, and every effort was made to minimize any unnecessary costs or duplicative requirements. Although the promotion, research, and consumer information program will impose some additional costs on producers and importers, it is anticipated that the program will strengthen the position of the pork industry in the marketplace and will expand domestic and foreign markets. Therefore, the additional costs, particularly when viewed in light of the annual market value of porcine animals, pork, and pork products, should be more than offset by the benefits derived from expanded markets and sales.

Paperwork Reduction

The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In accordance with the procedures contained in Title 5 of the Code of Federal Regulations, Part 1320, the information collection and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0581–0151.

Background

The Pork Promotion, Research, and Consumer Information Act (Act) (7 U.S.C. 4801 *et seq.*) approved December 23, 1985, provides for the establishment of a national pork promotion, research, and consumer information program. The Agricultural Marketing Service issued an invitation to submit proposals for an initial order in the February 14, 1986, issue of the **Federal Register**. In response to the invitation to submit proposals, one proposed order was received from the National Pork Producers Council. As provided in the Act, the Agricultural Marketing Service published this proposed order for comment on March 19, 1986. Additionally, a public meeting was held on April 21, 1986, to provide an opportunity for a full discussion on the proposal and to facilitate a better understanding of the proposed rule and to solicit comments.

The Department of Agriculture received 30 comments related to the proposed Pork Promotion, Research, and Consumer Information Order from individuals, pork producer associations, general farm organizations, importers, and other industry organizations. The commenters generally supported the proposed order with certain qualifications. No comments were received which opposed the issuance of a Pork Promotion, Research, and Consumer Information Order.

After review of the proposed order and the comments and testimony, a number of technical changes of a non-substantive nature were made in this final rule, primarily in style, format, and organization. The substantive changes suggested by commenters are discussed below, together with changes made upon review of the proposed order by the Agency. For the reader's convenience, the discussion is organized by the topic headings of the proposed order.

Definitions

Most of the definitions in this final rule were adopted from the proposed rule without change. Most of the changes which were made result from a change in the method of calculating assessments on imported pork and pork products. The term "market value" has been expanded, and the term "equivalent value" has been deleted; two new terms, "Customs Service" and "imported pork and pork products" have been added. These changes as they relate to imported pork and pork products are discussed below, under *Expenses and Assessments.*

The term "market value" was also modified in order to provide methods for calculating assessments on porcine animals slaughtered for sale by the producer and on imported porcine animals. The methods are, respectively, the most recent annual seven-market average for barrows and gilts, and the declared value. These provisions were added because otherwise the collection of assessments could not begin until additional regulations establishing some method for determining the market value of such animals had been prescribed by the Board and approved by the Secretary. The methods set forth in the definition in this final rule are based upon the best information presently available to the Agency. If experience should demonstrate that these methods are unsatisfactory, the order may be amended to establish other methods.

The term "to market" has been replaced by "market," and the definition has been clarified. The term is used in the order only in reference to actions by domestic producers. The definition should not refer to the sale or other disposition of pork or pork products but rather, to the sale, slaughter for sale, or other disposition of porcine animals, because assessments on producers do not apply to pork or pork products. The definition has been modified accordingly.

Several commenters, including the proponents of the proposed order, suggested that the definition of "producer" should be clarified as to who may vote in elections to nominate members of the Delegate Body. The terms "producer" and "person" are defined in the proposed order just as they are in the Act. The Act defines a

"producer" as a person who produces porcine animals in the United States for sale in commerce. The Act further defines a "person" as an individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity. No further clarification of these terms is necessary at this time for the efficient operation of the order. If clarification is desirable with respect to elections for nominations to the Delegate Body or for the referendum, this may be accomplished through regulations prescribed by the Board and approved by the Secretary. This procedure would allow the Board to consider the matter, and would provide producers, importers, and other interested persons notice and opportunity to comment on any proposed clarification. Accordingly, this suggestion is not adopted in this final rule.

The proponents of the proposed order suggested that the term "imported pork and pork products" should be defined and that the definition specifically identify, by Tariff Schedule of the United States numbers, those imported pork and pork products which would be subject to assessment under the order. This suggestion has substantial merit. Accordingly, a definition and associated list of Tariff Schedule numbers has been included in this final rule. This list may be revised from time to time by regulations prescribed by the Board and approved by the Secretary.

National Pork Producers Delegate Body

Section 1230.30 "Establishment and Membership" of the proposed order has been modified in several respects in this final rule. The section began with a general description of the method of determining the number of producer members from each State and the number of importer members. This general provision is unnecessary in view of the detailed provisions specifying the manner of determining the number of producer members from each State, and importers, and the number of votes which may be cast by each member. Accordingly, it has been deleted in this final rule. Also, this section of the proposed order has been clarified by removing the phrase "aggregate amount of assessments." The reasons for this clarification are discussed below under *Expenses and Assessments.*

Section 1230.31 "Nominations for Producer Members" of the proposed order provided that in cases where there is no State association, or the State association does not submit nominations, the Secretary may appoint producer members from that state after consulting with representatives of the pork industry in that State. The proposed order did not specifically provide for cases where a State association does not submit the necessary number of nominations, or does not submit them in a valid manner. This section has been modified in this final rule to allow the Secretary to obtain additional nominees by consulting with representatives of the pork industry in any such State. This modification is necessary to assure that in accordance with the Act each State will receive the appropriate number of members. The section has also been renamed "Nomination and Appointment of Producer Members" and has been modifed to include appointment of producer members.

One of the methods authorized by the Act for selecting nominees for appointment to the Delegate Body is by election in each State. The proposed order contained detailed provisions for conducting such elections. The precise manner in which such elections are conducted would more appropriately be contained in implementing regulations rather than in the order itself. Further, since the proposed order was submitted, elections have been conducted in the States to select nominees. It would be appropriate for the Board to consider regulations for conducting any future elections in light of the experience of producers in the elections held for the initial Delegate Body. Accordingly, such detailed provisions for conducting elections contained in §§ 1230.33 through 1230.39 and § 1230.41 of the proposed order have been deleted in this final rule, and the final rule sets forth only the requirements established by the Act. The requirements of the order pertaining to the conduct of elections to select nominees to the Delegate Body are set forth in § 1230.32 of the final rule.

Several State pork producer associations suggested that the Board should be responsible for paying the expenses of any elections to nominate pork producers to the Delegate Body after the initial Delegate Body has been appointed. After the establishment of the initial Delegate Body, elections are not required for the selection of nominees for subsequent Delegate Bodies; other procedures authorized by the Act may be approved by the Secretary. If elections are to be held, the possible reimbursement or sharing of expenses is a matter which would be appropriate for consideration at that time. Accordingly, this suggestion is not adopted in the final rule.

Several comments were received from producer associations and individuals suggesting that the order provide for alternate members of the Delegate Body. However, the Act does not provide for the appointment of alternate members of the Delegate Body. Further, the size of the Delegate Body makes the appointment of alternate members impractical. Accordingly, this suggestion is not adopted in this final rule.

National Pork Board

No substantial changes have been made in the sections of the proposed order dealing with the National Pork Board.

Importer representatives suggested in testimony at the public meeting that the order should guarantee importers one or more seats on the Board. Numerous comments were received from producer associations arguing that neither importers nor any particular State or segment of the industry should be guaranteed a seat on the Board. The Act provides that the Delegate Body shall nominate not less than 23 persons for appointment to the Board, and it does not provide for any specific State or segment of the pork industry to be represented on the Board. Accordingly, the suggestion that importers should be guaranteed a seat on the Board is not adopted in this final rule.

A change has been made in § 1230.55 "Vacancies" in order to clarify the procedures for removal, and to clarify that the Secretary may remove employees of the Board if it is determined that their continued service would be detrimental to the purposes of the Act.

Promotion, Research, and Consumer Information

Many comments were received from individuals and producer associations favoring the authorization of brand advertising. However, these commenters suggested that the prior approval of the Secretary should not be required because it could delay promotional programs. Section 1619(b)(3) of the Act provides that no plan, project, or budget, including those for which State associations receive funds from the Board, may become effective unless approved by the Secretary; this provision also applies to brand advertising. The statutory requirement is implemented by paragraph (e) of § 1230.58 "Powers and Duties of the Board." Therefore, the suggestion that paragraph (d) of § 1230.60 "Promotion, Research, and Consumer Information" be deleted is not adopted in this final rule.

An individual commenter suggested that the reference in this section to

projects to maintain, develop, or expand markets for pork and pork products should include both domestic and foreign markets. It is clear that this is the intent of the Act; accordingly, the suggested change has been made in this final rule.

One comment was received from a public interest group suggesting that the order contain specific provisions for the content of promotional materials, in addition to the general prohibition of false, deceptive, misleading, or unfair advertising. No convincing case has been made that any such additional restrictions are necessary. Accordingly, the suggestion is not adopted in this final rule.

Expenses and Assessments

A general farm organization suggested that the administrative expenses of the Board, the National Pork Producers Council, and the State associations be limited to no more than five percent of their respective share of the projected revenue for a fiscal period. The Act does not provide for a specific administrative expense ceiling. Rather, the Act and the order authorize the efficient use of assessments through the fullest utilization of resources, staff, and facilities available to the Board through the use of contracts or agreements with existing organizations. These provisions, together with the Secretary's authority to review the Board's budgets, will ensure appropriate restraint on administrative expenses.

Section 1230.71 "Assessments" has been modified in several respects in this final rule. Persons who sell porcine animals directly to consumers as a part of a custom slaughter operation are made responsible for remitting assessments on such animals. This situation is very similar to slaughter for sale by the producer, and the purposes of the Act would not be furthered by requiring ordinary consumers to remit assessments.

The proponents of the proposed order and several importer representatives suggested that the U.S. Customs Service would be the most appropriate entity to provide cost effective and efficient collection of assessments due on imported porcine animals, pork, and pork products. The U.S. Customs Service has agreed in principle to serve as the collecting mechanism for importer assessments due under the Act and § 1230.71 "Assessments" has been revised to provide that importers shall remit assessments to the Customs Service, unless a different manner is established by regulations. The provision of the proposed order concerning the manner of remittance has been placed with the provisions concerning who must collect and remit assessments on domestic porcine animals. Also, the term "Customs Service" has been added to the definitions in this final rule.

The proposed order also provided that assessments would be remitted to the Secretary until the Board is established. This provision is not necessary, because the Board will be established before assessments begin. This is possible because elections have already been conducted to select nominees for the Delegate Body, which will nominate the members of the Board. Accordingly, references to the remittance of assessments to the Secretary and distribution by the Secretary have been eliminated in this final rule.

One individual commenter suggested that there be a common collection point for importer assessments, a common remittance date, and a single late payment penalty for assessments due under both the Pork Promotion, Research, and Consumer Information Act of 1985 and the Beef Promotion and Research Act of 1985. The Acts require the issuance of separate orders and the establishment of separate governing bodies which are responsible for the collection of assessments under each order's enabling legislation. The authorized programs while similar are not identical, and although coordination between the two may be desirable, such coordination can only be achieved through coordination between the officials of the two programs. It would be inappropriate to establish the requirements proposed by the commenter in either order.

The proposed order provided that the assessment rate would be 0.25 percent of market value, or a lesser percentage established by the Secretary upon the recommendation of the Delegate Body. In order to avoid uncertainty, this final rule provides that the initial rate of assessment shall be 0.25 percent. This modification does not diminish the authority of the Delegate Body to recommend a lower rate. If such a recommendation were made, it would be reviewed promptly and, if appropriate, the initial rate would be lowered.

The rate of assessment for imported pork and pork products was the subject of much concern at the public meeting and in the comments submitted to the Department.

The proposed order provided that assessments on imported pork and pork products be determined by applying the assessment rate to 70 percent of the value of the pork and pork products. Importer representatives suggested that one uniform assessment rate be established for all imported pork and pork products for ease of calculating such assessments. These methods do not meet the requirements set forth in the Act. A set percentage of the value of imported pork and pork products does not represent the equivalent value of the live porcine animals from which such pork and pork products were produced. Additionally, a single assessment rate, as proposed by the importers, could be unfair to importers dealing primarily in products which should be assessed at a lower rate.

Accordingly, the Agency has determined that assessments on imported pork and pork products shall be expressed in an amount per pound for each type of product subject to assessment. These amounts will be based upon the equivalent value of the live porcine animal from which such pork and pork products were produced. This shall be accomplished by first converting the weight of imported pork or pork products to a carcass weight equivalent utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the non-pork components of pork products. Second, the carcass weight equivalent will be converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of hogs in the United States. Third, the equivalent value of the live porcine animal will be determined by multiplying the live animal equivalent weight by an annual average seven-market price for barrows and gilts as reported by the USDA Agricultural Marketing Service's Livestock and Grain Market News Branch. This average price is published on a yearly basis during the month of January in the Livestock and Grain Market News' "Livestock, Meat, and Wool Weekly Summary and Statistics" publication. Finally, the equivalent value would be multiplied by the applicable assessment rate to determine the assessment amount due on imported pork or pork products. The end result would be expressed in an amount per pound for each type of pork or pork product.

The § 1230.72 "Distribution of Assessments" has been modified in several respects in this final rule. This section of the proposed order provided that State associations would receive a percentage determined by the Delegate Body of the aggregate assessments

attributable to porcine animals produced in that State, but that this amount would be reduced by the same percentage of the amount of refunds paid to producers in that State. Several individuals and State producer associations suggested that the phrase "aggregate assessments" was confusing and should be defined. The suggestion that the section be clarified has merit. The section has been modified in this final rule by eliminating the references to "aggregate assessments" and paragraph (f), concerning shares of refunds, and using instead the term "net assessments attributable to that State." The meaning of the section is not affected by these modifications.

This section of the proposed order also provided that State associations which have been conducting pork promotion programs would receive amounts in addition to the percentage set by the Delegate Body so that the total amount received under the order would not be less than the amount they would have received and retained under the preexisting programs. The determination of this amount requires the exercise of judgment and discretion by the Board, and it cannot easily be reduced to a formula, as the proposed order attempted. Accordingly, this section has been modified in this final rule by eliminating the formula and providing instead that a State association which was conducting a pork promotion, research, and consumer information program from July 1, 1984 to June 30, 1985, shall receive on an annual basis the amount that would have been collected and retained in that State under that program.

As previously discussed, the provisions for distribution of assessments by the Secretary prior to the establishment of the Board have been eliminated as unnecessary. In connection with this change, the section has been reorganized for clarity. In the proposed order, the provisions for distribution of assessments were organized by the time period in which they would be distributed, that is, before the establishment of the Board, and before and after the referendum. In this final rule, the provisions governing distribution of assessments are set forth in separate paragraphs for State associations and the Council.

An importer organization suggested that the order should provide that no funds collected from importers be used in any manner to restrict or limit the importation of pork or pork products. It is assumed that the commenter was concerned about the use of assessments collected from importers to influence governmental action to limit importations. The suggestion that funds collected under the order should not be used for such purposes has merit. Section 1230.74 "Prohibited Use of Distributed Assessments" has been modified in this final rule to reflect the long-standing policy of the Department that funds collected under research and promotion programs may not be used to influence governmental action, except to recommend to the Secretary amendments to the order and associated regulations. Also, a new paragraph has been added to clarify that the Board and the Secretary may require reports to verify that distributed assessments have not been used for prohibited purposes.

The proponents of the order suggested that the order should provide that the refund application form should show the name, address, and telephone number of the person requesting a refund. The refund application form must, in any event, include the information necessary for processing, and it is not necessary that the order contain such details. Accordingly, this suggestion is not adopted in this final rule.

An importer suggested that a provision should be included in the order to refund any assessments collected on product returns (products which are refused entry into the U.S. after customs duties have been paid). This suggestion has merit; however, such a situation should be treated as an adjustment of accounts rather than as a refund. Section 1230.75 "Adjustment of Accounts" has been modified slightly in this final rule to provide for payment when the matter cannot be handled by a credit to an account.

Reports, Books, and Records

The proponents of the proposed order suggested that the § 1230.80 "Reports" should be modified so that the reports required to be submitted with remittance of assessments "may" rather than "will" include the information set forth in that section. The proponents stated that the purpose of the suggested change would be to avoid the required collection of unnecessary information. This suggestion has merit. The section has been revised in this final rule so as to require only the information which is essential to the administration of the order. The section also provides for the issuance of regulations to require other information, if that should prove necessary for the efficient administration of the order. If the submission of essential information were not required by the order, the collection of assessments could be delayed until implementing regulations were issued.

Miscellaneous

Section 1230.88 "Patents, Copyrights, Inventions, and Publications" has been modified upon review by the Agency to remove the mandatory provision for payment of royalties to persons who patent inventions using funds collected under the order. No convincing case has been made that the payment of a royalty would be appropriate in every such instance. The manner of compensation for employees and agents of the Board should be left to the discretion of the Board subject to the approval of the Secretary.

Rules of Practice

No comments were received concerning the proposed Rules of Practice Governing Proceedings on Petitions to Modify or Be Exempted From an Order. These provisions, with minor modifications, are included in this final rule. They are not, however, part of the order, but are a separate subpart which implements the order.

Other Comments

One individual commenter suggested that the order should ensure minimum funding to the National Livestock and Meat Board (NLSMB) and the National Pork Producers Council (NPPC) so that both organizations may continue their efforts to promote pork and pork products and to respond to important issues concerning the pork industry. The Act does not provide for funding of the NLSMB but it does provide funding for the NPPC until 12 months after the initial referendum. The order does, however, allow contractual relationships between the Board and the NLSMB, the NPPC and other organizations for promotion, research, and consumer information projects by submitting the plans for such projects. Accordingly, this suggestion has not been adopted in this final rule.

A general farm organization suggested that provisions for the suspension or termination of the orders should be included in the order. However, the Act contains specific procedures for suspending or terminating the order, and it is not necessary that the provisions be incorporated into the order. Accordingly, this suggestion is not adopted in this final rule.

Several individual producers and general farm organizations suggested that procedures for the referendum should be included in the order. While the procedures for the referendum must be established before the referendum is held, it is not necessary that they be established at this time. No comments suggested what the procedures should

be, and therefore, the Board should consider the matter before the procedures are established. Accordingly, this suggestion is not adopted in this final rule.

Two general farm organizations and several individuals suggested that periodic referenda should be mandatory, for example, every 5 years. The Act provides that, after the initial referendum, the Secretary may conduct a referendum on the request of a representative group comprising 15 per centum or more of the total number of pork producers and importers. This provision in the statute provides adequate authority for periodic referenda, and it is unnecessary to include any further provision in the order. Accordingly, the suggestion is not adopted in this final rule.

It is hereby determined that it is impractical, unnecessary, and contrary to the public interest to delay the effective date of this final rule for 30 days after its publication in the Federal Register. In order to carry out the statutory timetable for the implementation of the Act, it is necessary that this final rule become effective on September 1, 1986, except that § 1230.71, which provides for the collection of assessments, will be effective November 1, 1986, and the collection of assessments will begin on that date.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Meat and meat products, Pork and pork products.

7 CFR is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Subpart A is redesignated as Subpart D.

3. New Subparts A and B are added to read as follows:

Subpart A—Pork Promotion, Research, and Consumer Information Order

Definitions

Sec.

1230.1 Act.
1230.2 Department.
1230.3 Secretary.
1230.4 Board.
1230.5 Consumer information.
1230.6 Council.
1230.7 Customs Service.
1230.8 Delegate Body.
1230.9 Fiscal period.
1230.10 Imported.
1230.11 Imported pork and pork products.
1230.12 Importer.
1230.13 Market.
1230.14 Market value.
1230.15 Part and subpart.
1230.16 Person.
1230.17 Plans and projects.
1230.18 Porcine animal.
1230.19 Pork.
1230.20 Pork product.
1230.21 Producer.
1230.22 Promotion.
1230.23 Research.
1230.24 State.
1230.25 State association.
1230.26 State where produced.

National Pork Producers Delegate Body

1230.30 Establishment and membership.
1230.31 Nomination and appointment of producer members.
1230.32 Conduct of election.
1230.33 Appointment of importer members.
1230.34 Term of office.
1230.35 Vacancies.
1230.36 Procedure.
1230.37 Officers.
1230.38 Compensation and reimbursement.
1230.39 Powers and duties of the Delegate Body.

National Pork Board

1230.50 Establishment and membership.
1230.51 Term of office.
1230.52 Nominations.
1230.53 Nominee's agreement to serve.
1230.54 Appointment.
1230.55 Vacancies.
1230.56 Procedure.
1230.57 Compensation and Reimbursement.
1230.58 Powers and Duties of the Board.

Promotion, Research, and Consumer Information

1230.60 Promotion, research, and consumer information.

Expenses and Assessments

1230.70 Expenses
1230.71 Assessments.
1230.72 Distribution of assessments.
1230.73 Uses of distributed assessments.
1230.74 Prohibited uses of distributed assessments.
1230.75 Adjustment of accounts.
1230.76 Charges.
1230.77 Refunds.

Reports, Books, and Records

1230.80 Reports.
1230.81 Books and records.
1230.82 Confidential treatment.

Miscellaneous

1230.85 Proceedings after termination.
1230.86 Effect of termination or amendment.
1230.87 Personal liability.
1230.88 Patents, copyrights, inventions, and publications.
1230.89 Amendments.
1230.90 Separability.
1230.91 Paperwork Reduction Act assigned number.

Subpart B—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Pork Promotion, Research, and Consumer Information Order

1230.100 Words in singular form.
1230.101 Definitions.
1230.102 Institution of proceeding.

Subpart A—Pork Promotion, Research, and Consumer Information Order

Definitions

§ 1230.1 Act.

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.2 Department.

"Department" means the United States Department of Agriculture.

§ 1230.3 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

§ 1230.4 Board.

"Board" means the National Pork Board established pursuant to § 1230.50.

§ 1230.5 Consumer information.

"Consumer information" means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

§ 1230.6 Council.

"Council" means the National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

§ 1230.7 Customs Service.

"Customs Service" means the United States Customs Service of the United States Department of Treasury.

§ 1230.8 Delegate Body.

"Delegate Body" means the National Pork Producers Delegate Body established pursuant to § 1230.30.

§ 1230.9 Fiscal period.

"Fiscal period" means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

§ 1230.10 Imported.

"Imported" means entered, or withdrawn from a warehouse for

consumption, in the customs territory of the United States.

§ 1230.11 Imported pork and pork products.

"Imported pork and pork products" means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the following numbers in Schedule 1 of the Tariff Schedules of the United States Annotated (1985): 106.4020; 106.4040; 106.8000; 106.8500; 107.1000; 107.1500; 107.3020; 107.3040; 107.3060; 107.3515; 107.3525; 107.3540; and 107.3560.

§ 1230.12 Importer.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.13 Market.

"Market" means to sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

§ 1230.14 Market value.

"Market value" means, with respect to porcine animals which are sold, the price at which they are sold. With respect to porcine animals slaughtered for the sale by the producer, the term means the most recent annual seven-market average for barrows and gilts, as published by the Department. With respect to imported porcine animals, the term means the declared value. With respect to imported pork and pork products, the term means an amount which represents the value of the live porcine animals from which the pork or pork products were derived, based upon the most recent annual seven-market average for barrows and gilts, as published by the Department.

§ 1230.15 Part and subpart.

"Part" means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a "subpart" of such part.

§ 1230.16 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

§ 1230.17 Plans and projects.

"Plans and projects" means promotion, research, and consumer information plans, studies, or projects.

§ 1230.18 Porcine animal.

"Porcine animal" means a swine, that is raised as (a) a feeder pig, that is, a young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.19 Pork.

"Pork" means the flesh of a porcine animal.

§ 1230.20 Pork product.

"Pork product" means an edible product produced or processed in whole or in part from pork.

§ 1230.21 Producer.

"Producer" means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.22 Promotion.

"Promotion" means any action, including but not limited to paid advertising and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

§ 1230.23 Research.

"Research" means any action designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, including the dissemination of the results of such research.

§ 1230.24 State.

"State" means each of the 50 States.

§ 1230.25 State association.

"State association" means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no such organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may cease to recognize a State association and instead recognize another organization of producers in a State as that State's association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

§ 1230.26 State where produced.

"State where produced" means with respect to a porcine animal marketed as a feeder pig or as breeding stock, the State in which that porcine animal was born, and with respect to a porcine animal that is marketed as a market hog, the State in which that porcine animal was fed for market.

National Pork Producers Delegate Body

§ 1230.30 Establishment and membership.

(a) There is hereby established a National Pork Producers Delegate Body which shall consist of producers and importers appointed by the Secretary.

(b)(1) At least two producer members shall be allocated to each State, but any State that has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) For the initial Delegate Body, shares shall be assigned to each State on the basis of one share for each $400,000 of market value (rounded to the nearest $400,000) attributable to porcine animals produced in such State (as determined by the Secretary based on the annual average of market value in the most recent three years for which data are available).

(3) In each fiscal period thereafter, shares shall be assigned to each State on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) For the initial Delegate Body, shares shall be assigned to importers on the basis of one share for each $575,000 (rounded to the nearest $575,000) of the market value of imported porcine animals, pork, or pork products (as determined by the Secretary, based on the three most recent years for which data is available).

(3) In each fiscal period thereafter, shares shall be assigned to importers on

the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to importers.

§ 1230.31 Nomination and appointment of producer members.

(a) For the initial Delegate Body, nominations for appointment as producer members shall be submitted to the Secretary pursuant to Subpart D.

(b) For each subsequent Delegate Body, nominations for appointment as producer members shall be submitted to the Secretary in the number requested by the Secretary by each State association either after an election conducted in accordance with § 1230.32 and by nominating the producers who receive the highest number of votes in such State; or pursuant to a selection process that is approved by the Secretary, is given public-notice at least one week in advance by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and provides complete and equal access to every producer who has paid all assessments due under this subpart and who has not demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body;

(c) The Secretary shall appoint the producer members of each Delegate Body from the nominations submitted in accordance with this section, except that if a State association does not submit nominations in the required manner or number, or if a State has no State association, the Secretary shall select producer members from that State after consultation with representatives of the pork industry in that State.

§ 1230.32 Conduct of election.

If a State association selects nominees for appointment to the Delegate Body through an election, it shall be conducted in the following manner:

(a) Elections shall be administered by the Board and the Board shall determine the timing of any elections.

(b) Producers who are residents of that State may be named as candidates for election to be nominees for appointment to the Delegate Body:

(1) By a nominating committee of producers in that State appointed by the Board; or

(2) By written petition signed by 100 producers in that State or by 5 percent of the producers in that State, whichever number is less.

(c) To be eligible to vote in an election to nominate producer members from a State, a person must:

(1) Be a producer who is a resident of that State;

(2) Have paid all assessments due pursuant to this subpart; and

(3) Not have demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body.

(d) The Board shall cause notices of any election to be published at least one week prior to the election in a newspaper or newspapers of general circulation in that State, and in pork production and agricultural trade publications. The notices shall set forth the period of time and places for voting and such other information as the Board considers necessary.

(e) The identity of any person who voted and the manner in which any person voted shall be kept confidential.

§ 1230.33 Appointment of importer members.

The Secretary shall appoint the importer members of each Delegate Body after consultation with importers.

§ 1230.34 Term of office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve only until the completion of the nomination and appointment process of the succeeding Delegate Body.

(b) Each member of the Delegate Body shall serve until that member's term expires, or a successor is appointed, whichever occurs later.

§ 1230.35 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the appropriate State association or by importers, depending upon whether the vacancy is a producer or importer vacancy.

§ 1230.36 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is, the concurring votes of a majority of the shares cast on that action. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

§ 1230.37 Officers.

The Delegate Body shall elect its Chairperson by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairperson.

§ 1230.38 Compensation and reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this Subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.39 Powers and duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate;

(c) To determine the percentage of the net assessments attributable to porcine animals produced in a State that each State association shall receive; and

(d) To nominate not less than 23 persons, including producers from a minimum of 12 States or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for each vacancy on the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with § 1230.36.

National Pork Board

§ 1230.50 Establishment and membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to § 1230.39(d). The Board shall be deemed to be constituted

once the Secretary makes the appointments to the Board.

§ 1230.51 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for one year terms; One-third shall serve for two year terms; and the remaining One-third shall serve for three year terms.

(b) Each member of the Board shall serve until the member's term expires, or until a successor is appointed, unless the member is removed pursuant to § 1230.55(b).

(c) No member shall serve more than two consecutive terms provided that those members serving an initial term of one year are eligible to serve two additional consecutive terms, but in no event, more than seven years in total.

(d) The first year of the terms of the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

§ 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with § 1230.39(d).

§ 1230.53 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with the Council or a State association or any organization that has a contract with the Board and thereafter disclose, at any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters concerning any entity referred to in paragraph (b) if an officer or member of the executive committee of such entity.

§ 1230.54 Appointment.

From the nominations submitted pursuant to § 1230.39(d), the Secretary shall appoint 15 producers or importers as members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

§ 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board fails or refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office. A person appointed under this Part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1230.56 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of its meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1230.57 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.58 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented: (1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and (2) The budget, plans, or projects for which State associations are to receive funds under § 1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1230.71. Any such contract or agreement shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(g) To appoint or employ such persons as staff as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers or State

associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To select committees and subcommittees of Board members and to adopt such rules and by laws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To prescribe rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1230.71 in, and only in, an obligation of the United States, a general obligation of any State or any political subdivision thereof, an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at the end of each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

Promotion, Research, and Consumer Information

§ 1230.60 Promotion, research, and consumer information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand domestic and foreign markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved, or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

(c) No plan or project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan or project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

Expenses and Assessments

§ 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to § 1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body and for the conduct of referenda.

§ 1230.71 Assessments.

(a)(1) Each producer producing in the United States a porcine animal raised as a feeder pig that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a feeder pig.

(2) Each producer producing in the United States a porcine animal raised for slaughter that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(3) Each producer producing in the United States a porcine animal raised for slaughter that such producer slaughters for sale shall pay an assessment on that animal unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(4) Each producer producing in the United States a porcine animal raised for breeding stock that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid by a person on that animal as breeding stock.

(5) Each importer importing a porcine animal, pork, or pork product into the United States shall pay an assessment on that porcine animal, pork, or pork product, unless such importer demonstrates to the Board by appropriate documentation that an assessment was previously paid for that porcine animal, pork, or pork product.

(b)(1) Each purchaser of a porcine animal raised by a producer as a feeder pig or market hog shall collect an assessment on such porcine animal if an assessment is due pursuant to paragraph (a) of this section, and shall remit that assessment to the Board. For the purposes of collection and remittance of assessments, any person engaged as a commission merchant, auction market, or livestock market in the business of

receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

(2) Each producer of porcine animals slaughtered for sale by the producer or sold directly to a consumer in connection with a custom slaughter operation shall remit an assessment to the Board if an assessment is due pursuant to paragraph (a) of this section.

(3) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the "National Pork Board" and shall be sent to the address designated by the Board not later than the tenth day of the month following the month in which the animals were marketed and shall be accompanied by the reports required by § 1230.80.

(4) Each importer of a porcine animal, pork, or pork product shall remit an assessment to the Customs Service at the time such porcine animal, pork, or pork product is imported or in such manner as may be established by regulations prescribed by the Board and approved by the Secretary, if an assessment is due pursuant to paragraph (a) of this section.

(c) The initial rate of assessment shall be 0.25 percent of market value.

(d) The rate of assessment may, upon the recommendation of the Delegate Body, be increased by regulations prescribed by the Board and approved by the Secretary by no more than 0.1 percent of such market value per fiscal period to a total of not more than 0.5 percent of market value.

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment. The initial amounts shall be as follows:

Pork and pork products (U.S. tariff schedule No.)	Assessment (cents per pound)
106.4020	0.0016
106.4040	.0016
106.6000	.0016
106.6500	.0016
107.1000	.0022
107.1500	.0022
107.3020	.0016
107.3040	.0016
107.3060	.0016
107.3515	.0024
107.3525	.0024
107.3540	.0016
107.3560	.0022

§ 1230.72 Distribution of assessments.

Assessments remitted to the Board shall be distributed as follows:

(a) Each State association shall receive on a monthly basis, a percentage determined by the Delegate Body or 16.5 percent, whichever is higher, of the net assessments attributable to that State. The net assessments attributable to a State is the total amount of assessments received from producers in a State less the amount of refunds paid to producers in that State.

(b) A State association which was conducting a pork promotion program in the period from July 1, 1984 to June 30, 1985, shall receive additional amounts at such times as the Board may determine, so that the total amount received on an annual basis would be equal to the amount that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals subject to assessment and to which no refund was received, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessment then in effect from such State to the Council and other national entities involved in pork promotion, research, and consumer information. This paragraph shall apply to a State association only if the annual amount determined under this paragraph would be greater than the annual amount determined under paragraph (a) of this section.

(c) The Council shall receive on a monthly basis 35 percent of the net assessments until after the referendum is conducted, and 25 percent thereafter and until 12 months after the referendum.

§ 1230.73 Uses of distributed assessments.

(a) Each State association shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for:

(1) Financing plans and projects;

(2) The Board's expenses for the Board's administration, maintenance, and functioning as authorized by the Secretary;

(3) Accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and

(4) The Secretary's administrative costs in carrying out this part.

§ 1230.74 Prohibited use of distributed assessments.

(a) No funds collected under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in section 4911 (d) and (e)(2) of the Internal Revenue Code of 1954, or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this part.

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with an annual report prepared by a certified public accountant of all funds distributed to such organization pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

§ 1230.75 Adjustment of accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. Any amount due the Board shall be remitted to the Board by the next date for remitting assessments as provided in § 1230.71(b)(3). Any overpayment to the Board shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1230.76 Charges.

Any assessment not paid when due shall be increased 1.5 percent each month beginning with the day following the date such assessment was due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the

Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

§ 1230.77 Refunds.

(a) Any producer or importer who is responsible for and pays an assessment under the authority of this subpart and does not support the pork promotion, research, and consumer information program established by this subpart shall have the right, prior to the approval of the continuation of this subpart pursuant to the referendum, to demand and receive from the Board a refund of such an assessment upon submission of proof satisfactory to the Board, that the producer or importer paid the assessment for which refund is sought and did not collect such assessment from another person.

(b) The producer or importer's demand shall be signed, if the producer or importer is an individual, by that producer or importer and, if other than an individual, by a person who is duly authorized, be mailed within a time period prescribed by the Board and approved by the Secretary, but not later than 30 days after the end of the month in which the assessment was paid, on a Board-approved refund application form.

(c) Refunds properly demanded in accordance with paragraphs (a) and (b) of this section shall be made by the Board to the producer or importer not later than 30 days after demand is received by the Board.

(d) The name of any producer or importer demanding a refund shall be kept confidential by all persons, except that the Board may utilize such information in determining who is entitled to vote in elections for Delegate Body that are administered by the Board.

Reports, Books, and Records

§ 1230.80 Reports.

Each person responsible for collecting or remitting any assessment under § 1230.71(b) shall report at the time for remitting assessments to the Board the following information:

(a) The quantity and market value of the porcine animals subject to assessment;

(b) The amount of assessment collected;

(c) The month the assessment was collected;

(d) The State where the porcine animals were produced; and

(e) Such other information as may be required by regulations prescribed by the Board and approved by the Secretary.

§ 1230.81 Books and records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any required reports. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1230.82 Confidential treatment.

All information obtained from the books, records or reports required to be maintained under §§ 1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this subpart or of statistical data collected therefrom, which statements or data do not identify the information furnished by any person; or

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1230.85 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of, the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement;

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

§ 1230.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1230.87 Personal liability.

No member or employee of the Board shall be held personally liable, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1230.88 Patents, copyrights, inventions, and publications.

Any patents, copyrights, trademarks, inventions, or publications developed

through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications inure to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1230.85 shall apply to determine disposition of all such property.

§ 1230.99 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1230.90 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1230.91 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this Subpart have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter and have been assigned OMB Control Number 0851–0151.

Subpart B—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Pork Promotion, Research, and Consumer Information Order

§ 1230.100 Words in singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1230.101 Definitions.

As used in this Subpart, the terms as defined in subpart A of this Part shall apply with equal force and effect. In addition, under the context otherwise requires:

(a) The terms "Administrative Law Judge" or "judge" mean any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(b) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead;

(c) The term "**Federal Register**" means the publication provided for by the Federal Register Act (44 U.S.C. 1501–1511), and acts supplementary thereto and amendatory thereof;

(d) The term "order" means subpart A of this Part and any regulation which may be issued pursuant thereto or to the Act;

(e) The term "proceeding" means a proceeding before the Secretary arising under section 1625 of the Act (7 U.S.C. 4815);

(f) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(g) The term "party" includes the Department;

(h) The term "hearing clerk" means the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250;

(i) The term "decision" means the judge's initial decision in any proceeding and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law, or discretion as well as the reasons or basis therefor; (2) order; and (3) rulings on findings, conclusions and proposed orders submitted by the parties; and

(j) The term "petition" includes an amended petition.

§ 1230.102 Institution of proceeding.

(a) *Filing and Service of Petition.* Any person subject to the order desiring to complain that the order or any provision of thereof or any obligation imposed in connection therewith is not in accordance with law, shall file with the Hearing Clerk five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the Hearing Clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of Petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioners' business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which complained of;

(4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Request for the specific relief which the petitioner desires the Secretary to grant.

(c) *Motion to Dismiss Petition-Filing, Contents, and Responses Thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply in form or content with the Act or with the requirements of paragraph (b) of this section, or is not filed in good faith or is filed for the purpose of delay, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegation of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk, not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice or upon receipt of such papers from the petitioner, the Hearing Clerk shall transmit all papers which have been filed in connection with the motion to the Judge for consideration.

(d) *Further Proceeding.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(c)(2) through

900.71 of this title (Rules of Practice Governing Proceeding on Petitions To Modify or To Be Exempted From Marketing Orders), except that each reference to "marketing order" in those sections shall mean "order."

Subpart C—[Added and Reserved]

4. Subpart C is added and reserved.

Done at Washington, DC, on: September 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86-20073 Filed 9-4-86; 8:45 am]

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Part IV

Department of Agriculture

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1987; Solicitation of Applications for the Competitive Research Grants Program; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1987; Solicitation of Applications for the Competitive Research Grants Program

Applications are invited for competitive grant awards under the Competitive Research Grants Program administered by the Office of Grants and Program Systems, Cooperative State Research Service, for fiscal year 1987.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulations governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended by 50 FR 5499, February 8, 1985), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015.

Specific Research Areas To Be Supported in Fiscal Year 1987

Standard project grants and a small number of continuation grants will be awarded to support basic research in selected areas of the biological sciences related to agriculture and human nutrition.

The Competitive Research Grants Program covers the following areas:

Plant Science
Human Nutrition
Animal Science
Biotechnology
Pest Science

The research areas of plant and animal science and human nutrition have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the long run, to applied research and development vitally needed on high-priority food and nutrition problems.

The major initiative in biotechnology research that began in fiscal year 1985 will continue for fiscal year 1987. It is designed to provide opportunities to address research problems in all areas of agricultural science including plants, animals, forestry, and microorangisms associated with these biota. It is anticipated that this research will advance broadly the nation's competitive advantages in the food, feed, fiber and natural resource processes. Consideration will be given to research proposals that address fundamental questions in the areas noted below and that are consistent with the long-range agricultural needs of the nation.

Several of the research program areas have been rearranged this year, based upon the past two years' experience in administering the biotechnology research initiative. Some of the program areas have been combined to streamline the review process and to use available scientific expertise more effectively. For example, proposals covering the molecular biology of photosynthetic genes and apparatus should be submitted to the Photosynthesis program area. Similarly, proposals covering the molecular biology of nitrogen fixation will be reviewed by the Biological Nitrogen Fixation peer panel. The areas of molecular and cellular mechanisms of animal stress responses have been incorporated into the Animal Molecular Biology program and the Animal Growth and Development program.

While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed, the guidelines are not meant to provide boundaries or to detract from the creativity of potential applicants. USDA encourages the submission of innovative projects in the so-called "high-risk" category as well as those that may have a more certain payoff potential. In all instances, innovative research will be given high priority.

Agriculturally important organism(s) should be used to accomplish the research objectives. The use of other organisms as experimental model systems must be justified relative to the goals of the appropriate research program area and to the long-term objectives of USDA.

Workshops or symposia that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this Competitive Research Grants solicitation will be considered for partial or, if modest, complete support.

The following specific research areas (program areas) and guidelines are provided as a base from which proposals may be developed:

1.0 *Plant Biological Stress Including Molecular Plant Pathology, Entomology and Nematology.* Plants are exposed to many stresses that may adversely affect their productivity and usefulness to man. This program area will support research on stresses on plants arising from their interactions with other plants or other biological agents such as weeds, insects, nematodes, fungi, bacteria, viruses, and mycoplasma-like organisms. The ultimate goal of the research supported in this area is to reduce losses in plant productivity from damage caused by biologically generated stresses. This program area will emphasize studies that enhance our understanding of (a) how stressful interactions are established between plants and other biological agents; (b) how plants react to stresses generated by interactions with biological agents; and (c) how damage from such interactions may be reduced or eliminated. The interactions may be studied at any number of levels (i.e., population, organismal, cellular, and (molecular) and by various approaches including genetics, molecular biology, and biochemistry.

Within this context, one of the goals of this program area is to understand the molecular basis for the organism's response to these stresses and to identify which of the genetic systems involved in these responses can be manipulated by techniques in biotechnology. Research on plants, plant-associated insects or microorganisms should emphasize: (a) Identification, isolation, transfer, regulation, and expression of genes involved in biological stresses; (b) physiological/biochemical-genetic analysis of identified genes or gene products involved in biological stress; and (c) fundamental or molecular mechanisms underlying stress responses, injury, tolerance, and avoidance at the molecular, cellular, and organismal levels.

Proposals may include studies on plants separated from stress-causing

organisms or on stress-causing organisms separated from their target plants. However, proposals should indicate how the anticipated information will be relevant to an understanding of the causes, consequences, and avoidance of biologically generated stresses on plants. The research supported in this program area will focus on the identification of new approaches that will be both effective and compatible with social and environmental concerns.

To expedite processing and review of the large number of proposals submitted in the broad subject area of Plant Biological Stress, proposals will be evaluated under two subprogram areas:

1.1 *Plant Pathology/Weed Science* and

1.2 *Entomology/Nematology*, each of which will have a separate deadline date for submission of proposals.

Within the guidelines described above, the Plant Pathology/Weed Science subprogram area will consider all proposals for research addressing plant pathogens or weeds affecting plant stress. The Entomology/Nematology subprogram area will consider all proposals for research addressing arthropods or nematodes stressing the plant.

2.0 *Plant Genetic Mechanisms and Plant Molecular Biology*. The goal of this program area is to encourage new approaches for the development of genetically superior varieties of agricultural crops. Proposals should be directed toward obtaining novel combinations or gene modifications that cannot be achieved by using conventional plant breeding techniques. One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. Studies addressing the basic cellular, molecular, and genetic processes which contribute new information required for the development of novel approaches to crop improvement will be given high priority. This research should increase our understanding of the structure, function, regulation, and expression of genes. This program area will emphasize the following but will not exclude other new or unusual approaches to crop improvement: (a) Identification, isolation, and characterization of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transposition; (f) molecular basis of chromosomal replication; (g) cell and tissue culture studies designed to increase our knowledge of the basic molecular, biochemical, and cellular processes involved in regenerating whole plants from single cells; (h) development of cellular and molecular methods for identifying plant characteristics or genes which are important targets for genetic manipulation; (i) development of molecular and cellular methods for crop improvement using gene transfer or genetic engineering technology; (j) development of new methods for producing, selecting, and transferring agronomically important qualitative and quantitative traits; and (k) basic genetic studies on the alteration and utilization of unadapted and wild germplasm.

3.0 *Biological Nitrogen Fixation and Metabolism*. The most common limiting nutrient for plant growth is nitrogen. The presence of soil nitrogen is due to past accretions in nature, biological nitrogen fixation, or the application of nitrogenous fertilizer. The latter represents a significant energy input in cropping and ultimately increases food costs. Thus, the enhancement of biological nitrogen fixation capacity in plant-soil microbial associations is of major importance. Research aimed at understanding nitrogen-fixing mechanisms and related nitrogen metabolism in both symbiotic and free-living organisms as well as the fate of fixed nitrogen in the plant is of high priority.

In general, the objectives of this program area include building a foundation of basic information concerning nitrogen fixation as it relates to enhancing the process in currently known systems and in providing a base for developing new nitrogen-fixing associations, by genetic transfer or other means, for crop species not now possessing such capability. Moreover, the process of nitrification, the assimilation and utilization of ammonia and nitrate, and denitrification all play important roles in plant growth.

Examples of research encompassed in this program area include: (a) Structure and mechanism of action of nitrogenase; the regulation of nitrogenase activity and synthesis; the relationship between nitrogenase and hydrogenase activities in nitrogen-fixing organisms; (b) energetics of the nitrogen fixation process including competitive processes within the plant; (c) infection by *Rhizobium* and conditions for effective nodulation; basis of the recognition process between symbiotic organisms; factors controlling symbiont specificity; competition in the soil; (d) nitrogen-fixing capabilities of *Actinomycetes*, *Azospirillum* spp., Cyanobacteria, and other organisms potentially important in supplying nitrogen needs of plants; (e) relation between the fixation process and the processes of assimilation, nitrification, and denitrification; (f) development of methods for the *in situ* measurement of nitrification and denitrification and determination of the actual extent of these processes in nature; (g) analysis of the distribution of denitrifying and nitrifying bacteria and elucidation of control mechanisms operating on nitrogen transformations in the major species; (h) metabolism of fixed nitrogen including the enzymes involved in the assimilation and dissimilation of fixed nitrogen in bacteria and crop plants and the partitioning of fixed nitrogen into various gene products or plant organs; and (i) efficiency of nitrogen utilization by crop plants in the production of food proteins.

Emphasis in program priorities will be on innovative approaches which may contribute to a more thorough understanding of nitrogen cycling encompassing biochemistry, molecular biology, cellular and developmental biology, genetics and genetic manipulation, and other relevant life science disciplines including suitable techniques of biotechnology. An understanding of these processes is essential to the development of strategies which maximize nitrogen fixation, minimize inputs of nitrogenous fertilizers, and optimize their utilization in agriculture.

4.0 *Photosynthesis*. Photosynthetic efficiency is an important factor in crop productivity. Basic research which provides information on limiting processes of photosynthesis and associated carbon metabolism will lead to a greater understanding of those factors which affect the ability of the plant to produce a usable product.

Research is needed in the following major subareas: (a) Genetic and cellular manipulation to improve photosynthetic efficiency in plants including studies of the chloroplast and nuclear genomes, analyses of regulatory steps controlling both nuclear and extra-nuclear photosynthetic gene expression and their interactions; (b) aspects of photosynthetic energy conversion, including such areas as early events in photon capture by photosynthetic systems and the mechanisms of charge separation, the structure and function of photosynthetic membranes and membrane constituents, and the associated chemical and physical reactions; (c) photosynthetic carbon assimilation including mechanisms of CO_2 fixation, biochemistry and

molecular biology of photosynthetic and related biosynthetic pathways, photorespiration, and aspects of cellular metabolism regulating these reactions; (d) control of photosynthate partitioning, translocation, and utilization; (e) factors controlling development and senescence of the photosynthetic apparatus; and (f) photosynthetic process in leaves, whole plants, and canopies including, but not limited to, involvement of the stomatal apparatus.

Other research designed to generate new information leading to a basic understanding of photosynthesis and its accompanying processes also may be considered a part of this program.

5.0 *Molecular and Cellular Mechanisms of Plant Growth and Development.* Suboptimal growth and development are limiting factors in plant productivity. A basic understanding of the developmental processes in agriculturally important plants is largely lacking, but new experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is to encourage the use of emerging techniques for the investigation of the developmental processes.

This research area will place emphasis on, but not be limited to, studies of (a) cellular and molecular mechanisms controlling growth and developmental processes, including reproduction, differentiation, and senescence; and (b) metabolic processes related to growth and development. Projects designed to identify molecular, cellular, and organismal targets for genome manipulation also are encouraged.

6.0 *Genetic and Molecular Mechanisms Controlling Plant Responses to Physical and Environmental Stresses.* Physical stresses prevent the expression of the full genetic potential of an organism's productivity and set limits on where and when it thrives. A major goal of this program area is to understand the molecular and cellular bases for the organism's responses to these stresses and to identify which of the genetic systems involved in these responses can be manipulated. Research on plants should emphasize: (a) Identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the molecular, cellular, and organismal levels; and (e) laboratory and field investigations on the physiology of the organism that contribute to an understanding of the causes, consequences, and avoidance of stresses, rather than simply describing the effects of stress.

7.0 *Human Nutrition.* Proposals are invited in the area of human requirements for nutrients. Support will not be provided for clinical research, demonstration or action projects, nor for surveys of the nutritional status of population groups.

Research in this program area is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic, creative research that will help to fill gaps in our knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. and of the nutrient condition of healthy individuals, as all of these relate to human nutrient requirements. Special attention will be given to applications involving innovative approaches designed to improve methods of research and investigation that will increase the reliability and validity of data concerned with the quantitative evaluation of nutrient requirements and nutrient condition. The use of animals as model systems should be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determination of human nutrient requirements. Proposals which concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements. It is especially important that proposals emphasize innovative, fundamental research.

8.0 *Animal Science (Reproductive Physiology).* Suboptimal reproductive performance in domestic farm animals is the major factor limiting more efficient production of animal food products. This failure to achieve maximal reproductive efficiency is due to problems related to puberty, ovulation, corpus luteum formation and function, insemination, fertilization, prenatal death, and poor survival of offspring.

The economic loss to the producer and increased costs of animal food products to the consumer due to inefficient reproductive performance makes the requirement for new knowledge in this area a high priority. Although the exact needs may vary from species to species and region to region, there are areas where additional fundamental research is crucial.

This program area will support innovative research in the following categories: (a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryomaternal interactions, and embryo implantation; (b) gamete physiology, primarily gametogenesis including maturation processes, follicle growth, ovulation, corpus luteum formation and function, and superovulation; fundamental processes of fertilization, mechanisms regulating gamete survival *in vitro,* and basic questions regarding gamete transport; and (c) parturition, postpartum interval to conception, and neonatal survival.

Emphasis will be on innovative approaches which may contribute to a thorough understanding of the reproductive processes in agriculturally important food and fiber-producing animals. The use of experimental model systems should be justified relative to the objectives of this research.

Proposals on the development of methods for *in vitro* manipulation and preservation of animal gametes and embryos will be considered, but overall objectives of such studies should be related to the development of fundamental knowledge.

9.0 *Animal Molecular Biology and Brucellosis.* One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. The primary objective of this program area is to increase our understanding of the structure, organization, function, regulation, and expression of genes in animals and their associated infectious agents and microorganisms.

This program area will emphasize the following categories of research: (a) Identification, isolation, characterization, and expression of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transposition; (f) molecular basis of chromosomal replication; and (g) mechanisms of interaction with beneficial or deleterious microorganisms or infectious agents.

This program area also will support research at the molecular, cellular, and genetic levels that will (a) define the mechanisms by which *Brucella abortus* induces disease in cattle and persists as an infectious agent and (b) define the basis of the bovine immune response with *B. abortus* that results in protective

VOL 51 ISS 172 SE 5 1986 UMI

immunity; proposals also are encouraged which, through molecular biological techniques, identify and produce (c) antigens to differentiate among non-infected, vaccinated, and the *B. abortus*-infected cattle and (d) immunogens to stimulate long-lived protective immunity in cattle.

The program encourages additional basic research directed toward understanding the genetic and molecular mechanisms controlling animal responses to physical and biological stresses. Topics include the organism's interaction with the stresses and identification of the genetic systems involved in the interaction that can be manipulated through molecular genetic techniques. Research may emphasize (a) identification, isolation, transfer, and expression of genes or gene systems that are regulated by, or involved in, stress; (b) biochemical genetic analysis of genome segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; and (d) fundamental mechanisms of stress responses at the molecular level.

10.0 *Molecular and Cellular Mechanisms of Animal Growth and Development.* Suboptimal growth and development are limiting factors in animal productivity. Yet, a basic understanding of the developmental processes in agriculturally important animals is largely lacking. New experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is a basic understanding of the developmental processes in agriculturally important animals. This research area will place emphasis on, but not be limited to, studies of (a) cellular and molecular mechanisms controlling growth and developmental processes, including reproduction, differentiation, and senescence; (b) molecular and cellular biological studies of metabolic processes related to growth and development; and (c) identification of molecular, cellular, and organismal targets for genome manipulation.

This program area also encourages basic research in *Genetic, Molecular, and Cellular Mechanisms Controlling Animal Responses to Physical and Biological Stresses* that impinge upon growth and development. Research should address the molecular basis for the organism's interaction with these stresses and the identification of genetic systems causing these responses which can be manipulated. Research may emphasize (a) identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular and cellular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the cellular and molecular levels; and (e) cellular physiology of the organism that contributes to an understanding of the causes, consequences, and avoidance of stress, rather than simply describing the physiological effects of stress. Proposals addressing research on infectious agents should be sent to the Animal Molecular Biology panel.

11.0 *Insect Pest Science.* Uncontrolled insect pests are a major factor in reducing crop and forest productivity. Before successful strategies for managing insect pests can be developed, a strong basic insect biology research effort is needed. This program area, restricted to the insect pests listed below, will support research on behavioral physiology; chemical ecology; insect-host interaction; endocrinology; population dynamics; behavioral ecology; insect pathogens, parasites and predators; and epidemiology of beetle-borne pathogens. Proposals bringing a blend of approaches to a specific problem are encouraged.

The Insect Pest Science program area will support studies on:

11.1 boll weevil/bollworm;
11.2 pine bark beetle; and
11.3 gypsy moth.

12.0 *Alcohol Fuels Research.* Proposals will be considered for research relating to the physiological, microbiological, biochemical, and genetic processes controlling the biological conversion of agriculturally important biomass material to alcohol fuels and industrial hydrocarbons. The scope of this program area includes studies on factors that limit efficiency of biological production of alcohol fuels and the means for overcoming these limitations.

Soybean Research. Proposals on soybeans should emphasize research objectives that fit the scientific disciplines of the appropriate program areas noted above. Within those areas, physiological, biochemical, genetic, and interdisciplinary approaches are encouraged.

Soybean proposals will not be evaluated by a special soybean peer review panel. They will be reviewed and evaluated by the peer panel whose collective expertise is most appropriate to the scientific content of the proposals. For example, proposals concerning the genetics of soybean plants will be reviewed by the Plant Genetic Mechanisms and Plant Molecular Biology panel. The most meritorious soybean proposals submitted under the appropriate program areas outlined in this solicitation will be selected for funding to fulfill the anticipated appropriation to soybean research. Submission deadlines for these program areas (and their corresponding peer review panels) are listed below.

How to Obtain Application Materials

Please note that potential applicants who were on the Competitive Research Grants mailing list for fiscal year 1986, or who recently requested placement on the list for fiscal year 1987, will automatically receive copies of this solicitation, the Grant Application Kit, and the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended). All others may request copies from: Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 007, J.S. Morrill Building, 15th & Independence Avenue SW., Washington, DC 20251; telephone: (202) 475–5049.

What to Submit

An original and 14 copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form S&E–661, "Grant Application," which is included in the Grant Application Kit. Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Each project description is expected by the the members of review committees and the staff to be complete in itself. It should be noted that reviewers are not required to read beyond 15 pages of the project description to evaluate the proposal. Proposals beyond this limit are therefore subject to non-review and return. It would be helpful for reviewers if the vitae of key project personnel were limited to three (3) or four (4) pages.

All copies of a proposal must be mailed in one package. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. Also, please see that each copy of each proposal is *stapled securely* in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the *proposal contains all pertinent information when initially submitted.* Prior to mailing, compare your proposal with the "Application Requirements" checklist contained in the Grant Application Kit and instructions contained in the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200.

Applicants must not submit the same research proposal in the same fiscal year to different research program areas within the Competitive Research Grants Program. Duplicate proposals, essentially duplicate proposals, or predominantly overlapping proposals will be returned without review.

Submission of more than one proposal from the same principal investigator in the same fiscal year is discouraged.

Excessive numbers of co-principal investigators and collaborators create conflicts of interest problems during the review and award processes. Multiple co-principal investigators and collaborators, beyond those required for genuine multi-disciplinary studies, are strongly discouraged.

Where and When to Submit Grant Applications

Proposals submitted to the research program areas in this notice (e.g., 2.0 Plant Genetic Mechanisms and Plant Molecular Biology) will be assigned by the staff of the Competitive Research Grants office to the most appropriate peer review panel. If necessary, further information may be obtained from the responsible Associate Program Manager at the telephone numbers given below. Each research grant application must be submitted to: Competitive Research Grants Program, c/o Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 007, J.S. Morrill Building, 15th and Indpendence Avenue, SW., Washington, DC 20251. To be considered for funding during fiscal year 1987, proposals *must be postmarked* by the following dates and received in time to permit adequate peer panel review:

Postmark dates	Peer review panels/program areas	Contacts
Nov. 3, 1986	7.0 Human Requirements for Nutrients.	475-5034
	10.0 Molecular and Cellular Mechanisms of Animal Growth and Development.	475-3399
Nov. 10, 1986	4.0 Photosynthesis	475-5030
	1.2 Entomology/Nematology	475-5046
	2.0 Plant Genetic Mechanisms and Plant Molecular Biology.	475-5042
	1.1 Plant Pathology/Weed Science.	475-5027
Jan. 19, 1987	5.0 Molecular and Cellular Mechanisms of Plant Growth and Development.	475-5042
	6.0 Genetic and Molecular Mechanisms Controlling Plant Responses to Physical and Environmental Stresses.	475-5038
Jan. 26, 1987	8.0 Animal Science (Reproductive Physiology).	475-5034
	12.0 Alcohol Fuels Research.	475-5042
Feb. 9, 1987	3.0 Biological Nitrogen Fixation and Metabolism.	475-5030
	9.0 Animal Molecular Biology and Brucellosis.	475-3399
Feb. 23, 1987	11.0 Insect Pest Science	475-5046

Special Instructions

The Competitive Research Grants Program should be indicated in Block 7 and the applicable program area should be indicated in Block 8 of Form S&E-661 provided in the Grant Application Kit. *Select one program area only.* The *number* assigned to the applicable program area also must be cited in Block 8 of Form S&E-661. A final determination of the program area will be made by the program staff and/or appropriate peer panel.

Supplementary Information

The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document Nos. 0524-0022 or 0525-0001.

The award of any grants under the Competitive Research Grants Program during FY 1987 is subject to the availability of funds. One copy of each proposal that is *not* selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Done at Washington, D.C., this 1st day of September 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86-20068 Filed 9-4-86; 8:45 am]

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VOL 51 ISS 172 SE 5 1986 UMI

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September 5, 1986

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Program of Financial Assistance for Disadvantaged Health Professions Students

VOL 51 ISS 172 SE 5 1986 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Program of Financial Assistance for Disadvantaged Health Professions Students

AGENCY: Public Health Service, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This rule proposes regulations for the program of Financial Assistance for Disadvantaged Health Professions Students, authorized by section 787 of the Public Health Service (PHS) Act, as amended by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985.

DATE: Comments on this proposed rule are invited. To be considered, comments must be received by October 6, 1986.

ADDRESSES: Respondents should address written comments to the Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: The Health Professions Training Assistance Act of 1985, Pub. L. 99–129, amended section 787 of the PHS Act to include a new paragraph (a)(2)(F) which authorizes the Secretary to make grants to public or nonprofit private health or educational entities to pay stipends to disadvantaged students of medicine, osteopathic medicine, or dentistry. Pub. L. 99–129 also amended section 787(b) to require that, of the funds appropriated to carry out section 787 for any fiscal year, 20 percent must be obligated for stipends under paragraph (a)(2)(F) to individuals of exceptional financial need, as defined by regulations promulgated by the Secretary under section 758 of the PHS Act (the Scholarship Program for First-Year Students of Exceptional Financial Need).

The statement of consensus of the House Subcommittee on Health and Environment and the Senate Committee on Labor and Human Resources on the provisions of Pub. L. 99–129 further explains that Congress intends that the 20 percent of section 787 funds designated for stipends to eligible students be used to assist students in all years of attendance to help pay the costs of their tuition, books and equipment, and living expenses, at amounts not to exceed $10,000 per student per year (*Congressional Record* for October 3, 1985, pages H8113–H8114, and *Congressional Record* for October 4, 1985, page S12668).

Based on the statutory authority and Congressional intent cited above, this notice is proposing the program of Financial Assistance for Disadvantaged Health Professions Students (FADHPS). The term "stipend" is not being used in the proposed regulations since the intended purposes of these funds are broader in scope than would be covered by the Department's traditional definition of stipend.

Since section 220 of Pub. L. 99–129 repealed the authority for making grants for training United States citizens foreign medical students (section 782 of the PHS Act), the Secretary is proposing to delete 42 CFR Part 57, Subpart DD, entitled "Grants for Training United States Citizen Foreign Medical Students," and substitute in its place a new proposed Subpart DD, entitled "Financial Assistance for Disadvantaged Health Professions Students." The major provisions of these proposed regulations are described below.

Institutional eligibility: Section 787 authorizes the Secretary to make grants to schools of medicine, ostepathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, and podiatry, public and nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities. For purposes of the FADHPS program, this NPRM would limit institutional eligibility to schools of medicine, osteopathic medicine, and dentistry, as defined in section 701(4) of the PHS Act, which enroll students who are from disadvantaged backgrounds and who are of exceptional financial need.

Because of the way section 787 is written, the Department could, in theory, award grants to (for example) schools of podiatry or rural health clinics to enable them to run programs of financial assistance for students attending schools of medicine, osteopathic medicine, and dentistry. However, the Department is proposing to limit institutional eligibility for receiving funding to schools of medicine, osteopathic medicine, and dentistry because the Secretary believes this approach is consistent with section 787(a)(2)(F), which limits student eligibility for stipends to students at schools of medicine, osteopathic medicine, and dentistry. In addition, the Department believes that the expertise to administer this program does not exist in entities other than schools, although they are legally eligible as grantees under section 787. To determine whether a student is of exceptional financial need will require knowledge of the need analysis process for Federal need-based financial aid programs. This type of expertise exists primarily in school financial aid offices. The Department also believes it would be difficult for a school other than the medical or dental student's own school to assure that *both* the disadvantaged and the exceptional financial need criteria are met. It is the admissions office of the student's own school that will usually have the information necessary to determine whether a student is from a disadvantaged background for purposes of this program.

In addition to concern that eligibility in assuring proper coordination of this program with other types of student financial aid. Coordination of these funds with other aid will best meet the needs of eligible students, and will help to avoid awards in excess of a student's need, which might more likely occur if an outside organization were to administer these funds separately from the financial aid award process at the student's own school. For this additional reason, the Department believes that it is desirable to limit institutional eligibility for these funds to schools at which eligible students are enrolled.

Student eligibility: In accordance with statutory requirements, this NPRM would require that the student be from a disadvantaged background, as defined in 42 CFR 57.1804, and of exceptional financial need, as defined in 42 CFR 57.2804. Although section 787, as amended, also authorizes stipend support for disadvantaged health professions students who are not of exceptional financial need, the Secretary believes that proper management of scarce Federal resources requires that these funds be limited to students of exceptional financial need.

The definition of an "individual from a disadvantaged background" provides that the student must: (a) Come from an

environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school of medicine, osteopathic medicine, or dentistry, or (b) come from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary will periodically publish these income levels in the Federal Register. The following income figures determine what constitutes a low income family for this purpose for calendar year 1985:

Size of parents' family:[1]	Income level[2]
1	7,200
2	9,400
3	11,100
4	14,300
5	16,800
6 or more	16,900

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1985 rounded to $100.

Schools which have established programs to assist disadvantaged students under section 787 generally determine whether students meet part (a) of the disadvantaged background definition by looking at factors that are considered in the admissions process (e.g., national test scores and/or grade point averages that are below the standard admission requirements and result in a student being admitted as "marginal" or "academically at risk").

The definition of a student of "exceptional financial need" provides that the student's resources available for educational costs may not exceed the lesser of $5,000 or one-half the cost of attendance at the school, as determined by the school.

Institutional award process: This proposed rule also sets forth procedures for making awards to schools. Under these procedures, the Secretary would compare the total funds requested by applicant schools with the total of the funds available for the award period, and would award each school the total amount of its request if adequate funds are available. If the total funds requested exceeds the funds available, the Secretary would allocate funds to each school based on a ratio which compares the number of eligible students at the school with the total number of eligible students at all applicant schools, except that no school's award would exceed the amount of funds requested (i.e., the total funds available would be divided by the total number of eligible students; each school would receive an award equal to the dollar amount available per eligible student times its number of eligible students). The Secretary has proposed these funding procedures to assure that the amount of funds a school receives is directly proportionate to the number of eligible students enrolled in the school.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed new requirements in these regulations are minimal in comparison to the overall resources of the schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these proposed regulations will not have a significant impact on a substantial number of schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

This proposed rule contains the following information collection requirements: § 57.2904, recordkeeping; § 57.2909, reporting and recordkeeping. The Department has submitted an information collection request to the Office of Management and Budget (OMB) for approval of these requirements under section 3504(h) of the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to comment on the information collection requirements should send their comments to the Director, Bureau of Health Professions at the address listed earlier in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, the Department of Health and Human Services proposes to delete 42 CFR Part 57, Subpart DD, entitled "Grants for Training United States Citizen Foreign Medical Students" and add a new subpart DD, as set forth below, entitled "Financial Assistance for Disadvantaged Health Professions Students."

Dated: June 12, 1986.

Donald Ian Macdonald,

Assistant Secretary for Health.

Approved: August 12, 1986.

Otis R. Bowen,

Secretary.

PART 57—[AMENDED]

1. 42 CFR Part 57 would be amended by removing Subpart DD, entitled "Grants for Training United States Citizen Foreign Medical Students" and adding a new Subpart DD, entitled "Financial Assistance for Disadvantaged Health Professions Students" to read as follows:

Subpart DD—Financial Assistance for Disadvantaged Health Professions Students

Sec.
57.2901 To what program do these regulations apply?
57.2902 Definitions.
57.2903 How to apply for a grant.
57.2904 Eligibility and selection of aid recipients.
57.2905 Amount of student award.
57.2906 How is the amount of the grant award determined?
57.2907 For what purposes may grant funds be spent?
57.2908 What additional Department regulations apply to grants?
57.2909 What other records, audit, and inspection requirements apply to schools?
57.2910 Additional conditions.

Subpart DD—Financial Assistance for Disadvantaged Health Professions Students

Authority: Sec. 215 of the Public Health Service Act, 58 stat. 690, as amended by 63 stat. 35 (42 U.S.C. 216); sec. 787 of the Public Health Service Act, 90 stat. 2309, as amended by 95 stat. 923, 99 stat. 541 (42 U.S.C. 295g–7).

§ 57.2901 To what program do these regulations apply?

These regulations apply to grants to eligible schools under section 787(a)(2)(F) and (b) of the Public Health Service Act for financial assistance for disadvantaged health professions students of exceptional financial need.

§ 57.2902 Definitions.

"Act" means the Public Health Service Act, as amended.

"Full-time student" means a student enrolled in a school and pursuing a course of study which constitutes a full-time academic workload, as determined

by the school, leading to a degree from a school of medicine, school of osteopathic medicine, or school of dentistry, as specified in section 701(4) of the Act.

"National of the United States" means—

(1) A citizen of the United States, or

(2) A person who, though not a citizen of the United States, owes permanent allegiance to the United States, as defined in the Immigration and Nationality Act, at 8 U.S.C. 1101(a)(22).

"School" means a public or private nonprofit school of medicine, osteopathic medicine, or dentistry, as defined in section 701(4) of the Act.

"School year" means the traditional approximately 9-month September to June annual session. For the purpose of computing school year equivalents for students who, during a 12-month period, attend for a longer period than the traditional school year, the school year will be considered to be 9 months in length.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department to whom the authority involved has been delegated.

"State" means in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 57.2903 How to apply for a grant.

(a) Any school located in a State may apply for a grant. Each school seeking a grant must submit an application at the time and in the form and manner that the Secretary may require. The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and the terms and conditions of the award.

(b) Each application will be reviewed to determine eligibility and the reasonableness of the amount of Federal support requested. The Secretary may require the applicant to submit additional data for this purpose.

§ 57.2904 Eligibility and selection of aid recipients.

(a) *Determination of eligibility.* An individual is eligible for consideration for financial assistance under this program if he or she:

(1) Is a national of the United States, a permanent resident of the Trust Territory of the Pacific Islands or the Commonwealth of the Northern Mariana Islands, or a lawful permanent resident of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam;

(2) Is enrolled or has been accepted for enrollment as a full-time student at a school;

(3) Comes from a disadvantaged background. For purposes of this program, an individual from a disadvantaged background is one who—

(i) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school; or

(ii) Comes from a family with an annual income below a level based on low income thresholds according to family size published by the the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs.

The Secretary will periodically publish these income levels in the **Federal Register**; and

(4) Has exceptional financial need. For purposes of this program, a student will have exceptional financial need if the school determines that the student's resources, as described in paragraph (b)(1) of this section, do not exceed the lesser of $5,000 or one-half of the cost of attendance at the school. Student summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will not be considered resources for purposes of determining whether a student has exceptional financial need.

(b) *Selection of aid recipients.* The school will select qualified recipients and determine the amount of aid to be awarded.

(1) In determining the amount of aid an eligible student needs to pursue a full-time course of study at the school, the school will take into consideration:

(i) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Secretary of Education and published under 34 CFR 674.13 in combination with other information which the school has regarding the student's financial status. The school must take into account, regardless of the tax status of the student, the expected contribution from parents, spouse, self, or (as appropriate) other family members. In making this determination, the school must consider copies of the parent's, student's, and spouse's most recent income tax forms certified as having been received by the Internal Revenue Service; and

(ii) The costs reasonably necessary for the student's attendance at the school. The school must document the criteria used for determining these costs.

(2) The school must select aid recipients in order of greatest need, as determined by the school.

§ 57.2905 Amount of student award.

(a) A school may not award a student more than the school determines that the student needs to meet the costs of education (i.e., tuition, fees, books, equipment, other expenses required by the school, and reasonable living expenses) for the period covered by the award.

(b) The total award made under this program to any student for a school year may not exceed $10,000. The maximum amount awarded during a 12-month period to any student enrolled in a school which provides a course of study longer than the traditional 9-month school year may be proportionately increased.

(c) The school must disburse this award to the student in payments based on the student's need during each academic period (e.g. semester, quarter, trimester) of a school year.

§ 57.2906 How is the amount of the grant award determined?

(a) The amount of the grant to each eligible school will be the amount requested in its application, except that if the total of the amounts requested for any fiscal year by all schools for these funds exceeds the amount of Federal funds determined by the Secretary at the time of payment to be available for this purpose, the grant to each school will be reduced to whichever is smaller:

(1) The amount requested in the application; or

(2) An amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of grant award to be available for that fiscal year for this program as the number of eligible students at the school bears to the total number of eligible students at all participating schools during that year.

(b) Amounts remaining after the calculation described in paragraph (a) will be distributed in accordance with paragraph (a)(2) of this section among schools whose applications requested more than the amount paid to them, but with whatever adjustments may be necessary to prevent the total grant to any school from exceeding the amount requested by it.

§ 57.2907 For what purposes may grant funds be spent?

(a) A school shall only spend funds it receives under this subpart in accordance with the approved

application, the authorizing legislation, terms and conditions of the grant award, and these regulations.

(b) The school must discontinue all payments to a recipient in the event that the recipient ceases to be a full-time student at the school, and must remit any unused balance of funds to the Federal Government in the event it is unable to make full use of its grant award during the award period.

§ 57.2908 What additional Department regulations apply to grants?

Several other regulations apply to these grants. They include, but are not limited to, the following:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 74—Administration of grants
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Section 704 of the Public Health Service Act
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.2909 What other records, audit, and inspection requirements apply to schools?

(a) Each school must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act concerning recordkeeping, audit, and inspection.

(b) The school must also maintain the following:

(1) A record of all applications for aid under this program and the basis for approving or disapproving each application, including a copy of the total need analysis and determination of resources for each applicant, documentation for any changes made to the need analysis report used by the school, and documentation which indicates for each applicant whether he or she met the eligibility requirements; and

(2) A record of the amount of funds awarded to each recipient.

§ 57.2910 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

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Privacy
TDD for
FEDERA
31069-31
31309-31
31605-31
31757-31

Reader Aids

Federal Register

Vol. 51, No. 172

Friday, September 5, 1986

INFORMATION AND ASSISTANCE

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PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308.....2
31309-31604.....3
31605-31758.....4
31757-31924.....5

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5519.....31309
5520.....31311

7 CFR

2.....31757
226.....31313
301.....31605
908.....31758
1136.....31759
1230.....31898
1475.....31316

Proposed Rules:
1065.....31133
1068.....31133
1079.....31133
1137.....31340

8 CFR

Proposed Rules:
214.....31637

9 CFR

Proposed Rules:
92.....31637

10 CFR

477.....31316

Proposed Rules:
2.....31340
50.....31341

14 CFR

21.....31317
39.....31089, 31090, 31607, 31608
71.....31097
75.....31097
91.....31098
95.....31319
97.....31322

Proposed Rules:
21.....31644
23.....31644
39.....31133-31137, 31342, 31343, 31647, 31779
71.....31138, 31648

17 CFR

Proposed Rules:
150.....31648

18 CFR

Proposed Rules:
37.....31651, 31781

19 CFR

111.....31760
171.....31760
178.....31760

21 CFR

81.....31323
175.....31098
178.....31099, 31760
193.....31324
357.....31763
369.....31763
510.....31100
558.....31763

24 CFR

511.....31764

26 CFR

1.....31610, 31613
602.....31610, 31613

28 CFR

Proposed Rules:
16.....31781

30 CFR

Proposed Rules:
733.....31139

32 CFR

199.....31100
205.....31325
286g.....31103
706.....31103-31112

Proposed Rules:
40.....31651

33 CFR

117.....31112, 31113
165.....31113, 31114

34 CFR

Proposed Rules:
614.....31754

36 CFR

13.....31619
800.....31115
1254.....31617

38 CFR

Proposed Rules:
21.....31782

39 CFR

10.....31325
233.....31328

Proposed Rules:
111.....31673

40 CFR

52.....31125, 31127, 31129, 31328
261.....31330
271.....31618

VOL 51 ISS 172 SE 5 1986 UMI

Proposed Rules:
86.....31783
260.....31783
261.....31140, 31783
262.....31783
264.....31783
265.....31783
268.....31783
270.....31783
271.....31783

41 CFR

Proposed Rules:
201-33.....31674

42 CFR

405.....31454
412.....31454
Proposed Rules:
57.....31920

43 CFR

36.....31619
2880.....31764
Proposed Rules:
2800.....31886
2880.....31886

44 CFR

64.....31330
65.....31635
Proposed Rules:
10.....31786
67.....31675, 31678

47 CFR

0.....31303
1.....31303
2.....31303
13.....31303
21.....31303
22.....31335
63.....31303
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303
Proposed Rules:
15.....31147
67.....31149
68.....31149
76.....31147
80.....31306

48 CFR

5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
47.....31424
50.....31424
52.....31424
223.....31765
228.....31765
242.....31765
252.....31765
914.....31335
933.....31335
952.....31335
970.....31335

Proposed Rules:
32.....31194
45.....31196
48.....31197
52.....31194, 31197
515.....31344
538.....31344
552.....31344
1317.....31687
1352.....31687

49 CFR

571.....31765
Proposed Rules
391.....31150

50 CFR

17.....31412
20.....31430
23.....31130
36.....31619
655.....31774, 31775
663.....31778
Proposed Rules
630.....31151

LIST OF PUBLIC LAWS

Last List August 27, 1986

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.R. 1343/Pub. L. 99-395

To authorize the use of funds from rental of floating drydock and other marine equipment to support the National Maritime Museum in San Francisco, California, and for other purposes. (Aug. 27, 1986; 100 Stat. 836; 1 page) Price: $1.00

H.R. 2478/Pub. L. 99-396

To amend the Revised Organic Act of the Virgin Islands, to amend the Covenant to Establish a Commonwealth of the Northern Mariana Islands, to amend the Organic Act of Guam, to provide for the governance of the insular areas of the United States, and for other purposes. (Aug. 27, 1986; 100 Stat. 837; 11 pages) Price: $1.00

H.R. 3108/Pub. L. 99-397

To amend title 17, United States Code, to clarify the definition of the local service area of a primary transmitter in the case of a low power television station. (Aug. 27, 1986; 100 Stat. 848; 1 page) Price: $1.00

H.R. 3554/Pub. L. 99-398

Klamath Indian Tribe Restoration Act. (Aug. 27, 1986; 100 Stat. 849; 4 pages) Price: $1.00

H.R. 4151/Pub. L. 99-399

Omnibus Diplomatic Security and Antiterrorism Act of 1986. (Aug. 27, 1986; 100 Stat. 853; 49 pages) Price: $1.50

H.R. 5371/Pub. L. 99-400

To extend until September 15, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982. (Aug. 27, 1986; 100 Stat. 902; 1 page) Price: $1.00

S. 140/Pub. L. 99-401

Children's Justice and Assistance Act of 1986. (Aug. 27, 1986; 100 Stat. 903; 7 pages) Price: $1.00

S. 1868/Pub. L. 99-402

Federal Lands Cleanup Act of 1985. (Aug. 27, 1986; 100 Stat. 910; 3 pages) Price: $1.00

S.J. Res. 249/Pub. L. 99-403

To proclaim October 23, 1986, as "A Time of Remembrance" for all victims of terrorism throughout the world. (Aug. 27, 1986; 100 Stat. 913; 1 page) Price: $1.00

S.J. Res. 298/Pub. L. 99-404

To designate the week of October 5, 1986, through October 11, 1986, as "Mental Illness Awareness Week." (Aug. 27, 1986; 100 Stat. 914; 2 pages) Price: $1.00

S.J. Res. 338/Pub. L. 99-405

To designate November 18, 1986, as "National Community Education Day." (Aug. 27, 1986; 100 Stat. 916; 1 page) Price: $1.00

S.J. Res. 358/Pub. L. 99-406

To designate the month of September 1986 as "Adult Literacy Awareness Month." (Aug. 27, 1986; 100 Stat. 917; 2 pages) Price: $1.00

S.J. Res. 386/Pub. L. 99-407

To designate October 6, 1986, as "National Drug Abuse Education Day." (Aug. 27, 1986; 100 Stat. 919; 1 page) Price: $1.00

H.R. 3132/Pub. L. 99-408

To amend chapter 44, of title 18, United States Code, to regulate the manufacture, importation, and sale of armor piercing ammunition, and for other purposes. (Aug. 28, 1986; 100 Stat. 920; 3 pages) Price: $1.00

H.R. 4331/Pub. L. 99-409

Rural Industrial Assistance Act of 1986. (Aug. 28, 1986; 100 Stat. 923; 1 page) Price: $1.00

H.R. 4393/Pub. L. 99-410

Uniformed and Overseas Citizens Absentee Voting Act. (Aug. 28, 1986; 100 Stat. 924; 7 pages) Price: $1.00

H.J. Res. 713/Pub. L. 99-411

Making a repayable advance to the Hazardous Substance Response Trust Fund. (Aug. 28, 1986; 100 Stat. 931; 1 page) Price: $1.00

S. 410/Pub. L. 99-412

Conservation Service Reform Act of 1986. (Aug. 28, 1986; 100 Stat. 932; 12 pages) Price: $1.00

H.R. 4843/Pub. L. 99-413

To provide for a minimum price and an alternate production rate for petroleum produced from the naval petroleum reserves, and for other purposes. (Aug. 29, 1986; 100 Stat. 944; 2 pages)

28,
3 pages)

-409
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86; 100
rice:

-410
eas
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Stat. 924;
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99-411
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31; 1

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VOL
51
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VOL
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9-8-86
Vol. 5
Pages

9-8-86
Vol. 51 No. 173
Pages 31925-32046

federal register

Monday
September 8, 1986

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VOL
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ISS
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Contents

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

Agriculture Department
See Animal and Plant Health Inspection Service; Food Safety and Inspection Service

Alcohol, Tobacco and Firearms Bureau
NOTICES
Organization, functions, and authority delegations:
Associate Director (Compliance Operations), 31997, 31998 (2 documents)

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, domestic:
Citrus canker, 31956

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
Colville Resident Trout Hatchery, WA, 31964

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Colorado, 31961
Nevada, 31961
Meetings; Sunshine Act, 32000

Coast Guard
RULES
Drawbridge operations:
New Jersey, 31946
Ports and waterways safety:
Niagara River, NY; safety zone, 31946
PROPOSED RULES
Ports and waterways safety:
Mississippi River Gulf Outlet, LA; safety zone, 31958
NOTICES
Meetings:
Coast Guard Academy Advisory Committee, 31995
Navigational rules:
Certificates of alternative compliance, 31996

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration; Travel and Tourism Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 31961

Defense Department
See also Navy Department
NOTICES
Meetings:
Defense Information School Board of Visitors, 31962
Science Board task forces, 31963

Energy Department
See also Bonneville Power Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Environmental statements; availability, etc.:
Fernald, OH, 31963
Grant awards:
University of Florida, 31964
Meetings:
National Petroleum Council, 31964

Environmental Protection Agency
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Emissions trading; report availability, 31959
Gaseous emissions standards; 1988 and later model year light-duty trucks, and heavy-duty engines and vehicles, 32032
NOTICES
Agency information collection activities under OMB review, 31979
Air quality criteria:
Polychlorinated dibenzofurans; draft health assessment document, 31979
Grants; State and local assistance:
Regional Administrator protest appeal determinations; subject index list, 32038

Executive Office of the President
See Presidential Documents

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 32000

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arizona et al., 31950
California et al., 31951
NOTICES
Disaster and emergency areas:
New Hampshire, 31980

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consolidated Gas Transmission Corp., 31986
Iroquois Gas Transmission System, 31988
Hydroelectric applications, 31970
Natural gas certificate filings:
ANR Pipeline Co. et al., 31976
Small power production and cogeneration facilities; qualifying status:
McMasters & Schroder et al., 31978

Federal Home Loan Bank Board
NOTICES
Meetings; Sunshine Act, 32000

Federal Maritime Commission
NOTICES
Agency information collection activities under OMB review, 31980
Agreements filed, etc., 31980

Freight forwarder licenses:
CAP Air/Ocean, Inc., et al., 31981
Sara Sandford Dodd & Associates, Inc., et al., 31981

Federal Reserve System
NOTICES
Meetings:
Consumer Advisory Council, 31981
Applications, hearings, determinations, etc.:
Bayerische Vereinsbank et al., 31982
Riggs National Corp. et al., 31983

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 31986

Food and Drug Administration
NOTICES
Medical devices; premarket approval:
Model 674 Pulse Generator and Model 600 AV Programmer, 31984

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Export certificates delivery, 31937

General Services Administration
NOTICES
Agency information collection activities under OMB review, 31983

Health and Human Services Department
See also Food and Drug Administration; National Institutes of Health; Public Health Service
NOTICES
Organization, functions, and authority delegations:
Public Health Service et al.; Office on Smoking and Health, 31983

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
Cases filed, 31978

Housing and Urban Development Department
NOTICES
Meetings:
Solar Energy and Energy Conservation Advisory Committees, 31986

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Estate and gift taxes:
Disclaimers of property, qualified
Correction, 31938

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 31961

Justice Department
RULES
Organization, functions, and authority delegations:
Director of Prisons Bureau et al., 31939
(2 documents)
Postal Service, 31940

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Aleknagik Natives Ltd., 31987

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Clinchfield Coal Co., 31988
Consolidation Coal Co., 31988

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 31988

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 31984, 31985
(3 documents)
National Heart, Lung, and Blood Institute, 31985
(2 documents)
President's Cancer Panel, 31985

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine mammals, 31962

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
Valley Forge National Historical Park, PA, 31987
Environmental statements; availability, etc.:
George Washington Memorial Parkway, VA, 31987
Meetings:
Statue of Liberty-Ellis Island Centennial Commission, 31987

Navy Department
NOTICES
Environmental statements; availability, etc.:
Gulf Coast strategic homeporting, and permit applications, 31963

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Niagara Mohawk Power Corp., 31989
Power Authority of the State of New York, 31990
Texas A & M University, 31990
University of California at Santa Barbara, 31991
Applications, hearings, determinations, etc.:
Babcock & Wilcox, 31992
University of California at Santa Barbara, 31991

Occupational Safety and Health Review Commission
RULES
Procedure rules, 32002

Personnel Management Office
RULES
Retirement:
Civil Service Retirement Spouse Equity and Federal Employees Benefits Improvement Acts; implementation, 31927
PROPOSED RULES
Employment:
Selective Service System registration; statutory bar to appointment of persons who fail to register, 31954

Postal Rate Commission
NOTICES
Complaints filed:
United Parcel Service, 31992

Presidential Documents
ADMINISTRATIVE ORDERS
South Africa emergency; continuation (Notice of September 4, 1986), 31925

Public Health Service
See also Food and Drug Administration; National Institutes of Health
RULES
Personnel:
National Health Service Corps private practice loans, 31947

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Public utility holding company filings, 31992

Small Business Administration
NOTICES
Disaster loan areas:
South Carolina, 31994
Meetings; regional advisory councils:
Montana, 31994

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
Alabama, 31940
Pennsylvania, 31942

Transportation Department
See also Coast Guard
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 31995
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 31995

Travel and Tourism Administration
NOTICES
Meetings:
Travel and Tourism Advisory Board, 31962

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service

Veterans Administration
NOTICES
Agency information collection activities under OMB review, 31999
Meetings:
Special Medical Advisory Group, 31999

Separate Parts In This Issue

Part II
Occupational Safety and Health Review Commission, 32002

Part III
Environmental Protection Agency, 32032

Part IV
Environmental Protection Agency, 32038

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12532 (See Notice of September 4, 1986)..... 31925
Administrative Orders:
Notice:
September 4, 1986..... 31925

5 CFR
831..... 31927
Proposed Rules:
300..... 31954

7 CFR
Proposed Rules:
301..... 31956

9 CFR
322..... 31937

26 CFR
20..... 31938
25..... 31938
602..... 31938

28 CFR
0 (3 documents)..... 31939, 31940

29 CFR
2200..... 32002

30 CFR
901..... 31940
938..... 31942

33 CFR
117..... 31946
165..... 31946
Proposed Rules:
165..... 31958

40 CFR
Proposed Rules:
86 (2 documents)..... 31959, 32032

42 CFR
23..... 31947

44 CFR
65..... 31950
67..... 31951

VOL 51 ISS 173 SE 8 1986 UMI

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

Presidential Documents

Title 3—

The President

Notice of September 4, 1986

Continuation of the South Africa Emergency

On September 9, 1985, by Executive Order No. 12532, I declared a national emergency to deal with the threat to the foreign policy and economy of the United States constituted by the actions and policies of the Government of South Africa. Because those actions and policies continue to pose an unusual and extraordinary threat to the foreign policy and economy of the United States, the national emergency declared on September 9, 1985, must continue in effect beyond September 9, 1986. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to South Africa. Additional measures to deal with this threat will be considered upon the completion of consultations with key Allies on joint, effective measures to eliminate apartheid and encourage negotiations for peaceful change in South Africa. This notice shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
September 4, 1986.

[FR Doc. 86-20269
Filed 9-4-86; 2:42 pm]
Billing code 3195-01-M

Editorial note: For the text of the President's message to Congress, dated Sept. 4, 1986, on the continuation of the South Africa emergency, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 36).

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Rules and Regulations

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement Provisions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comment on the rules to implement the retirement provisions of the Federal Employees Benefits Improvement Act of 1986 (FEBIA) which made several changes in the Civil Service Retirement Spouse Equity Act of 1984 (CSRSEA). These interim rules also include changes to the current interim rules for implementing CSRSEA based on the comments received and our operational experience.

DATE: Interim rules effective September 8, 1986; comments must be received on or before November 7, 1986.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Retirement and Insurance Group, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

Send applications under §§ 831.621 through 831.623 of these rules to the Office of Personnel Management, Employee Service and Records Center, Attention: Spouse Equity Act Coordinator, Boyers, PA 16017.

Send court orders affecting retirement benefits under Subpart Q of these rules to Allotments Branch, Office of Personnel Management, P.O. Box 17, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–1265.

SUPPLEMENTARY INFORMATION: On May 13, 1985, we published (50 FR 20064) interim rules and requested comments to implement the Civil Service Retirement Spouse Equity Act of 1984 (Pub. L. 98–615). A typographical error in the interim rules was corrected on May 22, 1985, 50 FR 21031.

Title II of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, made miscellaneous changes in CSRSEA. These interim rules are necessary to conform our earlier-published interim rules to implement CSRSEA with the changes made by FEBIA. In addition, changes in the interim rules are necessary to correct errors or omissions discovered through comments.

1. Changes Based on Comments

Eleven comments were received in response to our request. Four changes in these interim rules are based on those comments.

Two commenters requested that addresses be included in the rules to notify former spouses where to send (1) court orders under Subpart Q of these rules; and (2) applications for survivor benefits under § 831.622. In response, we have included the appropriate addresses in the "**ADDRESSES**" section of this rulemaking notice.

One commenter pointed out that § 831.620(a) failed to state the commencing date for court-ordered former spouse annuities in cases when the marriage was terminated and the employee retired after May 6, 1985. This oversight has been corrected in these interim rules.

Two commenters stated that it is inappropriate to require postal return receipts as proof of spousal notification under § 831.2007 because the receipt proves only that some piece of mail was delivered, not necessarily the notification form. To correct this deficiency, these interim rules establish that as an alternative to submission of a notification form signed by the spouse, the employee may submit (1) affidavits of witnesses to the notification; (2) proof that the current or former spouse's whereabouts are unknown; or (3) the current or former spouse's current mailing address. The refund application will inform the employee that alternative 3 will result in a 6- to 8-week delay in payment of the refund while we notify the spouse. It will also inform the employee that the refund will be denied if the notice cannot be delivered at the address provided. In addition, we have modified § 831.2007 to clarify that when affidavits of witnesses to the attempted notification are used, the witnesses must attest that they witnessed the attempt to deliver the notification form, not just an oral attempt at notification.

One commenter inquired whether a spouse or former spouse must be notified in accordance with CSRSEA when retirement contributions are transferred from one Federal retirement system to another. This is done to switch credit attained under one system to another system under certain circumstances involving individual entitlements. (For example, under Pub. L. 85–157, August 21, 1957, when Secret Service employees attain sufficient service to be covered under the District of Columbia Police and Firefighters Retirement and Disability System, contributions are transferred to permit the transfer of service credit.) We have added § 831.2010 to clarify that transfers of funds between retirement systems are not refunds; therefore, they are not subject to the spousal notification requirements.

2. Changes To Correct Omissions

After publication of the first interim rule, we discovered several provisions that were unclear or contained minor errors. We have corrected these deficiencies in these interim rules.

Section 831.105 has been amended to expressly provide that interest is to be compounded annually. Compound interest is necessary to implement the intent of the interest provisions of CSRSEA that the Civil Service Retirement and Disability Fund be approximately compensated for the income lost because the applicable survivor reductions were not taken. Interest on the interest lost is essential to the Fund because the money that would have been in the Fund would have earned compound interest.

A new paragraph was added to § 831.105 to specify the formula used in computing interest under CSRSEA deposits. Interest on CSRSEA deposits compounds annually, but accrues monthly. The formula in § 831.105(h) was developed to accomplish this purpose. To compute the interest on each monthly difference between the rate paid to the retiree and the reduced

rate that would have been in effect, 1.06 is raised to the power equal to one-twelfth of the number of months between the date when the benefit was paid and the date when collection of the deposit will begin (the date when collection begins is also the date when the annuity will be reduced to provide the survivor benefit). The 1.06 is the principal (1.00) plus the annual interest rate (.06). The exponent is the time period during which the interest is applied.

For example, if a retiree whose annuity commenced on January 1, 1985, at a rate of $14,700 per year, elected to provide a full survivor annuity for a former spouse, the retiree's annuity would be reduced by $100 per month. If the reduction began on November 1, 1985 (first reflected in the December 1 annuity check) the retiree would owe a deposit of $1027.17, as of December 1, 1985, computed as follows:

Date of check	Difference in rates	Months prior to annuity adjustment	Interest factor	Interest
Feb. 1, 1985	$100	10	.049756	$4.9756
Mar. 1, 1985	100	9	.044671	4.4671
Apr. 1, 1985	100	8	.039610	3.9610
May 1, 1985	100	7	.034574	3.4574
June 1, 1985	100	6	.029563	2.9563
July 1, 1985	100	5	.024576	2.4576
Aug. 1, 1985	100	4	.019613	1.9613
Sept. 1, 1985	100	3	.014674	1.4674
Oct. 1, 1985	100	2	.009759	.9759
Nov. 1, 1985	100	1	.004868	.4868
Dec. 1, 1985	0	0	.000000	.0000
Total	1000			27.1664

If the deposit is not paid in a single lump sum, we will collect it in monthly installments fixed at 25 percent of the net annuity paid December 1, 1985. The retiree's gross annuity is $1125 per month. Assuming Federal income tax withholdings of $222.05 and Federal Employees Health Benefits premiums of $102.95 per month, the retiree would have a net annuity of $800 per month. Collection would be made at the rate of $200 per month for 5 months with a final installment of $37.71 from the May 1, 1986 annuity check, as follows:

Date of check	Additional interest	Revised balance	Payment	Remaining balance
Dec. 1, 1985	$0.0000	$1027.1664	$200	$827.1664
Jan. 1, 1986	4.0266	831.1930	200	631.1930
Feb. 1, 1986	3.0726	634.2656	200	434.2656
Mar. 1, 1986	2.1140	436.3796	200	236.3796
Apr. 1, 1986	1.1507	237.5303	200	37.5303
May 1, 1986	.1827	37.7130	37.71	0.0000

Accordingly, the retiree would pay a total of $1037.71, of which $1000 is the amount by which the annuity would have been reduced and $37.71 is interest.

Section 8341(b)(1) of title 5, United States Code, allows the current spouse of an employee or Member whose annuity is based on a separation before October 11, 1962, a maximum survivor annuity of 50 percent of the employee's or Member's unreduced annuity; the reduction to provide that annuity is computed under the formula provided by section 9 of the Civil Service Retirement Act Amendments of 1956, Pub. L. 84–854, as required by section 1104 of the Civil Service Retirement Act Amendments of October 11, 1962, Pub. L. 87–793. These interim rules provide that the same maximum annuity rate and reduction formula apply also to the *former* spouse of an employee or Member whose annuity is based on a separation before October 11, 1962. (However, the reduction formula to provide a survivor annuity for a current spouse acquired after retirement, or for a former spouse divorced after retirement, will continue to be computed as provided in section 8339(j)(4) of title 5, United States Code.) Sections 831.604, 831.605, 831.612, 831.613, and 831.614 were modified to clearly state these rules.

The definition of "time of retirement" in § 831.603 has been corrected to explain more clearly that it refers to the first day for which annuity benefits are paid. In immediate annuity cases, this will usually be either the day after pay ceases, or the beginning of the month after pay ceases, if the employee worked more than 3 days during the month of retirement. In deferred annuity cases, this will be the former employee's 62nd birthday.

Section 831.606(9) states that in cases when the retiree elects both a fully or partially reduced annuity and an insurable interest annuity, both reductions are computed from the rate of the self-only annuity. It failed to explain that the beneficiary of the insurable interest annuity will receive an annuity equal to 55 percent (50 percent if the annuity is based on a separation before October 11, 1962) of the retiree's rate after the reduction for the insurable interest election but before any reduction to provide the current spouse annuity or former spouse annuity. This has been corrected in these interim rules.

Section 831.608(b)(1) of the current interim rules was superfluous. It has been eliminated from these interim rules.

The formula for computing the amount of the deposit under § 831.621(c)(2) was designed to cover only cases in which the retiree had a single former spouse for whom a spousal annuity had been provided prior to divorce. The formula has been corrected to cover situations when the retiree has had survivor reductions for more than one spouse. The revised formula conforms to our original intent that retirees will not be charged again for any time period when they were receiving a reduced annuity during the marriage to the spouse for whom they are now providing a former spouse annuity.

Section 831.623 has been amended to clarify that the rate of annuity payable to current spouses based on elections under that section will be at the same rate that would have been paid if the election had been at the first opportunity. This clarification principally affects survivors of disability annuitants who retired before October 20, 1969. The maximum annuity rate for those survivors is based on the employee's earned annuity (based on length of actual service) without the benefit of the 40 percent minimum or projection to age 60 applicable to the survivors of disability retirees who retired on or after October 20, 1969.

Section 831.701(d) has been amended to correct a reference to former § 831.1002 which has been renumbered § 831.620.

Section 831.1706(a) was clarified to express its original purpose that only funds to which the employee has an immediate entitlement can be affected by court orders aimed at employee retirement benefits.

3. Changes Based on FEBIA

Section 831.301 has been amended to include the right of former spouses to make the deposits required under Subpart C of this part to obtain credit for post-1956 military service. "Survivor," as used in Subparts C and U of this part, includes former spouses entitled to survivor annuities. In addition, § 831.602 of the interim rules has been amended to cross reference the provision on military deposits in Subparts C and U.

The definition of "former spouse" in § 831.603 was incorrect because it failed to provide that, except for the retroactive cases under §§ 831.621 and 831.622 (section 4(b) of CSRSEA), only persons married to employees or Members after CSRSEA became effective could be "former spouses" under Subpart F. This was required by section 4(a) of CSRSEA which limited the effect of the (section 2) retirement

changes to persons married to employees or Members after CSRSEA became effective. Section 201(a) of FEBIA extended coverage to additional former spouses. Now a person may meet the definition of a "former spouse" if either the marriage to the employee terminates after May 6, 1985, or the employee retires after that date. The definition of former spouse has been changed accordingly.

Under section 203(c)(2) of FEBIA, a current spouse may no longer be the beneficiary of both a fully or partially reduced annuity and an insurable interest annuity. Section 831.606(c) has been rewritten to require spousal consent giving up the right to a current spouse annuity before an insurable interest election can be made to benefit that spouse. The consent requirement prevents the spouse from receiving both annuities. To prevent an unintended inequity, we have provided that this *pro forma* consent will be cancelled if the employee cancels the insurable interest election under § 831.609 or fails to meet the requirements to make the election (e.g., fails to prove that he or she is in good health). Similiarly, we have continued the conversion right under § 831.606(h). That section has been amended to provide the right to cancel the *pro forma* consent when all former spouses' entitlements terminate, if the insurable interest annuity was elected to benefit the current spouse because the former spouse(s) had prior right to the spousal annuity.

Section 831.611(b) implements section 307 of FEBIA for employees who retire after May 27, 1986. These retirees are allowed to increase the amount allotted for a current spouse annuity during the 18-month period after retirement. An election under this section which causes the current spouse annuity and any former spouse annuities to exceed the total allowable survivor annuity will force a reduction in the former spouse annuities except to the extent that the former spouse annuities are required by court order. If a reduction in a former spouse annuity would be contrary to a court order, the court order prevents payment of the current spouse annuity to the extent necessary to comply with the court order and § 831.614.

Sections 831.612 and 831.613 have been amended to reflect the change in effective date of CSRSEA provided in section 201(a) of FEBIA. Under CSRSEA, generally, only retirees who retired on or after May 7, 1985, could elect to provide former spouse annuities for spouses from whom they were divorced after retirement. Under FEBIA and the new § 831.612, all retirees receiving reduced annuities to provide a current spouse annuity will be entitled to elect to provide a former spouse annuity for that spouse if the marriage terminates.

CSRSEA permitted a 2-year time limit in which to elect a reduced annuity to provide a survivor annuity for a spouse acquired after retirement only for retirees who retired after May 6, 1985. Under FEBIA and the new § 831.613, the 2-year election period applies to all marriages on or after February 27, 1986, even if the retiree retired years earlier.

Section 831.613(b)(4)(ii) was added to implement section 203(c)(1) and (c)(3) of FEBIA. If a retiree marries after retirement and elects a reduced annuity to benefit the new spouse, that election automatically voids an insurable interest election to benefit the same person, but gives the retiree the option of voiding an election of an insurable interest annuity if the beneficiary of the insurable interest annuity is a person other than the spouse acquired after retirement.

Section 831.617 was revised to conform to the changes in the rates of child annuities in section 205 of FEBIA. The revised provision sets each child's annuity rate depending on whether the child has a living parent who was the current or former spouse of the employee, Member, or retiree.

The new children's rates under FEBIA will be applied in the cases of children whose annuities commence on or after February 27, 1986, or whose annuities are required to be recomputed because of the death of the deceased employee's widow, former spouse, or another child, on or after that date.

Section 831.618 was revised to conforms to the change in the effective date of the CSRSEA marriage duration requirement under section 201(a) of FEBIA. Under CSRSEA, the former § 831.618 stated the marriage duration requirements before a survivor annuity right attaches based on a death of an annuitant who retired on or after May 7, 1985, or an employee or Member who died while employed in a position under CSRS on or after that date. Section 8341(a) of title 5, United States Code, as amended, provides that a spouse must be married to an employee, Member, or annuitant for only the 9 months immediately preceding death or be the parent of a child of that marriage to be eligible for a survivor annuity. Prior law (which continued to apply to annuitants who retired before May 7, 1985) required 1 year of marriage. Section 8341(i) of title 5, United States Code, provides that the requirement that a surviving spouse of an employee or Member must have been married to an employee or Member for at least 9 months immediately before death is satisfied in any case in which the death was accidental or in which the surviving spouse previously had been married to the individual and the aggregate time married is at least 9 months. These statutory changes were extended by FEBIA to cover all marriages after November 7, 1984 (including marriages by retirees who retired before May 7, 1985).

Section 831.620(e) incorporates the provision of section 204 of FEBIA for prorating the initial cost-of-living increases for former spouse annuities and beneficiaries of insurable interest annuities in the same manner as has been done for employee and current spouse annuities.

Section 831.621 has been amended to incorporate several changes made by FEBIA. Section 831.621 (a), (c), and (e) were changed to permit election of a partially reduced annuity to provide a former spouse annuity in accordance with section 201(d) of FEBIA. Previously, only an election of a fully reduced annuity was permitted under § 831.621. Section 831.621(b)(4) was changed to reflect the new time limit for making the election. That deadline is 12 months after publication of these interim rules.

Section 201(b) of FEBIA extended benefits under section 4(b) of CSRSEA to former spouses of employees who were eligible for immediate annuities but died (before May 7, 1985) while still employees. This change has been incorporated into § 831.622.

Section 831.622(a)(1) includes the five requirements to receive an annuity under section 4(b)(1)(B) of CSRSEA, as amended by section 201(b)(1)(C) of FEBIA. The CSRSEA requirement that the former spouse not be receiving an employer-provided retirement or survivor annuity in order to be eligible has been eliminated.

Section 831.622(a)(2) is the alternate method of qualifying under section 201(b)(3) of FEBIA. Under this provision, former spouses whose marriages were terminated before September 15, 1978, can qualify for annuities under this section if, at the time of application, no one else is receiving or designated to receive an annuity, other than a child's annuity, based on the service of the employee.

Section 831.622(b)(3) was revised to limit the former spouse's responsibility for notifying us about changes in status to giving notice of remarriage before age 55. The changes made by section 201 of FEBIA made the other information required by the previous § 831.622(b)(3) (i.e., eligibility for an employer-provided

retirement or survivor annuity) irrelevant.

Section 831.624 was amended to include references, in paragraphs (a) and (e), to the new deposit requirements in §§ 831.611, 831.628, and 831.629. The deposits are required for changes in election under these sections as provided in section 307 of FEBIA.

Section 201(a) of FEBIA extends survivor annuitant's right to remarry (without loss of the survivor annuity) after age 55 (rather than 60) to all remarriages on or after the date of enactment of CSRSEA (November 8, 1984). CSRSEA applied the age-55 standard only in cases in which the employee retired or died while serving in a position covered by the Civil Service Retirement System (CSRS) on or after May 7, 1985. Section 831.625 has been amended to reflect this change.

Section 307(b) of FEBIA granted retirees who retired before May 28, 1986, an 18-month period in which to increase the survivor protection for their current spouses provided that the current spouse is the same spouse to whom they were married at retirement and the increase does not cause all survivor annuities provided by that retiree to exceed the maximum. The election for these cases is the same as under § 831.611(b) (discussed above) except that, in accordance with section 307(b)(2)(B)(ii) of FEBIA, no interest on the deposit is charged under § 831.628.

Section 831.629 regulates the deposit required for a "later" election made under § 831.611(b) or 831.628. Section 307 of FEBIA provides that the deposit is equal to the sum of reductions that would have been made to the retired employee's annuity if the later election had been made at retirement, plus the additional cost to the CSRS associated with the later election.

We are assuming that 5 percent of the retirees who use this second opportunity to elect a survivor annuity or to increase the survivor base amount constitute—in actuarial terms—an "adverse selection." In other words, the *probability* of their spouse receiving a survivor annuity has increased. (For example, the retirees may have learned of a deterioration in their health status since making the original election.) Also, because a higher mortality rate is projected for this group, their survivors are assumed to receive benefits over a longer period of time. While it is logical to assume that the rate of "adverse selections" is actually much greater than 5 percent, this minimum number was established pending the development of actual mortality experience.

Accordingly, the additional cost associated with allowing this later election is the amount projected to be paid in survivor annuities (offset by projected reductions to the retirees' annuity) in the 5 percent of the cases representing "adverse selections." Spreading this total cost over the entire class of retirees making a later election, we derived an average cost of $245 per $1,000 of change in the designated base for computing the survivor annuity. We will recalculate this cost based on the actual costs to the system after we have had sufficient experience (estimated to require 10–15 years).

Sections 831.1704(d) and 831.1711 were amended to reflect the change in the effective date of CSRSEA provided in section 201(a) of FEBIA. Previously, court orders could award survivor annuities only if both the court order terminating the marriage and the employee's retirement or death while serving in a position covered by CSRS were on or after May 7, 1985. Now, under FEBIA, courts may generally award a survivor annuity provided either of these conditions is fulfilled. Two exceptions remain: Retirees who retired before May 7, 1985, are only subject to the terms of any divorce decree issued on or after that date which requires them to provide a former spouse survivor annuity if they had elected to provide a current spouse survivor annuity for that spouse when they retired, or, in the case of a post-retirement marriage, they had elected to provide a survivor annuity for that spouse before May 7, 1985. The second exception pertains to employees who were divorced before May 7, 1985, and who die in service on or after that date. In such a case, the law does not provide for compliance with a court order awarding a survivor annuity to the former spouse.

The amendment to § 831.1704(e) was required by section 208 of FEBIA which prohibited changes in court orders after the death of the employee.

The amendment to § 831.2009 was to permit court orders to block refunds of retirement deductions in legal separation cases as well as final divorce cases, as provided in section 209 of FEBIA. Before FEBIA, courts could block refunds in divorce cases but not in legal separation cases.

4. Interpretive Guideline

Lastly, we are adding a guideline (as Appendix B to Subpart Q) for interpreting orders which award survivor annuities. This guideline emphasizes the difference between reduced annuities to provide former spouse annuities under section 8339(j) of title 5, United States Code, and insurable interest annuities under section 8339(k) of title 5, United States Code. We hope that this guideline will eliminate the confusion which has been apparent from the telephone inquiries that we have received.

Under section 553(d)(3) of title 5, United States Code, I find that there is good reason to make these amendments effective in less than 30 days. The regulations are effective upon publication to prevent harm to persons entitled to benefits under FEBIA. Delaying rulemaking would be contrary to the public interest as expressed in FEBIA because such a delay could require delayed payments in cases authorized by the revised statute most of which was effective retroactive to May 7, 1985, until implementing regulations could be put in place. Although later payments could be retroactive to May 7, 1985, when entitlement attached on that date, delay could seriously harm entitled persons with an immediate need for payment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Personnel Management Office, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 831—RETIREMENT

Accordingly, OPM is amending 5 CFR Part 831 as follows:

Subpart A—Administration and General Provisions

1. The authority citation for Subpart A of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

2. In § 831.105, paragraph (h) is added to read as follows:

§ 831.105 Computation of interest.

* * * * *

(h) Interest under §§ 831.612, 831.613, 831.621, and 831.623 is compounded annually and accrued monthly.

(1) The initial interest on each monthly difference between the reduced annuity rate and the annuity rate actually paid equals the amount of the monthly difference times the difference between (i) 1.06 raised to the power whose numerator is the number of months between the date when the monthly difference in annuity rates occurred and the date when the initial interest is computed and whose denominator is 12; and (ii) 1.

(2) The total initial interest due is the sum of all of the initial interest on each monthly difference computed in accordance with paragraph (h)(1) of this section.

(3) Additional interest on any uncollected balance will be compounded annually and accrued monthly. The additional interest due each month equals the remaining balance due times the difference between (i) 1.06 raised to the 1/12th power; and (ii) 1.

Subpart C—Credit for Service

3. The authority citation for Subpart C of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

4. Section 831.301 is amended by removing the words "employee or Member (or his or her widow(er))" and inserting in their place "employee, Member, or survivor."

Subpart F—Survivor Annuities

5. The authority citation for Subpart F of Part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Section 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99-251.

6. In § 831.602, paragragh (f) is added to read as follows:

§ 831.602 Relation to other regulations.

* * * * *

(f) Subparts C and U of this part contain information about service credit deposits by survivors of employees or Members.

7. In § 831.603, the definitions of "former spouse" and "time of retirement" are revised to read as follows:

§ 831.603 Definitions.

* * * * *

"Former spouse" means a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree. Except in §§ 831.621 and 831.622, "former spouse" includes only persons who were married to an employee or Member on or after May 7, 1985, or who were the spouse of a retiree who retired on or after May 7, 1985, regardless of the date of termination of the marriage.

* * * * *

"Time of retirement" means the effective commencing date for a retired employee's or Member's annuity.

8. In § 831.604, paragraphs (c) and (d) are added to read as follows:

§ 831.604 Election at time of retirement of fully reduced annuity to provide a current spouse annuity.

* * * * *

(c) The maximum rate of a current spouse annuity is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a current spouse annuity is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(d)(1) The amount of the reduction to provide a current spouse annuity equals 2½ percent of the first $3600 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a current spouse annuity (under § 831.613) for a spouse acquired after retirement.

(2) The amount of the reduction to provide a current spouse annuity under this section for former employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $2400.

9. Section 831.605 is amended by revising paragraph (c)(2) and adding paragraphs (e) and (f) to read as follows:

§ 831.605 Election at time of retirement of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

* * * * *

(c) * * *

(2) Would cause the total of current spouse annuities and former spouse annuities payable based on the employee's or Member's service to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the self-only annuity to which the employee or Member would be entitled.

* * * * *

(e) The maximum rate of a former spouse annuity under this section or § 831.612 is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a former spouse annuity under this section or § 831.612 is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(f)(1) The amount of the reduction to provide a former spouse annuity equals 2½ percent of the first $3600 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a former spouse annuity (under § 831.612) for a former spouse from whom the employee or Member was divorced after retirement.

(2) The amount of the reduction to provide a former spouse annuity under this section for former employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $2400.

10. Section 831.606 is amended by revising paragraphs (c), (g), and (h), and by adding a new paragraph (k) to read as follows:

§ 831.606 Election of insurable interest annuity.

* * * * *

(c)(1) In the case of a married employee or Member, an election under this section may not be made on behalf of a current spouse unless that current spouse has consented to an election not to provide a current spouse annuity in accordance with § 831.604(a)(1).

(2) A consent (to an election not to provide a current spouse annuity in accordance with § 831.604(a)(1)) required by paragraph (c)(1) of this

section to be eligible to be the beneficiary of an insurable interest annuity is cancelled if—

(i) The retiree fails to qualify to receive the insurable interest annuity; or

(ii) The retiree changes his or her election to receive an insurable interest annuity under § 831.609; or

(iii) The retiree elects a fully or partially reduced annuity to provide a current spouse annuity under § 831.628.

(3) An election of a partially reduced annuity under § 831.611(b) or § 831.628 to provide a current spouse annuity for a current spouse who is the beneficiary of an insurable interest annuity is void unless the spouse consents to the election.

(4) If a retiree who had elected an insurable interest annuity to benefit a current spouse elects a fully reduced annuity to provide a current spouse annuity (or, with the consent of the current spouse, a partially reduced annuity to provide a current spouse annuity) under § 831.611(b) or § 831.628, the election of the insurable interest annuity is cancelled.

* * * * *

(g) (1) When an employee or Member elects both an insurable interest annuity and a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity and/or a former spouse annuity or annuities, each reduction is computed based on the self-only annuity computation. The combined reduction may exceed the maximum 40 percent reduction in the retired employee's or Member's annuity permitted under section 8339(k)(1) of title 5, United States Code, applicable to insurable interest annuities.

(2) The rate of annuity paid to the beneficiary of an insurable interest election, when the employee or Member also elected a fully reduced annuity or a partially reduced annuity, equals 55 (or 50 percent if based on a separation before October 11, 1962) percent of the rate of annuity after the insurable interest reduction. The additional reduction to provide a current spouse annuity or a former spouse annuity is not considered in determining the rate of annuity paid to the beneficiary of the insurable interest election.

(h) (1) Except as provided in § 831.605(d), if a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity has also elected an insurable interest annuity to benefit a current spouse and if the eligible former spouse dies or remarries before age 55 and no other former spouse is entitled to a survivor annuity based on an election made in accordance with § 831.612 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's death or remarriage, to convert the insurable interest annuity to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the death or remarriage of the former spouse.

(2) An election under paragraph (h)(1) of this section cancels any consent not to receive a current spouse annuity required by paragraph (c) of this section for the current spouse to be eligible for an annuity under this section.

(3) When a former spouse receiving an annuity under section 8341(h) of title 5, United States Code, loses eligibility to that annuity, a beneficiary of an insurable interest annuity who was the current spouse at both the time of the retiree's retirement and death may, within 2 years after the death or remarriage of the former spouse, elect to receive a current spouse annuity instead of the annuity he or she had been receiving.

* * * * *

(k) (1) An election under this section is prospectively voided by an election of a reduced annuity to provide a current spouse annuity under § 831.613 that would benefit the same person.

(2) (i) If the spouse is not the beneficiary of the election under this section, a retiree may prospectively void an election under this section at the time the retiree elects a reduced annuity to provide a current spouse annuity under § 831.613.

(ii) A retiree's election to void an election under paragraph (k)(2)(i) of this section must be filed at the same time as the election under § 831.613.

11. In § 831.608, paragraph (b) is revised to read as follows:

§ 831.608 Waiver of spousal consent requirement.

* * * * *

(b) The spousal consent requirement will be waived if the employee or Member presents a judicial determination regarding the current spouse that would warrant waiver of the consent requirement based on exceptional circumstances.

12. Section 831.611 is revised to read as follows:

§ 831.611 Changes of election after final adjudication.

(a) Except as provided in section 8339 (j) or (k) of title 5, United States Code, or §§ 831.621, 831.623, 831.628, or paragraph (b) of this section, an employee or Member may not revoke or change the election or name another survivor later than 30 days after the date of the first regular monthly payment.

(b) (1) Except as provided in § 831.606 and paragraphs (b)(2) and (b)(3) of this section, a retiree who was married at the time of retirement and has elected a self-only annuity, or a partially reduced annuity to provide a current spouse annuity, or a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity, or an insurable interest annuity may elect, no later than 18 months after the time of retirement, an annuity reduction or an increased annuity reduction to provide a current spouse annuity.

(2) A current spouse annuity based on an election under paragraph (b)(1) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under § 831.614.

(3) To make an election under paragraph (b)(1) of this section, the retiree must pay, in full, a deposit determined under § 831.629, plus interest, at the rate provided under § 831.105(g), no later than 18 months after the time of retirement.

(4) If a retiree makes an election under paragraph (b)(1) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended to 30 days after OPM sends the notice of the amount of the deposit.

(5) An election under paragraph (b)(1) of this section, cancels any spousal consent under § 831.604 to the extent of the election.

(6) An election under paragraph (b)(1) of this section is void unless it is filed with OPM before the retiree dies.

(7) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or former spouse annuities makes an election under paragraph (b)(1) of this section which would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 831.614, the former spouse annuity (or annuities) must be reduced to not exceed the maximum allowable under § 831.614.

13. In § 831.612, paragraph (a) is revised to read as follows:

§ 831.612 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a) (1) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7,

1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(2) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired before May 7, 1985, and whose marriage was terminated on or after May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity if the retiree while married to the former spouse had elected, prior to May 7, 1985, a reduced annuity to provide a current spouse annuity for that spouse. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(3) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7, 1985, and before February 27, 1986, and whose marriage terminated before May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be made no later than February 27, 1988.

* * * * *

14. In § 831.613, the introductory text of paragraphs (a) and (b), and paragraphs (b) (3) and (4) are revised to read as follows:

§ 831.613 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a current spouse annuity.

(a) In cases of retirees who retired before May 7, 1985, and married after retirement but before February 27, 1986:

* * * * *

(b) In cases involving retirees who retired on or after May 7, 1985, or married on or after February 27, 1986:

* * * * *

(3) An election under paragraph (b)(1) or (b)(2) of this section is not effective to the extent that it conflicts with a qualifying court order or would cause the combined current and former spouse annuities to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the retiree's annuity.

(4) (i) Except as provided in paragraph (b)(4)(ii) of this section, a retiree making an election under this section must deposit an amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraphs (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(ii) An election under this section may be made without deposit, if that election prospectively voids an election of an insurable interest annuity.

* * * * *

15. In § 831.614, paragraph (a) is revised to read as follows:

§ 831.614 Division of a survivor annuity.

(a) Except as provided in §§ 831.621 and 831.622, the maximum combined total of all current and former spouse annuities (not including any benefits based on an election of an insurable interest annuity) payable based on the service of a former employee or Member equals 55 percent (or 50 percent if based on a separation before October 11, 1962) of the rate of the self-only annuity that otherwise would have been paid to the employee, Member, or retiree.

* * * * *

16. Section 831.617 is revised to read as follows:

§ 831.617 Rates of child annuities.

(a) (1) The rate of annuity payable to a child survivor whose annuity commenced before February 27, 1986, is computed in accordance with the law in effect on the date when the annuity began to accrue, unless the rate of annuity is recomputed under paragraph (e) of this section on or after February 27, 1986.

(2) The rate of annuity payable to a child survivor whose annuity commenced on or after February 27, 1986, or was recomputed under paragraph (e) of this section on or after February 27, 1986, is computed under paragraph (b), (c), or (d) of this section.

(b) Except as provided in paragraph (a) of this section, the rate of annuity of a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member or annuitant was never married to a natural or adoptive parent of that surviving child of the former employee or Member.

(c) Except as provided in paragraphs (a) and (b) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (A) through (C) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, whenever a deceased employee, Member, or retiree is survived by a natural or adoptive parent of that surviving child of the employee, Member, or retiree.

(d) Except as provided in paragraph (a) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member, or retiree is not survived by a natural or adoptive parent of that surviving child of the former employee or Member.

(e) On the death of a natural or adoptive parent or termination of the annuity of a child, the annuity of any other child or children is recomputed and paid as though the parent or child had not survived the former employee or Member.

17. In § 831.618, the introductory text of paragraph (a) is revised to read as follows:

§ 831.618 Marriage duration requirements.

(a) The surviving spouse of a retiree who retired on or after May 7, 1985, or of a retiree who retired before May 7, 1985, but married that surviving spouse on or after November 8, 1984, or of an employee or Member who dies while serving in a position covered by CSRS on or after May 7, 1985, or of an employee or Member who died while serving in a position covered by CSRS before May 7, 1985, but married that surviving spouse on or after November 8, 1984, can qualify for a current spouse annuity only if—

* * * * *

18. Section 831.620 is amended by revising the section heading, revising paragraph (a), and adding paragraph (e) to read as follows:

§ 831.620 Commencing and terminating dates of survivor annuities.

(a) A survivor annuity payable from the Civil Service Retirement and Disability Fund commences the day after (1) death of the employee, Member, or retiree; or (2) attainment of age 50 when, under section 12 of the Civil Service Retirement Act Amendments of February 29, 1948, the annuity is deferred until age 50; or (3) a claim is received in OPM when an annuity is authorized for unremarried widows and widowers by section 2 of the Civil Service Retirement Act Amendments of June 25, 1958, 72 Stat. 218; or (4) the later of the date of death of the retiree or the first day of the second month after the date the application for annuity is filed under § 831.622; or (5) the later of the date of death of the employee, Member, or retiree or the first day of the second month after the court order awarding the

former spouse annuity is received in OPM when a former spouse annuity is authorized by court order under section 8341(h) of title 5, United States Code.

* * * * *

(e) Initial cost-of-living increases on current and former spouse annuities, and annuities to beneficiaries of insurable interest annuities are prorated under section 8340(c) of title 5, United States Code.

19. Section 831.621 is amended by revising paragraphs (a), (b)(4), (c), (d), (e)(1), and (e)(2), and adding paragraph (f) to read as follows:

§ 831.621 Election by a retiree who retired before May 7, 1985, to provide a former spouse annuity.

(a) A retiree who retired before May 7, 1985, including a retiree receiving a fully reduced annuity to provide a current spouse annuity, may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity.

(b) * * *

(4) Be filed with OPM before September 8, 1987.

(c)(1)(i) If a retiree who is receiving an insurable interest annuity elects a fully reduced annuity or a partially reduced annuity under this section to benefit the same person, the insurable interest annuity terminates. A retiree who is receiving an insurable interest annuity at the time that an annuity is elected under this section does not owe any further deposit.

(ii) If a retiree who had been receiving an insurable interest annuity, which was terminated to elect a reduced annuity to provide a current spouse annuity for a spouse acquired after retirement, elects to provide a former spouse annuity for a former spouse who was the beneficiary of the insurable interest annuity, the retiree must deposit an amount equal to the sum of the monthly differences between the self-only annuity and a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) from the date the insurable interest annuity terminated, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(2) A retiree who elects a fully reduced annuity or a partialy reduced annuity under this section, to provide a former spouse annuity for a former spouse for whom the retiree had elected (during the marriage to that former spouse) a reduced annuity to provide a current spouse annuity, must deposit an amount equal to the sum of the monthly differences between the self-only annuity and the amount of annuity that would have been in effect had a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable, except that the retiree will not be charged for any period during which the survivor reduction was in effect for that former spouse.

(3) A retiree who elects a fully reduced annuity or a partially reduced annuity under this section, and is not covered under paragraph (c)(1) or (c)(2) of this section, must deposit an amount equal to the sum of the monthly difference between the self-only annuity and a fully reduced annuity or a partially reduced annuity (with the same base as elected to provide the former spouse annuity) since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(d) If a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity elects a fully reduced annuity or a partially reduced annuity under this section to provide a former spouse annuity, the annuity will be reduced separately to provide for the current and former spouse annuities. Each separate reduction will be computed based on the self-only annuity, and the separate reductions are cumulative.

(e)(1) In response to a retiree's inquiry about providing a former spouse annuity under this section, OPM will send an application form. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully reduced annuity or a partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity or partially reduced annuity; and

(ii) The rate of the potential former spouse annuity; and

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

* * * * *

(f)(1) A retiree who made an election under this section prior to September 9, 1986 may modify that election by designating a lesser portion of the retiree's annuity be used as the base for the annuity reduction and the former spouse annuity.

(2) Any modification under paragraph (f)(1) of this section must be in writing and received in OPM no later than the date provided for applications in § 831.621(b)(4).

20. In § 831.622, paragraphs (a) and (b)(3) are revised to read as follows:

§ 831.622 Annuities for former spouses of employees or Members retired before May 7, 1985.

(a)(1) The former spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and had fulfilled the age and service requirements to be eligible to retire under section 8336 of title 5, United States Code, at the time of death) is entitled, after the death of the retiree, employee, or Member to a survivor annuity equal to 55 percent of the annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse's marriage to the retiree, employee, or Member was dissolved after September 14, 1978. The date of dissolution of a marriage is the date when the marriage between the former spouse and the retiree, employee, or Member ended under the law of the jurisdiction that terminated the marriage, rather than the date when restrictions on remarriage ended. The date of entry of the decree terminating the marriage will be rebuttably presumed to be the date when the marriage was dissolved.

(ii) The former spouse was married to the retiree, employee, or Member for at least 10 years of the retiree's, employee's, or Member's creditable service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(iii) The former spouse has not remarried before reaching age 55.

(iv) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 9, 1987.

(v) The former spouse is at least 50 years old when filing the application.

(2) A former spouse who is not eligible for an annuity under paragraph (a)(1) of this section and who is the former

spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and had fulfilled the age and service requirements to be eligible to retire under section 8336 of title 5, United States Code, at the time of death) is entitled, after the death of the retiree, employee, or Member to a survivor annuity equal to 55 percent of the annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse was married to the retiree, employee, or Member for at least 10 years of the retiree's, employee's, or Member's creditable service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(ii) The former spouse has not remarried before reaching age 55.

(iii) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 9, 1987.

(iv) The former spouse ia at least 50 years old when filing the application.

(v) No current spouse, other former spouse, or insurable interest designee is receiving or has been designated to receive a survivor annuity based on the service of the employee, Member, or retiree.

(3) If two or more eligible former spouses of a retiree, employee, or Member apply for annuities under paragraph (a)(2) of this section based on the service of the same retiree, employee, or Member, and neither meets the requirements of paragraph (a)(1) of this section, the former spouse whose application OPM receives first is entitled to the annuity.

(b) * * *

(3)(i) Former spouses applying for benefits under this section must meet the requirements of paragraph (a) of this section at the time of application.

(ii) An annuity under this section terminates on the last day of the month before the former spouse dies or remarries before age 55. A former spouse who is receiving a former spouse annuity under this section must notify OPM within 30 days after he or she remarries before age 55.

* * * * *

21. In § 831.623, paragraph (c)(2)(iii) is revised and paragraph (f) is added to read as follows:

§ 831.623 Second chance elections to provide survivor benefits.

* * * * *

(c) * * *

(2) * * *

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

* * * * *

(f) The rate of a survivor annuity under this section will be computed under the laws in effect at the time of the retiree's separation from the Federal service.

22. Section 831.624 is amended by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 831.624 Payments of required deposits.

(a) The deposits required to elect fully or partially reduced annuities under §§ 831.611, 831.612, 831.613, 831.621, 831.623, or 831.628 are not annuity overpayments and their collection is not subject to waiver. They are subject to reconsideration only to determine whether the amount has been correctly computed.

* * * * *

(e) The deposits required by § 831.611 or § 831.628 are controlled by § 831.629.

23. In § 831.625, paragraphs (a) and (b) are revised to read as follows:

§ 831.625 Remarriage.

(a)(1) If a recipient of a current spouse annuity remarried before November 8, 1984, the current spouse annuity terminates on the last day of the month before the recipient remarried before attaining age 60.

(2) If a recipient of a current spouse annuity remarries on or after November 8, 1984, a current spouse annuity terminates on the last day of the month before the recipient remarries before attaining age 55.

(b) A former spouse annuity or eligibility for a future former spouse annuity terminates on the last day of the month before the month in which the former spouse remarries before attaining age 55.

* * * * *

24. New §§ 831.628 and 831.629 are added to read as follows:

§ 831.628 Changes in elections to provide a current spouse annuity by a retiree who retired before May 28, 1986.

(a) Except as provided in § 831.606 and paragraphs (b) and (c) of this section, a retiree who retired before May 28, 1986, was married at the time of retirement, and at the time of retirement did not elect a fully reduced annuity to provide a current spouse annuity may elect a fully reduced annuity or a greater partially reduced annuity to provide a current spouse annuity.

(b)(1) An election under paragraph (a) of this section may be made only by a retiree who is married to the same spouse to whom the retiree was married at the time of retirement.

(2) A current spouse annuity based on an election under paragraph (a) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under § 831.614.

(3)(i) Except as provided in paragraph (b)(4) of this section, to make an election under paragraph (a) of this section, the retiree must pay the deposit computed under § 831.629, in full, no later than November 28, 1987.

(ii) Except as provided in paragraph (b)(4) of this section, failure to pay the deposit, in full, before November 29, 1987, voids an election made under paragraph (a) of this section.

(4) If a retiree makes an election under paragraph (a) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended to 30 days after OPM sends the notice of the amount of the deposit.

(c) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity makes an election under paragraph (a) of this section that would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 831.614, the former spouse annuity (or annuities) must be reduced to conform with that allowed under § 831.614.

(d) An election under paragraph (a) of this section is void unless it is filed with OPM before the retiree dies.

§ 831.629 Deposit required to make an election under § 831.611(b) or § 831.628.

The amount of the deposit required under § 831.611(b) or § 831.628 equals the sum of the monthly differences between the annuity paid to the retiree and the annuity that would have been paid if the additional annuity reduction elected under § 831.611(b) or § 831.628 had been in effect since the time of retirement, plus 24.5 percent of the increase in the designated base (computed as of the time of retirement) on which the survivor annuity is calculated.

VOL 51 ISS 173 SE 8 1986 UMI

Subpart G—Computation of Annuities

25. The authority citation for Subpart G of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

26. In § 831.701, paragraph (d) is revised to read as follows:

§ 831.701 Effective dates of annuities.

* * * * *

(d) Survivor annuities commence as provided in § 831.620.

* * * * *

Subpart Q—Court Orders affecting Civil Service Retirement Benefits

27. The authority citation for Subpart Q of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

28. In § 831.1704, paragraphs (d) and (e) are revised to read as follows:

§ 831.1704 Qualifying court orders.

* * * * *

(d) For purposes of affecting or awarding a former spouse annuity, a court order is not a qualifying court order whenever—

(1) The marriage was terminated before May 7, 1985; and

(i) The employee or Member retired under CSRS before May 7, 1985; or

(ii) The employee or Member died in service; or

(2)(i) The marriage was terminated on or after May 7, 1985; and

(ii) The employee or Member retired under CSRS before May 7, 1985; and

(iii)(A) The employee or Member had elected not to provide a current spouse annuity for that spouse at the time of retirement; or,

(B) In the case of a post-retirement marriage, the annuitant had not elected to provide a survivor annuity for that spouse before May 7, 1985.

(e)(1) Except in cases when divorces occur after retirement, a court order concerning a survivor annuity will not be honored if it is issued after the retirement of the employee or Member involved.

(2) A court order concerning a survivor annuity for a former spouse will not be honored if it is issued after the death of the employee, Member, or retiree involved.

29. In § 831.1706, paragraph (a)(2) is revised and paragraph (a)(3) is added to read as follows:

§ 831.1706 Amounts payable.

(a) * * *

(2) Application for payment of the money by the former employee or Member; and

(3) The former employee's or Member's immediate entitlement to payment of the money subject to the order.

* * * * *

30. In § 831.1711, paragraph (b)(1) is revised to read as follows:

§ 831.1711 Effective dates.

* * * * *

(b)(1) The provisions of this subpart concerning former spouse annuities apply only with respect to a former spouse of an employee, Member, or retiree who retires or dies while employed in a position covered by CSRS on or after May 7, 1985, or a former spouse whose marriage to an employee, Member, or retiree is terminated on or after May 7, 1985, regardless of the date the employee separates from a position covered by CSRS.

* * * * *

31. Appendix B to Subpart Q of Part 831 is added to read as follows:

Appendix B to Subpart Q of Part 831—Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

UNITED STATES OF AMERICA

Office of Personnel Management

Compensation Group

Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

Recent inquiries and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in awarding survivor benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Insurable Interest Annuities

Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Section 8339(j) of title 5, United States Code, provides for reduced annuities to provide "former spouse annuities." Section 8339(k) of title 5, United States Code, provides for "insurable interest annuities." These are distinct benefits, each with its own advantages.

A. OPM will enforce State court orders to provide section 8339(j) annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8339(j) annuity, the order must use terms such as "former spouse annuity," "section 8339(j) annuity," or "survivor annuity."

B. OPM will not enforce State court orders to provide "insurable interest annuities" under section 8339(k). These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The election may also be eliminated to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the non-employee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8339(j) annuity. However, the State court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM will not enforce the order. Language including the words "insurable interest" or referring to section 8339(k) will be interpreted as providing for this type of survivor benefit.

C. In orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8339(j)," the section reference will control.

Subpart T—Payment of Lump Sums

32. The authority citation for Subpart T of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

33. In § 831.2007, paragraph (e) is removed and paragraphs (c) and (d) are revised to read as follows:

§ 831.2007 Notification of current and/or former spouse before payment of lump sum.

* * * * *

(c) Proof of notification will consist of a signed and witnessed Statement by the current and/or former spouse on a form provided by OPM acknowledging that he or she has been informed of the former employee's or Member's application for refund and the consequences of the refund on the current or former spouse's possible annuity entitlement. This Statement must be presented to the employing agency or OPM when filing the Application for Refund of Retirement Deductions.

(d) If the current and/or former spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement, the employee or Member must submit—

(1) Affidavits signed by two individuals who witnessed the employee's or Member's attempt to personally notify the current or former spouse. The witnesses must attest that they were in the presence of the employee or Member and the current or former spouse when the employee or

Member gave or attempted to give the notification form to the current or former spouse and that the employee's or Member's purpose should have been clear to the current or former spouse; or

(2) The current mailing address of the current or former spouse. OPM will attempt to notify (by certified mail—return receipt requested) the current or former spouse at the address provided by the employee or Member. The lump-sum credit will not be paid until OPM receives the signed return receipt.

34. In § 831.2009, paragraph (a) is revised to read as follows:

§ 831.2009 Court orders or decrees preventing payment of lump sums.

(a) Payment of the lump-sum credit to a former employee or Member will be subject to the terms of any court order or decree issued with respect to any former spouse or to any current spouse from whom the employee or Member was legally separated, if—

(1) The court order or decree expressly relates to any portion of the lump-sum credit involved; and

(2) Payment of the lump-sum credit would extinguish entitlement of the current or former spouse to a survivor annuity under section 8341(h) of title 5, United States Code, or to any portion of an annuity under section 8345(j) of title 5, United States Code.

* * * * *

35. Section 831.2010 is added to read as follows:

§ 831.2010 Transfers between retirement systems.

Transfers of employees' contributions between the Civil Service Retirement and Disability Fund and other retirement systems for Federal or District of Columbia employees when made in accordance with Federal statute for the purpose of transferring retirement service credit to the other retirement system are not subject to the notice requirements or court order provisions of this subpart.

[FR Doc. 86-20105 Filed 9-5-86; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 322

[Docket No. 85-011F]

Delivery of Export Certificates

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On February 26, 1986, the Food Safety and Inspection Service (FSIS) published a proposed rule (51 FR 6743) that would permit the filing of a duplicate export certificate with the United States Customs Service within four days of the clearance of a vessel carrying a shipment of meat products. This action is consistent with regulations of the United States Customs Service that allow a delay of four business days in the filing of a Complete Cargo Declaration. In the interim period, the United States Customs Service will clear the vessel on the basis of a statement containing information as to the export certificate number. This action is necessary so that vessels carrying meat products can depart on schedule even though certain export certificates are not on file at the time of departure. Five comments were received on the proposed rule and all supported it. Therefore, FSIS is adopting the proposed rule as final with minor modifications.

EFFECTIVE DATE: October 8, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Fetzner, Director, Export Coordination Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-9051.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule makes more flexible and less burdensome certain paperwork requirements mandated by the Federal Meat Inspection Act.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The rule makes more flexible and less burdensome certain paperwork requirements mandated by the Federal Meat Inspection Act.

Background

On February 26, 1986, FSIS published in the **Federal Register** (51 FR 6743) a proposed rule to amend the Federal meat inspection regulations by adding a provision that would permit a four-day delay in the filing of a duplicate export certificate with the United States Customs Service (Customs). This delay period would enable vessels carrying meat products to depart even though the duplicate of the export certificate covering meat products intended for export had not been filed with Customs. Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), meat products intended and offered for export to and sale in a foreign country must be inspected (21 U.S.C. 615). In addition, the FMIA prohibits the clearance for departure of any vessel carrying meat products for export to and sale in a foreign country until the owner or shipper has obtained from an inspector a certificate indicating that the products are sound and wholesome (unless the Secretary has waived certificate requirements for the country) (21 U.S.C. 617). The FMIA also requires that copies of the certificate be filed with USDA, the owner or shipper of the products intended for export, and the chief officer of the vessel carrying the meat products (21 U.S.C. 618). Section 322.2(e) of the Federal meat inspection regulations (9 CFR 322.2(e)) had required that the duplicate of the export certificate be delivered to the shipper for filing with Customs at the time the master's manifest or supplemental manifest is filed by the chief officer of the vessel with Customs, that is, on the day of departure. However, Customs' law and regulations allow shippers a delay of four business days in the filing of a Complete Cargo Declaration (manifest) if the vessel's cargo declaration is not complete (or if certain required shipper's export declarations are not on file), and a General Declaration is filed at departure time (46 U.S.C. 91, 19 CFR 4.75).

There have been instances where a vessel carrying meat products has been denied clearance by Customs because the export certificate, covering meat products on board, was not available at the time the vessel was due to depart. This can occur frequently because certain importing countries require that a veterinarian sign the export certificate. All such products would be certified as being sound and wholesome, and the certificate would be prepared and the boxes stamped with the number of the export certificate. However, if the veterinarian is on an assignment

covering more than one establishment, or if the product is being shipped from an establishment without veterinary coverage, then the veterinarian may not be able to send the signed certificate, verifying completion of inspection, in a timely manner. In these cases, if the veterinarian notifies plant management that product may be shipped, then the product may be moved from the establishment even without a signed certificate.

This rule permits the shipper, shipper's agent or the vessel's agent to provide to Customs a statement under the shipper's or agent's letterhead signed by the shipper briefly describing the shipment of the product, in those instances where the export certificate is not available at departure time. This description would include the number of boxes covered, number of pounds covered, type of product, and the number of the export certificate that covers the shipment of the product. For example, the following statement would be acceptable: "The *600* boxes, *36,000* pounds of *Beef Tenderloins* in the shipment are covered by *USDA Export Certificate No. MPA 52983.*" The export certificate number is readily available to the shipper because the outside of each container is required to be stamped with the number of the export certificate covering it before the shipment leaves the establishment. Customs will then clear the vessel for departure on the basis of the statement. The duplicate of the signed export certificate will be delivered to Customs by the shipper, shipper's agent, or vessel's agent within four business days of the vessel's departure. The four-day time frame is consistent with Customs' regulations that allow a Complete Cargo Declaration (manifest) or shipper's export declarations to be filed within four business days after clearance.

This rule is expected to impact positively on all shippers and exporters, and on FSIS and the Customs Service, as it provides an alternative to an unnecessarily restrictive regulatory requirement that is inconsistent with Customs' procedures and is currently causing enforcement problems for Customs and vessel delays for shippers transporting meat products as part of or all of their cargo. Since the product has been inspected and certified for export (the export stamp provides this assurance), unavoidable delay in the delivery of the certificate to Customs should not delay a vessel's departure.

Discussion of Comments

FSIS received five comments in response to the proposed rule: one from an industry member; one from a shipping association, one from a steamship operator's association; one from an export company; and one from a government agency, United States Customs Service. All of the commenters supported the intent of the proposed change. Most commenters simply stated their concurrence, and noted that adoption of the proposal would reduce delays in clearing vessels carrying meat products without weakening current regulatory controls and would be consistent with the regulations and procedures used by the United States Customs Service.

The Customs Service recommended a few substantive changes and asked for procedural clarification on certain aspects of the proposal. The following are the substantive issues raised by the Customs Service and FSIS' response to each:

1. *Comment.* The proposed language to amend § 322.2 can be taken to imply that a vessel is not to be cleared unless and until the letterhead statement is presented to Customs. If this is meant to be the case, Customs recommends that language to that effect also be inserted in § 322.2 or § 322.4.

Response. The language proposed for § 322.2 states in part ". . . In the interim period, the vessel will be cleared by Customs on the basis of a statement, under the shipper's or agent's letterhead . . . ." To avoid any questions as to the intent of the amendment, FSIS is adding a sentence to the regulation which clarifies that no vessel with cargo subject to certification is to be cleared by Customs unless either the duplicate of the certificate or the letterhead statement has been presented to Customs.

2. *Comment.* Customs suggests that FSIS specify the delay period as four (4) business days to conform to the Customs' law and regulations.

Response. FSIS intended that this delay period be consistent with Customs' regulations. The final rule states that the delay period is four (4) business days.

FSIS is also deleting a gender-specific reference that was inadvertently included in the proposed rule.

After careful consideration of the comments received on the proposed rule, FSIS is adopting the proposal as published, with the modifications discussed above.

Final Rule

List of Subjects in 9 CFR Part 322

Meat inspection; Exports.

1. The authority citation for Part 322 is revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Paragraph (e) of § 322.2 is revised to read as follows:

§ 322.2 Export certificates; instructions concerning issuance.

* * * * *

(e) The duplicate of the certificate shall be delivered to the shipper and shall be delivered by the shipper to the agent of the railroad or other carrier which transports the consignment from the United States otherwise than by water, or to the chief officer of the vessel on which the export shipment is made, or to the vessel's agent and shall be used only by such carrier and only for the purpose of effecting the transportation of the consignment certified. The chief officer of the vessel or the vessel's agent, shipper or shipper's agent shall file such duplicate with the Customs officer within four (4) business days of the clearance of the vessel at the time of filing the complete manifest. In the interim period, the vessel will be cleared by Customs on the basis of a statement, under the shipper's or agent's letterhead, containing the number of boxes, the number of pounds, the product name and the USDA export certificate number that covers the shipment of the product. No clearance shall be given to a vessel carrying meat products unless either the duplicate of the certificate or the prescribed statement referencing the certificate has been presented to Customs.

* * * * *

Done at Washington, DC, on September 3, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-20113 Filed 9-5-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20, 25, and 602

[T.D. 8095]

Estate and Gift Taxes; Qualified Disclaimers of Property

Correction

In FR Doc. 86-17606 beginning on page 28365 in the issue of Thursday, August 7, 1986, and corrected on August 29, 1986, at 51 FR 30857, make the following corrections:

§ 25.2518–2 [Corrected]

1. On page 28373, second column, in § 25.2518–2(d)(4), Example (2), fifth line, "declined" should read "decided";

§ 25.2518–3 [Corrected]

2. On page 28377, second column, in § 25.2518–3(d), Example (15), second line below the equation, "$25,00," should read "$25,000,".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1150–86]

Redelegation of Authority; Federal and Penal Correctional Institutions

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Attorney General is authorized to appoint all necessary officers and employees to control and manage Federal penal (including detention) and correctional institutions under the provisions of 18 U.S.C. 4001(b)(1) and 28 U.S.C. 510. Pursuant to 28 CFR 0.96, the Attorney General has authorized the Director of the Bureau of Prisons to exercise any of the authority, functions, or duties imposed by law on the Attorney General relating to the commitment, control or treatment of persons charged with or convicted of offenses against the United States. Similarly, under the provisions of 8 U.S.C. 1103 and 28 U.S.C. 510, the Attorney General is authorized to appoint such employees of the Immigration and Naturalization Service as he deems necessary, and to delegate to them or to any officer or employee of the Department of Justice any of the duties and powers vested in him regarding the enforcement of the Immigration Laws. The Attorney General has delegated to the Commissioner of the Immigration and Naturalization Service the authority to administer and enforce the Immigration and Naturalization Act and other related immigration laws. This Order allows the Director of the Bureau of Prisons to redelegate his authority to any employee of the Department of Justice. It also allows the Commissioner of the Immigration and Naturalization Service to redelegate his authority to any employee of the Immigration and Naturalization Service or to any employee of the United States.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, Room 770, 320 First Street, NW., Washington, DC 20534 (202/272–6874).

SUPPLEMENTARY INFORMATION: This Order allows the Director of the Bureau of Prisons to redelegate his various duties and responsibilities regarding the management of federal penal and correctional institutions and the custody and care of persons held therein to any employee of the Department of Justice. This redelegation allows greater flexibility in managing federal penal and correctional institutions. The Order also allows the Commissioner of the Immigration and Naturalization Service to redelegate his various duties and responsibilities of enforcing the immigration laws to any employee of the Immigration and Naturalization Service or to any employee of the United States.

This Order pertains to agency management and is therefore not subject to publication for notice and comment under 5 U.S.C. 553. It will not have a significant economic impact on a substantial number of small entities within the meaning of 5 U.S.C. 605. It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Government employees, Organization and functions (government agencies).

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Accordingly, by virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Subparts Q and S of Part 0 of 28 CFR are amended to read as follows:

1. The authority citation for Part 0 of Chapter 1 of Title 28 of the Code of Federal Regulations is revised to read as follows and the authority citations which appear throughout Part 0 are removed:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103; 15 U.S.C. 644(k); 18 U.S.C. 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. app. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; E.O. 11267; E.O. 11300.

2. In Subpart Q, § 0.97 is revised to read as follows:

§ 0.97 Redelegation of authority.

The Director of the Bureau of Prisons is authorized to redelegate to any of his subordinates any of the authority, functions or duties vested in him by this Subpart Q. The Director may make similar delegations to any other employee of any Bureau, Board, Office, or Division of the Department of Justice with the consent of the head of that Bureau, Board, Office, or Division, and after written notification to the Attorney General or designee. A redelegation of authority is limited to employees of the Department of Justice. Existing redelegations by the Director of the Bureau of Prisons shall continue in force and effect until modified or revoked.

3. In Subpart S, § 0.108 is revised to read as follows:

§ 0.108 Redelegation of authority.

The Commissioner of the Immigration and Naturalization Services may redelegate to any employee of the Service or the Department of Justice any of the powers, privileges, or duties conferred or imposed on the Commissioner by § 0.105. The Commissioner is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed on the Commissioner by § 0.105. Existing redelegations by the Commissioner shall continue in force and effect until modified or revoked.

Dated: August 27, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86–20115 Filed 9–5–86; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 0

[Order No. 1149–86]

Authority To Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order increases from $2500 to $5000 the settlement authority delegated to the Director of the Bureau of Prisons, the Commissioner of Immigration and Naturalization Service, the Director of the United States Marshals Service, and the Administrator of the Drug Enforcement Administration. This order also redefines "gross amount of the original claim" for purposes of delegation of settlement authority in certain customs law penalty cases.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Gregory Walden, Associate Deputy Attorney General, (202) 633–2268.

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VOL 51 ISS 173 SE 8 1986 UMI

SUPPLEMENTARY INFORMATION: This order concerns internal Department management and is being published for the information of the general public.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, Title 28 of the Code of Federal Regulations, Part 0, Subpart Y, is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.169 is amended by revising it to read as follows:

§ 0.169 Definition of "gross amount of the original claim".

The phrase "gross amount of the original claim," as used in this subpart Y and as applied to any civil claim brought under section 592 of the Tariff Act of 1930, as amended (see § 0.45(c)), shall mean the actual amount of lost customs duties involved. In nonrevenue loss cases brought under section 592 of the Tariff Act of 1930, as amended, the phrase "gross amount of the original claim" shall mean the amount demanded in the Customs Service's mitigation decision issued pursuant to 19 U.S.C. 1618, or, if no mitigation decision has been issued, the "gross amount of the original claim" shall mean twenty percent of the dutiable value of the merchandise.

§ 0.172 [Amended]

3. Section 0.172(a) is amended by removing the figure "2,500" and inserting in lieu thereof the figure "5,000."

Dated: August 27, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86–20114 Filed 9–5–86; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 0

[Order No. 1148–86]

Designation of the Postal Service Under the Protection of Children Against Sexual Exploitation Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Section 2254(b) of title 18 of the United States Code allows the Attorney General to authorize or designate "officers, agents, or other persons" to enforce the civil forfeiture section of the Protection of Children Against Sexual Exploitation Act, as amended by the Child Protection Act of 1984, 18 U.S.C. 2251–2255 (hereinafter referred to as "the Act"). The legislative intent of this portion of section 2254(b) is to permit the efforts of one law enforcement agency to be supplemented by another law enforcement agency.

This order of designation to the Postal Service authorizes the Postal Service to conduct civil forfeitures under the Act. The Postal Service currently has jurisdiction to enforce the substantive offenses of the Act and may seek, through the judicial, process criminal forfeiture thereunder.

This order of designation requires the Postal Service to abide by all rules, regulations, and procedures of the Federal Bureau of Investigation as they relate to the Act.

EFFECTIVE DATE: August 22, 1986.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 272–6420.

SUPPLEMENTARY INFORMATION: This order authorizes the Postal Service to perform specific duties of the Attorney General and is, therefore, a necessary act of internal management of the Department of Justice. The order is not a rule within the meaning of Executive Order 12291, section (1)(a). The order does not affect a substantial number of small business entities and is not, therefore, subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 0 of title 28 of the Code Federal Regulations is amended as follows:

1. The authority citation of Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4201 *et seq.*, 6003(B); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Part 0 is amended by adding the following orders at the end of the Appendix to Subpart Y:

Attorney General Order No. 1147–86

By virtue of the authority vested in the Attorney General by 18 U.S.C. 2254, the Attorney General hereby designates the Postal Service with the authority to conduct civil forfeitures under Section 2254 of the Protection of Children Against Sexual Exploitation Act, as amended by the Child Protection of 1984, 18 U.S.C. 2251–2255.

In utilizing the authority hereby granted, all rules, regulations, and procedures of the Federal Bureau of Investigation relating to the aforementioned Act must be followed, including the Federal Bureau of Investigation's Manual of Investigative Operations and Guidelines.

The authority hereby granted to enforce section 2254 of the Protection of Children Against Sexual Exploitation Act, as amended by the Child Protection Act of 1984, is subject to the direction of the Attorney General.

Dated: August 22, 1986.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 86–19670 Filed 9–5–86; 8:45 am]

BILLING CODE 4401–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Approval of Permanent Program Amendments From the State of Alabama Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director, OSMRE, is announcing the approval of program amendments submitted by Alabama to modify its approval permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on May 20, 1986, and pertain to permitting requirements for coal processing plants and their support facilities, and related definitions.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSMRE, has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendments. The Federal rules at 30 CFR Part 901 codifying decisions concerning the Alabama program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mark Boster, Acting Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254–0890.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found at 47 FR 22020 (May 20, 1982) and 48 FR 34026 (July 27, 1983). Subsequent actions concerning the Alabama program are identified in 30 CFR 901.15.

II. Proposed Amendment

On May 20, 1986, Alabama submitted a proposed amendment to modify requirements contained in the Alabama Surface Mining Commission rules at 880–X–9J–.11 and 880–X–2A–.06. The amendment relates to requirements for coal processing plants and their support facilities and related definitions. As a result of the July 6, 1984, ruling of the District Court for the District of Columbia in the case entitled *In re: Permanent Surface Mining Regulation Litigation, II*, the requirement to obtain a mining permit was extended to include processing facilities which in any way leach, chemically process, or physically process coal, even if they do not separate coal from its impurities. The Alabama rule is intended to bring these facilities under jurisdiction of the Alabama program in accordance with the court's decision. The effective date of the Alabama rule was June 20, 1986, with permit applications for the affected facilities to be filed by August 20, 1986.

On July 8, 1986, OSMRE announced receipt of the amendments and procedures for a public comment period and for a public hearing on the substantive adequacy of the proposed amendments (51 FR 24719). Since no requests for a public hearing were received, the public hearing scheduled for August 4, 1986, was not held. The comment period ended on August 7, 1986.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendments submitted by Alabama on May 20, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII. Only those provisions of particular interest are discussed in the specific findings which follow, and lack of discussion of a specific provision does not indicate or imply any deficiency in the provision.

1. Subsection 1 of 880–X–8J–.11 pertains to operators of processing plants and associated support facilities and requires operators to obtain a permit in accordance with requirements of this Rule. Subsection 2 specifies information to be included in the mining and reclamation plan and requires that the plan demonstrate that operations will be conducted in compliance with Rule 880–X–10J. Subsection 3 directs that the regulatory authority find, in writing, that operations will be conducted in compliance with requirements of Rule 880–X–10J.

These sections remain unchanged from the precious requirements in the Alabama Surface Mining Commission (ASMC) rule 880–X–8J–.11. The Director finds that these sections remain no less effective than the Federal rules at 30 CFR 785.21 (a), (b), and (c), which contain similar provisions.

2. Subsection 4 of ASMC 880–X–8J–.11 provides that persons operating coal processing plants not previously subject to Rules 880–X–2A–.06, Definitions of Coal Processing, et al., amended under rulemaking 86–1 will have no later than sixty days after the effective date of the rule to apply for a permit or cease operations.

The Director finds the Alabama requirement consistent with the Federal interim final rule at 30 CFR .785.21(d)(2)(ii) (July 10, 1985, 50 FR 28186) which require operators to apply for a permit in accordance with the State schedule approved by OSMRE. The Director further finds that schedule is consistent with and no less effective than the schedule established at 30 CFR 785.21(d)(1) which allows operators of coal preparation plants (in States with no statutory bar to regulating such plants) that were not subject to the requirements of Chapter VII before July 6, 1984, to apply for a permit up to two months after the effective date of the interim final rule.

3. ASMC rule 880–X–8J–.11, subsection 4, paragraphs (a), (a)(1), (a)(2), and (a)(3) allow coal preparation plant operations to continue after the effective date of the amended rules if: (1) The operator files a timely permit application except that if the application is determined to be incomplete the applicant will have 60 days to correct the deficiencies; (2) the ASMC has not yet issued or denied the permit; and (3) the operation complies with interim program performance standards. The Director finds that these exemptions are similar to and no less effective than the exemptions provided in interim final rule 30 CFR 785.21(e).

4. Subsection (4), paragraph (b) of ASMC rule 880–X–8J–.11 provides that upon issuance of a permit under the rule, processing plants shall comply with Chapter 880–X–10J, which contains performance requirements for coal processing plants not located within the permit area for a mine. The Director finds the provision consistent with and no less effective than the Federal provision at 30 CFR 785.21(a) which requires any person who intends to operate a coal preparation plant outside the permit area of a mine, to obtain a permit in accordance with the requirements of the section.

5. Alabama has added a definition of "coal processing" at ASMC rule 880X–2A–.06 to mean "chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal." The Director finds the definition identical to and, therefore, no less effective than the Federal definition of "coal preparation" at interim final rule 30 CFR 701.5 (July 10, 1985, 50 FR 28186).

6. Alabama has amended the definition of "coal processing plant" at ASMC rule 880X–2A–.06(bb) to mean "a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating or other processing or preparation. "The processing plant includes, but need not be limited to, associated facilities: Loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas. The Director finds that, although Alabama uses the term "coal processing plant" while the Federal definition at interim final rule 30 CFR 701.5 uses the term "coal preparation plant," the Alabama definition is substantially similar to the Federal definition and includes all plants and associated facilities included by the Federal definition. The Director, therefore, finds the Alabama definition no less effective than the Federal definition.

7. Alabama has amended its definition of "surface coal mining operations" at ASMC rule 880X–2A–.06(kkkkkk) to insert the word "and" before "the

cleaning, concentrating, or other processing, or preparation of coal; . . ." Although the Director finds this to be a minor, non-substantive change, he notes that the punctuation used in the definition now more closely resembles that in the Federal rule and therefore clarifies that "leaching or other chemical or physical processing" is not modified by the phrase "in situ" and therefore does not restrict regulatory requirements to coal processing plants at or near the mine site. The Director finds, therefore, that the Alabama definition is not less effective than the amended Federal definition in the interim final rule at 30 CFR 700.5 (July 10, 1985, 50 FR 28186).

IV. Public Comments

No public comments were received on this rulemaking.

V. Director's Decision

The Director, based on the findings above, is approving the May 20, 1986 amendments to the Alabama program. The Director is amending 30 CFR Part 901 to reflect the approval of the above State program modifications.

VI. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 29, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 901—ALABAMA

30 CFR Part 901 is amended as follows:

1. The authority citation for Part 901 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 901.15 is amended by adding a new paragraph (i) to read as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(i) Amendments to the Alabama permanent regulatory program submitted to OSMRE on May 20, 1986, to amend ASMC Rules at 880–X–8J–.11 and 880–X–2A–.06 are approved effective September 8, 1986.

[FR Doc. 86–20139 Filed 9–5–86; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938

Approval of Amendment to the Pennsylvania Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is approving, with certain exceptions, program provisions submitted by Pennsylvania as amendments to the State's permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to Pennsylvania's Inspection and Enforcement Policy and Civil Penalty Program for coal mining. Pennsylvania submitted the proposed program amendments on September 30, 1985 (Administrative Record No. PA 568). OSMRE published a notice in the **Federal Register** on October 29, 1985, announcing receipt of the amendments and inviting public comments for 30 days on the adequacy of the proposed amendments (50 FR 43726). On February 4, 1986, OSMRE notified Pennsylvania of its concerns pertaining to the amendments. In response to this letter Pennsylvania submitted additional materials on May 22, 1986. OSMRE reopened the comment period on the amendments for 15 days to provide the public an opportunity to review and comment on the additional materials submitted by the State on May 22, 1986 (51 FR 22309, June 19, 1986).

After providing opportunity for public comment and conducting a thorough review of the program amendments submitted September 30, 1985, and the additional materials submitted May 22, 1986, the Director has determined that, with certain exceptions, the amendments meet the requirements of SMCRA and the Federal regulations and the Director is approving the provisions with the exceptions noted below. The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage the State to conform its program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South Second Street, Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Pennsylvania program was conditionally approved by the Secretary of the Interior on July 31, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050–33063). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.15 and 938.16.

II. Submission of Program Amendments

On September 30, 1985, Pennsylvania submitted for OSMRE's review and approval proposed amendments to the

State program Administrative Record (No. PA 568). The amendments modify the State's inspection and enforcement policy and civil penalty program.

On October 29, 1985, OSMRE announced receipt of the amendments in the **Federal Register** and invited comment on the adequacy of the proposed amendments in satisfying the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17 (50 FR 43728).

On February 4, 1986, OSMRE notified the State of its concerns pertaining to the amendments (OSMRE administrative record number PA 593). In response to this letter Pennsylvania submitted additional materials on May 22, 1986 (Administrative Record No. PA 606). OSMRE reopened the comment period on the amendments for 15 days to provide the public an opportunity to review and comment on the additional materials (51 FR 22309, June 19, 1986).

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the program amendments submitted by Pennsylvania on September 30, 1985, as modified by the State's submission to OSMRE dated May 22, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII with the exceptions noted below.

Finding 1

Civil Penalty Program I. and VIII. and Inspection and Enforcement Policy II.B.2.a (5) and II.J.

Amendments to these sections establish a new requirement which provides that in all cases of corporate violations which lead to the issuance of a failure-to-abate cessation order, corporation officials, directors or agents may be subject to individual civil penalties. Individual civil penalties shall be assessed based upon a determination by the Department of Environmental Resources (DER) that the violations are the result of knowing and willful conduct. As initially submitted, the State provisions did not provide for all the sanctions and penalties contained in the Federal statutory provision. Section 518(f) provides authority for assessing individual penalties for all violations, not merely those that lead to a failure-to-abate cessation order. In addition, SMCRA provides for individual criminal penalties as well as civil penalties.

In its February 4, 1986 letter to the State, OSMRE advised Pennsylvania that (1) its Civil Penalty Program should be amended to include provisions for assessing individual civil penalties for all violations, not just those leading to a failure-to-abate cessation order and (2) the State should clarify that nothing in the amendment precludes the Commonwealth from initiating alternative enforcement action under the State's statutory counterparts to sections 518(d), 518(f), 521(a)(4), or 521(c) of SMCRA which are included in the approved State program.

In its May 22, 1986 submission the State addressed item one above by adding section II.8. to its Civil Penalty Program. This provision provides that DER will review each assessment against a corporate permittee to determine if a corporate officer, director or agent willfully and knowingly authorized, ordered or carried out the violation. DER is required to assess individual civil penalties against any principal who willfully and knowingly authorized, ordered or carried out the violation. This provision is no less stringent than section 518(f) of SMCRA.

To address the second concern raised by OSMRE, Pennsylvania added Section II.J. to its Inspection and Enforcement Policy. Section II.J. specifies that alternative enforcement actions are those described in Subsections (C), (D), (E), (F), (H), or (I). Subsections (C), (H), and (I) concern permit suspension of revocation for a pattern of violations, injunction actions, and criminal penalties, respectively, and are no less stringent than the Federal counterparts at 30 CFR 845.15(b)(2) and sections 521(a)(4), 521(c) and 518(e) of SMCRA. Subsections (D), (E), and (F) describe additional "alternative enforcement" actions which have no Federal counterparts.

Subsection (D) provides that an operator's license may be suspended or revoked thereby causing the cessation of mining at all sites permitted or operated by the licensee. This action is somewhat analogous to a permit suspension or revocation action in that the effect is to cease mining until compliance occurs. Subsection (D), therefore, provides for an action no less stringent than the actions set out in 30 CFR 845.15(b)(2).

Subsection (E) provides that DER will withhold or deny an operator's license renewal for outstanding violations. This action is less stringent than 30 CFR 845.15(b)(2) because there is no provision linking the timing of the license renewal to the alternative enforcement action which must be taken when capping a failure-to-abate penalty.

Subsection (F) provides that a bond may be forfeited, which affects the permittee's ability to operate other surface mines by restricting future permit and license actions. This action is not comparable to any of the Federal alternative enforcement actions. First, bond forfeiture is not an enforcement sanction or penalty as are each of the Federal alternative enforcement actions. Second, the Pennsylvania program already required DER to take action to forfeit the bond if an operator refuses or is unable to conduct reclamation of an unabated violation (25 Pa. Code 86.181). Finally, bond forfeiture does nothing to ensure that abatement occurs as required by 30 CFR 845.15(b) (2). For these reasons, subsection (F) is less stringent than 30 CFR 845.15(b) (2).

In addition to finding that two of the actions included in the State's definition of alternative enforcement action under subsection II.J. are less stringent than the actions set out under 30 CFR 845.15(b) (2), OSMRE has two other concerns pertaining to II.J. The State's provision provides that "if the Department decides to pursue alternative enforcement as a means to terminate the civil penalty liability, the Department will initiate *an* alternative enforcement action. . ." (emphasis added). This proposal suggests that DER must elect at the outset to pursue one of the enumerated alternative enforcement actions, but not more than one. The Federal rule, however, envisions that each of the enumerated alternative enforcement actions may be pursued in combination with any or all of the others, rather than to exclusion of the other enforcement actions. In the preamble to the Federal rule, OSMRE agreed with a commenter that the rule should require OSMRE to "take whatever enforcement action *or actions* are most likely to abate a violation in the most expeditious manner possible to deter future violations" (emphasis added) 45 FR 58782, September 4, 1980. Therefore, the Pennsylvania provision is less stringent because it would limit DER's discretion to pursue more than one enforcement action where appropriate in a given situation. In addition section II.J. does not define alternative enforcement actions to include individual civil penalties consistent with 30 CFR 845.15(b) (2). The Federal rules does not distinguish between "alternative enforcement" actions and individual civil penalty actions. Under the Federal rule, any of the enumerated actions, including individual civil penalties, may be pursued to ensure the abatement occurs.

Based on these findings the Director is approving sections I. and VIII. of the State's Civil Penalty Program and sections II.B.2.a.(4) and (5) of the State's Inspection and Enforcement Policy with the following exceptions: (1) Because subsections (E) and (F) section II of the State's Inspection and Enforcement

Policy establish alternative enforcement actions which are less stringent than the actions set out in 30 CFR 845.15(b)(2), OSMRE is disapproving section II.J. of the Inspection and Enforcement Policy to the extent that it defines the actions described under subsections II.E. and II.F. as alternative enforcement actions. This does not preclude Pennsylvania from using these enforcement actions in addition to alternative enforcement actions described in section II of the State's Inspection and Enforcement Policy to ensure that abatement of the violation or reclamation of the site occurs. The State simply may not regard these actions as "alternative enforcement actions" for the purpose of terminating the civil penalty liability. (2) OSMRE is requiring Pennsylvania to amend its program by six months from the date of this notice to clarify that individual civil penalties are one of the alternative enforcement actions and that the State may pursue any of the enumerated alternative enforcement actions in combination with any or all of the others. This requirement is set forth herein under 30 CFR 938.16(g).

Finding 2

Civil Penalty Program II.2.

Section II.2 of Pennsylvania's proposed Civil Penalty Program provides that the Department of Environmental Resources (DER) may terminate or "cap" a failure-to-abate penalty after thirty days if (1) DER decides to pursue an alternative enforcement action and initiates that action within 60 days of the expiration of the abatement period pursuant to Section II.J. of DER's Inspection and Enforcement Policy, or (2) DER will initiate individual civil penalty (ICP) actions agains corporate officers, directors or agents. The Director has determined that the amended provision is consistent with 30 CFR 845.15(b)(2) which establishes a 30-day cap for civil penalties for failure to abate the violation and requires the regulatory authority to take appropriate action pursuant to section 518(e), 518(f), 521(a)(4) or 521(c) of SMCRA within 30 days with the following exception:

The State's proposal does not establish a timeframe within which DER must initiate individual civil penalty actions against corporate officers, directors or agents following termination of the penalty.

As initially submitted, the State's proposal did not establish a timeframe within which an alternative enforcement action must be taken following termination of the penalty. In its May 22, 1986 submission Pennsylvania included a modified section II.2. of the Civil Penalty Program establishing a timeframe within which alternative enforcement actions must be initiated. However, Pennsylvania's provision at section II.2. distinguishes between individual cviil penalty actions and alternative enforcement actions. There is no provision in Pennsylvania linking the timing of the individual civil penalty action which must be taken with the capping of the failure-to-abate penalty. As discussed in Finding 1 above relative to section II.J. of Pennsylvania's Inspection and Enforcement Policy, the Federal rule at 30 CFR 845.15(b)(2) does not distinguish between "alternative enforcement" actions and individual civil penalty actions. To be consistent with the Federal requirements Pennsylvania must amend its program to establish a timeframe within which DER must initiate individual civil penalty actions against corporate officers, directors or agents following termination of the penalty. This could be addressed by merely eliminating the distinction under section II.2. between alternative enforcement actions and individual civil penalty actions. As discussed under Finding 1. the Director is requiring Pennsylvania to amend section II.J. of its Inspection and Enforcement Policy to modify the definition of alternative enforcement action to include individual civil penalty actions. The Director is requiring the State to adopt the change by six months following the date of publication of this notice. This requirement is set forth herein under 30 CFR 938.16(h).

It should also be noted that the Director's approval of section II. 2. of its inspection and Enforcment Policy, which is subject to the required amendment discussed above, is based on the following interpretation of the phrase "may be terminated" as used in that section. The Director interprets the phrase "may be terminated" to apply to the continued assessment of the penalty beyond 30 days and not the failure-to-abate penalty itself which has already been assessed.

Finding 3

Civil Penalty Program II. (4) and Inspection and Enforcement Policy II.B 2.a. (4)

As amended these sections provide a limited exception for mandatory civil penalties for violations resulting in the issuance of a Compliance Order. A mandatory penalty is not required for Compliance Orders that are issued solely for the purpose of extending an abatement date prescribed in a previous inspection report notice. Under Pennsylvania's approved program, either an inspection report notice or a Compliance Order is an analog to the Federal notice of violation. Previously approved State program provisions provide that compliance orders are subject to a mandatory civil penalty.

Unlike Pennsylvania's program the Federal regulations do not require mandatory civil penalties for violations resulting in the issuance of a notice of violation. The Director has determined that Pennsylvania's adoption of provisions allowing a limited exception to the mandatory penalty requirement for compliance orders does not render the State program inconsistent with the Federal requirements.

Finding 4

Inspection and Enforcement Policy (II. E.)

Pennsylvania has amended this provision to provide that an operator's license renewal will be withheld or denied for outstanding violations that are being adjudicated, for cessation orders and for agreements or decrees or written notices from the Department of a declaration of bond forfeiture. The previously existing provision provided that license renewal would be withheld or denied for any outstanding Compliance Order. The Pennsylvania program requirement to obtain a license has no counterpart in the Federal regulations. Under Pennsylvania's program an operator must obtain both a permit and a license. The State program regulations at 86.37 (a)(8) require DER to make a written finding prior to permit issuance that the applicant has corrected or is in the process of correcting or appealing any outstanding violations. The Director has determined that the State program license provision, as amended, does not conflict with the SMCRA or the Federal regulations. Therefore, the Director is approving the amendment provision.

IV. Public Comment

The U.S. Fish and Wildlife Service (FWS) submitted the following comments on the amendment provisions submitted by the State on September 30, 1985.

With respect to the establishment of a 30-day cap for civil penalties under section II.2 of the Civil Penalty Program the FWS noted that this section did not include provisions for criminal penalties and did not require the Department to initiate alternative enforcement action within the 30-day time limit specified in the Federal regulation.

As discussed in Finding 1, Pennsylvania included in its May 22,

1986 submission to OSMRE a new paragraph J. under section II. of the Inspection and Enforcement Policy which provides for DER to pursue any one of several alternative enforcement actions if a decision is made to terminate the civil penalty liability. Criminal penalties are one of the alternative enforcement actions the State may pursue. The criminal penalties which are described under section II.I. of the Inspection and Enforcement Policy are no less stringent than those set forth under the Federal Act and regulations.

With respect to the timeframe for initiating alternative enforcement action following termination of the penalty Pennsylvania's submittal of May 22, 1986, included a modified section II.2. of the Civil Penalty Program establishing such a timeframe. As discussed in Finding 2, the Director has found the State's modified provision to be consistent with the Federal requirements with one exception. The Director is requiring the State to amend its program to address the identified deficiency. This issue is discussed in detail in Finding 2.

The FWS also commented that Pennsylvania's amendment provisions establishing an individual civil penalty requirement were not consistent with section 518 of the Act because they failed to establish criminal penalties of up to $10,000 and imprisonment for not more than one year, or both.

As discussed above, Pennsylvania's amendment, as submitted May 22, 1986, establishes that criminal penalties are one of the alternative enforcement actions the State may pursue if a decision is made to terminate the civil penalty liability. Section II.I. of the Inspection and Enforcement Policy specified that the Department may initiate criminal prosecution in the form of summary action or misdemeanors for any violations. Section 18.5 of the Pennsylvania Surface Mining Conservation and Reclamation Act, which is a component of the approved State regulatory program, provides for criminal penalties of up to $25,000 and imprisonment for not more than one year, or both.

The FWS further commented with respect to the modified requirements for withholding a license or denying license renewal that Pennsylvania should expand these requirements to include criminal penalties. The Pennsylvania program requirement to obtain a license has no counterpart in the Federal regulations. Under Pennsylvania's program, an operator must obtain both a permit and license. The State program regulations require DER to make a written finding prior to permit issuance that the applicant has corrected or is in the process of correcting or appealing any outstanding violations. Because there is no counterpart to Pennsylvania's license requirement in the Federal regulation, the Director has no authority to require the State to amend its license provisions unless these conflict with SMCRA or the Federal regulations. As discussed in Finding 4 above, the Director has determined that Pennsylvania's modified requirement does not conflict with the Federal standards.

V. Director's Decision

The Director has determined that, with the exceptions discussed in the above findings, the Pennsylvania program as modified by the amendments submitted to OSMRE on Septermber 30, 1985, and May 22, 1986, incorporates penalties and sanctions no less stringent than those set forth under sections 518 and 521 of SMCRA and 30 CFR Parts 843 and 845 of the Federal regulations and contains the same or similar procedural requirements relating thereto. Accordingly, the Director is approving the amendments, with the exception discussed in Finding 1 and subject to the requirements set forth under 30 CFR 938.16(g) and (h), and is revising 30 CFR Part 938 to reflect this decision.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reducton Act.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 29, 1986

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.).*

2. 30 CFR 938.15 is amended by adding a new paragraph (l) as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(l) The amendments to the following sections of the Pennsylvania State program which were submitted to OSMRE on September 30, 1985, and May 22, 1986 are approved effective September 8, 1986.

Civil Penalty Program

Secton I.

Secton II.2., subject to the requirements set forth under 30 CFR 938.16(h).

Secton II.4.

Secton VIII.

Inspection and Enforcement Policy

Secton II.B.2.a.(4).

Secton II.B.2.a.(5).

Secton II.E.

Secton II.J. (except to the extent that this section defines the actions described under subsections II.E. and II.F. of the Inspection and Enforcement Policy as alternative enforcement actions and subject to the requirement set forth under 30 CFR 938.16(g))

3. 30 CFR 938.16 is amended by adding new paragraphs (g) and (h) to read as follows:

§ 938.16 Required program on amendments.

* * * * *

(g) In accordance with 30 CFR 854.15(b)(2) Pennsylvania is required to amend its program by March 9, 1986, to clarify that individual civil penalties are one of the alternative enforcement actions and that the State may pursue

any of the enforcement actions enumerated under section II.J. of the Pennsylvania Inspection and Enforcement Policy in combination with any or all of the other.

(h) Pennsylvania is required to amend its program by March 9, 1986, to establish a timeframe within which DER must initaite individual civil penalty action against corporate officers, directors or agents following termination of the daily penalty for failure to abate a violation in accordance with 30 CFR 845.15(b)(2).

4. A new section 30 CFR 938.12 is added to read as follows:

§ 938.12 State program provisions disapproved.

(a) The following amendment to the Pennsylvania program which was submitted to OSMRE on May 22, 1986, is disapproved:

Section II.J. of the Pennsylvania Inspection and Enforcement Policy is disapproved to the extent that this section defines the actions described under subsections II.E. and II.F. of the Inspection and Enforcement Policy as alternative enforcement actions.

[FR Doc. 86-20138 Filed 9-5-86; 8:45am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 86-47]

Drawbridge Operation Regulations; Nacote Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document corrects the regulations for the Route 575 Drawbridge across Nacote Creek. This action is necessary to correct errors made relating to the route number and bridge owner name that have recently been brought to the attention of the Coast Guard by the bridge owner.

EFFECTIVE DATE: October 8, 1986.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: The final rule for the Route 575 bridge was initially published on Thursday, March 22, 1984 (49 FR 10670). This regulation correctly stated the route number but incorrectly stated the bridge owner. On April 24, 1984, the Coast Guard published a final rule in the **Federal Register** (49 FR 17450) which completely reorganized 33 CFR Part 117. That document omitted the regulations for Nacote Creek. Subsequently on Monday, October 29, 1984 (49 FR 43458) the Coast Guard corrected the omission but incorrectly stated the bridge owner's name and route number. This rulemaking action is purely administrative in nature and merely corrects these errors without substantive changes to the regulations.

Therefore, in accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after the **Federal Register** publication. Following normal rulemaking procedures and delaying its effective date is unnecessary since this document merely corrects errors and makes no substantive changes to the published material.

Drafting Information

The drafters of this notice are Ciro Compagno, project manager, and Mary Ann Arisman, project attorney.

Discussion of Amendments

The bridge owner recently called the Coast Guard's attention to the errors in 33 CFR 117.732 which incorrectly identified the bridge owner as Ocean County and the route number as U.S. 9. Because there is an existing Route 9 drawbridge across Nacote Creek, the error has caused confusion for mariners using this waterway. The Route 9 Drawbridge crosses Nacote Creek at mile 1.5 and is required to open on signal. The bridge crossing Nacote Creek at mile 3.5 is owned by Atlantic County and is Route 575. This document amends this section to correctly identify the bridge owner and route number.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33 Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.732 is revised to read as follows:

§ 117.732 Nacote Creek.

The draw of the Atlantic County (Rte. 575) bridge, mile 3.5 at Port Republic, shall open on signal if at least eight hours notice is given. Public vessels of the United States shall be passed as soon as possible at any time.

Dated: August 25, 1986.

J.C. Uithol,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 86-20159 Filed 9-5-86; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Buffalo, NY regulation 86-02]

Safety Zone Regulations: Buffalo, New York, Niagara River

August 29, 1986.

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a 1500 Foot safety zone, in the vicinity of the Peace Bridge, Buffalo, New York, Niagara River. The zone is needed to protect vessels from a possible safety hazard associated with the barge #45 aground at stanchion #3 on the Peace Bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 14 August 1986 at 3:00 p.m.

It terminates on 10 December 1986 at 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Buffalo, New York. (716) 846-4168.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent possible damage to the vessels involved.

Drafting Information

The drafters of this regulation are LCDR T.G.M. Balunis, project officer for the Captain of the Port, and LCDR M.A. Leone, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with the barge #45 breaking up in the vicinity of the Peace Bridge, Buffalo, New York, Niagara River.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0902 is added to read as follows:

§ 165.T0902 Safety Zone: New York, Niagara River.

(a) *Location.* The following area is a safety zone: From a starting point (1) L 42 deg.-54 min.-34 sec. N, 078 deg.-54 min. 22 sec. W then due East to point (2) L 42 deg.-54 min.-34 sec. N, 078 deg.-54 min. -17 sec. W then due South passing inside of the second stanchion from U.S. to a point (3) L 42 deg.-54 min.-19 sec. N, 078 deg.-54 min. 17 sec. W then due West to point (4) L 42 deg.-54 min.-19 sec. N, 078 deg.-54 min. -22 sec. W then North along International boundary line to point (1).

(b) *Effective date.* This regulation becomes effective on 14 August 1986 at 3:00 p.m. It terminates on 10 December 1986 at 3:00 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: August 14, 1986.

J. H. Johnson,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 86–20161 Filed 9–5–86; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 23

National Health Service Corps

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: This notice promulgates new regulations (Subparts B and C of Part 23, 42 CFR) to implement the provisions of section 338E of the Public Health Service (PHS) Act (42 U.S.C. 254p) regarding special loans for former National Health Service Corps (NHSC) members to enter private practice and the provisions of section 338C of the PHS Act (42 U.S.C. 254n) regarding private start-up loans. The law requires that the Secretary of Health and Human Services shall, by regulations, set interest rates and repayment terms for private practice option (PPO) special loans. This notice also makes several technical corrections to Subpart A of 42 CFR Part 23.

EFFECTIVE DATE: The rule set forth below is effective on September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James Corrigan, Associate Bureau Director for Legislation and Policy, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7–05, Rockville, Maryland 20857, (301) 443–2380.

SUPPLEMENTARY INFORMATION: On July 3, 1985, the Acting Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published a Notice of Proposed Rulemaking (50 FR 27465) proposing the following:

- New regulations governing loans made by the Secretary under section 338E of the PHS Act to NHSC scholarship recipients who have completed at least two years of obligated service, to assist them in establishing private full-time clinical practice in designated health manpower shortage areas (Subpart B of Part 23).
- New regulations governing loans made by the Secretary under section 338C of the PHS Act to NHSC scholarship recipients who plan to fulfill all or part of their service obligations through the private practice option provided for in section 338B of the Act, to assist them in acquiring equipment and supplies needed to start up their practices (Subpart C of Part 23).
- Several technical corrections to Subpart A of Part 23, which governs assignment of NHSC personnel.

In response to the invitation for public comment on the proposed regulations, only one comment was received. That comment endorsed the NPRM in all respects. Accordingly, the rule set out below adopts the amendments to Part 23 as proposed in the NPRM.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's certification is that the regulation will affect only a small number of health care providers and patients treated by those providers; therefore, the Department has determined that this regulation does not require preparation of a regulatory flexibility analysis.

The Secretary has also determined, in accordance with Executive Order 12291 of February 17, 1981, entitled "Federal Regulation," that the rule does not constitute a "major rule" because it will not have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Information Collection Requirements

Sections 23.4(b), and 23.34 (f), (h) and (i) of this rule contain information collection requirements. As required by section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), we submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. The information collection requirements in this regulation have been approved (OMB control number 0915–0101).

List of Subjects in 42 CFR Part 23

Government employees, Health professions, Loan programs, Manpower, Scholarships and fellowships.

Accordingly, 42 CFR Part 23 is amended as set forth below.

Dated: July 11, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 18, 1986.

Otis R. Bowen,

Secretary.

PART 23—NATIONAL HEALTH SERVICE CORPS

1. The authority citation for Part 23 is revised to read as follows:

Authority: Secs. 333, 338E(c), and 338C(e)(1), Public Health Service Act. 90 Stat. 2272, as amended, 95 Stat. 905, 97 Stat. 1345 (42 U.S.C. 254f et seq.), 95 Stat. 912 (42 U.S.C. 254p(c)), 95 Stat. 910 (42 U.S.C. 254n(e)(1)).

Supart A is amended as follows:

1. In § 23.4(b), paragraph (b)(5) is revised to read as follows:

§ 23.4 How must an entity apply for assignment?

* * * * *

(b) * * *

(5) If an entity wishes to request an interest free loan (not to exceed $50,000) under section 335(c) of the Act to assist the applicant in establishing the practice of the assigned National Health Service Corps personel, a detailed justification of the amount requested must be included

* * * * *

§ 23.6 [Amended]

2. In § 23.6, a. the word "and" is added before the word "third" and the words "and fourth" are removed in the second sentence of the introductory text of paragraph (b); b. paragraph (b)(2) is removed, and paragraphs (b)(3) and (b)(4) are redesignated (b)(2) and (b)(3) respectively; and c. the last sentence which follows paragraph (b)(4) is removed.

§ 23.7 [Amended]

3. In § 23.7(a)(3), "(a)(3)" is removed immediately after "section 334."

§ 23.10 [Amended]

4. In § 23.10:

a. In the introductory text to paragraph (a), "section 334" is removed and "section 334(a)(3)" is inserted in lieu thereof;

b. The current paragraph "23.10(b)" is renumbered as "23.10(d)" and "a prospective or retrospective" is inserted before "waiver."

c. A new paragraph (b) is added:

* * * * *

(b) The Secretary may waive in whole or in part the reimbursement requirements of section 334(f)(1) of the Act if he or she determines that the National Health Service Corps site is a small health center (as defined by section 334(f)(5) of the Act) that needs all or part of the amount otherwise payable to—

(1) expand or improve its provision of health services;

(2) increase the number of individuals served;

(3) renovate or modernize facilities for its provision of health services;

(4) improve the administration of its health service programs; or

(5) establish a financial reserve to assure its ability to continue providing health services;

d. A new paragraph (c) is added:

* * * * *

(c) Where the Secretary determines that a National Health Service Corps site is eligible for a waiver under paragraph (a)(1) or (2) of this section. the Secretary may waive the application of the reimbursement requirements of section 334(a)(3) of the Act and apply the reimbursement requirements of section 334(f)(1) of the Act. The Secretary may waive in whole or in part the reimbursement requirements of section 334(f)(1) for such a site if he or she determines that the National Health Service Corps site meets the requirements of paragraph (a)(1) of this section. Funds retained by a National Health Service Corps site as a result of such waiver must be used for the purposes set forth in paragraphs (b)(1) through (5) of this section.

Subparts B and C are added to read as follows:

Subpart B—Private Practice Special Loans for Former Corps Members

Sec.

23.21 Definitions.
23.22 What is the purpose of a private practice loan?
23.23 Who is eligible to receive a private practice option loan?
23.24 In what amounts are loans made?
23.25 How will interest rates for loans be determined?
23.26 How is the loan repaid?
23.27 What happens if scheduled payments are late?
23.28 What events constitute defsult?
23.29 What happens in the case of default?
23.30 May the loan be prepaid?
23.31 May loan payments be postponed or waived?
23.32 What conditions are imposed on the use of the loan funds?
23.33 What security must be given for these loans?
23.34 What other conditions are imposed?
23.35 What criteria are used in making loans?

Subpart C—Private Startup Loans

23.41 What conditions are applicable to loans under this subpart?

Subpart B—Private Practice Special Loans for Former Corps Members

§ 23.21 Definitions.

As used in this subpart, terms have the same meanings as those given to them in Subpart A, § 23.2. In addition:

"National Health Service Corps scholarship recipient" means an individual receiving a scholarship under the Public Health and National Health Service Corps Scholarship Training Program authorized by section 225 of the Act as in effect on September 30, 1977, and repealed on October 1, 1977, or a scholarship under the NHSC Scholarship Program authorized by section 338A of the Act, formerly section 751 of the Act.

"Private full-time clinical practice" means the provision of ambulatory clinical services for a minimum of 40 hours per week for at least 45 weeks a year, including the provision of hospital coverage services appropriate to meet the needs of patients treated and to assure continuity of care. The 40 hours per week must be performed in no less than 4 days per week with no more than 12 hours of work being performed in any 24-hour period.

§ 23.22 What is the purpose of a private practice loan?

The purpose of the private practice loan is to assist NHSC scholarship recipients in establishing private full-time clinical practices in designated health manpower shortage areas.

§ 23.23 Who is eligible to receive a private practice option loan?

(a) Eligibility for loans is limited to NHSC scholarship recipients who have completed at least 2 years of their service obligations at a NHSC site. NHSC scholarship recipients remain eligible for loans under this subpart for 1 year after they have completed their service obligations at a NHSC site.

(b) Scholarship recipients who are in arrears 31 days or more on a Health Professions Student Loan (42 U.S.C. 294m *et seq.*), Health Education Assistance Loan (42 U.S.C. 294, *et seq.*), Nursing Student Loan (42 U.S.C. 297a *et seq.*), or any other Federally guaranteed or direct student loan are ineligible for this loan program.

(c) NHSC scholarship recipients who have received loans under either this Subpart or Subpart C of this Part are ineligible for loans under this Subpart.

§ 23.24 In what amounts are loans made?

The Secretary may make loans either in the amount of $12,500, if the recipient agrees to practice in accordance with the loan agreement for a period of at least 1 year but less than 2 years, or $25,000, if the recipient agrees to practice in accordance with the loan agreement for a period of at least 2 years.

§ 23.25 How will interest rates for loans be determined?

Interest will be charged at the Treasury Current Value of Funds (CVF) rate in effect on April 1 immediately preceding the date on which the loan is approved and will accrue from the date the loan funds are disbursed to the borrower.

§ 23.26 How is the loan repaid?

Payments shall be made at monthly intervals, beginning 1 month from the date of the loan disbursement, in accordance with the repayment schedule established by the Secretary and set forth in the loan agreement. Only interest payments are required during the first 2 years. The repayment schedule may be extended in accordance with § 23.31(a).

§ 23.27 What happens if scheduled payments are late?

(a) Failure to make full payment of principal and/or interest when due will subject the borrower to the assessment of administrative costs and penalty charges, in addition to the regular interest charge, in accordance with 45 CFR Part 30.

(b) Failure to make full payment of principal and/or interest when due may result in the Secretary placing the borrower in default of the loan. See § 23.28(a).

§ 23.28 What events constitute default?

The following events will constitute defaults of the loan agreement:

(a) Failure to make full payment of principal and/or interest when due, and continuance of that failure for a period of sixty (60) days, or a lesser period of time if the Secretary determines that more immediate action is necessary in order to protect the interests of the Government.

(b) Failure to perform or observe any of the terms and conditions of the loan agreement and continuance of that failure for a period of sixty (60) days.

(c) The institution of bankruptcy proceedings, either voluntary or involuntary, under any State or Federal statute, which may adversely affect the borrower's ability to comply with the terms and conditions of the agreement or the promissory note.

§ 23.29 What happens in the case of a default?

(a) In the event of default, the Secretary may declare the entire amount owed (including principal, accrued interest and any applicable charges) immediately due and payable. Collection of the amount owed will be made in accordance with 45 CFR Part 30.

(b) The borrower is not entitled to written notice of any default and the failure to deliver written notice of default in no way affects the Secretary's right to declare the loan in default and take any appropriate action under the loan agreement or the promissory note.

(c) The failure of the Secretary to exercise any remedy available under law or regulation shall in no event be construed as a waiver of his or her right to exercise that remedy if any subsequent or continued default or breach occurs.

§ 23.30 May the loan be prepaid?

The borrower shall have the option to prepay the balance of any part of the loan, together with accrued interest, at any time without prepayment penalty.

§ 23.31 May loan payments be postponed or waived?

(a) Whenever health, economic, or other personal problems affect the borrower's ability to make scheduled payments on the loan, the Secretary may allow the borrower an extension of time or allow the borrower to make smaller payments than were previously scheduled; however, interest will continue to accrue at the rate specified in the promissory note until the loan is repaid in full. The loan must be fully repaid within 10 years after it was made.

(b) No waiver, full or partial, of repayment of the loan will be granted; except that the obligation of a borrower to repay a loan shall be cancelled upon the death or total and permanent disability of the borrower, as determined by the Secretary.

(c) In order to make a determination under paragraph (a) or (b) of this section, the Secretary may require supporting medical, financial, or other documentation.

§ 23.32 What conditions are imposed on the use of the loan funds?

(a) The borrower must use the total amount of the loan to purchase or lease, or both, equipment and supplies, to hire authorized personnel to assist in providing health services and/or to renovate facilities for use in providing health services in his or her private practice. Equipment and supplies purchased and/or leased, personnel hired and facilities renovated shall be limited to the items requested in the loan application and approved by the Secretary.

(b) The borrower must expend the loan funds within 6 months from the date of the loan or within such other time as the Secretary may approve. Documentation of the expenditure of funds must be furnished to the Secretary upon request.

§ 23.33 What security must be given for these loans?

The Secretary may require the borrower to pledge to the Secretary a security interest in specified collateral.

§ 23.34 What other conditions are imposed?

(a) The borrower must sign a loan agreement describing the loan and practice conditions, and a promissory note agreeing to repay the loan plus interest.

(b) The borrower must agree to enter into private full-time clinical practice in a HMSA for the time period specified in the loan agreement.

(c) The borrower must accept assignment, for the time period specified in the loan agreement, under section 1842(b)(3)(B)(ii) of the Social Security Act as full payment for all services for which payment may be made under part B of title XVIII of that Act.

(d) The borrower must enter into an appropriate agreement, for the time period specified in the loan agreement, with the State agency which administers the State plan for medical assistance under title XIX of the Social Security Act to provide services to individuals entitled to medical assistance under the plan.

(e) During the time period specified in the loan agreement, the borrower must provide health services to individuals at the usual and customary rate prevailing in the HMSA in which services are provided; however, services must be provided at no charge or at a nominal charge to those persons unable to pay for these services.

(f) The borrower must keep and preserve all documents, including bills, receipts, checks, and correspondence which affect the operation of the private practice and the expenditure of loan funds for the period of the practice obligation specified in the loan agreement plus 3 years. Accounts will be maintained under one of the accounting principles identified by the Secretary in the loan agreement.

(g) The borrower must provide the Secretary and the Controller General of the United States, or their representatives, access during normal working hours to accounts, documents, and records for the purposes of audit or evaluation; and must permit the Secretary or his or her representative to inspect the private practice at reasonable times during the period of the practice obligation specified in the loan agreement plus 3 years. All information as to personal facts and circumstances about recipients of services shall be held confidential, and shall not be divulged without the individual's consent except as may be required by law or as may be necessary to provide medical service to the individual or to provide for medical or fiscal audits by the Secretary or his or

her designee with appropriate safeguards for confidentiality of records.

(h) For the entire period of loan repayment, the borrower must acquire, maintain, and when requested, must provide the Secretary with copies of policies of insurance on equipment and supplies in amounts adequate to reasonably protect the borrower from risk, including public liability, fire, theft, and worker's compensation.

(i) If the Secretary retains a security interest pursuant to § 23.33, the borrower must keep and preserve all documents which affect that security interest for the period of the loan repayment and allow the Secretary or his or her designee access, during normal working hours, to those documents.

(j) The borrower must maintain the loan proceeds in a separate account from his or her other transactions and must agree to draw upon this account and expend the loan proceeds in accordance with § 23.32.

(k) The Secretary may impose other conditions which he or she deems appropriate under law or regulation to protect the Government's interests.

§ 23.35 What criteria are used in making loans?

Approval of loan applications will be based on the criteria set forth below:

(a) The need in the HMSA for the applicant's health profession as determined under section 332 of the Act;

(b) The applicant's need for the loan funds; and

(c) The comments from State or local health professional societies on the appropriateness of the applicant's intended private practice; and

(d) The applicant's credit worthiness and projected financial ability to repay the loan.

Subpart C—Private Startup Loans

§ 23.41 What conditions are applicable to loans under this subpart?

The regulations set out in Subpart B of this part are fully applicable to loans awarded under section 338C(e)(1) of the Public Health Service Act, except as noted below;

(a) *Eligibility.* (1) In lieu of § 23.23(a), the following applies to loans made under this subpart:

(i) Eligibility for loans is limited to NHSC scholarship recipients who plan to enter private practice and have not begun fulfilling their scholarship service obligation or are currently fulfilling their scholarship service obligation under section 338B of the Act and have completed less than 2 years of this obligation.

(2) In lieu of § 23.23(c), the following applies to loans made under this subpart:

(i) NHSC scholarship recipients who have received loans under either this subpart or subpart B of this Part are ineligible for loans under this subpart.

(b) *Loan amounts.* (1) In lieu of § 23.24, the following applies to loans made under this subpart:

(i) The Secretary may make loans in the amount of $12,500 if the recipient agrees to practice in accordance with the loan agreement for a period of at least 1 year but less than 2 years or the remaining period of the borrower's NHSC scholarship service obligation, whichever is shorter.

(ii) The Secretary may make loans in the amount of $25,000 if the recipient agrees to practice in accordance with the loan agreement for a period of at least 2 years or the remaining period of the borrower's NHSC scholarship service obligation, whichever is shorter.

(c) *Use of funds.* (1) In lieu of § 23.32(a), the following applies to loans made under this subpart:

(i) The borrower must use the total amount of the loan only to purchase or lease, or both, the equipment and supplies needed for providing health services in his or her private practice. Equipment and supplies purchased and/or leased shall be limited to the items requested in the loan application and approved by the Secretary.

[FR Doc. 86-20174 Filed 9-5-86; 8:45 am]
BILLING CODE 4160-15-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevation are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.)

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the flood plain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Deputy Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended as follows:

§ 65.4 List of communities submitting new technical data.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No. 6713).	City of Peoria	April 4, 1986, and April 11, 1986, *Peoria Times.*	The Honorable Edmund Pang, Mayor, City of Peoria, P.O. Box 38, Peoria, AZ 85345.	Mar. 24, 1986, letter of map revision.	040050
Pima (FEMA Docket No. 6713).		April 9, 1986, and April 16, 1986, *Arizona Daily Star.*	The Honorable Sam Lena, Chairman, Pima County Board of Supervisors, 131 West Congress, Tucson, AZ 85701.	Mar. 19, 1986, letter of map revision.	040073
Connecticut:					
Hartford (FEMA Docket No. 6707).	Town of West Hartford	April 1, 1986, and April 8, 1986, *The Hartford Courant.*	The Honorable Barry M. Feldman, West Hartford Town Manager, 28 South Main Street, West Hartford, Connecticut 06107.	Mar. 21, 1986	095082
Texas:					
Dallas (FEMA Docket No. 6700).	City of Coppell	January 30, 1986, and February 6, 1986, *The Coppell News Weekly.*	The Honorable Lou Duggan, Mayor of the city of Coppell, 136 Glenwood Drive, Coppell, TX 75019.	Jan. 21, 1986, letter of map revision.	480170C
Dallas, Denton, Collin, Rockwall (FEMA Docket No. 6707).	City of Dallas	February 12, 1986, and February 19, 1986, *The Dallas Morning News.*	The Honorable A. Starke Taylor, Jr., Mayor of the city of Dallas, Mayor's Office, Room 5E North, 1500 Marilla, Dallas, TX 75201.	Jan. 23, 1986, letter of map revision.	480171C
El Paso (FEMA Docket No. 6700).	City of El Paso	December 27, 1985, and January 3, 1986, *The El Paso Times.*	The Honorable Jonathan Rogers, Mayor of the city of El Paso, 2 Civic Center Plaza, El Paso, TX 79999.	Dec. 11, 1985, letter of map revision.	480214B
Dallas (FEMA Docket No. 6691).	City of Irving	October 16, 1985, and October 23, 1985, *Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the city of Irving, Dallas County, P.O. Box 3008, Irving, TX 75061.	Oct. 7, 1985	480180A
Do	do	February 21, 1986, and February 28, 1986, *The Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the city of Irving, Dallas County, P.O. Box 2286, Irving, TX 75061.	Feb. 7, 1986	480180
Dallas (FEMA Docket No. 6713).	do	April 9, 1986, and April 16, 1986, *Irving Daily News.*	do	Mar. 28, 1986, letter of map revision.	480180
Collin and Denton (FEMA Docket No. 6691).	City of Plano	December 11, 1985, and December 18, 1985, *Plano Daily Star-Courier.*	The Honorable Jack Harvard, Mayor of the city of Plano, P.O. Box 358, Plano, TX 75074.	Nov. 26, 1985, letter of map revision.	480140B
Dallas and Rockwall (FEMA Docket No. 6700).	City of Rowlett	January 3, 1986, and January 10, 1986, *The Rowlett Record American.*	The Honorable Bill Payne, Mayor of the city of Rowlett, P.O. Box 99, Rowlett, TX 75088.	Dec. 4, 1985, letter of map revision.	480185B
Tarrant (FEMA Docket No. 6707).	City of Watauga	March 26, 1986, and April 2, 1986, *Mid-Cities Daily News.*	The Honorable Virgil Anthony, Sr., Mayor of the city of Watauga, 7101 Whitley Road, Watauga, TX 76148.	Feb. 18, 1986	480613

Issued: August 20, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-20169 Filed 9-5-86; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

The final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Deputy Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood plains.

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 67.11 [Amended]

2. Section 67.11 is amended as follows:

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
CALIFORNIA	
Palm Desert (City), Riverside County (FEMA Docket No. 6712)	
Dead Indian Canyon: At the intersection of Portola Avenue and State Highway 74	None
Deep Canyon Channel: At the intersection of Portola Avenue and Haystack Road	None
Palm Valley Stormwater Channel (Palm Valley Drain): At the intersection of Bursera Way and Pitahaye Street	None
Maps available for inspection at the Planning and Engineering Department, 73510 Fred Waring Drive, Palm Desert, California.	
FLORIDA	
Hillsborough County (Unincorporated Areas), (FEMA Docket No. 6685)	
Buckhorn Creek:	
At confluence with Alafia River	*16
Just downstream of Kings Avenue	*26
Tributary Canal:	
At confluence with Buckhorn Creek	*25
About 3900 feet upstream of confluence with Buckhorn Creek	*30
Shallow Flooding (ponding from rainfall): South of Lumsden Avenue and about 0.5 mile west of Kings Avenue	*32
Maps available for inspection at the Department of Development Coordination, P.O. Box 1110, Tampa, Florida.	
Seminole County (Unincorporated Areas) (FEMA Docket No. 6706)	
Lake Irish: Entire Shoreline	*46
Lake 8: Entire Shoreline	*50
Lake Marietta: Entire Shoreline	*46
Banana Lake: Entire Shoreline	*50
Golf Course Lake: Entire Shoreline	*48
Lake 9: Entire Shoreline	*47
Lake 7: Entire Shoreline	*45
Maps available for inspection at the Planning Department, 1101 East First Street, Sanford, Florida.	
ILLINOIS	
Addison (Village), DuPage County (FEMA Docket No. 6706)	
South Fork of Westwood Creek:	
At mouth	*685
Just downstream of Fullerton Avenue	*693
Maps available for inspection at the Collectors Office, 131 West Lake Street, Addison, Illinois.	
Shorewood (Village), Will County (FEMA Docket No. 6712)	
Hammel Creek:	
At mouth	*577
Just downstream of River Road	*616
Hammel Creek Tributary:	
Just upstream of the confluence with Hammel Creek	*606
Just downstream of River Road	*614
Robin Hill Road Split Flow:	
At confluence with Hammel Creek	*605
At divergence from Hammel Creek	*613
Maps available for inspection at the Planning Department, Shorewood Village Hall, Route 52 and Raven Road, Shorewood, Illinois.	
INDIANA	
Dyer (Town), Lake County (FEMA Docket No. 6699)	
Dyer Ditch:	
Just upstream of 213th Street	*624
Just upstream of Lincoln Highway	*630
About 0.25 mile upstream of Lincoln Highway	*637
Just downstream of Novak Road	*639
Shallow flooding (ponding):	
About 500 feet north of the intersection of Novak Road and Louisville and Nashville Railroad	*641
About 0.35 mile northeast of the intersection of Novak Road and Louisville and Nashville Railroad	*637
About 400 feet east of Dyer Ditch and about 500 feet north of Lincoln Highway	*630
Just south of 213th Street and about 0.4 mile west of Dyer Ditch	*623
Maps available for inspection at the Town Hall, 226 East Schulte Street, Dyer, Indiana.	
New Haven (City, Allen County (FEMA Docket No. 6720)	
Dannenfelser-Cochoit Ditch:	
Just upstream of Werling Ditch Road	*769
About 0.25 mile upstream of Werling Road	*769
Just downstream of Green Street	*775
Maps available for inspection at the City Administration Building, 1235 Lincoln Highway East, New Haven, Indiana.	
KANSAS	
Harvey County (Unincorporated Areas) (FEMA Docket No. 6706)	
Mud Creek:	
Just downstream of U.S. Route 50	*1,420
About 100 feet upstream of U.S. Route 50	*1,421
About 650 feet downstream of West First Street	*1,428
Maps available for inspection at the Harvey County Courthouse, Newton, Kansas.	
LOUISIANA	
Alexandria (City), Rapides Parish (FEMA Docket No. 6706)	
Horseshoe Drainage Canal:	
Downstream side of Twin Bridges Road	*80
Approximately 700 feet upstream of Twin Bridges Road	*81
Maps available for inspection at the City Hall, 915 Third Street, Alexandria, Louisiana.	
Hammond (City), Tangipahoa Parish (FEMA Docket No. 6712)	
Ponchatoula Creek:	
Upstream side of East Church Street	*41
Upstream side of Illinois Central Gulf Railroad	*42
Yellow Water River Canal:	
At Blackburn Road (extended)	*43
At upstream corporate limits	*44
Shallow Flooding: Upstream of Illinois Gulf Central Railroad	*42
Maps available for inspection at the City Hall, Hammond, Louisiana.	
MARYLAND	
Queen Annes County (FEMA Docket No. 6699)	
Chesapeake Bay:	
Wells Cove, East Inlet	*9
Intersection of Turtle Drive and State Route 18	*7
Maps available for inspection at the County Commissioners Office, County Annex Building, Centreville, Maryland.	
MASSACHUSETTS	
Newtown (City), Middlesex County (FEMA Docket No. 6699)	
Charles River:	
Most downstream corporate limits	*5
Upstream side of Newton Lower Falls Dam	*47
Approximately 1,000 feet upstream of Washington Street	*49
Downstream side of Wales Street	*64
Downstream side of State Route 9 (Boylston Street)	*87
Approximately 75 feet downstream of Sudbury Aqueduct	*75
Maps available for inspection at the Engineering Department, City Hall, Newton, Massachusetts.	
NEBRASKA	
Omaha (City), Douglas County (FEMA Docket No. 6706)	
Thomas Creek:	
At mouth	*1,060
About 750 feet downstream of 90th Street	*1,065
About 500 feet downstream of Ida Street	*1,090
Big Papillion Creek:	
About 300 feet downstream of West Center Road	*1,024
About 0.25 mile upstream of West Center Road	*1,028
About 300 feet upstream of 105th Street	*1,033
About 0.50 mile upstream of Interstate 680	*1,028
Maps available for inspection at the Planning Department, Omaha/Douglas Civic Center, 1819 Farnam Street, Room 1110, Omaha, Nebraska.	

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD). Modified
Waterloo (Village), Douglas County (FEMA Docket No. 6720)	
Elkhorn River:	
About 0.93 mile downstream of Union Pacific Railroad	*1,420
About 1.10 miles upstream of State Highway 64	*1,421
	*1,428
Maps available for inspection at the Village Hall, 105 Washington Street, P.O. Box 50, Waterloo, Nebraska.	
NEW JERSEY	
East Brunswick (Township), Middlesex County (FEMA Docket No. 6706)	
Raritan River:	
Entire shoreline within community	*80
Shoreline of South River at confluence with Raritan River	*81
Downstream side of State Route 18	*11
Upstream side of State Route 18	*11
Shoreline of Lawrence Brook at confluence with Raritan River	*10
Upstream side of New Jersey Turnpike	*11
Maps available for inspection at the Department of Planning and County Development, Municipal Building, East Brunswick, New Jersey.	
Sayreville (Borough), Middlesex County (FEMA Docket No. 6706)	
Raritan Bay: Entire shoreline within community	*18
Raritan River:	
Shoreline at Scott Avenue (extended)	*12
At Garden State Parkway Crossing	*10
Shoreline of South River at Washington Road	*10
Shoreline of South River at William Street (extended)	*10
At Bordentown-Amboy Turnpike	*10
Maps available for inspection at the Office of the Borough Clerk, 167 Main Street, Sayreville, New Jersey.	
South Amboy (City), Middlesex County (FEMA Docket No. 6706)	
Raritan River:	
At Roosevelt Street (extended)	*15
Upstream side of CONRAIL bridge	*13
Shoreline at Raritan Street (extended)	*12
Maps available for inspection at the City Clerk's Office, City Hall, 319 George Street, South Amboy, New Jersey.	
NEW YORK	
Brookhaven (Town), Suffolk County (FEMA Docket No. 6720)	
Great South Bay:	
Intersection of Noble Street and Blue Point Avenue	*8
Shoreline at Mott Avenue (extended)	*11
Moriches Bay:	
Intersection of Elm Road and Diana Drive	*8
Shoreline at Bay Avenue (extended)	*12
Atlantic Ocean:	
Shoreline at First Walk (extended)	*15
Intersection of Ocean Walk and Pine Walk	*12
Maps available for inspection at the Town Clerk's Office, 205 South Ocean Avenue, Patchoque, New York.	
East Hampton (Town) Suffolk County (FEMA Docket No. 6720)	
Atlantic Ocean:	
Shoreline at South Edison Street (extended)	*15
Intersection of Osprey Road and Martin Drive	*9
Maps available for inspection at the Town Clerk's Office, Town Hall, 159 Pantigo Road, East Hampton, New York.	
OHIO	
Whitehall (City), Franklin County (FEMA Docket No. 6706)	
Mason Run:	
About 0.25 mile downstream of Main Street	*775
About 0.11 mile upstream of Broad Street	*795
Maps available for inspection at the Service Director's Office, 360 South Yearling Road, Whitehall, Ohio.	
PENNSYLVANIA	
Unity (Township), Westmoreland County (FEMA Docket No. 6706)	
Loyalhanna River:	
Approximately 1,900 feet downstream of Mission Road	*996
Downstream side of Mission Road	*1,000
Downstream side of State Route 982	*1,004
Sewickley Creek:	
Downstream corporate limits	*1,023
Downstream side of State Route 130	*1,033
Upstream side of State Route 583	*1,046
Approximately .44 mile upsteam of State Route 583	*1,071
Township Line Run:	
Downstream corporate limits	*974
Upstream side of Township Route 492	*980
Upstream side of upsteam Robert Shaw Acres Bridge	*995
Approximately .46 mile downstream of L.R. 64174	*1,010
Upstream side of L.R. 64174	*1,034
Approximately 0.72 mile upsteam of L.R. 64174	*1,070
Maps available for inspection at the Township Building, Latrobe, Pennsylvania.	
West Lebanon (Township), Lebanon County (FEMA Docket No. 6699)	
Quittapahilla Creek:	
Approximately 500 feet downstream of 16th Street	None
Downstream side of 16th Street	None
Maps available for inspection at the Lebanon County Planning Department, Room 206, Municipal Building, Lebanon, Pennsylvania.	
TEXAS	
Travis County (FEMA Docket No. 6706)	
Williamson Creek:	
Approximately 30 feet downstream of Oak Hill Bee Caves Road	*834
Approximately 330 feet upstream of Oak Hill Bee Caves Road	*837
Approximately 360 feet downstream of confluence of Tributary 5	*843
Approximately 800 feet upstream of confluence of Tributary 5	*851
Approximately 1,840 feet upstream of confluence of Tributary 5	*860
Williamson Creek Tributary No. 5:	
Approximately 640 feet upstream of confluence with Williamson Creek	*848
Approximately 960 feet upstream of confluence with Williamson Creek	*851
Maps available for inspection at the Travis County Engineering Office, 314 W-11, Suite 200, Austin, Texas.	
Uvalde (City), Uvalde County (FEMA Docket No. 6712)	
Leona River:	
Downstream corporate limits	*887
Upstream side of East Nopal Street	*891
Upstream side of Studer Street	*902
Upstream corporate limits	*904
Taylor Slough:	
Downstream corporate limits	*907
Approximately 80 feet upstream of FM Highway 1023	*912
Upstream corporate limits	*917
Maps available for inspection at the City Permits Office, Main Street, Uvalde, Texas.	

Issued: August 20, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-20170 Filed 9-5-86; 8:45 am]

BILLING CODE 6718-03-M

Proposed Rules

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations, as required by section 1622 of the Department of Defense Authorization Act of 1986, to provide procedures for executive agencies to determine whether individuals have registered with the Selective Service System and are eligible for appointment. These regulations also provide procedures for OPM to use in determining, in certain cases, whether failure to register was knowing and willful. Comparable requirements have been enacted for certain Department of Education and Department of Labor programs in order to encourage young men to register with the Selective Service System.

DATES: Comments will be considered if received no later than October 8, 1986.

ADDRESS: Send or deliver written comments to Curtis J. Smith, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Donald L. Holum, (202) 632-6817.

SUPPLEMENTARY INFORMATION: Section 1622 of Pub. L. 99-145, approved November 8, 1985, added section 3328, "Selective Service registration," to title 5, United States Code. The section provides that men born in 1960 or later who are required to but did not register under section 3 of the Military Selectvie Service Act (50 U.S.C. App. 453) generally are ineligible for appointment to Federal executive agencies. A non-registrant who is not yet 26 years of age may correct his ineligibility by registering. After a non-registrant becomes 26 years of age or older, he can no longer register to correct his failure. In the latter situation, the section further authorizes OPM to prescribe procedures for determining whether failure to register was knowing and willful.

For Privacy Act purposes. OPM considers the completed statement or registration status in § 300.704(b) to be part of the application record covered by the system or records notice for OPM/GOVT-5, Recruiting, Examining, and Placement Records, published on September 20, 1984, at 49 FR 36964. Accordingly, disclosures of information on the statement to the Selective Service System fall within the scope of routine use described in that notice.

These regulations supersede interim memorandum instructions to personnel directors on December 23, 1985.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations only affect Federal employees and job applicants.

List of Subjects in 5 CFR Part 300

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 54 CFR Part 300 by adding Subpart G to read as follows:

PART 300—EMPLOYMENT (GENERAL)

* * * * *

Subpart G—Statutory Bar to Appointment of Persons Who Fail to Register Under Selective Service Law

Sec.
300.701 Statutory requirement.
300.702 Coverage.
300.703 Definitions.
300.704 Considering applicants for appointment.
300.705 Agency action following statement.
300.706 Office of Personnel Management adjudication.
300.707 Termination of employment.

Authority: Pub. L. 99-145, section 1622; 5 U.S.C. 3328.

Subpart G—Statutory Bar to Appointment of Persons Who Fail to Register Under Selective Service Law

§ 300.701 Statutory requirement.

Section 3328 of title 5 of the United States Code provides that—

"(a) An individual—

"(1) who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App., 453); and

"(2) who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an executive agency of the Federal Government.

"(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication within the Office of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful."

§ 300.702 Coverage.

Appointments in the competitive service, the excepted service, the Senior Executive Service, or any other civil service personnel management system in an executive agency are covered by these regulations.

§ 300.703 Definitions.

In this subpart—

"Appointment" means any personnel action which brings onto the rolls of an executive agency as a civil service officer or employee as defined in 5 U.S.C. 2104, or 2105, respectively, a person who is not currently employed in an executive agency. It includes the initial employment as well as subsequent employment after a break in service. Personnel actions which move an employee within or between executive agencies without a break in service are not covered. A break in service is a period of four or more calendar days during which an individual is no longer on the rolls of an executive agency.

"Covered job applicant" means a male whose application for appointment is under consideration by an executive agency, and who was born after

December 31, 1959, is at least 18 years of age, and is either a United States citizen or an alien residing in the United States.

"Executive agency" means an agency of the Government of the United States as defined in 5 U.S.C. 101 through 105.

"Exemptions" means those individuals determined by the Selective Service System as excluded from the requirement to register under sections 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or Presidential proclamation.

"Preponderance of the evidence" means the degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

"Registrant" means an individual registered under Selective Service law.

"Selective Service law" means the Military Selective Service Act, all rules and regulations issued thereunder, and proclamations of the President under that Act.

"Selective Service System" means the Federal agency responsible for administering the registration system and for determining who is required to register and who is exempt.

§ 300.704 Considering applicants for appointment.

(a) An executive agency must request a written statement of Selective Service registration status from each covered job applicant prior to appointment. The applicant must complete, sign, and date in ink the statement on a form provided by the agency unless the applicant furnishes other documentation as provided by paragraph (c) of this section.

(b) Statement of Selective Service registration status. Agencies should reproduce the following statement, which has been approved by the Office of Management and Budget under OMB Control No. 3206–0166:

Applicant's Statement of Selective Service Registration Status

If you are a male born after December 31, 1959, and are at least 18 years of age, civil service employment law (5 U.S.C. 3328) requires that you must be registered with the Selective Service System, unless you meet certain exemptions under Selective Service law. If you are required to register but knowingly and willfully fail to do so, you are ineligible for appointment by executive agencies of the Federal Government.

Certification of Registration Status

Check one:

[ ] I certify that I am registered with the Selective Service System.

[ ] I certify that I have been determined by the Selective Service System to be exempt from the registration provisions of Selective Service law.

[ ] I certify I have not registered with the Selective Service System.

[ ] I certify I have not reached my eighteeth birthday and understand I am required by law to register at that time.

Non-Registrants Under Age 26

If you are under age 26 and hava not registered as required, you should register promptly at a United States Post Office, or consular office if you are outside the United States.

Non-Registrants Age 26 or Over

If you were born in 1960 or later, are 26 years of age or older, and were required to register but did not do so, you can no longer register under Selective Service law. Accordingly, you are not eligibla for appointment to an executive agency unless you can prove to the Office of Personnel Management (OPM) that your failure to register was neither knowing nor willful. You may request an OPM decision through the agency which was considering you for employment by returning this statement with your written request for an OPM determination together with any explanation and documentation you wish to furnish to prove that your failure to register was neither knowing nor willful.

Privacy Act Statement

Because information on your registration status is essential for determining whether you are in compliance with 5 U.S.C. 3328, failure to provide the informaiton requested by this statement will prevent any further consideration of your application for appointment. This information is subject to verification with the Selective Service System and may be furnished to other Federal agencies for law enforcement or other authorized use in implementing this law.

False Statement Notification

A false statement may be grounds for not hiring you, or for firing you if you have already begun work. Also you may be punished by fine or imprisonment. (Section 1001 of title 18, United States Code.)

Legal signature of applicant (please use ink)

Date signed (please use ink)

(c) At his option, a covered job applicant may submit, in lieu of the statement described above, a copy of his Acknowledgment Letter or other proof of registration or exemption issued by the Selective Service System. The applicant must sign and date the document and add a note stating it is submitted as proof of Selective Service registration or exemption.

(d) An executive agency will deny further consideration for appointment to individuals who fail to provide the information requested on registration status.

(e) An agency considering employment of a former Federal employee is not required to request a statement when the individual's Official Personnel Folder contains evidence indicating the individual is registered or currently exempt from registration.

§ 300.705 Agency action following statement.

(a) Agencies must resolve conflicts of information and other questions concerning an individual's registration status prior to appointment. An agency may verify, at its discretion, an individual's registration status by requesting the individual to provide proof of registration or exemption issued by the Selective Service System and/or by contacting the Selective Service System.

(b) An agency may continue regular pre-employment consideration of applicants whose statements show they have registered or are exempt.

(c) An agency will take the following actions when an individal who is required to register, has not done so, and is under age 26:

(1) Advise him to register promptly and to submit a new statement immediately to the agency once he has registered.

(2) Provide written notice to an individual who still does not register that he is ineligible for appointment according to 5 U.S.C. 3328 and will be given no further employment consideration. If the individual was certified or otherwise referred by an Office of Personnel Management (OPM) examining office or other office delegated examining authority by OPM, the agency will provide a copy of its written notice to that office.

(d) An agency will take the following actions when an individual who is age 26 or over, was required to register, and has not done so:

(1) Provide written notice to the individual that, in accordance with 5 U.S.C. 3328, he is ineligible for appointment unless his failure to register was neither knowing nor willful, and that OPM will decide whether his failure to register was knowing and willful if he submits a written request for such decision and an explanation of his failure to register. If the individual was certified or otherwise referred by an OPM examining office or other office delegated examining authority by OPM,

the agency will provide a copy of its written notice to that office.

(2) Submit the individual's application, the statement described in § 300.704(b), a copy of the written notice, his request for a decision and explanation of his failure to register, if any, and any other papers pertinent to his registration status for determination to—

Registration Review, Recruiting and Staffing Services Division, Career Entry Group, Room 6A12, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

(e) An agency is not required to keep a vacancy open for an individual awaiting an OPM determination.

§ 300.706 Office of Personnel Management adjudication.

(a) OPM will adjudicate cases forwarded by agencies under § 300.705(d). For those cases in which the applicant requested a decision and presented a written explanation, OPM will determine whether failure to register was knowing and willful. The determination will be made on the record by the Associate Director for Career Entry or his or her designee. The burden of proof will be on the individual to show by a preponderance of the evidence that failure to register was neither knowing nor willful.

(b) OPM may consult with the Selective Service System in making determinations.

(c) The Associate Director for Career Entry or his or her designee will notify the individual and the agency in writing of the determination. The determination is final unless reconsidered at the discretion of the Associate Director. There is no further right to administrative review.

(d) The Director of OPM may reopen and reconsider a determination.

(e) The Director of OPM may, at his or her discretion, delegate to an executive agency the authority to make initial determinations. However, OPM may review any initial determination and make a final adjudication in any case. If a delegation is made under this subsection, the notice in paragraph § 300.705(d)(1) shall state that the applicant may submit a written request that OPM review the agency's initial determination. The agency shall forward to OPM copies of all documents relating to the applicant's failure to register, including the applicant's request for review and his explanation of his failure to register.

§ 300.707 Termination of employment.

A person who is a covered job applicant but is serving under appointment made on or after November 8, 1985, and who has not registered as required, will be terminated unless he registers or if he is no longer eligible to register, OPM determines in response to his explanation that his failrue to register was neither knowing nor willful.

[FR Doc. 86-20106 Filed 9-5-86; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-398]

Subpart—Citrus Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend "Subpart—Citrus Canker" regulations by adding provisions allowing, under specified conditions, the issuance of limited permits for interstate movement of calamondin and kumquat plants from quarantined areas to areas not designated as commercial citrus-producing areas. These changes appear to be necessary to relieve current restrictions on interstate trade without increasing the risk of spreading citrus canker disease.

DATE: Written comments concerning this proposal must be received on or before November 7, 1986.

ADDRESS: Written comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination Group, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should indicate that they are in response to Docket No. 85-398. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director of the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, USDA, Room 611, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker, a disease caused by the bacterial pathogen, *Xanthomonas campestris* pv. *citri* (Hasse) Dowson, is a devastating disease which is known to affect plants and plant parts (including fruit) of citrus and citrus relatives (Family Rutaceae). This very aggressive disease can rapidly infect plants and plant parts, leading to extensive economic losses throughout entire citrus growing areas.

After the discovery of citrus canker in Florida, regulations captioned "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.* and referred to below as the regulations) were established to regulate the interstate movement, from anywhere in Florida, of certain articles designated as regulated articles. Interstate movement of regulated articles may be permitted under limited permits, which require compliance with stringent criteria to prevent artificial spread of citrus canker.

Calamondin and Kumquat Plants

Present § 301.75-2(a) lists as regulated articles "plants or plant parts, including fruit and seeds, of . . . . all species, clones, cultivars, strains, varieties, and hybrids of the genera Citrus and Fortunella". Calamondin, a hybrid combination of mandarin orange and kumquat (*Citrus reticulata* and *Fortunella* sp.), and kumquat (*Fortunella margarita*) are named as regulated articles in present § 301.75-2(a). However, there is little likelihood of calamondin and kumquat plants causing the artifical spread of citrus canker as calamondin and kumquat are highly resistant to citrus canker in general, and to the strains found in Florida in particular.

Calamondin and kumquat plants produce a small, bright orange fruit. Some individuals use the extremely sour fruit as a substitute for lemons and limes, but there is no commercial demand for calamondin or kumquat fruit.

There is, however, a commercial demand for calamondin and kumquat plants to be sold as indoor house plants. This document would allow calamondin and kumquat plants to move interstate under limited permits, but would require different permit issuance criteria for the two types of calamondin ornamental trade operations.

Greenhouse-Grown Calamondin Plants

Greenhouse-grown calamondin plants would be packaged and sold within Florida prior to interstate movement as individual plants. The overwhelming majority would be purchased by tourists buying last-minute souvenirs at gift shops and roadside fruit stands prior to leaving Florida. The Department believes that such plants can be

maintained canker free if grown and moved under the carefully controlled conditions proposed in § 301.75–7(e). These conditions include:

1. Growing only in sterile medium on raised benches.

2. Propagating only with cuttings taken from plants located on the same premises.

3. Allowing movement only from nurseries that were not found to be infested with citrus canker after three inspections by Federal and/or State of Florida inspectors, at 30-day intervals prior to shipment, and that have not received any exposed material from infested or exposed properties.

4. Requiring removal of fruit and the placing of individual plants in hermetically sealed plastic bags prior to movement from nurseries.

To assure that consumers will be informed of geographic distribution limitations, § 301.75–7(e) would also require that individual packages for greenhouse-grown calamondin plants carry a bold face statement that the plants are not for distribution to or within American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States. Purchasers would, however, be allowed to move the plants into any non-citrus producing State.

Container-Grown Calamondin and Kumquat Plants

Container-grown calamondin and kumquat nursery plants are usually grown out-of-doors. This proposal would establish criteria in § 301.75–7(f) for the interstate movement of container-grown calamondin and kumquat plants without causing the artificial spread of citrus canker. The proposed criteria would require that distribution of such plants would be limited to only within that area of the United States east of the Mississippi River and north of a line formed by the southernmost borders of Illinois, Indiana, Ohio, New Jersey, and Pennsylvania. This area is considered "safe" as weather conditions will not permit commercial production of citrus or the outdoor survival of citrus plants.

The proposed criteria also requires the following for growing and moving container-grown calamondin and kumquat nursery plants:

1. Growing plants entirely on site and propagating only with cuttings taken from plants located on the same premises.

2. Allowing movement only from nurseries that were not found to be infested with citrus canker after three inspections by Federal and/or State of Florida inspectors, at 30-day intervals prior to shipment, and that have not received any exposed material from infested or exposed properties, and that have not housed citrumelo or trifoliate orange (*Poncirus trifoliata*) since May 1, 1985.

3. Allowing transportation only in sealed, rigid containers or completely enclosed vehicles.

4. Requiring attachment of a waterproof, boldface statement of geographic distribution limitations to each individual plant in containers.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic region; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The revisions proposed in this document would relieve unnecessary restrictions on the interstate trade in calamondin and kumquat plants. Under the requirements for issuance of limited permits, as proposed herein, movement of these plants would not threaten citrus production in the United States or increase the artificial spread of citrus canker.

The overwhelming majority of gift shops and roadside stands selling calamondin and kumquat plants are small entities, as are a portion of the nurseries that grow and sell these plants. However, although sales of calamondin and kumquat should increase under this proposal, the economic impact would be minor as calamondin and kumquat are a small part of such small entities' selling or purchasing inventory.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, it is proposed to amend "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.*) as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.75–6 would be amended by adding a new paragraph (e) to read as follows:

§ 301.75–6 Conditions governing the interstate movement of regulated articles from quarantined areas.

* * * * *

(e) Calamondin and kumquat plants may be moved interstate from a quarantined area with a limited permit issued and attached in accordance with § 301.75–10 and either § 301.75–7(e) or § 301.75–7(f).

3. Section 301.75–7 would be amended by adding new paragraphs (e) and (f) to read as follows:

§ 301.75–7 Issuance and cancellation of certificates and limited permits.

* * * * *

(e) A limited permit shall be issued by an inspector for greenhouse-grown calamondin plants to be packaged and sold within Florida prior to interstate movement as individual plants, if such inspector:

(1) Determines that each individual plant will be sealed hermetically in a plastic bag at the nursery before moving from the nursery premises and will have no fruit attached.

(2) Determines that the calamondin plants have been grown in sterile medium on raised benches, and that cuttings used for propagation have only been taken from plants located on the same premises.

(3) Determines that the nursery where the plants were grown has not received any exposed material from any infested or exposed property.

(4) Determines that the nursery where the plants were grown has received three negative inspections for citrus canker by Federal and/or State of Florida inspectors, at 30-day intervals,

prior to the date of shipment and that all plants were citrus canker free.

(5) Determines that each individual package will have a bold face statement which states that the plant is not for distribution within American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States.

(f) A limited permit shall be issued by an inspector for container-grown calamondin or kumquat nursery plants to be moved from the State of Florida to that area of the United States east of the Mississippi River and north of an imaginary line formed by the southernmost borders of Illinois, Indiana, Ohio, New Jersey, and Pennsylvania, if such inspector:

(1) Determines that the plants will be transported in a sealed, rigid container or a completely enclosed vehicle.

(2) Determines that the plants are from a nursery that has not received any exposed plant material from any exposed or infested property, and has had no citrumelo or *Poncirus trifoliata* plants in the nursery since May 1, 1985.

(3) Determines that the plants have been produced entirely on site and that cuttings used for propagation have only been taken from plants located on the same premises.

(4) Determines that the nursery where the plants were grown has received three negative inspections for citrus canker by Federal and/or State of Florida inspectors, at 30-day intervals, prior to the date of shipment and that all plants were citrus canker free.

(5) Determines that a waterproof, boldface statement will be attached to each plant stating that the plant may be distributed only within that area of the United States east of the Mississippi River and north of an imaginary line formed by the southernmost borders of Illinois, Indiana, Ohio, New Jersey, and Pennsylvania.

Done at Washington, DC, this 3rd day of September 1986.

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-20137 Filed 9-5-86; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8 86-05]

Safety Zone; Mississippi River Gulf Outlet

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend its Safety Zone Regulations, 33 CFR Part 165, by disestablishing the safety zone in the Mississippi River Gulf Outlet (MRGO). Improvements to the navigational channel since the safety zone's establishment (**Federal Register** Vol. 46, No. 107/4 June 1981) and the ability of the U.S. Army Corps of Engineers to deal quickly with critical shoaling, have made this safety zone unnecessary. Its removal will provide economic benefits to the shipping industry and the Port of New Orleans without reducing navigation safety.

DATE: Comments must be received on or before October 23, 1986.

ADDRESSES: Comments should be mailed to U.S. Coast Guard, Captain of the Port, 4640 Urquhart Street, New Orleans, Louisiana, 70117-4698. The comments and other materials referenced in this notice will be available for inspection and copying at U.S. Coast Guard Group, 4640 Urquhart Street, New Orleans, Louisiana, 70117-4698, Room A-303. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Scott Newsham at (504) 589-7127.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD8 86-05) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed post card or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT Scott Newsham, project officer, Chief, Waterways Safety Branch, and LCDR James Vallone, project attorney, Eighth, Coast Guard District Legal Office.

Discussion of Proposed Regulations

On 4 June 1981 the MRGO Safety Zone was established to prevent vessels, including tows, over 600 feet in length, or over 80 feet in beam, or with a draft of over 30 feet from meeting or overtaking one another in that portion of the MRGO between Lighted Buoy 1 [LLNR 2014] and Light 62 [LLNR 2068]. This created single-lane traffic in this portion of the MRGO. This action was in response to substantial channel construction from shoaling and the perceived dangers of varying crosscurrent below the jetties.

In 1985 the U.S. Army Corp of Engineers completed a dredging project, restoring the MRGO to its original project dimensions of 36 feet deep and 500 feet wide. The Corps has indicated to the Captain of the Port, New Orleans that they should be able to deal quickly with any future critical shoaling problems.

Discussions with the Associated Branch Pilots, who provide pilotage for vessels transiting between the seaward entrance of the MRGO and Light 62, indicate that the restoration of the channel to project dimensions, and planned improvements to the aids to navigation, have alleviated the navigational safety concerns which led to their recommendations for the original MRGO Safety Zone.

The New Orleans Steamship Association, comprised of 58 companies of ship owners, agents, operators and stevedores in the Port of New Orleans, and associated with hundreds of vessel owners in international commerce, has recommended that the MRGO Safety Zone be eliminated. The association believes that this will allow for more efficient sailing schedules, which would benefit both the vessel operators and the Port of New Orleans.

St. Bernard and Orleans Parishes, the two parishes through which the MRGO passes, were asked to comment on the possible elimination of the safety zone. St. Bernard Parish offered no objection, while no response was received from Orleans Parish.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Ships will be able to call at the Port of New Orleans with less

restrictions on their sailing schedules. Any economic impact would be beneficial due to reduced vessel operating costs.

Since the impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

1. The authority for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

§ 165.801 [Removed]

2. Section 165.801 is removed.

Dated: May 14, 1986.

J.E. Lindak,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 86–20162 Filed 9–5–86; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–3075–3]

Certification Program; Emissions Trading and/or Banking; Report Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Report Availability.

SUMMARY: This notice announces the availability of an EPA staff paper which examines the issues surrounding the implementation of a certification program allowing the trading and/or banking of oxides of nitrogen and diesel particulate emission credits to determine compliance with heavy-duty engine emission standards. A supporting economic analysis report prepared for EPA to quantify the benefits of implementing such a program is also available. In addition, the notice requests comment on the staff paper and announces EPA's intention to convene a public workshop on this subject.

DATE: All comments must be submitted by November 7, 1986.

ADDRESSES: Single copies of the staff paper and the economic analysis report may be obtained by contacting: Ms. Jacqueline L. Whelchel, Emission Control Technology Division, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, 313–668–4272.

Those persons desiring to provide written comments on the staff paper should submit those comments in duplicate directly to the public contact person indicated below. Commenters desiring to submit proprietary information should clearly distinguish such information from other comments to the greatest extent possible, and label it "Confidential Business Information."

Information covered by such a proprietary claim will be disclosed by EPA only to the extent and by means of the procedures set forth in the 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is received by EPA it may be made available to the public without further notice to the commenter.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Kanner, Emission Control Technology Division (SDSB–12), U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105 (313–668–4361).

SUPPLEMENTARY INFORMATION:

Background

As part of the October 15, 1984 Notice of Proposed Rulemaking covering future heavy-duty engine (HDE) oxides of nitrogen (NOx) and heavy-duty diesel engine (HDDE) particulate emission standards, EPA proposed that manufacturers be permitted to use a form of emissions averaging as part of their approach to compliance with these emission standards. In addition, EPA requested comments on the possibility of establishing an emissions trading program for HDE NO_x and HDDE particulate to complement the emissions averaging program (49 FR 40262).

The public comments received in response to the proposed emissions averaging program raised several issues relevant to both emissions averaging and trading. In the course of developing the final rule, EPA was able to address satisfactorily the concerns raised in the comments as they pertained to HDE NO_x and HDDE particulate emission averaging, and these programs were established, applicable beginning with the 1991 model year. However, action on the emissions trading program was deferred pending further study. A decision on emissions trading was postponed because EPA had not proposed a specific program for emissions trading and the court-imposed schedule for promulgation of the final rule did not allow time to deal satisfactorily with the comments received on the emissions trading concept (50 FR 10637).

Shortly following the decision to postpone action on emissions trading, EPA formed a technical committee to study more thoroughly the issues raised with regard to emissions trading, and to develop details of appropriate options for dealing with these issues. Also, the study was expanded to include the possibility of adding a banking program to the trading program. The EPA staff paper mentioned above, prepared by the technical committee, represents the first step in EPA's further evaluation of the possibility of implementing trading and/or banking programs for HDEs.

Summary of the Staff Paper

The EPA staff paper, entitled "Issue Analysis: Trading and Banking of Heavy-Duty Engine NOx and Particulate Emissions Credits," is divided into five main sections. Following a short introduction, a background on trading and banking is presented, including a description of the two concepts and a discussion as to why these programs are being considered. The next section presents some key design goals for trading/banking programs and discusses some constraints on the programs which may be necessary to meet these design goals. This is followed by a discussion of the potential environmental impacts of trading and banking programs, with special emphasis on the potential for fleetwide and temporally-localized emission increases. A discussion of the possible interactions between trading and banking and existing mobile source programs is presented in the ensuing section, and this is followed by a final section discussing the competitive and equity impacts of trading and banking. This final section, which is drawn from the aforementioned economic analysis report, focuses on overall cost savings benefits, equity effects, and anti-competitive effects. The paper closes with a brief summary.

Overall the staff paper is not designed or intended to present EPA's final positions on the issues and concerns described therein. Rather, EPA hopes that the paper will provide focus to those issues requiring consideration and resolution, as well as a framework in which the affected industry and other interested parties can develop comments, suggestions, and further questions on the issues. Based on analyses of these inputs, EPA will determine if it is appropriate to issue a

BEST COPY AVAILABLE

proposed rulemaking for specific programs on trading and/or banking.

Requests for Public Comment

EPA solicits written public comment on the issues raised in the staff paper and invites additional comments on areas which the staff paper may not have addressed. Specifically, EPA requests that manufacturers provide an evaluation of the potential benefits and negative impacts of implementing such programs, including a quantitative assessment of the potential cost savings. This evaluation should also address the potential equity and competitive effects of these programs. EPA requests comments on concerns regarding the potential for negative environmental impacts and possible means to remedy the problems raised in the staff paper with regard to trading across HDDE subclasses. Comments should also address the question of EPA's authority to establish trading and/or banking programs for HDE NOx and HDDE particulate emissions within the constraints of the mobile source provisions of the Clean Air Act. EPA requests that commenters address the reasons for or against implementation of trading and banking concepts in conjunction with HDE NO_x and HDDE particulate averaging, both in general and with regard to specific types of trading or banking programs.

Although EPA has not pre-scheduled a public workshop on the trading and banking concepts, EPA intends to hold a workshop after reviewing the written comments received on the staff paper. A public workshop will provide an open forum for discussion of the issues raised in the staff paper and allow further comment on the issues. When a public workshop is scheduled, adequate notice and specific details will be provided in a future **Federal Register** notice.

Dated: August 6, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-20031 Filed 9-5-86; 8:45 am]

BILLING CODE 6560-50-M

VOL 51 ISS 173 SE 8 1986 UMI

Notices

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission originally scheduled for September 8, 1986, convening at 1:00 p.m. and adjourning at 4:00 p.m., at the U.S. Commission on Civil Rights, Conference Room #2950, 1405 Curtis Street, Denver, Colorado, (FR Doc. 86-16960, Page 27066) has been cancelled.

Dated at Washington, DC, August 29, 1986.

Ann E. Goode,
Program Specialist for Regional Programs.

[FR Doc. 86-20125 Filed 9-5-86; 8:45 am]
BILLING CODE 6335-01-M

Nevada Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission originally scheduled for September 20, 1986, convening at 10:00 a.m. and adjourning at 2:00 p.m., at the Holiday Inn South, 5851 South Virginia, Reno, Nevada, (FR Doc 86-16583, Page 28457) has been cancelled.

Dated at Washington, DC, August 27, 1986.

Ann E. Good,
Program Specialist for Regional Programs.

[FR Doc. 86-20126 Filed 9-5-86; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Membership of the Office of Inspector General Performance Review Board

In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Office of Inspector General (OIG) announces the appointment of persons to serve as members of its Performance Review Board (PRB). The OIG PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The names of all Commerce OIG Senior Executives will be placed on a register from which PRB's will be established, the register will be established on September 15, 1986. The appointment of the member of the OIG PRB from outside of the OIG will be for a period of two years beginning September 15, 1986.

The names and titles of the OIG PRB membership follow. All are OIG employees, except where noted.

Francis D. DeGeorge, Deputy Inspector General
Charles M. Hall, Assistant Inspector General for Planning, Evaluation and Inspections
Bryan B. Mitchell, Acting Deputy Inspector General (Department of Health and Human Services)
John D. Newell, Assistant Inspector General for Automated Information Systems
J. Steven Sadler, Deputy Assistant Inspector General for Auditing
Linda G. Sundro, Counsel to the Inspector General
John R. Szpanka, Assistant Inspector General for Auditing
Randolph M. West, III, Assistant Inspector General for Investigations

FOR FURTHER INFORMATION CONTACT: Marie Van Wyk, Personnel Officer, Department of Commerce, Office of Inspector General, 14th & Constitution, NW., Room 7713, Washington, DC 20230, (202) 377-4948.

Dated: August 29, 1986.

Approved:
Francis D. DeGeorge,
Deputy Inspector General.
[FR Doc. 86-20116 Filed 9-5-86; 8:45 am]
BILLING CODE 3510-11-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than September 30, 1986, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September, for the following periods:

Antidumping Duty Proceeding	Period
Parts for Self-Propelled Bituminous Paving Equipment from Canada	9/1/85-8/31/86
Metal-Walled Above-Ground Swimming Pools from Japan	9/1/85-8/31/86
Steel Jacks from Canada	9/1/85-8/31/86
Printcloth from the People's Republic of China	9/1/85-8/31/86
Woodwind Pads from Italy	9/1/85-8/31/86
Kraft Condenser Paper from Finland	9/1/85-8/31/86
Steel Bars & Shapes from Canada	9/1/85-8/31/86
Instant Potato Granules from Canada	9/1/85-8/31/86
Sheet Piling from Canada	9/1/85-8/31/86

Countervailing Duty Proceeding	Period
Fresh Cut Roses from Israel	10/1/84–9/30/85
Lime from Mexico	1/1/85–12/31/85
Lambmeat from New Zealand	4/1/85–3/31/86
Portland Hydraulic Cement and Cement Clinker from Mexico	1/1/85–12/31/85
Carbon Steel Wire Rods from Argentina	1/1/83–12/31/85
Cotton Shop Towels from Peru	1/1/85–12/31/85

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by September 30, 1986.

If the Department does not receive by September 30, 1986 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–20175 Filed 9–5–86; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit to Dr. Sidney Lees

On July 8, 1986, notice was published in the **Federal Register** (51 FR 24737) that an application had been filed by Dr. Sidney Lees, Head Bioengineering Department, Forsyth Dental Center, 140 Fenway, Boston, Massachusetts 02115, for importation from Iceland of otic bones and associated tissues from three fin whales.

Notice is hereby given that on August 28, 1986, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue, NW., Washington, DC

and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Masschusetts 01930.

Dated: September 3, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–20172 Filed 9–5–86, 8:45 am]

BILLING CODE 3510–22–M

United States Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on September 29, 1986 at 9:00 a.m. at Tan-Tar-A Resort, Lake of the Ozarks, Osage Beach, Missouri 65065. Meeting Room information will be posted on the hotel directory.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97–63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order.
II. Approval of the Minutes.
III. Old Business.
  A. Foreign Service Conversion of USTTA Personnel.
  B. Report on China Trip.
  C. Crisis Management.
IV. New Business.
  A. Review of USTTA Operations.
  B. German Test Market Assessment Results.
  C. International Marketing Conference.
  D. Caribbean Basin Initiative.
V. Miscellaneous.
  A. Establish next meeting date.
VI. Adjournment.

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–377–0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 86–20124 Filed 9–5–86; 8:45 am]

BILLING CODE 3510–11–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Information School Board of Visitors; Meeting

AGENCY: Defense Information School Board of Visitors.

ACTION: Notice of Meeting.

SUMMARY: A meeting will be held to discuss military public affairs with the Service Chiefs of Public Affairs and/or their representatives in order to determine trends and issues that would be useful to the Defense Information School. The meeting is open to the public and will be conducted in Room 1E801 (#1), the Pentagon, Washington, DC.

DATES: (September 29, 1986—8:00 a.m. to 4:00 p.m.) and (September 30, 1986—8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Ted Daniel, Director for Management, Office of the Assistant Secretary of Defense for Public Affairs, Room 2E811, the Pentagon, Washington, DC 20301. Mr. Daniel's telephone number is (202) 697–8959.

Patricia H. Means,

OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–20128 Filed 9–5–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Semi-Conductor Dependency

ACTION: Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Semi-Conductor Dependency will meet in closed session on September 24, 1986 at Palisades Corporation, Crystal City, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will evaluate the state of current and projected Department of Defense Foreign Semi-Conductor Dependency.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this DSB panel meeting, concerns matters listed in 5 U.S.C. 552b:(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 2, 1986.

[FR Doc. 86–20129 Filed 9–5–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Public Hearings on the Draft Environmental Impact Statement and Dredging Permit Applications for U.S. Navy Gulf Coast Homeporting

The U.S. Navy pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR Part 1500), and Executive Order 12382 has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for the proposed Gulf Coast Strategic Homeporting. The DEIS has been distributed to various public officials, federal, state, and local agencies, organizations, individuals, and public libraries in Key West, Florida; Pensacola, Florida; Mobile, Alabama; Pascagoula, Mississippi; Lake Charles, Louisiana; Galveston, Texas, Corpus Christi, Texas and Ingleside, Texas.

Public hearings to inform the public of the study's findings and to solicit comments on the Navy's proposed homeport facilities will be held at the following locations:

Gulfport, Mississippi—Tuesday, September 30, 1986, at 7:00 p.m., Westside Community Center, 4010 West Beach (highway 90), Gulfport, Mississippi.

Key West, Florida—Thursday, October 2, 1986, at 7:00 p.m., City Commission Chambers, 524 Angela Street, Key West, Florida.

Pensacola, Florida—Tuesday, October 7, 1986, at 7:00 p.m., New City Hall, 180 Governmental Center, Pensacola, Florida.

Mobile, Alabama—Wednesday, October 8, 1986, at 7:00 p.m., Mobile Municipal Auditorium, 401 Auditorium Drive, Mobile, Alabama.

Pascagoula, Mississippi—Thursday, October 9, 1986, at 7:00 p.m., LaFont Inn, Highway 90 East, Pascagoula, Mississippi.

Lake Charles, Louisiana—Tuesday, October 14, 1986, at 7:00 p.m., Lake Charles Civic Center Buccaneer Room, Lake Shore Drive, Lake Charles, Louisiana.

Galveston, Texas—Wednesday, October 15, 1986, at 7:00 p.m., Moody Civic Center, 2nd Level, Seawall Boulevard, Galveston, Texas.

Corpus Christi Ingleside, Texas—Thursday, October 16, 1986, at 7:00 p.m., Gregory-Portland High School Auditorium, Wildcat Drive, Portland, Texas.

The hearings will be chaired by the U.S. Navy and, at appropriate sites, co-chaired by the U.S. Army Corps of Engineers. These hearings will also serve as permit hearings for section 404, section 10, and section 103 permit applications for certain sites. All hearings will be held from 7:00 p.m. to completion of public comments or 12:00 midnight.

All interested parties are invited and urged to be present or be represented at this meeting. This includes representatives of federal and non-federal agencies; commercial and business, industrial, transportation, and utilities agencies, civic, ecological, and environmental groups, fish and wildlife organizations; interested and concerned citizens and other interests. All parties will be afforded full opportunity to express their views; but in order to allow all an opportunity to speak, statements will be limited to eight (8) minutes. If longer statements are to be presented, they should be delivered in writing at the hearing or mailed to: Mr. Laurens Pitts, P.E., Southern Division, Naval Facilities Engineering Command, 2420 Mall Drive, Suite 110, North Charleston, South Carolina, 29406.

Oral statements will be heard and transcribed by a stenographer, but for accuracy of record all statements should be submitted in writing. All statements, both oral and written, will become part of the official record on this study.

The public hearing will be reported verbatim. Copies of the transcript of the proceedings may be purchased from the Navy. The cost of a copy will correspond directly to the number of pages enclosed within the transcript.

Final decision on the proposed plans will be made only after full consideration is given to the views of responsible agencies, groups and citizens.

Written statements will be accepted until October 27, 1986.

Questions concerning this public notice may be directed to: Mr. Laurens Pitts at (803) 743–3864.

Dated: September 4, 1986.

Harold L. Stoller, Jr.

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer

[FR Doc. 86–20219 Filed 9–5–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

National Environmental Policy Act, Additional Public Scoping Meeting for Feed Materials Production Center, Fernald, OH

Notice is hereby given that the Department of Energy (DOE) has scheduled a second public meeting for September 22, 1986, to obtain additional comments on the scope and content of an environmental impact statement (EIS) which DOE will prepare on the proposed renovation and remedial activities at DOE's Feed Materials Production Center (FMPC) near Fernald, Ohio. In addition, the written comment period has also been extended to September 26, 1986.

The meeting will be held at 7:30 p.m. in the Crosby School in Hamilton County, Ohio. Individuals desiring to make oral comments at the second

meeting should mail their requests by September 18 to Mr. James Reafsnyder, Site Manager, Department of Energy, P.O. Box 398705, Cincinnati, Ohio 45239, ATTN: FMPC–EIS. Requests should include a telephone number so that individuals may be advised of the schedule of presentations. Persons may also register at the meeting to provide oral comments and will be called upon to speak. Written comments may also be submitted and should be sent to Mr. Reafsnyder at the same address no later than September 26, 1986.

Background

Originally, a single meeting was scheduled for September 3 and the close of the comment period was set for September 22 as announced in an August 19, 1986, **Federal Register** notice (51 FR 29583). However, since that time, DOE received a number of requests for additional time to prepare comments. Except for the additional meeting and revised dates, the information provided in the August 19 **Federal Register** notice should be referenced for further information. The September 3 meeting was held as scheduled.

Dated at Washington, DC, this 3rd day of September 1986 for the United States Department of Energy.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 86–20234 Filed 9–5–86; 8:45 am]

BILLING CODE 6450–01–M

Intent To Renew Grant Agreement

AGENCY: Department of Energy (DOE).

ACTION: The U.S. DOE announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for the award of additional effort under existing agreement number DE–FG01–84CE22122 for continuation of their research in daylight design and fenestration performance evaluation. The University of Florida, Florida Solar Energy Center (FSEC), has submitted a renewal proposal.

SUMMARY: The U.S. DOE, Office of Building and Community Systems, Building Systems Division, is preparing a grant modification to fund a renewal proposal submitted by FSEC.

The objectives of this work are to advance the state-of-the-art of daylighting design and fenestration performance evaluation in the areas of characterizing sky luminance distributions, developing a standard practice for fenestration photometry measurements, and developing optical instruments for measuring daylight availability.

Eligibility: Award of this effort has been limited to FSEC, an institute of higher education, because of their high qualifications in the fields of optical physics and fenestration system design and evaluation.

The term of of this renewal shall be from September 29, 1986 through September 28, 1987 and the amount of funds estimated to be awarded are $49,000.

For further information contact: Rosemarie Marshall, MA–453.2, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585

Edward T. Lovett,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 86–20191 Filed 9–5–86; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in September 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will be addressing the current activities of all task groups and providing guidance for future studies. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Coordinating Subcommittee on U.S. Petroleum Refining will hold its fourteenth meeting on Thursday, September 11, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Coordinating Subcommittee on U.S. Petroleum Refining meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review individual drafting assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Petroleum Refining is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee on U.S. Petroleum Refining will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology, Extraction and Environmental Controls, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 29, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–20143 Filed 9–5–86; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Finding of No Significant Impact for the Proposed Funding of the Colville Resident Trout Hatchery, WA

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Finding of No Significant Impact (FONSI) for Bonneville Power Administration's proposed funding of the Colville Resident Trout Hatchery.

SUMMARY: The proposed Colville Resident Trout Hatchery would be located on the Columbia River just below Chief Joseph Dam in the State of Washington. The hatchery will mitigate the adverse effects of hydroelectric operations of Chief Joseph and Grand Coulee Dams. BPA has prepared an Environmental Assessment (DOE/EA–0307) on construction and operation of the proposed hatchery. Reasons that impacts of the hatchery are not significant include: The stocking program will not change from the past 20 years; water quality will be protected; no threatened or endangered species will be affected; and the hatchery will be compatible with local land uses. A finding is included that there is no practicable alternative to locating the outfall structure in the floodplain.

FOR FURTHER INFORMATION CONTACT: Environmental Manager, Bonneville Power Administration, P.O. Box 3621—

SJ, Portland, Oregon 97208, telephone (503) 230–5136.

SUPPLEMENTARY INFORMATION: BPA proposes to fund construction and operation of a resident trout hatchery on the Colville Indian Reservation in central Washington. The hatchery would be located on Federal land approximately 3.5 miles downstream of Chief Joseph Dam on the Columbia River (at RM 541.5). The fish reared at the proposed hatchery would replace fish currently provided by Federal hatcheries being phased out for resident trout production. BPA's funding of construction and operation of the hatchery will implement measure 804(e)(15) of the Northwest Power Planning Council's 1984 Columbia River Basin Fish and Wildlife Program.

BPA has prepared an EA to analyze the environmental effects resulting from construction and operation of the hatchery (see EA, pages 20–48). Alternatives to the proposed action that were considered are: (1) An option of purchasing fish from existing state or private fish hatcheries; and (2) a no-action alternative. These alternatives were dismissed from detailed evaluation because they would not adequately meet the purposes for the project (see EA, page 12). Two different site locations (upper and lower) for the proposed action were analyzed in the EA. The upper site has been eliminated from further consideration because of the unavailability of an economically acceptable water supply.

Reasons why the proposed action will not significantly affect the quality of the human environment:

1. The introduction of stocked fish from the proposed hatchery will not change the status quo with regard to impacts on fish and other aquatic species in tribal reservation water bodies because the proposed program generally follows an existing stocking program that has been in effect for approximately 20 years. Standard hatchery management and operational procedures include testing and treatment programs to minimize the probability of fish diseases in stocked watersheds. (See EA, pages 27–30.)

2. Suspended solids or nutrient loading to the Columbia River following treatment in settling ponds will meet Environmental Protection Agency (EPA) requirements on effluent limitations to maintain good water quality. A National Pollutant Discharge Elimination System permit will be obtained from EPA. Accumulated wastes from the hatchery raceways will be vacuumed into settling ponds for a minimum of 1 hour retention time. The settling pond wastes will either be buried on site or used locally as a fertilizer. A localized increase in Columbia River turbidity may result from ground excavation and placement of no more than 10 cubic yards of riprap around the base of the effluent outfall structure. This construction is estimated to last up to 2 weeks. Turbidity created by construction activities will be regulated by restrictions of the Corps of Engineers' (COE) section 404 permit and BPA contract stipulations to not exceed State or local water quality standards. Septic tanks to handle sewage from the hatchery building and associated residences will be designed and installed to protect groundwater quality according to tribal and local ordinances. The quantity of water available at the proposed site is adequate for hatchery operation and will impose no more than a 1-foot depression of groundwater levels in surrounding wells. (See EA, pages 21–27.)

3. Bald eagle use of the site during winter is minimal because there are no desirable perching or foraging areas on the site. A tall pine tree is on adjacent property approximately 400 feet from the proposed hatchery facilities, but other pine trees closer to foraging areas are available across the river, upstream, and downstream. Since construction activities will not take place during winter months and since areas of most human activity will be located as far as possible from the pine tree, BPA has come to a finding of no effect on the bald eagle in a Biological Assessment which is included as Appendix E of the EA. The U.S. Fish and Wildlife Service has concurred with this finding. No other endangered species are known to occur in the project area.

4. The proposed hatchery facilities are not located in a floodplain, wetland, or on prime or unique agricultural land. The lower section of the wastewater outfall line will be located in the 100-year floodplain. DOE has determined that there is no practicable alternative to locating the outfall structure in the floodplain and that the proposed action includes all practicable measures to minimize harm to or within the floodplain. The proposed outfall structure will be designed and built to withstand peak flows. The presence of the outfall structure will not alter the floodplain's physical characteristics. No adverse impacts of floods on human safety, health, and welfare will occur due to the project because the channel discharge capacity will not be changed. (See EA, pages 21–22.)

5. Construction of the hatchery facilities will result in a loss of approximately 5 acres of natural shrub-steppe vegetation along the Columbia River. The percentage of shrub-steppe vegetation lost due to the hatchery is small (5 acres out of 108 acres available for the hatchery site), particularly with respect to the widespread regional availability. Riparian vegetation along the river bank consists of an occasional willow bush and will be avoided when installing the outfall structure. (See EA, pages 31–33.)

6. State and county land use jurisdiction does not extend to tribal reservation lands. However, the EA has been coordinated with State of Washington agencies, Okanogan County commissioners, and the Washington Intergovernmental Review Process. Construction and operation of the hatchery will not conflict with State or local plans or programs. The proposed action will result in a land use change that will require processing through the special procedures outlined in the Colville Confederated Tribes' (CCT) Interim Land Use and Development Ordinance. (See EA, pages 41–43.)

7. Consultation with the Washington State Historic Preservation Office, the CCT, and the COE, Seattle District, has revealed that there are no known archaeological, historical, or unique cultural resources located on the site nor are there any identified religious and/or ceremonial sites within the project area. An archaeological specialist will be present on the site during construction activities to ensure that subsurface resources are either not present or will be properly dealt with if encountered. (See EA, pages 43–44.)

8. BPA evaluated the proposed action with respect to current legislation effecting Federal projects and found it to comply with those laws and regulations (see the EA, pages 20–48). There will be no effect on: (a) special recreational areas such as Wild and Scenic Rivers, National Trails, etc. (EA, page 39); (b) air quality (EA, pages 44–45); (c) noise levels (EA, page 45); (d) solid or hazardous waste disposal (EA, pages 46–47); and (e) aesthetics (EA, pages 47–48).

Related Documents

Frederiksen, Kamine, and Associates, Inc. 1981. Mid-Columbia River Study, Part 1: Hatchery Siting Survey. Prepared for Chelan, Douglas, and Grant County PUD's

Koch, D.L. and G.F. Cochran. 1977. Feasibility Report of a Fish Hatchery on the Colville Indian Reservation at Chief Joseph Dam, Bridgeport, Washington. Prepared for Colville Confederated Tribes, Nespelem, WA.

Raymond Kaiser Engineers. 1985. Colville Fish Hatchery Water Supply Study of Alternative Columbia River Sites. Report No. 85–034–RE prepared for Bonneville Power Administration, Portland, OR.

Public Availability. The EA was distributed for public review to landowners in the area and governmental agencies involved with the project. Copies of this finding will also be distributed to those landowners and governmental agencies that received the EA.

Determination. Based on the information in the EA. the Department of Energy determines that BPA's action is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Issued in Washington. D.C., on August 26, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 86-20192 Filed 9-5-86 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-344-000 and CP86-344-001]

Consolidated Gas Transmission Corp.; Second Notice of Intent To Prepare an Environmental Assessment on the Proposed Line No. TL-460 and Biddlecum Road Measuring Station, Request for Comments, and Notice of Public Meeting

September 3, 1986.

On February 25, 1986, Consolidated Gas Transmission Corporation (Consolidated) applied to the Federal Energy Regulatory Commission (Commission) for a certificate to construct 33.5 miles of 24-inch natural gas pipeline, called Line No. TL-460, in Onondaga and Oswego Counties, New York, and to construct a measuring station at Biddlecum Road in Oswego County. The facilities would be used to deliver gas to Niagara Mohawk Corporation (Niagara Mohawk), an intrastate pipeline and distribution company.

On May 8, 1986, the Commission staff released a notice which described the project, requested public comment on environmental issues, and notified the public of a Commission-sponsored public meeting that was to be held on June 2, 1986, in Baldwinsville, New York.

On May 28, 1986, the Commission staff postponed the public meeting because Consolidated was planning to amend its application in response to a revision in Niagara Mohawk's estimate of delivery requirements. Consolidated filed the amendment with the Commission on June 23, 1986, under Docket No. CP86-344-001.

The amendment changes the operational relationship between Consolidated and Niagara Mohawk but the facility requirements remain essentially the same.[1] Consolidated originally proposed to shift all gas deliveries from the existing Oneida Measuring Station near Oneida, New York, to the proposed Biddlecum Road Measuring Station, retaining the Oneida Measuring Station only for emergencies. However, to deliver the amended volumes estimated by Niagara Mohawk, the Oneida Measuring Station would now be needed routinely during peak periods. A significant portion of the increased volumes would be consumed in Niagara Mohawk's existing franchise areas in Evans Mills, Sackets Harbour, and the Watertown area, and in proposed new market areas in Lewis and St. Lawrence Counties. Also, by shifting the current deliveries at the Oneida Measuring Station to the proposed Biddlecum Road Measuring Station, Consolidated would be able to deliver more gas to Niagara Mohawk in Saratoga County, located in eastern New York, where Niagara Mohawk expects that additional volumes will be needed.

Construction was originally proposed to begin May 1, 1986, and to be completed by October 31, 1986. Consolidated now plans to construct during the same period in 1987.

Location and Land Requirements

Figure 1 shows the location of the project.[2] Fifty-nine percent of the route would occupy or overlap existing electric power and gas pipeline rights-of-way. In these areas, the additional width of clearing required to construct the pipeline would range from 20 to 49 feet. Twenty feet of this clearing would be needed only during construction; thus the additional width of permanent right-of-way Consolidated proposes to use would range from 0 to 29 feet. Where the route would not parallel existing rights-of-way, Consolidated proposes to construct and operate the pipeline within a 60-foot-wide permanent right-of-way. The permanent right-of-way is the area where the easement prohibits the construction of homes and other structures. The Commission staff understands that Consolidated has and plans to negotiate rights-of-way up to 100-feet wide with willing landowners.

The Biddlecum Road Measuring Station would be located in an agricultural field 1 mile south of Biddlecum Road in the town of Schroeppel. Consolidated plans to purchase a 5-acre site and to use 1.4 acres for the facility. The remaining 3.6 acres would be available to the adjacent landowner for agricultural purposes. The facility would be designed to produce noise levels less than an Ldn of 55 dB(A) at the nearest residence.

Consolidated states that about 50 acres of woodland would be cleared during pipeline construction. Five acres would be cleared for construction purposes only and would be allowed to return to forest land. The remaining 45 acres would be kept clear of trees for the life of the project. About 108 acres of cropland and 20 acres of pasture would be disturbed for one growing season. Other lands affected include open fields (34 acres), wetland (18 acres), and residential land (7 acres). The 13 wetland crossings range from 100 to 1,900 feet in length, and would require permits from the New York Department of Environmental Conservation. Other than a 1,200-foot crossing of the Three Rivers State Game Management Area, the staff is not aware of any public parks, forests, or other public lands along the route.

The proposed right-of-way would not cross any property within 50 feet of a home.

Construction and Restoration

Construction is planned to take place in the spring, summer, and fall of 1987. According to Consolidated, about 185 to 200 people would be employed during construction, 60 percent of whom would be local workers. The contractor's personnel would comprise the rest. Construction of Line No. TL-460 would start at Therm City, in Onondaga County, and proceed westward/northward, using a staggered start with right-of-way crews first, bulldozers second, and ditching third, etc. Work crews would be staggered about one week apart so that the total distance between the clearing crew and the cleanup crew is about 10 miles.

The pipeline would cross the Seneca and Oswego Rivers and 34 streams. Various measures are proposed to protect these waterbodies and the wetlands crossed, such as using onshore sediment control structures, keeping petroleum storage and refueling areas at

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[1] Consolidated plans to construct approximately 32.5 miles of 24-inch pipeline, instead of 33.5 miles as originally proposed, and to relocate the Biddlecum Road Measuring Station to an open field 1 mile south of Biddlecum Road. This change was made as a result of landowner negotiations and is not related to the amendment.

[2] Not sent to the Federal Register, but available from the Commission's Division of Public Reference.

least 50 feet away, and restoring streambanks. Forty-five highways would be crossed by the pipeline. Most paved road crossings would be bored to prevent disruption of pavement or traffic. Unpaved road crossings would be open-cut.

Consolidated's cleanup and restoration plans would include grading, liming, fertilizing, seeding, and mulching for areas where the soil has been disturbed and exposed as a result of construction. A general seed mix that is compatible with the various soil conditions would be used, and all disturbed areas would be mulched to promote germination and prevent the washing of soil and seed. Consolidated has proposed temporary erosion control and restoration measures during construction, with special attention given to highly erodible areas.

Operation and Maintenance

Maintenance functions for the right-of-way would include periodically removing woody vegetation by mowing, repairing depressions caused by settlement of trench fill, repairing drain tiles and terraces, periodically inspecting water crossings, and maintaining an emergency supply of pipe, leak repair clamps, etc., for repairs.

Aerial inspections of the right-of-way would be done to monitor encroachment and to provide information on possible leaks, erosion, exposed pipe, and any other potential problem that could affect the safety and operation of the pipeline. Should maintenance problems occur, Consolidated would dispatch personnel and equipment to alleviate them.

Related Facilities

Consolidated states that Niagara Mohawk would need to construct approximately 1 mile of 12-inch and 23 miles of 24-inch pipeline loop adjacent to its existing delivery lines to transport the proposed volumes. If the New York Public Service Commission grants Niagara Mohawk the authority to open new market areas in St. Lawrence, Lewis, and Saratoga Counties, and if the Commission allows Consolidated to serve Niagara Mohawk in those areas, then Niagara Mohawk would construct additional loop or new pipeline.

Under the U.S. Fish and Wildlife Service regulations implementing the Endangered Species Act of 1973 (50 CFR Part 402, Federal Register No. 51, Vol. 106, June 3, 1986), the Commission is required to ensure that certificated projects are not likely to jeopardize the continued existence of any listed threatened or endangered species or result in the adverse modification of the species' critical habitat. This requirement extends to nonjurisdictional projects that are reasonably certain to occur as a result of approval of a jurisdictional project. The Commission does not yet know where Niagara Mohawk's facilities would be constructed. The Commission staff will set forth a recommended procedure to ensure compliance with the Endangered Species Act and will present it in the environmental assessment.

Alternatives

The Commission staff is presently studying three alternatives. The first alternative would diverge from the proposed route 0.4-mile north of the Seneca River and follow Niagara Mohawk's Oswego-Lafayette powerline northwest across State Route 690 to its intersection with the New York Power Authority's Niagara Adirondack Tie Line powerline. From there it would head northeast along the Tie Line back across State Route 690 where it would join the proposed route. The alternative could potentially reduce the amount of new right-of-way required for the project by using the existing Niagara Mohawk right-of-way which Consolidated proposes to do in other locations. The environmental assessment will also discuss the possibility of joint use of the New York Power Authority's right-of-way.

The second alternative would diverge northeast from the proposed route about 1.3 miles north of the Seneca River, and follow the Niagara Adirondack Tie Line in an easterly direction for about 6 miles. It would then turn and head due north along a fenceline located 0.5-mile west of State Route 481, cross Verplank Road and State Route 481, and join the Niagara Mohawk pipeline at Maider Road. The meter station would be located south of the road. A variation of this alternative would, instead of turning north along the fenceline west of State Route 481, continue east along the powerline and cross the highway, where it would then turn and head northwest along the highway 2.3 miles and join the Niagara Mohawk pipeline. A water main parallels the highway along this portion. The alternative and variation could possibly reduce the amount of new right-of-way required for the project by using the existing New York Power Authority, highway, and water main rights-of-way. The environmental assessment will discuss the possibility of joint use of these rights-of-way. The alternative would cross about 1 mile of the Three Rivers State Game Management Area and a housing development; the variation would cross these areas and the Oneida River.

The third alternative would involve constructing different facilities. Instead of delivering gas to Niagara Mohawk via the Biddlecum Road Measuring Station, the proposed volumes would be delivered at the Oneida Measuring Station by adding pipeline loop on Consolidated's and Niagara Mohawk's existing systems or adding loop and compression. The initial, unverified figures supplied by Consolidated indicate that this alternative would involve facilities and costs ranging from 98.3 miles of 12-, 16-, 24-, and 36-inch pipeline loop with a total cost of $75,868,000 (plus $573,000 annual operating cost), to 45.2 miles of 12-, 16-, and 24-inch pipeline loop and 5,000 horsepower of compression for a total cost of $35,816,000 (plus $1,887,900 annual operating cost). The proposed project is estimated to cost $25,685,000 for construction and $62,119 annually for operation.

Current Issues

The environmental assessment will address the following issues for the proposed route and alternatives. Additional issues will be considered based on public comments.

Land Use—Effect of right-of-way location and width on existing and future uses of land; potential for off-road vehicle problems.

Pipeline Safety—Safety considerations, potential for pipeline accidents.

Restoration—Erosion control, topsoil preservation, revegetation, drain tile repair, soil productivity.

Aesthetics—Effects of appearance of right-of-way and measuring station.

Vegetation and Wildlife—Impacts on wetlands, fisheries, threatened and endangered species.

Geology—Evaluation of potential for geologic hazards.

Public Meeting and Comment Procedure

The Commission staff will hold a public meeting at 7:00 p.m. on September 25, 1986, at the Van Buren Town Hall, 7575 Van Buren Road, Baldwinsville, New York. All members of the public and state and local government officials are invited to attend. Representatives of Consolidated Gas Transmission Corporation will also be present. The purpose of the meeting will be to provide the public an opportunity to identify the environmental issues that should be studied in the environmental assessment. Concerns involving individual right-of-way negotiations will not be discussed or resolved in this forum. The environmental assessment will be used to determine whether or not

the proposal is a major Federal action significantly affecting the quality of the human environment.

A copy of this notice has been distributed to a number of Federal, state, and local agencies, parties to the proceeding, and interested individuals. The deadline for filing written comments is October 24, 1986. All written comments must reference Docket No. CP86-344-001, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Any recommendations that the Commission address specific issues should be supported by a detailed explanation of the need to consider such issues. *Comments or interventions previously filed with the Commission need not be refiled in response to this notice.*

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Cary Secrest, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-9038.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20178 Filed 9-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-523-000 and CP86-524-000]

Iroquois Gas Transmission System; Pipeline Project Notice of Intent To Prepare a Draft Environmental Impact Statement and Request for Comments on Its Scope

September 3, 1986.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has determined that approval of this project would be a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 2.82(b) of the Commission's Rules of Practice and Procedure [18 CFR 2.82(b)], a draft environmental impact statement (DEIS) will be prepared.

Introduction

On May 30, 1986, Iroquois Gas Transmission System (Iroquois) applied to the FERC for a certificate of public convenience and necessity to construct 355.8 miles of 12-, 20-, and 24-inch-diameter natural gas pipeline in New York and Connecticut. Iroquois also filed a companion application for a Presidential permit for the construction, operation, maintenance, and connection of the proposed facilities at the international boundary between the United States and Canada. Iroquois filed its application pursuant to section 7 of the Natural Gas Act (NGA) under the optional expedited certificate procedures of Subpart E of Part 157, the blanket transportation certificate procedures under Subpart G of Part 284, and the blanket facilities certificate procedures under Subpart F of Part 157 of the Commission's Rules of Practice and Procedure.

The optional expedited certificate procedures do not lessen the requirement that Iroquois comply with all applicable environmental laws. Nor do the optional expedited certificate procedures exempt Iroquois from state and local permit requirements. The National Environmental Policy Act applies equally to applications filed under traditional NGA section 7 procedures and to applications filed under the optional expedited certificate procedures. State and local permit requirements relating to construction and other environmental matters apply equally as well.

The new pipeline system, having a capacity to transport 353,000 Mcf of gas per day, would be used to import Canadian gas for delivery to the Brooklyn Union Gas Company, Connecticut Light and Power Company, Connecticut Natural Gas Corporation, New Jersey Natural Gas Company, Southern Connecticut Gas Company, Long Island Lighting Company, South Jersey Gas Company, Public Service Electric and Gas Company, Consolidated Edison Company of New York, Inc., and Elizabethtown Gas Company. Construction of the land portion of the pipeline is proposed to occur between April and October of 1988, while the crossing of Long Island Sound is proposed to take place between October 1987 and March 1988. Iroquois estimates an in-service date of November 1, 1988. However, construction can begin only if the Commission has issued the certificate. The estimated cost of the project is $357,200,000.

Location and Land Requirements

Figure [1] shows the location of the pipeline. Table 1 identifies the towns and counties located along the proposed pipeline route that would be crossed. The proposed Iroquois system would include a mainline and a lateral pipeline. Six route modification alternatives have also been identified by Iroquois. The towns and counties affected by these alternatives are also shown in table 2.

[1] Not printed in the **Federal Register** but available from the Commission's Division of Public Reference.

The mainline would consist of 293.5 miles of 24-inch-diameter pipeline and 36.3 miles of 20-inch-diameter pipe extending from a point on the St. Lawrence River near Iroquois, Ontario and Waddington, New York through eastern New York and western Connecticut, across Long Island Sound to its terminus point near South Commack on Long Island.

The proposed lateral would consist of 26 miles of 12-inch-diameter pipe starting at a point on the mainline near Washington, Connecticut. The lateral route would then run eastward to a point near Farmington, Connecticut.

Iroquois also requests authority to establish delivery points at Waddington, Canajoharie, Wright, and South Commack, New York and Stratford, Southbury, Farmington (2), Roxbury, Huntington, and Milford (2), Connecticut. However, at this time, only the interconnection facilities at Farmington, Roxbury, Huntington, and Milford, Connecticut and at South Commack, New York are proposed for construction. No compression is proposed.

Approximately 4,200 acres of land would be disturbed during construction. Iroquois proposes to use a 100-foot-wide construction right-of-way with 75 feet to be maintained as permanent right-of-way. Except at aboveground facilities, access roads, and where the right-of-way crosses formerly wooded areas, Iroquois states that the right-of-way could be used as it was before construction as long as no structures are built on it.

Pipeline Safety Standards

The proposed pipeline would conform to the minimum pipeline safety standards set by the U.S. Department of Transportation. These standards specify minimum pipe wall thickness, strength, and depth of burial for different population densities encountered along the route. Thicker-walled pipe is normally used at road crossings and at major creek and river crossings. All such crossings would follow the requirements of applicable codes and permits. Pipe would be installed by boring beneath railroad tracks and major state and interstate highways to avoid disrupting their use. The applicant presently states that most local roads would be crossed during construction by digging an open trench.

Construction Procedures

Iroquois estimates that the project will be constructed within a period of 12 months. Construction at any one place along the pipelines would take 6 to 12

weeks between the initial land disturbance and the end of restoration. Iroquois expects that construction would advance at an average rate of 1 mile per day. Five construction spreads would be used, each consisting of various crews to perform the full range of construction activities (i.e., from clearing and grading to restoration). Iroquois proposes to employ environmental inspectors during construction to insure that appropriate techniques to minimize impact are implemented.

Construction would begin with right-of-way clearing and grading. The trench, normally dug by tracked, rotary-wheeled trenching machines, would be deep enough to provide a minimum cover of 30 inches in normal soils and about 18 inches in rock. Trenching in rock generally requires that a tractor-mounted ripper, or blasting and backhoe be used.

The pipe would be strung along the right-of-way and bent as required to conform to the bottom of the trench. Pipe sections would be welded and radiographically inspected in compliance with the U.S. Department of Transportation's Minimum Federal Safety Standards. Before being placed in the trench, the pipe would be coated to inhibit corrosion. After the pipe was placed in the trench, the trench would be backfilled with the spoil excavated from the ditch. Select backfill would be used where the trench was excavated in rock. The backfill would be compacted, and a 2–8 inch crown would be left over the ditch to compensate for settlement.

Land would be returned to near-original contours and restored in accordance with landowner requirements, where possible. Details of the company's erosion control and revegetation plan are not yet available. However, the specific elements of the plan will be analyzed by the staff in the DEIS.

The method of trench excavation across streams and wetlands would vary with the characteristics of each. Small streams would be trenched using a backhoe, clam dredge, dragline, and/or similar equipment. For major river crossings, floating excavation equipment may be required to dig the trench. Blasting would be used for streams and rivers with rock bottoms. Work areas required for major river construction would be located back from the shoreline. Construction across small wetlands would be similar to that used on dry land. Construction in large wetland areas would involve using the push/pull technique. After the trench is dug, the pipe joints would be welded together in one area, flotation devices would be attached to the pipe, and the floating pipeline would be pushed or pulled into place. When the floats are removed, the pipe would settle to the bottom of the trench.

Construction across Long Island Sound would use conventional lay barge techniques to install the pipe. At this time, it is not clear how the pipe would be buried or stabilized. Details of this will be discussed in the DEIS.

After construction, the pipeline would be hydrostatically tested in lengths dictated by elevation differentials and availability of water. Test water would be obtained from rivers, creeks, lakes or other approved sources and would be reused as many times as practicable. The water would be discharged to surface waters in accordance with applicable state and Federal regulations.

Although Iroquois has not filed its final environmental report with the FERC, a preliminary environmental report and detailed route maps have been submitted.[2] From the preliminary report and maps, the staff has determined that construction would be within or near the following areas or water bodies:

Areas of Public Interest

New York

Upper and Lower Lakes State Wildlife Management Area
Fire Fall State Forest
Bonaparte Cave State Forest
Jadwin Memorial State Forest
State Forest Preserve
Lake Taghkanic State Park

Connecticut

Appalachian Trail
Wyantenock State Forest
Above All State Park
Silver Sands State Park

Major Water Bodies

St. Lawrence River
Sucker Brook
Grass River (2)
Harrison Creek
Elm Creek
Oswegatchie River
West Branch Oswegatchie River
Carley Swamp
Indian River
Beaver River
Independence River
Otter Creek
Black River
Sugar River
West Canada Creek
Mohawk River
Canajoharie Creek
Schoharie Creek
Basic Creek
Potic Creek
Hudson River
Roeliff Jansen Kill
Housatonic River (3)
Shepaug River
Pomperang River
Farmill River
Naugatuck River
Peguabuck River
Scott Swamp
Long Island Sound

Outline of Current Issues

The staff's initial review of Iroquois's preliminary environmental report and of comments submitted by intervenors has resulted in a tentative outline of issues to be covered in the DEIS. These include, but are not limited to, the following:

Encroachment on Residential Properties
Safety During Construction and Operation
Wildlife, Fisheries, and Their Habitat
Clearing of Woodlands
Endangered and Threatened Species
Aesthetic Values
Historic/Cultural Resources
Land Use Impacts Including Impacts on Croplands, Orchards, Dairy and Poultry Farms
Wetlands and Stream/River Crossings
Long Island Sound Crossing
Water Supplies/Quality
Blasting
Alternative Routes and System Alternatives

After Iroquois files its final environmental report, the staff will thoroughly review it. As questions arise or more information is required from the applicant, the staff will prepare data requests for response by Iroquois. After comments from this notice are received and analyzed and the various issues are investigated, the staff will prepare a DEIS.

Cooperating Agencies

The following Federal agency has indicated that it wishes to be a cooperating agency in the preparation of the EIS: Department of Defense, U.S. Army Corps of Engineers.

All Federal agencies desiring cooperating agency status should send a request describing how they would like to be involved to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426.

The request should reference Docket Nos. CP86–523–000 and CP86–524–000 and should be received by October 15, 1986. Mr. James P. Daniel should be sent a copy of any request for cooperating agency status. Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency (FERC).

Comment and Scoping Procedure

The FERC intends to prepare a DEIS for this project. The DEIS will analyze various alternative routes as well as alternatives utilizing the existing interstate gas pipeline systems in the Northeast to transport all or part of the proposed Canadian gas volumes. The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties to the

[2] Iroquois has estimated that the final environmental report will be filed by the end of August or early September 1986.

proceeding. A 45-day period will be allotted for review and comment. After these comments are reviewed, modifications made to the DEIS, and any new issues investigated, a final EIS will then be prepared by the staff and distributed.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties to this proceeding, and the public. Comments on the scope of the DEIS should be filed as soon as possible but no later than October 6, 1986. All written comments *must* reference Docket Nos. CP86–523–000 and CP86–524–000 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Any recommendations that the EIS address specific issues should be supported with a detailed explanation of the need to consider such issues.

Additional information about the proposal, including detailed route maps of limited areas of the proposed route, is available from Mr. James P. Daniel, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357–5364.

Kenneth F. Plumb,

Secretary.

TABLE. 1.—TOWNS AND COUNTIES PROPOSED TO BE CROSSED BY IROQUOIS PIPELINE ROUTE

Towns	Counties
New York State	
Waddington	St. Lawrence.
Lisbon	
Canton	
De Kalb	
Hermon	
Edwards	
Pitcairn	
Diana	Lewis.
Croghan	
New Bremen	
Watson	
Greig	
Turin	
West Turin	
Leyden	
Boonville	Oneida.
Remsen	
Trenton	
Russia	Herkimer.
Norway	
Fairfield	
Salisbury	
Manheim	
Danube	
Minden	Montgomery.
Canajoharie	
Root	
Charleston	
Carlisle	Schoharie.
Esperance	
Duanesburg	Schenectady.
Schoharie	Schoharie.
Wnght	
Knox	Albany.
Berne	
Westerlo	
Greenville	Greene.
New Baltimore	
Coxsackie	
Athens	
Greenport	Columbia.
Livingston	
Taghkanic	
Gallatin	
Ancram	
Northeast	Dutchess.
Huntington	Suffolk.
Smithtown	
Connecticut	
Salisbury	Litchfield.
Sharon	
Cornwell	
Kent	
Warren	
Washington	
Roxbury	
Woodbury	
Southbury	New Haven.
Oxford	
Monroe	Fairfield.
Shelton	
Stratford	
Milford	New Haven.
Farmington Lateral:	
Washington	Litchfield.
Bethlehem	
Watertown	
Thomaston	
Plymouth	Hartford.
Bristol	
Burlington	
Farmington	

TABLE 2.—TOWNS AND COUNTIES PROPOSED TO BE CROSSED BY IROQUOIS ALTERNATIVE ROUTES

Towns	County
Alternate No. IA & IB Along Power Line:	
Canton	St. Lawrence.
Russell	
Hermon	
Edwards	
Pitcairn	
Diana	Lewis.
Croghan	
New Bremen	
Watson	
Greig	
Alternate No. 2—Around Tailings Pond:	
Edwards	St. Lawrence.
Alternate No. 3—Around Town of Washington:	
Warren	Litchfield.
Litchfield	
Morris	
Bethleham	
Woodbury	
Alternate No. 4—Within Town of Shelton:	
Shelton	Fairfield.
Alternate No. 5—Alternative Crossing of Housatonic River:	
Shelton	Fairfield.
Milford	New Haven.
Alternate No. 6—Through Silver Sands State Park:	
Milford	New Haven.

[FR Doc. 86–20179 Filed 9–5–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4349–006, etc.]

Hydroelectric Applications (Long Lake Energy Corp. et al.); Notice of Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Transfer of License.

b. Project No.: 4349–006.

c. Date Filed: July 23, 1986.

d. Applicant: Long Lake Energy Corporation, Moose River Corporation, Prudential Interfunding Corporation.

e. Name of Project: Moose River.

f. Location: On the Moose River in the Town of Lyonsdale, Lewis County, New York.

g. Filed Pursuant to: Section 9 of the Federal Power Act 791(a)–825(r).

h. Contact Person: Mr. Donald Hamer, Long Lake Energy Corporation, 122 East 42nd St., Suite 1901, New York, NY 10168, (212) 986–0440.

i. Comment Date: October 9, 1986.

j. Description of Project: On May 6, 1986, a major license was issued to the Long Lake Energy Corporation (Long Lake) to construct, operate, and maintain the Moose River Project No. 4349. Long Lake intends to sell its interest in the project to Moose River Corporation (Moose River) and Prudential Interfunding (Interfunding) Corporation to be made effective in two stages. The first transfer is to be made from Long Lake to Moose River effective as of the date of conveyance of the project properties from Long Lake to Moose River and the second transfer to occur so as to add Interfunding as licensee as of the date of the Second Closing. For that reason, Long Lake, Moose River, and Interfunding have filed a request that the project license be transferred to Moose River and Interfunding.

k. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Major License (over 5 MW)—Existing Dam.

b. Project No.: 6901–001.

c. Date Filed: May 29, 1985.

d. Applicant: City of New Martinsville.

e. Name of Project: New Cumberland.

f. Location: Ohio River in Hancock County, West Virginia and Jefferson County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael Francis, City Attorney, City of New Martinsville, Brennan Francis, P.O.

Drawer 68, New Martinsville, WV 26155, (301) 455–1751.

i. Comment Date: October 30, 1986.

j. Description of Project: The proposed project would utilize the head created by the existing Corps of Engineers' New Cumberland Locks and Dam, and would consist of: (1) a proposed 600-foot-long approach channel with varying widths around 114 feet; (2) a proposed powerhouse containing a generating unit with a rated capacity of 37 MW; (3) a proposed 649-foot-long exit channel with varying widths around 112 feet; and (4) a proposed 1,000-foot-long transmission line tying into the existing Monongahela Power Company System. The applicant estimates an average annual energy generation of 166.25 GWh.

k. Purpose of Project: Power would be sold to Monongahela Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, & C.

3 a. Type of Application: Exemption (5 MW or less).

b. Project No: 8738–001.

c. Date Filed: May 27, 1986.

d. Applicant: Mega Renewables.

e. Name of Project: Walker/Digger Hydroelectric Project.

f. Location: On Digger Creek, near town of Manton, in Tehama County, California (In Sections 19, 20, and 21 of T30N, R2E, MDB&M; in sections 23 and 24, T30N, R1E, MDB&M).

g. Filed Pursuant to: Section 408 of the Federal Energy Security Act, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Fred Castagna, Mega Renewables, 2576 Hartnell Ave., Redding, CA 96002.

i. Comment Date: October 10, 1986.

j. Description of Project: The proposed project would consist of: (1) An inlet structure in the west bank of Digger Creek at elevation 3,085 feet m.s.l.; (2) a 48-inch-diameter, 2-mile-long diversion conduit; (3) a 42-inch-diameter, 1.8-mile-long steel penstock; (4) a powerhouse with a total installed capacity of 3,000 kW operating under a head of 725 feet; and (5) a 2,000-foot-long, 60-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual generation at 9.5 million kWh to be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3a.

4 a. Type of Application: Conduit Exemption.

b. Project No: 9334–001.

c. Date Filed: April 14, 1986.

d. Applicant: Mega Renewables.

e. Name of Project: Bidwell Ditch.

f. Location: On an irrigation conduit in T34N, R5E, near Old Station in Shasta County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Fred Castagna, 2576 Hartnell Ave., Redding, CA 96002, (916) 222–1414.

i. Comment Date: October 10, 1986.

j. Description of Project: The proposed project would use an existing irrigation conduit which delivers water from Lost Creek to the Bidwell Ranch and would consist of a powerhouse containing one generating unit with a rated capacity of 1,800 kW. The average annual generation would be 13.1 GWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

5 a. Type of Application: Minor License.

b. Project No: 9815–000.

c. Date Filed: December 31, 1985.

d. Applicant: Bowers Hydro-Electric I, Inc.

e. Name of Project: Eagleville.

f. Location: On the Willimantic River in Tolland County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Albert F. Delaney, Jr., President, Bowers Hydro-Electric I, Inc., 999 Asylum Avenue, Hartford, CT 06105, (203) 728–5111.

i. Comment Date: October 31, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 22-foot-high and 170-foot-long granite block dam; (2) a reservoir with a water surface area of 83 acres and surface elevation of 277 feet NGVD; (3) a new intake structure at the east bank; (4) a new 25-foot-wide and 60-foot-long canal; (5) a new powerhouse just downstream from the dam crest with 2 turbine-generator units with a total installed capacity of 350 kW; (6) a tailrace; (7) a new 300-foot-long, 13.8 kV buried transmission line; and (8) other appurtenances. Applicant estimates an average annual generation of 1,200,000 kWh. Existing facilities are owned by the Connecticut Department of Environmental Protection.

k. Purpose of Project: Project energy would be sold to the Connecticut Light and Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6 a. Type of Application: Conduit Exemption.

b. Project No: 9824–000.

c. Date Filed: December 31, 1985.

d. Applicant: Antelope Valley—East Kern Water Agency.

e. Name of Project: Pressure Reducing Station No. 2.

f. Location: At Pressure Reducing Station No. 2 in T9N, R13W, near Rosamond in Kern County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Jack T. Leonard, Boyle Engineering Corporation, P.O. Box 670, Bakersfield, CA 93302, (805) 325–7253.

i. Comment Date: October 9, 1986.

j. Description of Project: The proposed project would use an existing conduit which delivers water from the California Aqueduct to the Rosamond Water Treatment Plant and would consist of a powerhouse containing two generating units each with a rated capacity of 80 kW. The average annual generation would be 520,000 kWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

7 a. Type of Application: Major License (less than 5 MW).

b. Project No.: 9825–000.

c. Date Filed: December 31, 1985.

d. Applicant: City of Ogdensburg, New York.

e. Name of Project: Ogdensburg.

f. Location: Oswegatchie River, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. William J. Kenney, Esq., Kenney, Carlson & Warren, Suite 209, 2600 Virginia Avenue NW., Washington, DC 20037, (202) 965–7040.

i. Comment Date: October 10, 1986.

j. Competing Application: Project No. 9821–000 Date Filed: 12–31–85.

k. Purpose of Project: The proposed project would consist of: (1) An existing concrete gravity dam 400 feet long and 19 feet high, with a spillway 350 feet long and a crest elevation of 258 feet mean sea level; (2) an existing impoundment of 293 acres surface area and storage capacity of 1,450 acre-feet at a normal maximum surface elevation of 258 feet mean sea level; (3) an existing concrete sluice gate structure to be replaced with proposed flood control gates; (4) a proposed powerhouse to house two proposed turbine-generators of 1,600 kW capacity each; (5) a proposed transmission line; and (6) appurtenant facilities.

The net hydraulic head is 11 feet. The estimated annual energy production is 17,000 megawatt-hours. Project power

would be sold. The existing facilities are owned by Niagara Mohawk Power Corporation and the applicant. The estimated cost of the project is $6 million.

l. This notice also consists of the following standard paragraphs: A4, B, C and D1.

8 a. Type of Application: Exemption Under 5 MW.

b. Project No: P–9984–000.

c. Date Filed:April 28, 1986.

d. Applicant: Rocky Glen Hydro Limited Partnership.

e. Name of Project: Rocky Glen Dam.

f. Location: On the Pootatuck River in Fairfield County, Connecticut.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Contact Person: Mr. Joe Keegan, PEPCO, Box 514, Woodbury, CT 06798, (203) 863–5978.

i. Comment Date: October 10, 1986.

j. Description of Project: The proposed project would consist of: (1) Renovating an existing 38-foot-high, 130-foot-long concrete and earth dam with a spillway crest elevation of 170.5 feet NGVD owned by the applicant; (2) an existing 3.8-acre reservoir with a storage capacity of 60 acre-feet with a normal surface elevation of 170.5 feet NGVD; (3) an existing intake canal which is controlled by a sluice gate which directs flows through; (4) an existing conduit 70 feet long; (5) an existing penstock 67 inches in diameter and approximately 35 feet long; (6) an existing mill building which will house two turbine/generators with a total installed capacity of 120 kW; (7) an existing tailrace 90 feet long. The estimated average annual energy produced by the project would be 400,000 kWh per year operating under a net hydraulic head of 40 feet.

k. Purpose of Project: Project power will be sold to the Northeast Utility Company.

l. This notice also consists of the following standard paragraphs: A3, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

9 a. Type of Application: Preliminary Permit.

b. Project No: 10018–000.

c. Date Filed: June 13, 1986.

d. Applicant: Parkers Branch Lake Industrial Authority.

e. Name of Project: Parker Branch Reservoir Project.

f. Location: On the Rockcastle River in Rockcastle, Jackson, Laurel, and Clay Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Foster Pelton, Project Manager, Acres International Corporation, Suite 1000 Liberty Building, 424 Main Street, Buffalo, NY 14202–3592, (716) 853–7525.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed project would consist of: (1) A new rock-filled dam with an impervious central core approximately 161 feet high and 900 feet long; (2) a new 8,700-acre reservoir having a storage capacity of 317,200 acre-feet at an elevation of 1,000 feet m.s.l.; (3) a new steel-lined power tunnel 900 feet long and 17 feet in diameter leading to; (4) a new reinforced concrete powerhouse containing a single turbine/generator unit with a capacity of 22,000 kW operating at 112 feet of hydraulic head; (5) a new open channel tailrace; (6) a new four-mile-long 66-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy production to be 30,000 MWh.

The Applicant intends to obtain all proprietary rights necessary to construct, operate, and maintain the project.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to Kentucky Utilities Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

10 a. Type of Application: Preliminary Permit.

b. Project No: 10037–000.

c. Date Filed: July 14, 1986.

d. Applicant: WV Hydro, Inc.

e. Name of Project: Cannelton Hydroelectric Development.

f. Location Ohio River, Hancock County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James B. Price, WV Hydro, Inc., 120 Calumet Ct., Aiken, SC 29801, (803) 642–2749.

i. Comment Date: October 14, 1986.

j. Competing Application: Project No. 10035–000, Date Filed: July 10, 1986.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineer's Cannelton Locks and Dam, and would consist of: (1) A proposed intake structure; (2) a proposed powerhouse, located on the south end of the existing dam, and containing generating facilities with a total installed capacity of 70,000 kW; (3) a proposed tailrace structure; (4) a proposed, 2.5 mile-long, 161-kV transmission line; and (5) appurtenant facilities. The estimated average annual generation is 300 GWH.

l. Purpose of Project: The Applicant intends to sell the project power to Virginia Electric Power Company.

m. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $100,000.

11 a. Type of Application: Preliminary Permit.

b. Project No: 10041–000.

c. Date Filed: July 17, 1986.

d. Applicant: Marble Hill Hydro Corp.

e. Name of Project: Rocky Dale.

f. Location: New Haven River, Addison County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Debra Gable, 121 Maple Avenue, Barre, VT 05641, (802) 476–7596.

i. Comment Date: October 30, 1986.

j. Description of Project. The proposed project would consist of: (1) An existing natural ledge dam with a wooden crib crest 90 feet long and 10 feet high; (2) an existing impoundment with 0.2 acres surface area and no storage capacity at a normal maximum surface elevation of 690 feet mean sea level; (3) a proposed reinforced concrete intake structure 12 feet high, 16 feet wide, and 12 feet deep; (4) a proposed 4-foot-diameter iron penstock 1,600 feet long; (5) a proposed reinforced concrete powerhouse 10 feet wide, 16 feet long, and 15 feet high enclosing a proposed turbine-generator of 600 kW capacity at a net hydraulic head of 100 feet; (6) a proposed excavated tailrace 16 feet wide, 10 feet long, and 6 feet deep; (7) a proposed 4.16-kV transmission line 200 feet long; and (8) appurtenant facilities.

The estimated annual energy production is 2.8 GWh. Project power would be sold to Vermont Power Exchange, Inc. The existing facilities are owned by the Town of Bristol, VT.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

VOL 51 ISS 173 SE 8 1986 UMI

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates tha tthe cost of the work to be performed under the preliminary permit would be $20,000.

12 a. Type of Application: License (5 MW or Less).

b. Project No.: 9294–000.

c. Date Filed: June 19, 1985.

d. Applicant: Proctor Hill Hydroelectric Company.

e. Name of Project: Proctor Hill.

f. Location: Contoocook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Warren A. Guinan, Power Technics, Inc., P.O. Box 1469, Dover, NH 03820, (603) 335–2606.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed project would consist of: (1) Reconstructing an 18.7-foot-high, including 4.25 feet of freeboard, 180-foot-long timber crib dam; (2) a proposed reservoir with a surface area of 65 acres and a gross storage capacity of 380 acre-feet; (3) a proposed low flow generating unit at the dam with a rated capacity of 131 kW; (4) a proposed 1,800-foot-long transmission line; (5) a proposed 1,800-foot-long, 10-foot-diameter penstock; (6) a proposed generating unit with a rated capacity of 1,030 kW; and (7) a proposed 250-foot-long transmission line tying with the first line into the existing Public Service Company of New Hampshire System. The applicant estimates with the total rated capacity of 1,161–kW an average annual energy generation of 4,994,000 kWh.

k. Purpose of Project: Power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

13 a. Type of Application: License (Minor).

b. Project No.: 9343–001.

c. Date Filed: January 6, 1986.

d. Applicant: American Fork Hydro Associates.

e. Name of Project: American Fork Lower Project.

f. Location: American Fork River in Utah County, Utah: Section 28, 32, & 33, Township 4S, Range 2E, SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael J. Graham, P.O. Box N, Manti, UT 84642.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed project would be located within the Uinta National Forest and would consist of: (1) An overflow diversion structure, about 6 feet high and 26 feet long; (2) a steel penstock, 48 inches in diameter and 7,600 feet long; (3) a powerhouse containing trubine-generator units rated at 1,450 kW and operating under about 200 feet of head; (4) a tailrace returning flow to the river; (5) a 12.5–kV transmission line, 275 feet long, connecting to an existing Utah Power and Light Company line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 6,276,877 kWh. This application was filed during the term of the Applicant's preliminary permit for Project No. 9343.

k. Purpose of Project: Project energy would be sold to the Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 10063–000.

c. Date Filed: August 11, 1986.

d. Applicant: Cumberland Mills Hydroelectric Limited Partnership.

e. Name of Project: Cumberland Mills.

f. Location: On the Presumpscot River in Cumberland County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Marc A. Auth, Swift River/Hafslund Company, 10 Harbor Street, Danvers, MA 01923, (617) 777–7040.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Cumberland Mills dam, comprised of three segments (the 148-foot-long, 12-foot-high main dam with the top elevation of the existing 3.4-foot-high flashboards at 41.62 feet m.s.l.; the 150-foot-long, 20-foot-high wing dam with a crest elevation of 43.5 feet m.s.l.; and the 120-foot-long, "flashboard section", with a crest elevation of 41.62 feet m.s.l.; (2) the existing 28-acre reservoir with a gross storage capacity of 312 acre-feet; (3) a 35-foot-long intake channel; (4) a proposed powerhouse which will contain two generating units with a total installed capacity of 1.6 MW; (5) the existing freshet channel will be modified; (6) the proposed 200-foot-long, 12.47–kV transmission line; and (7) appurtenant facilities.

The applicant estimates that the average annual energy generation will be 10.0 GWh. The name and address of the owner of the existing Cumberland Mills Dam is: S.D. Warren Company, A Division of Scott Paper Company, 89 Cumberland Street, Westbrook, MA 04092.

k. Purpose of Project: The applicant intends to sell the project energy to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending on the outcome of the studies, the applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $85,000.00.

15 a. Type of Application: Minor License (5MW or Less).

b. Project No.: 9387–001.

c. Date Filed: February 18, 1986.

d. Applicant: Tultex Corporation.

e. Name of Project: Avalon Dam Hydro Project.

f. Location: On the Mayo River near the town of Mayodan, Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. John F. Miller, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, Md 21403, (301) 268–8820.

i. Comment Date: October 27, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing arch shaped stone masonry Avalon Dam approximately 380 feet long and 20 feet high; (2) a proposed 12.1-acre reservoir having a storage capacity of 128 acre-feet at an elevation of 625.5 feet m.s.l. with; (3) proposed 12-inch-high flashboards; (4) an existing 56-foot-long stone masonry headworks structure; (5) a new powerhouse located at the dam containing a single turbine/generator unit with an installed capacity of 200 kW operating at 20 feet of hydraulic head; (6) a new tailrace approximately 25 feet wide, 10 feet deep and 50 feet long; (7) an existing 2000-foot-long by 26 foot-wide power canal leading to; (8) an existing steel penstock 160 feet long and 9 feet in diameter connecting to; (9) an

existing powerhouse containing a single turbine/generator unit with an installed capacity of 580 kW operating at 36 feet of hydraulic head; (10) an existing tailrace approximately 40 feet wide, 7 feet deep and 150 feet long; (11) a new 490-foot-long 12.4–kV transmission line; and (12) appurtenant facilities. Total installed capacity will be 780 kW. The Applicant estimates the average annual energy would be 3.6 GWh. The project dam is owned by Tultex Corporation.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facilaity to the Duke Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

16 a. Type of Application: Conduit Exemption.

b. Project No.: 9822–000.

c. Date Filed: December 31, 1985.

d. Applicant: Antelope Valley—East Kern Water Agency.

e. Name of Project: Pressure Reducing Station No. 1.

f. Location: At Pressure Reducing Station No. 1 in T8N, R14W, near Quartz Hill in Los Angeles County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Jack T. Leonard, Boyle Engineering Corporation, P.O. Box 670, Bakersfield, CA 93302, (805) 325–7253.

i. Comment Date: October 6, 1986.

j. Description of Project: The proposed project would use an existing conduit which delivers water from the California Aqueduct to the Rosamond Water Treatment Plant and would consist of a powerhouse containing two generating units, one with a capacity of 116 kW and one with a capacity of 180 kW. The average annual generation would be 1.35 GWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

17 a. Type of Application: Conduit Exemption.

b. Project No.: 9823–000.

c. Date Filed: December 31, 1985.

d. Applicant: Antelope Valley—East Kern Water Agency.

e. Name of Project: Rosamond Water Treatment Plant.

f. Location: At the Rosamond Water Treatment Plant in Section 18, T9N, R12W, in Rosamond, Kern County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Jack T. Leonard, Boyle Engineering Corporation, P.O. Box 670, Bakersfield, CA 93302, (805) 325–7253.

i. Comment Date: October 6, 1986.

j. Description of Project: The proposed project would use an existing conduit which delivers water from the California Aqueduct to the Rosamond Water Treatment Plant and would consist of a powerhouse containing one generating unit having a capacity of 141 kW and an average annual generation of 500,000 kWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 10023–000.

c. Date Filed: June 24, 1986.

d. Applicant: Leatherboard Associates.

e. Name of Project: Milton Leatherboard Project.

f. Location: On the Salmon Falls River, in the Town of Lebanon, York County, Maine, and the Town of Milton, Strafford County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert L. Winship, National Hydro Corporation, 77 Franklin Street, Boston, MA 02110.

i. Comment Date: October 27, 1986.

j. Description of Project: The proposed project would consist of one of the following two development alternatives: Development Alternative A.

(1) The existing 350-foot-long Milton Leatherboard Dam varying in height from 2 feet to 37 feet; (2) a reservoir having a surface area of 4 acres, a storage capacity of 60 acre-feet, and a normal water surface elevation of 398.5 feet msl; (3) the existing intake structure; (4) the existing powerhouse containing one new generating unit having an installed capacity of 255 kW; (5) an existing tailrace; (6) a new 3,000-foot-long, 34.5-kV, 3 phase transmission line; and (7) appurtenant facilities. The applicant estimates the annual average generation would be 2,300,000 kWh. The existing dam and project facilities are owned by the Milton Land Corporation and the Milton Leatherboard Company.

Development Alternative B.

(1) the existing 350-foot-long Milton Leatherboard Dam varying in height from 2 feet to 37 feet; (2) a reservior having a surface area of 4 acres, a storage capacity of 60 acre-feet, and a normal water surface elevation of 398.5 feet msl; (3) the existing intake structure; (4) a proposed 625-foot-long, 6.2-foot-diameter penstock; (5) an existing powerhouse containing one new generating unit having an installed capacity of 400 kW; (6) a proposed tailrace; (7) a proposed 3,000-foot-long 34.5-kV 3 phase transmission line; and (8) appurtenant facilities. The applicant estimates the average annual generation would be 3,600,000 kWh.

k. Purpose of Project: All project energy generated would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the applicant would decide whether to proceed with an application for FERC license. The applicant estimates the cost of the studies under permit would be $40,000.

19 a. Type of Application: Preliminary Permit.

b. Project No: 10035–000.

c. Date Filed: July 10, 1986.

d. Applicant: Synergics, Inc.

e. Name of Project: Cannelton Locks and Dam.

f. Location: Ohio River, Hancock County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. R. Mason Cargil, Synergics, Inc., 56 Perimeter Center East, Fifth Floor, Atlanta, GA 30346–2283, (404) 399–1600.

i. Comment Date: October 27, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Cannelton Locks and Dam, and would consist of: (1) A proposed inlet channel approximately 1,000 feet-long, to be located on the South bank of the river; (2) a proposed powerhouse, 220 feet long and 180 feet wide, containing three generating units with a total generating capacity of 73,500 kW, (3) a proposed exit channel, approximately 900 feet long; (4) a proposed 161–kV transmission line, approximately 3 miles long; and (5) appurtenant facilities. The estimated average annual generation is 388 GWh.

k. Purpose of Project: the project power would be sold to an as yet unspecified power purchaser.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the the studies under the permit would be 110,000.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 10059–000.

c. Date Filed: August 8, 1986.

d. Applicant: Berry Creek Power Company, Inc.

e. Name of Project: Berry Creek.

f. Location: Berry Creek, near Sierraville, in Sierra County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Russell Turner, Berry Creek Power Company, Inc., P.O. Box 7, Sattley, CA 96124, (916) 587–1470.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) An 8-foot-high, 50-foot-long concrete diversion dam across Berry Creek; (2) a 22-inch-diameter, 8,500-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kW, operating under a head of 1,030 feet and a hydraulic capacity of 23 cfs, and producing an estimated annual generation of 3.3 GWh; (4) a concrete lined tailrace returning flows to Berry Creek; and (5) a 1,500-foot-long, 12.5–kV transmission line interconnecting the project to an existing Plumas-Sierra Rural Electric Company line. The proposed diversion dam and penstock would be located on Tahoe National Forest lands. The proposed project would be located in Sections 8 and 9, Township 20 North, Range 14 East, MDB&M, Sierra County, California.

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be between $20,000 and $30,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

21 a. Type of Application: Preliminary Permit.

b. Project No: 10060–000.

c. Date Filed: August 8, 1986.

d. Applicant: Hamlin Creek Power Company, Inc.

e. Name of Project: Hamlin Creek.

f. Location: Hamlin Creek, near Sierraville, in Sierra County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Russell Turner, Berry Creek Power Company, Inc., P.O. Box 7, Sattley, CA 96124, (916) 587–1470.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 7-foot-high, 40-foot-long concrete diversion dam across Hamlin Creek; (2) a 18-inch-diameter, 6,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 450 kW, operating under a head of 570 feet and a hydraulic capacity of 11 cfs, and producing an estimated annual generation of 3.3 GWh; (4) a concrete lined tailrace returning flows to Hamlin Creek; and (5) an 8,000-foot-long, 12.5–kV transmission line interconnecting the project to an existing Plumas-Sierra Rural Electric Company line. The proposed penstock would be located on Tahoe National Forest lands. The proposed project would be located in Sections 14, 22, 23, and 27, Township 20 North, Range 14 East, MDB&M, Sierra County, California.

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be between $20,000 and $30,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the initial development applicant, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of

intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirments of the Rules of Practice and Procedure, 18 CR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing ond Service of Responsive Documents*—Any filings must bear in all capital letters the tile "COMMENTS" "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confirned to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 3, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20177 Filed 9–5–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86–681–000, etc.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86–681–000]

August 29, 1986.

Take notice that on August 18, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–681–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point in Dubois County, Indiana, for natural gas service to Indiana Natural Gas Corporation (INGC) under the certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as

more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that it would install metering facilities for the delivery of up to 150 dt equivalent of natural gas on a peak day to INGC, an existing distribution customer of ANR, for redelivery to commercial and residential customers in Schnellville and Birdseye, Indiana. It is asserted that the deliveries at the proposed delivery point would be within INGC's existing peak day and annual entitlements from ANR and would have no impact on ANR's other existing customers. It is estimated that the cost of installing the proposed facilities would be $67,100.

Comment date: October 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. KN Energy, Inc.

[Docket No. CP86-685-000]

August 29, 1986.

Take notice that on August 19, 1986, KN Energy, Inc. (KN), Post Office Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-685-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate six sales taps on its system in Nebraska and Colorado under the certificate issued in Docket Nos. CP83-140-000 and CP83-140-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

KN proposes to install interconnecting tap facilities for residential, agricultural and commercial end-users, enabling KN to deliver up to 600 Mcf on a peak day and 8,320 Mcf per year (see Appendix for details). It is stated that the installation of the proposed taps is not prohibited by any of KN's existing tariffs and that the deliveries made at the proposed taps would have no significant impact on KN's peak day and annual deliveries.

Appendix

KN Energy, Inc., Docket No. CP86-685-000

Customer	Location	Quantity to be sold (Mcf)		End use	Estimate cost [1]
		Peak day	Annual		
Marvin Hanes	Frontier County, NE	88	2,900	Irrigation	$2,500
New Life Fellowship Church	Yuma County, CO	10	600	Small commercial	(2)
Holdrege Coop Equity	Buffalo County, NE	350	2,900	Grain drying	3,200
Paul Schardt	Thayer County, NE	140	1,200	Grain drying	850
Kevin Choquette	Franklin County, NE	2	120	Domestic	650
William A. Darrenbacher	Washington County, CO	10	600	Small commercial	850

[1] Customers reimburse KN partially by means of a $400 connection charge.
[2] Relocation of tap at KN's request; no connection charge.

Comment date: October 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP86-210-001]

September 2, 1986.

Take notice that on August 13, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-210-001, a petition pursuant to section 7(c) of the Natural Gas Act to amend its certificate of public convenience and necessity authorizing the transportation of natural gas issued in Docket No. CP86-210-000 on December 30, 1985, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Southern indicates that pursuant to the certificate issued in Docket No. CP86-210-000, it is authorized through November 18, 1986, to transport up to 10 billion Btu equivalent of natural gas per day on an interruptible basis for Georgetown Steel Corporation (Georgetown). Southern states that it receives the gas from Georgetown's supplier, Exxon Corporation (Exxon), and redelivers the gas to South Carolina Pipe Line Corporation (South Carolina) at an existing interconnection in Aiken County, South Carolina for ultimate delivery to Georgetown's South Carolina plant.

In Docket No. CP86-210-001, Southern requests that the Commission amend the certificate granted in Docket No. CP86-210-000 to authorize Southern to continue its transportation service on behalf of Georgetown in accordance with the terms and conditions of a replacement transportation agreement betweeen Southern and Georgetown dated July 8, 1986. In order to accommodate Georgetown's increased needs the replacement agreement provides for the transportation of 20 billion Btu equivalent of gas per day on an interruptible basis for a term of one year. Southern indicates that under the new agreement, gas purchased by Georgetown from Exxon, or other suppliers, would be delivered to Southern at four existing interconnections in offshore Louisiana and Marion County, Mississippi. Southern asserts it would continue to redeliver the gas to Georgetown through South Carolina at the existing interconnection in Aiken County.

Southern also requests that its certificate be amended to provide flexible authority so that it could transport gas from additional delivery points in the event Georgetown obtains alternative sources of natural gas. Southern indicates that such authority would not be used to authorize a change in the recipient of the proposed service, the location of the redelivery point or the proposed maximum daily quantity of gas transportation by Southern.

Southern would charge South Carolina 48.2 cents per million Btu for the transportation service except that it would charge 77.6 cents per million Btu for volumes transported and redelivered by Southern on any day to South Carolina under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Carolina exceeded the daily contract demand of South Carolina. Southern would collect a Gas Research Institute surcharge of 1.35 cents per Mcf of gas redelivered to South Carolina.

Southern's application states that the proposed transportation services would be conditioned upon the availability of capacity sufficient for Southern to perform the proposed services without detriment or disadvantage to Southern's obligations to its customers who are dependent on its general system supply.

Comment date: September 23, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20183 Filed 9-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-988-000, etc.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; McMasters & Schroder et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

August 29, 1986.

Take notice that the following filings have been made with the Commission.

1. McMasters & Schroder

[Docket No. QF86-988-000]

On August 18, 1986, McMaster & Schroder (Applicant), c/o Pacific Hydropower Company, P.O. Box 31359, Seattle, Washington 98103-1359, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 12 MW facility (FERC Project Nos. 3239, 6373 and 6374) will be located on the Sandy, Sulphur and Rocky Creeks, in Whatcom County, Washington.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. First American Energy Company/ Culmtech, Ltd.

[Docket No. QF86-964-000]

On August 7, 1986, First American Energy Company/Culmtech, Ltd. (Applicant), P.O. Box 616, Pittston, Pennsylvania 18640, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Inkerman, Pennsylvania. The facility will consist of two circulating fluidized-bed boilers and an extraction/condensing turbine generating unit. Extraction steam produced by the facility will be sold to Green Mall, Ltd. for use in heating ten one-acre greenhouses. The electric power production capacity of the facility will be 80 MW. The primary energy source will be anthracite culm. The installation of the facility will begin on or about January 31, 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20184 Filed 9-5-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of July 25 Through August 1, 1986

During the Week of July 25 through August 1, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 28, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 25 through Aug. 1, 1986]

Date	Name an location of applicant	Case No.	Type of submission
July 28, 1986	Inland USA, Inc./Site Oil & Flash Oil Corp., St. Louis, MO.	RR176-2 and RR176-3	Request for Modification/Rescission. If granted: The June 5, 1986, Dicision and Order (Case No. RF176-9 and RF176-10) issued to Site Oil Co. and Flash Oil Corp. would be modified regarding both firm's applications for refund submitted in the Inland USA, Inc. refund proceeding.
July 29, 1986	Ivan Von Zuckerstein, Darien, IL	KFA-0047	Appeal of Information Request Denial. If granted: The June 19, 1986, Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded and Ivan Von Zuckerstein would receive access to a memo from Georgia R. Johnson to Martin Bernard, dated April 13, 1986.
Do	Leonard S. Spector, Washington, DC	KFA-0048	Appeal of an Information Request Denial. If granted: The June 25, 1986, Freedom of Information Request Denial issued by the Office of Classification would be rescinded and Leonard S. Spector would receive access to documents concerning the Iranian nuclear program since 1975.
July 30, 1986	Lenawee Fuels, Inc., Tecumseh, MI	KEE-0059	Exception to the Reporting Requirements. If granted: Lenawee Fuels, Inc. would no longer be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report".

REFUND APPLICATIONS RECEIVED

[Week of July 25 to Aug. 1, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
July 25, 1986	Conoco/Suttman Oil Co.	RF220-387.
July 28, 1986	Conoco/McMullen Oil Co.	RF220-388.
Do.	Gulf/Ladd Marshall Gulf	RF40-3224.
July 28, 1986	King/Highway Oil, Inc.	RF256-3.
Do.	USA/E-Z Serve, Inc.	RF252-7.
Do.	Beacon/Appollo Distributors.	RF238-66.
Do.	Beacon/Wolverton Oil, Inc.	RF238-67.
Do.	Gulf/Falmouth Coal Co., Inc.	RF40-3225.
Do.	Gulf/Southwire Co.	RF40-3226.
July 28, 1986	OKC/Kansas	RQ13-319.
July 28, 1986 through Aug. 1, 1986.	Mobil Refund Applications.	RF225-9169 through RF225-9893.
July 28, 1986 through Aug. 1, 1986.	Marathon Refund Applications.	RF250-723 through RF250-831.

[FR Doc. 86-20144 Filed 9-5-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3076-1]

Agency Information Collection Activities, Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Survey of Antifouling Paint Use at Boatyards and Shipyards (EPA ICR #1344). (This is a new collection.)

Abstract: This study of antifouling paint usage at boatyards and shipyards is part of a special review of all registrations for the use of tributyltin (TBT) in antifouling paints. This study is necessary because of the concern that TBT used in antifouling paint may expose nontarget aquatic organisms at concentrations causing acute and chronic effects.

Respondents: Selected boatyards and shipyards in coastal areas.

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: August 29, 1986.

Odelia Funke,

Acting Director, Information and Regulatory Systems, Division.

[FR Doc. 86-20195 Filed 9-5-86; 8:45 am]

BILLING CODE 6560-50-M

[ORD-FRL-3075-4]

Health Assessment Document for Polychlorinated Dibenzofurans

AGENCY: Environmental Protection Agency.

ACTION: Reopening of the Public Comment Period.

SUMMARY: This notice announces the reopening of the public comment period for the external review draft of the Health Assessment Document for Polychlorinated Dibenzofurans, EPA-600/8-86/018A, dated June 1986. On July 18, 1986 a notice was published in the **Federal Register** announcing the assessment as being available for public comment from July 18, 1986 through August 18, 1986.

DATES: The Agency will make this document available for public review and comment from the date of this notice through September 22, 1986.

ADDRESSES: To obtain a copy of the draft document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268, (513) 569-7652, and request the external review draft of the Health Assessment Document for Polychlorinated Dibenzofurans, EPA Document Number EPA-600/8-86/018A. Please provide your name, mailing address, and the EPA document number when requesting a copy of the draft document.

The draft document will also be available for inspection and copying at the EPA Library, EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Comments on the draft document should be sent to: Debdas Mukerjee, Project Officer for Polychlorinated Dibenzofurans, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, 26

BEST COPY AVAILABLE

West St. Clair Street, Cincinnati, Ohio 45268.

FOR FURTHER INFORMATION CONTACT: Debdas Mukerjee, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 569–7531.

Dated: August 29, 1986.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86–20196 Filed 9–5–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–771–DR]

Major Disaster and Related Determinations; New Hampshire

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–771–DR), dated August 27, 1986, and related determinations.

DATED: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of August 27, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from severe storms and flooding during the period July 29 through August 10, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Albert A. Gammal, Jr., of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster and are designated eligible as follows:

For Public Assistance only:

The Towns of Alstead, Gilsum, Marlow, Nelson, and Sullivan in Cheshire County.

The Towns of Brookline, Greenville, Mason, Milford, and Wilton in Hillsborough County.

The Towns of Acworth and Langdon in Sullivan County.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86–20171 Filed 9–5–86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Information, including copies of the collection of information and supporting documentation, may be obtained from Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Room 11101, Washington, DC 20573, telephone number (202) 523–5725. Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR 510—Licensing of Ocean Freight Forwarders

FMC requests an extension of clearance for this part which sets forth regulations providing for the licensing of ocean freight forwarders in the U.S. foreign commerce. The Commission estimates that approximately 2600 respondents are annually affected at an estimated cost to them of $320,000. The approximate cost to the Federal Government is the annual budget appropriated to the Office of Freight Forwarders of $233,000.

46 CFR 550.5—Voluntary Letter to Automobile Manufacturers

FMC requests a clearance extension for a voluntary letter addressed to automobile manufacturers requesting information on the cubic measurements and weights of new foreign and domestic automobiles. The information received is compiled in a guide entitled "Automobile Manufacturers' Measurements." The guide is used by carriers transporting automobiles in the domestic offshore trades and is designed to assist in their compliance with 46 CFR 550.5(b)(8)(xiv). It is estimated that annual compliance with this voluntary letter will impose a burden of one manhour for each of 23 respondents.

46 CFR 510, 580 and 582—Certification of Company Policies and Efforts To Combat Rebating in the Foreign Commerce of the United States

FMC requests a clearance for these amendments in Docket No. 86–19 which require that the Chief Executive Officer of every common carrier and ocean freight forwarder in the U.S. foreign commerce file a written certification with the Commission attesting to the company's prohibition against receiving or paying rebates by December 31 of each year. In addition, it broadens the number of parties subject to filing such certificates to include potentially, if requested by the Commission, individual shippers, shippers' associations, marine terminal operators and brokers.

Ocean common carriers and ocean freight forwarders, respectively, will also have to file a certification with their initial tariff or license application. The Commission estimates that approximately 1500 NVOCCs, 700 VOCCs and 1600 freight forwarders will have to file initial and annual anti-rebate certifications.

Joseph C. Polking,

Secretary

[FR Doc. 86–20120 Filed 9–5–86; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009648A–033
Title: Inter-American Freight Conference
Parties: A. Bottacchi S.A. de Navegacion C.F.I. e I.; A/S Ivarans Rederi; Brazil-America Container Line; Companhia Maritima Nacional; Companhia de Navegacao Lloyd Brasileiro; Companhia de Navegacao Maritime Netumar; Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A); Empresa de Navegacao Allianca S.A.; Flota Mercante del Estato; Frota Amazonica S.A.; Georgia-Aztec Line; Van Nievelt Goudriaan & Co. B.V.; Kimberly Navigation Company; Reefer Express Lines Pty. Ltd.; R.M.C. Lines, Inc.; Transportacion Maritima Mexicana S.A.; United States Lines, Inc.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202–009968–017
Title: Inter-American Freight Conference Puerto Rico and U.S. Virgin Islands Area
Parties: A. Bottacchi S.A. de Navegacion C.F.I. e I.; A/S Ivarans Rederi; Companhia Maritima Nacional; Companhia de Navegacao Lloyd Brasileiro; Companhia de Navegacao Maritima Netumar; Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A); Empresa de Navegacao Allianca S.A.; Frota Amazonica S.A.; Paxicon Line; Suriname Line; Transportacion Maritima Mexicana S.A.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 217–010051–010
Title: Mediterranean Force Majeure Agreement
Parties: Compania Trasatlantica Espanola; Costa Container Line; Farrell Lines, Inc.; Italia di Navigazione, S.A.; Jugolinija; Lykes Bros. Steamship Co., Inc.; Med-America Express Service; Sea-Land Service, Inc.; Zim Israel Navigation Co., Inc.
Synopsis: The proposed amendment would delete the agreement's current termination date of December 13, 1987, and provide that the agreement shall remain in effect indefinitely unless terminated by unanimous vote. It would also restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 202–010122–015
Title: Inter-American Freight Conference Area River Plate/Puerto Rico and U.S. Virgin Islands/River Plate
Parties: A. Bottacchi S.A. de Navegacion C.F.I. e I.; A/S Ivarans Rederi; Companhia Maritima Nacional; Companhia de Navegacao Lloyd Brasileiro; Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A); Transportacion Maritima Mexicana S.A.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

By Order of the Federal Maritime Commission.

Dated: September 3, 1986.

Joseph C. Polking,
Secretary.

[FR Doc. 86–20121 Filed 9–5–86; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants; CAP Air/Ocean, Inc.

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

CAP Air/Ocean, Inc.,3115 Will Clayton Parkway, Houston, TX 77032
Officers: Derrell D. Gardner, President, Edward O. Himly, Jr., Vice President

Rider Distributors, Inc.,1671 W. 38th Place, No. 1408, Hialeah, FL 33012
Officers: Jorge Pelaez, President, Diana Pelaez, Secretary

By the Federal Maritime Commission.

Dated: September 3, 1986.

Joseph C. Polking,
Secretary.

[FR Doc. 86–20122 Filed 9–5–86; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations; Sara Sandford Dodd and Associates, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1055
Name: Sara Sandford Dodd and Associates, Inc.
Address: 1252 Texas Street, Mobile, AL 36633
Date Revoked: July 17, 1986
Reason: Surrendered license voluntarily

License Number: 2583
Name: C. C. Forwarders, Inc.
Address: 3590 N.W. 50th Street, Miami, FL 33142
Date Revoked: August 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 1917
Name: Jar Forwarding, Ltd.
Address: 3 Park Row, New York, NY 10038
Date Revoked: August 24, f1986
Reason: Failed to maintain a valid surety bond

Eugene P. Stakem,
Deputy Director, Bureau of Tariffs.

[FR Doc. 86–20123 Filed 9–5–86; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Wednesday, October 8, and Thursday, October 9. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The October 8 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The October 9 session is expected to begin at 9:00 a.m. and to continue until 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer

Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *1986 Survey of Consumer Finances:* Preliminary report by Board staff on a Board-sponsored 1986 nationwide survey of consumer finances.

2. *APR Demonstration Project:* Briefing by Board staff on the results of a congressionally mandated demonstration project involving the publication and distribution of shoppers guides to credit in three local market areas.

3. *Responses to Branch Closings:* Update on branch closings by commercial banks and on the assessment of closings by Federal Reserve examiners; and discussion (led by a Council planning group) of (1) the banks' perspective and recent industry efforts to help bankers manage more effectively the impact of a branch closing on the community, and (2) possible responses to branch closings (including neighborhood-based altenative strategies) by community groups.

4. *Delayed Funds Availability:* Report by the Council's Ad Hoc Committee on Service Charges on the area of delayed funds availability; and update by Board staff on data collected by Federal Reserve examiners concerning state member banks' responses to the joint policy statement of the Federal Home Loan Bank Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Federal Reserve Board encouraging financial institutions to refrain from imposing unnecessary delays in making funds available to depositors.

5. *Consumer Education:* Report from the Council's Committee on Consumer Education; and briefing by Board staff on the scope of the Federal Reserve's consumer education efforts through various media.

6. *Emerging Technologies:* (1) Educational presentation by the Council's Ad Hoc Committee on Emerging Technologies on the smart card technology (tentative); (2) Discussion of a proposed amendment to Regulation E (Electronic Fund Transfers) that would eliminate periodic statement disclosure requirements for the issuer of a debit card (or other access device for making EFTs) when the issuer does not hold the consumer's account.

7. *Community Reinvestment Act (CRA):* Report from the Council's Ad Hoc Committee on the Community Reinvestment Act on its efforts in exploring how Federal Reserve examiners evaluate various CRA activities by banks.

8. *Changes in Financial Organization:* Report from the Council's Ad Hoc Committee on Changes in Financial Organization on issues targeted for further committee study in the area of expanded powers for financial institutions.

9. *Regulation Z—Right of Recission:* Discussion of the Board's proposal to exempt certain refinancings from the Truth-in-Lending right of rescission.

10. *Rise in Second Mortgage Consumer Debt:* Discussion of the rise in second mortgages consumer debt and of the various purposes for which such debt is primarily used.

11. *Adjustable Rate Mortgages (ARMs):* Discussion of the Federal Financial Institutions Examination Council's recommendation that the Federal Reserve Board, Federal Home Loan Bank Board, and the Office of the Comptroller of the currency adopt uniform disclosures for adjustable rate mortgages.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Wednesday, October 1, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Bedelia Calhoun, Staff Specialist, at (202) 452–3305; for Telecommunications Device for the Deaf (TDD) users, Earnestine Hill or Dorothea Thompson (202) 452–3544; Board of Governors of the Federal Reserve System, Washington DC 20551.

Board of Governors of the Federal Reserve System, September 2, 1986.

James McAfee,

Associate Secretary to the Board.

[FR Doc. 86–20140 Filed 9–5–86; 8:45 am]

BILLING CODE 6210–01–M

Bayerische Vereinsbank et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each applicaiton is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bayerische Vereinsbank*, Munich Federal Republic of Germany; to engage *de novo* through its subsidiary, AE Capital Management, Inc., New York, New York, in the provision of investment advisory services pursuant to section 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Community Bankshares, Inc.*, Cornelia, Georgia; to engage *de novo* through its subsidiary Community Insurance Agency, Cornelia, Georgia, in the sale of general insurance, which may include, without limitation, life insurance, accident and sickness insurance, casualty insurance, and surety insurance, pursuant to section 4(c)(8)(c)(i) of the Bank Holding

Company Act. These activities will be conducted in Cornelia, Clarkesville, Demorest and Commerce, Georgia.

Board of Governors of the Federal Reserve System, September 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20141 Filed 9-5-86; 8:45 am]

BILLING CODE 6210-01-M

Riggs National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 29, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Riggs National Corporation*, Washington, DC, to acquire 100 percent of the voting shares of The Riggs National Bank of Virginia, the successor by merger to Guaranty Bank and Trust Company, Fairfax, Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Lamar Capitol Corporation*, Purvis, Mississippi; to become a bank holding company by acquiring 80 percent of the voting shares of Lamar County Bank, Purvis, Mississippi.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dawson Springs Bancorp, Inc.*, Dawson Springs, Kentucky; to merge with Kentucky State Bancorp, Inc., Scottsville, Kentucky, and thereby indirectly acquire Kentucky State Bank of Scottsville, Scottsville, Kentucky. Comments on this application must be received by September 26, 1986.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *UB & T Bancshares, Inc.*, Abilene, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of United Bank and Trust, Abilene, Texas. Comments on this application must be received by September 26, 1986.

Board of Governors of the Federal Reserve System, September 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20142 Filed 9-5-86; 8:45 am]

BILLING CODE 6210-10-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Being Reviewed by the Office of Management and Budget; Surplus Personal Property Mailing List Application

AGENCY: Federal Supply Service, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to reinstate a recently expired report.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GAS Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John Hansley, Federal Supply Service (703) 557-0814.

Purpose of Collection: Allows persons to have their names put on a mailing list to be notified of upcoming surplus property sales.

Annual Reporting Burden: 25,000 respondents; 1,667 burden hours.

Copies of Proposal: Copies can be obtained from the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC, 20405, or telephone (202) 566-0668.

Dated: August 29, 1986.

Rodney P. Lantier,

Acting Director, Information Management Division.

[FR Doc. 86-20117 Filed 9-5-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to revise Chapter HA (Office of the Assistant Secretary for Health) and Chapter HC (Centers for Disease Control). These revisions will reflect the transfer of responsibility for the Office on Smoking and Health from the Office of the Assistant Secretary for Health (OASH) to the Centers for Control (CDC). Specifically:

(1) The statement for the Office of the Assistant Secretary for Health (42 FR 61318, December 2, 1977, as amended most recently at 51 FR 16390-91, May 2, 1986) is amended to delete the title and statement for the Office on Smoking and Health (HAG). The responsibilities of this office are transferred to CDC.

(2) The statement for the Center for Health Promotion and Education, Centers for Disease Control (45 FR 67772-67776, October 14, 1980 and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 51 FR 10117, March 24, 1986) is amended to reflect the transfer of functions of the Office on Smoking and Health to the Center for Health Promotion and Education.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health, HA-10, Organizations, delete item (8), Office on Smoking and Health (HAG). Renumber items (9) through (18) as items (8) through (17).

Under Section HA-20, Functions, delete the title and statement for the *Office on Smoking and Health (HAG).*

Section HA-30, Delegations of Authority. All delegations and redelegations of authority made to PHS officials which were in effect prior to the effective date of this reorganization shall continue in effect pending further redelegations.

Centers for Disease Control

Under Part H, Chapter HC, Centers for Disease Control, Section HC–B, Organization and Functions, revise the statement for the *Center for Health Promotion and Education* by renumbering items (3) through (9) as items (5) through (11), and inserting the following as items (3) and (4):

(3) administers a national program to inform Americans about the dangers of smoking, to reduce the death and disability due to smoking, and to promote research by government and voluntary agencies on smoking and health; (4) assists the Surgeon General in the preparation of his annual report on smoking and health;

This change is effective September 14, 1986.

Otis R. Bowen,

Secretary.

August 11, 1986.

[FR Doc. 86–20173 Filed 9–5–86; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 86M–0343]

Pacesetter® Systems, Inc.; Premarket Approval of Model 674 Pulse Generator and Model 600 V Programmer

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pacesetter® Systems, Inc., Sylmar, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Model 674 Pulse Generator and Model 600 AV Programmer. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 8, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald F. Dahms, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

SUPPLEMENTARY INFORMATION: On August 2, 1984, Pacesetter® Systems, Inc., Sylmar, CA 91342, submitted to FDA an application for premarket approval of the Model 674 Pulse Generator and Model 600 AV Programmer that is indicated for use as a cardiac pacing system.

On May 13, 1985, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall indentify the form of review requested (hearing or independent advisory committee) and shall submit the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 8, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 28, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–20112 Filed 9–5–86; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control Centers and Community Oncology Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Centers and Community Oncology Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 21, 1986, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892. The entire meeting will be open to the public from 7:30 p.m. to adjournment, and the current and future programs of the Centers and Community Oncology Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20892 (301/427–

8630) will furnish substantive program information.

Dated: August 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-20130 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control, Budget and Evaluation Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Budget and Evaluation Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 22, 1986, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892. The entire meeting will be open to the public from 5:30 p.m. to adjournment, and the current and future programs of the Surveillance and Operations Research Branch will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20892 (301/427-8630) will furnish substantive program information.

Dated: August 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-20131 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control; Prevention Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Prevention Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 22, 1986, to be held in Conference Room 3, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892. The entire meeting will be open to the public from 7:30 p.m. to adjournment, and the current and future programs of the Prevention Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20892 (301/427-8630) will furnish substantive program information.

Dated: August 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-20132 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, October 3, 1986. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, Building 31, Conference Room 7, C-Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 27, 1986.

Betty J. Beveridge,

NIH Committee Monogement Officer.

[FR Doc. 86-20134 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 27-28, 1986, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 8, C Wing.

The entire meeting will be open to the public from 9:00 AM to 5:00 PM on October 27, and from 9:00 AM to adjournment on October 28, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: Afugust 27, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-20135 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, September 30, 1986 at the Dana-Farber Cancer Institute, 44 Binney Street, Boston, Massachusetts 02115.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel, and discussions to obtain information regarding center programs supported by the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496–1148) will furnish substantive program information.

Dated: August 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–20133 Filed 9–5–86; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Solar Energy and Energy Conservation Bank

[Docket No. N–86–1635; FR 2286]

Meeting of the Solar Energy and Energy Conservation Advisory Committees

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Notice; Meeting of the Solar Energy and Energy Conservation Advisory Committees.

SUMMARY: This Notice announces a meeting of the Solar Energy and Energy Conservation Advisory Committees. The meeting will be held on September 25, 1986 via a telephone conference call originating in Washington, DC. The purpose of the meeting is to discuss Bank business.

FOR FURTHER INFORMATION CONTACT: Walter Preysnar, Office of the Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development, 451 7th Street, SW., Room 7110, Washington, DC 20410; Telephone (202) 755–7166. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Energy Security Act of 1980 established Energy Conservation Solar Energy Conservation Advisory Committees for the purpose of assisting the Board in carrying out the activities of the Bank which relate to energy conserving improvements and solar energy systems. Each committee consists of five members, appointed by the Board from among individuals who are not officers or employees of any governmental entity, as follows:

(1) One individual who is able to represent the views of consumers as a result of the individual's education, training and experience.

(2) One individual who is able to represent the views of financial institutions as a result of the individual's education, training and experience.

(3) One individual who is able to represent the views of builders as a result of the individual's education, training and experience.

(4) One individual who is able to represent the views of architectural or engineering interests as a result of the individual's education, training and experience.

(5)(a) For the Solar Energy Committee, one individual who is able to represent the views of the solar energy industry as a result of the individual's education, training and experience.

(b) For the Energy Conservation Committee, one individual who is able to represent the views of producers or installers of residential and commercial energy conserving improvements as a result of the individual's education, training and experience.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2), announcement is made of the following meeting:

The Solar Energy and Energy Conservation Advisory Committees will meet on September 25, 1986. The meetings are open to the public and will convene at 3:45 p.m. via a telephone conference call originating from the Department of Housing and Urban Development, 451 7th Street, SW., Room 7202, Washington, DC 20410.

An agenda will be available at the meeting. Inquiries concerning the agenda and the meeting may be made by contacting the Office of the Solar Energy and Energy Conservation Bank at (202) 755–7166.

Authority: Title V, Subtitle A, of the Energy Security Act of 1980, (Pub. L. 96–294, 12 U.S.C. 3601–3620).

Dated: August 18, 1986.

Approved:

Walter Bruce,

Advisory Committee Chairperson.

Dated: August 21, 1986.

Approved:

Richard H. Francis,

Manager, Solar Energy and Energy Conservation Bank.

[FR Doc. 86–20136 Filed 9–5–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–711493

Applicant: Jack Woody, National Sea Turtle Coordinator, U.S. Fish & Wildlife Service, Albuquerque, NM.

The applicant requests a permit to export 20 kg. of seized hawksbill turtle (*Eretmochelys imbricata)* shell, to be obtained from the U.S. Fish & Wildlife Service, Division of Law Enforcement, to the Tokelau Village elders, Tokelau Island, Western Samoa, for use in making traditional fishing lures. The natives will use the turtle shell for suubsistence fishing only; the lures will not be entered into commerce. This export will increase the likelihood of the survival of the species by eliminating the need for taking the turtles from the wild.

PRT–711637

Applicant: Roger D. Harris, Berkeley, CA.

The applicant requests a permit to live trap and release salt marsh harvest mice (*Reithrodontomys raviventris)* on Blair Island, San Mateo County, CA. The purpose is to determine the possible occurrence of this species on the property.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: September 2, 1986.
Earl B. Baysinger,
Chief, Federal Wildlife Permit Office.
[FR Doc. 86-20108 Filed 9-5-86; 8:45 am]
BILLING CODE 4310-55-M

Bureau of Land Management

[AA-6648-A2]

Alaska Native Claims Selection; Aleknagik Natives, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Aleknagik Natives Limited for approximately 2,490 acres. The lands involved are in the vicinity of Aleknagik, Alaska.

Seward Meridian, Alaska

T. 10 S., R. 54 W. (Unsurveyed)

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until October 8, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,
Section Chief, Branch of ANCSA Adjudication.
[FR Doc. 86-18363 Filed 8-5-86; 8:45 am]
BILLING CODE 4310-JA-M

National Park Service

Revision of Park Boundary; Valley Forge National Historical Park, PA

AGENCY: National Park Service, Valley Forge National Historical Park, Pa., Interior.

ACTION: Notice of revision of park boundary.

SUMMARY: Section 2.(a) of the Act of July 4, 1976, Pub. L. 94-337 (90 Stat. 796) established the Park boundary as depicted on the map entitleld "Valley Forge National Historical Park" dated February 1976, and numbered VF 91,000. The boundary was further revised by an act of June 28, 1980, Pub. L. 96-267 (94 Stat. 601) to include the area as generally depicted on Map numbered VF-91,001 dated June 1979. Portions of this boundary on the north side of the park were located on the centerline of Pawling Road. Subsequent to the establishment of this boundary, a twenty-two hundred foot (2200') section of Pawling Road was relocated. This section begins at a point approximately thirty-five hundred feet east of the Schuylkill River, and was relocated in order to construct an overpass over U.S. Highway 422. The effect of this relocation was to create a narrow strip of privately owned land between the park boundary and the centerline of the new Pawling Road. This strip of land may be suitable for some type of development which could be detrimental to the park. The inclusion of this additional land will increase the area of the park by 2 acres, more or less.

Therefore, pursuant to section 2.(a) of Pub. L. 94-337, notice is given that the boundary of Valley Forge National Historical Park has been revised to coincide with the centerline of that portion of Pawling Road that has been relocated as described above and as depicted as a portion of Tracts 101-43, 101-55, 101-60 and 101-62 on Land Status Map numbered 464/80,017, Segment 101, Sheet 1 of 2 dated August 1980 prepared by the Land Resources Division of the Mid-Atlantic Region of the National Park Service.

SUPPLEMENTARY INFORMATION: The map is on file and available for inspection in the administrative office of the Valley Forge National Historical Park, Valley Forge, Pennsylvania, 19481; in the office of the Mid-Atlantic Region, Land Resources Division, Custom House, Room 502, Second and Chestnut Streets, Philadelphia, Pennsylvania, 19106; and in the office of the National Park Srevice, Department of the Interior, 18th and C Streets, Washington, DC, 20240.

Dated: June 19, 1986.

Don H. Castleberry,
Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 86-20157 Filed 9-5-86; 8:45 am]
BILLING CODE 4310-70-M

Final Environmental Impact Statement; George Washington Memorial Parkway

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: This notice announces the availability of a final environmental impact statement (EIS) for traffic and recreation management, George Washington Memorial Parkway (Spout Run to Theodore Roosevelt Bridge) and Spout Run Parkway.

The document has been reviewed for legal sufficiency by the Regional Solicitor. The 30-day no-action period following the Environmental Protection Agency's notice of availability of the final EIS will end October 14 1986.

ADDRESSES: Public reading copies of the final EIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: 202-343-6843
George Washington Memorial Parkway Headquarters, Turkey Run Headquarters, McLean, Virginia 22101, Telephone: 703-285-2600
Arlington Central Library, Virginiana Section, 1015 N. Quincy Street, Arlington, Virginia 22204
Cherrydale Branch Library, 2190 N. Military Road, Arlington, Virginia 22207
Fairfax City Regional Library, 4000 Chain Bridge Road, Fairfax, Virginia 22030
Reston Regional Library, 2355 A Hunters Woods Plaza, Reston, Virginia 22091
Dolly Madison Library, 1244 Oak Ridge Avenue, Vienna, Virginia 22180
Potomac Library, 1000 Falls Road, Potomac, Maryland 20854
Martin Luther King, Washingtoniana Division, 901 G Street NW., Washington, DC 20001

A limited number of copies of the DES and FES are available on request from: Superintendent, George Washington Memorial Parkway, Turkey Run Headquarters, McLean, Virginia 22201.

Dated August 22, 1986.

Manus J. Fish, Jr.,
Regional Director, National Capital Region.
[FR Doc. 86-20158 Filed 9-5-86; 8:45 am]
BILLING CODE 4310-70-M

Statue of Liberty-Ellis Island Centennial Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Statue of Liberty-Ellis Island Centennial Commission will be held at the Department of the Interior, 18th & C

Streets, NW., Washington, DC, on Friday, September 26, 1986. at 9:30 a.m. The Commission will meet to receive a report on proposals for use of the south half of Ellis Island and to conduct such other business as is properly before the meeting.

DATE: September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Keith Eastin, (202) 343–5183.

Keith E. Eastin,

Deputy Under Secretary.

[FR Doc. 86–20182 Filed 9–5–86; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M–86–97–C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device) to its Lambert Fork No. 2 Mine (I.D. No. 44–06175) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within in each belt flight.

2. In a separate petition (M–86–96–C), petitioner proposes to use the belt entry as an intake airway.

3. In lieu of a heat detection system, petitioner proposes to use an early-warning fire detection system using a low-level carbon monoxide detection system. The system will be installed and operated with specific conditions in all belt entries used as intake aircourses.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 8, 1986. Copies of the petition are available for inspection at that address.

Dated: August 27, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR. Doc. 86–20152 Filed 9–5–86; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–117–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Amonate No. 31 Mine (I.D. No. 46–04421) located in McDowell Country, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that there are rectifiers located along an older haulage which is ventilated with intake air. There are no effective return airways in the immediate vicinity. The intake air passing the rectifiers goes to a bleeder fan which is pulling off the back of the pillar line.

3. As an alternate method, petitioner proposes that:

(a) The structure enclosing the rectifier would be ventilated so that any smoke would be confined to the enclosed area and would activate a warning light on the haulway to warn miners that a fuse link has been broken on the fire extinguishers;

(b) The area in which the rectifier would be located would have both ends enclosed with cement block walls. Two steel doors would be installed which would allow an air current to pass through the structure and they would close automatically when a 135°F fuse link separates;

(c) A dry-type fire extinguisher would be mounted through the top covers of the rectifier and positioned so that, when activated, the dry chemical would be dispersed inside all compartments. The fire extinguisher would be activated by 160°F fuse links;

(d) All entrances for electrical cables would be effectively sealed to prevent the release of smoke. The inside of the enclosure would be well rock dusted and kept free from combustible materials; and

(e) The installation would be examined on a weekly basis to insure that the safety factors were intact.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 8, 1986. Copies of the petition are available for inspection at that address.

Dated: August 27, 1986.

Patricia W. Silvey,

Office of Standards, Regulations and Variances.

[FR Doc. 86–20151 Filed 9–5–86; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86–59)]

NASA Advisory Council, Aeronautics Advisory Committee, (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Task Team on Computational Fluid Dynamics (CFD) Validation.

DATE AND TIME: September 23, 1986, 8:30 a.m. to 5 p.m.

ADDRESS: General Dynamics Support Training Center, Room 217, Fort Worth Division, 6310 Southwest Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Dr. Randolph Graves, Code RF, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–2828).

SUPPLEMENTARY INFORMATION: The Aeronautics Advisory Committee (AAC) Ad Hoc Task Team on CFD Validation was established to assess CFD verification activities in the Office of

Aeronautics and Space Technology (OAST). This team, chaired by Dr. Richard Bradley, is comprised of nine members and was formed to provide a review of OAST's CFD Verification Programs, to include speed ranges from subsonic to hypersonic for both external and internal aerodynamics/ aerothermodynamics. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open

Agenda

September 23, 1986

8:30 a.m.—Discussion of Team Study Plan and specific areas to be studied.

1 p.m.—Assignment of specific study tasks to team members.

5 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86-20109 Filed 9-5-86; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-410]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 19, to the Niagara Mohawk Power Corporation (the applicant), for the Nine Mile Point Nuclear Station, Unit 2 (NMP-2), located at the applicant's site in Scriba, New York.

Environmental Assessment

Identification of Proposed Action: The proposed action would exempt the applicant from meeting certain requirements of 10 CFR Part 50, Appendix A, GDC 19, until prior to exceeding five percent of rated power. GDC 19 requires a control room be provided in which actions can be taken to operate the nuclear powerplant safely under accident conditions, including a loss-of-coolant accident (LOCA). GDC 19 further states that adequate radiation protection shall be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident.

In the process of reviewing the radiological consequences of the additional bypass leakage paths submitted by the applicant on June 30, 1986, the staff raised questions concerning the methodology used by the applicant to calculate the X/Q values used to determine the control room operator doses. If the more conservative Murphy-Campe method suggested in the staff's Standard Review Plan (NUREG-0800, Revision 2) is used to determine the X/Q, then the calculated control room doses in the event of a LOCA could exceed those permitted by GDC 19.

For this reason, the applicant has requested an exemption to GDC 19 while the staff evaluates the methodology used by the applicant to calculate the X/Q for the control room doses. If the methodology is determined by the staff to be unacceptable, then the applicant has requested until operation of the plant above five percent of rated power to complete any additional analysis or modifications as needed.

The applicant's request for this exemption, and the bases therefor, are contained in its letter dated August 14, 1986.

The Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the review of the methodology used to calculate the control room X/Q completed by the staff. In addition, the exemption would allow any additional analysis and/or modifications required to meet GDC 19 to be deferred until prior to operation above five percent of rated power. This exemption will provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: The exemption would allow any additional analysis and/or modifications required to meet GDC 19 to be completed after fuel load but prior to exceeding five percent of rated power.

The initial source term inventory of the core during operation below five percent of rated power is low. With this lower inventory, if the more conservative method were used to calculate the control room does in the event of a LOCA, the result would be within the dose guideline required by GDC 19. Therefore, the staff concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases in excess of those previously determined for Nine Mile Point Nuclear Station, Unit 2. Moreover the proposed relief would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: These actions associated with the granting of the proposed exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 2", dated May 1985.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's submittal that supports the proposed exemption discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment.

For further details with respect to this action, see the request for the exemption as listed herein, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Penfield Library, State University College, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 2nd day of September 1986.

For the Nuclear Regulatory Commission.
Elinor G. Adensam,
Director, BWR Project Directorate No. 3, Division of BWR Licensing.
[FR Doc. 86-20186 Filed 9-5-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix R of 10 CFR Part 50 to the Power Authority of the State of New York (PASNY/the licensee), for the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action: The licensee would be exempted from the requirements of sections III.L.1.b and III.L.2.b of Appendix R to 10 CFR Part 50 to the extent that the reactor coolant level would be permitted to drop below the top of the core during use of alternate safe shutdown procedures following a postulated fire which renders the control room uninhabitable.

The Need for the Proposed Action: The licensee has performed revised analyses to determine the time required for an operator to regain control functions for reactor shutdown at the remote alternate shutdown panels after manual scram of the reactor following a control room fire. The required time has been revised from 10 minutes to 30 minutes. This increase in operator action time would result in a temporary uncovery of the core (i.e., at 10 minutes, no core uncovery occurs).

Environmental Impact of the Proposed Action: The proposed action would not impact the ability to effect safe shutdown of the plant in the event of a fire in the control room, would not pose a threat to the fuel cladding integrity, and would provide an acceptable level of safety, equivalent to that attained by compliance with section III.L. of Appendix R to 10 CFR 50. On this basis, the Commission concludes there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has detemined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 14, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Penfield Library, State University College of Oswego, New York.

Dated at Bethesda, Maryland, this 2nd day of September 1986.

For the Nuclear Regulatory Commission.
Daniel R. Muller,
Director, BWR Project Directorate No. 2, Division of BWR Licensing.
[FR Doc. 86-20187 Filed 9-5-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-128]

Texas A&M University; Environmental Assessment and Notice of Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-83

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-83 for the Texas A&M University TRIGA reactor located on the campus of the Texas A&M University (the licensee) in College Station, Texas.

Environmental Assessment

Description of Proposed Action: By letter dated July 11, 1986, the licensee requested a license amendment to raise the total iodine inventory in a fueled experiment from 1.5 curies to 10 curies for iodine isotopes 131 through 135.

Need for the Proposed Action: Texas A&M desires to irradiate larger masses of fueled experiments rather than irradiate many smaller experiments.

Alternatives to the Proposed Action: The alternative would be to have 7 times as many smaller experiments. However, the preliminary activities for experiment encapsulation plus the post-irradiation handling of the seven 1.5 curie iodine-filled capsules could produce a greater probability of accident than handling one 10 curie capsule of iodine in a larger fueled experiment.

Environmental Impact of a 10 Curie Iodine Inventory: A postulated accident and release of all the iodine inventory into the containment building, followed by a release to the atmosphere would result in a maximum one-hour exposure to a person at the boundary of less than one-twentieth of the allowable whole body exposure limit of 0.5 Rem as per 10 CFR 20.

Alternative Use of Resources: This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted: The staff did not consult other agencies or persons.

Conclusion and Basis for Finding of No Significant Environmental Impact: Based on the foregoing Environmental Assessment, the Commission has concluded that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an Environmental Impact Statement for this proposed action.

For further details with respect to this action, see the licensee's request for a license amendment dated July 11, 1986. This document is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 27th day of August 1986.

For the Nuclear Regulatory Commission.
Herbert N. Berkow,
Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.
[FR Doc. 86-20188 Filed 9-5-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-433]

University of California at Santa Barbara; Finding of No Significant Environmental Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the University of California at Santa Barbara to dismantle their L-77 reactor facility in Santa Barbara, Santa Barbara County, California and to dispose of the reactor components in accordance with the application dated September 9, 1985, as supplemented.

The Order would authorize dismantling of the facility and disposal of the components in accordance with the licensee's application for decontamination and dismantling dated September 9, 1985, as supplemented. Opportunity for hearing was afforded by the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on October 30, 1985 at 50 FR 45180.

Finding of No Significant Environmental Impact: The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment.

Summary of Environmental Impacts: The environmental impacts associated with the dismantling and decontamination operations are discussed in an Environmental Assessment associated with this action. The operations are calculated to result in a collective radiation exposure of less than 0.05 person-rem to all operating personnel. Collective radiation exposure to the general public will be insignificant. The Environmental Assessment concluded that the operation will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated September 9, 1985, as supplemented, the Environmental Assessment, and the Safety Evaluation prepared by the staff. These documents and this Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTENTION: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 26th day of August 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-20189 Filed 9-5-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-433]

University of California at Santa Barbara; the University of California at Santa Barbara L-77 Research Reactor; Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated September 9, 1985, as supplemented, the University of California at Santa Barbara (the Licensee) requested authorization to dismantle the L-77 reactor facility, License No. R-124, located in Santa Barbara, Santa Barbara County, California and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Notice of Proposed Issuance of Order Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on October 30, 1985 at 50 FR 45180. No request for hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) staff has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of the findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment, dated August 26, 1986, for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an Environmental Impact Statement need not be prepared.

Accordingly, the licensee is hereby authorized to dismantle the L-77 reactor facility covered by License No. R-124, as amended, and dispose of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it will perform to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R-124.

For further details with respect to this action, see (1) the licensee's application for authorization to dismantle the facility and dispose of component parts, dated September 9, 1985, as supplemented, (2) the Commission's related Safety Evaluation, and (3) the Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 26th day of August 1986.

For the Nuclear Regulatory Commission.

Frank Schroeder,

Acting Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-20190 Filed 9-5-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-364, (ASLBP No. 815-511-01-ML)]

Atomic Safety and Licensing Board Panel; Babcock and Wilson, Parks Township, PA, Volume Reduction Facility; Informal Hearings

Before Administrative Judge: Dr. Oscar H. Paris.

August 28, 1986.

Notice is hereby given that an informal evidentiary hearing will be held concerning the application by Babcock and Wilson (B&W) for an amendment to its special nuclear materials license (No. SNM-414) to allow it to operate a Volume Reduction Services Facility (VRSF) in Parks Township, Pennsylvania. The VRSF would employ a high-force compactor and an incinerator that would be utilized to reduce the volume of low-level radioactive waste (LLW) generated by medical facilities, institutions, industry, and nuclear power plants. After volume reduction, the volume reduced LLW would be shipped elsewhere for disposal. The application was filed on October 31, 1984 pursuant to the Atomic Energy Action of 1954, as amended, and the National Environmental Policy Act of 1969.

The informal hearing will commence on September 30, 1986 at 9:00 a.m., local time, in the Apollo Community Center, 405 North Pennsylvania Avenue, Apollo, Pennsylvania and will continue at the direction of the Presiding Officer.

The subject of the hearing will pertain to fourteen complaints raised by Intervenors John P. Bologna and Frutie Johnson relating to the health and safety of the public and protection of the environment, as admitted in the Memorandum and Order (Ruling on Supplemental Petitions, Procedure, and Schedule) issued June 23, 1986 (LBP-86-19) and amended by the Memorandun and Order (Ruling on Licensee's Request Relating to License Amendment for Compactor) Issued July 1, 1986 (unpublished). A late-filed petition to intervene by Ms. Cindee Virostek on behalf of the Kiski Valley Coation to Save Our Children, dated August 2, 1986 and served August 18, 1986, remains to be ruled on, pending receipt of responses from the parties.

Procedures with respect to the presentation of evidence and examination of witnesses was set forth in LBP-86-19. Questions to be answered by witnesses with respect to their testimony will be set forth in another memorandum and order to be issued in the near future.

The public is invited to attend the informal hearing. An appropriate opportunity will be provided during the course of the hearing for persons not party to the proceeding to make a limited appearance pursuant to 10 CFR 2.715(a), by means of an oral statement on the issues. The terms under which limited appearances are to be made will be established by the Presiding Officer.

It is so ordered.

Bethesda, Maryland

Presiding Officer.

Dr. Oscar H. Paris,

Administrative Judge.

[FR Doc. 86-20176 Filed 9-5-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 707; Docket No. C86-3]

Order on Filing of Complaint of United Parcel Service

Issued September 3, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

On August 28, 1986, United Parcel Service (UPS) filed a complaint with the Commission under 39 U.S.C. 3662. UPS asserts that the rates for parcel post currently do not cover their attributable costs and make no contribution to nonattributable costs. UPS requests that the Commission promptly hold hearings and issue a recommended decision to increase parcel post rates to a level sufficient to cover those costs.

UPS states that it is a competitor of the Postal Service, particularly for parcel post. UPS says that in the most recent omnibus rate case, Docket No. R84-1, the Commission found that parcel post must have a cost coverage of 116 percent to meet the requirements of the Postal Reorganization Act (Act). Citing the Commission's decision in MC86-1, UPS asserts that, in fiscal 1985, parcel post rates did not cover their attributable costs and made no contribution to nonattributable costs. UPS predicts that the cost coverage for parcel post will continue to erode. UPS reports its understanding that a postal rate increase is unlikely for 10 months to 2 years.

UPS argues that the current parcel post rates constitute unfair competition, particularly in the near zones. Citing sections 403(c) and 3622(b)(1) of the Act, UPS says the current schedule constitutes an undue or unreasonable discrimination among users, as well as an undue or unreasonable preference to certain users.

Under the Commission's rules of practice (39 CFR 3001.84) the Postal Service has 30 days to file an answer to a complaint. The date for the Postal Service's filing an answer is therefore September 29, 1986.

The Commission appoints Stephen A. Gold, Director of the Office of the Consumer Advocate, to represent the interest of the general public in this proceeding.

It is ordered:

(1) The Postal Service is to file an answer to the complaint of United Parcel Service by September 29, 1986.

(2) Stephen A. Gold, Director of the Office of the Consumer Advocate, is appointed to represent the interests of the general public in this proceeding.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86-20111 Filed 9-5-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24176]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 28, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 22, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addressees specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as

amended, may be granted and/or permitted to become effective.

James River Paper Company, Inc, et al (31–817)

James River Paper Company, Inc., Tredegar Street, Richmond, Virginia 23217, a Virginia corporation whose ultimate parent is James River Corporation, a Virginia corporation, has filed an application pursuant to Section 2(a)(3) of the Act for an order declaring it and its subsidiaries (collectively, "James River") not to be an electric utility company for the purposes of the Act as a result of the transactions summarized below.

James River Corporation proposes to acquire certain assets from Premoid Corporation, a Delaware corporation ("Premoid"), and its subsidiaries, Whitman Products Limited, a New York corporation ("Whitman"), Agawam Canal Co., Inc., a Delaware corporation ("Agawam"), and Trimco Incorporated, a Massachusetts corporation ("Trimco") (collectively, "Premoid Group"). Certain of the assets ("Assets") will be transferred by the Premoid Group directly to James River, a company engaged in the specialty and communications paper businesses, at the closing of the acquisition. These Assets include (i) a plant in West Springfield, Massachusetts, at which Premoid engages in the specialty paper business and Trimco engages in the business of designing and selling artificial leather products ("Plant"), and (ii) a dam and canal owned by Agawam with which Premoid operates a hydroelectric facility ("Facility") which supplies electric power to the Plant.

Premoid has previously sold excess electric power to Western Massachusetts Electric Company ("Western"). James River also intends to sell electric power produced by the Facility in excess of the requirements of the Plant to Western. For the six months ended June 30, 1985, Premoid produced a total of 3,248,000 KWH of electricity at the Facility and purchased approximately 989,000 KWH from Western. During the period, Premoid used a total of 3,439,000 KWH and sold approximately 800,000 KWH to Western at an approximate price of $28,000. For the six months ended June 30, 1985, the assets to be sold produced net revenues of approximately $22,984,911 and net income after tax of approximately $1,882,649.

For six months ended December 27, 1985, James River had net revenues of approximately $503,134,000 and net income after tax of approximately $7,101,000. Based upon these figures, it is estimated that upon completion of the acquisition of the Assets, James River will derive an estimated 0.005% of its revenues from the sale of electricity produced at the Facility.

It is asserted that James River is primarily engaged in nonutility businesses and will sell only a small amount of electric energy to Western, it is not necessary in the public interest or for the protection of investors and consumers that James River and its subsidiaries be considered an electric utility company for purposes of the Act.

New England Electric System, et al. (70–7088)

New England Electric System ("NEES"), a registered holding company, and eight of its subsidiaries, Granite State Electric Company ("Granite"), Massachusetts Electric Company ("Mass Electric"), the Narragansett Electric Company ("Narragansett"), NEES Energy, Incorporated ("NEES Energy"), New England Electric Transmission Corporation ("NEET"), New England Energy, Incorporated ("NEEI"), New England Power Company ("NEP"), and New England Power Service Company ("NEPSCO"), 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment to the application-declaration in this proceeding pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order in this proceeding date March 28, 1985 (HCAR No. 23642), NEES, Granite, Mass Electric, Narragansett, and NEPSCO were authorized to participate in the NEES Money Pool ("Money Pool") through March 31, 1987. NEP has also received authorization to participate in the Money Pool through December 31, 1987. (HCAR No. 23484 (November 19, 1984)). These companies, together with NEES Energy, NEET, and NEEI, now propose to amend the terms of the Money Pool in the following manner: (1) NEES Energy and NEEI would participate as lenders of their surplus funds; (2) NEET would participate both as a lender of its surplus funds and as a borrower, through March 31, 1987, of up to $10,000,000 outstanding at any one time; (3) a borrower with the ability to issue commercial paper would pay interest at a rate equal to the weighted monthly average of the rates of its own outstanding commerical paper, rather than the outstanding commercial paper of all of the members of the Money Pool, as the current terms provide; (4) members without the ability to issue commercial paper would borrow at an interest rate of 1.08 times the monthly average of the rate for high grade 30-day commercial paper sold through dealers by major corporations as published in the Wall Street Journal; and (5) among borrowers paying the same rate, loan requirements of $1,000,000 or less will be met first.

The Columbia Gas System, Inc., et al. (70–7276)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and TriStar Ventures Corporation ("TVC"), a wholly owned subsidiary of Columbia, have filed an application-delaration pursuant to sections 6(b), 9(a), 10, 12(b), and 13(b) of the Act and Rules 45, 87, 90, and 91 thereunder.

TVC proposes to issue and sell up to $25 million of common stock, $25.00 par value, and/or unsecured installment promissory notes all of which will be acquired by Columbia except that some of the notes may be issued to nonaffiliated third parties, and, if so issued, said notes may be guaranteed by Columbia. TVC proposes to use the proceeds to invest in qualifying cogeneration facilities ("Qualifying Facilities") as defined pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the rules and regulations promulgated thereunder by the Federal Energy Regulatory Commission and as permitted by Public Law No. 99–186, December 18, 1985, 99 Stat. 1180 authorizing gas utility holding company systems to acquire interests in such Qualifying Facilities. These investments in Qualifiying Facilities may be in the form of the acquisition of stock, participation in partnerships and joint ventures, the making and/or guaranteeing of loans, and entry into other contractual arrangements. TVC's investment in any Qualifying Facility will not exceed 50% of that facility's voting securities. Investments in joint ventures will also be subject to a maximum 50% participation level. To permit flexibility, TVC requests authorization to negotiate the acquisition of any such interests subject to the $25 million maximum commitment without further Commission authorization. The interest rate on the installment promissory notes proposed to be issued to Columbia will be equal to the actual cost of money to Columbia for its most recent sale of long-term debt or preferred stock. Such notes will be payable in 15 equal annual installments. No third-party financing obtained by TVC or guaranteed by Columbia will exceed a term of 10 years or bear an interest rate in excess of 115% of the prime rate in effect at the time of issuance.

It is further proposed that TVC will be furnished a variety of management, technical, financial, and legal services by Columbia Gas System Service Corporation, the service subsidiary of Columbia. In addition, employees of Columbia's distribution companies may also provide services to TVC from time to time.

American Electric Power Service Corporation, et al. (70–7296)

American Electric Power Company, Inc. ("American"), a registered holding company, and its subsidiary service corporation, American Electric Power Service Corporation ("Service Corporation"), both located at 1 Riverside Plaza, Columbus, Ohio 43215 have filed with the Commission a declaration pursuant to sections 6(a), 7 and 12(b) of the Act and Rules 42(b)(2) and 50(a)(2) promulgated thereunder.

Service Corporation seeks authorization to issue $10 million principal amount of unsecured, fixed-rate notes to banks or other financial institutions from time to time within 180 days of an order in this matter, pursuant to a fixed-rate term loan agreement ("Term Loan Agreement"). The proceeds of these fixed-rate notes will be used to refinance an unsecured, guaranteed promissory note in the principal amount of $10 million, which matures on October 14, 1986, and bears an interest rate of 11.71% per annum (HCAR No. 22926, May 3, 1983).

The Term Loan Agreement will provide that Service Corporation may pay the lender or lenders the principal amount of each note thereunder and accrued interest thereon, on a quarterly basis and reborrow the principal amount of each note on each repayment date. The fixed-rate notes will mature on a date not less than two nor more than ten years from the date of issuance. No compensating balances of commitment fees will be required. Each such note will bear interest on the unpaid principal amount at a fixed rate of interest no greater than 12% annum. American will guarantee the terms of the Term Loan Agreement.

Northeast Utilities (70–7297)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company has filed a declaration with this Commission pursuant to section 12(b) of the Act, and Rate 45 thereunder.

NU proposes to guarantee a tease ("Lease") entered into by its subsidiary Northeast Utilities Service Company ("NUSCO") with Century Executive Park West Limited Partnership. NUSCO has determined that additional office facilities are necessary to relieve overcrowding at its Seden Street facility and to permit consolidation of activities currently located at other facilities. Accordingly, NUSCO has entered into the Lease in order to provide such facilities. The Lease is for a term of 11 years, commencing on January 1, 1986, for an annual rental amount of $906,262. NUSCO has the option to cancel the Lease after January 1, 1990.

Kentucky Power Company (70–7298)

Kentucky Power Company ("KPCo"), 1701 Central Avenue, Ashland, Kentucky 41101, a subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

KPCo proposes to sell, in a series of transactions, certain of its assets to South Central Bell Telephone Company ("South Central"). The assets to be sold consist of electric power distribution poles which are jointly used by KPCo and South Central pursuant to a Pole Joint Use Agreement effective January 1, 1986 ("Joint Use Agreement"). Pursuant to the Joint Use Agreement, KPCo may require South Central to purchase up to 5% of the jointly used poles annually until an objective of 55.625% and 44.375% ownership, respectively, by KPCo and South Central is reached. KPCo currently owns approximately 87.5% of all jointly used poles. It is proposed that South Central's purchase of the jointly used poles will be funded by the payment of cash to KPCo in amounts equal to KPCo's Embedded Pole Cost calculated for each of the series of transactions pursuant to the terms of the Joint Use Agreement. In connection with each proposed transaction, the jointly used poles to be sold will be released from the lien of KPCo's Mortgage and Deed to Trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20185 Filed 9–5–86; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2249]

South Carolina; Declaration of Disaster Loan Area

Newberry and Union Counties and the adjacent County of York in the State of South Carolina constitute a disaster area due to heavy rains and flash flooding which occurred August 18–20, 1986. Applications for loans for physical damage may be filed until the close of business on October 27, 1986, and for economic injury until the close of business on May 27, 1987, at the address listed below. Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Building, 75 Spring Street, SW., Suite 822, Atlanta, Georgia 30303.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Business with credit available elsewhere	8.000
Business withot credit available elsewhere	4.000
Business (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 224906 for physical damage and for economic injury the number is 643400.

(Catolog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: August 27, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86–20118 Filed 9–5–86 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Friday, October 24, 1986, at the Federal Office Building, 301 South Park, Room 289, Helena, Montana, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449–5381.

Jean M. Nowak,

Director, Office of Advisory Council.

August 26, 1986.

[FR Doc. 86–20119 Filed 9–5–86 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 29, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.) The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44284

Date Filed: August 25, 1986.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 22, 1986.
Description. Application of Florida Express, Inc., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, requests authority to engage in foreign air transportation of persons, property, and mail for scheduled service between the following points: In the State of Florida: Orlando, Fort Lauderdale, Tampa and Palm Beach, on the one hand, and the Bahamas.

Docket No. 44312

Date Filed: August 29, 1986.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 22, 1986.
Description: Application of Compagnie National Air France, pursuant to section 402 of the Act and Subpart Q of the Regulations, for amendment of its foreign air carrier permit to incorporate the route changes which are the subject of the 1986 amendments to the French/U.S. bilateral Air Transport Services agreement.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 86-20154 Filed 9-5-86; 8:45 am]
BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During Week Ending August 29, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44293

Parties: Members of International Air Transport Association.
Date Filed: August 28, 1986.
Subject: Amend Rounding-Off Factor ex-Egypt Fares.
Proposed Effective Date: September 1, 1986.

Docket No. 44294

Parties: Members of International Air Transport Association.
Date Filed: August 28, 1986.
Subject: Delete 3% ULD Increase from UK to Japan.
Proposed Effective Date: October 1, 1986.

Docket No. 44300

Parties: Members of International Air Transport Association.
Date Filed: August 27, 1986.
Subject: Amend Proportional Rates for Japan.
Proposed Effective Date: October 1, 1986.

Docket No. 44301

Parties: Members of International Air Transport Association.
Date Filed: August 27, 1986.
Subject: Special Cargo Amending Resolution from People's Republic of China.
Proposed Effective Date: October 1, 1986.

Docket No. 44302

Parties: Members of International Air Transport Association.
Date Filed: August 27, 1986.
Subject: Family Fare from Japan to USA—New.
Proposed Effective Date: October 1, 1986.

Docket No. 44303

Parties: Members of International Air Transport Association.
Date Filed: August 27, 1986.
Subject: Family Fares from Japan to Guam/Saipan.
Proposed Effective Date: October 1, 1986.

Docket No. 44311

Parties: Members of International Air Transport Association.
Date Filed: August 28, 1986.
Subject: Amend Adjustment Factors—Japan to Europe.
Proposed Effective Date: October 1, 1986.

Docket No. 44314

Parties: Members of International Air Transport Association.
Date Filed: August 29, 1986.
Subject: Increase in Rates from Madagascar.
Proposed Effective Date: September 1, 1986.

Docket No. 44315

Parties: Members of International Air Transport Association.
Date Filed: August 29, 1986.
Subject: Canada/US-Israel Fares.
Proposed Effective Date: September 15, 1986.

Phyllis T. Kaylor,
Chief, Documentary Service Divisions.

[FR Doc. 86-20153 Filed 9-5-86; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 86-052]

Coast Guard Academy Advisory Committee

AGENCY: Coast Guard, DOT.
ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT on Wednesday and Thursday, October 8 and 9, 1986. The open session on Wednesday will be held from 1:30 p.m. to 3:30 p.m. Another open session will be held on Thursday from 9:00 a.m. to 11:00 a.m. The agenda for this meeting consists of the following items:

1. Faculty
2. Curricula

The Coast Guard Academy Advisory Committee was established in 1973 by Pub. L. 75-38 to advise on the course of instruction at the Academy and to make recommendations as necessary. Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Capt. David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S.

Coast Guard Academy, New London, CT 06320, phone (203) 444–8275.

Issued in Washington, DC on August 27, 1986.

James C. Irwin,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 86–20163 Filed 9–5–86; 8:45 am]

BILLING CODE 4910–14–M

[CGD–86–042]

Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea (72 COLREGS)

AGENCY: Coast Guard, DOT.

ACTION: Notice of granting of certificates of alternative compliance to vessels.

SUMMARY: This notice lists commercial vessels granted Certificates of Alternative Compliance between May 20, 1982 and October 22, 1985. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Regulations for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessels' special functions. The intent of this notice is to allow the mariner to be aware of the listing of these commercial vessels that have been granted Certificates of Alternative Compliance.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: LTJG Edward D. Zacharias, Office of Navigation, U.S. Coast Guard, (G–NSR–3), 2100 Second Street, SW., Washington, DC, 20593. Telephone (202) 267–0362.

SUPPLEMENTARY INFORMATION: Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules of light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The listing consists of commercial vessels granted certificates after authority of issuance was transferred to the Chief of the Marine Safety Division of the Coast Guard Districts on April 1, 1982 (33 CFR 81). The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. The Coast Guard has on record a total of 142 vessels that were granted Certificates of Alternative Compliance between May 20, 1982 and October 22, 1985. These vessels are incapable of complying with the 72 COLREGS light provisions. The following commercial vessels are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance.

Vessel and Official Number

The following vessel's after masthead lights are obstructed by a crane through their arc for one degree on either side of the centerline of the vessel:

1st Lt Alex Bonnyman.....680897
Cpl. Louis J. Hauge, Jr.....671969

The following vessel's two sets of "restricted in ability to maneuver" lights are obstructed by a crane and shall be positioned on the mast to provide a full 360° arc of visibility:

Dredge Wheeler..... Hull No. 2322

The following vessel's after masthead light is located 22.22 meters above the main deck:

Gem State..... 501712

The following vessels carry the masthead light on the centerline at a horizontal distance of 21.82 meters from the stem:

Glomar Arctic I.....654313
Glomar Arctic II.....654314
Glomar Arctic III.....654315

The following vessels' after masthead light is spaced horizontally 17.26 meters from the forward masthead light:

M/V Gulf Fleet No. 65.....659216
M/V Gulf Fleet No. 66.....661148
M/V Gulf Fleet No. 67.....665295
M/V Gulf Fleet No. 68.....667084
M/V Gulf Fleet No. 69.....669018
M/V Gulf Fleet No. 70.....674683

The following vessel's after masthead light is obstructed by a crane:

S/S Keystone State.....502569

The following vessel displays one all-round light instead of a masthead and sternlight. The vessel displays flare-up lights instead of restricted in ability to maneuver lights:

M/V Lakewood.....127752

The following vessel's forward masthead light is less than 60 feet from the stem of the vessel:

M/V Nantucket Clipper.....677685
M/V Newport Clipper.....661485

The following vessel's sidelights are forward of the masthead light. The vessel displays flare-up lights instead of restricted in ability to maneuver lights. The vessel's dredge side/safe lights are obstructed from view:

M/V Markham Usacoe ID No.....6002795
Dredge

The following vessel's masthead lights for towing are carried in the after mast position and split into two fixtures showing 10 points on either side of the vessel. The Not Under Command and Restricted In Ability To Maneuver lights are split and displayed at the side of the vessel. The shape for indicating a tow in excess of 200 meters cannot be seen from right ahead to 40 degrees forward of the beam on each side of the vessel. The not under command, restricted in ability to maneuver and aground shapes will be displayed on each side of the vessel to achieve all-round visibility. The forward masthead light is carried 5.39 meters (7.7 feet) above the hull. The after masthead light is carried at a horizontal separation of 19.89 meters (65.3 feet) aft of the forward masthead light:

R/V Moanna Wave.....I.D. No. HA 202XS

The following vessel carries a 260° white light at the stern:

M/V Ocean Explorer.....296607

The following vessel carries the sidelights forward of the masthead light:

M/V Tug Ohio.....200669

The following vessels carry the sidelights forward of the masthead light. The vessels after masthead light is 15.0 feet above the forward masthead light:

M/V PBI–MK1..... Hull No. 9511.
PFC. James Anderson, Jr.....679513

The following vessel has the forward and after masthead lights 10 feet off the centerline:

M/V Plattsburgh.....676440

The following vessel carries the forward masthead light 3.58 meters above the hull, and the after masthead light 3.11 meters above the forward masthead light:

M/V Point Counterpoint II..... 571776

The following vessels carry the forward anchor light 12 feet 4 inches above the hull. The after anchor light is 1 foot 5 inches higher than the foward anchor light. The sidelights are 7 feet 4 inches in front of the forward masthead light:

Potomac..... ID No. AG 25
PVT. Harry Fisher..... 684591

The following vessel carries the masthead light 22.0 feet above the main deck:

M/V Reiss Marine.....591064

The following vessel carries the masthead light 1 meter higher than the sidelights:

M/V Tigertayl..... 659628

The following vessel carries the masthead light 16 feet 11 inches above the main deck. The towing masthead lights are spaced 26 inches apart. The sidelights are 26 inches below the towing lights:

M/V Tug South Carolina 224431

The following vessel carries the masthead light 19 feet 10 inches above the main deck. The center towing masthead light is 49 inches above the masthead light, and the top towing masthead light is 36 inches above the center towing masthead light:

M/V tug Superior 210354

The following vessel carries the towing masthead lights 28 inches apart. The sidelights are 28 inches below the lowest towing masthead light and also forward of the masthead light:

M/V Tug Wisconsin 107302

The following vessels carry the masthead light 13.0 feet above the main deck, the towing mathead lights are spaced 16 inches apart, and the sidelights are 16 inches below the lowest towing masthead light:

M/V Arkansas 206972
M/V Arizona 230656
M/V Alabama 214376
M/V Colorado 227317
M/V Kansas 228596
M/V Massachusetts 227318
M/V Minnesota 206339
M/V Nebraska 228273
M/V Nevada 229795
M/V New Mexico 208117
M/V New York 211165
M/V North Dakota 207930
M/V Vermont 212455
M/V Washington 224791
M/V Wyoming 229004
M/V Tug Oklahoma 211746

The following vessels carry the masthead light 13.0 feet above the main deck, the towing masthead lights are spaced 16 inches apart, and the sidelights are foward of the masthead light:

M/V California 225914
M/V Connecticut 228554
M/V Delaware 223616
M/V Idaho 231180
M/V Illinois 212542
M/V Indiana 208915
M/V Iowa 213566
M/V Kentucky 229122
M/V Louisiana 214848
M/V Mississippi 214556
M/V Montana 228335
M/V New Jersey 223623
M/V Oklahoma 211746
M/V Pennsylvania 209376
M/V Rhode Island 230068
M/V Tennessee 214797
M/V Texas 214624
M/V Utah 206840
M/V Virginia 212640

The following vessels carry the after (second) masthead light at a designated horizontal masthead light from the forward masthead light:

Vessel	Official No.	After masthead light carried at a designated horizontal distance (in meters) from the forward masthead light
M/V Amanda Graham	672038	15.86 m
M/V Argosy Navigator	674683	14.64 m
M/V Argosy Pilot	67484	14.64 m
M/V Big Orange XXI	674377	15.25 m
M/V Gulf Service	682579	18.95 m
M/V Kenda	678511	16.39 m
M/V Laney Chouest	680844	16.46 m
M/V Indian Seal	557401	14.03 m
M/V Argosy Captain	663403	14.60 m
M/V Agnes Candies	659398	15.24 m
M/V Abshire Tide	663944	18.60 m
M/V Jan Tide	663943	16.66 m
M/V Al Tide	624385	14.60 m
M/V Boh Tide	617785	16.01 m
M/V Lulu Tide	620317	14.03 m
M/V Mire Tide	607756	17.10 m
M/V Munson Tide	616064	14.60 m
M/V Norris Tide	598140	15.60 m
M/V Pourciau Tide	619716	14.60 m
M/V Ramey Tide	606076	17.10 m
M/V Sutton Tide	597200	15.80 m
M/V Bolling Tide	619050	16.01 m
M/V Cannon Tide	620434	16.01 m
M/V Guillot Tide	583163	15.80 m
M/V Jensen Tide	606595	17.10 m
M/V Laughlin Tide	590786	16.60 m
M/V Loupe Tide	599087	15.80 m
M/V Toby Tide	618175	16.01 m
M/V Verret Tide	604111	17.10 m
M/V Wise Tide	621939	16.01 m
M/V Marsea Seventeen	6431121	14.80 m
M/V GSI Alaskan	656633	13.87 m
M/V Ramona Graham	656083	16.15 m
M/V Nicor Rebel	655966	17.98 m
M/V Nicor Power	659158	19.50 m
M/V Inter Service	655446	15.24 m
M/V Cape Fear	Hull No. 38	14.63 m
M/V William Tide	Hull No. 1076	15.24 m
M/V Sea-Fab 143	Hull No. 143	15.85 m
M/V Pro Surveyor	Hull No. 170	15.65 m
M/V Pro Navigator	Hull No. 171	15.85 m
M/V Clark Graham	Hull No. 162	15.85 m
M/V Sybil Graham	Hull No. 163	15.85 m
M/V PBR 385	Hull No. 1012	15.20 m
North American Ship Bldg. (Vessel Name Unknown)	Hull No. 125	16.60 m
M/V Petromar Sentry	Hull No. 1077	15.24 m
M/V Petromar Titan	Hull No. 1078	15.24 m
Gulf Outlet Marine Services (Vessel Name unknown)	Hull No. 8	15.24 m
M/V Petromar Quest	Hull No. 1079	15.24 m
M/V Petromar Royale	Hull No. 1080	15.24 m
M/V Point Bravo	Hull No. 1083	15.24 m
M/V Point Chaleur	Hull No. 1084	15.24 m
M/V Point Liberty	Hull No. 1085	15.24 m
M/V Point Normandy	Hull No. 1086	15.24 m
M/V Gulf Fleet 61	Hull No. 182	17.67 m
M/V Gulf Fleet 62	Hull No. 183	17.67 m
M/V Gulf Fleet 63	Hull No. 184	17.67 m
Leevac Shipyards (Vessel Name Unknown)	Hull No. 283	16.76 m
M/V Nicor Republic	Hull No. 35	17.98 m
M/V Nicor Empire	Hull No. 34	17.98 m
M/V Nicor Rebel	Hull No. 33	17.98 m
M/V Nicor Yankee	Hull No. 32	17.98 m
Sterkoder Mek Versted (Vessel Name Unknown)	Hull No. 100	14.50 m
Sterkoder Mek Versted (Vessel Name Unknown)	Hull No. 101	14.50 m
Sterkoder Mek Versted (Vessel Name Unknown)	Hull No. 103	14.50 m
Sterkoder Mek Versted (Vessel Name Unknown)	Hull No. 104	14.50 m
Halter Marine Inc. (Vessel Name Unknown)	Hull No. 1061	15.24 m
(Vessel Name Unknown)	Hull No. 100	17.00 m
Hudson Shipbuilders, Inc. (Vessel Name Unknown)	Hull No. 101	17.00 m
Hudson Shipbuilders, Inc. (Vessel Name Unknown)	Hull No. 106	17.00 m
Champion Swiftships (Vessel Name Unknown)	Hull No. 011	15.14 m
Champion Swiftships (Vessel Name Unknown)	Hull No. 010	15.14 m
Champion Swiftships (Vessel Name Unknown)	Hull No. 009	15.14 m
Leevac Shipyards (Vessel Name Unknown)	Hull No. 286	15.30 m
Leevac Shipyards (Vessel Name Unknown)	Hull No. 287	15.30 m

Dated: August 27, 1986.
Signed:

Martin H. Daniell,

RADM, USCG Chief, Office of Navigation.

[FR Doc. 86-20160 Filed 9-5-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 602; Ref: ATF O 1100.99B]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 25, Beer

Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.99A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 245, Beer, dated July 30, 1984, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to breweries. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by the Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms required by regulations including bonds,

applications, notices, reports, returns and records, under 27 CFR 25.3.

b. To approve applications by a brewer desiring to use a brewery for other purposes, not involving the production of beer or cereal beverage, under 27 CFR 25.23(c).

c. To approve the use of an alternate method or procedure, from those specified in regulations, for details of construction, equipment or methods of operation under 27 CFR 25.52(a)(3).

d. To withdraw approval of an alternate method or procedure, if the revenue is jeopardized or effective administration of the regulations is hindered by the approval, under 27 CFR 25.52(d).

e. To grant hearings and render final decisions on disapproved bonds or consents of surety, under 27 CFR 25.101(b).

f. To require the actual place of production to be shown on labels when the brewer's name, trade name, or brand name includes the name of a city which is not the place where the beer was produced, under 27 CFR 25.142(c).

g. To determine the similarity of a container to a bottle or can and the similarity of a container to a barrel or keg, under 27 CFR 25.155.

5. *Redelegation.*

a. The authorities in paragraphs 4a, 4b, 4c and 4d above may be redelegated to Bureau Headquarters personnel not lower than the position of branch chief.

b. The authorities in paragraphs 4f and 4g above may be redelegated to Bureau Headquarters personnel not lower than the position of ATF specialist.

c. The authority in paragraph 4b above to approve applications to use the brewery for other purposes which are in the public interest because of emergency conditions may be redelegated to regional directors (compliance), who may redelegate this authority to personnel no lower than the position of chief, technical services or area supervisor.

d. The authorities in paragraphs 4b and 4c above may be redelegated to regional directors (compliance) to approve, without submission to Headquarters, requests which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate these authorities to personnel not lower than the position of technical section supervisor.

e. The authority in paragraph 4e above may not be redelegated.

6. *For Information Contact.* Robert Trainor, Procedures Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566-7602.

7. *Effective Date.* This delegation order becomes effective on September 8, 1986.

Approved: August 25, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-20057 Filed 9-5-86; 8:45 am]

BILLING CODE 4810-13-M

[Notice No. 603; Ref: ATF O 1100.91B]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum

Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.91A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 211, Denatured Alcohol and Rum, dated May 10, 1984, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to the distribution and use of denatured alcohol and rum. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms required by regulations under 27 CFR 20.21(a).

b. To approve, pursuant to written applications, alternate methods or procedures (including alternate construction or equipment, but excluding action on general-use formulas) in lieu of methods or procedures specifically prescribed in regulations, under 27 CFR 20.22(a).

c. To withdraw approval of any alternate method or procedure whenever the revenue is jeopardized or the effective administration of the regulations is hindered, under 27 CFR 20.22(c).

d. To issue permits, pursuant to 27 CFR 20.242, to cover the use of specially denatured spirits by the United States or a governmental agency, under 27 CFR 20.25.

e. To approve the printing of extraneous matter on labels which are to be used on containers of completely denatured alcohol of 5 gallons or less, under 27 CFR 20.147.

f. To authorize other marks to be placed on the Government head or side of a package, under 27 CFR 20.178.

g. To approve applications and grant permits on ATF Form 5150.33, Spirits for Use of the United States, for the procurement and withdrawal of specially denatured spirits for use by the United States or any governmental agency, and to receive evidence of authority to sign for the head of an agency or subagency, under 27 CFR 20.242.

h. To cancel permits issued under 27 CFR 20.245.

i. To authorize the disposition of excess specially denatured spirits in the possession of a governmental agency, under 27 CFR 20.246.

5. *Redelegation.*

a. The authorities in paragraphs 4a and 4c above may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 4b and 4d through 4i above may be redelegated to personnel in Bureau Headquarters not lower than the position of ATF specialist.

c. The authority in paragraph 4b above may be redelegated to regional directors (compliance) to approve, without submission to Bureau Headquarters, subsequent applications for alternate methods or procedures and processes which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of technical section supervisor.

d. The authority in paragraph 4i above may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than the position of technical section supervisor or area supervisor.

e. The authority in paragraph 4c above may be redelegated to regional directors (compliance) to withdraw approval of alternate methods or procedures which were approved at the regional level. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of chief, technical services.

f. The authority in paragraph 4f above may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than

the position of technical section supervisor.

6. *For Information Contact.* Mary B. Lerch, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566–7602.

7. *Effective Date.* This delegation order becomes effective on September 8, 1986.

Approved: August 25, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86–20058 Filed 9–5–86; 8:45 am]

BILLING CODE 4820–13–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Jill Cottine, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joe Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 2, 1986.

By direction of the Administrator.

Raymond S. Blunt,

Director, Office of Program Analysis and Evaluation.

Extension

1. Department of Veterans Benefits.
2. Veterans' Job Training Act (previously named the Emergency Veterans' Job Training Act of 1983).
3. VA Forms 22–8929, 22–8930, 22–8931 and 22–8932.
4. On occasion; Monthly; and Quarterly.
5. Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.
6. 217,000 responses.
7. 109,135 hours.
8. Not applicable.

Extension

1. Department of Medicine and Surgery.
2. Authorization and Invoice for Medical and Hospital Services.
3. VA Form 10–7078.
4. Non-recurring.
5. Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.
6. 252,000 responses.
7. 10,080 hours.
8. Not applicable.

[FR Doc. 86–20166 Filed 9–5–86; 8:45 am]

BILLING CODE 8320–01–M

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Special Medical Advisory Group will be held on September 18 and 19, 1986. The session on September 18 will be held at the Sheraton Carlton Hotel, 923 Sixteenth Street, NW., Washington, DC 20006, and the session on September 19 will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The session on September 18 will convene at 6 p.m. and the session on September 19 will convene at 6 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Kathy Eller, Secretary, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389–5156) prior to September 12, 1986.

Dated: August 27, 1986.

Rosa Maria Fontanez,

Committee Management Office.

[FR Doc. 86–20167 Filed 9–5–86; 8:45 am]

BILLING CODE 8320–01–M

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VOL 51 ISS 173 SE 8 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Commission on Civil Rights	1
Federal Communications Commission	2
Federal Home Loan Bank Board	3

1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW, Room 512, Washington, DC 20425.

DATE AND TIME: Thursday, September 11, 1986, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Staff Director's Report (July and August)
  A. Status of Funds
  B. Personnel Report
  C. Office Director's Reports
IV. Updated Findings and Recommendations of the Alabama Advisory Committee Report on Police/Community Relations in Montgomery
V. Rhode Island SAC Report
VI. Economic Progress of Black Men in America
VII. Commission Appropriation for Fiscal Year 1987
VIII. Civil Rights Development in Northwestern Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376–8314.

William H. Gillers,
Solicitor, 376–8339.
[FR Doc. 86–20265 Filed 9–4–86; 2:14 pm]
BILLING CODE 6335-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

FCC to hold open Commission meeting Wednesday, September 10, 1986 at 2:30 P.M.

September 3, 1986

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 10, 1986, which is scheduled to commence at 2:30 P.M., in Room 856, at 1919 M Street, NW., Washington, DC

Agenda, Item No., and Subject

Hearing—1—Title: Motion for Waiver of § 1.301(b) and Petition for Leave to File Applications, Approval of Settlement Agreement and Related Relief in the Los Angeles, California KHJ–TV (RKO) comparative renewal proceeding. Summary: The Commission will consider a Joint Motion to waive its rules prohibiting appeals of ALJ's interlocutory rulings in Docket Nos. 16679 and 16680. The parties request waiver in order to enable the Commission to address the parties' proposed settlement agreement of this comparative case.

Private Radio—1— Title: Amendment of Part 90 Subpart M and S of the Commission's Rules. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making which addresses the elimination of Subpart M and the modification of Subpart S as it applies to trunked Specialized Mobile Radio systems.

Common Carrier—1—Title: In the Matter of Notice of Proposed Rulemaking to Amend Part 31 Uniform Systems of Accounts for Class A and B Telephone Carriers to Account for Judgments and other Costs Associated with Antitrust Lawsuits, and Conforming Amendments to the Annual Report Form M (CC Docket No. 85–64). Summary: The Commission will consider a Report and Order adopting policies and rules governing the manner in which carriers subject to the USOA are to record payments incurred for antitrust judgments and settlements, and the expenses of litigating antitrust proceedings.

Mass Media—1—Title: Telecommunications in the TV Vertical Blanking Interval. Summary: The Commission will consider adoption of a Report and Order concerning the use of certain lines in the TV vertical blanking interval for telecommunication purposes.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

Issued: September 3, 1986.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86–20223 Filed 9–4–86; 10:48 am]
BILLING CODE 6712-01-M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE:

Wednesday, September 24, 1986 (9:00 a.m.—4:30 p.m.)
Thursday, September 25, 1986 (9:00 a.m.—11:30 a.m.)

PLACE: Quality Inn Pentagon City, 300 Army Navy Drive, Arlington, Virginia.

STATUS: Federal Savings and Loan Advisory Council.

CONTACT PERSON FOR MORE INFORMATION:

John M. Buckley, Jr. (202/377–6577)
Debra J. Abearn (202/377–6924)

MATTERS TO BE CONSIDERED:

1. FSLIC insured institutions vs. FDIC insured institutions—cost of funds currently being paid.
2. Policies and procedures regarding utilization of anticipated additional funds from recapitalization plan.
3. FSLIC/FDIC Mergers.
4. FSLIC institutions converting from FSLIC to FDIC insurance.

No. 7, September 4, 1986.

Jeff Sconyers,
Secretary.
[FR Doc. 86–20283 Filed 9–4–86; 8:45 am]
BILLING CODE 6720-01-M

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federal register

Monday
September 8, 1986

Part II

Occupational Safety and Health Review Commission

29 CFR Part 2200
Rules of Procedure; Final Rule

VOL 51 ISS 173 SE 8 1986 UMI

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This document thoroughly revises the procedural rules for adjudicative proceedings before the Occupational Safety and Health Review Commission and its Administrative Law Judges. The revisions codify rules that have been developed by Commission and appellate court decisions and modify existing rules or create new rules to remedy recurring procedural problems. The Commission's experience under its present rules had revealed the need for this comprehensive revision. The rulemaking proceedings conducted by the Commission have confirmed this necessity. The Commission therefore adopts these revised rules to allow the parties to conduct their litigation before the Commission and its Judges with greater speed, economy and fairness.

EFFECTIVE DATE: These revised rules will take effect on December 8, 1986. They apply to all cases docketed on or after that date. They also apply to further proceedings in cases then pending, except to the extent that their application would be infeasible or would work injustice, in which event the present rules apply.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 634-4015.

SUPPLEMENTARY INFORMATION:

Rulemaking Proceedings

On June 25, 1986, the Occupational Safety and Health Review Commission published in the Federal Register a proposal to adopt a comprehensive revision of its Rules of Procedure. 51 FR 23184-23208. The notice fully explained the procedures followed by the Commission in developing its proposal and the basis and purpose of the proposed rules. The notice included a request for public comment.

In response, 21 organizations and individuals filed comments with the Commission. These commentators capably represented the full spectrum of those who will be affected by the revised rules. The most extensive comments were filed by the Deputy Solicitor of Labor on behalf of the Secretary of Labor. The Office of the Solicitor represents the Secretary in all adjudicative proceedings before the Commission. The other parties in Commission proceedings are employers who have been cited by the Secretary for alleged violations of the Occupational Safety and Health Act of 1970, affected employees and employee representatives. Four attorneys in private practice who have represented employers in proceedings before the Commission filed comments, as did three unions that have represented affected employees.

Aside from the parties, those most directly affected by the Commission's Rules of Procedure are the Commission's Administrative Law Judges, whose proceedings are governed by these rules. Two Judges served on the Rules Committee that assisted the Commission in developing both the proposed and the final rules. In addition, the Rules Committee solicited the views of all of the Commission's Judges before preparing the committee's recommendations. Finally, nine of the Commission's Judges, including the Chief Administrative Law Judge, presented their comments and suggestions on the proposed rules.

The Commission also received comments from the following groups and individuals: the Administrative Conference of the United States (ACUS); the Motor Vehicle Manufacturers Association; James T. O'Reilly, an author and teacher in the labor and administrative law fields; and Susan Hnatt-Topf, an environmental inspector. The Commission gratefully acknowledges its receipt of all of these comments and assures the commentators that all comments were fully considered, though they may not be specifically mentioned here.

Following its receipt of the comments, the Commission met in joint session with its Rules Committee to consider the comments and to develop the final rules set forth in this document. The meeting was open to the public under the Government in the Sunshine Act, 5 U.S.C. 552b, and sessions were held on four different days. Numerous changes were made in the proposed rules, in response to comments or at the suggestion of individual Commissioners. Other changes urged by the commentators were considered but rejected. The final rules adopted by the Commission are the end product of this deliberative process.

Unchanged Rules

Many of the rules proposed by the Commission elicited only favorable comments or no comments. Those rules require no further discussion. The Commission has adopted those rules for the reasons stated in its notice of proposed rulemaking. 51 FR 23184-23208. Only those rules that commentators proposed changes in or the Commission changed are discussed here.

Computation of Time

Section 2200.4(a) instructs practitioners how to compute "any period of time prescribed or allowed in these rules." The proposed rule included the following provision: "When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and Federal holidays shall be excluded from the computation." The Secretary urged that the number "11" be substituted for "7" to eliminate the difference between the Commission's rule and Fed.R.Civ.P. 6(a) as it was recently amended. The Commission agreed with this suggestion and changed its final rule accordingly.

Extensions of Time

Section 2200.5 establishes procedures governing motions to extend filing deadlines. The proposed rule required that all such motions be made in writing, but "in exigent circumstances" permitted an oral request followed by a written motion. One of the unions urged that this rule be modified to "make clear that the oral requests must be done by conference call to include all the parties to the extent possible and if a party can not be notified the judge should be so advised."

The Commission rejected this suggestion. In its view, any marginal benefit that might be gained by imposing these requirements would be outweighed by the loss of needed flexibility in the procedures for handling requests for extension of time. The commentator presumably is concerned with the problem of a union or employee party not being notified when the Secretary or the employer seeks an extension of time. Based on its experience, the Commission does not believe that this is a significant problem. In the usual situation, the party requesting an extension of time will on his own initiative seek the concurrence of all other parties to the proceeding. If the requesting party does not do this, the Judge will normally condition his granting of the motion on prompt notification of all other parties. In those rare situations where a party does not receive notice of the oral request, notice will be given under these revised rules when the follow-up written motion is filed and served. The Commission believes that this provides adequate protection for the non-requesting parties.

The Commission did, however, make an unrelated change in its proposed rule. The first sentence has been modified to make clear that the rule applies to the extension of deadlines established by order of the Commission or its Judges as well as to the extension of time periods prescribed in the Commission's rules. With this slight modification, the Commission adopted its proposed rule as its final rule.

Service and Notice

Section 2200.7 is the Commission's general rule on service and notice requirements. The final rule contains several provisions that differ from the proposed rule, in paragraphs (a), (g), (i) and (j). These changes will be discussed later in this document, in connection with §§ 2200.20, 2200.52 and 2200.60. With the exceptions of the modified provisions in paragraphs (a), (g), (i) and (j), the final revised rule is the same as the present rule.

Filing—Number of Copies

Section 2200.8(c) instructs practitioners as to how many copies of pleadings and other documents they must file with the Commission or the Judge. One of the Judges correctly observed that, under the proposed rule, parties would be required to file multiple copies of documents during the time period when a case is still before the Commission because it has not yet been assigned to a Judge. At that stage of the proceeding, multiple copies serve no useful purpose. The Commission therefore revised its final rule to provide that multiple copies shall be filed only if the case is pending before the Commission for purposes of review. When the case is pending before a Judge or if it has not yet been assigned to a Judge, only the original of the document will be filed.

The same Judge also suggested that there is an inconsistency between §§ 2200.8(c) and 2200.91(h). Section 2200.91(h) requires parties to file an original and *three* copies of a petition for discretionary review or a statement in opposition to a petition. However, § 2200.8(c) requires parties to file an original and *four* copies of documents when the case is pending before the Commission on review.

At the outset, the Commission notes that there is no conflict between these two rules. Section 2200.8(c) is a general provision that applies "[u]nless otherwise . . . stated . . . ." Thus, with respect to PDR's and statements in opposition, the general provision is preempted by the specific provision at § 2200.91(h). Also, while the two requirements are different, they are not inconsistent. For internal administrative reasons, the Commission needs one less copy of PDR's and statements in opposition than it does of other review documents, notably the parties' briefs on review. Thus, the difference between the two rules is intentional.

Trade Secrets and Other Privileged or Confidential Matters

Extensive comments were filed by Mr. O'Reilly concerning the handling of trade secret issues under the Commission's proposed Rules of Procedure. In particular, Mr. O'Reilly raised concerns over future litigation under 29 CFR 1910.1200, the Secretary's hazard communication standard. As pointed out by Mr. O'Reilly, the principal issue in some of the cases arising under this standard will be whether particular information is properly classified as a trade secret.

While Mr. O'Reilly suggested that the Commission develop a separate and more stringent rule for handling § 1910.1200 cases, his comments caused the Commission to re-examine the adequacy of the rule in all cases. As a result of this re-examination, the Commission decided to substantially revise proposed § 2200.11. The Commission believes that the new rule at § 2200.11 that it has adopted as its final rule will provide adequate protection in all cases involving trade secrets, as well as other privileged or confidential information, including cases arising under § 1910.1200.

It bears emphasis that the revised rule applies to all claims of privilege that are asserted before the Commission at any stage in the proceedings. Several of the comments concerning the proposed rule revealed a need to clarify the scope of the rule. For example, the Secretary raised the question of whether the rule would cover an employee's "substantial privacy interest in . . . medical records [maintained by his employer]." He noted that "personally identifiable medical records of an individual" might not, strictly speaking, be considered "privileged" information entitled to protection under the rule, although the Commission and the courts, including the Supreme Court, have recognized the confidential nature of this information. In connection with another rule, Mr. O'Reilly raised the question of whether the term "privileged" includes both the statutory privilege created by section 15 of the Occupational Safety and Health Act, 29 U.S.C. 664, and 18 U.S.C. 1905, and the evidentiary privileges recognized under the Federal Rules of Evidence. Finally, Ms. Hnatt-Topf objected to the prospect that the Commission would "expand" trade secret protection.

Taking this last comment first, the Commission notes that it misapprehends the rule. The Commission's final rule at § 2200.11 contains no substantive provisions governing the determination of what matters are trade secrets and what matters are otherwise classified as "privileged' or "confidential" information. Instead, the Commission's rule merely establishes procedures to be followed to protect the confidentiality of matters that are entitled to protection under other sources of substantive law. In response to the questions raised by the Secretary and by Mr. O'Reilly, the Commission notes that the privileges asserted may be based on statute (e.g., 29 U.S.C. 664 and 18 U.S.C. 1905), the Federal Rules of Evidence, a regulation (e.g., § 1910.1200) or case law (e.g., the employee's privacy interest in his medical records). As stated in § 2200.11(a), the rule applies to any "information the confidentiality of which is protected by law."

The rule also applies to claims that are raised at any point in the proceeding. For example, the rule applies to discovery procedures that could lead to the disclosure of privileged information. Indeed, a specific provision has been included in the rule relating to requests for entry upon land. Often in the Commission's experience, such requests by the Secretary have led to claims by the employer that an entry upon land for the purpose of preparing an expert witness to give testimony at the hearing would lead to the disclosure of trade secrets. Under § 2200.11(f)(3), the Judge has the authority in this situation to stay the proceedings before him so that the Secretary may seek to obtain a search warrant or some other court order compelling entry and containing judicially enforceable protective conditions. In response to comments by unions on a related proposed rule, this provision has been broadly written to cover situations where the party seeking entry is not the Secretary.

The rule also applies in a situation described by Mr. O'Reilly. Mr. O'Reilly noted that, in the process of establishing a trade secrets claim, a party may be compelled to divulge privileged or confidential information. The Commission's final rule is written broadly enough to cover such matters as affidavits or testimony offered in support of a claim of privilege, when the supporting evidence is itself privileged or confidential. (E.g., § 2200.11(d)—"In examining a claim of privilege, the Judge may enter such orders and impose such

terms and conditions on his examination as justice may require . . . .") Other situations in which the Commission anticipates that the rule will be applied include (a) objections to testimony during a hearing on the ground that the evidence sought is privileged and (b) motions to quash subpenas duces tecum on the ground that the documents sought contain privileged information.

Once a claim of privilege is raised, the Judge is given broad discretion under the final rule to take whatever actions are necessary to protect the confidentiality of the allegedly privileged information, including the power to enter protective orders, to condition disclosure upon entry into a written confidentiality agreement, to permanently seal parts of the record, to exclude the public from a hearing room, and even to receive ex parte communications outside of the presence of the other parties and their representatives. The Commission anticipates that all of these powers, and particularly the authority to receive allegedly privileged information ex parte, will be exercised sparingly. The Judge should be mindful of his responsibility to the other parties in the proceeding, who must at a minimum be given sufficient information to enable them to challenge the claim of trade secrets or other privilege. Where these extraordinary powers are exercised, however, the Judge should also exercise his authority under § 2200.11(d)(3) to compel the preparation and service of summaries of or excised copies of documents withheld from full disclosure.

The final rule also contains provisions, in paragraph (f), protecting the confidentiality of information during the pendency of an appeal from a Judge's overruling of a claim of privilege. The Commission notes that a Judge should not reveal information that a party has asserted to be privileged even though the Judge has rejected the claim, so long as the party continues to pursue his claim through appropriate legal channels. *See, e.g., Massman-Johnson (Luling),* 80 OSAHRC 44/B8, 8 BNA OSHC 1369, 1378, 1980 CCH OSHD ¶ 24,436, p. 29,810 (No. 76–1484, 1980).

References to Cases

One of the Judges opposed the adoption of proposed § 2200.12, a new rule that codifies current Commission practice on the citing of cases. In the Judge's view, the rule is not properly included in the Rules of Procedure. The Commission disagreed and therefore adopted the proposed rule, with a slight modification noted below.

The inclusion of § 2200.12 in the Rules of Procedure makes it more likely that counsel will become aware of the Commission's preferences and thereby aid the work of the Commission. As noted previously in the preamble to the proposed rules, even though the rule uses the term "should," counsel representing parties are nevertheless expected to be guided by the rule and thereby to fulfill their responsibilities to be helpful and informative to the Commission.

The final rule contains one slight change from the proposed rule. While all of the provisions of the rule are advisory, paragraph (b)(1) was revised to make clear that the Commission expects compliance with this provision only where the practitioner has reasonable access to a CCH or BNA reporter.

Employee Election of Party Status

Several commentators, including all three unions that filed comments, objected to the Commission's proposed revision of § 2200.20(a), which governs the election of party status by affected employees or their authorized employee representatives. These comments were directed to two specific provisions of the proposed rule: (a) a requirement that party status be elected "at least ten days before the hearing" and (b) a statement that affected employees or their authorized employee representative "may elect party status concerning any matter in which the Act confers a right to participate." The Commission rejected these comments and adopted the provisions as proposed. However, in response to a request by the Secretary, the Commission added a new provision concerning service of a notice of election, as discussed below.

The question of whether to impose a time limitation on employee elections of party status was a matter that was thoroughly discussed in developing the Commission's proposed rules. In proposing its revision of § 2200.20(a), the Commission took the position that a time limitation was necessary in order to allow for orderly adjudication and to prevent prejudice to the other parties. Nothing in the comments it received has caused the Commission to change its opinion. The Commission remains convinced that allowing last-minute elections of party status by unions or employees can result in the disruption of extensive trial preparation efforts by the Secretary and the employer. A last-minute election can result in the calling of unanticipated witnesses, the introduction of unanticipated exhibits, and the interjection of unanticipated issues or arguments. Under the Commission's revised rules, the Secretary and the employer will be compelled to examine their cases and to state their positions on the issues and their trial plans well in advance of the hearing. Fairness to the Secretary and the employer requires that union parties and affected employee parties do the same.

Two of the union commentators vigorously objected to the provision limiting the election of party status to "any matter in which the Act confers a right to participate." In addition, the Secretary stated his qualified objection, as follows:

> It is the position of the Secretary that employee-parties in cases initiated by the employer notice of contest are entitled to conduct discovery, present and cross-examine witnesses and submit briefs on all issues raised in the case. What employee-parties may not do is raise issues not raised by the Secretary or the employer, object to settlement agreements between the Secretary and employers (except as to the reasonableness of abatement dates), or object to the withdrawal of citations by the Secretary. To the extent that the language of proposed Rule 20 and the comments explaining the revision reflect a contrary view by the Commission, the Secretary must state his objection.

The Commission does not necessarily disagree with the Secretary's view of the rights of employee parties under the Act. The Secretary's statement appears to be a fairly accurate summary of existing case law on the subject, although the question of whether an employee party can raise issues not raised by the other parties is probably an open question at this point. Nevertheless, whether the Commission agrees or disagrees with the Secretary's position is irrelevant to this rulemaking proceeding. Section 2200.20(a) does not codify *any* view of employee rights under the Act. It simply states that, whatever those rights are, affected employees and their authorized employee representatives have exactly the same rights under the Commission's Rules of Procedure. The fear of the union commentators that the proposed rule would have restricted employee rights overlooks the fact that the rule leaves to substantive case law the determination of what those rights are.

While rejecting the comments discussed above, the Commission did make one change from the proposed version of § 2200.20(a). The Secretary noted that, in his experience, employees or unions electing party status frequently do not give the other parties notice of their election. He suggested that the rule include a reference to the service and notice requirements of § 2200.7. The Commission agreed with this comment and accordingly added a sentence to its final rule concerning

VOL 51 ISS 173 SE 8 1986 UMI

service of notice that affected employees or their authorized employee representatives have elected party status. A similar comment was received and a similar change was made to § 2200.21, the rule on interventions.

The Secretary also proposed a related change in § 2200.7(g). That rule sets forth the contents of a notice to affected employees that must be posted after a case is docketed with the Commission. The Secretary suggested that, in view of the Commission's adoption in § 2200.20(a) of a time limitation on the election of party status, the notice to affected employees should warn employees of that limitation. The Commission agreed with this comment and modified § 2200.7(g) accordingly. Under the revised rule, the posted notice states that affected employees must file their notice of intent to participate no later than 10 days before the hearing. Authorized employee representatives receive this same warning when copies of the posted notice are served on them under § 2200.7(h).

Representation of Parties

The Commission received two comments suggesting changes in § 2200.22, which relates to the representation of parties and intervenors in Commission proceedings. Mr. O'Reilly urged the adoption of a new provision excluding self-represented parties (presumably affected employees) from access to trade secrets in cases arising under § 1910.1200, the Secretary's hazard communication standard. He raised the possibility that a person initially denied access to a trade secret under the standard might later gain that access as a party in proceedings before the Commission. The Commission agreed that Mr. O'Reilly had raised a valid concern, but it did not agree that the way to address the problem was by placing a limitation on self-represented parties in the rule at § 2200.22. Instead, the problem raised by Mr. O'Reilly was one of the factors taken into consideration in revising the Commission's procedures for handling trade secrets under § 2200.11. See discussion of that rule, above. Under the final revised rule at § 2200.11, the situation described by Mr. O'Reilly can be prevented by excluding parties or their representatives from the hearing room while the Judge receives privileged information ex parte.

The Commission also rejected as unnecessary a change proposed by the Secretary. Section 2200.22(c) states that, when more than one affected employee elects party status and there is no authorized employee representative, the Judge shall provide for the affected employees "to be treated as one party." The Secretary urged that this rule be modified to expressly grant the Judge authority to designate a representative for the group if the employees are unable to agree on a representative. The Commission considered that this authority is clearly implied in the rule as it was proposed.

Withdrawal of Counsel

The Commission also adopted its proposed § 2200.23 as its final rule. One of the Judges had suggested that the following provision be added to § 2200.23(b), which governs the withdrawal of counsel from a Commission proceeding: "A representative shall not be permitted to withdraw unless another representative enters his appearance or the party or intervenor enters his or its appearance pro se." However, the Commission rejected this suggestion. In the Commission's view, the proposed rule gave Judges sufficient discretion in controlling withdrawals. A rule requiring denial of the motion under the stated circumstances would have been too restrictive.

Notices of Contest

Section 2200.33 deals with the Secretary's receipt of notification of an intent to contest under section 10(c) of the Act. It requires the Secretary to notify the Commission of his receipt of this notice within 15 working days of the receipt and to transmit to the Commission copies of relevant documents and records.

Two comments were received in response to this proposed rule. One of the Judges objected to the extension of the time period prescribed in the rule from 7 to 15 working days. The Commission concluded, however, that the longer period is reasonable because it gives the Secretary an opportunity to pursue informal settlements of some cases under procedures set forth in his administrative directives but does not add significantly to the overall length of the proceeding.

In general, the Commission determined that the time periods for filing various documents under the present rules are inadequate. It concluded that the longer time periods allowed under its revised rules are more realistic given the circumstances of litigation under the Act. Moreover, it anticipated that, by allowing the parties more time under the rules, the necessity of *routinely* filing motions for extension of the time periods established by the rules will be eliminated. The Commission notes that the Secretary in several instances agreed with its view that the time periods under the present rule are inadequate.

The Secretary also filed comments on § 2200.33, in which he argued that the language of the rule should be "modified to explicitly state the requirement that the employer's notice of contest must be in writing." The Commission disagreed. The proposed rule was drafted to conform more closely than the present rule to the relevant statutory language. The proposed rule did not explicitly require a written document because the statute itself does not explicitly include this requirement. Under the statute an oral notice of contest may be adequate to vest jurisdiction in the Commission. The Commission therefore adopted proposed § 2200.33 as its final rule.

Employer Contests

Proposed § 2200.34 concerns the procedures for filing pleadings in a case initiated by an employer notice of contest under section 10(c) of the Act. The Secretary and one Judge filed comments that raised issues with respect to each of the four paragraphs contained in this proposed rule.

Paragraphs (a) and (d) established the deadlines for filing the Secretary's complaint and the employer's answer, respectively. Under the proposed rule, the Secretary was given 30 days to file a complaint (starting from the time he gives notice to the Commission under § 2200.33 of his receipt of notification of an intent to contest). The employer was then given 30 days from his receipt of the complaint to file his answer. The comparable time periods under the present rules are 20 and 15 days, respectively.

One of the Judges objected to the expansion of these two filing deadlines. The Secretary, on the other hand, argued that 30 days would not be sufficient time for him to prepare a complaint conforming to the new pleading requirements of § 2200.35. The Secretary contended that, at a minimum, the filing period should be 45 days.

After first considering and revising the pleading requirements of proposed §§ 2200.35 and 2200.36, see discussion of those rules, infra, the Commission reconsidered the question of what filing deadlines would be appropriate. The Commission concluded that the deadlines stated in the proposed rule are reasonable and adopted the proposed rules at paragraphs (a) and (d) as its final rules. As noted previously, the Commission determined that there was a general need to increase the deadlines established by the rules. With regard to the filing of the complaint and the answer, there was a particular need

VOL 51 ISS 173 SE 8 1986 UMI

to extend the deadlines because the revised rules impose more stringent pleading requirements on the parties and more time will be needed for the parties to comply with those requirements. On the other hand, the Commission concluded that the time period for filing a complaint should not be extended to 45 days, as requested by the Secretary. The Commission's final revised § 2200.35 is a hybrid of fact pleading and notice pleading, requiring less fact pleading than the proposed rule. See discussion of that rule, infra. This should make it possible for the Secretary in most cases to file his complaint within 30 days of his notice to the Commission. More generally, however, the Commission does not believe that in the usual contested case it should take long to draft a complaint. The elements of violations are generally set out clearly in the standards themselves and the Secretary's attorneys will be expected to draw upon the OSHA investigative file to supply any needed factual bases.

The Secretary also directed comments to paragraph (b) of proposed § 2200.34, which provides for the filing, by the employer, of a motion for more definite statement. The Secretary questioned the need for this provision and suggested that it would result in the filing of motions for improper purposes, e.g., as a discovery vehicle or for delay. The Commission rejected this comment. As noted by the Secretary, motions for more definite statement are already part of the Commission's procedures under the present rules, by virtue of § 2200.2 and Fed.R.Civ.P. 12(e). Paragraph (b) of § 2200.34 merely makes this point explicitly. The primary reason for including the provision is that it serves as a foundation for paragraphs (c) and (d) of § 2200.34. Paragraph (c) provides that the Secretary may be ordered to file an amended complaint if a motion for more definite statement is granted. Paragraph (d) provides for an extension of the time period for filing an answer when a motion for more definite statement has been filed.

The Commission emphasizes that the purpose of including paragraph (b) in § 2200.34 is *not* to encourage motions for more definite statement. Under the rule, the employer has the burden of proving that the defect in the complaint is such that he is not able to frame a responsive answer to the Secretary's allegations. *See generally American Can Co.*, 82 OSAHRC 5/A2, 10 BNA OSHC 1305, 1982 CCH OSHD ¶ 25,899 (No. 76–5162, 1982). Motions raising "nitpicking" objections to the way in which the Secretary has framed his complaint will not be looked upon with favor. The Commission believes that its Judges have sufficient discretionary authority under the rules to deal with employers who may file frivolous motions.

The Secretary also objected to a provision in paragraph (c) of proposed § 2200.34. Under the proposed rule, the Commission and its Judges could, on their own initiative, order the Secretary to file an amended complaint. The Secretary objected to this provision for several reasons. The Commission concluded that this objection was meritorious and accordingly deleted the provision from its final rule. With the exception of this revision in paragraph (c), the Commission adopted proposed § 2200.34 as its final rule.

Pleadings Under the Revised Rules

The Commission has substantially revised Subpart C of the Commission's procedural rules, which governs pleadings and motions. The new rules impose strict requirements on pleadings, particularly complaints. Their underlying philosophy departs significantly from that of the Federal Rules of Civil Procedure, which permit but do not require the specificity required by the new rules. The Occupational Safety and Health Act expressly authorizes the Commission to depart from the Federal Rules of Civil Procedure. Section 12(g) of the Act, 29 U.S.C. 661(g), states that the federal rules apply "[u]nless the Commission has adopted a different rule . . . ." The Commission has adopted a different rule in this matter, as it has in many other matters. As we shall explain below, pleadings to be useful in OSHA litigation must necessarily serve different functions than they do under the federal system. This difference in functions is reflected in the different requirements of the pleadings rules.

The Commission's present rule and practice, which have remained largely unchanged since the Commission's earliest days, follow the notice pleading format of the federal rules. Present § 2200.33(a)(2)(ii), requires only that the complaint state with "particularity . . . [t]he time, location, place, and circumstances of each . . . alleged violation . . . ." *See generally Allis-Chalmers Corp.*, 75 OSAHRC 86/F5, 3 BNA OSHC 1629, 1632, 1975–76 CCH OSHD ¶ 20,065, p. 23,872 (No. 5599, 1975) (Commission rules, like federal rules, require only notice pleadings), *aff'd*, 542 F.2d 27 (7th Cir. 1976). The proposed pleadings rules, by contrast, would have imposed a requirement for what has come to be called "fact pleading" by the commentators.

Most of the comments on the proposed pleading rules dealt with the central issue of whether the Commission should retain the "notice pleading" provisions of the present rule or adopt the stricter requirements of the proposed pleadings rules. Over half of the commentators addressed this issue and persuasive arguments were presented on both sides of the question. As noted previously, comments on the Commission's proposed revision of Part 2200 were received from four private practitioners who have represented employers in proceedings before the Commission. Three of these private practitioners specifically noted in their comments that they agreed with the Commission's view that changes in the present rule are needed in order to compel the Secretary to better evaluate the legal sufficiency of his case before he files his complaint. (The fourth private practitioner filed a general comment urging adoption of all of the Commission's proposed rules.) On the other hand, other commentators believed that the pleading requirements of the proposed rule would be unduly burdensome on the Secretary and would seriously impede his ability to enforce the Act.

In recognition of the competing concerns voiced by the commentators, the Commission made substantial changes in its proposed rule in an effort to accommodate the concerns raised by the Secretary and others, while still adhering to the remedial goals that led to the development of the proposed rule. The Commission's final rule at § 2200.35 is a hybrid rule that requires specific pleading of the factual basis of some elements of an alleged violation while allowing less detailed pleading of other elements.

If pleadings are to be useful in OSHA litigation, they cannot merely serve the functions they serve in federal court litigation. In the federal system, a complaint serves two basic functions. It initiates the litigation. Fed.R.Civ.P. 3. It also informs the defendant, by a short and plain statement, of the claim, showing that the plaintiff is entitled to relief. Fed.R.Civ.P. 8(a). The federal rules then leave to extensive and freely available discovery the function of narrowing the issues. Under the Occupational Safety and Health Act, however, it is the citation and the employer's notice of contest that actually initiate the litigation. See section 10(c) of the Act, 29 U.S.C. 659(c) (requiring the Secretary to immediately advise the Commission of notification of intent to contest the citation). Furthermore, as explained in more detail

below, the typical citation has already informed the employer of what OSHA's general objection is. As a practical matter, to permit the complaint to simply incorporate the citation by reference makes the complaint almost useless. Moreover, there is much less justification in OSHA litigation for failing to plead with specificity the allegations of a complaint. Unlike the federal scheme, OSHA litigation is preceded by the functional equivalent of the discovery process—the OSHA inspection and investigation made under sections 8 (a) and (b) of the Act, 29 U.S.C. 657(a) and (b). OSHA standards and regulations also pose more narrow issues than the typical federal statute. Therefore, in OSHA litigation the complaint can and should define the issues more clearly than the complaint filed in federal district courts.

In practice, most complaints before the Commission merely incorporate by reference the allegations of the citation. A copy of the citation is attached to the complaint. These citations "are drafted by non-legal personnel, acting with necessary dispatch." *National Realty & Construction Co.* v. *OSHRC*, 489 F.2d 1257, 1264 (D.C. Cir. 1973). Such complaints typically meet the minimal requirements for notice pleading, for the citations they incorporate by reference usually do inform an employer of what OSHA's general objection is. The Commission observed in the preamble to the proposed rules, however, that except for introducing an allegation of commerce coverage and raising affirmative defenses, pleadings under the present rules typically add nothing to the citation and the notice of contest. The preamble also noted that, because the present rules do not demand more detail than the citation contains, the Solicitor's Office generally files a standardized complaint. As a result, the preamble continued, problems with the Secretary's case that could be discovered and corrected at an early stage are frequently overlooked and the proceedings are unnecessarily prolonged. And because the typical answer broadly denies the only substantive allegation of the complaint—that violations occurred as described in the citation—the pleadings do not narrow the issues significantly. The Commission therefore cannot rely on the notice pleadings of the federal rules to accomplish in its proceedings the function of defining and narrowing issues.

In his comments on the proposed rules, the Secretary pointed out that under old state pleading codes that predated the federal rules, litigation tended to become a battle over the pleadings rather than a trial of the merits. However, the danger of a battle over the pleadings under the revised rules will not be nearly as great as it was under the old pleading codes. It bears emphasis that the Commission's final rules are a hybrid. See discussion on changes in the proposed rules, infra. Some of the pleadings rules still permit more generalized pleading. See, e.g., revised § 2200.35(b)(5). The revised pleadings rules are also accompanied by rules that permit liberal amendments. See revised § 2200. 35(f) (last sentence) and Fed.R.Civ.P. 15(a) (leave to amend "shall be freely given when justice so requires") and 15(b) (pleadings to be conformed to the evidence). Unlike the old code pleading rules, the revised rules do not create a straitjacket for the pleader, requiring him to "commit . . . himself unreservedly to a course of action and a factual statement from which he could not deviate because of rules against 'variance' . . . ." Skinner, "Pre-Trial and Discovery Under the Alabama Rules of Civil Procedure," 9 Ala.L.Rev. 202, 204 (1957), *quoted in* 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1202, pp. 62–63 (1969).

Thus, if an employer moves under Fed.R.Civ.P. 12(b)(6) to dismiss the complaint on the ground that a necessary allegation is missing, or that a necessary allegation is accompanied by an insufficient factual basis, the Solicitor should move to amend the complaint to meet the objection. If the complaint still lacks a necessary element—either because the Secretary does not have *any* evidence to support it or because the Secretary incorrectly believes that he need not plead or prove it—we would expect the Judge to grant the motion to dismiss. If, however, some factual basis for an allegation is pleaded but the Judge believes that it could not withstand a motion for involuntary dismissal after trial under Fed.R.Civ.P. 41(b), the Judge need not grant the motion to dismiss. The revised rules do not require that the factual basis pleaded in the complaint be as complete as that which the Judge might require after a hearing. The revised rules require only that the complaint contain sufficient facts to provide a reasonable basis for believing that the Secretary may ultimately prevail on the issue. They do not preclude the Secretary from proving additional facts at the hearing to support the allegations in the complaint. Thus, contrary to the Secretary's comments, OSHA will not be required to "assur[e] that each case file will, prior to the initiation of the litigation process, entirely meet the litigation needs that arise in a contested case . . . ." Also, under Fed.R.Civ.P. 12(b)(6), the Secretary's allegations are to be assumed to be true for the purpose of the motion and are to be construed in the light most favorable to the Secretary. Such motions, which are disfavored, may not simply make a broad allegation that the complaint fails to state a claim; they must identify the shortcoming with specificity.

Changes in the Proposed Rule on Complaints

As indicated previously, the Commission, in an effort to meet the competing concerns of the commentators, adopted as its final rule at § 2200.35 a hybrid rule that requires some "fact pleading" and some "notice pleading." The Commission determined that, in order to obtain its objectives of making the pleadings useful and forcing the parties to evaluate their cases at an earlier stage in the proceedings, it was necessary to retain certain features of the proposed rule. Thus, the final rule: (a) Prohibits incorporation by reference of the citation into the complaint, (b) requires the Secretary to set forth in separate paragraphs the differing components of his case-in-chief, and (c) requires the Secretary to plead the factual basis underlying three of the most critical elements of his case—his allegation that the cited standard applies to the cited conditions, his allegation that the employer failed to comply with the standard or with the Act's general duty clause, and his allegation that employees were exposed to or had access to the violative conditions. With respect to other matters, i.e., employer knowledge, the classification of the violation, the appropriateness of the proposed penalty, and the reasonableness of the abatement period, the final rule requires only notice pleading.

The Commission also made changes in paragraph (d) of proposed § 2200.35 in response to specific suggestions. Under the final rule, if a cited standard does not specify a means of abatement or provide specific performance criteria, the complaint must "identify the feasible means by which the employer *could* have abated the allegedly violative condition" (emphasis added). The proposed rule had used the word "should" rather than "could." Also, the final rule deleted the following requirement, which was contained in the proposed rule: "If the cited standard or regulation lists a number of alternative means of abatement, the complaint shall also state which the employer failed to

use." The Secretary correctly observed that, under the circumstances stated, there would be no alleged violation unless the employer failed to use any of the alternative abatement means.

On the other hand, the Commission rejected the Secretary's proposal that paragraph (e) of proposed § 2200.35 be deleted. In the Commission's experience, the information required under that paragraph, which relates to allegations of failure to abate, is not customarily included in the Secretary's notification of failure to abate. The Commission also rejected the Secretary's request that paragraph (f) of proposed § 2200.35 be changed to grant the Secretary an *unqualified* right to amend his contested citations, etc., once as a matter of course before the answer is filed. Under the Commission's revised rule, three limitations are placed on the Secretary's right to make such amendments. The Commission adopted this rule because it codifies longstanding Commission precedent governing the amendment of citations in the complaint. That precedent does not give the Secretary an unqualified right to amend once as a matter of course, but instead requires consideration of the factors that are now codified in paragraph (f). The requirement that the complaint clearly identify the change that is being made in the allegation is carried over from the present rule at § 2200.33(a)(3) and is retained in the revised rule so that the employer may be given fair notice of the effect of the amendment. The Commission stresses, however, that § 2200.35(f) addresses only amendments made without leave of the Judge. Fed.R.Civ.P. 15(a), which states that leave to amend "shall be freely given when justice so requires," applies to all other amendments; except that Fed.R.Civ.P. 15(b) also continues to apply to amendments to conform the pleadings to the evidence.

Contents of the Answer

While the Commission made changes to proposed § 2200.35 for the purpose of reducing the pleading burden on the Secretary, it made changes to proposed § 2200.36 for the purpose of imposing more stringent pleading requirements on employers. The Commission agreed with the Secretary's assertion that the respective burdens placed on the parties under the proposed rules were unequal. The Secretary also argued convincingly that the Commission could not attain its stated objective of refining and narrowing the issues at the pleadings stage of the proceedings unless it imposed stricter requirements on the contents of an answer.

Two changes were therefore made in the proposed rule. One of the Judges had suggested that the following sentence be added to the rule: "General denials shall not be accepted." The Commission agreed with this suggestion and, for emphasis, it placed the sentence at the very beginning of the rule. Under the final pleading rules, the Secretary must break his case-in-chief into its component elements and the employer must then respond specifically and separately to each allegation. In this way (and also through the requirement that affirmative defenses be stated), the revised pleading rules should result in significant refinement and narrowing of the issues early in the proceedings. These procedures should also result in the attainment of another principal goal, that is, requiring both parties to examine the legal elements of their cases and the factual bases of those elements early in the proceedings.

In addition, the Commission adopted, to a limited extent, a requirement for "fact pleading" in the answer. The Commission added a requirement, in paragraph (b) of § 2200.36, that the employer state in its answer, "to the extent they are known or with reasonable diligence could have been known, the facts that are the basis of [its affirmative defenses]." For example, if the employer asserts that § 5(a)(1) of the Act is preempted by a specific standard, it must at a minimum identify the specific standard that it is relying on. To a large extent, the imposition of these pleading requirements is simply a matter of fairness. The Secretary correctly notes that he should not be required to "resort to discovery to determine the factual and legal bases of . . . affirmative defenses."

On the other hand, it again bears emphasis that the pleading requirements for answers, like the pleading requirements for complaints, are not designed for the purpose of creating trials on the pleadings or evidentiary straitjackets. Instead, the intent is that the Secretary be given fair notice of the basis of the employer's claim that a particular affirmative defense is applicable.

Generally, under the revised rules, more detailed pleading is required on those matters on which the particular party bears the burden of proof. For example, the Secretary is required to plead the factual basis in support of his claim that the cited standard applies to the cited conditions because this is a matter that he is required to prove. The Commission disagreed with the Secretary's suggestion that the employer be required to plead the factual basis for denying such allegations. In the Commission's view, the employer has a right to compel the Secretary to prove his case-in-chief if the employer disagrees in good faith with the accuracy of the Secretary's allegations. Accordingly, under the rules, the employer is required to plead the factual basis of a denial only if the denial is based on an affirmative defense, e.g., denial of an allegation that a standard is applicable based on the affirmative defense that another standard is more specifically applicable.

Petitions for Modification of the Abatement Period

No objections were filed to proposed § 2200.37, which governed the Commission's procedures for handling petitions for modification of the abatement period (PMA's). However, the Secretary did request one change in the rule's time periods, which the Commission agreed to. Under paragraph (c)(4) of the proposed rule, the Secretary was required to wait a period of 15 working days before exercising his authority to approve an employer's PMA. (If the Secretary approves the PMA and no objections are filed by affected employees or their representatives, then the matter is resolved without coming before the Commission.) The purpose of this waiting period was to give affected employees or their representatives an opportunity to file objections to the PMA and thus an opportunity to influence the Secretary's decision as to whether to approve or to oppose the PMA.

The Secretary's requested change related to the deadline imposed on him for taking a position on the PMA once the 15-working-day waiting period has expired. Under the present and proposed rules, he was required to make this decision within three working days of the expiration of the waiting period. He asked, however, that he be given 10 working days so that he would be able to conduct a "monitoring inspection" to assist him in deciding whether to approve or oppose a PMA. The Commission concluded that this request was reasonable and revised paragraph (d)(1) of § 2200.37 accordingly.

Statements of Position

As proposed, § 2200.39 authorized parties or intervenors to file statements of position with respect to any or all issues to be heard at any time prior to the hearing. One of the Judges suggested that a sentence be added to the rule empowering Judges to order the filing of such statements. The Commission

agreed with this suggestion, and the final rule therefore includes a provision to that effect.

Sanctions

The Commission's proposed rules included three rules relating to the subject of sanctions for failure to comply with the rules or failure to comply with orders of the Commission or its Judges. Generally speaking, § 2200.52(e) prescribed sanctions against a party for noncompliance with a discovery order, § 2200.41 prescribed sanctions against a party for noncompliance with all other orders or rules, and § 2200.104 prescribed sanctions against a party's representative (as opposed to the party himself). Two commentators, the Secretary and one of the private practitioners, raised similar questions concerning the interrelationship of these sanction provisions, the applicability of sanction provisions under the Federal Rules of Civil Procedure and the adequacy of the sanctions under the Commission's rules. The private practitioner specifically argued for stronger sanctions against representatives of the parties (including, in particular, attorneys for the Secretary), such as "personal liability" for loss due to "frivolous prosecutions, frivolous discovery, and other abuses of the systems."

In response, the Commission revised both §§ 2200.41 and 2200.52 for the purpose of clarifying and strengthening the provisions on sanctions. The sanctions provisions under the Commission's revised rules are much stronger than the provisions under the present rules. However, the Commission declined to include sanctions against a party's representative as part of its own rules. If experience under the revised rules reveals that the need exists, the Commission may well change its rules to provide expressly for personal liability for frivolous attorney conduct.

With respect to the changes that were made in the final rules, the Commission initially made clear that the matter of discovery sanctions is governed by § 2200.52(e) rather than § 2200.41. It did this by adding a new paragraph (c) to § 2200.41, which expressly states that § 2200.52(e) is the relevant provision in determining discovery sanctions. The Commission also strengthened its rule on discovery sanctions by adding two new provisions to § 2200.52(e): (1) A statement that the Judge may include in his order imposing sanctions "any sanction stated in Fed.R.Civ.P. 37" and (2) express authorization to enter a default judgment against the party disobeying a discovery order.

One specific question raised by the comments was whether the adoption of the Commission's proposed rules would result in the preemption of Fed.R.Civ.P. 37. At first glance, it would appear that the answer to this question is "yes" since the Commission now has its own rule (§ 2200.52(e)) on the imposition of sanctions for failure to comply with discovery orders. However, as noted, § 2200.52(e) by its terms authorizes the Judge to impose any sanction stated in Fed.R.Civ.P. 37. Moreover, many of the procedural provisions in the federal rule apply to the Commission's proceedings by virtue of the following statement in § 2200.52(a)(1): "In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure." The Commission's revised rules say little, if anything, about the procedures to be followed in imposing discovery sanctions.

Prehearing Conference

Although no comments were filed relating to the substance of proposed § 2200.51, several comments were filed relating to the language of the rule. As a result, the last sentence of the rule has been rewritten to (a) restore language inadvertently omitted from the proposed rule, (b) make clear that the rule applies to all parties, not just the Secretary and the employer, and (c) make clear that the rule applies to all representatives of the parties, not just attorneys. As a union commentator correctly noted, "you don't need to be an attorney to enter into stipulations."

General Provisions Governing Discovery

Proposed § 2200.52 was a new rule containing several miscellaneous provisions governing discovery in Commission proceedings. Numerous comments were directed to various provisions of this rule, raising several different issues. The comments relating to paragraph (e) on sanctions and the resulting changes in the proposed rule have been discussed previously in conjunction with the discussion of § 2200.41. Other comments and changes will be discussed in the sections of the preamble that follow this section. The initial question dealt with by the Commission was whether the entire rule should be deleted, as suggested by one of the Commission's Judges. That commentator essentially urged that the Commission rely on the Federal Rules of Civil Procedure, as it does under the present rules. The Commission, however, rejected that approach. In the Commission's view, the present rules governing discovery were inadequate because they did not clearly identify which federal rules applied to the Commission's proceedings and which did not. This ambiguity was created by the preemption provision of § 2200.2. Thus, it was not clear which provisions of the federal rules were preempted by the Commission's rules and which were not.

The Commission believes that its revised rules have significantly reduced the ambiguity in the area of discovery. Essentially, the Rules Committee went through the federal rules governing discovery and specifically incorporated into the Commission's rules those provisions of the federal rules that are suitable to the OSHA context. In the process, the Rules Committee not only simplified the rules but also adapted them to fit into the OSHA enforcement scheme. To a far greater extent, therefore, discovery in Commission proceedings will now be governed by the Commission's own rules.

Discovery Without Approval of Judge

One issue on which there was a wide range of opinions expressed in the comments was the extent to which discovery should be allowed without obtaining the approval of the Commission or a Judge. For example, the Chief Administrative Law Judge expressed the opinion that no discovery of any kind should be allowed without an order permitting discovery. At the other end of the spectrum, one of the Judges argued that all forms of discovery should be allowed without leave of the Judge or the Commission. The Commission reconsidered this issue, but decided ultimately to stay with the "mix" it had suggested in its proposed rules: depositions permissible only by agreement between the parties or with the approval of the Commission or the Judge; 25 requests for admissions and 25 interrogatories permissible without approval; and all other forms of discovery permissible without approval. In essence, the revised rules require prior approval in those situations where the Commission believes that the potential for abuse or the potential burden on the responding party is the greatest.

Entry Upon Land

The provision of the proposed rules that evoked the strongest and most widespread opposition (10 of the 21 commentators opposed it, while only one expressly supported it) was the following provision in proposed § 2200.52(a)(1):

> [E]ntry upon land or other property may not be compelled by the imposition of sanctions under these rules or Fed.R.Civ.P. 34. If a party objects and refuses permission

to enter upon land or other property, such entry shall be sought by application for a search warrant from a federal district court.

The most frequently-voiced objections were the contentions that (a) a federal district court would not have jurisdiction to issue a discovery order in the midst of a pending administrative proceeding and (b) the procedure would lead to disruption and delay. It was also argued that the Commission's Judges are impartial and independent judicial officers who could authorize intrusions for discovery purposes onto private property without running afoul of fourth amendment considerations.

A divided Commission voted to delete the language stated above from the final rule at § 2200.52(a)(1). Dissenting Commissioner Rader believed that the procedure is necessary because a Commission Judge is an Executive branch official and only a judicial branch officer can compel entry upon land in the face of an employer's claim that the requested entry is unreasonable. The Commission majority decided, however, that given the many uncertainties on the matter, the question should be left for adjudicative resolution. It noted that, if a Commission Judge enforced his order compelling entry by dismissing the resisting employer's notice of contest, the employer could then obtain a judicial determination on any fourth amendment claim he may have by appealing the dismissal order first to the Commission and then to a U.S. Court of Appeals. The employer can thus raise any claim that the Judge lacked authority to compel entry.

Because the language stated above has been deleted from the final rule, enforcement of an order compelling entry is governed under the revised rules by the same procedures that govern the enforcement of all other discovery orders. See § 2200.52(e).

Time for Discovery

Proposed § 2200.52(a)(2) established the time period during which the parties could conduct discovery. The beginning date was established by a provision stating that a party could initiate discovery "at any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss." (This same limitation is found in §§ 2200.52–2200.56, which govern the various types of discovery permitted under the Commission's procedures.) The ending date was set by a provision stating that "[d]iscovery requests shall be completed" no later than seven days prior to the hearing date, unless the Judge orders otherwise.

The Commission received comments objecting to both of the dates established under the proposed rule. The Secretary objected to the provision on the beginning of the discovery period, arguing that he should be able to commence discovery procedures with the filing of his complaint. The Commission rejected this comment on the ground that the delay in discovery until the issues have been formulated in the pleadings would eliminate needless, standardized discovery and result in discovery requests fashioned to the circumstances of the particular case.

The Secretary also argued against the deadline on completion of "[d]iscovery requests," suggesting that it might not give him adequate time to prepare his case. Two of the Judges, on the other hand, argued that the rule did not require completion of discovery early enough and that a discovery request initiated only seven days before the hearing could result in a postponement of the hearing. The Commission agreed with the Judges and adopted the goal of completing (rather than initiating) discovery at least seven days before the hearing. Under the final rule, the relevant provision has been altered to require that discovery must be "initiated early enough to permit completion of discovery no later than seven days prior to the date set for hearing, unless the Judge orders otherwise."

Service of Discovery Papers

Several comments were filed concerning various discovery provisions in the proposed rules that raised the same issue with respect to each of the provisions. In general, the proposed rules governing discovery did not provide for service of discovery papers on affected employees or employee representatives that have elected party status. The Commission agreed with arguments, submitted by a union commentator and others, that all parties should be served copies of discovery papers (both requests and responses). However, it disagreed with the proposal that each of the discovery rules be revised to provide for such service. Instead, the Commission added a new provision at two different locations in the Rules: at § 2200.7(a), which establishes general service requirements in Commission proceedings; and at § 2200.52(a)(3), as part of the rule on general provisions governing all discovery. The new rule states that "[e]very paper relating to discovery required to be served on a party shall be served on all parties." Thus, whenever a requesting party serves a discovery document on a responding party, or vice versa, the document must be served on all parties to the proceeding.

Limitations on Discovery

The Commission rejected the Secretary's request that paragraph (c) of proposed § 2200.52 "be clarified so that discovery by the Secretary is not limited because a judge believes that certain information sought could have been obtained during the inspection, either by conducting a more thorough inspection or by issuing an administrative subpoena." As stated in the preamble to the proposed rules, "[p]roposed paragraph (c) on the limitations of discovery essentially codifies case law under the FRCP and the Commission's rules." The proposed rule was not intended as a means for reducing the discovery rights of the Secretary that have been recognized in Commission precedent.

Paragraph (d) of proposed § 2200.52 related to protective orders entered in conjunction with orders compelling discovery. Mr. O'Reilly filed two separate comments concerning this provision. Both raised the question of the adequacy of the protection provided under the rule, and both included suggestions for specific changes in the rule. The Commission declined to make these changes. Paragraph (d) includes an express reference to § 2200.11 and makes clear that the Judge has the authority, in entering a protective order under § 2200.52(d), to exercise any of the powers granted him under § 2200.11. As indicated previously, the Commission believes that its final revised rule at § 2200.11 grants the Judges sufficient authority and flexibility to protect trade secrets and other confidential information, regardless of the context in which the privilege issue is raised.

Responses to Discovery—Time For Filing

Under the proposed rules at §§ 2200.53(b), 2200.54(b), and 2200.55(c), a responding party was given 30 days to respond to requests for production of documents or things, requests for entry upon land, requests for admissions, and interrogatories. Two of the Judges filed comments to the effect that the responding party should be given only 15 days in the usual case. The Commission rejected these comments and adopted the 30-day response times stated in the proposed rules. Based on its experience with litigation under the present rules, the Commission concluded that 15 days is not enough time in many cases to respond to discovery requests. The need for communication between the attorney or

other representative and the client, as well as the need to search through often voluminous records, makes 30 days a more reasonable deadline. As noted previously, the Commission also sought as a general matter to cut back on the number of requests for extensions of time during the prehearing period by giving the parties more time under the rules to file various prehearing documents.

Limitation on Number of Requests for Admissions and Interrogatories

Under the proposed rules at §§ 2200.54(a) and 2200.55(a), the parties were given a limited right to serve requests for admissions and interrogatories without obtaining permission. If the number of requests or interrogatories was less than 25, permission was not needed. Otherwise, the discovery document could only be served with the approval of the Commission or the Judge. Several comments were filed relating to these rules. Two of the commentators argued persuasively that "the complexity of the case" should not be the only factor under the rule warranting the service of more than 25 interrogatories or requests for admissions. In some instances, they pointed out, the sheer number of contested citations requires a larger number of interrogatories or requested admissions. Other comments simply urged clarification of the language of the proposed rules. As a result of these comments, the rules at §§ 2200.54(a) and 2200.55(a) were substantially rewritten, although the substance of the rules has not been changed. The final rules expressly state that the Judge or the Commission may allow more than 25 interrogatories or requests for admission based on either "the complexity of the case or the number of citation items."

Filing of Depositions

One of the Judges recommended that a new provision be added to § 2200.56, the Commission's rule on depositions. The suggested provision would have prohibited the parties from filing copies of discovery depositions with the Commission or the Judge. The commentator argued that these documents merely "clutter" the official files. The two Judges on the Rules Committee, however, argued that discovery depositions can be helpful in preparing a Judge for a hearing and that the suggested rule should not be adopted. The Commission concluded that the real concern of the commentator was the problem of determining which documents are included in the official record; it decided that this matter can be handled administratively. Proposed § 2200.56 was accordingly adopted without change.

Subpenas

Comments were filed urging three unrelated changes in proposed § 2200.57, the Commission's rule on subpenas. One of the Judges requested that a provision be added allowing the Judge or the Executive Secretary to issue subpenas in blank. The Commission concluded that this is an administrative matter, best left to the discretion of the individual Judge, but that it did not wish to encourage the practice suggested by the Judge by writing it into the Commission's rules.

One of the private practitioners filed comments criticizing the Secretary's attorneys for using subpenas duces tecum as a last-minute discovery tool rather than "for the legitimate production of evidence at trial." He urged revision of the rule to prohibit such practices. The Commission concluded that the suggested change in the rules was impractical. Realistically, a Judge cannot be asked to base his decision on whether to issue a subpena duces tecum on the suspected motives of the requesting attorney.

The Secretary requested that a provision be added to § 2200.57(d), requiring that any ruling by a Judge declining to enforce a subpena duces tecum be reduced to writing and include findings of fact and conclusions of law. The Commission rejected this suggestion, finding that it is misdirected. Paragraph (d) of the rule requires that an application for enforcement be made to the Commission. Proposed § 2200.57 was accordingly adopted without change.

Notice of Hearing and Location

Several comments were filed relating to proposed § 2200.60, which generally required a Judge to give at least 30 days notice of the time and place of a hearing, except where "exigent circumstances" are present or the hearing is being rescheduled. In these exceptional circumstances, at least 10 days notice was required.

The Commission decided to adopt its proposed rule as its final rule, after considering conflicting comments that argued both for a longer and for a shorter notice period. As the comments revealed, there are competing considerations to be taken into account in determining how much notice should be given. A 30-day notice requirement represents a reasonable compromise that attempts to accommodate all of these competing concerns.

Two of the Judges raised the same issue of interpretation under the proposed rule. Both Judges asked the Commission to clarify the meaning of the term "place" as it is used in the rule. The Commission agreed that the term "place" refers to the city and state where the hearing will be held. Therefore, less than 30 days notice may be given under the rule of the specific address of the hearing room.

In addition, one of the union commentators raised issues concerning the interrelationship of three of the revised rules: § 2200.60, which provides for service of notice of a hearing on parties and intervenors; § 2200.7, which provides for service of notice of a hearing on represented and unrepresented affected employees; and § 2200.20(a), which provides that the right of affected employees and their representatives to elect party status expires 10 days before the scheduled hearing. The union commentator correctly observed that, in view of the relationship between the hearing date and the cut-off date for electing party status, it is important to give affected employees and their representatives as much advance notice as possible of a scheduled hearing date. The Commission therefore accepted the suggestion that §§ 2200.7 (i) and (j) be revised to require the employer to post notice of a hearing and to serve copies of the notice on authorized employee representatives "[i]mmediately upon receipt" of the hearing notice.

However, the Commission rejected the union's other suggestion—that the cut-off date provision of § 2200.20(a) be automatically waived if less than 30 days notice of a hearing is given to affected employees or their representatives. Under the terms of § 2200.20(a), "[a] notice of election filed less than ten days prior to the hearing is ineffective *unless good cause is shown for not timely filing the notice*" (emphasis added). The Commission concluded that this exception is broad enough to cover situations where failure to file a timely election of party status is the result of failure to receive timely notice of a hearing.

Motion for Postponement of Hearing

The Commission rejected a comment by the Secretary requesting a revision in the proposed rule at § 2200.62(a). The provision in question required a party filing a motion for postponement of a hearing to state the position of the other parties on the motion. The Secretary asked that the provision be modified by including the qualifying language "where possible". The Commission concluded, however, that this qualification would invite abuses of the rule. If truly exceptional circumstances

arise, waiver of the requirement can be obtained under § 2200.107.

Stay of Proceedings

The Commission also rejected a comment by one of the Judges suggesting a revision in proposed § 2200.63. Under the proposed rule, a Commission Judge could, with the concurrence of the Chief Administrative Law Judge, grant a stay motion. The commentator urged that the matter be placed entirely in the hands of the Chief Judge. The Commission disagreed. The participation of the Chief Judge is required to insure uniformity in the treatment of stay motions. However, in the Commission's view, the participation of the Judge to whom the case is assigned is also desirable because he knows the case better than the Chief Judge does and may be aware of valid reasons for departing from the general policy in the particular case.

Payment for Transcripts

Paragraph (b) of proposed § 2200.66 stated that "[e]ach party is responsible for securing and paying for its copy of the transcript." In its comments, ACUS objected to this provision on the ground that it appeared to be in conflict with section 11 of the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 11, which requires agencies to make transcripts of their proceedings available at cost to any person requesting such transcripts. The Commission concluded, however, that there is no conflict between the proposed rule, which it has adopted as its final rule, and the statute cited by ACUS. Nothing in the rule either expressly or implicitly precludes a party from obtaining a copy of the transcript from the Commission under section 11 of the Federal Advisory Committee Act. That is an option available to the parties. Parties are forewarned, however, that they can obtain copies of transcripts much more quickly by ordering them directly from a court reporter. Transcripts received from the Commission under the provisions of the Federal Advisory Committee Act may not be received in time to permit the timely filing of post-hearing briefs.

Powers of Judges

In response to a suggestion from one of the Judges, proposed § 2200.67(k) was revised to make clear that Judges may ask for statements of position from the parties at any time in the proceeding—before, during or after the hearing.

Examination of Witnesses

In his comments, the Secretary raised the question of whether there is an "unintended conflict" between § 2200.69 and Rule 611(c) of the Federal Rules of Evidence, which is made applicable to Commission proceedings under § 2200.71. The potential conflict related to the use of leading questions on "cross-examination" of a party by his own counsel where the party had been called as an adverse witness. The Commission concluded that no change in its proposed rule was necessary because there is no conflict between the two rules. In the situation presented by the Secretary, § 2200.69 would permit cross-examination, but Federal Rule of Evidence 611(c) would govern the use of leading questions.

Disposal of Exhibits

The Secretary suggested that a provision be added to proposed § 2200.79(g), requiring the Executive Secretary to give notice to a party before disposing of a physical exhibit introduced by that party. The Commission concluded that this matter could be taken care of administratively and that no change in the proposed rule was necessary.

Rules of Evidence

Nine commentators addressed the question of whether the Commission should adopt its proposed rule at § 2200.71. That proposed rule stated quite simply that "[t]he Federal Rules of Evidence are applicable." Four commentators, including one of the Judges and three private practitioners who have represented employers in cases before the Commission's Judges, endorsed the adoption of the Commission's proposed rule. Three other commentators apparently argued for retention of the Commission's present rule, which makes the Federal Rules applicable "insofar as practicable." Finally, ACUS and the Chief Administative Law Judge urged the Commission to "consider revising proposed section 2200.71 along the lines of [ACUS] Recommendation 86–2, so as to permit Administrative Law Judges to resort to the Federal Rules of Evidence as a source of guidance without requiring them to exclude any evidence which they believe to be reliable."

The Commission carefully considered the arguments of all the commentators, including the supporting documents submitted by ACUS in support of its position. Nevertheless, it concluded that the reasons it had given, in the preamble to its proposed rules, for following the Federal Rules of Evidence in Commission proceedings, remained valid reasons. See 51 FR 23190. Thus, the rulemaking proceedings confirmed the Commission's views that the rule adopted by the Commission provides clearer guidance to practitioners and allows for the admission of all relevant evidence, including reliable hearsay.

Burdens of Proof

The Commission had proposed to retain without change its current rule on burdens of proof, present § 2200.73, redesignated as proposed § 2200.72. Paragraph (b) of the rule stated that in a PMA case the burden of proof is with the petitioning employer. This paragraph is unnecessary; it merely restates the statutory allocation of the burden of proof in § 10(c) of the Act, 29 U.S.C. 659(c), and is duplicative of former § 2200.34(d)(4), which has been retained in revised § 2200.37(d)(3). Paragraph (a) of the rule stated that, in all notice of contest proceedings, "the burden of proof shall rest with the Secretary." The Secretary commented that paragraph (a) needed to be clarified. The Secretary correctly observed that paragraph (a) has never been applied literally because the Commission has recognized numerous affirmative defenses, such as the invalidity of a standard, to which the employer has the burden of proof. It has also been the Commission's experience that the unequivocal wording of the present rule has misled pro se employers and sometimes even attorneys into believing that they never bore a burden of proof. The Secretary proposed, therefore, that the rule be clarified to reflect that the Secretary bears the burden of proof with respect to those elements deemed to be a part of his prima facie case, and that the employer bears the burden of proof on affirmative defenses.

The Commission agreed with the Secretary that the present rule is misleading but concluded that it could not be rewritten as he proposed without great difficulty. A simple statement that the Secretary bears the burden of proof on matters that are part of his prima facie case provides no guidance. To give the statement some meaning, the Commission would have to state what each element of the Secretary's prima facie case is. The same would be true of all affirmative defenses. To do so in greater detail than is suggested by the allocation of the burdens of pleading in revised §§ 2200.35(b)–(e) and 2200.36(b), would not only be impractical but would tend either to restrict the development of the law or render the rule misleading as case law developed. More fundamentally, the Commission determined that such a rule is not a rule of procedure at all but one of substantive occupational safety and health law, which has been and must be

developed and stated in case law. The Commission also observed that the lack of a rule on burden of proof would have few drawbacks. In 1979, the Federal Mine Safety and Health Review Commission deleted its interim rule on burdens of proof, 44 FR 38226, 38227 (1970), without untoward effect. Finally, the Commission emphasizes that, because Commission case law on burdens of proof is in no way affected by the deletion of present § 2200.73, the parties before it may continue to be guided by that case law.

Redesignated Rules

As a result of the deletion of proposed § 2200.72 from the Commission's final revised rules, the rules on objections, interlocutory review and filing of post-hearing briefs have been redesignated as §§ 2200.72, 2200.73 and 2200.74, respectively.

Offers of Proof

One of the Judges suggested adding a sentence to the proposed rule on offers of proof (the provision adopted as § 2200.72(b)). Under the suggested revision, offers of proof could only be accepted in question-and-answer form. Summaries of rejected testimony presented by the party's representative would not be acceptable. The Commission rejected this suggestion. It noted that the Commission's Judges have the authority, under Federal Rule of Evidence 103(b), to require that offers of proof be presented in question-and-answer form. The Commission, however, declined to adopt a rule that would prohibit summaries in all circumstances. In some instances, it might be preferable to accept a summary rather than going through the more time-consuming question and answer process.

Interlocutory Review

Under paragraph (e) of proposed § 2200.74 (redesignated as final rule § 2200.73), the Commission is authorized to request a Judge to submit his written views on the merits of a petition for interlocutory review. One of the unions commented that this rule should be revised to make clear that the written comments must be served on the parties and made part of the record. The Commission agreed with this comment and modified its final rule accordingly by adding the second sentence in § 2200.73(e).

Petitions for Discretionary Review

One of the unions suggested that proposed § 2200.91 be modified by adding a provision concerning notification to a party that its petition for discretionary review (PDR) has been received. The Secretary also filed a related comment concerning the consequences of failure to file a timely petition. The Commission rejected the union's suggestion. It noted that there are ways for a party to obtain notice of the date on which his PDR is received. For example, the party could mail the document by certified mail, return receipt requested, or he could send an extra copy of the document with a request that it be stamped with the date of receipt and returned to the sender. He could also call the Commission's Executive Secretary and ask when the PDR was received.

It is important to note that the purpose of establishing a deadline for the filing of PDR's is to give the Commissioners adequate opportunity to consider the issues raised in the petitions. The Commissioners have the authority to direct review of a case at any time up until the expiration of their statutory deadline. This includes the authority to direct review in response to a late-filed PDR. However, a party filing an untimely PDR runs the risk of not having his position fully considered by the Commission. He also runs some risk of being told by an appellate court that he failed to exhaust his administrative remedies because he did not comply with the Commission's procedural rules. *See Keystone Roofing Co.* v. *Dunlop*, 539 F.2d 960 (3d Cir. 1976).

Jurisdiction of the Commission on Review

The Commission noted the Secretary's formal statement of opposition to the codification of *Hamilton Die Cast, Inc.*, 86 OSAHRC _____, 12 BNA OSHC 1797, 1986 CCH OSHD ¶ 27,576 (No. 83-308, 1986). Nevertheless, the Commission adopted proposed § 2200.92 as its final rule.

Briefs Before the Commission

Section 2200.93 establishes the procedures for filing briefs with the Commission in cases that are on review. Under the proposed rule, a simultaneous briefing system would have been established. However, the Secretary filed comments strongly objecting to this proposed change in the briefing procedures. The Commission reviewed these arguments and also re-examined the reasons for the Commission's 1978 change from a simultaneous briefing system to the present sequential briefing system. Having fully reconsidered its experience under both sets of rules, the Commission decided to retain a sequential briefing system.

Accordingly, paragraph (b) of the final rule has been totally rewritten to accomplish this result. Parties should note, however, that procedures under the revised rule differ in some respects from procedures under the present rule. For example, new rules have been adopted for determining which party will file the first brief when a direction for review has not specifically granted any petition for discretionary review.

Commission Review of Settlement Agreements

The Commission's present rule at § 2200.100(a) contains the following provision: "A settlement agreement shall be approved when it is consistent with the provisions and objectives of the Act." The Commission proposed to delete this provision from its revised rule at § 2200.100. However, one of the union commentators objected, urging that the Commission retain that part of the sentence concerning review of a settlement agreement to insure that it is consistent with the objectives of the Act. The Commission rejected this suggestion. The Commission believes that deletion of the provision from the Commission's rules is in keeping with the Commission's limited role in reviewing settlement agreements. *See General Electric Co.*, 85 OSAHRC _____, 12 BNA OSHC 1597, 1985 CCH OSHD ¶ 27,452 (No. 83-1227, 1985).

Withdrawal With Prejudice

Two of the proposed rules contained provisions concerning the withdrawal of a notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period. Proposed § 2200.100(b) governed such withdrawals when they are included in the terms of a settlement agreement. Proposed § 2200.102 governed unilateral withdrawals accomplished by filing and service of a notice of withdrawal. Under both of these proposed rules, a presumption would have been created that all withdrawals are with prejudice. However, the parties could agree otherwise in their settlement agreement under proposed § 2200.100(b), and the Judge or the Commission could order otherwise under proposed § 2200.102.

Two commentators objected to the withdrawal-with-prejudice provisions of both rules. Two more commentators objected to the provision only in the context of proposed § 2200.102.

The Commission adopted proposed § 2200.100(b) as its final rule. The Commission believed that, in the usual case, a party enters into a settlement agreement with the expectation that all withdrawals by the opposing party are withdrawals with prejudice. Where the expectation of the parties is otherwise, it

is reasonable to require them to state so explicitly in their settlement agreement.

The Commission deleted the withdrawal-with-prejudice provision from its final rule at § 2200.102, however. The Commission concluded that a general rule that a withdrawal is with prejudice would tend to discourage voluntary withdrawals. The Commission considered adopting a rule that withdrawals would generally be without prejudice, but decided to leave the matter for determination on a case-by-case basis under Fed.R.Civ.P. 41.

Service of Settlement Agreements and Notices of Withdrawal

Comments on the service requirements for settlement agreements under proposed § 2200.100(c) were similar to those on service of notices of withdrawals under proposed § 2200.102. With respect to both of these rules, one of the Judges stated that "[t]he proposed rule overlooks requirement of service upon an authorized employee representative which has not elected party status." With respect to § 2200.102, this statement was accurate. The Commission inadvertently failed to provide for service of notices of withdrawal on non-party authorized employee representatives. With respect to § 2200.100(c), the statement was only partially correct. The proposed rule provided for service of settlement agreements on non-party authorized employee representatives. However, it inadvertently provided for service by posting under § 2200.7(g) rather than personal service under § 2200.7(c).

Under the final rules at §§ 2200.100(c) and 2200.102, these errors have been corrected. In § 2200.100(c) all parties as well as non-party authorized employee representatives must be served in accordance with § 2200.7(c), while non-party affected employees must be served by posting under § 2200.7(g). In § 2200.102, however, there is a limitation on these service requirements. Non-party affected employees and their representatives need only be served if they are still eligible to elect party status under § 2200.20(a). The Commission saw no reason to require service of a notice of withdrawal on anyone who has not elected party status and is no longer eligible to do so.

Section 2200.100(c) contains a similar limitation, but not on the service requirement. Although all affected employees and their representatives are entitled to service of the settlement agreement under the rule, they are given an opportunity to object to the settlement agreement only if they have already elected party status or they are still eligible under § 2200.20(a) to make such an election. One of the union commentators objected to the inclusion of this limitation in the proposed rule. However, the Commission rejected this comment. The Commission saw no reason why the filing of a settlement agreement should give affected employees and their representatives a second chance to elect party status when their opportunity to make such an election has already expired under the express terms of the Commission's rules.

Settlement Judges

Proposed § 2200.101, which would create a new Settlement Judge procedure, drew responses from about half the commentators. They were equally divided on the basic issue of whether the Commission should adopt its proposed rule. The five commentators who opposed the rule, the Secretary and four of the Commission's Judges, each stated the same objection. They did not believe that there is a need for the Settlement Judge procedure.

The Commission disagreed with this argument. It concluded that there are a substantial number of cases in which use of the Settlement Judge procedure can result in settlement of the case and avoidance of needless litigation. The Commission anticipates that this will occur, most commonly, in cases where, at some time during the pre-hearing stage of the litigation, the parties realize that they do not really want to go to trial but would prefer some other means of resolving their dispute. The Commission believes that, if the option of a mediated settlement is provided expressly and is available to the parties, they will utilize the procedure.

Accordingly, the Commission decided to adopt a rule establishing a Settlement Judge procedure. The Commission emphasized, however, that the rule has been adopted and, particularly at the outset, will be implemented, on an experimental basis. The procedure will be used sparingly at first until problems can be worked out.

Nevertheless, while the Commission retained the basic concept of its proposed rule, it also made numerous changes in response to the comments received and to other concerns raised by individual Commissioners. The final rule at § 2200.101 differs substantially from the proposed rule.

Aside from the contention that proposed § 2200.101 was unnecessary, the only other objection raised to its adoption was the Secretary's argument that it "is likely to result in substantial delays in resolving contested cases." The proposed rule contained several provisions designed to decrease this possibility, and these were strengthened under the final rule. Under paragraph (a)(4) of the final rule, when a case is assigned to a Settlement Judge, it is assigned for a limited period (45 days, reduced from 60 days under the proposed rule). Under paragraph (d)(1), the initial settlement period can be enlarged by as much as 20 days (reduced from 30 days under the proposed rule). However, this can only be done when the parties, the Settlement Judge and the Chief Administrative Law Judge all agree to it. The Commission anticipates that this will occur only in cases where, at the end of 45 days, the parties are close to agreement, but they need more time to complete the process. Moreover, under paragraph (d)(2), the Settlement Judge has the power to terminate the process at any time, even before the expiration of the original 45-day period, if he determines that "further negotiations would be fruitless." This provision would cover situations, for example, where the Secretary or the employer objects to continuation of the process. (See related discussion below.)

Accordingly, it is extremely unlikely that use of the Settlement Judge procedure would result in an unproductive delay of 65 days in a particular case. Yet, this is the worst possible result under the rule. The Commission anticipates that the few cases in which proceedings under the rule turn out to be a wasted effort will be outweighed by the cases in which the Settlement Judge procedure leads to a successful conclusion, resulting in savings to all parties and the Commission due to the early termination of the litigation.

Several changes in the rule were made in response to specific suggestions or specific objections by the commentators. Mr. O'Reilly raised concerns about the small number of Administrative Law Judges that are employed by the agency and the possibility of improper communication between two Judges in the same office, one assigned as a Settlement Judge and the other assigned as a hearing Judge on the same case. At Mr. O'Reilly's suggestion, a provision in the proposed rule that encouraged assignment of a case for a hearing to another Judge from the same office as the Settlement Judge was deleted from the final rule. Also, an existing prohibition against discussing the merits of the case with any person was revised to emphasize that the Settlement Judge must not discuss the merits with any other Administrative Law Judge.

Other changes in the rule were made in response to comments from one of the unions and from the Secretary. The

union raised concerns about improper use of documents that are revealed during settlement negotiations for settlement purposes only. In response, the Commission added a provision to paragraph (b)(2) of the final rule stating that such documents may not be used unless they are properly discoverable under the rules and are obtained through discovery or subpena in advance of trial. The Secretary objected to a provision in the proposed rule that would have allowed the Settlement Judge to order the parties, as well as their representatives, to appear at settlement conferences. The Secretary argued that this provision would interfere with the attorney-client privilege, and the Commission agreed with this comment. Under the final rule, the Settlement Judge has the power to recommend that the parties be present at a conference, but he may not compel their presence.

Two conflicting comments were filed on the question of how the procedure should be invoked. One of the Judges argued that the assignment of cases to Settlement Judges should be totally within the discretion of the Chief Administrative Law Judge and the Chairman. He argued against allowing the parties to initiate the process on the ground that this could lead to abuses of the procedure. In contrast, the Secretary objected to a provision in the proposed rule that would have allowed the Chief Judge or the Chairman to assign a case on his own motion to a Settlement Judge. The Secretary asserted that "there is no reason to sidetrack a case before a settlement judge if neither party thinks such action is likely to increase the chance of settlement."

The Commission agreed with the Secretary that there is no point in assigning a case to a Settlement Judge if the parties are unwilling to cooperate. On the other hand, the Commission declined to make initiation of the process totally dependent upon the parties. Under paragraph (a)(2) of the final rule, the Chief Judge or the Chairman may assign a case to a Settlement Judge upon motion of a party or with the consent of the parties. Thus, the Chief Judge, the Chairman or even the Judge to whom the case has been assigned for hearing can initiate the procedure, but the consent of the parties must be obtained before a Settlement Judge will be assigned.

Also in response to the Secretary's comment above, the Commission added the following provision to paragraph (a)(2) of the final rule: "In the event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed." This provision gives the Secretary and the employer the power to "veto" the assignment of a case to a Settlement Judge. The Commission expressly decided that union parties and affected employee parties should not be given the power to "veto" proceedings under § 2200.101 when the other parties have consented to them. The Commission emphasized, however, that this is the only limitation on the rights of union parties and affected employee parties under the rule. They are otherwise entitled to fully participate in proceedings under § 2200.101.

Two other changes in the proposed rule urged by the Secretary were rejected by the Commission. The Secretary objected to giving the Settlement Judge authority (1) to suspend discovery during the settlement negotiation period and (2) to engage in ex parte communications with representatives of a single party. The Commission concluded, however, that it is necessary for the Settlement Judge to have these powers in order for the procedure to be effective. If the Secretary in a particular case is unwilling to grant this authority to a Settlement Judge, he has the power to prevent this simply by objecting to the use of the Settlement Judge procedure.

Other changes were made in the rule at the suggestion of the individual Commissioners and others during the final Commission meeting on the rules. A provision was added limiting the scope of the rule to cases initiated by an employer notice of contest and Equal Access to Justice Act cases. If experience under the rule proves to be satisfactory, the rule can be revised at a later date to cover other cases where the Secretary and the employer are not the primary litigants, e.g., employee notice of contest cases and cases where affected employees or their representatives object to the granting of a PMA.

Other miscellaneous changes were made. The rule was revised to give parties the option of retaining their Settlement Judge as their hearing Judge. Several provisions in the proposed rule relating to the case assignment process were deleted from the final rule, which gives the Chairman and the Chief Judge greater discretion over these administrative matters. Finally, paragraph (e) of the rule was revised to clarify and narrow the range of non-reviewable matters under the rule. As stated in the final rule, "[a]ny decision concerning the assignment of a particular Settlement Judge or the decision by any party or Settlement Judge to terminate proceedings under this section [§ 2200.101] is not subject to review."

Acknowledgments

The Commission acknowledges the invaluable contribution of its Rules Committee in the development and adoption of these revised Rules of Procedure. The members of that committee were: James D. Burroughs, First Administrative Law Judge, Atlanta, Ga., office; Stanley M. Schwartz, Administrative Law Judge, Dallas, Texas, office; Earl R. Ohman, Jr., General Counsel; Arthur G. Sapper, Deputy General Counsel; and Ray H. Darling, Jr., Executive Secretary. The Commission is thankful for the assistance rendered by each of these individuals.

List of Subjects in 29 CFR Part 2200

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Lawyers.

For the reasons set out in the preamble, Title 29, Chapter XX, Part 2200, is amended as set forth below.

1. The authority citation for Part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted.

2. Subparts A, B, C, D, E, F, and G are revised to read as follows:

PART 2200—RULES OF PROCEDURE

Subpart A—General Provisions

Sec.
2200.1 Definitions.
2200.2 Scope of rules; applicability of Federal Rules of Civil Procedure; construction.
2200.3 Use of gender and number.
2200.4 Computation of time.
2200.5 Extensions of time.
2200.6 Record address.
2200.7 Service and notice.
2200.8 Filing.
2200.9 Consolidation.
2200.10 Severance.
2200.11 Protection of claims of privilege.
2200.12 References to cases.

Subpart B—Parties and Representatives

2200.20 Party status.
2200.21 Intervention; Appearance by non-parties.
2200.22 Representation of parties and intervenors.
2200.23 Appearances and withdrawals.

Subpart C—Pleadings and Motions

2200.30 General rules.
2200.31 Caption; Titles of cases.
2200.32 Signing of pleadings and motions.
2200.33 Notices of contest.
2200.34 Employer contests.
2200.35 Complaints.
2200.36 Content of the answer.

2200.37 Petitions for modification of the abatement period.
2200.38 Employee contests.
2200.39 Statement of position.
2200.40 Motions and requests.
2200.41 Failure to obey rules.

Subpart D—Prehearing Procedures and Discovery

2200.51 Prehearing conferences and orders.
2200.52 General provisions governing discovery.
2200.53 Production of documents and things.
2200.54 Requests for admissions.
2200.55 Interrogatories.
2200.56 Depositions.
2200.57 Issuance of subpenas; petitions to revoke or modify subpenas; right to inspect or copy data.

Subpart E—Hearings

2200.60 Notice of hearing; Location.
2200.61 Submission without hearing.
2200.62 Postponement of hearing.
2200.63 Stay of proceedings.
2200.64 Failure to appear.
2200.65 Payment of witness fees and mileage; Fees of persons taking depositions.
2200.66 Transcript of testimony.
2200.67 Duties and powers of judges.
2200.68 Disqualification of the judge.
2200.69 Examination of witnesses.
2200.70 Exhibits.
2200.71 Rules of evidence.
2200.72 Objections.
2200.73 Interlocutory review.
2200.74 Filing of briefs and proposed findings with the Judge; Oral argument at the hearing.

Subpart F—Posthearing Procedures

2200.90 Decisions of Judges.
2200.91 Discretionary review; petitions for discretionary review; Statements in opposition to petitions.
2200.92 Review by the Commission.
2200.93 Briefs before the Commission.
2200.94 Stay of final order.
2200.95 Oral argument before the Commission.

Subpart G—Miscellaneous Provisions

2200.100 Settlement.
2200.101 Settlement judge procedure.
2200.102 Withdrawal.
2200.103 Expedited proceeding.
2200.104 Standards of conduct.
2200.105 Ex parte communication.
2200.106 Amendment to rules.
2200.107 Special circumstances; Waiver of rules.
2200.108 Official Seal Occupational Safety and Health Review Commission.

Subpart A—General Provisions

§ 2200.1 Definitions.

As used herein:

(a) "Act" means the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678.

(b) "Commission," "person," "employer," and "employee" have the meanings set forth in § 3 of the Act.

(c) "Secretary" means the Secretary of Labor or his duly authorized representative.

(d) "Executive Secretary" means the Executive Secretary of the Commission.

(e) "Affected employee" means an employee of a cited employer who is exposed to or has access to the hazard arising out of the allegedly violative circumstances, conditions, practices or operations.

(f) "Judge" means an Administrative Law Judge appointed by the Chairman of the Commission pursuant to 12(j) of the Act, 29 U.S.C. § 661(j), *as amended by* Pub. L. 95–251, 92 Stat. 183, 184 (1978).

(g) "Authorized employee representative" means a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees.

(h) "Representative" means any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

(i) "Citation" means a written communication issued by the Secretary to an employer pursuant to 9(a) of the Act.

(j) "Notification of proposed penalty" means a written communication issued by the Secretary to an employer pursuant to 10 (a) or (b) of the Act.

(k) "Day" means a calendar day.

(l) "Working day" means all days except Saturdays, Sundays, or Federal holidays.

(m) "Proceeding" means any proceeding before the Commission or before a Judge.

(n) "Pleadings" are complaints and answers filed under § 2200.34, statements of reasons and contestants' responses filed under § 2200.38, and petitions for modification of abatement and objecting parties' responses filed under § 2200.37. A motion is not a "pleading" within the meaning of these rules.

§ 2200.2 Scope of rules; applicability of Federal Rules of Civil Procedure; construction.

(a) *Scope.* These rules shall govern all proceedings before the Commission and its Judges.

(b) *Applicability of Federal Rules of Civil Procedure.* In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure.

(c) *Construction.* These rules shall be construed to secure an expeditious, just and inexpensive determination of every case.

§ 2200.3 Use of gender and number.

(a) *Number.* Words importing the singular number may extend and be applied to the plural and vice versa.

(b) *Gender.* Words importing the masculine gender may be applied to the feminine gender.

§ 2200.4 Computation of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and Federal holidays shall be excluded from the computation.

(b) *Service by mail.* Where service of a document, other than a petition for discretionary review, is made by mail pursuant to § 2200.7, three days shall be added to the prescribed period for the filing of a response. The period of time for filing a petition for discretionary review is governed by § 2200.91(b). Service within the meaning of this rule includes issuance of documents by the Commission or Judge.

§ 2200.5 Extensions of time.

Upon motion of a party for good cause shown, the Commission or Judge may enlarge any time prescribed by these rules or prescribed by an order. All such motions shall be in writing, but in exigent circumstances in cases pending before Judges, an oral request may be made and followed by a written motion. A request for an extension of time should be received in advance of the date on which the pleading or document is due to be filed. However, an extension of time may be granted even though the request was filed after the designated time for filing has expired, but in such circumstances, the party requesting the extension must show good cause for his failure to make the request before the time prescribed for the filing had expired. The motion may be acted upon before the time for response has expired.

§ 2200.6 Record address.

Every pleading or document filed by any party or intervenor shall contain the name, current address and telephone number of his representative, or, if he has no representative, his own name, current address and telephone number. Any change in such information shall be

communicated promptly in writing to the Judge or the Executive Secretary if no Judge has been assigned, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

§ 2200.7 Service and notice.

(a) *When service is required.* At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor. Every paper relating to discovery required to be served on a party shall be served on all parties.

(b) *Service on represented parties or intervenors.* Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(c) *How accomplished.* Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(d) *Proof of service.* Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(e) *Proof of posting.* Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

(f) *Service on represented employees.* Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in paragraph (c) of this section.

(g) *Service on unrepresented employees.* In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer) ————————

Your employer has been cited by the Secretary of Labor for violation of the Occupational Safety and Health Act of 1970. The citation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION in its Rules of Procedure. Notice of intent to participate must be filed no later than 10 days before the hearing. This notice should be sent to: Occupational Safety and Health Review Commission, 1825 K Street, NW., Washington, DC 20006.

All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted: The reasonableness of the period prescribed by the Secretary of Labor for abatement of the violation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(h) *Special service requirements; Authorized employee representatives.* The authorized employee representative, if any, shall be served with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest.

(i) *Notice of hearing to unrepresented employees.* Immediately upon receipt, a copy of the notice of the hearing to be held before the Judge shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(j) *Notice of hearing to represented employees.* Immediately upon receipt, a copy of the notice of the hearing to be held before the Judge shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph (c) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

(k) *Employee contest; Service on other employees.* Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with § 2200.38, serve a copy thereof on such authorized employee representative in the manner prescribed in paragraph (c) of this section and shall file proof of such service.

(l) *Employee contest; Service on employer.* Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.

(m) *Employee contest; Service on other authorized employee representatives.* An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(n) *Duration of posting.* Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

§ 2200.8 Filing.

(a) *Where to file.* Prior to the assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at 1825 K Street NW, Washington, DC 20006. Subsequent to the assignment of the case to a Judge, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the docketing of the Judge's report, all papers shall be filed with the Executive Secretary, except as provided in § 2200.90(b)(3).

(b) *How to file.* Unless otherwise ordered, all filing may be accomplished by first class mail.

(c) *Number of copies.* Unless otherwise ordered or stated in this Part:

(1) If a case is before a Judge or if it has not yet been assigned to a Judge, only the original of a document shall be filed.

(2) If a case is before the Commission for review, the original and four copies of a document shall be filed.

(d) *Filing date.* Filing is deemed effected at the time of mailing, except petitions for discretionary review are deemed to be filed at the time of receipt. See § 2200.91.

§ 2200.9 Consolidation.

Cases may be consolidated on the motion of any party, on the Judge's own motion, or on the Commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

VOL 51 ISS 173 SE 8 1986 UMI

§ 2200.10 Severance.

Upon its own motion, or upon motion of any party or intervenor, the Commission or the Judge may, for good cause, order any proceeding severed with respect to some or all issues or parties.

§ 2200.11 Protection of claims of privilege.

(a) *Scope.* This section applies to all claims of privilege, whenever asserted. It applies to privileged information, such as trade secrets and other matter protected by 18 U.S.C. § 1905, and other information the confidentiality of which is protected by law. As it is used in this section, "privileged information" encompasses such confidential information.

(b) *Assertion of a privilege.* A person claiming that information is privileged, shall claim the privilege in writing or, if during a hearing, on the record. The claim shall (1) identify the information that would be disclosed and for which a privilege is claimed, and (2) allege with specificity the facts showing that the information is privileged. The claim shall be supported by affidavits, depositions or testimony and shall specify the relief sought. The claim may be accompanied by a motion for a protective order, or motions that the allegedly privileged information be received and the claim be ruled upon *in camera*, that is, with the record and hearing room closed to the public, or *ex parte*, that is, without the participation of parties and their representatives.

(c) *Opposition to the claim.* A party wishing to make a response opposing a claim of privilege, or asserting a substantial need for disclosure in the event a qualified privilege exists, must do so within 15 days but, if the motion is made during a hearing, the Judge may prescribe a shorter time or require that the response be made during the hearing. A response contravening the facts stated by the claimant of the privilege shall be supported by affidavits, depositions, or testimony.

(d) *Examination of claim.* In examining a claim of privilege, the Judge may enter such orders and impose such terms and conditions on his examination as justice may require, including orders designed to assure that the alleged privileged information not be disclosed until after the examination is completed. The Judge may:

(1) Receive the allegedly privileged information *in camera;* he may temporarily seal the portions of the record containing the allegedly privileged information and may exclude the public from the hearing room.

(2) Receive the allegedly privileged information *ex parte;* he may order that the allegedly privileged information not be heard or served on all parties and their representatives; he may hear or examine it without the presence of all parties and their representatives.

(3) Order the preparation of a summary of the allegedly privileged information; he may order that a copy of a document be prepared with the allegedly privileged information excised; he may order that such summaries or documents be served upon other parties or their representatives.

(4) Enter a protective order. See paragraphs (e) and (f) of this section.

(e) *Upholding of claim.* If a claim of privilege is upheld, the Judge may enter such orders and impose such terms and conditions as justice may require, including orders that the privileged information not be disclosed or be disclosed in a specified manner. The Judge may: exclude the privileged information from the record; enter orders under § 2200.52(d), including an order that discovery not be had; revoke or modify a subpena; and permanently seal that portion of the record or other files of the Commission containing the privileged information, permitting access only to the Commission and any reviewing court. The Judge may also permit the information to be disclosed only to persons covered by protective orders under § 2200.52(d) and paragraph (f) of this section.

(f) *Protective Orders.* To govern the examination of a claim of privilege or to govern the treatment of privileged information, the Judge may enter protective orders under § 2200.52(d). The Judge may decline to permit disclosure to persons against whom the Commission could not enforce the order. The order may require that—

(1) An attorney or other representative not disclose the allegedly privileged information to any person, including his client.

(2) Any person to whom the material will be disclosed sign a written confidentiality agreement that the material will not be disclosed except under stated terms and conditions and that stipulates a reasonable preestimate of likely damages.

(3) In the case of an entry upon land, the case be stayed to allow the party seeking entry an opportunity to seek an order of a court or search warrant with protective conditions.

(g) *Rejection of claim.* If the Judge overrules a claim of privilege, the person claiming the privilege may obtain as of right an order sealing from the public those portions of the record containing the allegedly privileged information pending interlocutory or final review of the ruling, or final disposition of the case, by the Commission. Interlocutory review of such an order shall be given priority consideration by the Commission.

§ 2200.12 References to cases.

(a) *Citing decisions by Commission and Judges.—(1) Generally.* Parties citing decisions by the Commission should include in the citation the name of the employer, a citation to either the Bureau of National Affairs' Occupational Safety & Health Cases ("BNA OSHC") or Commerce Clearing House's Occupational Safety and Health Decisions ("CCH OSHD"), the OSHRC docket number and the year of the decision. For example, *Clement Food Co.*, 11 BNA OSHC 2120 (No. 80–607, 1984).

(2) *Parenthetical statements.* When citing the decision of a Judge, the digest of an opinion, or the opinion of a single Commissioner, a parenthetical statement to that effect should be included. For example, *Rust Engineering Co.*, 1984 CCH OSHD ¶ 27,023 (No. 79–2090, 1984) (view of Chairman ———), *vacating direction for review of* 1980 CCH OSHD ¶ 24,269 (1980) (ALJ) (digest).

(3) *Additional reference to OSAHRC Reports optional.* A parallel reference to the Commission's official reporter, OSAHRC Reports, which prints the full text of all Commission and Judges' decisions in microfiche form, may also be included. For example, *Texaco, Inc.*, 80 OSAHRC 74/B1, 8 BNA OSHC 1758 (No. 77–3040, 1980). *See generally* 29 CFR 2201.4(c) (on OSAHRC Reports).

(b) *References to court decisions.*—(1) *Parallel references to BNA and CCH reporters.* When citing a court decision, a parallel reference to either the Bureau of National Affairs' Occupational Safety & Health Cases ("BNA OSHC") or Commerce Clearing House's Occupational Safety and Health Decisions ("CCH OSHD") is desirable. For example, *Simplex Time Recorder Co.* v. *Secretary of Labor*, 766 F.2d 575, 12 BNA OSHC 1401 (D.C. Cir. 1985); *Deering Milliken, Inc.* v. *OSHRC*, 630 F.2d 1094, 1980 CCH OSHD ¶ 24,991 (5th Cir. 1980).

(2) *Name of employer to be indicated.* When a court decision is cited in which the first-listed party on each side is either the Secretary of Labor (or the name of a particular Secretary of Labor), the Commission, or a labor union, the citation should include in parenthesis the name of the employer in the Commission proceeding. For example, *Donovan* v. *Allied Industrial Workers (Archer Daniels Midland Co.)*, 760 F.2d 783, 12 BNA OSHC 1310 (7th Cir. 1985);

Donovan v. *OSHRC* (Mobil Oil Corp.), 713 F.2d 918, 1983 CCH OSHD ¶ 26,627 (2d Cir. 1983).

Subpart B—Parties and Representatives

§ 2200.20 Party status.

(a) *Affected employees.* Affected employees and authorized employee representatives, by notice of election filed at least ten days before the hearing, may elect party status concerning any matter in which the Act confers a right to participate. A notice of election filed less than ten days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice. A notice of election shall be served on all other parties in accordance with § 2200.7.

(b) *Employee contest.* Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status by a notice filed at least ten days before the hearing. A notice filed less than ten days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice.

§ 2200.21 Intervention; Appearance by non-parties.

(a) *When allowed.* A petition for leave to intervene may be filed at any time prior to ten days before commencement of the hearing. A petition filed less than ten days prior to the commencement of the hearing will be denied unless good cause is shown for not timely filing the petition. A petition shall be served on all parties in accordance with § 2200.7.

(b) *Requirements of petition.* The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unduly delay the proceeding.

(c) *Granting of petition.* The Commission or Judge may grant a petition for intervention to such an extent and upon such terms as the Commission or the Judge shall determine.

§ 2200.22 Representation of parties and intervenors.

(a) *Representation.* Any party or intervenor may appear in person, through an attorney, or through another representative who is not an attorney. A representative must file an appearance in accordance with § 2200.23. In the absence of an appearance by a representative, a party or intervenor will be deemed to appear for himself. A corporation or unincorporated association may be represented by an authorized officer or agent.

(b) *Affected employees in collective bargaining unit.* Where an authorized employee representative (see § 2200.1(g)) elects to participate as a party, affected employees who are members of the collective bargaining unit may not separately elect party status. If the authorized employee representative does not elect party status, affected employees who are members of the collective bargaining unit may elect party status in the same manner as affected employees who are not members of the collective bargaining unit. See § 2200.20(c).

(c) *Affected employees not in collective bargaining unit.* Affected employees who are not members of a collective bargaining unit may elect party status under § 2200.20(a). If more than one employee so elects, the Judge shall provide for them to be treated as one party.

(d) *Control of proceeding.* A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

§ 2200.23 Appearances and withdrawals.

(a) *Entry of appearance.*—(1) *General.* A representative of a party or intervenor shall enter an appearance by signing the first document filed on behalf of the party or intervenor in accordance with paragraph (a)(2) of this section, or thereafter by filing an entry of appearance in accordance with paragraph (a)(3) of this section.

(2) *Appearance in first document or pleading.* If the first document filed on behalf of a party or intervenor is signed by a representative, he shall be recognized as representing that party. No separate entry of appearance by him is necessary, provided the document contains the information required by § 2200.6.

(3) *Subsequent appearance.* Where a representative has not previously appeared on behalf of a party or intervenor, he shall file an entry of appearance with the Executive Secretary, or Judge if the case has been assigned. The entry of appearance shall be signed by the representative and contain the information required by § 2200.6.

(b) *Withdrawal of counsel.* Any counsel or representative of record desiring to withdraw his appearance, or any party desiring to withdraw the appearance of counsel or representative of record for him, must file a motion with the Commission or Judge requesting leave therefor, and showing that prior notice of the motion has been given by him to his client or counsel or representative, as the case may be. The motion of counsel to withdraw may, in the discretion of the Commission or Judge, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party or intervenor.

Subpart C—Pleadings and Motions

§ 2200.30 General rules.

(a) *Format.* Pleadings and other documents (other than exhibits) shall be typewritten, double spaced, on letter size opaque paper (approximately 8½ inches by 11 inches). All margins shall be approximately 1½ inches. Pleadings and other documents shall be fastened at the upper left corner.

(b) *Clarity.* Each allegation or response of a pleading or motion shall be simple, concise and direct.

(c) *Separation of claims.* Each allegation or response shall be made in separate numbered paragraphs. Each paragraph shall be limited as far as practicable to a statement of a single set of circumstances.

(d) *Alternative pleading.* A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may state as many separate claims or defenses as he has regardless of consistency or the grounds on which based. All statements shall be made subject to the signature requirements of § 2200.32.

(e) *Content of motions and miscellaneous pleadings.* A motion shall contain a caption complying with § 2200.31, a signature complying with § 2200.32, and a clear and plain statement of the relief that is sought together with the grounds therefor. These requirements also apply to any pleading not governed by more specific requirements in this Subpart.

(f) *Burden of persuasion.* The rules of pleading established by this Subpart are not determinative in deciding which party bears the burden of persuasion on an issue. By pleading a matter affirmatively, a party does not waive its right to argue that the burden of persuasion on the matter is on another party.

(g) *Enforcement of pleading rules.* The Commission or the Judge may refuse for filing any pleading or motion that does

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VOL 51 ISS 173 SE 8 1986 UMI

not comply with the requirements of this Subpart.

§ 2200.31 Caption; titles of cases.

(a) *Notice of contest cases.* Cases initiated by a notice of contest shall be titled:

Secretary of Labor, Complainant, v. *(Name of Contestant),* Respondent.

(b) *Petitions for modification of abatement period.* Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of employer), Petitioner, v. *Secretary of Labor,* Respondent.

(c) *Location of title.* The titles listed in paragraphs (a) and (b) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(d) *Docket number.* The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Commission.

§ 2200.32 Signing of pleadings and motions.

Pleadings and motions shall be signed by the filing party or by the party's representative. The signature of a representative constitutes a representation by him that he is authorized to represent the party or parties on whose behalf the pleading is filed. The signature of a representative or party also constitutes a certificate by him that he has read the pleading, motion, or other paper, that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 2200.33 Notices of contest.

Within 15 working days after receipt of—

(a) Notification that the employer intends to contest a citation or proposed penalty under section 10(a) of the Act, 29 U.S.C. 659(a); or

(b) Notification that the employer wishes to contest a notice of a failure to abate or a proposed penalty under section 10(b) of the Act, 29 U.S.C. 659(b); or

(c) A notice of contest filed by an employee or representative of employees under section 10(c) of the Act, 29 U.S.C. 659(c), the Secretary shall notify the Commission of the receipt in writing and shall promptly furnish to the Executive Secretary of the Commission the original of any documents or records filed by the employer and copies of all other documents or records relevant to the contest.

§ 2200.34 Employer contests.

(a) *Filing deadline for complaint.* The Secretary shall file with the Commission a complaint conforming to the requirements of § 2200.35 no later than 30 days after the filing of the Secretary's notice to the Commission pursuant to § 2200.33.

(b) *Motion for more definite statement.* Upon a showing by the employer that it cannot frame a responsive answer to the allegations of the complaint, the employer may move for a more definite statement of the Secretary's allegations before filing an answer. The motion shall be filed within twenty days after service of the complaint and shall point out the defects complained of and the details desired. The prompt filing of an amended complaint meeting the objections of the moving party may obviate the necessity for the Judge to rule on the motion.

(c) *Order to file amended complaint.* In response to a motion for more definite statement, the Secretary may be ordered to file an amended complaint. The order will require the Secretary to supply such additional information or further particularization of the complaint's allegations as the Commission or the Judge deems necessary.

(d) *Time to file answer.* (1) *Generally.* Except as provided in paragraph (d)(2) of this section, the employer shall file with the Commission an answer conforming to the requirements of § 2200.36 within 30 days after service of the complaint.

(2) *Exceptions.* If a motion to dismiss or a motion for a more definite statement has been filed, the answer shall be filed within 15 days after the motion is denied. If a motion to amend the complaint or a motion for a more definite statement has been granted, or if an amended complaint has been filed voluntarily under § 2200.35(f) before an answer is served, the answer shall be filed within 30 days after service of the amended complaint.

§ 2200.35 Complaints.

(a) *General requirements.* The purpose of this section is to insure the early ascertainment of the issues to be litigated. Attachment of the citation or notification of failure to abate to the complaint and incorporation of its terms by reference do not comply with this section. The complaint shall contain the following allegations in separately designated paragraphs:

(1) The employer is engaged in a business affecting commerce within the meaning of section 3(5) of the Act, 29 U.S.C. 652(5);

(2) The employer's name, principal place of business and type of business conducted as of the date of the alleged violation or failure to abate; and

(3) The time and place of each alleged violation or failure to abate.

(b) *Complaints concerning contested alleged violations.* Each alleged violation shall be set out in a separate numbered paragraph, which shall have the subparagraphs described below. All allegations that relate to the same alleged violation shall be placed in one paragraph. A paragraph alleging a violation shall in separate subparagraphs state clearly and concisely—

(1) What provision of the Act, standard, regulation, rule or order was violated and the item and citation number in which the alleged violation is set forth;

(2) The factual basis for each allegation necessary to establish that the standard, regulation or rule applies, and what scope or application provision governs its applicability;

(3) The factual basis for each allegation necessary to establish that the cited circumstances, conditions, practices or operations violated the cited provision of the Act, standard, regulation, rule or order;

(4) Where pertinent, the factual basis for the allegation that employees had access to or were exposed to the cited circumstances, conditions, practices or operations;

(5) That the employer knew or could have known with the exercise of reasonable diligence of the cited circumstances, conditions, practices or operations;

(6) Any allegation that the alleged violation is serious, or that the employer willfully committed the alleged violation;

(7) Any allegation that the employer repeatedly committed the alleged violation, each prior citation and item number that serves as the basis for the classification, and the date that each became a final order of the Commission;

(8) That the proposed penalty is appropriate, specifying the amount;

(9) That the proposed abatement date is reasonable, specifying the date.

(c) *Additional requirements for complaints alleging violations of the General Duty Clause.* With respect to each alleged violation of section 5(a)(1) of the Act, 29 U.S.C. 654(a)(1), the

complaint shall also identify the alleged hazard and specify the feasible means by which the employer could have eliminated or materially reduced the alleged hazard.

(d) *Additional requirements for complaints alleging violations of general standards.* With respect to each alleged violation of any standard or regulation under which the obligation of the employer is contingent upon the existence of a hazard (e.g., 29 CFR 1910.94(d)(7)(iii), 1910.94(d)(9)(i), 1910.132(a) and 1926.28(a)), the complaint shall also identify the particular hazard created by the circumstances, conditions, practices or operations that are the basis for the alleged violation. With respect to each alleged violation of any standard or regulation that does not specify a means of abatement and does not provide a specific performance criterion, the complaint shall also identify the feasible means by which the employer could have abated the allegedly violative condition.

(e) *Complaints alleging failure to abate.* With respect to each contested allegation of failure to abate a violation, the complaint shall allege with particularity the failure to abate, specifying its date, location and circumstances. The complaint also shall state the penalty proposed, and allege that the penalty is "appropriate" under section 17(j) of the Act, 29 U.S.C. 666(j). The complaint shall also identify the citation and item number in which the violation was previously cited, the date on which this prior citation became a final order of the Commission, and the date by which abatement was required.

(f) *Amendment of the citation and complaint.* A contested citation, notification of proposed penalty, or notification of failure to abate may be amended once as a matter of course in the complaint before an answer is served if (1) the amended allegation arises out of the same conduct, occurrence or hazard described in the citation; (2) the amendment does not result in incurable harm to the employer in the preparation or presentation of its case; and (3) the complaint clearly identifies the change that is being made in the allegation. All other amendments of the Secretary's allegations, as well as any amendments of the employer's responses, are governed by Federal Rule of Civil Procedure 15.

§ 2200.36 Content of the answer.

(a) *Response to the Secretary's allegations.* General denials shall not be accepted. The answer shall contain in short and plain terms a response to each allegation of the complaint. It shall specifically admit or deny each allegation or, if the employer is without knowledge of the facts, the answer shall so state. A statement of lack of knowledge has the effect of a denial. A failure to respond to an allegation shall be treated as an admission that the allegation is true. Amendment of the answer to correct a failure to respond may be permitted when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the Commission or Judge that the amendment will prejudice him in presenting his case or defense on the merits.

(b) *Affirmative defenses.* (1) The employer shall state in its answer in separate numbered paragraphs any matter that may constitute an avoidance or an affirmative defense and, to the extent they are known or with reasonable diligence could have been known, the facts that are the basis of the defense. Such matters include, but are not limited to, the following: creation of a greater hazard by complying with a cited standard; exemption under section 4(b)(1) of the Act, 29 U.S.C. 653(b)(1); failure to issue a citation with reasonable promptness; infeasibility of compliance; invalidity of the cited standard; preemption of section 5(a)(1) of the Act, 29 U.S.C. 654(a)(1), by a specific standard; preemption of a standard by a more specifically applicable standard under 29 CFR 1910.5(c)(1); res judicata; the six-month limitation period in section 9(c) of the Act, 29 U.S.C. 658(c); or unpreventable employee conduct.

(2) By pleading an avoidance or affirmative defense, the employer does not waive its right to argue that the Secretary has the burden of persuasion concerning the matter. See § 2200.30(f).

§ 2200.37 Petitions for modification of the abatement period.

(a) *Grounds for modifying abatement date.* An employer may file a petition for modification of abatement date when such employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's reasonable control.

(b) *Contents of petition.* A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(c) *When and where filed; Posting requirement; Responses to petition.* A petition for modification of abatement date shall be filed with the Area Director of the United States Department of Labor who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition shall remain posted for a period of 10 days.

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Area Director. Failure to file such objection within 10 working days of the date of posting of such petition shall constitute a waiver of any further right to object to said petition.

(3) The Secretary or his duly authorized agent shall have the authority to approve any uncontested petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders pursuant to sections 10 (a) and (c) of the Act.

(4) The Secretary or his authorized representative shall not exercise his approval power until the expiration of 15 working days from the date the petition was posted pursuant to paragraphs (c) (1) and (2) of this section by the employer.

(d) *Contested petitions.* Where any petition is objected to by the Secretary or affected employees, such petition shall be processed as follows:

(1) The petition, citation and any objections shall be forwarded to the Commission within 10 working days after the expiration of the 15 working day period set out in paragraph (c)(4) of this section.

(2) The Commission shall docket and process such petitions as expedited proceedings as provided for in § 2200.103 of this Part.

(3) An employer petitioning for a modification of the abatement period shall have the burden of proving in accordance with the requirements of section 10(c) of the Act, 29 U.S.C. 659(c), that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

(4) Within 10 working days after the receipt of notice of the docketing by the Commission of any petition for modification of the abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

§ 2200.38 Employee contests.

(a) *Secretary's statement of reasons.* Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the Secretary shall, within 10 days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.

(b) *Response to Secretary's statement.* Not later than 10 days after receipt of the statement referred to in paragraph (a) of this section, the contestant shall file a response.

(c) *Expedited proceedings.* All contests under this section shall be handled as expedited proceedings as provided for in § 2200.103 of this Part.

§ 2200.39 Statement of position.

At any time prior to the commencement of the hearing before the Judge, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard. The Judge may order the filing of a statement of position.

§ 2200.40 Motions and requests.

(a) *How to make.* A request for an order shall be made by motion. Motions shall be in writing or, unless the Judge directs otherwise, may be made orally during a hearing on the record and shall be included in the transcript. In exigent circumstances in cases pending before Judges, a motion may be made telephonically if it is reduced to writing and filed within a short time. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. Unless a motion is made by all parties, the moving party shall state in the motion any opposition or lack of opposition of which he is aware.

(b) *When to make.* A motion filed in lieu of an answer pursuant to § 2200.34(b) shall be filed no later than twenty days after the service of the complaint. Any other motion shall be made as soon as the grounds therefor are known.

(c) *Responses.* Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response. A procedural motion may be ruled upon prior to the expiration of the time for response. A party adversely affected by the ruling may within five days of service of the ruling seek reconsideration.

(d) *Postponement not automatic upon filing of motion.* The filing of a motion, including a motion for a postponement, does not automatically postpone a hearing. See § 2200.62 with respect to motions for postponement.

§ 2200.41 Failure to obey rules.

(a) *Sanctions.* When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge, he may be declared to be in default either: (1) On the initiative of the Commission or Judge, after having been afforded an opportunity to show cause why he should not be declared to be in default; or (2) on the motion of a party. Thereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party or strike any pleading or document not filed in accordance with these rules.

(b) *Motion to set aside sanctions.* For reasons deemed sufficient by the Commission or Judge and upon motion expeditiously made, the Commission or Judge may set aside a sanction imposed under paragraph (a) of this rule.

(c) *Discovery sanctions.* This section does not apply to sanctions for failure to comply with orders compelling discovery, which are governed by § 2200.52(e).

Subpart D—Prehearing Procedures and Discovery

§ 2200.51 Prehearing conferences and orders.

Prehearing conferences are encouraged. Prehearing conferences may be conducted by a telephone conference call. In addition to the prehearing and scheduling procedures set forth in Fed.R.Civ.P. 16, the Judge may upon his own initiative or on the motion of a party direct the parties to confer among themselves to consider settlement, stipulation of facts or any other matter that may expedite the hearing. Where a prehearing conference is not held, the Judge may in his discretion require the parties or their representatives to prepare and submit an agreed prehearing order setting forth any stipulations among the parties, the disputed issues of fact and law, the names and addresses of witnesses expected to be called and the exhibits expected to be introduced by each party in its case-in-chief, the possibility of settlement, the estimated hearing time, and a proposed hearing date or dates.

§ 2200.52 General provisions governing discovery.

(a) *General.*—(1) *Methods and limitations.* In conformity with these rules, any party may, without leave of the Commission or Judge, obtain discovery by one or more of the following methods:

(i) Production of documents or things or permission to enter upon land or other property for inspection and other purposes (§ 2200.53);

(ii) Requests for admission to the extent provided in § 2200.54; and

(iii) Interrogatories to the extent provided in § 2200.55.

Discovery is not available under these rules through depositions except to the extent provided in § 2200.56. In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure.

(2) *Time for discovery.* A party may initiate all forms of discovery in conformity with these Rules at any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss. Discovery shall be initiated early enough to permit completion of discovery no later than seven days prior to the date set for hearing, unless the Judge orders otherwise.

(3) *Service of discovery papers.* Every paper relating to discovery required to be served on a party shall be served on all parties.

(b) *Scope of discovery.* The information or response sought through discovery may concern any matter not privileged and that is relevant to the subject matter involved in the pending case. It is not ground for the objection that the information or response sought will be inadmissible at the hearing, if

that information or response appears reasonably calculated to lead to discovery of admissible evidence, regardless of which party has the burden of proof.

(c) *Limitations.* The frequency or extent of the discovery methods provided by these rules may be limited by the Commission or Judge if it is determined that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity to obtain the information sought by discovery in the action; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations on the parties' resources, and the importance of the issues in litigation.

(d) *Protective orders.* In connection with any discovery procedure, the Commission or Judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That discovery may be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(3) That discovery be conducted with no one present except persons designated by the Commission or Judge; and

(4) That confidential information not be disclosed or that it be disclosed only in a designated way. See also § 2200.11 on trade secrets.

(e) *Failure to cooperate; Sanctions.* A party may apply for an order compelling discovery when another party refuses or obstructs discovery. For purposes of this paragraph, an evasive or incomplete answer is to be treated as a failure to answer. If a Judge enters an order compelling discovery and there is a failure to comply with that order, the Judge may make such orders with regard to the failure as are just. The orders may issue upon the initiative of a Judge after affording an opportunity to show cause why the order should not be entered, or upon the motion of a party. The orders may include any sanction stated in Fed.R.Civ.P. 37, including the following:

(1) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;

(2) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed; and

(4) An order dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(f) *Unreasonable delays.* None of the discovery procedures set forth in these rules shall be used in a manner or at a time which shall delay or impede the progress of the case toward hearing status or the hearing of the case on the date for which it is scheduled, unless, in the interests of justice, the Judge shall order otherwise. Unreasonable delays in utilizing discovery procedures may result in termination of the party's right to conduct discovery.

§ 2200.53 Production of documents and things.

(a) *Scope.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served;

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon.

(b) *Procedure.* The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. It shall specify a reasonable time, place and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request. The Commission or Judge may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified. To obtain a ruling on an objection by the responding party, the requesting party shall file a motion with the Judge and shall annex thereto his request, together with the response and objections, if any.

§ 2200.54 Requests for admissions.

(a) *Scope.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve upon any other party written requests for admissions, for purposes of the pending action only, of the genuineness and authenticity of any document described in or attached to the requests, or of the truth of any specified matter of fact. Each matter of which an admission is requested shall be separately set forth. The number of requested admissions shall not exceed 25, including subparts, without an order of the Commission or Judge. The party seeking to serve more than 25 requested admissions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of requested admissions. The original of the request shall be filed with the Judge.

(b) *Response to requests.* Each matter is deemed admitted unless, within 30 days after service of the requests or within such shorter or longer time as the Commission or Judge may allow, the party to whom the requests are directed serves upon the requesting party: (1) A written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or (2) an objection, stating in detail the reasons therefor. The response shall be made under oath or affirmation and signed by the party or his representative. The original shall be filed with the Judge.

(c) *Effect of admission.* Any matter admitted under this section is conclusively established unless the Judge or Commission on motion permits withdrawal or modification of the admission. Withdrawal or modification may be permitted when the presentation of the merits of the case will be subserved thereby, and the party who obtained the admission fails to satisfy the Commission or Judge that the withdrawal or modification will prejudice him in presenting his case or defense on the merits.

VOL 51 ISS 173 SE 8 1986 UMI

§ 2200.55 Interrogatories.

(a) *General.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve interrogatories upon any other party. The number of interrogatories shall not exceed 25 questions, including subparts, without an order of the Commission or Judge. The party seeking to serve more than 25 questions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of interrogatories.

(b) *Answers.* All answers shall be made in good faith and as completely as the answering party's information will permit. The answering party is required to make reasonable inquiry and ascertain readily obtainable information. An answering party may not give lack of information or knowledge as an answer or as a reason for failure to answer, unless he states that he has made reasonable inquiry and that information known or readily obtainable by him is insufficient to enable him to answer the substance of the interrogatory.

(c) *Procedure.* Each interrogatory shall be answered separately and fully under oath or affirmation. If the interrogatory is objected to, the objection shall be stated in lieu of the answer. The answers are to be signed by the person making them and the objections shall be signed by the party or his counsel. The party on whom the interrogatories have been served shall serve a copy of his answers or objections upon the propounding party within 30 days after the service of the interrogatories. The Judge may allow a shorter or longer time. The burden shall be on the party submitting the interrogatories to move for an order with respect to any objection or other failure to answer an interrogatory.

§ 2200.56 Depositions.

(a) *General.* Depositions of parties, intervenors, or witnesses shall be allowed only by agreement of all the parties, or on order of the Commission or Judge following the filing of a motion of a party stating good and just reasons. All depositions shall be before an officer authorized to administer oaths and affirmations at the place of examination. The deposition shall be taken in accordance with the Federal Rules of Civil Procedure, particularly Fed.R.Civ.P. 30.

(b) *When to file.* A motion to take depositions may be filed after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss.

(c) *Notice of taking.* Any depositions allowed by the Commission or Judge may be taken after ten days' written notice to the other party or parties. The ten-day notice requirement may be waived by the parties.

(d) *Expenses.* Expenses for a court reporter, and the preparing and serving of depositions shall be borne by the party at whose instance the deposition is taken.

(e) *Use of depositions.* Depositions taken under this rule may be used for discovery, to contradict or impeach the testimony of a deponent as a witness, or for any other purpose permitted by the Federal Rules of Evidence and the Federal Rules of Civil Procedure, particularly Fed.R.Civ.P. 32.

§ 2200.57 Issuance of subpenas; petitions to revoke or modify subpenas; right to inspect or copy data.

(a) *Issuance of subpenas.* On behalf of the Commission or any member thereof, the Judge shall, on the application of any party, issue to the applying party subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence or documents, in his possession or under his control. The party to whom the subpena is issued shall be responsible for its service. Applications for subpenas, if filed prior to the assignment of the case to a Judge, shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, DC 20006. After the case has been assigned to a Judge, applications shall be filed with the Judge. Applications for subpenas shall be made ex parte. The subpena shall show on its face the name and address of the party at whose request the subpena was issued.

(b) *Revocation or modification of subpenas.* Any person served with a subpena, whether ad testificandum or duces tecum, shall, within 5 days after the date of service of the subpena upon him, move in writing to revoke or modify the subpena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpena was issued. The Judge or the Commission, as the case may be, shall revoke or modify the subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpena is otherwise invalid. The Judge or the Commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(c) *Rights of persons compelled to submit data.* Persons compelled to submit data or evidence at a public proceeding are entitled to retain or, on payment of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(d) *Failure to comply with subpena.* Upon the failure of any person to comply with a subpena issued upon the request of a party, the Commission by its counsel shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpena would be consistent with law and with policies of the Act. Neither the Commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

Subpart E—Hearings

§ 2200.60 Notice of hearing; Location.

Except by agreement of the parties, or in an expedited proceedi under § 2200.103, notice of the ti. e, place, and nature of the first setting of a hearing shall be given to the parties and intervenors at least thirty days in advance of the hearing. If a hearing has been previously postponed or if exigent circumstances are present, at least ten days notice shall be given. The Judge will designate a place and time of hearing that involves as little inconvenience and expense to the parties as is practicable.

§ 2200.61 Submission without hearing.

A case may be fully stipulated by the parties and submitted to the Commission or Judge for a decision at any time. The stipulation of facts shall be in writing and signed by the parties or their representatives. The submission of a case under this rule does not alter the burden of proof, the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof. Motions for summary judgment are covered by Fed.R.Civ.P. 56.

§ 2200.62 Postponement of hearing.

(a) *Motion to postpone.* A hearing may be postponed by the Judge at his own initiative or for good cause shown upon the motion of a party. A motion for postponement shall state the position of the other parties, either by a joint

motion or by a representation of the moving party. The filing of a motion for postponement does not automatically postpone a hearing.

(b) *Grounds for postponement.* A motion for postponement grounded on conflicting engagements of counsel or employment of new counsel shall be filed promptly after notice is given of the hearing, or as soon as the conflict is learned of or the engagement occurs.

(c) *When motion must be received.* A motion to postpone a hearing must be received at least seven days prior to the hearing. A motion for postponement received less than seven days prior to the hearing will generally be denied unless good cause is shown for late filing.

(d) *Postponement in excess of 60 days.* No postponement in excess of 60 days shall be granted without the concurrence of the Chief Administrative Law Judge. The original of any motion seeking a postponement in excess of 60 days shall be filed with the Judge and a copy sent to the Chief Administrative Law Judge.

§ 2200.63 Stay of proceedings.

(a) *Motion for stay.* Stays are not favored. A party seeking a stay of a case assigned to a Judge shall file a motion for stay with the Judge and send a copy to the Chief Administrative Law Judge. A motion for a stay shall state the position of the other parties, either by a joint motion or by the representation of the moving party. The motion shall set forth the reasons a stay is sought and the length of the stay requested.

(b) *Ruling on motion to stay.* The Judge, with the concurrence of the Chief Administrative Law Judge, may grant any motion for stay for the period requested or for such period as is deemed appropriate.

(c) *Periodic reports required.* The parties in a stayed proceeding shall be required to submit periodic reports on such terms and conditions as the Judge may direct.

§ 2200.64 Failure to appear.

(a) *Attendance at hearing.* The failure of a party to appear at a hearing may result in a decision against that party.

(b) *Requests for reinstatement.* Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five days after the scheduled hearing date.

(c) *Rescheduling hearing.* The Commission or the Judge, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

§ 2200.65 Payment of witness fees and mileage; Fees of persons taking depositions.

Witnesses summoned before the Commission or the Judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

§ 2200.66 Transcript of testimony.

(a) *Hearings.* Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Judge before whom the matter was heard.

(b) *Payment for transcript.* The Commission shall bear all expenses for court reporters' fees and for copies of the hearing transcript received by it. Each party is responsible for securing and paying for its copy of the transcript.

(c) *Correction of errors.* Error in the transcript of the hearing may be corrected by the Judge on his own motion, on joint motion by the parties, or on motion by any party. The motion shall state the error in the transcript and the correction to be made. Corrections will be made by hand with pen and ink and by the appending of an errata sheet.

§ 2200.67 Duties and powers of judges.

It shall be the duty of the Judge to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Judge shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the Commission, to:

(a) Administer oaths and affirmations;

(b) Issue authorized subpenas;

(c) Rule upon petitions to revoke subpenas;

(d) Rule upon offers of proof and receive relevant evidence;

(e) Take or cause depositions to be taken whenever the needs of justice would be served;

(f) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(g) Hold conferences for the settlement or simplification of the issues;

(h) Dispose of procedural requests or similar matters, including motions referred to the Judge by the Commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(i) Make decisions in conformity with § 557 of title 5, United States Code;

(j) Call and examine witnesses and to introduce into the record documentary or other evidence;

(k) Request the parties to state their respective positions concerning any issue in the case or theory in support thereof;

(l) Adjourn the hearing as the needs of justice and good administration require;

(m) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Commission.

§ 2200.68 Disqualification of the judge.

(a) *Discretionary withdrawal.* A Judge may withdraw from a proceeding whenever he deems himself disqualified.

(b) *Request for withdrawal.* Any party may request the Judge, at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) *Granting request.* If, in the opinion of the Judge, the affidavit referred to in paragraph (b) of this section is filed with due diligence and is sufficient on its face, the Judge shall forthwith disqualify himself and withdraw from the proceeding.

(d) *Denial of request.* If the Judge does not disqualify himself and withdraw from the proceedings, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and the provisions of § 2200.90 shall thereupon apply.

§ 2200.69 Examination of witnesses.

Witnesses shall be examined orally under oath or affirmation. Opposing parties have the right to cross-examine any witness whose testimony is introduced by an adverse party. All parties shall have the right to cross-examine any witness called by the Judge pursuant to § 2200.67(j).

VOL 51 ISS 173 SE 8 1986 UMI

§ 2200.70 Exhibits.

(a) *Marking exhibits.* All exhibits offered in evidence by a party shall be marked for identification before or during the hearing. Exhibits shall be marked with the case docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively.

(b) *Removal or substitution of exhibits in evidence.* Unless the Judge finds it impractical, a copy of each exhibit shall be given to the other parties and intervenors. A party may remove an exhibit from the official record during the hearing or at the conclusion of the hearing only upon permission of the Judge. The Judge, in his discretion, may permit the substitution of a duplicate for any original document offered into evidence.

(c) *Reasons for denial of admitting exhibit.* A Judge may, in his discretion, deny the admission of any exhibit because of its excessive size, weight, or other characteristic that prohibits its convenient transportation and storage. A party may offer into evidence photographs, models or other representations of any such exhibit.

(d) *Rejected exhibits.* All exhibits offered but denied admission into evidence, except exhibits referred to in paragraph (c) of this section, shall be placed in a separate file designated for rejected exhibits.

(e) *Return of physical exhibits.* A party may on motion request the return of a physical exhibit within 30 days after expiration of the time for filing a petition for review of a Commission final order in a United States Court of Appeals under section 11 of the Act, 29 U.S.C. 660, or within 30 days upon completion of any proceedings initiated thereunder. The motion shall be addressed to the Executive Secretary and provide supporting reasons. The exhibit shall be returned if the Executive Secretary determines that it is no longer necessary for use in any Commission proceeding.

(f) *Request for custody of physical exhibit.* Any person may on motion to the Executive Secretary request custody of a physical exhibit for use in any court or tribunal. The motion shall state the reasons for the request and the duration of custody requested. If the exhibit has been admitted in a pending Commission case, the motion shall be served on all parties to the proceeding. Any person granted custody of an exhibit shall inform the Executive Secretary of the status every six months of his continuing need for the exhibit and return the exhibit after completion of the proceeding.

(g) *Disposal of physical exhibit.* Any physical exhibit may be disposed of by the Commission's Executive Secretary at any time more than 30 days after expiration of the time for filing a petition for review of a Commission final order in a United States Court of Appeals under section 11 of the Act, 29 U.S.C. 660, or 30 days after completion of any proceedings initiated thereunder.

§ 2200.71 Rules of evidence.

The Federal Rules of Evidence are applicable.

§ 2200.72 Objections.

(a) *Statement of objection.* Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Judge, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

§ 2200.73 Interlocutory review.

(a) *General.* Interlocutory review of a Judge's ruling is discretionary with the Commission. A petition for interlocutory review may be granted only where the petition asserts and the Commission finds:

(1) That the review involves an important question of law or policy about which there is substantial ground for difference of opinion and that immediate review of the ruling may materially expedite the final disposition of the proceedings; or

(2) That the ruling will result in a disclosure, before the Commission may review the Judge's report, of information that is alleged to be privileged.

(b) *Petition for interlocutory review.* Within five days following the receipt of a Judge's ruling from which review is sought, a party may file a petition for interlocutory review with the Commission. Responses to the petition, if any, shall be filed within five days following service of the petition. A copy of the petition and responses shall be filed with the Judge. The petition is denied unless granted within 30 days of the date of receipt by the Commission's Executive Secretary.

(c) *Denial without prejudice.* The Commission's action in denying a petition for interlocutory review shall not preclude a party from raising an objection to the Judge's interlocutory ruling in a petition for discretionary review.

(d) Stay.—(1) *Trade secret matters.* The filing of a petition for interlocutory review of a Judge's ruling concerning an alleged trade secret shall stay the effect of the ruling until the Commission denies the petition or rules on the merits.

(2) *Other cases.* In all other cases, the filing or granting of a petition for interlocutory review shall not stay a proceeding or the effect of a ruling unless otherwise ordered.

(e) *Judge's comments.* The Judge may be requested to provide the Commission with his written views on whether the petition is meritorious. The Judge shall serve copies of these comments on all parties when he files them with the Commission.

(f) *Briefs.* Should the Commission desire briefs on the issues raised by an interlocutory review, it shall give notice to the parties. See § 2200.93—Briefs before the Commission.

§ 2200.74 Filing of briefs and proposed findings with the Judge; Oral argument at the hearing.

(a) *General.* A party is entitled to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Judge. In lieu of briefs, the Judge may permit or direct the parties to file memoranda or statements of authority.

(b) *Time.* Briefs shall be filed simultaneously on a date established by the Judge. A motion for extension of time for filing any brief shall be made at least three days prior to the due date and shall recite that the moving party has advised the other parties of the motion. Reply briefs shall not be allowed except by order of the Judge.

(c) *Untimely briefs.* Untimely briefs will not be accepted unless accompanied by a motion setting forth good cause for the delay.

Subpart F—Posthearing Procedures

§ 2200.90 Decisions of Judges.

(a) *Contents.* The Judge shall prepare a decision that constitutes his final disposition of the proceedings. The decision shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented on the record. The decision shall include an order affirming, modifying or vacating each

contested citation item and each proposed penalty, or directing other appropriate relief. A decision finally disposing of a petition for modification of the abatement period shall contain an order affirming or modifying the abatement period.

(b) *The Judge's report.*—(1) *Mailing to parties.* The Judge shall mail or otherwise transmit a copy of his decision to each party.

(2) *Docketing of Judge's report by Executive Secretary.* On the twenty-first day after the transmittal of his decision to the parties, the Judge shall file his report with the Executive Secretary for docketing. The report shall consist of the record, including the Judge's decision, any petitions for discretionary review and statements in opposition to such petitions. Promptly upon receipt of the Judge's report, the Executive Secretary shall docket the report and notify all parties of the docketing date. The date of docketing of the Judge's report is the date that the Judge's report is made for purposes of section 12(j) of the Act, 29 U.S.C. 661(j).

(3) *Correction of errors; Relief from default.* Until the Judge's report has been directed for review or, in the absence of a direction for review, until the decision has become a final order, the Judge may correct clerical errors and errors arising through oversight or inadvertence in decisions, orders or other parts of the record. If a Judge's report has been directed for review, the decision may be corrected during the pendency of review with leave of the Commission. Until the Judge's report has been docketed by the Executive Secretary, the Judge may relieve a party of default or grant reinstatement under § 2200.41(b), 2200.52(e) or 2200.64(b).

(c) *Filing documents after the docketing date.* Except for papers filed under paragraph (b)(3) of this section, which shall be filed with the Judge, on or after the date of the docketing of the Judge's report, all documents shall be filed with the Executive Secretary.

(d) *Judge's decision final unless review directed.* If no Commissioner directs review of a report on or before the thirtieth day following the date of docketing of the Judge's report, the decision of the Judge shall become a final order of the Commission.

§ 2200.91 Discretionary review; petitions for discretionary review; statements in opposition to petitions.

(a) *Review discretionary.* Review by the Commission is not a right. A Commissioner may, as a matter of discretion, direct review on his own motion or on the petition of a party.

(b) *Petitions for discretionary review.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review. Discretionary review by the Commission may be sought by filing with the Judge a petition for discretionary review within the 20-day period provided by § 2200.90(b). Review by the Commission may also be sought by filing directly with the Executive Secretary a petition for discretionary review. A petition filed directly with the Executive Secretary shall be filed within 20 days after the date of docketing of the Judge's report. The earlier a petition is filed, the more consideration it can be given. A petition for discretionary review may be conditional, and may state that review is sought only if a Commissioner were to direct review on the petition of an opposing party.

(c) *Cross-petitions for discretionary review.* Where a petition for discretionary review has been filed by one party, any other party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a cross-petition for discretionary review. The cross-petition may be conditional. See paragraph (b) of this section. A cross-petition shall be filed with the Judge during the 20 days provided by § 2200.90(b) or directly with the Executive Secretary within 27 days after the date of docketing of the Judge's report. The earlier a cross-petition is filed, the more consideration it can be given.

(d) *Contents of the petition.* No particular form is required for a petition for discretionary review. A petition should state why review should be directed, including: Whether the Judge's decision raises an important question of law, policy or discretion; whether review by the Commission will resolve a question about which the Commission's Judges have rendered differing opinions; whether the Judge's decision is contrary to law or Commission policy; whether a finding of material fact is not supported by a preponderance of the evidence; whether a prejudical error of procedure or an abuse of discretion was committed. A petition should concisely state the portions of the decision for which review is sought and should refer to the citations and citation items (for example, citation 3, item 4a) for which review is sought. A petition shall not incorporate by reference a brief or legal memorandum. Brevity and the inclusion of precise references to the record and legal authorities will facilitate prompt review of the petition.

(e) *When filing effective.* A petition for discretionary review is filed when received. If a petition has been filed with the Judge, another petition need not be filed with the Commission.

(f) *Failure to file.* The failure of a party adversely affected or aggrieved by the Judge's decision to file a petition for discretionary review may foreclose court review of the objections to the Judge's decision. *See Keystone Roofing Co.* v. *Dunlop*, 539 F.2d 960 (3d Cir. 1976).

(g) *Statements in opposition to petition.* Statements in opposition to petitions for discretionary review may be filed in the manner specified in this section for the filing of petitions for discretionary review. Statements in opposition shall concisely state why the Judge's decision should not be reviewed with respect to each portion of the petition to which it is addressed.

(h) *Number of copies.* An original and three copies of a petition or of a statement in opposition to a petition shall be filed.

§ 2200.92 Review by the Commission.

(a) *Jurisdiction of the Commission; Issues on review.* Unless the Commission orders otherwise, a direction for review establishes jurisdiction in the Commission to review the entire case. The issues to be decided on review are within the discretion of the Commission but ordinarily will be those stated in the direction for review, those raised in the petitions for discretionary review, or those stated in any later order.

(b) *Review on a Commissioner's motion; Issues on review.* At any time within 30 days after the docketing date of the Judge's report, a Commissioner may, on his own motion, direct that a Judge's decision be reviewed. In the absence of a petition for discretionary review, a Commissioner will normally not direct review unless the case raises novel questions of law or policy or questions involving conflict in Administrative Law Judges' decisions. When a Commissioner directs review on his own motion, the issues ordinarily will be those specified in the direction for review or any later order.

(c) *Issues not raised before Judge.* The Commission will ordinarily not review issues that the Judge did not have the opportunity to pass upon. In exercising discretion to review issues that the Judge did not have the opportunity to pass upon, the Commission may consider such factors as whether there was good cause for not raising the issue before the Judge, the degree to which the issue is factual, the degree to which proceedings will be disrupted or delayed by raising the issue on review, whether the ability of an adverse party to press a

claim or defense would be impaired, and whether considering the new issue would avoid injustice or ensure that judgment will be rendered in accordance with the law and facts.

§ 2200.93 Briefs before the Commission.

(a) *Requests for briefs.* The Commission ordinarily will request the parties to file briefs on issues before the Commission. After briefs are requested, a party may, instead of filing a brief, file a letter setting forth its arguments, a letter stating that it will rely on its petition for discretionary review or previous brief, or a letter stating that it wishes the case decided without its brief. The provisions of this section apply to the filing of briefs and letters filed in lieu of briefs.

(b) *Filing briefs.* Unless the briefing notice states otherwise:

(1) *Time for filing briefs.* The party required to file the first brief shall do so within 40 days after the date of the briefing notice. All other parties shall file their briefs within 30 days after the first brief is served. Any reply brief permitted by these rules or by order shall be filed within 15 days after the second brief is served.

(2) *Sequence of filing.* (i) If one petition for discretionary or interlocutory review has been filed, the petitioning party shall file the first brief.

(ii) If more than one petition has been filed but only one was granted, the party whose petition was granted shall file the first brief.

(iii) If more than one petition has been filed, and more than one has been granted or none has been granted, the Secretary shall file the first brief.

(iv) If no petition has been filed, the Secretary shall file the first brief.

(3) *Reply briefs.* The party who filed the first brief may file a reply brief. Additional briefs are otherwise not allowed except by leave of the Commission.

(c) *Motion for extension of time for filing brief.* An extension of time to file a brief will ordinarily not be granted except for good cause shown. A motion for extension of time to file a brief shall be filed within the time limit prescribed in paragraph (b) of this section, shall comply with § 2200.40, and shall include the following information: when the brief is due; the number and duration of extensions of time that have been granted to each party; the length of extension being requested; the specific reason for the extension being requested; and an assurance that the brief will be filed within the time extension requested.

(d) *Consequences of failure to timely file brief.* The Commission may decline to accept a brief that is not timely filed. If a petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may vacate the direction for review, or it may decide the case without that party's brief. If the non-petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may decide the case without that party's brief. If a case was directed for review upon a Commissioner's own motion, and any party fails to respond to the briefing notice, the Commission may either vacate the direction for review or decide the case without briefs.

(e) *Length of brief.* Except by permission of the Commission, a main brief, including briefs and legal memorandums it incorporates by reference, shall contain no more than 35 pages of text. A reply brief, including briefs and legal memorandums it incorporates by reference, shall contain no more than 20 pages of text.

(f) *Table of contents.* A brief in excess of 15 pages shall include a table of contents.

(g) *Failure to meet requirements.* The Commission may return briefs that do not meet the requirements of paragraphs (e) and (f) of this section.

(h) *Number of copies.* The original and four copies of a brief shall be filed. See § 2200.8(c)(2).

§ 2200.94 Stay of final order.

(a) *Who may file.* Any party aggrieved by a final order of the Commission may, while the matter is within the jurisdiction of the Commission, file a motion for a stay.

(b) *Contents of motion.* Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) *Ruling on motion.* The Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

§ 2200.95 Oral argument before the Commission.

(a) *General policy.* Oral argument before the Commission ordinarily will not be allowed.

(b) *Notice of oral argument.* In the event the Commission desires to hear oral agrument with respect to any matter, it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least 10 days prior to the date set.

Subpart G—Miscellaneous Provisions

§ 2200.100 Settlement.

(a) *Policy.* Settlement is permitted and encouraged by the Commission at any stage of the proceedings.

(b) *Requirements.* The Commission does not require that the parties include any particular language in a settlement agreement, but does require that the agreement specify the terms of settlement for each contested item, specify any contested item or issue that remains to be decided (if any remain), and state whether any affected employees who have elected party status have raised an objection to the reasonableness of any abatement time. Unless the settlement agreement states otherwise, the withdrawal of a notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period will be with prejudice.

(c) *Filing; Service and notice.* A settlement submitted for approval after the Judge's report has been directed for review shall be filed with the Executive Secretary. When a settlement agreement is filed with the Judge or the Executive Secretary, proof of service shall be filed with the settlement agreement, showing service upon all parties and authorized employee representatives in the manner prescribed by § 2200.7(c) and the posting of notice to non-party affected employees in the manner prescribed by § 2200.7(g). The parties shall also file a final consent order for adoption by the Judge. If the time has not expired under these rules for electing party status, or if party status has been elected, an order terminating the litigation before the Commission because of the settlement shall not be issued until at least ten days after service to consider any affected employee's or authorized employee representative's objection to the reasonableness of any abatement time. The affected employee or authorized employee representative shall file any such objection within this time. If such objection is filed or stated in the settlement agreement, the Commission or the Judge shall provide an opportunity for the affected employees or authorized employee representative to be heard and present evidence on the objection, which shall be limited to the reasonableness of the abatement time.

(d) *Form of settlement document.* It is preferred that settlement documents be typewritten in conformance with § 2200.30(a). However, a settlement document that is hand-written or printed in ink and is legible shall be acceptable for filing.

§ 2200.101 Settlement Judge procedure.

(a) *Appointment of Settlement Judge.* (1) This section applies only to notices of contests by employers and to applications for fees under the Equal

Access to Justice Act and 29 CFR Part 2204.

(2) Upon motion of any party following the filing of the pleadings (or notice of simplified proceedings), or otherwise with the consent of the parties at any time in the proceedings, the Chief Administrative Law Judge or the Chairman may assign a case to a Settlement Judge for processing under this section whenever it is determined that there is a reasonable prospect of substantial settlement with the assistance of mediation by a Settlement Judge. In the event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed.

(3) The settlement negotiations under this section shall be for a period not to exceed 45 days.

(b) *Powers and duties of Settlement Judges.* (1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case.

(2) The Judge may allow or suspend discovery during the time of assignment.

(3) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider, and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(4) The Judge shall seek resolution of as many of the issues in the case as is feasible.

(c) *Settlement conference and other communication.*—(1) *Types of conferences.* In general it is expected that the Settlement Judge shall communicate with the parties by a conference telephone call. The Settlement Judge, however, may schedule a personal conference with the parties under one or more of the following circumstances:

(i) It is possible for the Settlement Judge to schedule in one day three or more cases for conference at or near the same location;

(ii) The offices of the attorneys or other representatives of the parties, as well as that of the Settlement Judge, are located in the same metropolitan area;

(iii) A conference may be scheduled in a place and on a day that the Judge is scheduled to preside in other proceedings under this Part;

(iv) Any other suitable circumstances in which, with the concurrence of the Chief Administrative Law Judge, the Settlement Judge determines that a personal meeting is necessary for a resolution of substantial issues in a case and the holding of a conference represents a prudent use of resources.

(2) *Participation in conference.* The Settlement Judge may recommend that the attorney or other representative who is expected to try the case for each party be present, and without regard to the scope of the attorney's or other representative's powers, may also recommend that the parties, or agents having full settlement authority be present. The parties, their representatives, and attorneys are required to be completely candid with the Settlement Judge so that he may properly guide settlement discussions, and the failure to be present at a settlement conference or the refusal to cooperate fully within the spirit of this rule may result in the termination of the settlement proceeding under this section. The Settlement Judge may make such other and additional requirements of the parties and persons having an interest in the outcome as to him shall seem proper in order to expedite an amicable resolution of the case. No evidence of statements or conduct in proceedings under this section will be admissible in any subsequent hearing, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpena.

(d) *Report of Settlement Judge.* (1) With the consent of the parties, the Settlement Judge may request from the Chief Administrative Law Judge an enlargement of the time of the settlement period not exceeding 20 days. This request and any action of the Chief Administrative Law Judge in response thereto, may be written or oral.

(2) Under other circumstances the Settlement Judge, following the expiration of the settlement period or at such earlier date that he determines further negotiations would be fruitless, shall promptly notify the Chief Administrative Law Judge in writing of the status of the case. If he has not approved a full settlement pursuant to § 2200.100 of these rules, such report shall include written stipulations embodying the terms of such partial settlement as has been achieved during the assignment.

(3) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to a different Administrative Law Judge for appropriate action on the remaining issues, unless the parties request otherwise. The Settlement Judge shall not discuss the merits of the case with any Administrative Law Judge or other person, nor be called as a witness in any hearing of the case.

(e) *Non-reviewability.* Any decision concerning the assignment of a particular Settlement Judge or the decision by any party or Settlement Judge to terminate proceedings under this section is not subject to review by, appeal to, or rehearing by any subsequent presiding officer, the Chief Administrative Law Judge, or the Commission.

§ 2200.102 Withdrawal.

A party may withdraw its notice of contest, citation, notification of proposed penalty, and petition for modification of abatement period at any stage of a proceeding. The notice of withdrawal shall be served in accordance with § 2200.7(c) upon all parties and authorized employee representatives that are eligible to elect, but have not elected, party status. It shall also be posted in manner prescribed in § 2200.7(g) for the benefit of any affected employees not represented by an authorized employee representative who are eligible to elect, but have not elected, party status. Proof of service shall accompany the notice of withdrawal.

§ 2200.103 Expedited proceeding.

(a) *When ordered.* Upon application of any party or intervenor or upon its own motion, the Commission may order an expedited proceeding. When an expedited proceeding is ordered by the Commission, the Executive Secretary shall notify all parties and intervenors.

(b) *Automatic expedition.* Cases initiated by employee contests and petitions for modification of abatement period shall be expedited.

(c) *Effect of ordering expedited proceeding.* When an expedited proceeding is required by these rules or ordered by the Commission, it shall take precedence on the docket of the Judge to whom it is assigned, or on the Commission's review docket, as applicable, over all other classes of cases, and shall be set for hearing or for the submission of briefs at the earliest practicable date.

(d) *Time sequence set by Judge.* The assigned Judge shall make rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, may order daily transcripts of the hearing, and shall do all other things appropriate to complete the proceeding in the minimum time consistent with fairness.

§ 2200.104 Standards of conduct.

(a) *General.* All representatives appearing before the Commission and its Judges shall comply with the letter and spirit of the Model Rules of

Professional Conduct of the American Bar Association.

(b) *Misbehavior before a Judge.*—(1) *Exclusion from a proceeding.* A Judge may exclude from participation in a proceeding any person, including a party or its representative, who engages in disruptive behavior, refuses to comply with orders or rules of procedure, continuously uses dilatory tactics, refuses to adhere to standards of orderly or ethical conduct, or fails to act in good faith. The cause for the exclusion shall be stated in writing, or may be stated in the record if the exclusion occurs during the course of the hearing. Where the person removed is a party's attorney or other representative, the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or other representative.

(2) *Appeal rights if excluded.* Any attorney or other representative excluded from a proceeding by a Judge may, within five days of the exclusion, appeal to the Commission for reinstatement. No proceeding shall be delayed or suspended pending disposition of the appeal.

(c) *Disciplinary action by the Commission.* If an attorney or other representative practicing before the Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Commission or its Judges, the Commission may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action, including suspension or disbarment from practice before the Commission.

§ 2200.105 Ex parte communication.

(a) *General.* Except as permitted by § 2200.101 or as otherwise authorized by law, there shall be no ex parte communication with respect to the merits of any case not concluded, between any Commissioner, Judge, employee, or agent of the Commission who is employed in the decisional process and any of the parties or intervenors, representatives or other interested persons.

(b) *Disciplinary action.* In the event an ex parte communication occurs, the Commission or the Judge may make such orders or take such actions as fairness requires. The exclusion of a person by a Judge from a proceeding shall be governed by § 2200.104(b). Any disciplinary action by the Commission, including suspension or disbarment, shall be governed by § 2200.104(c).

(c) *Placement on public record.* All ex parte communications in violation of this section shall be placed on the public record of the proceeding.

§ 2200.106 Amendment to rules.

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein. The Commission invites suggestions from interested parties to amend or revoke rules of procedure. Such suggestions should be addressed to the Executive Secretary of the Commission at 1825 K Street, NW, Washington, DC 20006.

§ 2200.107 Special circumstances; Waiver of rules.

In special circumstances not contemplated by the provisions of these rules or for good cause shown, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after three days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

§ 2200.108 Official Seal Occupational Safety and Health Review Commission.

The seal of the Commission shall consist of: A gold eagle outspread, head facing dexter, a shield with 13 vertical stripes superimposed on its breast, holding an olive branch in its claws, the whole superimposed over a plain solid white Greek cross with a green background, encircled by a white band edged in black and inscribed "Occupational Safety and Health Review Commission" in black letters.

Dated: August 28, 1986.

E. Ross Buckley,

Chairman.

Dated: September 2, 1986.

Robert E. Rader, Jr.,

Commissioner.

Dated: August 28, 1986.

John R. Wall,

Commissioner.

[FR Doc. 86-20127 Filed 9-5-86; 8:45 am]

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federal register

Monday
September 8, 1986

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicles Engines; Gaseous Emissions Regulations for 1988 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines and Vehicles; Advance Notice of Proposed Rulemaking

VOL 51 ISS 173 SE 8 1986 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3035-9]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicles Engines; Gaseous Emissions Regulations for 1988 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines and Vehicles

AGENCY: U.S. Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Agency is considering actions in three principal areas related to motor vehicle emission standards and regulations. First, EPA is evaluating more stringent hydrocarbon (HC) exhaust emission standards for light-duty trucks (LDTs). The standards would likely differ by vehicle test weight and would be chosen to be approximately equivalent in stringency to the current light-duty vehicle (LDV) standard. If this approach were adopted, the revised standard for lighter LDTs would probably be 0.41 g/mi, numerically the same as the standard that now applies to light-duty vehicles. For heavier LDTs, the numerical value of the standard would be somewhat higher, perhaps 0.50 g/mi. Second, EPA is contemplating more stringent HC standards for light and heavy LDTs at higher elevations that; as is currently the case, would require the same percentage reduction in emissions at high altitude as is required at low altitude. Using the same regulatory approach as described above for revised low-altitude standards, the resulting high-altitude standards would be 0.49 g/mi and 0.60 g/mi for lighter and heavier LDTs, respectively. Both of these actions are being considered to help address the nationwide problem associated with nonattainment of the ambient air quality standard for ozone.

Third, and finally, the Agency also is contemplating a requirement that lighter heavy-duty trucks (Class IIB) be certified in compliance with the LDT standards using the applicable certification protocols. If adopted, this revision would make mandatory a certification scheme which is currently optional for heavy-duty engine manufacturers. Changing the certification requirements in this manner would make EPA's enforcement program easier to implement and less costly for Class IIB trucks, because the test procedure for LDTs is less complex than for heavy-duty engines.

DATES: In order to insure full consideration in the Agency's preparation of this rulemaking, comments pertaining to this ANPRM should be submitted in writing by October 8, 1986.

ADDRESSES: Written comments should be submitted in duplicate to: Central Docket Section (LE-131A); Attention: Docket No. A-85-22; U.S. Environmental Protection Agency; 401 M Street SW., Washington, DC 20460.

This docket is located at the above address in the West Tower Lobby, Gallery I, and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Wilcox, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4390.

SUPPLEMENTARY INFORMATION:

I. Background

Although there have been significant gains in the control of motor vehicle emissions, many areas of the nation continue to experience air quality problems associated with motor vehicle-related pollutants. One of the most persistent and pervasive of these is the ozone problem. Presently, 73 urban areas of the country are in violation of the National Ambient Air Quality Standard (NAAQS) for ozone. The more stringent standards identified in today's notice would help address the nationwide ozone problem by reducing HC emissions (i.e., an ozone precursor) from LDTs.

II. Revised LDT HC Standards

At the present time, LDTs must comply with both low- and high-altitude emission standards. The current exhaust HC standard at low altitude is 0.80 g/mi and was promulgated on September 25, 1980 (45 FR 63734). Although the standard applies to all LDTs, this class of vehicles is actually composed of two subclasses, which are governed by different sections of the Clean Air Act (the Act).

The "heavier" LDTs have gross vehicle weight ratings (GVWR) of 6,000 to 8,500 pounds. Under section 202(b)(3)(c) of the Act, vehicles weighing 6,000 pounds or more are considered "heavy-duty vehicles or engines" (HDEs). Thus, the heavier LDTs are subject to the emission control requirements for heavy-duty engines (HDEs) contained in section 202(a)(3). These requirements include a 90 percent or greater reduction in HC emissions from baseline levels. The current 0.80 g/mi HC standard was specifically promulgated under section 202(a)(3)(A)(ii)(I), which requires a 90 percent reduction in HC emissions.

The "lighter" LDTs have GVWRs of 6,000 pounds or less. They fall into neither of the two broad categories—light-duty vehicles (LDVs) and HDEs—for which the Act specifies emission standards. Thus, these LDVs are regulated under section 202(a)(1), which provides EPA with general standard setting authority.

The current low-altitude standard for these vehicles was established on the basis of emissions from heavier LDTs, and is less difficult for lighter LDTs to achieve than for heavier LDTs. Lighter vehicles generally use less fuel to propel them over the road due to their lower weights and smaller frontal areas. As a consequence, these vehicles tend to have lower emission rates. Hence, compliance with the 0.80 g/mi standard by these lighter LDTs requires a smaller percentage reduction in exhaust HC emissions than is required for the heavier trucks in this class (i.e., less than 90 percent). The relative stringency of the current LDT standard can be illustrated by comparing the above percentage emission reductions to that represented by the present LDV standard, which requires more than a 95 percent reduction in exhaust HC emissions.

In contemplating more stringent HC standards for LDTs at low altitude, EPA believes an appropriate overall strategy would be to more closely approximate the emission reductions that are being achieved by LDVs, within the limits of technical feasibility. Due to the great range of vehicle weights that comprise the LDT class, the Agency feels that emission control benefits and cost effectiveness can be maximized by adopting separate standards for each LDT subclass. This approach is patterned after the NO_x standards for 1988 and later LDTs, which were published on March 15, 1985 (50 FR 10606). In that rulemaking, the two subclasses of LDTs were separated on the basis of loaded vehicle weight (LVW): 3,750 pounds LVW or less and greater than 3,750 pounds LVW. The subclasses defined in terms of LVW are largely the same as those defined in terms of GVWR. The only difference in categorization is that a few vehicles that are lighter LDTs under the GVW scheme (i.e., weigh 6,000 pounds GVWR or less) are classified as heavier LDTs under the LVW scheme (i.e., weigh greater than 3,750 pounds LVW). The LVW discriminator is used in conjunction

with the possible HC standards described below.

The Agency has tentatively identified more stringent HC control requirements for LDTs at low altitude that appear to be reasonably achievable by each subclass based on a consideration of their relative sizes and weights. For lighter LDTs, EPA is considering a low-altitude standard that is numerically identical to the LDV standard of 0.41 g/mi. The primary rationale for this choice is that these smaller trucks are very similar in size and function to many LDVs and, therefore, it appears likely that these LDTs could comply with the same standard.

In attempting to identify a standard for heavier LDTs that is roughly equivalent in stringency to the lighter LDT requirement, the Agency believes the LDV standard should be adjusted upward by a factor of 1.2. This adjustment factor was developed in previous EPA actions (e.g., 46 FR 5838), and accounts for the deleterious effect on emission rates caused by the greater weights and frontal areas of the largest LDTs relative to the largest LDVs. Consequently, EPA is considering a revised low-altitude standard of 0.50 g/mi for heavier LDTs.

Turning to the high-altitude standards, the Agency currently regulates emissions from LDTs at higher levels (standard setting) to achieve the same percentage reduction in HC emissions under high-altitude conditions as is required by the low-altitude standard under low-altitude conditions. Since HC emissions from motor vehicles naturally increase at higher elevations due to changes in air density, the numerical value of the high-altitude proportional standard is somewhat greater than the corresponding standard for low altitude. The present exhaust HC standard for high-altitude LDTs is 1.0 g/mi and was promulgated on October 19, 1983 (48 FR 48598). Certain exemptions from the high-altitude standards are allowed for very low-power LDTs.

In considering more stringent HC standards for LDTs at higher elevations, EPA's present intent is to propose continuing the proportional relationship between high-altitude standards and low-altitude standards. The methodology for deriving proportional high-altitude standards was fully described in the **Federal Register** notice that established the original requirements for 1982–83 model year vehicles (45 FR 66984). In summary, the proportional HC standards are derived by multiplying the low-altitude standards by a "proportional factor" of 1.2. This factor represents the ratio of uncontrolled emissions at high altitude to those at low altitude (i.e., the change in HC emissions as a function of elevation). Therefore, EPA has tentatively identified new high-altitude standards, which correspond to the revised low-altitude HC standards described above, as 0.49 g/mi for lighter LDTs and 0.60 g/mi for heavier LDTs.

The current regulatory provisions governing the certification and sale of LDTs at high altitude would be unaffected if EPA promulgated only new proportional high-altitude standards. However, in addition to the possibility of adopting revised proportional standards, the Agency is also considering regulatory requirements for LDTs that closely resemble the current "all-altitude" LDV emission control provisions.[1] This more stringent regulatory option could result in greater emission reductions at higher elevations and would likely enhance model availability in high-altitude areas, where currently only those vehicles certified to high-altitude standards can be sold.

Adopting all-altitude requirements for LDTs would entail two significant changes in the light truck regulations. First, every LDT would be required to *automatically* comply with the applicable HC standards at both low and high altitudes, unless otherwise exempted. Currently, LDTs may be manually adjusted or modified to comply with the high-altitude requirements. Second, LDTs would be subject to the more stringent exemption criteria that apply to LDVs. The primary change in this area would be that as a condition for exempting a particular vehicle, a manufacturer would have to certify for sale at least one version of that vehicle's model type at high altitude. Comments are specifically requested on adopting all-altitude requirements for LDTs, in addition to revising the existing proportional requirements.

In considering the technical feasibility of new low- and high-altitude LDT standards, the Agency notes that because they would approximate the stringency of the existing LDV HC standard, light trucks should be able to comply with the new requirements by using emission control technology which is similar to that used by LDVs. Furthermore, even though EPA has not yet performed detailed technical feasibility or economic analyses, a review of recent emissions certification information shows that many LDTs already use the requisite control technology. This suggests that more stringent LDT HC standards are feasible and may be relatively inexpensive.

Another matter closely related to the question of technical feasibility is that of non-conformance penalties (NCPs). Section 206(g) of the Act permits vehicles weighing over 6,000 pounds GVWR to be sold even if they do not comply with emission standards so long as the manufacturer pays a monetary penalty and the vehicle emission rates are below an upper limit established by EPA. However, NCPs are only available for standards that EPA finds will require "substantial work" to meet. (See generic NCP rule, 50 FR 35374.) The Agency invites comment on the appropriateness of NCPs for the anticipated revision of the HC standards.

The leadtime necessary to ensure compliance with new emission control requirements is generally proportional to the difficulty of the task. As previously described, many LDTs already appear to be equipped with emission control technology that is capable of achieving the anticipated standards. This suggests that the leadtime would be needed primarily for hardware recalibration and emission recertification. If this is the case, and assuming that new LDT standards were promulgated in 1987, there should be adequate time to allow compliance beginning with the 1989 model year. If additional development and emission control hardware are needed, the effective date of the anticipated LDT standards would need to be delayed as appropriate.

Also important to the determination of leadtime is the fact, as noted earlier, that the heavier LDTs fall within the statute's definition of HDE. The statute appears to require that revisions of standards applicable to HDEs provide four years of leadtime before becoming effective. (See "Statutory Authority" section for further discussion of legal requirements.) Assuming the revised HC standard for heavier LDTs were promulgated in 1987, the 1991 model year would be the earliest possible effective date if the four-year leadtime requirement applies. The Agency would, of course, favor implementing any revised HC standards for all LDTs as early as possible, and requests comments on its authority to adopt standards for heavier LDTs as early as the 1989 model year.

The new, more stringent LDT standards should reduce HC inventories of urban areas throughout the nation. Such reductions are needed to help attain and maintain the NAAQS for ozone, a standard that is currently being violated in 73 urban areas of the

[1] The "all-altitude" certification protocols are described in Title 40, 86.087–6 of the Code of Federal Regulations.

country. When the cost of this action is compared with its environmental benefits, the cost effectiveness of the new LDT standards is expected to be very good.

In a related matter, EPA notes that the emission control techniques required for compliance with the new HC requirements will generally provide concurrent reductions in carbon monoxide (CO) emissions. Additional control of this pollutant is desirable because many areas of the country currently violate the NAAQS for CO. In fact, to help ensure this added benefit, the Agency is entertaining the possibility of revising the CO standards for LDT's so they are similar in stringency to the HC standards described above. Comments are specifically requested on the environmental need, technical feasibility, and cost of such requirements.

III. Certifying Class IIB Trucks to Light-Duty Trucks Standards

Heavy-duty vehicles (HDVs) are defined in the Agency's regulations as any motor vehicle with a GVWR greater than 8,500 pounds. The lightest HDVs (Class IIB) range from 8,501 to 10,000 pounds GVWR. Under the current regulations, these light HDVs may be certified to the LDT exhaust emission requirements rather than the applicable heavy-duty requirements. The Agency originally provided this option to reduce certification costs for a manufacturer that might be producing essentially the same engine configuration in both the LDT and light HDV categories. Certifying both to the LDT standards allowed the manufacturers to conduct a single certification program rather than incurring costs for both LDT and HDV certification.

The Agency also found that allowing the option would be environmentally advantageous because certifying Class IIB trucks to the LDT requirements provided a greater degree of emission control than if these trucks were certified to the exhaust emission requirements for heavy-duty engines (HDEs). This resulted because the LDT gaseous emission standards were significantly more stringent than those for Class IIB trucks.[2] The tighter standards more than offset the fact that the HDE dynamometer procedure, where the engine is tested out of the vehicle, is more rigorous due to higher power demands than the LDT chassis dynamometer procedure, where the engine is tested in the vehicle. The relative difficulty of achieving the respective requirements is clearly illustrated by considering the requisite emission controls used by each vehicle type: catalytic technology for LDTs and non-catalytic technology for HDEs.

Historically, it has turned out that manufacturers have not exercised the LDT certification option. However, present indications are that manufacturers of gasoline-fueled HDEs will make extensive use of the option for the 1987 model year. Beginning in that year, the HDE emission standards will become stringent enough to require catalysts on gasoline-fueled Class IIB trucks for the first time.

While manufacturers are apparently finding it advantageous to voluntarily certify gasoline-fueled Class IIB trucks to the LDT exhaust standards, EPA may also benefit from widespread use of the option. The current need to remove and reinstall the engine in the vehicle as part of the heavy-duty engine dynamometer test makes an in-use compliance program (e.g., recall program) significantly more difficult and time-consuming for HDEs than for LDTs. Testing Class IIB trucks according to the chassis test procedure used for LDTs would make the in-use compliance program not only easier to implement, but substantially less costly for the Agency and the manufacturers. This cost savings could be substantial given that Class IIB trucks represent the vast majority of HDE sales. Although reclassifying Class IIB trucks may be the most expedient way to adopt the LDT requirements for these vehicles,[3] this could also be accomplished by revising the heavy-duty requirements for this vehicle category.

In addition to considering the economic ramifications of reclassifying Class IIB trucks as LDTs, the environmental effects of such a change must also be carefully considered. While the Agency has yet to fully analyze the environmental consequences of reclassification, several comments are appropriate at this time. As noted previously, when the LDT option was originally allowed, the LDT exhaust emission control requirements were definitely more stringent than the applicable HDE requirements. Now, except for NOx, the relative stringency of the gaseous emission standards is more difficult to judge, because of the tighter HDE standards which take effect in 1987. The LDT and HDE 1987 gaseous exhaust emission control requirements for Class IIB trucks may, on balance, be comparable, since both sets of requirements require catalytic control technology for gasoline-fueled engines to reduce HC and CO emissions. EPA will continue to assess how the two sets of standards compare.

Aside from the comparability of the LDT and HDE gaseous emission standards, it is important to note that reclassifying Class IIB trucks could offer emission benefits in areas not directly associated with the stringency of the standards. First, current inspection and maintenance (I/M) programs around the country frequently include LDTs, but not HDEs. The reclassification of Class IIB trucks would allow these vehicles to be easily included in existing I/M programs without significant regulatory changes. Second, the evaporative HC standard for gasoline-fueled HDVs in this weight range is 3 g/test, while for LDTs it is 2 g/test. Compliance with the latter standard would reduce evaporative emissions from these vehicles.

With regard to diesel-powered Class IIB trucks, an added consideration related to reclassification is the relative stringency of applicable particulate standards. The particulate standard for LDTs requires the use of trap-oxidizer technology in 1987, whereas the HDE particulate standards will not require traps until 1991. To the degree that the reclassification of Class IIB trucks might result in an earlier introduction of trap-oxidizer technology on those vehicles, further reduction in particulate emissions can be expected. This change would be accompanied by the increased costs associated with trap technology, and likely would present technical challenges to affected diesel engine manufacturers. EPA specifically requests comments on the feasibility of such a change.

Although the Agency has not yet performed detailed technical feasibility and economic analyses, the fact that manufacturers apparently will be voluntarily certifying gasoline-fueled Class IIB trucks to comply with the current LDT standards indicates that most of these trucks already will be equipped with the requisite closed-loop three-way catalyst systems, regardless of the applicable emission standards. Also, HDEs must comply with an idle CO standard that is the same as the LDT standard, and there is no immediately obvious reason why attaining the more stringent LDT evaporative emission standard should be technically difficult for HDEs. Therefore, for gasoline-fueled Class IIB trucks, the LDT standards

[2] Particulate emission standards for diesel-powered vehicles did not exist at the time the option was adopted.

[3] General Motors suggested a similar certification scheme during the 1983 rulemaking to revise the emission regulations for 1984 and later LDTs and HDEs. GM's proposal, however, was linked to higher emission standards.

VOL 51 ISS 173 SE 8 1986 UMI

should be feasible and the cost of control small. The same analysis is applicable to diesel-powered Class IIB trucks, except to the extent that certification of LDT standards might require that trap-oxidizers be introduced earlier than would otherwise occur. Additionally, if technical feasibility proves to be a significant issue for some Class IIB trucks, non-conformance penalties as provided for in section 206 (g) of the Act could be implemented. The users of such trucks would, of course, pay more per vehicle.

In light of the enforcement benefits of reclassifying HDEs with GVWRs from 8,501 to 10,000 pounds as LDTs, the Agency is considering this change for such vehicles.[4] However, as previously noted, the issue of emission control equivalency is not yet completely resolved, and EPA is continuing to study this matter. Furthermore, while the statute gives EPA broad discretion to categorize HDEs, it specifies when and in what way EPA may revise HDE standards, which the reclassification would effectively involve. The statutory issues raised by reclassification are discussed in the "Statutory Authority" section.

To assist the Agency in deciding whether or not to pursue such a reclassification, as well as the timing of the action, comments are specifically requested in the following areas. Gasoline-fueled and diesel engines should be considered separately where appropriate (e.g., the particulate standards). First, to what extent will the LDT certification option be used in future model years and why? Second, what is the relative stringency of the current LDT certification requirements relative to the 1987 and later HDE requirements for Class IIB trucks? Third, what would be the net environmental effects of reclassifying Class IIB trucks as LDTs, relative to their continuing to comply with the applicable HDE emission control requirements? Fourth, what are the important technical or economic issues associated with making the current LDT option mandatory? Fifth, what are the in-use effects on exhaust emission levels? Sixth, what would be the effect on the above topics if revised exhaust HC standards for LDTs are promulgated?

IV. Statutory Authority

A. Revision of LDT HC Standard

The Agency's authority to revise the LDT HC standard stems from two statutory provisions: Section 202(a)(1) for lighter LDTs and section 202(a)(3)(E) for heavier LDTs. The lighter LDTs are regulated under section 202(a)(1), which grants EPA broad authority to prescribe and revise emission standards for new vehicles as needed to protect public health and welfare. (As noted earlier, lighter LDTs are not covered by the statutory provisions which specifically address LDVs and HDEs.) Since LDT HC emissions contribute to the formation of ozone and many urban areas continue to experience ozone levels above the applicable health-based standard, tightening the HC standard for lighter LDTs is clearly within EPA's authority under section 202(a)(1).

Standards issued under section 202(a)(1) are required by section 202(a)(2) to "take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology . . . ." The statute thus delegates to EPA the determination of how much leadtime should be provided for standards applicable to lighter LDTs must provide.

Heavier LDTs are regulated by EPA under section 202(a)(3), which governs HDEs. The current LDT HC standard was promulgated under section 202(a)(3)(A)(ii)(I), which requires a 90 percent reduction in HC emissions. However, section 202(a)(3)(E)(ii) permits EPA to change standards set under section 202(a)(3)(A)(ii) if the Agency determines that the standards should be either more or less stringent in light of studies required by section 202(a)(3)(E)(i) and other available information on the health and welfare effects of the relevant emissions. In the case of HC, a section 202(a)(3)(E)(i) study published in 1980 (45 FR 53730) and subsequent rulemaking analyses (*see* 45 FR 63734, 48 FR 1430, and 48 FR 52170) confirm that mobile source HC emissions contribute to ozone formation and that further reductions in the emissions are needed if the ozone NAAQS is to be met nationwide. While EPA plans to update this section 202(a)(3)(E)(i) study in the future, the basic relationship between mobile source HC and ozone is not in doubt. Given the public health risk posed by continuing nonattainment of the ozone NAAQS, tightening the HC standard for heavier LDTs is well within EPA's statutory authority.

Section 202(a)(3)(E)(ii) also provides that "no such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated." Apparently, any standard revised under section 202(a)(3)(E)(ii) must provide four years of leadtime regardless of whether the revised standard could be met in less time. EPA requests comments on the applicability of the four-year leadtime requirement to the suggested revision of the HC standard for heavier LDTs.

B. Reclassification of Class IIB Trucks as LDTs

The Agency has broad discretion under section 202(a)(3)(A)(iv) to categorize HDEs for regulatory purposes. The discretion has been exercised in the past to group light HDEs (referred to as "heavier LDTs"), with LDTs in recognition of their similar potential for emission control. Here, EPA would exercise its discretion to include in the LDT category Class IIB trucks in order to achieve the legitimate regulatory goal of more effective enforcement at lower cost.

Of course, standards which apply to HDEs, regardless of how categorized by EPA, must comply with the statutory provisions governing the HDE standard-setting process. Those provisions include requirements that apply to revising standards. Reclassifying Class IIB trucks as LDTs could have the practical effect of revising the standards applicable to those trucks; if the LDT standards are found to differ in stringency from their HDE counterparts, reclassification would subject the formerly Class IIB trucks to different standards. In that case, the requirements for revising HDE standards would appear to apply to reclassifying the Class IIB trucks.

The requirements which apply depend on which standards are found to differ and in what way. HDEs are not yet capable of meeting the NO_x standard set by section 202(a)(3)(A)(ii)(II), so the HDE NO_x standards have been promulgated under sections 202(a)(3) (B) and (C), which provide for temporary revision of the statutorily-set standards. However, section 202(a)(3)(B) requires: (1) That revisions be undertaken in certain window periods, (2) that revised standards provide four years of leadtime, (3) that they be effective for no more and no less than three years, and (4) that consecutive revisions each be more stringent than the last. It thus appears that a reclassification which entails a change in the applicable NO_x standard cannot occur until the current revised NO_x standard has run its three-year course and unless consistent with the other provisions listed above.

[4] In addition to revising the weight discriminators in the LDT and HDE definitions of § 86.082-2, the frontal area discriminators would also be appropriately modified.

The 1987 model year standards governing HC and CO emissions from Class IIB trucks were at the levels required by section 202(a)(3)(A)(ii)(I). As noted above, section 202(a)(3)(E) permits EPA to permanently change the standards set by the statute if the Agency finds that the revision is consistent with protecting public health and welfare. Thus, any change in the stringency of the HC or CO standards applicable to what are now Class IIB trucks would apparently have to be made under section 202(a)(3)(E) in light of available information on the health and welfare effects of HC and CO.

In addition, section 202(a)(3)(E) seems to require that any permanent change of standard—regardless of whether the changed standard is more or less stringent than its predecessor—provide four years of leadtime. If that requirement applies, then a reclassification that involves a change in the stringency of the applicable HC and CO standards could only take effect four years after promulgation.

The HDE particulate standards are promulgated under section 202(a)(3)(A)(iii), which does not specify an allowable level of emissions. Instead, the section requires EPA to set standards which ". . . reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply," giving appropriate consideration to cost and other factors. It is clear that reclassifying Class IIB trucks would subject those vehicles to a more stringent particulate standard than they would otherwise have to meet, at least in the short term. Whether EPA could impose the more stringent standard on the reclassified trucks thus seems to depend on whether the Administrator determines that the requisite technology will be available to those vehicles in time to meet the standard. Section 202(a)(3)(A)(iii) does not specify a minimum leadtime period that revised particulate standards must provide. Thus, at least for the particulate standards, a reclassification of Class IIB trucks could take effect in the model year for which the Administrator determines that the LDT particulate standard will be technologically feasible for the reclassified trucks to achieve.

VI. Request for Comments

The Agency is issuing this ANPRM to maximize public participation early in the rulemaking process. Comments pertaining to any points or aspects raised in today's notice are encouraged. These comments, along with additional EPA analyses, will be used by the Agency in preparing the notice of proposed rulemaking.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Secs. 202, 206, 207, 208, and 301 of the Clean Air Act (42 U.S.C. 7521, 7525, 7541, 7542, and 7601).

Dated: August 29, 1986.

A. James Barnes,

Acting Administrator.

[FR Doc. 86-20194 Filed 9-5-86; 8:45 am]

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Part IV

Environmental Protection Agency

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1985; Notice

VOL 51 ISS 173 SE 8 1986 UMI

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3076-3]

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1985

This notice publishes the subject index list of bid protest appeal decisions issued by EPA Regional Administrators during 1985. These determinations were made pursuant to the EPA protest procedures set forth at 40 CFR 35.939 (assistance awarded prior to May 12, 1982), 40 CFR Part 33, May 12, 1982 Interim Final Rules (assistance awarded between May 12, 1982 and March 28, 1983) and 40 CFR Part 33, March 28, 1983 Final Rules (assistance awarded after March 28, 1983).

This is the Eighth EPA subject index which lists only the decisions for the year stated. The first index, listing Regional Administrator protest appeal determinations issued during the period 1974 through 1977, was published at 43 FR 29086–95 (July 5, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812–18 (May 2, 1979), the index of 1979 determinations published at 45 FR 58770–74 (September 4, 1980), the index of 1980 determinations published at 46 FR 30476–80 (June 8, 1981), the index of 1981 and 1982 determinations published at 49 FR 36004 (September 13, 1984), the index of 1983 decisions published at 50 FR 4148 (January 29, 1985) and the index of 1984 decisions published at 50 FR 23061 (May 30, 1985).

The index lists 71 appeal determinations and 6 reconsideration request determinations issued by the EPA Regional Administrators in 1985.

The determinations are cited informally with the names of the assistance recipients and protestors shortened and abbreviated for administrative convenience. Each entry begins by identifying the year the appeal was decided and the sequential determination number for the year. This number is not part of the preferred citation which should state the following: Grantee, State, (EPA Region _____, date of determination) (Protest of _____).

The issues have been divided into two major subject headings and then alphabetized. Procedural protest issues are listed under the heading "Protest Appeals;" substantive procurement issues are listed under the heading "Procurement."

Copies of specific protest appeal determinations may be examined at or obtained from the EPA Offices of Regional Counsel or from the Office of General Counsel in EPA headquarters.

FOR FURTHER INFORMATION CONTACT: J. Kent Holland, Jr., Esquire: Grants, Contracts, and General Law Division (LE–132G), Office of General Counsel, United States Environmental Protection Agency, Washington, DC 20460; (202) 382–5313.

Dated: August 29, 1986.

Gerald H. Yamada,

Acting General Counsel.

Bid Protest Appeals—Procedural Matters

Burden of Proof

85:12 Orlando, FL (IV, 2–8–85) *(Drum Owen Valve Co.)* (burden shifts throughout proceedings where unduly restrictive specifications alleged).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)* (shifting burden—where protester alleges unduly restrictive specification and shows that its equipment was eliminated, grantee must show the specification is necessary for minimum performance needs and show rational basis for rejecting protester's equipment).

Choice of Law (See Procurement Index—"State and Local Law")

Exhaustion of Administrative Remedy

85:14 Lake Accotink Park, Fairfax, VA (III, 2–22–85) *(Lyons Const.)* (protester cannot raise new issue on appeal which was not raised in original protest to grantee).

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (issue not raised during initial protest cannot be raised on appeal).

Harmless Error

No entries.

Jurisdiction

84:52 Possum Valley Sewer District (III, 2–14–85) *(U-Max Engineering)* (Reconsideration) (where EPA review would require decision on collateral issue pending in State Court, protest may be considered inappropriate for EPA review) (*cf.* Jordan, MI, Region V, 10–21–86).

85:08 Milwaukee, WI (V, 1–31–85) *(Kari-Kool Transports, Inc.)* (reliance on incorrect oral advice given at pre-bid conference is not protestable).

85:11 Austin, TX (VI, 2–8–85) *(Turbo Blowers, Inc.)* (where no federal funds are involved, procurement is not protestable).

85:31 Bradenton, FL (IV, 6–4–85) *(Lakeside Equipment Co.)* (subcontractor substitution made by independent decision of prime contractor is not protestable).

85:32 Warren, OH (V, 6–6–85) *(RAM Engineering Inc.)* (substitution of subcontractor is matter of contract administration and is not protestable).

85:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (basic design decision is not protestable).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (subcontractor substitution is contract administration issue and is not protestable).

85:54 Anne Arundel, MD (III, 9–27–85) *(Roberts Filter Manufacturing Co., Inc.)* (if owner anticipates receiving EPA funding, procurement actions prior to grant award are protestable).

85:57 Pueblo, CO (VIII, 10–11–85) *(WesTech Engineering, Inc.)* (subcontractor substitution is matter of contract administration and not protestable).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenco Hydro, Inc.)* (independent action of prime contractor is not a grantee decision and is not protestable).

85:59 Georgetown, MN (V, 10–18–85) *(Robert J. Roberts & Associates, Inc.)* (unless contract will receive EPA funding, procurement regulations do not apply and issues are not protestable).

85:61 Jordan, MI (V, 10–21–86) *(Veit & Company)* (protest appeal may be decided by EPA even though there is a pending law suit in State court) (*cf.* Possum Valley, III, 2–14–85).

85:63 State of New Jersey, NJ (II, 12–2–85) *(Marvec All State, Inc.)* (where no EPA grant participation is anticipated, EPA will not hear a protest appeal).

85:70 Modesto, CA (IX, 12–20–85) *(Industrial Pump Supply)* (equipment supplier may protest prime contractor rejection of its equipment where prime contractor's decision was directed by the recipient. However, technical disputes concerning performance are matters of contract administration which are not reviewed by EPA) (*cf.* New York, II, 3–5–84).

Parties to Appeal

No entries.

Procedures

84:52 Possum Valley Sewer District (III, 2–14–85) *(U-Max Engineering)* (Reconsideration) (where EPA review would require decision on collateral issue pending in State Court, protest may be considered inappropriate for review).

85:07 Maine Dept. of Environmental Protection (I, 1–30–85) *(Metcalf & Eddy)* (where failure of protester to notify other interested parties of protest caused no prejudice, the appeal will be considered).

85:09 Carthage, MO (VII, 1–31–85) *(LaForge & Budd Const. Co.)* (grantee is not required to prepare a memo or rationale to accompany its written protest determination).

85:15 Lake Accotink Park, Fairfax, VA (III, 2–22–85) *(Lyons Const.)* (only those matters raised before grantee on protest can be raised during appeal).

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (issue not raised during initial protest cannot be raised on appeal).

85:25 Shubuta, MS (IV, 4–29–85) *(Video Pipe Services, Inc.)* (letter addressed to recipient instead of EPA is not a proper appeal).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const., Inc.)* (letter addressed to City is not proper appeal to EPA).

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial and Municipal Engineering, Inc.)* (protest may not be denied on procedural grounds where grantee failed to notify bidders that the procurement was subject to EPA regulation).

85:50 Lorain, OH (V, 9–17–85) *(Mosser Const., Inc.)* (where grantee decides protest in favor of protester, other parties to the protest may appeal to EPA without first filing a protest) (where bid rejected as nonresponsive EPA will not consider arguments that bidder could be rejected as nonresponsible) *(cf.* Anne Arundel, III, 9–27–85).

85:54 Anne Arundel, MD (III, 9–27–85) *(Robert Filter Manufacturing Co., Inc.)* (although interested parties must be notified of protest, failure to give notice will not justify rejection of protest where no prejudice resulted) (EPA may rely on all information available and is not restricted to the arguments raised by the parties).

85:61 Jordan, MI (V, 10–21–85) *(Veit & Co.)* (protest appeal may be decided by EPA although there is a pending law suit in State court) *(cf.* Possum Valley, III, 2–14–85).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Const., Inc.)* (where project engineer recommended rejection of low bid, it was reasonable for grantee to accept a protest directly from that decision).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const., Inc.)* (where third-low bidder failed to participate in protest proceedings initiated by the second-low bidder and had notice of the basis for its protest, it improperly waited until EPA issued appeal determination and then protested award that grantee made in accordance with the EPA determination).

85:70 Modesto, CA (IX, (12–20–85) *(Industrial Pump Supply)* (it is not a conflict of interest for the project engineer who rejected equipment to decide the subsequent bid protest for the grantee.

Rational Basis Test (See also Engineering Judgment)

85:09 Carthage, MO (VII, 1–31–85) *(LaForge & Budd Const.)* (EPA refers to other appeal decisions and GAO decisions) (EPA will not reverse grantee decision concerning who is low bidder under State law unless clear showing of violation of State law or federal regulation).

85:12 Orlando, FL (IV, 2–8–85) *(Drum Owen Valve Co.)* (no EPA deference to engineer's technical judgment where inaccurate information used or where City's reason for rejection was speculative in nature).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)* (EPA defers to technical judgment of engineer provided there is rational basis for specification).

85:50 Lorain, OH (V, 9–17–85) *(Mosser Const., Inc.)* (potential savings must be material before rejecting bid because it exceeds engineer's estimate).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Const., Inc.)* (grantee lacked rational basis for finding bid nonresponsive and bidder nonresponsible).

Reconsideration

84:52 Possum Valley, PA (III, 2–14–85) *(U-Max Engineering)* (limited review does not permit rearguing points previously discussed and determined).

85:39 Lewes, DE (III, 8–28–85) *(Mixing Equipment Co., Inc.)* (denied where no factual mistake or error of law).

85:54 Anne Arundel, MD (III, 7–18–85) *(Roberts Filter)* (EPA did not err in looking beyond the arguments made by the parties).

85:60 Westborough, MA (I, 12–10–85) *(Dorr-Oliver, Inc.)* (denied) (where no newly discovered evidence, issue of law, factual mistake or error of law, the decision will not he reconsidered).

Regulations

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S Contracting)* (grantee elected to follow Part 33 regulations instead of Part 35 which was in effect on date of grant award) (appeal decisions interpreting certain Part 35 requirements continue to be followed and applied by EPA).

85:59 Georgetown, MN (V, 10–18–85) *(Robert of Roberts & Associates, Inc.)* (explanation of whether Parts 33 and 35 apply).

85:68 Monterey, CA (IX, 12–17–85) *(Fluor Constructors, Inc.)* (EPA may rely on protest appeal determinations issued under Part 35 regulations and principles stated in those regulations.

Review by EPA

85:07 Maine Dept. of Environmental Protection, MA (I, 1–30–85) *(Metcalf & Eddy)* (review of competitive negotiations is limited to whether bid evaluation was based on RFP criteria).

85:09 Carthage, MO (VII, 1–31–85) *(LaForge & Budd Const.)* (EPA refers to other appeal decisions and GAO decisions) (EPA will not reverse grantee decision concerning who is low bidder under State law unless clear showing of violation of State law or federal regulations).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (deference given to grantee's responsibility determination).

Sua Sponte Review

85:27 Lansing, MI (V, 5–17–85) *(Acrision, Inc.)* (where protest was untimely, EPA summarily dismissed appeal but reversed the merits).

84:52 Possum Valley, PA (III, 2–14–85) *(U-Max Engineering)* (Reconsideration) (where no blatant violation of EPA regulations, EPA will not exercise discretion to review).

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial & Municipal Engineering, Inc.)* (protests were defective but brought to EPA's attention serious defects in grantee procurement, EPA reviewed merits of protests).

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (EPA has authority to independently review grantee procurement actions).

85:53 Anne Arundel County, MD (III, 9–27–85) *(Allied Contractors, Inc.)* (EPA may review late protest on its merits).

Standing

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (subcontractor may not protest prime's method of evaluating its equipment).

85:39 Lewes, DE (III, 7–19–85) *(Mixing Equipment Co.)* (supplier has standing to protest specifications on prequalification but if protester can meet specifications it cannot challenge them as unduly restrictive).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (subcontractor

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VOL 51 ISS 173 SE 8 1986 UMI

substitution is not protestable) (subcontractor lacks standing to challenge grantee's evaluation of responsiveness of competitor supplier's equipment).

85:56 Westchester County, NY (II, 10–9–85) *(Crouse Combustion Systems, Inc.)* (bidder who withdrew bid before contract award lacks standing to protest award to another bidder).

85:57 Pueblo, CO (VIII, 10–11–85) *(WesTech Engineering, Inc.)* (substituted subcontractor cannot protest prime's decision to substitute firms).

85:60 Westborough, MA (I, 10–21–85) *(Dorr-Oliver, Inc.)* (where supplier was able to compete but chose not to, it lacks standing to protest the later approval by recipient of another supplier's equipment).

85:68 Monterey, CA (IX, 12–17–85) (IX, 12–17–85) *(Fluor Constructors Inc.)* (a nonresponsive bidder has no adversely affected direct financial interest and, therefore, lacks standing).

85:70 Modesto, CA (IX, 12–20–85) *(Industrial Pump Supply)* (equipment supplier may protest prime contractor rejection of its equipment where prime contractor's decision was directed by the recipient. However, technical disputes concerning performance are matters of contract administration which are not reviewed by EPA).

Summary Disposition

85:08 Milwaukee, WI (V, 1–31–85) *(Kori-Kool Transports, Inc.)* (reliance on incorrect oral advice given at pre-bid conference is not protestable).

85:33 Milwaukee, WI (V, 6–19–85) *(Staff Electric Co.)* (where grantee waives failure to notarize bid as a minor irregularity and gives legal opinion that State law permits the waiver, EPA will not review the matter where there is no overriding federal interest).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const., Inc.)* (protest challenged the waiver of minor bid irregularities of a competitor such as signature and seal) (where bidder is not next in line for award, EPA will not review).

Time Limitations

84:52 Possum Valley, PA (III, 2–14–85) *(U-Max Engineering)* (Reconsideration) (timeliness of protest is of paramount importance).

85:02 New York, NY (II, 1–17–85) *(Schiavone Const. Co.)* (appeal clock starts when protest determination received by address listed on protester's letterhead even if not received by main office at that time).

85:05 Carson City, NV (IX, 1–18–85) *(Nevada Const. & Mining)* (protest untimely where filed more than 7 days after protester had notice that contract was awarded to another bidder).

85:25 Shubuta, MS (IV, 4–29–85) *(Video Pipe Services, Inc.)* (appeal received by EPA 7 days after protester receives grantee determination is untimely).

85:27 Lansing, MI (V, 5–17–85) *(Acrison, Inc.)* (appeal of prequalification rejection dismissed because not filed within 7 days of notice of rejection). *But See* Chelan, WA (X, 6–24–86), which permits prequalification protests filed more than 7 days after receipt of decision if the protest challenges the specifications and is filed before prime contract bid opening.

85:30 Pittsylvania, PA (III, 5–24–85) *(J & D Constructors, Inc.)* (where contractor was default terminated for failing to provide performance bonds, its protest was untimely for being not filed within 7 days).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const. Inc.)* (appeal untimely where filed more than 7 days after receipt of grantee's determination).

85:41 Red Oak, IA (VII, 8–5–85) *(Elliott Equipment Co.)* (protest was untimely because it challenged specifications and was not filed before bid opening).

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S Contracting, Inc.)* (protest was untimely because it challenged specifications and was not filed before bid opening).

85:50 Rantoul, IL (V, 9–18–85)) *(American Surfpac Corp.)* (protest alleging improprieties in specification is timely where filed before bid opening) (this is generally so if protester knew of the improprieties for more than 7 days before filing. *See* Chelan, WA (X, 6–24–86)).

85:54 Anne Arundel, MD (III, 9–27–85) *(Roberts Filter Manufacturing Co., Inc.)* (unduly restrictive specifications must be challenged prior to bid opening—protester cannot wait until equipment is rejected after bid opening to file its protest). (*See also* Southbridge, I, 1–24–86)

85:55 Little Blue Valley, MO (VII, 10–1–85) *(Roots Division of Dresser Industries)* (where brand name or equal specifications exclude supplier's equipment, protest must be filed prior to bid opening—supplier cannot wait until equipment is rejected to file protest).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Construction, Inc.)* (where protest was based on action of project engineer rather than grantee, grantee may consider it).

85:64 Augusta, GA (IV, 12–5–85) *(Beiler Equipment Co., Inc.)* (where alleged improprieties in specifications were clearly apparent in the IFB, protest was not filed prior to bid opening).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const., Inc.)* (where the third-low bidder did not participate in proceedings initiated by the second-low bidder, bidders' subsequent protest of the award was untimely where it had adequate notice of basis for protest).

85:71 Binghamton, NY (II, 12–26–85) *(American Bio Tech)* (telegraph appeal notice was timely but subsequent submittal of detailed supplemental statement was untimely).

Waiver (See Procurement Index—"Waiver")

Procurement

A/E Services

85:07 Maine Dept. of Environmental Protection (I, 1–30–85) *(Metcalf & Eddy)* (EPA will not review grantee's judgment of what specific services are required for remedial action).

85:10 Lake County Sanitation District (IX, 2–5–85) *(Peak & Assoc.)* (bid evaluation of technical proposal is matter of procurement discretion and will not generally be disturbed by EPA).

Award Prime Contract

85:14 Washington Suburban Sanitary Commission (III, 2–22–85) *(Hycon and Professional Services Group)* (although state law gives grantee discretion in matters of contract award, that discretion is limited by fundamental federal procurement requirements).

Bid Shopping

85:31 Bradenton, FL (IV, 6–4–85) *(Lakeside Equipment Co.)* (subcontractor substitution is not protestable).

85:50 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (EPA regulations do not prohibit bid shopping and EPA views equipment listing as informational only unless IFB clearly makes it a matter of responsiveness).

85:57 Pueblo, CO (VII, 10–11–85) *(WesTech Engineering, Inc.)* (bid shopping not prohibited unless state, local law or the bidding documents so provide).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenco Hydro, Inc.)* (bid shopping not prohibited by EPA).

85:65 Jacksonville, AR (VI, 12–12–85) *(Tenco Hydro, Inc.)* (EPA neither

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prohibits nor requires bid shopping—see *EPA Report to Congress: Wastewater Treatment Contracting and Bid Shopping*, June 1978).

Bidders & Offerors

85:56 Westchester County, NY (II, 10–9–85) *(Crouse Combustion Systems, Inc.)* (grantee may obtain cost concessions from lowest bidder after bid opening).

Bids

Acceptance Period

No entries.

Addendum

85:38 Clarence, NY (II, 7–18–85) *(Hydro-Group, Inc.)* (failure to sign formal acknowledgment of receipt of IFB addendum may be waived as minor irregularity where bidder included a quotation for the additional item in its bid and specifically referred to addendum).

Alternates

85:61 Jordan, MI (V, 10–21–85) *(Veit & Co.)* (where bidders were required to list unit prices for several alternates but further required to choose one alternate to base its lump sum bids, a bid is nonresponsive if the bidder fails to list a unit price for one of its alternates).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (where failure to comply with bid terms reflect on responsibility rather than responsiveness they may be waived) (in order to be responsive on one alternate it was not necessary to submit bid on other alternate).

Ambiguity

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (where contrary to terms of IFB, bid was conditioned upon grantee approving proposed "or equal" equipment before award, this caused ambiguity concerning bidder's obligation if equipment substitution was later required and made bid nonresponsive).

Base Bids

No entries.

Cancellation of Solicitation

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial & Municipal Engineering, Inc.)* (EPA reversed grantee and directed solicitation be cancelled and readvertised).

Evaluation

85:07 Maine Dept. of Environmental Protection (I, 1–30–85) *(Metcalf & Eddy)* (where RFP stated cost was of secondary importance, grantee may award contract to more expensive proposal).

85:10 Lake County Sanitation District (IX, 2–5–85) *(Peak & Assoc.)* (A/E procurement—where RFP did not provide that proposer's failure to respond adequately to one of the evaluation factors would result in his rejection, grantee's affirmative evaluation was reasonable).

85:12 Orlando, FL (IV, 2–8–85) *(Drum Owen Valve Co.)* (performance based reason for rejection must be based on more than speculation of problems).

85:16 Mission, TX (IV, 3–1–85) *(Evirondyne Inc.)* (evaluation cannot be based on undisclosed, subjective criteria) (data submission requirement must be based on underlying need for considering data).

85:24 Chelan, WA (X, 4–26–85) *(Walker Process Corp.)* (A/E improperly rejected equipment for failing to meet design features which were not specified).

85:29 San Antonio, TX (VI, 5–23–85) *(Pollution Control, Inc.)* (may not reject equipment on basis of criterion not disclosed in IFB) (IFB clause requiring "experience" in making "similar" equipment cannot be used to require experience in making exactly the same equipment).

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (by reviewing bidder's alternate equipment proposal before awarding contract, grantee failed to evaluate the bids in accordance with IFB criteria which stated "or equal" equipment would only be evaluated after award).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (subcontractor lacks standing to challenge grantee's evaluation of its competitor's equipment).

Extension

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Constructors, Inc.)* (active participation in protest proceeding evidences intent to extend bid).

Late

85:36 Chemung County, NY (II, 7–3–85) *(Tougher Ind., Inc.)* (bid nonresponsive where IFB stated late bids would not be accepted and bid was 2 minutes late) (grantee has discretion in applying GAO strict treatment of late bids).

Mistake

85:08 Carthage, MO (VI, 1–31–85) *(LaForge & Budd Const.)* (extrinsic evidence may be used to show intended bid where no bid displacement) (words over numbers reconciliation clause will not be strictly enforced where intended bid is clearly apparent).

85:17 Mackinac Is., MI (V, 3–13–85) *(Barton-Malow Co. & Omega Const.)* (mistake in bid on entire project did not affect bid on individual pump station).

85:66 Newport, RI (I, 12–17–85) *(Peabody N.E., Inc.)* (bid displacement allowed where mistake and intended bid are apparent on the face of the bid—extended amount price was put in unit price column).

Preparation Costs

No entries.

Public Notice

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial & Municipal Engineering, Inc.)* (where grantee failed to advertise in newspapers and journals of general circulation and only allowed 17 days from notice to bid opening, EPA required resolicitation).

Qualified

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (bid that was conditioned on grantee approving "or equal" equipment before award is nonresponsive where IFB provided for post award equipment evaluation only.

Rejection of all Bids

85:47 Neenah-Menasha, IL (V, 3–28–85) *(Flour Bros. Const. Co.)* (where low bid had to be rejected for being late and other bids were deemed too expensive, grantee had rational business reasons for rejecting all bids).

85:02 Lowell, MA (I, 1–11–85) *(Gioiosa & Sons, Inc.)* (not justified by unbalanced bidding) (recipient does not have unfettered discretion).

85:22 Detroit, MI (V, 4–18–85) *(ETS Towers, Inc.)* (IFB failed to specify experience evaluation criteria necessary for determining which bids satisfied requirements—harm to bidder required readvertising the project).

Signature

85:33 Milwaukee, WI (V, 6–19–85) *(Staff Electric Co.)* (failure to notarize bid as required by state law may be waived as minor irregularity).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const., Inc.)* (failure to notarize bid waived as minor irregularity).

Time to Prepare

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial & Municipal Engineering, Inc.)* (advertising 17 days in advance of bid opening was inadequate) (adequate notice must be placed in newspapers and journals of general circulation).

Unbalanced

85:02 Lowell, MA (I, 1–11–85) *(Gioroso & Sons, Inc.)* (Penny bidding is not contrary to federal principles unless it causes bid to be materially unbalanced making it impossible to determine the low bid).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const., Inc.)* (whether unbalanced bid can be accepted depends on whether it is reasonably certain to result in lowest price).

Unit Pricing

No entries.

Bonds

85:30 Pittsylvania, PA (III, 5–24–85) *(J & D Constructors, Inc.)* (failure to provide performance bonds within 10 days of contract award was rational basis for grantee to reject bidder as nonresponsible).

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (performance bond which ensured performance for 3 years was reasonable where suppliers had no similar equipment in service) (inability of one supplier to obtain bond does not prove undue burden where other suppliers did obtain bond) (EPA no longer requires grantee to accept bond in lieu of experience).

Buy American Act

85:28 Osage Beach, MO (VII, 5–22–85) *(Morley Pump Co.)* (because grantee demonstrated that foreign components comprised under 50% total value of the product, the preference did not apply).

85:55 Little Blue Valley, MO (VII, 10–1–85) *(Roots, Dresser)* (until prime selects supplier, compliance with the Act cannot be determined) (*See also*, Chelan, Washington, X, 6–24–86).

Conflict of Interest

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (no evidence of conflict presented, appeal dismissed as without merit).

85:70 Modesto, CA (IX, (12–20–85) *(Industrial Pump Supply)* (it is not a conflict of interest for the project engineer who rejected equipment to decide the subsequent bid protest for the grantee).

Engineering Judgment

85:13 Dothan, AL (IV, 2–21–85) *(American Bioreactor Co. & Fluid Systems, Inc.)* (rational basis for experience requirements).

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S. Contracting, Inc.)* (rational performance based reasons for requiring single material is given deference by EPA.) (when EPA defers to engineer it does not mean it believes the specifications reflect the best engineering judgment and no opinion is offered regarding relative merits of the material or equipment or their suitability for particular engineering applications).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)* (protest appeal sustained where design features were not supported by rational performance based needs).

85:55 Little Blue Valley, MO (VII, 10–1–85) *(Roots, Dresser)* (performance reasons for design features).

Experience Requirements

85:13 Dothan, AL (IV, 2–21–85) *(American Bioreactor Co. and Fluid Systems, Inc.)* (City was justified in rejecting equipment which manufacturer had never before fabricated or designed to the size needed).

85:16 Mission, TX (VI, 3–1–85) *(Envirodyne, Inc.)* (experience clause was ambiguous where it did not define applicable period of experience to be objectively applied).

85:22 Detroit, MI (V, 4–18–85) *(ETS Towers, Inc.)* (experience requirements must be objectively stated evaluation criteria).

85:29 San Antonio, TX (VI, 5–23–85) *(Pollution Control, Inc.)* (where IFB required bidders to have experience manufacturing "similar" equipment, a bidder cannot be rejected for not having manufactured "exactly" the same equipment).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (where IFB states experience requirement was for purpose of determining bidders ability, it is a matter of responsibility not responsiveness and can be cured after bid opening).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (experience of key personnel was a matter of responsibility not responsiveness and the affirmative finding of responsibility is a discretionary decision which will not be reviewed in the absence of fraud or bad faith).

85:70 Modesto, CA (IX, 12–20–85) *(Industrial Pump Supply)* (where bidder was rejected for lack of experience, EPA found the IFB adequately defined experience and recipient had rational basis for rejecting bidder) (grantee may require proven product rather than newly designed one).

Innovative Technology

84:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (more restrictive specifications are permissable).

Invitation for Bids (IFB)

General

85:08 Milwaukee WI (V, 1–31–85) *(Kari-Kool Transports, Inc.)* (bidder unjustifiably relied on oral representations made at pre-bid conference).

Ambiguity

85:22 Detroit, MI (V, 4–18–85) *(ETS Towers, Inc.)* (requirement that experience be documented failed to state how experience would be objectively evaluated).

85:45 Monterey, CA (IX, 9–12–85) *(Mortenson/Natkin)* (no ambiguity where IFB clearly states that failure to list subcontractor renders bid nonresponsive and adds no other language describing rejection or permitting acceptance of nonconforming bid) (explanation of "two prong" test applied in other EPA decisions).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const., Inc.)* (City correctly found bid responsive where bidding documents did not clearly and unequivocally put bidders on notice that failure to comply with requirements that typically concern responsibility would render a bid nonresponsive) (EPA will examine not only the language in relevant portions of IFB but consider the bid documents in their entirety to determine overall clarity).

Defective

No Entries.

License Requirement

85:05 Carson Citv, NV (IX, 1–18–85) *(Nevada Const. & Mining)* (EPA would not consider whether state licensing law requiring license prior to bidding unreasonably restricted competition, since bidder's delay in applying for the license contributed to his inability to obtain it in time).

Listing Subcontractors

85:06 Addison, IL (V, 1–25–85) *(Sollitt Const. Co.)* (where IFB clearly required bidders to list manufacturers,

bid was properly rejected for failing to comply).

85:06 Addison, IL (V, 3–19–85) *(Sollitt Const. Co.)* (Reconsideration) (bid was nonresponsive because it named several subcontractors but did not identify which was to be used).

85:17 Mackinac Is., MI (V, 3–13–85) *(Barton-Malow Co. & Omega Const.)* (where IFB is ambiguous, subcontractor listing is matter of responsibility rather than responsiveness).

85:20 Leesburg, VA (III, 4–2–85) *(James Federline and MCI Const., Co.)* (failure to list subcontractors did not render bid nonresponsive).

85:32 Warren, OH (V, 6–6–85) *(RAM Engineering, Inc.)* (MBE subcontractor substitution is not protestable because it is a matter of contract administration, not procurement).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (bid cannot be rejected for failure to list subcontractors where IFB did not expressly require it as a matter of responsiveness).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (bid cannot be rejected for failure to list subcontractors where IFB did not expressly require it as a matter of responsiveness).

85:46 Monterey, CA (IX, 9–12–85) *(Mortenson/Natkin)* (bid failing to list equipment manufacturer must be rejected where IFB clearly stated listing was a matter of responsiveness—under Part 33 regulation IFB need not state that bid will be rejected, provided it clearly states bid will be nonresponsive and contains no conflicting language suggesting grantee may he permitted to accept nonresponsive bid).

85:65 Jacksonville, AR (VI, 12–12–85) *(Tenco Hydro, Inc.)* (where IFB did not state that failure to list subcontractors would render bid nonresponsive, grantee may award contract to bidder that did not accurately list its subcontractors) (listing a supplier in its bid did not obligate prime to award subcontract to that supplier).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const. Inc.)* (failure of listed equipment to meet the specifications does not render prime's bid nonresponsive where IFB required that equipment be listed but did not require that bids be rejected for listing unqualified equipment.)

85:68 Monterey, CA (IX, 12–17–85) *(Fluor Constructors, Inc.)* (same analysis as Monterey, *Dillingham*, IX, 12–17–85, this subject index).

Minority Business and Women's Business Enterprise (MBE/WBE)

85:14 Washington Suburban Sanitary Commission (III, 2–22–85) *(Hycon & Professional Services Group) (documentation was matter of responsibility, not responsiveness).*

85:15 Lake Accotink Park, Fairfax VA (III, 2–22–85) *(Lyons Const.)* (documentation a matter of responsibility).

85:18 Lake Geneva, WI (V, 3–18–85) *(Camosy Const.)* (MBE documentation is matter of responsibility where IFB did not clearly state otherwise).

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (prime may rely on MBE's self certification) (prime's evaluation of subcontractor is not protestable).

85:23 Unalaska, AL (X, 4–26–85) *(Rockford Corp.)* (failure to include documentation did not render bid nonresponsive where IFB did not clearly recuire it).

85:26 Scales Mound, IL (V, 5–14–85) *(Smith & Andrews Const. Co.)* (EPA policy is to treat MBE documentation as matter of responsibility but grantee made it matter of responsiveness and rejected nonconforming bid accordingly).

85:32 Warren, OH (V, 6–6–85) *(RAM Engineering, Inc.)* (subcontractor substitution is not protestable) (unsubstantiated allegation that prime negotiated in bad faith does not meet burden of proof needed for protest) (WBE firm has no standing to challenge the goal established by grantee).

85:34 Cannon Falls, MN (V, 6–28–85) *(Lysne Const., Inc.)* (bid responsive where it documented positive efforts and reasons for not meeting MBE goal).

85:50 Lorain, OH (V, 9–17–85) *(Mosser Const., Inc.)* (grantee cannot reject bid as nonresponsive when bidding documents contain contradictory language and, when read as a whole make documentation a matter of responsibility).

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (bonding requirement did not violate SBE/MBE policy where several firms obtained the required bonds).

85:53 Anne Arundel County, MD (III, 9–27–85) *(Allied Contractors, Inc.)* (bidder can meet requirements by either meeting goal or showing good faith efforts) (documentation a matter of responsibility) (EPA affirmed grantee determination of good faith).

85:57 Pueblo, CO (VIII, 10–11–85) *(WesTech Engineering, Inc.)* (substitution of firms for business reasons does not violate EPA policy) (prime's business decision to place one large order instead of dividing into smaller orders will not be reviewed by EPA).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenca Hydro, Inc.)* (prime's substitution of firms does not violate EPA regulation and is not protestable) (substitution does not violate affirmative steps) (protester lacks standing to challenge the way grantee calculated MBE participation).

85:65 Jacksonville, AR (VI, 12–12–85) *(Tenco Hydro, Inc.)* (MBE policy does not prohibit bid shopping) (prime did not bid shop but rather substituted the MBE based on a reconsideration of previous offers which were less expensive—prime did not negotiate prices with subcontract offerors after bid opening and was not required to do so) (no violation of the policy that total projects be divided into small tasks where it is not economically feasible to do so).

85:66 Newport, RI (I, 12–17–85) *(Peabody N.E., Inc.)* (bid documents when read as a whole did not make submission of certificates a matter of responsiveness).

Negotiated Procurement

85:07 Maine Dept. of Environmental Protection, MA (I, 1–30–85) *(Metcalf & Eddy)* (review of competitive negotiations is limited to whether bid evaluation was based on RFP criteria).

85:10 Lake County Sanitation District (IX, 2–5–85) *(Peak & Assoc.)* (A/E procurement—where RFP did not provide that proposer's failure to respond adequately to one of the evaluation factors would result in his rejection, grantee's affirmative evaluation was reasonable.

Prequalification

85:01 Ft. Lauderdale, FL (V, 1–8–85) *(Compost Systems Co.)* (City changed deadline for prime contract bid submittal but enforced the original deadline for submitting prequalification packages thereby incorrectly rejecting package submitted after that deadline but more than 30 days before the revised bid opening date).

85:13 Dothan, AL (IV, 2–21–85) *(American Bioreactor and Fluid Systems, Inc.)* (rejection of proposed composting system which manufacturer had never before designed and fabricated to the required dimensions was affirmed).

85:16 Mission, TX (IV, 3–1–85) *(Envirodyne Inc.)* (must be based on specifications, not on undisclosed

subjective criteria) (data submission requirement must be rationally based on underlying need for considering data).

85:24 Chelan, WA (X, 4–28–85) *(Walker Process Corp.)* (where only manufacturer could prequalify, it was unjustified sole source procurement).

85:27 Lansing, MI (V, 5–17–85) *(Acrison, Inc.)* (equipment rejected for prequalification because insufficient data submitted—protester did not show grantee lacked rational basis for equipment design features) (time limitations for filing protest). (*But see* Chelan, WA (X, 6–25–86)).

85:39 Lewes, DE (III, 7–19–85) *(Mixing Equipment Co.)* (requiring submission of working drawings that describe project modifications that will be required by use of equipment does not unduly restrict competition) (failure to submit information gives rational basis for rejecting equipment) (IFB authorizing only general contractors to submit equipment for prequalification unduly restricts competition).

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (proposal may be rejected as nonresponsive for not providing required information needed for determining responsiveness to specifications).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (successful bidder permitted to substitute a nonprequalified supplier for a prequalified supplier named in its bid).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)*.

Responsibility

85:14 Washington Suburban Sanitary Commission (III, 2–22–85) *(Hycon and Professional Services Group)* (MBE documentation is matter of responsibility unless bid documents unambiguously state it to be matter of responsiveness).

85:15 Lake Accotink Park, Fairfax VA (III, 2–22–85) *(Lyons Const.)* (documentation a matter of responsibility).

85:17 Machinac Is., MI (V, 3–13–85) *(Barton-Malow Co. & Omega Const.)* (where IFB ambiguous, subcontractor listing is matter of responsibility rather than responsiveness).

85:18 Lake Geneva, WI (V, 3–18–85) *(Comosy Const.)* (MBE documentation is matter of responsibility where IFB did not clearly state otherwise).

85:20 Leesburg, VA (III, 4–2–85) *(James Federline, Inc. & MCI Const., Co.)* (grantee determination of nonresponsibility based on prior poor contract performance was rationally based) (failure to list registered contract number in bid is matter of responsibility not responsiveness) (subcontractor listing) (inclusion of "experience, equipment and financial statement" is matter of responsibility, not responsiveness).

85:22 Detroit, MI (V, 4–18–85) *(ETS Towers, Inc.)* (documentation of experience is a matter of responsibility rather than responsiveness where bid documents did not clearly make it responsiveness).

85:28 Scales, Mound, L; (V, 5–14–85) *(Smith & Andrews Const. Co.)* (EPA policy to treat MBE documentation as matter of responsibility).

85:30 Pittsylvania, PA (III, 5–24–85) *(J & D Constructors, Inc.)* (responsibility determination is discretionary grantee decision which will not be reversed unless it lacks rational basis or is made in bad faith) (grantee found bidder nonresponsible because it failed to obtain performance bonds within required time after contract award).

85:34 Cannon Falls, MN (V, 6–28–85) *(Lysne Const. Co.)* (MBE compliance demonstrated after bid opening).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (experience requirements could be cured after bid opening since IFB made it a matter of responsibility).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (affirmative finding of responsibility will not be reviewed in the absence of fraud or bad faith) (manufacturers listing and experience of key personnel were matters of responsibility).

85:52 Seneca, IL (V, 9–18–85) *(Mehta & Associates, Ltd. and Shafer Engineering)* (where grantee found bidders nonresponsible due to lack of experience and adequate manpower, EPA will not reverse determination absent showing of clear error or lack of rational basis).

85:53 Anne Arundel County, MD (III, 9–27–85) *(Allied Contractors, Inc.)* (EPA affirmed grantee finding that bidder made good faith MBE efforts).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Const., Inc.)* (information developed post bid opening involves responsibility, not responsiveness) (bid may be rejected where owner determines bidder does not intend to comply with specifications) (grantee rejection of bidder lacked a rational basis and was reversed by EPA).

85:66 Newport, RI (I, 12–17–85) *(Peabody N.E., Inc.)* (bid documents when read as a whole did not make submission of certificates a matter of responsiveness).

85:69 Anne Arundel, MD (III, 12–20–85) *(Johnson Const. Co.)* (documentation was a matter of responsibility rather than responsiveness) (where grantee had rational basis for rejecting bid for failing to meet MBE requirements, EPA upheld the decision).

Responsiveness

85:06 Addison, IL (V, 1–25–85) *(Sollitt Const. Co.)* (bid was nonresponsive for failing to list equipment manufacturers when IFB clearly required it).

85:06 Addison, IL (V, 3–19–85) *(Sollitt Const. Co.)* (Reconsideration) (failure to identify intended subcontractor rendered bid nonresponsive).

85:23 Unalaska, AK (X, 4–28–85) *(Rockford Corp.)* (bid that failed to include MBE/EEO documentation was responsive since IFB did not clearly require documentation with the bids).

85:26 Scales Mound, IL (V, 5–14–85) *(Smith & Andrews Co.)* (bid properly rejected for failing to include MBE documentation).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (where failure to comply with bid terms reflect on responsibility rather than responsiveness they may be waived) (in order to be responsive on one alternate it was not necessary to submit bid on other alternate).

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (where bid conditioned upon prior approval of "or equal" equipment and IFB specified it would be evaluated post award only, bid was nonresponsive).

85:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (bid offering equipment that failed to conform to the specifications was nonresponsive).

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (under prequalification procedure, equipment was rejected for failure of bidder to submit required information and data with its proposal).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (defined as a bid in exact accord with the material terms of the IFB) (manufacturer's listing was not a matter of responsiveness).

85:46 Monterey, CA (IX, 9–12–85) *(Mortenson/Natkin)* (where IFB clearly states that failure to list subcontractors will render bid nonresponsive and IFB does not add language describing bid rejection, a bid which fails to comply is nonresponsive and must be rejected).

85:54 Anne Arundel, MD (III, 9–27–85) *(Roberts Filter Manufacturing Co., Inc.)* (bid offering clay instead of

specified plastic underdrains was nonresponsive).

85:55 Little Blue Valley, MO (VII, 10–1–85) *(Roots Division of Dresser Industries)* ("or equal" equipment must be rejected where it does not meet specified design features).

85:61 Jordan, MI (V, 10–21–85) *(Veit & Co.)* (bid was nonresponsive because it failed to bid on one of the required alternative unit items).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Const., Inc.)* (bid responsiveness must be determined at time of bid opening based on information submitted in bid) (information developed subsequent to bid opening cannot be used to determine responsiveness) (by submitting responsive bid, bidder agrees to supply equipment meeting specifications and may be required to provide different equipment if that listed in its bid is determined not to meet the specifications) (absent prequalification requirement, grantee need not evaluate equipment listed by low bidder prior to contract award) (rejection of prime bidder because one item of equipment will not qualify as "or equal" was not proper).

85:64 August, GA (IV, 12–5–85) *(Beiler Equipment Co., Inc.)* (equipment failing to meet specifications is properly rejected and bidder cannot rely on grantee's oral statement that led him to believe the nonresponsive equipment would be accepted).

85:68 Monterey, CA (IX, 12–17–85) *(Fluor Constructors, Inc.)* (failure of equipment listed in bid to meet the specifications does not render prime bid nonresponsive where by its bid, bidder has committed to meeting the specifications and substituting other equipment if necessary).

85:69 Anne Arundel, MD (III, 12–20–86) *(Johnson Const. Co.)* (MBE documentation is not a matter of responsiveness unless the IFB clearly so states) (documentation was a matter of responsibility rather than responsiveness) (where grantee had rational basis for rejecting bidder for failing to meet MBE requirements, EPA upheld the decision).

Small Business (SBE)

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (bonding requirement did not violate SBE/MBE policy where several firms obtained the required bonds) (grantee adequately divided its procurement requirements to comply with EPA policy).

Specifications

Ambiguous (*See* Invitation for Bid (IFB))

Brand Name or Equal .

85:39 Lewes, DE (III, 7–19–85) *(Mixing Equiment Co.)* (improper to use brand name or equal specifications unless it is impractical or uneconomical to use other types of specifications) (specifications defective for not identifying salient requirements).

85:39 Lewes, DE (III, 8–28–85) *(Mixing Equipment Co.)* (Reconsideration) (listing all the specifications of named brand is not a proper listing of salient features).

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (where IFB stated that "or equals" would only be evaluated after contract award, grantee improperly accepted a bid that was conditioned on preaward approval of equipment).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)* (where IFB was ambiguous concerning what salient features were required, a supplier would be unable to determine or demonstrate that its product is "equal").

85:55 Little Blue Valley, MO (VIII, 10–18–85) *(Roots, Dresser)* (permitting award to supplier whose equipment does not meet specifications would prejudice responsive bidders).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const., Inc.)* (failure of equipment listed in bid to satisfy specifications does not render prime bid nonresponsive where, by its bid, bidder had committed to meeting the specifications and substituting other equipment if necessary).

Competition

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S Contracting)* (specification limiting competition is not improper unless supplier would be unable to determine or demonstrate that its product is "equal").

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (requiring equipment supplier to be a manufacturer unduly restricts competition).

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (bonding requirement did not violate SBE/MBE policy where several firms obtained the required bonds) (grantee adequately divided its procurement requirements to comply with EPA policy).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenco Hydro, Inc.)* (prequalified supplier cannot protest that independent decision of prime to substitute another firm harmed its ability to compete).

Design

85:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (basic design decision is not protestable).

Local Preference

No Entries.

Minimum Needs (See Performance Based and Unduly Restrictive)

No Entries.

Nonrestrictive (See Unduly Restrictive)

No Entries.

Oral Statements

85:08 Milwaukee, WI (V, 1–31–85) *(Kari-Kool Transports, Inc.)* (reliance on incorrect oral advice given at pre-bid conference is not protestable).

85:18 Lake Geneva, WI (V, 3–18–85) *(Camosy Const.)* (Grantee's oral statements at pre-bid conference do not have force of law and cannot be basis for protesting City's subsequent responsibility determination).

85:64 Augusta, GA (IV, 12–5–86) *(Beiler Equipment Co., Inc.)* (a bidder who relies on oral statements regarding bidding documents does so at its own risk).

Performance Based

85:24 Chelan, WA (X, 4–26–85) *(Walker Process Corp.)* (EPA funds minimum performance needs, not ideal or best design—the specifications improperly focused on design features instead).

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (EPA rejects arguments that extra safety and economic stability factors that a manufacturer can provide are justified by the minimum performance needs of the project).

85:49 Frederick, MD (III, 9–17–85) *(RDP Company)* (for engineer to specify particular equipment he must show what is unique about a project that justifies it) (must compare operational efficiency of various equipment performing same task but having different configurations) (no rational performance based reasons given for design features).

Salient Requirements (See Brand Name or Equal)

No Entries.

Sole Source

85:24 Chelan, WA (X, 4–26–85) *(Walker Process Corp.)* (it was improper to formally advertise for procurement where only one offeror was able to effectively compete) (City

failed to justify need for sole source and failed to perform cost analysis).

85:42 Glenwood and Longbeach, MN (V, 8–9–85) *(J & S Contracting, Inc.)* (specification allowing a single material which can be obtained from several sources is not "sole source" specification).

85:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (equipment available from a sole source must be procured through negotiation not formal advertising) (grantee should probably find out whether there are two equipment sources before deciding to procure as subcontract items under formally advertised prime bids) (if only one supplier can be used by all primes there is potential for unreasonable bid prices by the supplier).

Unduly Restrictive

85:24 Chelan, WA (X, 4–26–85) *(Walker Process Corp.)* (grantee's description of requirements focused on design features rather than performance characteristics) (specification would require manufacturers to duplicate competitor's design).

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S Contracting)* (specification limiting competition is not improper unless its restrictive features are not necessary to the minimum project needs) (grantee explained rational performance basis for requiring single material).

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (requiring supplier to be a manufacturer is unduly restrictive—EPA rejects arguments that extra safety and economic stability factors that a manufacturer can provide are justified by the minimum performance needs of the project).

85:49 Frederick, MD (III, 9–17–85) *(RDP Company)* (where protester shows its equipment was eliminated, engineer must justify why particular project needs particular equipment—cannot require more than is necessary for the minimum performance needs) (specification that requires manufacturer to duplicate competitor's design places a premium on design rather than performance) (even where manufacturer *can* duplicate competitor's design, competition is discouraged).

State and Local Law

85:14 Washington Suburban Sanitary Commission (III, 2–22–85) *(Hycon and Professional Services Group)* (although state law gives grantee discretion in matters of contract award, that discretion is limited by federal procurement requirements).

85:20 Leesburg, VA (III, 4–2–85) *(James Federline, Inc. and MCI Const., Inc.)* (in determining questions of State law, EPA relies on State authorities and will accept a grantee's interpretation of State law unless it lacks a rational basis).

85:33 Milwaukee, WI (V, 6–19–85) *(Staff Electric Co.)* (where grantee waives failure to notarize bid as a minor irregularity and gives legal opinion that State law permits the waiver, EPA will not review the matter where there is no overriding federal interest).

Subcontract Award

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (requiring equipment supplier to be a manufacturer unduly restricts competition).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (successful bidder was permitted to substitute a nonprequalified supplier for a prequalified supplier named in its bid).

85:57 Pueblo, CO (VIII, 10–11–85) *(WesTech Engineering, Inc.)* (subcontract substitution is matter of contract administration, not protestable).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenco Hydro, Inc.)* (prime contractor's decision concerning subcontract award, substitution of firms, is not protestable) (EPA policy not to interfere in business judgments of primes) (no EPA restriction of prime requiring subcontractors to meet additional experience, bonding, warranty requirements).

Waiver

85:16 Mission, TX (IV, 3–1–85) *(Envirodyne, Inc.)* (grantee used unduly restrictive specifications and attempted to waive them to accept a nonresponsive offeror).

85:21 Wheatfield, NY (II, 4–12–85) *(Milherst Const., Inc.)* (grantee could waive IFB requirement that bids on two sections of a project must contain identical unit prices since it had a negligible effect and no unfair advantage occurred).

85:33 Milwaukee, WI (V, 6–19–85) *(Staff Electric Co.)* (failure to notarize bid as allegedly required by State law may be waived as minor irregularity).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (failure to comply with terms of bid such as certificates and forms may be waived and cured after bid opening where items reflect on responsibility rather than responsiveness).

85:38 Clarence, NY (II, 7–18–85) *(Hydro-Group, Inc.)* (failure to sign formal acknowledgment of receipt of IFB addendum waived as minor informality where bidder included a quotation for the additional addendum item in its bid and referred to the addendum).

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Vol. 51, No. 173

Monday, September 8, 1986

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United States Government Manual 523-5230

Other Services

Library	523-4986
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TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308.....2
31309-31604.....3
31605-31756.....4
31757-31924.....5
31925-32046.....8

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12532 (See Notice of September 4, 1986).....31925
Administrative Orders:
Notice:
September 4, 1986.....31925
Proclamations:
5519.....31309
5520.....31311

5 CFR

831.....31927
Proposed Rules
300.....31954

7 CFR

2.....31757
226.....31313
301.....31605
908.....31758
1136.....31759
1230.....31898
1475.....31316
Proposed Rules:
301.....31956
1065.....31133
1068.....31133
1079.....31133
1137.....31340

8 CFR

Proposed Rules:
214.....31637

9 CFR

322.....31937
Proposed Rules:
92.....31637

10 CFR

477.....31316
Proposed Rules:
2.....31340
50.....31341

14 CFR

21.....31317
39.....31089, 31090, 31607, 31608
71.....31097
75.....31097
91.....31098
95.....31319
97.....31322
Proposed Rules:
21.....31644
23.....31644
39.....31133-31137, 31342, 31343, 31647, 31779
71.....31138, 31648

17 CFR

Proposed Rules:
150.....31648

18 CFR

Proposed Rules:
37.....31651, 31781

19 CFR

111.....31760
171.....31760
178.....31760

21 CFR

81.....31323
175.....31098
178.....31099, 31760
193.....31324
357.....31763
369.....31783
510.....31100
558.....31763

24 CFR

511.....31764

26 CFR

1.....31610, 31613
20.....31938
25.....31938
602.....31610, 31613, 31938

28 CFR

0.....31939, 31940
Proposed Rules:
16.....31781

29 CFR

2200.....32002

30 CFR

901.....31940
938.....31942
Proposed Rules:
733.....31139

32 CFR

199.....31100
205.....31325
286g.....31103
706.....31103-31112
Proposed Rules:
40.....31651

33 CFR

117.....31112, 31113, 31946
165.....31113, 31114, 31946
Proposed Rules:
165.....31958

34 CFR

Proposed Rules:
614.....31754

36 CFR

13.....31619
800.....31115
1254.....31617

38 CFR

Proposed Rules:
21.....31782

39 CFR

10.....31325
233.....31328

Proposed Rules:
111.....31673

40 CFR

52.....31125, 31127, 31129, 31328
261.....31330
271.....31618

Proposed Rules:
86.....31783, 31959, 32032
260.....31783
261.....31140, 31783
262.....31783
264.....31783
265.....31783
268.....31783
270.....31783
271.....31783

41 CFR

Proposed Rules:
201-33.....31674

42 CFR

23.....31947
405.....31454
412.....31454

Proposed Rules:
57.....31920

43 CFR

36.....31619
2880.....31764

Proposed Rules:
2800.....31886
2880.....31886

44 CFR

64.....31330
65.....31635, 31950
67.....31951

Proposed Rules:
10.....31788
67.....31675, 31678

47 CFR

0.....31303
1.....31303
2.....31303
13.....31303
21.....31303
22.....31335
63.....31303
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303

Proposed Rules:
15.....31147
67.....31149
68.....31149
76.....31147
80.....31306

48 CFR

5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
47.....31424
50.....31424
52.....31424
223.....31765
228.....31765
242.....31765
252.....31765
914.....31335
933.....31335
952.....31335
970.....31335

Proposed Rules:
32.....31194
45.....31196
48.....31197
52.....31194, 31197
515.....31344
538.....31344
552.....31344
1317.....31687
1352.....31687

49 CFR

571.....31765

Proposed Rules
391.....31150

50 CFR

17.....31412
20.....31430
23.....31130
36.....31619
655.....31774, 31775
663.....31776

Proposed Rules
630.....31151

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 5, 1986

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14 Parts:		
1–59	20.00	Jan. 1, 1986
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15 Parts:		
0–299	7.00	Jan. 1, 1986
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17 Parts:		
1–239	26.00	Apr. 1, 1986
240–End	19.00	Apr. 1, 1986
18 Parts:		
1–149	15.00	Apr. 1, 1986
150–399	25.00	Apr. 1, 1986
400–End	6.50	Apr. 1, 1986
19	29.00	Apr. 1, 1986
20 Parts:		
1–399	10.00	Apr. 1, 1986
400–499	22.00	Apr. 1, 1986
500–End	23.00	Apr. 1, 1986
21 Parts:		
1–99	12.00	Apr. 1, 1986
100–169	14.00	Apr. 1, 1986
170–199	16.00	Apr. 1, 1986
200–299	6.00	Apr. 1, 1986
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22	28.00	Apr. 1, 1986
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24 Parts:		
0–199	15.00	Apr. 1, 1986
200–499	24.00	Apr. 1, 1986
500–699	8.50	Apr. 1, 1986
700–1699	17.00	Apr. 1, 1986
1700–End	12.00	Apr. 1, 1986
25	24.00	Apr. 1, 1986
26 Parts:		
§§ 1.0–1.169	29.00	Apr. 1, 1986
§§ 1.170–1.300	16.00	Apr. 1, 1986
§§ 1.301–1.400	13.00	Apr. 1, 1986
§§ 1.401–1.500	20.00	Apr. 1, 1986
§§ 1.501–1.640	15.00	Apr. 1, 1986
§§ 1.641–1.850	16.00	Apr. 1, 1986
§§ 1.851–1.1200	29.00	Apr. 1, 1986
§§ 1.1201–End	29.00	Apr. 1, 1986
2–29	19.00	Apr. 1, 1986
30–39	13.00	Apr. 1, 1986
40–299	25.00	Apr. 1, 1986
300–499	14.00	Apr. 1, 1986
500–599	8.00	[1] Apr. 1, 1980
600–End	4.75	Apr. 1, 1986
27 Parts:		
1–199	20.00	Apr. 1, 1986
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0–99	11.00	July 1, 1985
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1911–1919	5.50	[2] July 1, 1984
1920–End	20.00	July 1, 1985
30 Parts:		
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700–End	13.00	July 1, 1985
31 Parts:		
0–199	11.00	July 1, 1986
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Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	[3] July 1, 1984
1–39, Vol. II	19.00	[3] July 1, 1984
1–39, Vol. III	18.00	[3] July 1, 1984
1–189	13.00	July 1, 1985
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800–999	7.50	July 1, 1985
1000–End	5.50	July 1, 1985
33 Parts:		
1–199	20.00	July 1, 1985
200–End	14.00	July 1, 1985
34 Parts:		
1–299	15.00	July 1, 1985
300–399	11.00	July 1, 1986
400–End	18.00	July 1, 1985
35	7.00	July 1, 1985
36 Parts:		
1–199	9.00	July 1, 1985
200–End	14.00	July 1, 1985
37	9.00	July 1, 1985
38 Parts:		
0–17	16.00	July 1, 1985
18–End	11.00	July 1, 1985
39	12.00	July 1, 1986
40 Parts:		
1–51	16.00	July 1, 1985
52	21.00	July 1, 1985
53–80	23.00	July 1, 1985
81–99	18.00	July 1, 1985
100–149	18.00	July 1, 1985
150–189	13.00	July 1, 1985
190–399	19.00	July 1, 1985
400–424	14.00	July 1, 1985
425–699	13.00	July 1, 1985
700–End	8.00	July 1, 1985
41 Chapters:		
1, 1–1 to 1–10	13.00	[4] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[4] July 1, 1984
3–6	14.00	[4] July 1, 1984
7	6.00	[4] July 1, 1984
8	4.50	[4] July 1, 1984
9	13.00	[4] July 1, 1984
10–17	9.50	[4] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[4] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[4] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[4] July 1, 1984
19–100	13.00	[4] July 1, 1984
1–100	7.50	July 1, 1985
101	19.00	July 1, 1985
102–200	8.50	July 1, 1985
201–End	7.50	July 1, 1986
42 Parts:		
1–60	12.00	Oct. 1, 1985
61–399	7.00	Oct. 1, 1985
400–429	16.00	Oct. 1, 1985
430–End	11.00	Oct. 1, 1985
43 Parts:		
1–999	10.00	Oct. 1, 1985
1000–3999	18.00	Oct. 1, 1985
4000–End	8.50	Oct. 1, 1985
44	13.00	Oct. 1, 1985
45 Parts:		
1–199	10.00	Oct. 1, 1985
200–499	7.00	Oct. 1, 1985
500–1199	13.00	Oct. 1, 1985
1200–End	9.00	Oct. 1, 1985
46 Parts:		
1–40	10.00	Oct. 1, 1985
41–69	10.00	Oct. 1, 1985
70–89	5.50	Oct. 1, 1985
90–139	9.00	Oct. 1, 1985
140–155	8.50	Oct. 1, 1985
156–165	10.00	Oct. 1, 1985
166–199	9.00	Oct. 1, 1985
200–499	15.00	Oct. 1, 1985
500–End	7.50	Oct. 1, 1985
47 Parts:		
0–19	13.00	Oct. 1, 1985
20–69	21.00	Oct. 1, 1985
70–79	13.00	Oct. 1, 1985
80–End	18.00	Oct. 1, 1985
48 Chapters:		
1 (Parts 1–51)	16.00	Oct. 1, 1985
1 (Parts 52–99)	12.00	Oct. 1, 1985
2	15.00	Oct. 1, 1985
3–6	13.00	Oct. 1, 1985
7–14	17.00	Oct. 1, 1985
15–End	17.00	Oct. 1, 1985
49 Parts:		
1–99	7.00	Oct. 1, 1985
100–177	19.00	Nov. 1, 1985
178–199	15.00	Nov. 1, 1985
200–399	13.00	Oct. 1, 1985
400–999	16.00	Oct. 1, 1985
1000–1199	13.00	Oct. 1, 1985
1200–1299	13.00	Oct. 1, 1985
1300–End	2.25	Oct. 1, 1985
50 Parts:		
1–199	11.00	Oct. 1, 1985
200–End	19.00	Oct. 1, 1985
CFR Index and Findings Aids	21.00	Jan. 1, 1986
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[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

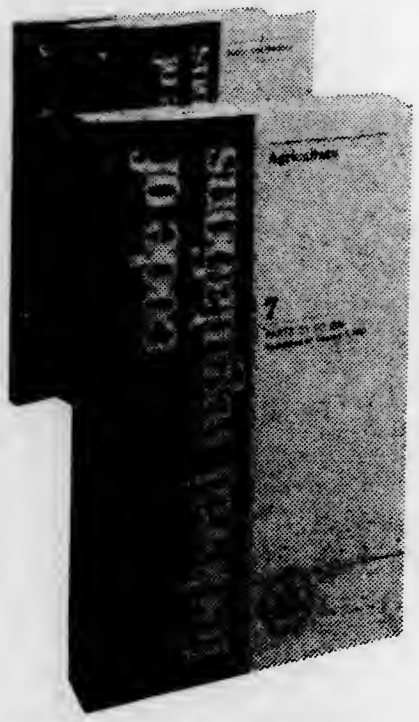
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VOL 51 ISS 173 SE 8 1986 UMI

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Vol. 51
Pages

9-9-86
Vol. 51 No. 174
Pages 32047-32188

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VOL 51 ISS 174 SE 9 1986 UMI

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Contents

Federal Register
Vol. 51, No. 174
Tuesday, September 9, 1986

Administrative Conference of the United States
NOTICES
Private sector health and safety whistleblowers; Federal protection; hearing, 32116

Agricultural Marketing Service
RULES
Milk marketing orders:
Eastern Colorado, 32056
PROPOSED RULES
Almonds grown in California, 32103
Limes and avocados grown in Florida, 32098
Milk marketing orders:
Lake Mead, 32104

Agricultural Stabilization and Conservation Service
RULES
Marketing quotas and acreage allotments:
Peanuts, 32049

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Food and Nutrition Service; Food Safety and Inspection Service

Air Force Department
PROPOSED RULES
Acquisition regulations, 32114
NOTICES
Environmental statements; availability, etc.:
Ground wave emergency network, 32119
Meetings:
Scientific Advisory Board, 32120

Army Department
See also Engineers Corps
NOTICES
Meetings:
Science Board, 32120
(2 documents)

Centers for Disease Control
NOTICES
Meetings:
Prevention of Leading Work-Related Diseases and Injuries National Symposium, 32133
Reproductive effects of low frequency radiofrequency radiation in rats, 32134

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; National Telecommunications and Information Administration
NOTICES
Agency information collection activities under OMB review, 32116

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certifications, etc.:
Mexico, 32119

Defense Department
See Air Force Department; Army Department; Engineers Corps; Navy Department

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Southeastern Power Administration
NOTICES
Meetings:
National Petroleum Council, 32121

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Crump Creek, Hanover County, VA, 32121

Environmental Protection Agency
RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Air quality models guideline, 32176
Air quality implementation plans; approval and promulgation; various States:
North Carolina, 32073
Wisconsin, 32075
Toxic substances:
Significant new uses—
Pentachloroethane, 32077
Testing requirements—
1, 2-Dichloropropane, 32079
PROPOSED RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Air quality models guideline, 32180
Toxic substances:
Testing requirements—
1, 2-Dichloropropane, 32107
NOTICES
Meetings:
Science Advisory Board, 32121
(2 documents)
Pesticide programs:
Registration standards—
Availability, etc.; correction, 32121

Equal Employment Opportunity Commission
RULES
Employment discrimination:
Charges; designation of State and local fair employment practice agencies
Puerto Rico, 32073
NOTICES
Meetings; Sunshine Act, 32169

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 32169

Federal Communications Commission
RULES
Radio and television broadcasting:
Oversight; clarifications and editorial corrections, etc., 32087
Radio stations; table of assignments:
Florida, 32089
PROPOSED RULES
Common carrier services:
Nonstructural safeguards for provision of enhanced services (Computer III proceeding), 32113
Radio stations; table of assignments:
Delaware, 32113
Pennsylvania, 32114
NOTICES
Meetings:
Radio Broadcasting Advisory Committee, 32131
Rulemaking proceedings; petitions filed, granted, denied, etc., 32131
Applications, hearings, determinations, etc.:
Interface Productions, Inc., et al., 32132
Meredith Corp. et al., 32132

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Commonwealth Electric Co. et al., 32122
Meetings; Sunshine Act, 32169
Preliminary permits surrender:
Mill Creek Associates, 32124
Applications, hearings, determinations, etc.:
Equitable Gas Co., 32123
Florida Gas Transmission Co., 32123
Great Lakes Gas Transmission Co., 32123
Northwest Central Pipeline Corp., 32124
Northwest Pipeline Corp., 32124
Pacific Interstate Transmission Co., 32125
Pacific Offshore Pipeline Co., 32125
Southern Natural Gas Co., 32126
Transwestern Pipeline Co., 32126

Federal Highway Administration
PROPOSED RULES
Motor carrier safety regulations:
Front wheel brakes; demonstration project, 32115

Federal Maritime Commission
NOTICES
Agreements filed, etc., 32132

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 32171

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 32171
Applications, hearings, determinations, etc.:
Peoples National Bancorp, Inc., et al., 32133
Unibancorp, Inc., 32133

Food and Drug Administration
NOTICES
Medical devices; premarket approval:
GYREX (nuclear magnetic resonance device), 32134

Food and Nutrition Service
PROPOSED RULES
Child nutrition programs:
Women, infants, and children; special supplemental food program; funding formula, 32093

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Pork or beef with barbecue sauce; labeling provisions, 32057

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
North Carolina; American Hoist & Derrick Crane Manufacturing Plant, 32117

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 32126

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Property improvement and manufactured home loan program; corrections, 32059
NOTICES
Organization, functions, and authority delegations:
Milwaukee Office, Manager; order of succession, 32135

Indian Affairs Bureau
NOTICES
Agency information collection activities under OMB review, 32135

Interior Department
See Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Partnerships; allocations of loss and deduction attributable to nonrecourse debt, 32061
Qualified conservation contributions
Technical amendments, 32071

International Trade Administration
NOTICES
Antidumping:
Carbon steel butt-weld pipe fittings from—
Japan, 32117
Applications, hearings, determinations, etc.:
Texas A&M University, 32118

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Iowa Terminal Railroad Co., 32136
(2 documents)

VOL 51 ISS 174 SE 9 1986 UMI

Justice Department
See Juvenile Justice and Delinquency Prevention Office; Parole Commission

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements:
Status offenders, deinstitutionalization; effects, 32184

Labor Department
See also Occupational Safety and Health Administration; Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 32138
Senior Executive Service:
Performance Review Board; membership, 32139

Land Management Bureau
NOTICES
Agency information collection activities under OMB review, 32135
Survey plat filings:
New Mexico, 32136

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 32135

National Aeronautics and Space Administration
NOTICES
Advisory committees; report on closed meetings; availability, 32149
Meetings:
Advisory Council, 32149, 32150 (4 documents)

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 32172

National Highway Traffic Safety Administration
NOTICES
Meetings:
Rulemaking, research, and enforcement programs, 32167

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Foreign fishing—
Poundage fee schedule, 32089
Ocean salmon off coasts of Washington, Oregon, and California, 32091
NOTICES
Meetings:
Caribbean Fishery Management Council, 32118
Gulf of Mexico Fishery Management Council, 32118

National Park Service
NOTICES
Historic Places National Register; pending nominations:
Alabama et al., 32137

National Science Foundation
NOTICES
Meetings:
Earth Sciences Advisory Committee, 32150
Physics Advisory Committee, 32151

National Telecommunications and Information Administration
NOTICES
Meetings:
Frequency Management Advisory Council, 32118

National Transportation Safety Board
NOTICES
Meetings: Sunshine Act, 32172

Navy Department
NOTICES
Meetings:
Naval Academy, Academic Advisory Board to Superintendent, 32120
Naval Research Advisory Committee, 32121

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Alabama Power Co., 32151
Niagara Mohawk Power Corp., 32151
Meetings:
Reactor Safeguards Advisory Committee, 32154

Occupational Safety and Health Administration
NOTICES
Meetings:
Occupational Safety and Heath Federal Advisory Council, 32139

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
Mainstem Passage Advisory Committee; correction, 32154

Parole Commission
RULES
Federal prisoners; paroling and releasing, etc.:
Parole policy guidelines—
Interpretative clarifications, revisions, and additions, 32071

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Alaska Laborers-Employers Retirement Trust Fund, 32139
Fresh Retirement Plan et al., 32139
United Parcel Service Thrift Plan et al., 32146

Presidential Documents
PROCLAMATIONS
Special observances:
Federal Lands Cleanup Day (Proc. 5521), 32047

Public Health Service
See Centers for Disease Control; Food and Drug Administration

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 32172

Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 32161
Philadelphia Stock Exchange, Inc., 32163
Applications, hearings, determinations, etc.:
Chrysler Financial Corp., 32155
Equus Investments II, L.P., 32156
Hartford Life Insurance Co. et al., 32157
Oglethorpe Power Corp., 32158
Oxford Acceptance Corp., 32158
Oxford Acceptance Corp. III, 32160
Thrift Financing Corp., 32164

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 32166
Meetings; regional advisory councils:
Oregon, 32166
Texas, 32166

Southeastern Power Administration
NOTICES
Power rates:
Cumberland Basin System of Projects, 32129

State Department
NOTICES
Meetings:
International Commission for Conservation of Atlantic Tunas, United States National Section Advisory Committee, 32166
International North Pacific Fisheries Commission, United States Section Advisory Committee, 32167
Shipping Coordinating Committee, 32167

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Abandoned mine land reclamation and permanent program submission:
Virginia, 32106

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 32172

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Highway Administration; National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service

United States Information Agency
NOTICES
Agency information collection activities under OMB review, 32167

Separate Parts In This Issue

Part II
Environmental Protection Agency, 32176

Part III
Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 32184

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

VOL 51 ISS 174 SE 9 1986 UMI

CFR PAR
A cumulat
the Reade
3 CFR
Proclamati
5521
7 CFR
729
1137
Proposed
246
911
915
981
1139
9 CFR
319
24 CFR
201
26 CFR
1
20
28 CFR
2
29 CFR
1601
30 CFR
Proposed
946
40 CFR
51
52 (3 docu
721
799
Proposed
51
52
799
47 CFR
0
1
73 (2 docu
74
Proposed
64
73 (2 docu
48 CFR
Proposed
5316
49 CFR
Proposed
393
50 CFR
611
661

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations
5521.....32047

7 CFR
729.....32049
1137.....32056
Proposed Rules:
246.....32093
911.....32098
915.....32098
981.....32103
1139.....32104

9 CFR
319.....32057

24 CFR
201.....32059

26 CFR
1.....32061
20.....32071

28 CFR
2.....32071

29 CFR
1601.....32073

30 CFR
Proposed Rules:
946.....32106

40 CFR
51.....32176
52 (3 documents).....32073, 32075, 32176
721.....32077
799.....32079
Proposed Rules:
51.....32180
52.....32180
799.....32107

47 CFR
0.....32087
1.....32087
73 (2 documents).....32087, 32089
74.....32087
Proposed Rules:
64.....32113
73 (2 documents).....32113, 32114

48 CFR
Proposed Rules:
5316.....32114

49 CFR
Proposed Rules:
393.....32115

50 CFR
611.....32089
661.....32091

VOL
51
ISS
1
7
4
SE
9
1986
UMI

Federal
Vol. 51,
Tuesday,

Title 3-

The P

Federal Register
Vol. 51, No. 174
Tuesday, September 9, 1986

Presidential Documents

Title 3—

The President

Proclamation 5521 of September 5, 1986

Federal Lands Cleanup Day, 1986

By the President of the United States of America

A Proclamation

America is blessed with a great wealth of natural resources—magnificent land, water, fish, and wildlife—as well as historic resources, places associated with the memories of great individuals, cultures, events, and structures of great historic or esthetic importance.

Many of our most prized natural and cultural resources are preserved as public sites for the benefit of all Americans. From national and State parks, forests, and shores to local playgrounds and urban open spaces, public lands provide recreational and educational opportunities for persons from every walk of life.

Although most people treat these treasured common possessions with the respect they deserve, some visitors to our public lands are thoughtless. Their litter, vandalism, theft, wildlife poaching, and other abuses are taking a toll on the legacy we will be passing on to future generations. With over 700 million acres of Federal public land and millions more of State and local public land, government cannot protect each acre without the support of the people who use these lands.

Fortunately, citizens and organizations all over America have taken it upon themselves to make a difference—to make these lands better for all of us. These voluntary cleanup and restoration activities have been conducted in cooperation with organizations such as Keep America Beautiful and Federal land managing agencies. Those who participate in this worthy endeavor have not only improved these lands and waters, but also have set an example for others to follow. Such stewardship embodies the spirit of commitment we hope to inspire with our "Take Pride in America" campaign, a partnership of Federal agencies, State and local governments, and private organizations to promote such voluntary efforts by individual Americans.

To celebrate and encourage these efforts on behalf of our public lands, the Congress, pursuant to Public Law 99-402, has designated the first Saturday after Labor Day of each year as "Federal Lands Cleanup Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 6, 1986, and the first Saturday after Labor Day in each successive year as Federal Lands Cleanup Day and urge all Americans to observe this day with appropriate activities that reflect our continuing dedication to the wise use and loving preservation of our natural and cultural resources.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of September, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-20441
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VOL 51 ISS 174 SE 9 1986 UMI

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Rules and Regulations

Federal Register
Vol. 51, No. 174
Tuesday, September 9, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota Regulations for the 1986 Through 1990 Crops of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule promulgates regulations for the 1986–1990 crops of peanuts governing producer marketing cards, producer penalties, collection by peanut buyers of amounts due the United States upon the marketing of peanuts, the treatment of foundation and breeder stock peanuts, and other related matters. Some changes from the rules applicable to the 1983–85 crop peanuts have been made, principally to (1) permit a producer to leave the producer's peanut marketing card with a peanut handler between marketings; (2) provide that the commingling of peanuts between farms will be treated as a false identification of peanuts if such peanuts are marketed as the peanuts of one farm; (3) allow for the correction of schemes or devices designed to defeat the purposes of the program; and (4) treat the production of breeder and foundation seed peanuts as experimental production in certain circumstances.

DATES: This rule is effective August 1, 1986; comments must be received on or before November 10, 1986.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Tonye Gross (ASCS), 202–447–4319. The Final Regulatory Impact Analysis is available upon request.

SUPPLEMENTARY INFORMATION: This Interim Rule has been reviewed under USDA procedures, Executive Order 12291, and Departmental Regulations No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by the regulation have been reviewed and approved by OMB under OMB Number 0560–0006.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Since the marketing year for 1986 crop peanuts begins on August 1, 1986, it is necessary that these regulations be published immediately and that the rule become effective as of that date. The principal purpose of the regulations is to codify statutory penalties in the regulations.

Comments are requested on all aspects of this interim rule for 60 days after publication of this document in the Federal Register. This interim rule will be scheduled for review at the end of that period so that a final document discussing comments received, and any amendments of this interim rule, which may be required, may be published in the Federal Register as soon as possible.

The Food Security Act of 1985 amended the Agricultural Adjustment Act of 1938 (the "1938 Act") and the Agricultural Act of 1949 (the "1949 Act") for the 1986–1990 crops of peanuts. This rule implements a portion of those amendments and specifically covers the issuance and handling of producer marketing cards, the assessment of producer penalties, the collection of certain sums due the United States upon the marketing of peanuts, and other related matters. The regulations issued in this interim rule supplement regulations which were published on June 20, 1986 (51 FR 22485). Other regulations regarding the 1986–1990 crops, which covered price support and handler operations were published on June 17, 1986 (51 FR 21879). Generally, these regulations are the same as the corresponding regulations that applied to the 1983–1985 crops of peanuts, 7 CFR 729.285 through 729.306. The salient provisions of this regulations are:

(1) *Marketing Cards*—Under this interim rule, as with previous crops, all marketings of peanuts by producers must be accompanied by a producer marketing card issued by a county Agricultural Stabilization and Conservation Service (ASCS) Office. Unlike with previous crops, however, the regulations specifically provide that a producer may leave the marketing card with a handler between marketings. The marketing card may not be left in the possession of the handler after the producer has completed marketings for the season. This adjustment recognizes that in the past a number of producers have customarily left their marketing cards at the buying point. Since it is the responsibility of the producer to review and certify the marketings before the marketing card is returned to the issuing office, it has been

VOL 51 ISS 174 SE 9 1986 UMI

determined that specifically recognizing this practice is appropriate.

(2) *Penalties*—(a) Statutory Provisions. Section 359 of the 1938 Act provides that the marketing of any peanuts for domestic edible use in excess of the farm poundage quota for the farm on which such peanuts are produced shall be subject to a penalty at a rate equal to 140 percent of the support price for quota peanuts for the marketing year in which such marketing occurs. That section provides that for purposes of such penalties, the marketing year for peanuts shall be the 12-month period beginning August 1 and ending July 31. It is also provided in section 359 of the Act that the marketing of any additional peanuts from a farm shall be subject to the same penalty unless such peanuts are, in accordance with regulations issued by the Secretary, either placed under loan at the additional loan rate in effect for such peanuts, marketed through an area marketing association designated pursuant to the Agricultural Act of 1949, or market under contracts between handlers and producers. Section 359 also provides that a penalty shall be paid by the person who buys or otherwise acquires peanuts from the producer or, if the peanuts are marketed by the producer through an agent, the penalty shall be paid by such agent. Under the Act, such person or agent may deduct an amount equivalent to the penalty from the price paid to the producer.

Section 359 also provides that if the person required to collect the penalty fails to collect such penalty, such person and all persons entitled to share in the peanuts marketed from the farm or the proceeds thereof shall be jointly and severally liable for the amount of the amount. The Act provides, in addition, that if any producer falsely identifies or fails to certify planted acres or fails to account for the disposition of any peanuts produced on such planted acres, an amount of peanuts equal to the farm yield times the planted acres shall be deemed to have been marketed in violation of the permissible use of quota and additional peanuts. Section 359 further provides that the Secretary shall authorize county Agricultural Stabilization and Conservation committees to waive or reduce marketing penalties in cases in which the committees determine that the violations were unintentional or without knowledge on the part of the parties concerned. It also provides that errors in weight that do not exceed one-tenth of one percent in the case of any one marketing document shall not be considered to be marketing violations except in cases of fraud or conspiracy.

(b) *Provisions of the regulations.* This rule implements the preceding statutory provisions. Penalties may be asserted against peanut producers for: (1) The marketing of peanuts for domestic edible use in excess of the effective farm poundage quota; (2) mismarketing of additional peanuts; (3) failure to certify planted acreage accurately; (4) failure to properly account for the disposition of peanuts; and (5) false identification of peanuts. As in the past and as prescribed by the statute, the basic penalty rate is equal to 140 percent of the basic quota support rate multiplied by the quantity of peanuts involved in the violation. The basic quota support rate is set by the Secretary pursuant to section 108B of the 1949 Act. As compared with the regulations which applied in the 1983 through 1985 crops, the regulations have been amended to provide that peanuts marketed from a particular farm which have in fact been commingled with peanuts from another farm will be peanuts which will be treated as having been falsely identified and therefore be subject to a penalty.

(3) *Breeder and foundation seed peanuts*—(a) *Statutory provisions.* Breeder peanuts are peanuts which are grown to produce foundation seed peanuts. Foundation seed peanuts are peanuts used to create a stock of seed peanuts which can be used as the foundation for producing more seed peanuts. Foundation and breeder seed peanuts are not, as such, used to produce a crop. Section 359 of the 1938 Act, as amended, provides that only quota peanuts may be retained for use as seed or for other uses on a farm. When so retained, the Act provides, such peanuts shall be considered as marketings of quota peanuts, except that the Secretary may exempt from consideration as marketings of quota peanuts seeds of peanuts that meet all of the following requirements: (i) The peanuts are "green peanuts", (ii) the peanuts are unique strains, and (iii) the peanuts are not commercially available. Section 372 of the 1938 Act provides that no penalty shall be collected with respect to the marketing of any agricultural commodity grown only for experimental purposes by any publicly-owned agricultural experiment station and no penalty shall be collected with respect to the marketing of any agricultural commodity grown on state prison farms for consumption within such state prison system.

(b) *Provisions of the regulations.* Because foundation seed and breeder stock seed are not used to produce a crop, the regulations unlike those that applied to the 1983–85 crops, provide that such production will not be treated as the production of quota peanuts in determining whether or not a farm has exceeded its poundage quotas if certain conditions are met. Those conditions include the requirement that such peanuts must be grown on behalf of, and under the auspices of, an agricultural experiment station and are not used for domestic edible use.

(4) *Schemes and Devices*—This rule differs from those which applied to the 1983–85 crop in that it is explicitly provided that, in determining whether penalties are due, such determinations will be made in such a manner as will take into account any scheme or device designed to, or having the effect of, defeating the purposes of the program.

(5) *Penalty Assessments*—As in the past, penalties against producers will be assessed by county ASCS committees but an appeal may be taken to State ASCS committees and the Deputy Administrator for State and County Operations, ASCS.

(6) *Other Provisions*—This rule specifies the conditions under which peanut buyers, when purchasing peanuts marketed by producers, must collect debts due the United States, and covers liens on peanuts resulting from debts due for producer penalties.

List of Subjects in 7 CFR Part 729

Poundage quotas, Peanuts, Penalties, Reporting and recordkeeping requirements.

Interim Rule

PART 729—PEANUTS

Accordingly, 7 CFR Part 729 is amended as follows:

1. The statement of authorities for Part 729, Subpart—Poundage Quotas and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts continues to read as follows:

Authority: Secs. 301, 357, 358, 358a, 359, 372, 373, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 65, as amended, 66 as amended (7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375, as amended); Section 108B of the Agricultural Act of 1949 as added by section 705 of the Food Security Act of 1985 (Pub. L. No. 99–198).

2. The Table of Contents for the Subpart entitled "Poundage Quota and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts" of Part 729 is amended by adding at the end thereof the following:

* * * * *

Marketing Cards and Producer Identification Cards

Sec.
729.385 Issuance of cards.
729.386 Claim stamping marketing cards.
729.387 Invalid cards.
729.388–729.392 [Reserved].

Marketing Penalties

729.393 Basic penalty rate.
729.394 Peanuts on which penalties are due.
729.395 Application of false identification of peanuts.
729.396 Peanuts on which penalties are not to be assessed.
729.397 Persons to pay penalty.
729.398 Payment of penalty.
729.399 Lien for penalty.
729.400 Assessment of penalties.
729.401 Reduction or waiver of penalty.
729.402 Appeals.
729.403 Failure to comply with program.
729.404 Schemes and devices.
729.405–729.415 [Reserved]

Producer Identification and Designation of Peanuts Marketed

729.416 Identification of producer marketings.
729.417 Designation of peanuts.
729.418–729.419 [Reserved]

Producer Records and Reports and Handling Segregation 3 Peanuts

729.420 Report of marketing green peanuts.
729.421 Report of acquisition of seed peanuts.
729.422 Peanuts marketed to persons who are not registered handlers.
729.423 Report on marketing card.
729.424 Report of production and disposition.
729.425 Handling Segregation 3 peanuts.
729.426 Persons engaged in more than one business.
729.427 Penalty for failure to keep records and make reports.
729.428 Examination of records and reports.
729.429 Length of time records and reports are to be kept.

3. The following sections are added at the end of Part 729—Subpart—Poundage Quota and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts:

Marketing Cards and Producer Identification Cards

§ 729.385 Issuance of cards.

(a) *Issuance of marketing cards.* A marketing card (ASCS–1002) shall be issued in the name of the farm operator for each farm on which peanuts are produced in the United States in the current year for use by each producer on the farm for marketing such producer's share of the peanuts produced. However, a marketing card issued for experimental peanuts shall be issued in the name of the experiment station and a marketing card issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The marketing card may show the names of other interested producers.

(b) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lots of peanuts when offered for sale. Producer identification cards shall be issued at the time the marketing cards are issued.

(c) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(d) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing such producer's proportionate share of the peanuts produced on the farm.

(2) Any person who succeeds, in whole or in part, to the share of a producer in the peanuts available for marketing from a farm shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer.

(e) *Data on marketing card and supplemental card.* (1) Before issuance, the following data and information must be entered on the marketing card in the spaces provided:

(i) The effective farm poundage quota;

(ii) The pounds of additional peanuts contracted and the handler number of the contracting handler, if applicable; and

(iii) The converted basic penalty rate determined in accordance with § 729.394(b), if applicable.

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm if an original or supplemental marketing card is returned to the county office. The balance of the poundage quota for the farm from the returned marketing card shall be entered as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the amount of the poundage quota (not to exceed the balance of poundage quota available) which is to be assigned to each card.

(4) The face of the marketing card shall show the entry "Eligible for Buyback" if the farm operator authorizes the handler to purchase peanuts under the "Immediate Buyback" purchase in accordance with Part 1446 of this chapter. If the producer and handler have contracted additional peanuts in accordance with Part 1446 of this chapter, the face of the marketing card shall not show the entry "Eligible for Buyback" until all contracted peanuts have been marketed from the farm. Two or more marketing cards may be issued for a farm under the provisions of paragraph (e)(3) of this section if the producer wishes to obtain an additional card for purposes of indicating or not indicating "Eligible for Buyback."

(5) Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

(f) *Data on producer identification cards.* (1) The identification card issued in the name of the farm operator shall be embossed to show the:

(i) Name and address of the farm operator, and

(ii) State, county code, and farm serial number. If an embossed identification card is not available, the above information shall be entered by the county ASCS office.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts offered for sale until such time as the peanuts are inspected and an ASCS–1007 has been executed by an approved inspector.

(3) After the identification card is returned to the farm operator, it may be used again to identify another lot of peanuts.

(g) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the country executive director who issued the card to have been lost, destroyed, or stolen, if the farm operator gives immediate written notice of such fact to the appropriate county ASCS office and furnishes a satisfactory report of the quantity of peanuts which was marketed using the marketing card prior to the time such card was lost, stolen, or destroyed.

(Approved by the Office of Management and Budget under Control No. 0560–0006).

§ 729.386 Claim stamping marketing cards.

If a person is indebted to the United States and the indebtedness is listed on the county office claim record, any marketing card issued for the farm on which the person has an interest as a producer shall bear the notation "U.S. Claim" or "PPQ" (peanut poundage quota penalty) followed by the amount of the indebtedness. The name of the indebted producer, if different from the

farm operator, shall be recorded directly under the notation. A notation showing "PPQ" as the type of indebtedness shall constitute notice to any peanut buyer that until the amount of the penalty involved plus accrued interest is paid, the United States has a lien on the crop of peanuts with respect to which the penalty was incurred and on any subsequent crop of peanuts subject to farm poundage quotas in which the person liable for payment of the penalty has an interest. Peanut poundage quota liens (PPQ amounts) shall be collected and paid to the Agricultural Stabilization and Conservation Service prior to making collection for any other lien or claim. A notation showing "U.S. Claim" shall constitute notice to any peanut buyer that, to the extent of the indebtedness shown, and subject to prior liens, the net proceeds from any price support loan or purchase settlement due the debtor must be paid to the Agricultural Stabilization and Conservation Service. The acceptance and use of a marketing card bearing a notation concerning indebtedness to the United States shall not constitute a waiver by the producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action. A lien-free or claim-free marketing card shall be issued by the county ASCS office when the lien or claim has been paid and the notated card returned.

§ 729.387 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or becomes illegible.

(4) An erasure or alteration has been made and not initialed by the county executive director.

(b) *Validating invalid cards.* If a marketing card is invalid because an entry is not made as required, the farm operator or other producer shall return the marketing card to the county office. Except for an incorrect entry of the converted basic penalty rate determined in accordance with § 729.394(b), the marketing card may be made valid by entering data previously omitted or by correcting any incorrect data previously entered. The county executive director shall initial each correction made on the marketing card. An invalid card, if not validated, shall be canceled and a replacement card issued.

§§ 729.388–729.392 [Reserved]

Marketing Penalties

§ 729.393 Basic penalty rate.

The basic penalty rate shall be 140 percent of the national average support level for quota peanuts, as determined for the marketing year in which the peanuts were produced.

§ 729.394 Peanuts on which penalties are due.

In addition to other remedies as may apply, a penalty is due at the basic penalty rate on:

(a) The quantity of peanuts which is marketed or considered to be marketed from a farm for domestic edible use in excess of the effective farm poundage quota for the farm.

(b) All peanuts marketed from the farm, if the certified acreage differs from the measured acreage by more than the tolerance provided in Part 718 of this Title: *Provided,* that such penalty shall be paid on each lot of peanuts marketed from a farm based on a converted basic penalty rate as shown on the marketing card. The converted basic penalty rate shall be determined by: (1) calculating the percentage of incorrect certification; and (2) multiplying the percentage by the basic penalty rate per pound.

(c) All peanuts produced on a farm for which the producer: (1) failed to accurately certify peanut acreage as provided in Part 718 of this Title; or (2) refused to permit entry on the farm to authorized representatives of the Secretary for the purpose of determining the acreage of peanuts on the farm.

(d) The quantity of peanuts marketed without identification by a valid marketing card.

(e) The quantity of peanuts falsely identified, as determined by the county committee with the concurrence of the State committee, pursuant to 7 CFR 729.395.

(f) All peanuts, the disposition of which the producer has failed to account for to the satisfaction of the county committee. The quantity of peanuts subject to penalty under this provision shall be the amount of peanuts determined by the county committee to have been marketed or considered marketed from the farm for domestic edible use in excess of the effective farm poundage quota for that farm.

(g)(1) All additional peanuts marketed as contract additional peanuts in excess of the pounds contracted between the producer and handler as provided in Part 1446 of this title or otherwise marketed in violation of this subpart; and (2) All peanuts otherwise marketed in violation of this subpart. Any penalty collected pursuant to this paragraph may be refunded to the extent that the total of all marketings for domestic edible use from the farm for the marketing year do not exceed the farm's effective farm poundage quota.

§ 729.395 Application of false identification of peanuts.

False identification shall include the following and the peanuts so involved shall be considered to be falsely identified for purposes of 7 CFR 729.324:

(a) Identifying or permitting the identification of peanuts at time of marketing as having been produced on a farm other than the farm of actual production;

(b) Marketing or permitting the marketing of peanuts from a farm without identifying the peanuts with a peanut marketing card issued for the farm;

(c) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, no peanuts were marketed from the farm; or

(d) Marketing peanuts that have been commingled with those of another farm.

§ 729.396 Peanuts on which penalties are not to be assessed.

Notwithstanding other provisions in this subpart:

(a) *Error in weight.* A penalty is not due and shall not be collected if the error in net weight as reported on each ASCS–1007, Inspection Certificate and Sales Memorandum which gives rise to the penalty, does not exceed one-tenth of one percent. However, in the case of fraud or conspiracy, a penalty shall be due for any error in the net weight, regardless of the size of the error.

(b) *Peanuts grown on State prison farms.* No penalty shall be collected on peanuts grown on State prison farms for consumption within such State prison system, and so consumed.

(c) *Peanuts grown for experimental purposes.* No penalty shall be collected on the marketings of any peanuts which are grown only for experimental purposes on land owned or leased by a publicly-owned agricultural experiment station and produced at public expense by employees of the experiment station, peanuts, including those determined by the County Executive Director in accordance with instructions of the Deputy Administrator to be breeder and foundation seed peanuts, produced by farmers for experimental purposes pursuant to an agreement with a publicly-owned experiment station, provided that such peanuts do not enter the domestic market for seed, food or any other use. However, for the

exception to apply, the director of the publicly-owned agricultural experiment station must furnish the State Executive Director a list by counties showing the following information for farms in the State on which peanuts are grown for experimental purposes only:

(1) Name and address of the publicly-owned experiment station;

(2) Name of the owner, and name of the operator if different from the owner, of each farm in the State on which peanuts are grown for experimental purposes only;

(3) The acreage of peanuts grown on each farm for experimental purposes only; and

(4) A signed statement that such acreage of peanuts was grown on each such farm only for experimental purposes and was necessary for carrying out experimentation, and that the peanuts were produced under the direction of representatives of the publicly-owned experiment station.

(d) *Unique strains used to plant green peanut acreage.* Seed peanuts shall not be subject to penalty if the county committee determines, based upon guidelines furnished by the Deputy Administrator, that such peanuts meet all of the following requirements:

(1) They are unique strains;

(2) They are not commercially available, and,

(3) They are used to plant green peanut acreage.

§ 729.397 Persons to pay penalty.

(a) *Marketings to handlers.* The handler is liable for the penalty due on marketing of excess quota peanuts which the handler buys or otherwise acquires from a producer. The handler may deduct the penalty from the price paid to the producer. If a handler fails to collect the penalty due on any marketing of peanuts from a farm, the handler and each of the producers on the farm shall be held jointly and severally liable for the amount of the penalty.

(b) *Other marketings.* The prpducer is liable for the penalty due on any marketings of excess quota peanuts to persons who are not peanut handlers.

(c) *Penalty for error on marketing card.* The producer and the handler are jointly and severally liable for any penalties which may be due if the handler made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error resulted in the effective poundage quota or the pounds contracted in accordance with Part 1446 of this Chapter being exceeded.

(d) *Penalty for false identification, failure to certify or failure to account for disposition.* Any producer who falsely identifies, fails to certify planted acres or fails to account for the disposition of any peanuts on the farm, shall be subject to a penalty at a rate equal to the farm yield, times the planted acres. Any penalty payable shall be paid by the producer.

(e) *Notice to affected parties.* Penalties shown on a farm marketing card shall be deemed to be notice to all affected parties of such penalties in addition to such notice as is by operation of law charged to all parties by the publication of these and all other regulations applicable to the peanut program. All affected parties shall be deemed to be on notice that penalties are due when the marketings of peanuts for domestic edible use exceed the effective poundage quota indicated on the marketing card.

§ 729.398 Payment of penalty.

(a) *Method of payment; Due date.* A draft, money order, or check made payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, other indebtedness, or interest thereon. All methods of payment shall be received subject to collection and payment at face value. The penalty becomes due on the date of marketing, or in the case of false identification or failure to account for the disposition of peanuts, the date the producer is notified of the false identification or the failure to account, as applicable.

(b) *Interest.* The person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of interest charged CCC for its borrowings by the United States Treasury on the date such penalty became due. If the rate charged CCC by the Treasury is increased, the interest due on the penalty may be increased commensurately for the period of such increase. Interest shall accrue from the date the penalty was due if the penalty is not remitted by Monday of the third calendar week following the week in which the penalty is assessed in accordance with 7 CFR 729.404. For cases of false identification or failure to account, if the penalty is not paid within 15 days after receipt of written notice by the person liable for such penalty, interest shall accrue from the date of mailing of the written notice to such person.

§ 729.399 Lien for penalty.

A lien on the crop of peanuts on which the penalty is incurred, and on any subsequent crops of peanuts subject to poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States until the penalty is paid. The lien on a subsequent crop takes precedence over all other claims as of the time the debt is entered on a county claim record in the ASCS office for the county in which the subsequent crop is grown. Each county ASCS office shall maintain a list of peanut marketing penalty liens on subsequent crops which have been entered on the county claim record. The list shall be available for examination upon written request by an interested person.

§ 729.400 Assessment of penalties.

Any person against whom a penalty is assessed in accordance with this subpart, shall be notified of the penalty assessment in writing by the appropriate county committee. Such notice shall state the amount of the penalty and the basis upon which the penalty is being assessed. The notice shall also state that the person against whom the penalty is being assessed has the right to appeal the assessment of the penalty in accordance with 7 CFR 729.402 and 729.405.

§ 729.401 Reduction or waiver of penalty.

(a) *Reduction of penalty.* The county committee may reduce any penalty required to be assessed by this subpart in cases in which the county committee determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned. The rate of penalty reduction shall be in accordance with instructions issued by the Deputy Administrator.

(b) *Waiver of penalty.* The county committee may in accordance with guidelines issued by the Deputy Administrator, waive any penalty assessed by this subpart in cases in which the county committee determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned.

(c) *Time of reduction or waiver.* The county committee may reduce or waive a penalty either before or after it has been formally assessed in accordance with 7 CFR 729.400. In those instances where the county committee makes the reduction or waiver prior to formal assessment, the notice of assessment issued under 7 CFR 729.400 shall state the amount of reduction or waiver and the basis upon which the reduction or waiver was made.

(d) *Appeal procedure.* Any person against whom a penalty is assessed under this subpart may request that the penalty be reduced or waived in accordance with instruction and guidelines issued by the Deputy

Administrator and the procedures set forth under 7 CFR § 729.402.

(e) *Review authority.* The Deputy Administrator may, either upon the Deputy Administrator's own motion or in response to appeals which are being taken under § 729.402 require that any determination of a county committee with regard to the reduction or waiver of penalties be reviewed by the State committee or the Deputy Administrator for the purpose of maintaining consistency between different counties in the application of this authority. The Deputy Administrator or the State committee may require a county committee to reverse or otherwise modify its previous determination if the Deputy Administrator or State committee determines that the county committee's previous determination was not made in accordance with the instructions and guidelines issued by the Deputy Administrator or is otherwise not proper. Any person who is adversely affected by any action of the Deputy Administrator or State committee taken under this paragraph may appeal such action by filing a request for reconsideration with the State committee or Deputy Administrator, as appropriate, in accordance with the procedures set forth in Part 780 of this Title.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.402 Appeals.

Any person who is dissatisfied with the penalties assessed by the county committee may file a written request for reconsideration with the county committee in accordance Part 780 of this Title. Such request must be filed no later than 15 days after such person receives the notice of assessment issued pursuant to 7 CFR 729.400. Adverse determinations rendered by the county committee may be appealed administratively in accordance with the procedures set forth in Part 780 of this Title.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.403 Failure to comply with program.

Any person who relied on the advice of a representative of the Secretary in rendering performance under this subpart, which the person believed in good faith met the requirements of the program as set forth in these regulations may file a request for review of an adverse county committee ruling in accordance with instructions and guidelines issued by the Deputy Administrator. This authority, however, does not extend to cases where such person knew or had sufficient reason to know that the action or advice of the representative of the Secretary upon which the person relied was improper or erroneous, or where the adverse action is based on changes made in the statutory authority of the program or changes in regulations issued for the program.

§ 729.404 Schemes and devices.

Penalties shall be assessed in such manner as will correct for and nullify any action in which a person has knowingly, whether passively or actively:

(a) Engaged in, acquiesced in, or adopted any scheme or device which tends to defeat the purpose of the regulations in this subpart,

(b) Made any fraudulent representation, or

(c) Misrepresented any fact affecting a program determination.

Such penalties as are provided for in this subpart shall be in addition to all other remedies and sanctions provided for, or permitted by, law.

§§ 729.405–729.415 [Reserved]

Producer Identification and Designation of Peanuts Marketed

§ 729.416 Identification of producer marketings.

The producer must identify each lot of peanuts offered for marketing through a handler by furnishing to the handler the farm operator identification card (ASCS–1003) and the peanut marketing card (ASCS–1002) which was issued for the farm on which the peanuts were produced. The producer may leave the peanut marketing card (ASCS–1002) in the custody of the handler during the period between marketing lots of peanuts to the same handler; however, the marketing card shall not be left in the possession of the handler after the producer has completed marketings for the season.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.417 Designation of peanuts.

Any marketings of peanuts which are not inspected by the Federal-State Inspection Service prior to marketing shall be deemed to be a marketing of quota peanuts. If a lot of peanuts is inspected by the Federal-State Inspection Service, the producer shall designate to the handler whether the lot of peanuts is to be marketed as quota, loan additional, or contract additional peanuts as defined in Part 1446 of this Title. The designation must be made within the time allowed by the handler but not later than the close of inspection of the first workday (excluding Saturday, Sunday, or legal holiday) after the peanuts are inspected. In the absence of a designation, any segregation 1 peanuts shall be marketed and deemed to be marketed in the folllowing order of priority:

(a) As quota peanuts to the extent of the unused poundage quota on the peanut marketing card which is used to identify the peanuts for marketing;

(b) As contract additional peanuts to the extent of the unused contract poundage balance on the peanut marketing card which is used to identify the peanuts for marketing if the peanuts are being marketed through the contracting handler; or

(c) As loan additional peanuts.

§§ 729.418–729.419 [Reserved]

Producer Records and Reports and Handling Segregation 3 Peanuts

§ 729.420 Report of marketing green peanuts.

(a) The operator of each farm from which green peanuts are marketed shall report the marketing of green peanuts. The operator shall make the report by filing Form ASCS–1011 at the ASCS office of the county in which the farm is administratively located. The report shall show for the farm:

(1) The number of acres on the farm planted from seed stocks of peanuts;

(2) The acreage on the farm from which peanuts were marketed as green peanuts; and

(3) The name and address of the buyer to, or through whom, each lot of green peanuts was marketed and the quantity in each lot marketed and the date marketed. However, if green peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of the quantity so marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file any report of the marketing of green peanuts as required by this section or the filing of a report which the county commitee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts produced on the farm which will subject the producer to marketing penalties as set forth in § 729.394.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.421 Report of acquisition of seed peanuts.

(a) If peanuts are planted on a farm in the current year and the seed peanuts were acquired by purchase or gift, the

farm operator shall file a report with the county ASCS office of the acquisition of the seed peanuts. The report must be filed by the farm operator at the time a report of planted acreage of peanuts is made in accordance with provisions of Part 718 of this Title. The report shall include:

(1) The name and address of the handler or person from whom peanuts were purchased or obtained as a gift for the purpose of planting the peanut acreage on the farm in the current year;

(2) The pounds of peanuts acquired for seed;

(3) The basis (farmers stock or shelled) of determining the quantity acquired;

(4) The type of peanuts acquired; and

(5) The date of acquisition.

(b) Unique strains of peanuts that are not commercially available and are retained on a farm to plant 1986 through 1990 crops of green peanuts shall also be reported to the county ASCS office.

§ 729.422 Peanuts marketed to persons who are not registered handlers.

(a) If peanuts are marketed to persons other than registered peanut handlers, the operator of the farm on which the peanuts were produced shall file a report of the marketings by executing Form ASCS–1011, Report of Acreage and Marketing of Peanuts to Nonestablished Buyers. The ASCS–1011 must be mailed or delivered to the county executive director of the county in which the farm is administratively located within 15 days after the marketing of peanuts from the farm has been completed. If peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, a daily or weekly summary of the quantity marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file an ASCS–1011 as required or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts on the farm and may result in the assessment of marketing penalties, as provided in 7 CFR 729.394.

(c) All peanuts marketed to persons other than registered handlers shall be considered as marketings of quota peanuts.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§729.423 Report on marketing card.

The farm operator shall return each peanut marketing card to the issuing county ASCS office as soon as marketings from the farm are completed or at such earlier time as the county executive director may request. At the time the last marketing card for a farm is returned, the farm operator shall execute the certification of the marketing card as to the pounds of peanuts retained for seed or other use. Failure to return a marketing card or failure to execute the certification of the quantity of peanuts retained for seed or other uses shall constitute failure to account for the disposition of peanuts marketed from the farm for which marketing penalties may be assessed as provided in 7 CFR 729.395, unless a satisfactory report of disposition is furnished to the county committee.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.424 Report of production and disposition.

(a)(1) In addition to any other reports which may be required under this subpart, the farm operator or any producer on the farm shall furnish, upon written request by certified mail from the State Executive Director, a report of production and disposition of the peanuts grown on the farm to the State committee. The report must be filed on ASCS–1010, Report of Production and Disposition, within 15 days after the request is mailed. The report shall show:

(i) The final acreage of peanuts on the farm;

(ii) The total production of peanuts on the farm;

(iii) The name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds in each lot, and the date marketed;

(iv) The quantity and disposition of peanuts not marketed; and

(v) The type of peanuts.

(2) Notwithstanding paragraph (a)(1) of this section, where peanuts are marketed in small lots to persons who are not established buyers, the report otherwise required in paragraph (a)(1) of this section, may be made as either a daily or weekly summary of the number of pounds marketed and the place of marketing may be reported in lieu of the name and address of each buyer; and

(b) Failure to file the ASCS–1010 as requested or the filing of an ASCS–1010 which is found by the State committee to be incomplete, incorrect, or in violation of the requirements of paragraph (a), shall constitute failure of the producer to account for the production and disposition of peanuts produced on the farm for which marketing penalties may be assessed, as provided in 7 CFR 729.394.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.425 Handling Segregation 3 Peanuts.

(a) *Disposition of Segregation 3 peanuts.* Any producer who has a lot of farmers stock peanuts classified by the inspector as Segregation 3 peanuts shall:

(1) Deliver the peanuts to the association for a price support loan subject to such conditions as apply to eligibility for such loans including those in Part 1446 of the Title;

(2) Deliver such lot as contract additional peanuts subject to provisions of Part 1446 of this Title;

(3) Sell such peanuts as quota peanuts subject to the conditions set forth in this subpart to a handler who has signed the peanut marketing agreement or to any handler in the event that such peanuts are seed peanuts produced under the auspices of a State agency if the handler to whom the peanuts are sold has signed s supervision supplement to a warehousing contract with the area marketing association; or

(4) Retain the lot for seed in accordance with paragraph (c) of this section.

(b) *Failure to properly dispose of Segregation 3 peanuts.*

(1) *Loss of price support.* If the producer does not, on the date of inspection, dispose of Segregation 3 peanuts in the manner specified in this section, such producer shall be ineligible for continued quota price support for the remainder of the marketing year.

(2) *Liquidated damages.* Any peanut producer participating in the price support loan program shall be deemed to have agreed that: (i) CCC will incur serious and substantial damage to its program to support the price of peanuts if Segregation 3 peanuts are disposed of other than in the manner prescribed by this subpart or by the CCC; (ii) the amount of such damages will be difficult, it not impossible, to ascertain; and, (iii) with respect to any lot of peanuts which is pledged as collateral for a quota price support loan but which is ineligible for such loan, or any lot of peanuts which is pledged as collateral for a quota price support loan by a producer after the producer has disposed of any lot of Segregation 3 peanuts in any manner other than in the manner prescribed in this section, such producer shall pay to CCC as liquidated damages and not as a penalty, the difference between the quota loan rate and the additional loan rate (on a per pound basis) per net pound of such peanuts. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer. This remedy shall be in addition to any other remedy or

VOL 51 ISS 174 SE 9 1986 UMI

sanction available against the producer, including penalties.

(c) *Retention of Segregation 3 peanuts for seed.* If the producer elects to retain a lot of Segregation 3 peanuts for seed, the producer shall designate such peanuts as quota peanuts, have the net weight of such peanuts determined and deducted from the farm marketing card, and advise the inspector that the peanuts are being retained for seed. The producer shall be given a copy of the ASCS–1007 as a record showing the quantity and quality factors of the peanuts and must store such peanuts separate from other peanuts on the farm. The producer shall notify CCC when such peanuts are used and otherwise account for the disposition of such peanuts. Should it later be determined that such peanuts are unfit for seed use, the producer may, after receiving prior approval from the county office, sell such peanuts without benefit of price support in accordance with such restrictions as may apply.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.426 Persons engaged in more than one business.

Any person who is required under this subpart to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business, shall keep such records for each such business.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.427 Penalty for failure to keep records and make reports.

Any person, who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, common carrier of peanuts, any broker or dealer in peanuts, any agency marketing peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut picking or peanut threshing machine, or any farmer engaged in the production of peanuts, who fails to make any report or keep any record as required under this subpart or who makes any false report or record shall be deemed to have improperly handled peanuts for the quantity of peanuts to which such failure applies for which a penalty may be assessed under the provisions of this Part or Part 1446 of this Title, as applicable. Such liability is in addition to criminal penalties or other remedies permitted by law.

(Approved by the Office of Management and Budget under Control Nos. 0560–0003 and 0560–0014)

§ 729.428 Examination of records and reports.

The Deputy Administrator, the Director of the Tobacco and Peanuts Division, the State Executive Director, or their designees and all auditors and agents of the Office of Inspector General, United States Department of Agriculture (USDA) or the General Accounting Office are authorized to examine any records of any producer, or handler, or person buying or processing peanuts as deemed needed to enforce the peanut poundage quota program. Upon a request for such examination, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under the control of the person receiving the request which any person hereby authorized to examine records has reason to believe are relevant to any matter under investigation which relates to the provisions of this subpart.

§ 729.429 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for a period of 3 years after the end of the marketing year. Records shall be kept for such longer periods of time as may be required in writing by the State Executive Director, or the Director of the Tobacco and Peanuts Division.

(Approved by the Office of Management and Budget under Control Nos. 0560–0003 and 0560–0014)

Signed at Washington, DC, on September 3, 1986.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–20214 Filed 9–8–86; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues to suspend through October 1986 portions of the Eastern Colorado Federal milk order that relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continued suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: September 9, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension: Issued July 29, 1986; published August 1, 1986 (51 FR 27554).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 1, 1986 (51 FR 27554) concerning

a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of August through October 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

Statement of Consideration

This action continues for the months of August through October 1986 suspension of the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. Earlier actions suspended these provisions for the months of September 1985 through July 1986.

The order provides that a cooperative may divert a quantity of milk not in excess of 20 percent of the cooperative association's member milk received at pool distributing plants. The suspension allows up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

The continued suspension was requested by Mid-America Dairymen, Inc., (Mid-Am) a cooperative association of producers supplying the market. Mid-Am also requested the earlier suspensions. The cooperative association stated that the volume of producer milk pooled on the Eastern Colorado order began to increase following the conclusion of the Milk Diversion Program in 1985, and has continued to increase during 1986. According to the cooperative, Eastern Colorado producer milk during the first 5 months of 1986 increased 14.4 percent over the same period in 1985. At the same time, producer milk used in Class I increased only 1.3 percent. Mid-Am stated that as a result of increased milk production, there are ample supplies of local milk available to meet the fluid requirements of Denver-area distributing plants. The cooperative estimated that approximately 15 loads of producer milk produced in Kansas and Nebraska would have to be shipped to Eastern Colorado pool distributing plants each month in order to qualify Mid-Am producers for continued pool status. The cooperative stated that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

No comments in opposition to the proposed action were received. Comments supporting the proposed action were filed by Mountain Empire Dairymen's Association (MEDA), a cooperative association representing most of the producers pooled under the order. Mid-Am also filed comments that provided additional information in support of the suspension.

Milk production is significantly above year-earlier levels and consequently a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. Favorable weather conditions and ample feed supplies provide strong indications that the current production trends will continue, without offsetting increases in Class I use. In view of these circumstances, it is concluded that the diversion limits and "touch-base" requirements of the Eastern Colorado milk order should be suspended for the months of August through October 1986 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of § 1137.12(a)(1) of the Eastern Colorado order are hereby suspended for the months of August through October 1986:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.12 [Amended]

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant" are suspended.

3. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing" are suspended.

Effective Date: September 9, 1986.

Signed at Washington, DC, on September 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–20066 Filed 9–8–86; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 84–019F]

Deletion of Labeling Requirements for Pork with Barbecue Sauce or Beef with Barbecue Sauce

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On February 24, 1986, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the standard in the Federal meat

VOL 51 ISS 174 SE 9 1986 UMI

inspection regulations for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce." The rule deletes the requirement that the product name be qualified whenever thickeners, binders or extenders are used in the barbecue sauce. This action would result in consistent labeling provisions for all meat and poultry products made with barbecue sauce. This proposed rule was the result of a petition submitted by the Pillsbury Company. Six comments were received on the proposal and all supported it. Therefore, FSIS is adopting the proposed rule as published.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. This rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets because no mandatory labeling changes are required.

Effects on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because no mandatory labeling changes are required.

Background

On February 24, 1986, FSIS published in the **Federal Register** (51 FR 6415) a proposed rule to delete the requirement in the current standard for "Beef with Barbecue Sauce" and "Pork with Barbecue Sauce," that the product name be qualified whenever thickeners, binders or extenders are added to the barbecue sauce. The present standard in the Federal meat inspection regulations for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" (9 CFR 319.312) was adopted in 1952. The standard provides, among other things, that when cereal, vegetable flour, soy flour, or similar substances are used to prepare the barbecue sauce, they must be prominently identified in the product name such as "Pork with Barbecue Sauce—Cereal Added."

Information on file with the Standards and Labeling Division shows that the use of barbecue sauce and labeling of products containing it was addressed by the Department as early as 1930. Approval for a pork sausage product with barbecue sauce was granted in December 1930. The records show that the approval was granted on the basis that the barbecue sauce was used as a type of dressing rather than a cooking process. The approval also noted the ingredients of the barbecue sauce—a traditional recipe containing no thickeners, binders or extenders. At that time, these added thickening ingredients were not expected ingredients in barbecue sauce.

The records indicate that the Agency considered barbecue sauce to be "a hot sauce composed of combinations of spices, flavorings, with or without tomato, and with or without fat." The records also show an approval for "Pork Sausage, Barbecue Sauce Added" with a sauce consisting of red pepper, Worchestershire sauce, sugar, salt, allspice, black pepper, paprika and onion powder. In 1944, a sketch label for "Cooked Beef, Barbecue Sauce Added" was approved. The barbecue sauce consisted of beef fat, paprika, pepper and salt.

The present standard for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" (9 CFR 319.312), adopted in 1952, requires special labeling of thickeners, binders or extenders when added to the barbecue sauce because at that time they were not common or usual ingredients in that product. Present day barbecue sauce recipes in several leading cookbooks call for only traditional ingredients without the use of thickeners, binders or extenders. However, some barbecue sauces are available to consumers in retail stores that do contain vegetable gums and thickening agents.

The Pillsbury Company has petitioned the Agency to amend the standard for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" contained in § 319.312 of the Federal meat inspection regulations by deleting the requirement that the product name be qualified whenever thickeners, binders or extenders are used in the barbecue sauce. The petitioner asserts that the requirement is not consistent with the labeling policy for all other meat and poultry products prepared with barbecue sauce and is also not consistent with the Food and Drug Administration's (FDA) labeling requirements for barbecue sauce.

The standardized products "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" are the only meat or poultry products that, when made with a barbecue sauce containing a thickening agent, must be labeled to identify the presence of the thickening agent in the product name such as "Pork with Barbecue Sauce—Cereal Added." For example, "Barbecue Sauce with Beef" and "Chicken in Barbecue Sauce" may be made with a barbecue sauce that contains a thickening agent without further identification in the product name. These products are considered different from the standardized products and have not been subject to the labeling requirements of § 319.312 of the Federal meat inspection regulations. In addition, the FDA regulations do not provide a standard for barbecue sauce and, therefore, thickeners, binders or extenders may be used in barbecue sauce under the FDA regulations without any further identification in the product name.

A review of approved labels for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" revealed that 313 establishments have approved labels for these products. Of these, 147 establishments produce the products without thickening agents while 166 establishments produce the products with and without thickening agents. There appears to be a market both for the traditional barbecue sauce without thickeners and for the nontraditional barbecue sauce with thickeners.

This final rule removes the labeling distinction that is now required when a nontraditional barbecue sauce, i.e., one containing thickening agents, is used in the standardized products "Pork with Barbecue Sauce" or "Beef with Barbecue Sauce." This action results in consistent labeling of all meat and poultry products made with barbecue sauce and eliminates any confusion resulting from different labeling requirements. Consumers who desire to purchase barbecue sauce products without thickening agents can still do so by examining the list of ingredients on the label. The rule also benefits processors by eliminating a burdensome labeling requirement and permits fair competition among all products made with a barbecue sauce.

Presently, the standard for "Pork with Barbecue Sauce and Beef with Barbecue Sauce" (9 CFR 319.312) reads as follows:

> "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" shall contain not less

than 50 percent meat of the species specified on the label, computed on the weight of the cooked and trimmed meat. Mechanically Separated (Species) may be used in accordance with § 319.6. The weight of the cooked meat used in this calculation shall not exceed 70 percent of the uncooked weight of the meat. If uncooked meat is used in formulating the products, they shall contain at least 72 percent meat computed on the weight of the fresh uncooked meat. When cereal, vegetable flour, soy flour, soy protein concentrate, isolated soy protein, nonfat dry milk, dry or dried whey, reduced lactose whey, reduced mineral whey, whey protein concentrate, calcium reduced dried skim milk, or similar substances are used in preparing products, there shall appear on the label in a prominent manner, the name of the product, the name of each such added ingredient as, for example, "Cereal Added" or "With Cereal and Nonfat Dry Milk."

FSIS is amending Part 319 of the Federal meat inspection regulations (9 CFR 319.312) by deleting the last sentence. The requirement that the product name be on the label, although deleted from this section, is still required under § 317.2(c)(1) of this subchapter.

Comments on the Proposed Rule

FSIS received six comments in response to the proposal: four from industry members, one from a trade association and one from a university. All of the commenters supported the proposed change and cited the need for consistency in labeling requirements for all products made with a barbecue sauce.

Final Rule

After careful consideration of all relevant information available to FSIS, the Administrator has determined that the proposed rule should be published as a permanent regulation as set forth below.

List of Subjects in 9 CFR Part 319

Meat and meat food products, Standards of identity, Food labeling.

PART 319—[AMENDED]

Accordingly, Part 319 of the Federal meat inspection regulations is amended as follows:

1. The authority citation for Part 319 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 et seq.); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 et seq.); 78 Stat. 663 (7 U.S.C. 450 et seq.).

2. Section 319.312 (9 CFR Part 319) is revised to read as follows:

§ 319.312 Pork with barbecue sauce and beef with barbecue sauce.

"Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" shall contain not less than 50 percent meat of the species specified on the label, computed on the weight of the cooked and trimmed meat. Mechanically Separated (Species) may be used in accordance with § 319.6. The weight of the cooked meat used in this calculation shall not exceed 70 percent of the uncooked weight of the meat. If uncooked meat is used in formulating the products, they shall contain at least 72 percent meat computed on the weight of the fresh uncooked meat.

Done at Washington, DC, on August 26, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-20300 Filed 9-8-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 201

[Docket No. R-86-1178, FR-1656]

Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans; Corrections

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: This Notice amends the final rule published in the **Federal Register** on October 25, 1985 (50 FR 43516) to correct errors. The errors are in provisions relating to credit, security, conditions for loan disbursement, flood insurance and coastal barriers properties, FHA insurance charges, curing of defaults, and insurance claims for property improvement and manufactured home loans.

DATE: Effective January 15, 1986. For a statement of compliance see the document published February 11, 1986 (51 FR 5068).

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Acting Director, Title I Insurance Division, Room 9160, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6880 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department published a final rule on October 25, 1985 (50 FR 43516), which restated and reorganized the then-current property improvement and manufactured home loan regulations appearing in 24 CFR Part 201 and implementing Title I, section 2 of the National Housing Act. On January 14, 1986 the Department published in the **Federal Register** a Notice announcing that the effective date for the new regulations was January 15, 1986.

Since the effective date, the Department has determined that the regulations as published in the final rule contain several errors and hereby makes technical corrections to the appropriate provisions. The affected provisions are § 201.22(a)(2), relating to verifications of employment and income; § 201.22(b), relating to income requirements for manufactured home loans; § 201.24(b) and § 201.26(a)(1), relating to security and title evidence requirements, respectively; § 201.26(b) (2)(iv) and (4)(iii), relating to conditions for manufactured home loan disbursements; § 201.28, relating to flood insurance and coastal barriers properties; § 201.31(c), relating to charges for late insurance payments; § 201.50(b), relating to repayment plans; and § 201.54(d), relating to recordation of assignments of security interests to the Secretary.

The corrections to § 201.22(a)(2) clarify the Department's intention that lenders be able to check on the present employment and income of borrowers and any co-makers or co-signers through written verification or by obtaining other documentation. The Department recognizes that written verification from employers may not always be obtainable within the time constraints on making the loan, and lack of such verification should not prevent borrowers from obtaining Title I loans if other documentation is available.

Section § 201.22(b) is corrected to clarify that "it" in the second sentence refers to housing expenses and other recurring expenses, and not to the borrower's income. In addition, the list of housing expense payments in the fourth sentence is corrected to change "mortgage insurance premium" to "loan insurance charge" and to clarify that utilities are included.

The corrections to § 201.24(b) delete the parenthetical phrase "(mortgage or deed of trust, chattel mortgage, or conditional sales contract)" and the term "security agreement", as they are included in the definition of "security instrument" in § 201.2(ee). They also clarify that the phrase "executed by the borrower and any other owner of the property" is applicable only to a security instrument, and that evidence of a lien may be a document not executed by the borrower, such as a

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certificate of title issued by a State and showing that there is a lien on the property. A number of States issue certificates of title for manufactured homes in the same manner as for automobiles, and such certificates of title indicate the lienors, if any.

The corrections to § 201.26 (a) change "the title interest" to "the interest" and eliminate redundant or confusing terminology, so as to clarify that it is the borrower's property interest for which the Department requires evidence. Section 201.20(a)(1) of the regulations makes it clear that a borrower may have other than a title interest in the property to be improved, i.e., a leasehold interest or an interest in a land installment contract.

In § 201.26(b)(2)(iv), a typographical error is rectified by changing "of" to "or", and in § 201.26(b)(4)(iii), a superfluous "that" is deleted.

In § 201.28, paragraph headings were omitted from paragraphs (a) and (c), and the Department hereby corrects those omissions by adding the appropriate headings.

In § 201.31(c), a typographical error is rectified by changing "no later charge" to "no late charge", and in § 201.50(b), "payment" is changed to "repayment".

The corrections to § 201.54 (d) clarify the Department's intention to require the recordation of an assignment of the lender's rights when submitting a claim only when the security interest has been assigned to the United States.

PART 201—[AMENDED]

Accordingly, the Department of Housing and Urban Development corrects Part 201 of Title 24, Code of Federal Regulations as follows:

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 2, National Housing Act, 12 U.S.C. 1703; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

2. Section 201.22 is amended by revising paragraphs (a)[2] and (b] to read:

§ 201.22 Credit requirements for borrowers.

(a) * * *

(2) The lender shall obtain a separate dated credit application on a HUD-approved form from and executed by the borrower and by any co-maker or co-signer under applicable criminal and civil penalties for fraud and misrepresentation for each loan made. The lender shall conduct a credit investigation based on the credit application, and shall obtain written verification of or otherwise document the current employment and current income of the borrower and of any co-maker or co-signer. If the borrower or any co-maker or co-signer has changed employment within the past two years, the lender shall obtain written verification of or otherwise document the person's prior employment and prior income during the two-year period. If the borrower or any co-maker or co-signer was self-employed during any period of the previous two years, the lender shall obtain documentation of the person's income during such period of self-employment.

* * * * *

(b) *Income requirements for manufactured home loans.* For any manufactured home loan, the credit application and review must establish that the borrower's income will be adequate to meet both the periodic payments required by the loan and to meet other recurring charges. For a borrower's income to be considered adequate, housing expenses and other recurring charges generally may not exceed maximum percentages of net effective income which the Secretary will publish by Notice in the Federal Register based upon generally prevailing interest rates and upon HUD's experience of claims/loan ratios, for prospective use by lenders in approving manufactured home loan applications. Net effective income includes continuing income from all sources which may reasonably be expected to continue during the first two years of the loan obligation. The income percentage limitations will apply to the borrower's total prospective housing expense payments related to the loan (principal, interest, loan insurance charge, ground rent or leasehold, utilities, hazard insurance, extended warranty or service contract, and realty taxes), as well as the sum of the prospective housing expense payments and other recurring charges. If either of the published income percentage limitations is exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of other factors with respect to the borrower's income and creditworthiness which support approval of the loan.

* * * * *

3. Section 201.24 is amended by revising paragraph (b) to read:

§ 201.24 Security requirements.

* * * * *

(b) *Manufactured home loans.* Any manufactured home loan shall be secured by a recorded lien on the property. The lien shall be a first lien, superior to any other lien on that property, and shall be evidenced by a properly recorded financing statement, a properly recorded security instrument executed by the borrower and any other owner of the property, or another acceptable instrument, such as a certificate of title issued by the State and containing a recitation of the lender's lien interest in the manufactured home.

* * * * *

4. Section 201.26 is amended by revising paragraph (a)(1) to read:

§ 201.26 Conditions for loan disbursement.

(a) * * *

(1) The lender shall ensure that the borrower is eligible for a property improvement loan in accordance with § 201.20(a), and shall ensure that the interest of the borrower in the property is valid, through such title or other evidence as is acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated.

* * * * *

5. Section 201.26 is also amended by removing the phrase "manufacturer of" and adding in its place "manufacturer or" in paragraph (b)(2)(iv), and by removing "that" where it appears as the first word in paragraph (b)(4)(iii)(D).

§ 201.28 [Amended]

6. Section 201.28 is amended by adding *"Flood insurance."* and *"Coastal barriers properties."* as titles for paragraphs (a) and (c), respectively.

§ 201.31 [Amended]

7. Paragraph (c) of § 201.31 is amended by removing the word "later" and adding in its place the word "late" in the last sentence.

§ 201.50 [Amended]

8. Paragraph (b)(3) of § 201.50 is amended by revising the phrase "modification agreement or payment plan" to read "modification agreement or repayment plan".

9. Section 201.54 is amended by revising the last sentence of paragraph (d) to read as set forth below:

§ 201.54 Insurance claim procedure.

* * * * *

(d) * * * If the security interest has been assigned to the United States, the assignment shall be recorded in that jurisdiction prior to filing the insurance claim.

* * * * *

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Dated: August 28, 1986.
Grady J. Norris,
Assistant General Counsel for Regulations.
[FR Doc. 86-20222 Filed 9-8-86; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8099]

Income Tax, Taxable Years Beginning After December 31, 1953; Allocations of Loss and Deduction Attributable to Nonrecourse Debt

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations under section 704(b) of the Internal Revenue Code of 1954, relating to allocations of loss and deduction attributable to nonrecourse debt of the partnership. In addition, certain clarifying amendments are made to the existing final regulations under section 704(b). This Treasury decision reflects certain changes made to the law by the Tax Reform Act of 1976.

DATE: The amendments are effective for partnership taxable years beginning after December 31, 1975, except as otherwise provided in existing §1.704-1 (b)(1)(ii), as modified by this Treasury decision.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Attn: CC:LR:T 202-566-3297.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1983, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 704(b) of the Internal Revenue Code of 1954. Those amendments were proposed to conform the regulations to section 213(d) of the Tax Reform Act of 1976 (95 Stat. 1548). Numerous written comments were received during the comment period, and a public hearing was held on May 4, 1983. On December 31, 1985, the **Federal Register** (50 FR 53420) published final regulations (T.D. 8065) under section 704(b). That Treasury decision adopted the proposed rules as revised by the Treasury decision, except that §1.704-1 (b)(4)(iv), relating to allocations of loss and deduction attributable to nonrecourse debt, was reserved. The proposed regulations remained outstanding on that issue. Since December 31, 1985, the Treasury Department has continued to consider the public comment concerning this issue. After consideration of all the public comments concerning the issue of the allocation of loss and deduction attributable to nonrecourse debt, the proposed rules on this issue are finalized as revised by this Treasury decision.

In addition, certain clarifying changes are made to the final regulations that were published on December 31, 1985.

Explanation of Provisions

Nonrecourse Debt

The final regulations provide that allocations of loss and deduction attributable to nonrecourse debt shall be deemed to be made in accordance with the partners' interests in the partnership so long as four requirements are met. First, requirements (*1*) and (*2*) of § 1.704-1 (b)(2)(ii)(*b*), relating to the requirements to maintain capital accounts and have liquidation distributions made in accordance with capital account balances, must be satisfied. Second, the partnership agreement must provide that allocations of such loss and deduction are made in a manner that is reasonably consistent with allocations, which have substantial economic effect, of some other significant partnership item attributable to partnership property securing the nonrecourse liabilities (other than minimum gain recognized by the partnership). Third, either requirement (*3*) of § 1.704-1(b)(2)(ii)(*b*), relating to the restoration of partners' deficit capital account balances, must be satisfied, or the partnership agreement must contain a "minimum gain chargeback." Fourth, all other material partnership allocations and capital account adjustments must be recognized under § 1.704-1(b). Allocations not qualifying under this safe harbor must be made in accordance with the partners' overall economic interests in the partnership.

In addition, the final regulations clarify that the amount of a partner's share of minimum gain shall be treated as a limited deficit make-up obligation for purposes of the alternative economic effect test of existing § 1.704-1 (b)(2)(ii)(*d*). In addition, the regulations give guidance on the application of section 704(c) and section 704(c) principles in cases where nonrecourse debt is involved. Finally, the regulations clarify the treatment of deductions attributable to nonrecourse loans made to the partnership by a partner of the partnership but reserve §1.704-1 (b)(4)(iv)(*h*) for rules to be proposed concerning the treatment of nonrecourse deductions attributable to nonrecourse loans made to the partnership by a person related to a partner of the partnership.

Other Clarifying Changes

The final regulations also contain several corrective and clarifying changes to the final regulations under section 704(b) that were published in the **Federal Register** on December 31, 1985.

Public Comments and Changes Made in Response to Public Comments

Nonrecourse Debt

Section 704(b), as amended by the Tax Reform Act of 1976, provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with such partner's interest in the partnership (determined by taking into account all facts and circumstances) if either the partnership agreement does not provide for the distributive share, or the allocation to the partner under the partnership agreement does not have substantial economic effect.

Allocations of loss and deduction attributable to nonrecourse debt cannot have substantial economic effect since no partner of the partnership can bear the economic loss corresponding to the loss and deduction attributable to such nonrecourse debt. Such economic loss can only be borne by the nonrecourse lender. Because allocations of loss and deduction attributable to nonrecourse debt cannot have economic effect, section 704(b) mandates that such items must be allocated in accordance with the partners' interests in the partnership.

The proposed regulations published in March of 1983 provided that loss and deduction attributable to nonrecourse debt would be deemed to be in accordance with the partners' interests in the partnership if the partnership maintained capital accounts in accordance with the regulations, liquidating distributions were made in accordance with positive capital account balances, and either: (1) Partners were obligated to restore the deficit balances in their capital accounts upon liquidation of their interests in the partnership, or (2) the deficit capital account balances attributable to such loss and deduction did not exceed the amount of minimum gain and such minimum gain was allocated to the partners who were allocated such loss and deduction.

VOL 51 ISS 174 SEP 9 1986 UMI

This rule was criticized by certain members of the public on conceptual grounds. These commentators contended that a partner's obligation to bear the burden of taxation on the minimum gain that resulted from loss and deduction attributable to nonrecourse debt was not necessarily a good indication of a partner's interest in the partnership. For example, under the proposed rule, so long as the partnership agreement contained a minimum gain chargeback provision, 100 percent of the loss and deduction attributable to nonrecourse debt could be allocated to a partner even though such partner's interest in every other partnership item was substantially less than 100 percent.

The Treasury Department has fully considered all of the public comment and agrees that a partnership should not be allowed to allocate loss and deduction attributable to nonrecourse debt in the manner described in the example in the preceding paragraph. Accordingly, the proposed rule has been modified to preclude this and similar types of tax-motivated arrangements.

In addition, several other changes were made in response to the public comment. Several commentators asked for examples that explained the interaction between section 704(c) and the nonrecourse debt provision. Other commentators asked for more limited partnership examples and examples where partnership assets secure more than one partnership liability and where nonrecourse liabilities are secured by more than one partnership asset. Additional examples have been added in response to these comments.

Similarly, in response to commentators who asked for clarification of the rule in a case where partnership assets are subject to both recourse and nonrecourse liabilities, new rules and examples have been added to address so-called "stacking" problems.

Certain commentators asked for clarification of the rules where a partner made a purported nonrecourse loan to the partnership. The final regulations provide that allocations of loss and deduction attributable to such loans are not governed by the nonrecourse debt rules. Instead, such losses and deductions must be allocated to the lending partner under § 1.704–1(b)(3). The Treasury Department is studying whether transactions involving loans to the partnership by persons related to partners should be governed by similar rules. If it determines that similar rules should be applicable to such cases, those rules will be proposed as part of another regulation project.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has concluded that the final regulations contained herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is John G. Schmalz of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects in 26 CFR 1.701–1 Through 1.771–1

Income taxes, Partnerships.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.704–1(b) is amended by revising the paragraph heading of (b)(4)(iv) and adding text and by adding examples (20) through (23) immediately after example (19) in paragraph (b)(5) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) *Determination of partner's distributive share.* * * *

(4) *Special rules.* * * *

(iv) *Nonrecourse deductions—(a) Allocation of nonrecourse deductions.* An allocation of loss, deduction, or section 705(a)(2)(B) expenditure (or item thereof) attributable to nonrecourse liabilities of the partnership ("nonrecourse deductions") cannot have economic effect because, in the event there is an economic burden that corresponds to such an allocation, the creditor alone bears that burden. Thus, nonrecourse deductions must be allocated in accordance with the partners' interests in the partnership. Paragraph (b)(4)(iv)(*d*) of this section, however, provides a test under which certain allocations of nonrecourse deductions will be deemed to be in accordance with the partners' interests in the partnership. If that test is not satisfied, the partners' distributive shares of nonrecourse deductions will be determined, under paragraph (b)(3) of this section, according to the partners' overall economic interests in the partnership.

(b) Determination of nonrecourse deductions. The amount of nonrecourse deductions for a partnership taxable year equals the net increase, if any, in the amount of partnership minimum gain during that taxable year. See Examples (20)(i), (21), and (22) of paragraph (b)(5) of this section. In determining such net increase for any partnership taxable year in which the capital accounts of the partners are increased pursuant to paragraph (b)(2)(iv)(*f*) of this section to reflect a revaluation of partnership property subject to one or more nonrecourse liabilities of the partnership, any decrease in partnership minimum gain attributable to each such revaluation shall be added back to the net decrease or increase otherwise determined. See example (22)(iii) of paragraph (b)(5) of this section. The nonrecourse deductions for a partnership taxable year shall consist first of depreciation or cost recovery deductions with respect to items of partnership property subject to one or more nonrecourse liabilities of the partnership to the extent of the increase in minimum gain attributable to the nonrecourse liabilities to which each such item of property is subject, with the remainder of such nonrecourse deductions, if any, made up of a pro rata portion of the partnership's other items of deduction, loss, and section 705(a)(2)(B) expenditure for that year. If, however, such depreciation or cost recovery deductions exceed the net increase in partnership minimum gain, a proportional share of each such deduction shall constitute a nonrecourse deduction. See example (23) of paragraph (b)(5) of this section. In addition, if the net increase in partnership minimum gain during a partnership taxable year exceeds the total amount of items of partnership loss, deduction, and section 705(a)(2)(B) expenditure for such year, then an amount of partnership loss, deduction, and section 705(a)(2)(B) expenditure for the partnership's next succeeding taxable year (or years) equal to such excess shall constitute nonrecourse deductions, as if there had been a net

increase in partnership minimum gain during such succeeding year (or years) in the amount of such excess.

(c) Partnership minimum gain. The amount of partnership minimum gain is determined by computing, with respect to each nonrecourse liability of the partnership, the amount of gain (of whatever character), if any, that would be realized by the partnership if it disposed of (in a taxable transaction) the partnership property subject to such liability in full satisfaction thereof, and by then aggregating the amounts so computed. See examples (20) (i) and (iv), (21), and (22) of paragraph (b)(5) of this section. For the purpose of determining the amount of such gain, (*1*) the adjusted basis of partnership property subject to two or more liabilities of equal priority shall be allocated among such liabilities in proportion to the respective outstanding balances of such liabilities, and (*2*) the adjusted basis of partnership property subject to two or more liabilities of unequal priority shall be allocated to the liabilities of an inferior priority (in accordance with (*1*) above) only to the extent of the excess, if any, of the adjusted tax basis of such property over the aggregate outstanding balance of the liabilities of superior priority. Only the portion of the property's adjusted basis allocated to nonrecourse liabilities of the partnership shall be used in computing minimum gain. See example (20) (v) and (vi) of paragraph (b)(5) of this section. If partnership property subject to one or more nonrecourse liabilities of the partnership is, under paragraph (b)(2)(iv)(*d*) or (b)(2)(iv)(*f*) of this section, properly reflected on the books of the partnership at a book value that differs from the adjusted tax basis of such property, the determinations under this paragraph (b)(4)(iv) shall be made with reference to such book value. See example (22) of paragraph (b)(5) of this section.

(d) Requirements to be satisfied. Allocations of nonrecourse deductions shall be deemed to be made in accordance with the partners' interests in the partnership if, and only if—

(*1*) Throughout the full term of the partnership, requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied,

(*2*) Beginning in the first taxable year in which there are nonrecourse deductions and thereafter throughout the full term of the partnership, the partnership agreement provides for allocations of nonrecourse deductions among the partners in a manner that is reasonably consistent with allocations, which have substantial economic effect, of some other significant partnership item attributable to the property securing nonrecourse liabilities of the partnership (other than minimum gain recognized by the partnership),

(*3*) Beginning in the first taxable year of the partnership in which the partnership has nonrecourse deductions and thereafter throughout the full term of the partnership, (*i*) requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section is satisfied, or (*ii*) the partnership agreement contains a "minimum gain chargeback" (as defined in paragraph (b)(4)(iv)(*e*) of this section), and

(*4*) All other material allocations and capital account adjustments under the partnership agreement are recognized under this paragraph (b) (without regard to whether allocations of adjusted tax basis and amount realized under section 613A(c)(*7*)(D) are recognized under paragraph (b)(4)(v) of this section).

(e) Minimum gain chargeback. A partnership agreement contains a "minimum gain chargeback" if, and only if, it provides that, if there is a net decrease in partnership minimum gain during a partnership taxable year, all partners with a deficit capital account balance at the end of such year (excluding from each partner's deficit capital account balance any amount that such partner is obligated to restore under paragraph (b)(2)(ii)(*c*) of this section, as well as any addition thereto pursuant to the next to last sentence of paragraph (b)(4)(iv)(*f*) of this section computed with respect to the amount of partnership minimum gain after such net decrease) will be allocated, before any other allocation is made under section 704(b) of partnership items for such taxable year, items of income and gain for such year (and, if necessary, subsequent years) in the amount and in the proportions needed to eliminate such deficits as quickly as possible. For purposes of the preceding sentence, partners' capital accounts shall be reduced for the items described in paragraphs (b)(2)(ii)(*d*) (*4*), (*5*), and (*6*) of this section. Allocations of items of income and gain made pursuant to a minimum gain chargeback shall be deemed to be made in accordance with the partners' interests in the partnership if requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied. The minimum gain chargeback allocated in any taxable year shall consist first of gains recognized from the disposition of items of partnership property subject to one or more nonrecourse liabilities of the partnership to the extent of the decrease in minimum gain attributable to the disposition of such items of property, with the remainder of such minimum gain chargeback, if any, made up of a pro rata portion of the partnership's other items of income and gain for that year. If, however, such gains exceed the amount of the minimum gain chargeback, a proportional share of each such gain shall constitute a part of the minimum gain chargeback. For purposes of paragraph (b)(2)(ii)(*d*)(*6*) of this section, offsetting increases to a partner's capital account taken into account under that paragraph shall not include income and gain that is expected to be allocated to such partner pursuant to a minimum gain chargeback.

(f) Partner's share of partnership minimum gain. A partner's share of partnership minimum gain at the end of any partnership taxable year equals the aggregate nonrecourse deductions allocated to such partner (and such partner's predecessors in interest) up to that time, less such partner's (and such predecessors') aggregate share of the net decreases in partnership minimum gain up to that time. A partner's share of the net decrease in partnership minimum gain during a partnership taxable year equals an amount that bears the same relation to the net decrease in partnership minimum gain during such year as such partner's share of partnership minimum gain at the end of the prior taxable year of the partnership (or, if later, at the time immediately following the last time that the capital accounts of the partners are increased pursuant to paragraph (b)(2)(iv)(*f*) of this section to reflect a revaluation of partnership property subject to one or more nonrecourse liabilities of the partnership) bears to the amount of partnership minimum gain at the end of such prior taxable year (or such later date). See examples (20) (i) and (iv) and (21) of paragraph (b)(5) of this section. In addition, if there is a decrease in partnership minimum gain in a taxable year of the partnership (whether or not there is a net decrease in partnership minimum gain during such year) attributable to the revaluation of partnership property subject to one or more nonrecourse liabilities of the partnership, each partner's share of partnership minimum gain as of the time of such revaluation shall be reduced by the amount of the increase in such partner's capital account attributable to such revaluation to the extent of the reduction in minimum gain caused by such revaluation. See example (22)(ii) of paragraph (b)(5) of this section. For purposes of paragraph (b)(2)(ii)(*d*) of this section, the amount of a partner's share of minimum gain shall be added to the limited dollar amount, if any, of the deficit balance in such partner's capital account that such partner is obligated to

restore. See examples (20)(i) and (22)(i) of paragraph (b)(5) of this section.

(g) Nonrecourse liabilities of the partnership where a partner has economic risk of loss. The rationale for the special rule contained in this paragraph (b)(4)(iv) is that, in the event there is an economic burden that corresponds to the nonrecourse deductions, none of the partners will bear that burden. Accordingly, for purposes of this paragraph, a nonrecourse liability of the partnership is a liability of the partnership (or portion thereof) with respect to which none of the partners has any economic risk of loss (other than through their interests as partners in the partnership assets subject to the liability). Therefore, to the extent a partner may bear the burden of an economic loss corresponding to a loss, deduction, or section 705(a)(2)(B) expenditure attributable to a partnership liability that would be considered nonrecourse for purposes of § 1.1001–2 (*e.g.*, a purported nonrecourse loan made by such partner to the partnership or guaranteed by such partner), allocations of such loss, deduction, or section 705(a)(2)(B) expenditure are not governed by this paragraph (b)(4)(iv). Instead, allocations of such loss or deduction shall be made in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section. This will require allocations of such loss or deduction to be made to the partner or partners who bear the burden of an economic loss corresponding to such loss or deduction. See examples (20) (vii) and (viii) of paragraph (b)(5) of this section.

(h) Nonrecourse liabilities of the partnership where a person related to a partner has economic risk of loss. [Reserved]

* * * * *

(5) *Examples.* * * *

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Example (20). (i) RM and HB form a limited partnership to acquire and operate a commercial office building. RM, the limited partner, contributes $180,000, and HB, the general partner, contributes $20,000 to the partnership, which obtains an $800,000 nonrecourse loan and purchases the building (on leased land) for $1,000,000. The nonrecourse loan is secured only by the building, and no principal payments are due for 5 years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section), HB will be required to restore any deficit balance in his capital account following the liquidation of his interest (as set forth in paragraph (b)(2)(ii)(*b*)(*3*) of this section), and RM will not be required to restore any deficit balance in his capital account following the liquidation of his interest. The partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section), and, as of the end of each partnership taxable year discussed herein, the items described in paragraphs (b)(2)(ii)(*d*)(*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in RM's capital account. In addition, the agreement contains a minimum gain chargeback (in accordance with paragraph (b)(4)(iv)(*e*) of this section). The partnership agreement provides that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, (a) all partnership items will be allocated 90 percent to RM and 10 percent to HB until the first time when the partnership has recognized items of income and gain that exceed the items of loss and deduction it has recognized over its life, and (b) all further partnership items will be allocated equally between RM and HB. Finally, the partnership agreement provides that all distributions, other than distributions in liquidation of the partnership or of a partner's interest in the partnership, will be made 90 percent to RM and 10 percent to HB until a total of $200,000 has been distributed, and thereafter all such distributions will be made equally to RM and HB. In each of the partnership's first 2 taxable years, it generates rental income of $95,000, operating expenses (including land lease payments) of $10,000, interest expense of $80,000, and a cost recovery deduction of $90,000, resulting in a net taxable loss of $85,000 in each of those years. The allocations of these losses, 90 percent to RM and 10 percent to HB, have substantial economic effect.

	RM	HB
Capital account upon formation	$180,000	$20,000
Less: net loss in years 1 and 2	(153,000)	(17,000)
Capital account at end of year 2	$27,000	$3,000

In the partnership's third taxable year, it again generates rental income of $95,000, operating expenses of $10,000, interest expense of $80,000, and a cost recovery deduction of $90,000, resulting in a net taxable loss of $85,000. If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the end of that year, it would realize $70,000 of gain ($800,000 amount realized less $730,000 adjusted tax basis). Since the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during that year) is $70,000, the amount of partnership nonrecourse deductions for that year is $70,000, consisting of cost recovery deductions allowable with respect to the building of $70,000. Pursuant to the partnership agreement all partnership items comprising the net taxable loss of $85,000, including the $70,000 nonrecourse deduction, are allocated 90 percent to RM and 10 percent to HB. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect.

	RM	HB
Capital account at end of year 2	$27,000	$3,000
Less: net loss in year 3 (without nonrecourse deduction)	(13,500)	(1,500)
Less: nonrecourse deduction in year 3	(63,000)	(7,000)
Capital account at end of year 3	($49,500)	($5,500)

This allocation of the $70,000 nonrecourse deduction, 90 percent, to RM and 10 percent to HB, satisfies requirement (2) of paragraph (b)(4)(iv)(*d*) of this section because the allocation is consistent with allocations, which have substantial economic effect, of other significant partnership items attributable to the building. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be made in accordance with the partners' interests in the partnership. At the end of the partnership's third taxable year, RM's and HB's shares of partnership minimum gain are $63,000 and $7,000, respectively. Therefore, pursuant to the next to last sentence in paragraph (b)(4)(iv)(*f*) of this section, RM is treated as obligated to restore a deficit balance in his capital account of $63,000, so that in the succeeding year RM could be allocated up to an additional $13,500 of partnership deductions, losses, and section 705(a)(2)(B) expenditures that are not nonrecourse deductions, and that allocation would be considered to have economic effect under the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section even though such an allocation would increase a deficit capital account balance. If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the beginning of the partnership's fourth taxable year (and had no other economic activity in that year), the partnership minimum gain would be decreased from $70,000 to zero. RM's and HB's shares of that net decrease would be $63,000 and $7,000, respectively. Upon such a disposition the minimum gain chargeback would require that RM be allocated an amount of that gain equal to $49,500 (the deficit balance in his capital account before any allocation is made to him under section 704(b) with respect to partnership items for the partnership's fourth taxable year).

(ii) Assume the same facts as originally stated in (i) except that the partnership agreement provides that all nonrecourse deductions of the partnership will be allocated equally between RM and HB. Furthermore, at the time the partnership agreement is entered into, there is a reasonable likelihood that over the partnership's life it will recognize amounts of income and gain significantly in excess of amounts of loss and deduction (other than nonrecourse deductions). The allocation of such excess equally between the partners

pursuant to the partnership agreement will have substantial economic effect. The allocation of all items, other than the nonrecourse deductions, 90 percent to RM and 10 percent to HB, has substantial economic effect.

	RM	HB
Capital account upon formation	$180,000	$20,000
Less: net loss in years 1 and 2	(153,000)	(17,000)
Capital account at end of year 2	27,000	3,000
Less: net loss in year 3 (without nonrecourse deduction)	(13,500)	(1,500)
Less: nonrecourse deduction in year 3	(35,000)	(35,000)
Capital account at end of year 3	($21,500)	($33,500)

The allocation of the $70,000 nonrecourse deduction equally between RM and HB satisfies requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section because the allocation is consistent with allocations, which will have substantial economic effect, of other significant partnership items attributable to the building. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be made in accordance with the partners' interests in the partnership. The allocation of the nonrecourse deductions, 75 percent to RM and 25 percent to HB (or in any other ratio between 90 percent to RM/10 percent to HB and 50 percent to RM/50 percent to HB), also would satisfy requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section.

(iii) Assume the same facts as originally stated in (i) except that the partnership agreement provides that RM will be allocated 99 percent, and HB 1 percent, of all nonrecourse deductions of the partnership. This allocation of the $70,000 nonrecourse deduction does not satisfy requirement (2) of paragraph (b)(4)(iv)(*d*) because it is not reasonably consistent with allocations, which have substantial economic effect, of any other significant partnership item attributable to the building. Therefore, the allocation of nonrecourse deductions will be disregarded, and the nonrecourse deductions of the partnership will be reallocated according to the partners' overall economic interests in the partnership, determined with reference to the factors set forth in paragraph (b)(3)(ii) of this section.

(iv) Assume the same facts as originally stated in (i) except that, at the beginning of the partnership's fourth taxable year, RM contributes $144,000 and HB contributes $16,000 of additional capital to the partnership, which the partnership uses to reduce the amount of its nonrecourse liability from $800,000 to $640,000. In addition, in the partnership's fourth taxable year, it again generates rental income of $95,000, operating expenses of $10,000, and a cost recovery deduction of $90,000, resulting in a net taxable loss of $85,000. If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the end of that year, it would realize no gain ($640,000 amount realized less $640,000 adjusted tax basis). Therefore, the amount of partnership minimum gain at the end of the year is zero, which represents a net decrease in partnership minimum gain of $70,000 during the year. RM's and HB's shares of this net decrease are $63,000 and $7,000, respectively, so that at the end of the partnership's fourth taxable year, RM's and HB's shares of partnership minimum gain are zero. Therefore, pursuant to the next to last sentence in paragraph (b)(4)(iv)(*f*) of this section, RM is no longer treated as being obligated to restore any deficit balance in his capital account. Assuming the sum of the reductions to RM's capital account described in paragraph (b)(2)(ii)(*d*) (*4*), (*5*), and (*6*) of this section do not exceed $94,500, the minimum gain chargeback does not require that either RM or HB be allocated items of income and gain in the partnership's fourth taxable year even though there is a net decrease in partnership minimum gain during that year. This is true because at the end of the year, before any allocation is made under section 704(b) to RM with respect to partnership items for the fourth taxable year, RM's capital account balance is $94,500 (his capital account balance at the end of the partnership's third taxable year increased by his $144,000 capital contribution), and HB has a full deficit makeup obligation.

	RM	HB
Capital account at end of year 3	($49,500)	($5,500)
Plus: contribution	144,000	16,000
Less: net loss in year 4	(76,500)	(8,500)
Capital account at end of year 4	$18,000	$2,000

(v) Assume the same facts as originally stated in (i) except that the partnership incurred only a $700,000 nonrecourse loan and, in addition, incurred a $100,000 recourse loan, subordinate in priority to the nonrecourse loan, to which the partnership's building is also subject. Under paragraph (b)(4)(iv)(c) of this section, $700,000 of the adjusted basis of the building at the end of the partnership's third taxable year is allocated to the nonrecourse liability (with the remaining $30,000 allocated to the recourse liability) so that if the partnership disposed of the building in full satisfaction of the nonrecourse liability at the end of that year, it would realize no gain ($700,000 amount realized less $700,000 adjusted tax basis). Therefore, there is no minimum gain at the end of the partnership's third taxable year (and no increase in partnership minimum gain in such year). If, however, the $700,000 nonrecourse loan were subordinate in priority to the $100,000 recourse loan, under paragraph (b)(4)(iv)(c) of this section, only $630,000 of the adjusted basis of the building would be allocated to the $700,000 nonrecourse loan (the excess of the $730,000 adjusted tax basis of the building at the end of the partnership's third taxable year over the balance of the superior $100,000 recourse liability). In that case the balance of the $700,000 nonrecourse liability would exceed the adjusted tax basis of the building so allocated by $70,000 so that there would be $70,000 of minimum gain (and a $70,000 increase in partnership minimum gain) in the partnership's third taxable year.

(vi) Assume the same facts as originally stated in (i) except that RM and HB personally guarantee the "first" $100,000 of the $800,000 nonrecourse loan (*i.e.*, only if the building is worth less than $100,000 will they be called upon to make up any deficiency). Under paragraph (b)(4)(iv)(*c*) of this section, only $630,000 of the adjusted tax basis of the building is allocated to the $700,000 nonrecourse portion of the loan because the collateral will be applied first to satisfy the $100,000 guaranteed portion, in effect making it superior in priority to the remainder of the loan. On the other hand, if RM and HB were to guarantee the "last" $100,000 (*i.e.*, if the building is worth less than $800,000, they will be called upon to make up the deficiency up to $100,000), $700,000 of the adjusted tax basis of the building would be allocated to the $700,000 nonrecourse portion of the loan because the guaranteed portion in effect would be inferior in priority to it.

(vii) Assume the same facts as originally stated in (i) except that the $800,000 loan is made by HB, the general partner. Under paragraph (b)(4)(iv)(*g*) of this section, the $800,000 obligation does not constitute a nonrecourse liability of the partnership for purposes of this paragraph (b)(4)(iv). To the extent that such obligation constitutes a nonrecourse liability under § 1.1001–2, $70,000 of the $90,000 cost recovery deduction in the partnership's third taxable year must be allocated in accordance with the partners' interests in the partnership, under paragraph (b)(3) of this section. HB bears the burden of any economic loss corresponding to that $70,000 deduction. Therefore, HB must be allocated the entire amount of such deduction.

(viii) Assume the same facts as in (vii) except that the $800,000 loan from HB to the partnership is a purchase money loan that "wraps around" a $700,000 underlying nonrecourse note (also secured by the building) issued by HB to an unrelated person in connection with HB's acquisition of the building. Under these circumstances if the partnership were to convey the building to HB in satisfaction of the partnership's $800,000 liability, HB would bear the economic risk of loss with respect to only $100,000 of the liability. Therefore, for purposes of this paragraph (b)(4)(iv), the $800,000 liability will be treated as a $700,000 nonrecourse liability of the partnership and a $100,000 liability (inferior in priority to the $700,000 liability) of the partnership to HB. Under paragraph (b)(4)(iv)(*g*) of this section, the $100,000 liability does not constitute a nonrecourse liability of the partnership for purposes of this paragraph (b)(4)(iv). To the extent that such obligation constitutes a nonrecourse liability under § 1.1001–2, $70,000 of the $90,000 cost recovery deduction realized in the partnership's third taxable year must be allocated to HB.

Example (21). (i) RD and PK form a general partnership to acquire and operate residential real properties. Each partner contributes $150,000 to the partnership. The partnership obtains a $1,500,000 nonrecourse loan and

purchases 3 apartment buildings (on leased land) for $720,000 ("Property A"), $540,000 ("Property B"), and $540,000 ("Property C"), respectively. The nonrecourse loan is secured only by the 3 buildings, and no principal payments are due for 5 years. In each of the partnership's first 3 taxable years, it generates rental income of $225,000, operating expenses (including land lease payments) of $50,000, interest expense of $175,000, and cost recovery deductions on the 3 properties of $150,000 ($60,000 on Property A, $45,000 on Property B, and $45,000 on Property C), resulting in a net taxable loss of $150,000 in each of those years. If the partnership were to dispose of the 3 apartment buildings in full satisfaction of its nonrecourse liability at the end of its third taxable year, it would realize $150,000 of gain ($1,500,000 amount realized less $1,350,000 adjusted tax basis). Since the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during that year) is $150,000, the amount of partnership nonrecourse deductions for that year is $150,000, consisting of cost recovery deductions allowable with respect to the 3 apartment buildings of $150,000. The result would be the same if the partnership obtained 3 separate nonrecourse loans that were "cross-collateralized" (*i.e.*, if each separate loan were secured by all 3 of the apartment buildings).

(ii) Assume the same facts as originally stated in (i) and that at the beginning of the partnership's fourth taxable year, the partnership (with the permission of the nonrecourse lender) disposes of Property A for $835,000 and uses a portion of the proceeds to repay $600,000 of the nonrecourse liability, reducing the balance to $900,000. As a result of the disposition, the partnerhips recognizes gain of $295,000 ($835,000 amount realized less $540,000 adjusted tax basis). Also during the partnership's fourth taxable year it generates rental income of $135,000 and operating expenses of $30,000, interest expense of $105,000, and cost recovery deductions of $90,000 ($45,000 on each remaining building). If the partnership were to dispose of the remaining 2 buildings in full satisfaction of its nonrecourse liability at the end of the partnership's fourth taxable year, it would realize gain of $180,000 ($900,000 amount realized less $720,000 aggregate adjusted tax basis), which represents the amount of partnership minimum gain at the end of such year. Since the amount of partnership minimum gain increased from $150,000 to $180,000 during the partnership's fourth taxable year, the amount of partnership nonrecourse deductions for such year is $30,000, consisting of cost recovery deductions allowable with respect to the 2 remaining apartment buildings.

Exomple (22). (i) OC and DR form a limited partnership to acquire and lease machinery that is 5-year recovery property. OC, the limited partner, and DR, the general partner, contribute $100,000 each to the partnership, which obtains an $800,000 nonrecourse loan and purchases the equipment for $1,000,000. The partnership elects under section 48(q)(4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such machinery. The nonrecourse loan is secured only by the machinery. The principal amount of the loan is to be repaid $50,000 per year during each of the partnership's first 5 taxable years, with the remaining $550,000 of unpaid principal due on the first day of the partnership's sixth taxable year. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section), DR will be required to restore any deficit balance in his capital account following the liquidation of his interest (as set forth in paragraph (b)(2)(ii)(*b*)(*3*) of this section), and OC will not be required to restore any deficit balance in his capital account following the liquidation of his interest. The partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section), and, as of the end of each partnership taxable year discussed herein, the items described in paragraphs (b)(2)(ii)(*d*)(*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in RM's capital account. In addition, the agreement contains a minimum gain chargeback (in accordance with paragraph (b)(4)(iv)(*e*) of this section). The partnership agreement provides that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, all partnership items will be allocated equally between OC and DR. Finally, the partnership agreement provides that all distributions, other than distributions in liquidation of the partnership or of a partner's interest in the partnership, will be made equally between OC and DR. In the partnership's first taxable year, it generates rental income of $130,000, interest expense of $80,000, and a cost recovery deduction of $150,000, resulting in a net taxable loss of $100,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $750,000. Allocations of these losses equally between OC and DR have substantial economic effect.

	OC	DR
Capital account upon formation	$100,000	$100,000
Less: net loss in year 1	(50,000)	(50,000)
Capital account at end of year 1	$50,000	$50,000

In the partnership's second taxable year it generates rental income of $130,000, interest expense of $75,000, and a cost recovery deduction of $220,000, resulting in a net taxable loss of $165,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $700,000, and distributes $2,500 of cash to each partner. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of that year, it would realize $70,000 of gain ($700,000 amount realized less $630,000 adjusted tax basis). Therefore, the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during that year) is $70,000, and the amount of partnership nonrecourse deductions for that year is $70,000, consisting of cost recovery deductions allowable with respect to the machinery of $70,000. Pursuant to the partnership agreement all partnership items comprising the net taxable loss of $165,000, including the $70,000 nonrecourse deduction, are allocated equally between OC and DR. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect.

	OC	DR
Capital account at end of year 1	$50,000	$50,000
Less: net loss in year 2 (without nonrecourse deduction)	(47,500)	(47,500)
Less: nonrecourse deduction in year 2	(35,000)	(35,000)
Less: distribution	(2,500)	(2,500)
Capital account at end of year 2	($35,000)	($35,000)

This allocation of the $70,000 nonrecourse deduction equally between OC and DR satisfies requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section because the allocation is consistent with allocations, which have substantial economic effect, of other significant partnership items attributable to the machinery. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be made in accordance with the partners' interests in the partnership. At the end of the partnership's second taxable year, OC's and DR's shares of partnership minimum gain are $35,000 each. Therefore, pursuant to the next to last sentence in paragraph (b)(4)(iv)(*f*) of this section, OC is treated as obligated to restore a deficit balance in his capital account of $35,000. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the beginning of the partnership's third taxable year (and had no other economic activity in that year), the partnership minimum gain would be decreased from $70,000 to zero. OC's and DR's shares of that net decrease would be $35,000 each. Upon such a disposition the minimum gain chargeback would require that OC be allocated an amount of that gain equal to $35,000 (the deficit balance in his capital account before any allocation is made to him under section 704(b) with respect to partnership items for the partnership's third taxable year). The minimum gain chargeback would not require that DR be allocated any amount of such gain, since he has a full deficit makeup obligation.

(ii) Assume the same facts as originally stated in (i) and that DT is admitted to the partnership at the beginning of the partnership's third taxable year. At the time of DT's admission, the fair market value of the machinery is $900,000. DT contributes $100,000 to the partnership (which amount the partnership invests in undeveloped land) in exchange for an interest in the partnership. Pursuant to paragraph (b)(2)(iv)(*f*) of this

section, the capital accounts of OC and DR are adjusted upward to $100,000 each. This reflects the manner in which the partnership gain of $270,000 ($900,000 fair market value minus $630,000 adjusted basis) would be shared if the machinery were sold for its fair market value immediately prior to DT's admission to the partnership.

	OC	DR
Capital account before DT's admission	($35,000)	($35,000)
Deemed sale adjustment	135,000	135,000
Capital account adjusted for DT's admission	$100,000	$100,000

The partnership agreement is modified to provide that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, partnership income, gain, loss, and deduction, as computed for book purposes, will be allocated equally among the partners, and such allocations will be reflected in the partners' capital accounts. The partnership agreement also is modified to provide that depreciation and gain or loss, as computed for tax purposes, with respect to the machinery will be shared among the partners in a manner that takes account of the variation between such property's $630,000 adjusted tax basis and its $900,000 book value, in accordance with paragraph (b)(2)(iv)(*f*) of this section and the special rule contained in paragraph (b)(4)(i) of this section. Finally, the partnership agreement is modified to provide that DT will not be required to restore any deficit balance in his capital account following the liquidation of his interest. Since the requirements of paragraph (b)(2)(iv)(*g*) of this section are satisfied, the capital accounts of the partners (as adjusted) continue to be maintained in accordance with paragraph (b)(2)(iv) of this section. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability immediately following the revaluation of the machinery, it would realize no book gain ($700,000 amount realized less $900,000 book value). Thus, as a result of the revaluation of the machinery upward by $270,000, the partnership minimum gain is reduced from $70,000 immediately prior to such revaluation to zero. OC's and DR's shares of that decrease are $35,000 each.

(iii) Assume the same facts as in (ii) and that also during the partnership's third taxable year the partnership generates rental income of $130,000, interest expense of $70,000, a cost recovery deduction of $210,000, and a book depreciation deduction (attributable to the machinery) of $300,000. As a result the partnership has a net taxable loss of $150,000 and a net book loss of $240,000. In addition, the partnership repays $50,000 of the nonrecourse liability (after the date of DT's admission), reducing that liability to $650,000, and distributes $3,333 of cash to each partner. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of the year, $50,000 of book gain would result ($650,000 amount realized less $600,000 book value). Therefore, the amount of partnership minimum gain at the end of the year is $50,000, which represents a net decrease in partnership minimum gain of $20,000 during the year. (This is so even though there would be an increase in partnership minimum gain in the partnership's third taxable year if minimum gain were computed with reference to the adjusted tax basis of the machinery.) Nevertheless, pursuant to the second sentence of paragraph (b)(4)(iv)(*b*) of this section the amount of nonrecourse deductions of the partnership for its third taxable year is $50,000 (the net increase in partnership minimum gain during the year determined by adding back the $70,000 decrease in partnership minimum gain attributable to the revaluation of the machinery to the $20,000 net decrease in partnership minimum gain during the year). The $50,000 of partnership nonrecourse deductions for the year consist of book depreciation deductions allowable with respect to the machinery of $50,000. Pursuant to the partnership agreement all partnership items comprising the net book loss of $240,000, including the $50,000 nonrecourse deduction, are allocated equally among the partners. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $210,000 cost recovery deduction for the partnership's third taxable year is, in accordance with section 704(c) principles, shared $55,000 to OC, $55,000 to DR, and $100,000 to DT.

	OC		DR		DT	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end of year 2	($35,000)	$100,000	($35,000)	$100,000	$100,000	$100,000
Less: nonrecourse deduction	(9,166)	(16,666)	(9,166)	(16,666)	(16,666)	(16,666)
Plus: items other than nonrecourse deduction in year 3	(25,834)	(63,334)	(25,834)	(63,334)	(63,334)	(63,334)
Less: Distribution	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Capital account at end of year 3	(75,000)	(15,000)	(75,000)	(15,000)	(15,000)	(15,000)

The allocation of the $50,000 nonrecourse deduction equally among OC, DR, and DT satisfies requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section because the allocation is consistent with allocations, which have substantial economic effect, of other significant partnership items attributable to the machinery. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, such allocation is deemed to be made in accordance with the partners' interest in the partnership. At the end of the partnership's third taxable year, OC's, DR's, and DT's shares of partnership minimum gain are $16,666 each.

(iv) Assume the same facts as in (iii) and that during the partnership's fourth taxable year the partnership generates rental income of $130,000, interest expense of $65,000, a cost recovery deduction of $210,000, and a book depreciation deduction (attributable to the machinery) of $300,000. As a result the partnership has a net taxable loss of $145,000 and a net book loss of $235,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $600,000, and distributes $5,000 of cash to each partner. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of the year, $300,000 of book gain would result ($600,000 amount realized less $300,000 book value). Therefore, the amount of partnership minimum gain as of the end of the year is $300,000, which represents a net increase in partnership minimum gain during the year of $250,000. Thus, the amount of partnership nonrecourse deductions for that year equals $250,000, consisting of book depreciation deductions of $250,000. Pursuant to the partnership agreement all partnership items comprising the net book loss of $235,000, including the $250,000 nonrecourse deduction, are allocated equally among the partners. That allocation of all items, other than the nonrecourse deductions, has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $210,000 cost recovery deduction for the partnership's fourth taxable year is, in accordance with section 704(c) principles, shared $55,000 to OC, $55,000 to DR, and $100,000 to DT.

	OC		DR		DT	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end of year 3	($75,000)	$15,000	($75,000)	$15,000	$15,000	$15,000
Less: nonrecourse deduction	(45,833)	(83,333)	(45,833)	(83,333)	(83,333)	(83,333)
Plus: items other than nonrecourse deduction in year 4	(12,449)	5,000	12,449	5,000	5,000	5,000

	OC		DR		DT	
	Tax	Book	Tax	Book	Tax	Book
Less: Distribution	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Capital account at end of year 4	(113,334)	(66,333)	(113,334)	(66,333)	(66,333)	(66,333)

The allocation of the $250,000 nonrecourse deduction equally among OC, DR, and DT satisfies requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, such allocation is deemed to be made in accordance with the partners' interest in the partnership. At the end of the partnership's third taxable year, OC's, DR's, and DT's shares of partnership minimum gain are $100,000 each.

(v) Assume the same facts as (iv) and that at the beginning of the partnership's fifth taxable year it sells the machinery for $650,000 (using $600,000 of the proceeds to repay the nonrecourse liability), resulting in a taxable gain of $440,000 ($650,000 amount realized less $210,000 adjusted tax basis) and a book gain of $350,000 ($650,000 amount realized less $300,000 book basis). The partnership has no other items of income, gain, loss, or deduction for such year. As a result of the sale, partnership minimum gain is reduced from $300,000 to zero, reducing OC's DR's and DT's shares of partnership minimum gain to zero from $100,000 each. The minimum gain chargeback requires that OC and DT each be allocated an amount of that gain equal to $66,333 (the deficit balance in each of their capital accounts at the end of the partnership's fifth taxable year before any allocation is made to them under section 704(b) with respect to partnership items for that year). Thus, the allocation of the first $136,666 of book gain $66,333 to OC and $66,333 to DT is deemed to be made in accordance with the partners' interests in the partnership under paragraph (b)(4)(iv)(e) of this section. The allocation of the remaining $213,334 of book gain in a manner such that the total book gain is allocated equally among the partners has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $440,000 taxable gain is, in accordance with section 704(c) principles, shared $161,667 to OC, $161,667 DR, and $116,666 to DT.

	OC		DR		DT	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end of year 4	($113,334)	($66,333)	($113,334)	($66,333)	($66,333)	($66,333)
Plus: minimum gain chargeback	94,691	66,333	0	0	66,333	66,333
Plus: additional gain	66,976	48,333	161,667	116,666	48,333	48,333
Capital account before liquidation	48,333	48,333	48,333	48,333	48,333	48,333

Example 23. (i) A partnership owns 4 properties, each of which is subject to a nonrecourse liability of the partnership. During a taxable year of the partnership, the following events take place. First, the partnership generates a cost recovery deduction (for both book and tax purposes) with respect to Property W of $10,000 and repays $5,000 of the nonrecourse liability secured only by that property, resulting in an increase in minimum gain with respect to that liability of $5,000. Second, the partnership generates a cost recovery deduction (for both book and tax purposes) with respect to Property X of $10,000 and repays none of the nonrecourse liability secured by that property, resulting in an increase in minimum gain with respect to that liability of $10,000. Third, the partnership generates a cost recovery deduction (for both book and tax purposes) of $2,000 on Property Y and repays $11,000 of the nonrecourse liability secured only by that property, resulting in a decrease in minimum gain with respect to that liability of $9,000 (although at the end of that year, there remains minimum gain with respect to that liability). Finally, the partnership borrows $5,000 on a nonrecourse basis, giving as the only security for that liability Property Z, which is a parcel of undeveloped land with an adjusted tax basis (and book value) of $2,000, resulting in a net increase in minimum gain with respect to that liability of $3,000. The net increase in partnership minimum gain during that year is $9,000, so that the amount of nonrecourse deductions of the partnership for that taxable year is $9,000. Those nonrecourse deductions consist of $3,000 of cost recovery deductions with respect to Property W and $6,000 of cost recovery deductions with respect to Property X. The amount of nonrecourse deductions consisting of cost recovery deductions is determined as follows. With respect to the nonrecourse liability secured by Property Z, with respect to which there is no cost recovery deduction, the amount of cost recovery deductions that constitutes nonrecourse deductions is zero. Similarly, with respect to the nonrecourse liability secured by Property Y, for which there is no increase in minimum gain, the amount of cost recovery deductions that constitutes nonrecourse deductions is zero. With respect to each of the nonrecourse liabilities secured by Properties W and X, which are (i) secured by property with respect to which there are cost recovery deductions and (ii) for which there is an increase in minimum gain, the amount of cost recovery deductions that constitutes nonrecourse deductions equals the product obtained by multiplying the net increase in partnership minimum gain ($9,000) times a fraction, the numerator of which is the total cost recovery deductions with respect to the partnership property securing that particular liability to the extent of the increase in minimum gain with respect to that liability and the denominator of which is the sum of the numerators for each such liability. Thus, for the liability secured by Property W, the amount is $9,000 times $5,000/$15,000. For the liability secured by Property X, the amount is $9,000 times $10,000/$15,000. (If one depreciable property secured 2 partnership nonrecourse liabilities, the amount of cost recovery or book depreciation with respect to that property would be allocated among such liabilities in accordance with the method by which adjusted basis is allocated under paragraph (b)(2)(iv)(*b*) of this section.)

(ii) Assume the facts as in (i) except that the loan secured by Property Z is $15,000 (rather than $5,000), resulting in a net increase in minimum gain with respect to that liability of $13,000. Thus, the net increase in partnership minimum gain is $19,000, and the amount of nonrecourse deductions of the partnership for that taxable year is $19,000. Those nonrecourse deductions consist of $5,000 of cost recovery deductions with respect to Property W, $10,000 of cost recovery deductions with respect to Property X, and a pro rata portion of the partnership's other items of deduction, loss, and section 705(a)(2)(B) expenditure for that year. The method for computing the amounts of cost recovery deductions that constitute nonrecourse deductions is the same as in (i) for the liabilities secured by Properties Y and Z. With respect to each of the nonrecourse liabilities secured by Properties W and X, the amount of cost recovery deductions that constitutes nonrecourse deductions equals the total cost recovery deductions with respect to the partnership property securing that particular liability to the extent of the increase in minimum gain with respect to that liability.

Par. 3. Section 1.704–1(b) is further amended as follows:

1. Paragraph (b)(1)(i) is amended by inserting the word "three" immediately after the phrase "there are" in the second sentence thereof.

2. Paragraph (b)(1)(ii) is amended by inserting immediately after the phrase

"May 1, 1986" the first time it appears in the second sentence thereof, the parenthetical phrase "(January 1, 1987, in the case of allocations of nonrecourse deductions as defined in paragraph (b)(4)(iv)(*a*) of this section)" and by deleting the phrase "as that term has" in the last sentence of that unit and adding in its place the phrase "or is in accordance with the partners' interests in the partnership as those terms have."

3. Paragraph (b)(1)(iii) is amended by adding a new sentence immediately before the last sentence to read as follows: "A deduction that appears to be a nonrecourse deduction deemed to be in accordance with the partners' interests in the partnership may not be such because purported nonrecourse liabilities of the partnership in fact constitute equity rather than debt."

4. Paragraph (b)(2)(ii)(*b*) is amended by inserting immediately before the last sentence thereof the following two new sentences: "Requirements (*2*) and (*3*) of this paragraph (b)(2)(ii)(*b*) are not violated if all or part of the partnership interest of one or more partners is purchased (other than in connection with the liquidation of the partnership) by the partnership or by one or more partners (or one or more persons related, within the meaning of section 267(b) (without modification by section 267(e)(1)) or section 707(b)(1), to a partner) pursuant to an agreement negotiated at arm's length by persons who at the time such agreement is entered into have materially adverse interests and if a principal purpose of such purchase and sale is not to avoid the principles of the second sentence of paragraph (b)(2)(ii)(*a*) of this section. In addition, requirement (*2*) of this paragraph (b)(2)(ii)(*b*) is not violated if, upon the liquidation of the partnership, the capital accounts of the partners are increased or decreased pursuant to paragraph (b)(2)(iv)(*f*) of this section as of the date of such liquidation and the partnership makes liquidating distributions within the time set out in that requirement (*2*) in the ratios of the partners' positive capital accounts, except that it does not distribute reserves reasonably required to provide for liabilities (contingent or otherwise) of the partnership and installment obligations owed to the partnership, so long as such withheld amounts are distributed as soon as practicable and in the ratios of the partners' positive capital account balances."

5. Paragraph (b)(2)(ii)(*d*) is amended by adding the parenthetical phrase "(other than increases pursuant to a minimum gain chargeback under paragraph (b)(4)(iv)(*e*) of this section)" to the end of the only sentence in (*6*) thereof, by adding the parenthetical phrase "(consisting of a pro rata portion of each item of partnership income, including gross income, and gain for such year)" in the penultimate sentence of that unit immediately after the phrase "income and gain", and by adding immediately before the last sentence of such unit a new sentence to read as follows: "Allocations of items of income and gain made pursuant to the immediately preceding sentence shall be deemed to be made in accordance with the partners' interests in the partnership if requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied."

6. Paragraph (b)(2)(ii)(*f*) is amended by replacing the cross-reference to "(*4*), and (*5*), and (*6*) of paragraph (b)(2)(iv)(*d*) of this section" in the first sentence thereof with the cross-reference to "(*4*), (*5*), and (*6*) of paragraph (b)(2)(ii)(*d*) of this section".

7. Paragraph (b)(2)(ii)(*h*) is amended by adding the following new sentence immediately after the second sentence thereof: "(Thus, for example, if one partner who assumes a liability of the partnership is indemnified by another partner for a portion of such liability, the indemnifying partner (depending upon the particular facts) may be viewed as in effect having a partial deficit makeup obligation as a result of such indemnity agreement.)", and by adding at the end of the last sentence a new phrase to read as follows: "or partnership."

8. Paragraph (b)(2)(ii)(*i*) is amended by revising the first sentence thereof to read as follows: "Allocations made to a partner that do not otherwise have economic effect under this paragraph (b)(2)(ii) shall nevertheless be deemed to have economic effect, provided that as of the end of each partnership taxable year a liquidation of the partnership at the end of such year or at the end of any future year would produce the same economic results to the partners as would occur if requirements (*1*), (*2*), and (*3*) of paragraph (b)(2)(ii)(*b*) of this section had been satisfied, regardless of the economic performance of the partnership."

9. Paragraph (b)(2)(iii)(*c*)(*2*) is amended by adding immediately after the parenthetical "(under this paragraph (b)(2)(iii)(*c*))" a new clause to read as follows:" and, for purposes of paragraph (b)(2)(iii)(*a*), it will be presumed that there is a reasonable possibility that the allocations will affect substantially the dollar amounts to be received by the partners from the partnership" and by deleting the phrase "(i) and (iv)" after "(*7*)".

10. Paragraph (b)(2)(iv)(*b*) is amended by deleting the word "securing" in the two places that it appears and by adding the phrase "secured by" in each such place.

11. Paragraph (b)(2)(iv)(*c*) is amended by revising the last sentence thereof to read as follows: "For purposes of this paragraph (b)(2)(iv)(*c*), liabilities are considered assumed only to the extent the assuming party is thereby subjected to personal liability with respect to such obligation, the obligee is aware of the assumption and can directly enforce the assuming party's obligation, and, as between the assuming party and the party from whom the liability is assumed, the assuming party is ultimately liable."

12. Paragraph (b)(2)(iv)(*d*)(*3*) is amended by revising the parenthetical phrase in the first sentence thereof to read "(see paragraph (b)(1)(vi) of this section)."

13. Paragraph (b)(2)(iv)(*f*) introductory text is amended by inserting the parenthetical phrase "(including intangible assets such as goodwill)" in the first sentence thereof immediately after the phrase "partnership property".

14. Paragraph (b)(2)(iv)(*f*)(*5*)(*ii*) is amended by inserting the phrase "the liquidation of the partnership or" immediately after the phrase "connection with".

15. Paragraph (b)(2)(iv)(*g*)(*3*) and (*m*)(*4*) is revised to read as set forth below:

§ 1.704-1 Partner's distributive share.

* * * * * *

(b) *Determination of a partner's distributive share.* * * *

(2) *Substantial economic effect.* * * *

(iv) *Maintenance of capital accounts.* * * *

(*g*) *Adjustments to reflect book value.* * * *

(*3*) *Determining amount of book items.* The partners' capital accounts will not be considered adjusted in accordance with this paragraph (b)(2)(iv)(*g*) unless the amount of book depreciation, depletion, or amortization for a period with respect to an item of partnership property is the amount that bears the same relationship to the book value of such property as the depreciation (or cost recovery deduction), depletioin, or amortization computed for tax purposes with respect to such property for such period bears to the adjusted tax basis of such property. If such property has a zero adjusted tax basis, the book depreciation, depletion, or amortization may be determined under any

reasonable method selected by the partnership.

* * * * *

(*m*) *Section 754 elections.* * * *

(*4*) *Section 734 adjustments.* Except as provided in paragraph (b)(2)(iv)(*m*)(*5*) of this section, in the case of a distribution of property in liquidation of a partner's interest in the partnership by a partnership that has a section 754 election in effect for the partnership taxable year in which the distribution occurs, the partner who receives the distribution that gives rise to the adjustment to the adjusted tax basis of partnership property under section 734 shall have a corresponding adjustment made to his capital account. If such distribution is made other than in liquidation of a partner's interest in the partnership, however, except as provided in paragraph (b)(2)(iv)(*m*)(*5*) of this section, the capital accounts of the partners shall be adjusted by the amount of the adjustment to the adjusted tax basis of partnership property under section 734, and such capital account adjustment shall be shared among the partners in the manner in which the unrealized income and gain that is displaced by such adjustment would have been shared if the property whose basis is adjusted were sold immediately prior to such adjustment for its recomputed adjusted tax basis.

* * * * *

16. Paragraph (b)(2)(iv)(*j*) is amended by removing the sentence "See example (2)(iii) of paragraph (b)(5) of this section".

17. Paragraph (b)(2)(iv)(*r*) is revised to read as follows:

(*r*) *Restatement of capital accounts.* With respect to partnerships that began operating in a taxable year beginning before May 1, 1986, the capital accounts of the partners of which have not been determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) since inception, such capital accounts shall not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) for taxable years beginning after April 30, 1986, unless either—

(1) such capital accounts are adjusted, effective for the first partnership taxable year beginning after April 30, 1986, to reflect the fair market value of partnership property as of the first day of such taxable year, and in connection with such adjustment, the rules contained in paragraph (b)(2)(iv)(*f*) (*2*), (*3*), and (*4*) of this section are satisfied, or

(*2*) the differences between the balance in each partner's capital account and the balance that would be in such partner's capital account if capital accounts had been determined and maintained in accordance with this paragraph (b)(2)(iv) throughout the full term of the partnership are not significant (for example, such differences are solely attributable to a failure to provide for treatment of section 709 expenses in accordance with the rules of paragraph (b)(2)(iv)(*i*)(*2*) of this section or to a failure to follow the rules in paragraph (b)(2)(iv)(*m*) of this section), and capital accounts are adjusted to bring them into conformity with the rules of this paragraph (b)(2)(iv) no later than the end of the first partnership taxable year beginning after April 30, 1986.

However, compliance with the previous sentence will have no bearing on the validity of allocations that relate to partnership taxable years beginning before May 1, 1986.

18. Paragraph (b)(3)(i) is amended by deleting the phrase "with respect" in the first sentence thereof and adding in its place the phrase "(if any) corresponding", and by adding the phrase "Except with respect to partnership items that cannot have economic effect (such as nonrecourse deductions of the partnership)," at the beginning of the second sentence thereof, and by adding immediately after the third sentence thereof a new sentence to read as follows: "(For example, in the case of an unexpected downward adjustment to the capital account of a partner who does not have a deficit make-up obligation that causes such partner to have a negative capital account, it may be necessary to allocate a disproporationate amount of gross income of the partnership to such partner for such year so as to bring that partner's capital account back up to zero.)"

19. Paragraph (b)(3)(iii) is amended by deleting the phrase "(i), (ii), and (iv)" after "(7)".

20. Paragraph (b)(4)(i) is amended by deleting the word "made" immediately before the phrase "in accordance with" in the third sentence thereof and by adding in its place the word "determined".

21. The second sentence of paragraph (b)(4)(v) is amended by deleting the word "are" the first time it appears and inserting in its place the word "is", by inserting the word "material" immediately after the phrase "and (*b*) all other", and by deleting the phrase "this paragraph" and by inserting in its place "this paragraph (b)."

22. *Example* (1)(ix) of paragraph (b)(5) is amended by adding the word "negotiable" immediately before the term "promissory note" in the first sentence thereof.

23. *Example* (7)(i) of paragraph (b)(5) is amended by adding a parenthesis after the phrase "deficit to the partnership" in the fourth sentence thereof.

24. *Example* (7)(iii) of paragraph (b)(5) is amended by deleting the phrase "general rules" and inserting in its place the phrase "second sentence" in the parenthetical phrase of the penultimate sentence thereof.

25. *Example* (13)(i) of paragraph (b)(5) is amended by adding immediately after the fourth sentence thereof a new sentence to read as follows: "The partnership uses the interim closing of the books method for purposes of section 706."

26. *Example* (14)(i) of paragraph (b)(5) is amended by adding immediately after the fourth sentence thereof a new sentence to read as follows: "The partnership uses the interim closing of the books method for purposes of section 706."

27. *Example* (18(iii), is amended by in changing WN to WM in penultimate sentence thereof.

28. *Example* (18)(vii) of paragraph (b)(5) is modified by deleting the phrase "under those principles MK must" in the last sentence thereof and adding in its place the phrase "under these facts those principles require MK to".

29. *Example* (18)(viii) of paragraph (b)(5) is amended by deleting the last two sentences thereof and by adding in their place two new sentences to read as follows: "Assume further that upon MK's admission WM and JL have adjusted capital account balances of $110,000 and $100,000, respectively. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the excess $10,000 cost recovery deduction ($110,000 less $100,000 included in MK's distributive share) is, in accordance with section 704 (c) principles, shared equally between WM and JL and is so included in their respective distributive shares for the partnership's third taxable year."

Par. 4. Section 1.704–1 (b)(0) is amended by adding, each on a separate line, the following lines to the table immediately after the line reference to §1.704–1 (b)(4)(iv):

Allocation of nonrecourse deductions.	1.704-1(b)(4)(iv)(*a*)
Determination of nonrecourse deductions.	1.704-1(b)(4)(iv)(*b*)
Partnership minimum gain	1.704-1(b)(4)(iv)(*c*)
Requirements to be satisfied	1.704-1(b)(4)(iv)(*d*)
Minimum gain chargeback	1.704-1(b)(4)(iv)(*e*)
Partner's share of partnership minimum gain.	1.704-1(b)(4)(iv)(*f*)
Nonrecourse liabilities of the partnership where a partner has economic risk of loss.	1.704-1(b)(4)(iv)(*g*)
Nonrecourse liabilities of the partnership where a person related to a partner has economic risk of loss.	1.704-1(b)(4)(iv)(*h*)

Lawrence B. Gibbs,

Commissioner.

August 27, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-20100 Filed 9-8-86; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 20

Income Taxes; Qualified Conservation Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: This document contains technical amendments to Estate Tax Regulations § 20.2055-2, which relates to transfers not exclusively for charitable purposes.

EFFECTIVE DATE: These amendments are effective December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1986, the Federal Register published final regulations relating to Qualified Conservation Contributions, as adopted by T.D. 8069 (51 FR 1496). The provisons set forth in those regulations reflected changes made by the Tax Reform Act of 1984 and the Temporary Tax Provisions, Extensions.

Revisions for Title 26 of the Code of Federal Regulations were published for April 1, 1986, with the inclusion of T.D. 8069. T.D. 8069 amended regulations § 20.2055-2 but inadvertently failed to revise cross references contained in paragraphs (e)(2), (f)(1) and (f)(2) of § 20.2055-2.

Need For Amendments

As published, Title 26 of the Code of Federal Regulations contains technical errors in § 20.2055-2 (e)(2), (f)(1) and (f)(2). Accordingly, technical amendments are being published to correct these errors.

List of Subjects in 26 CFR Part 20

Estate taxes.

PART 20—[AMENDED]

Part 209 of Title 26 of the Code of Federal Regulations is amended as follows:

Paragraph 1. The authority for Part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

§ 20.2055-2 [Amended]

Par. 2. Section 20.2055-2 is amended as follows:

1. Paragraph (e)(2)(vi)(*a*) is amended by revising the phrase "of this subdivision (v)" to in the second sentence to read "of this subdivision (vi)".

2. Paragraph (e)(2)(vi)(*g*) introductory text is amended by revising the phrase "of this subdivision (v)" to read "of this subdivision (vi)".

3. Paragraph (e)(2)(vi)(*h*) is amended by revising the phrase "of this subdivision (v)" to read "of this subdivision (vi)".

4. Paragraph (e)(2)(vii)(*a*) is amended by revising the phrase "of this subdivision (vi)" in the second sentence to read "of this subdivision (vii)".

5. Paragraph (f)(1) is amended by revising the phrase "in paragraph (e)(2)(v)(*h*)" to read "in paragraph (e)(2)(vi)(*h*)".

6. Paragraph (f)(2) is amended by revising the phrase "in subdivision (iv), (v), or (vi)" to read "in subdivision (v), (vi), or (vii)".

7. Paragraph (f)(2)(iv) is amended by revising the phrase "paragraph (e)(2)(v)" to read "paragraph (e)(2)(vi)".

8. Paragraph (f)(2)(iv), Examples (1)–(3), are amended by revising the phrase "(as defined in paragraph (e)(2)(v) of this section)" to read "(as defined in paragraph (e)(2)(vi) of this section)".

9. Paragraph (f)(2)(iv), Example (4), is amended by revising the phrase "paragraph (e)(2)(v)(*f*)" to read "paragraph (e)(2)(vi)(*f*)".

10. Paragraph (f)(2)(v) is amended by revising the phrase "described in paragraph (e)(2)(vi)" to read "described in paragraph (e)(2)(vii)".

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 86-20304 Filed 9-8-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is making a number of interpretive clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20 and 2.36. These changes and additions are intended to remove ambiguities, to conform to other parts in the guidelines, and to make the guidelines more comprehensive.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION:

A. The Proposed Rules and Their Purposes

On June 12, 1986, the U.S. Parole Commission published in the Federal Register (51 FR 21386) a set of proposed revisions to 28 CFR 2.20 and 2.36 that fell into three categories: (a) Revision of an offense example in the Offense Severity Index of § 2.20 and revision of the rescission guidelines in § 2.36, both to clarify and make the guidelines more comprehensive; (b) Revision to the notes accompanying one chapter of the Offense Severity Index of § 2.20 by incorporating, as part of the rules, instructional material previously included in the Commission's internal Rules and Procedures Manual; and (c) A request for public comment on the desirability for, and the potential content of, an offense example to become part of the Offense Severity Index of § 2.20.

(a) First, Offense Example 212 in Chapter 2, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 contains gradings for various assault

offenses, including assaults on law enforcement, judicial or correctional officials. To clarify this offense example, a new grading level was proposed to cover assaults committed while resisting arrest or detention. Next, there was a proposed addition to the Notes accompanying the Rescission Guidelines of 28 CFR 2.36. Previously, the Parole Commission had revised these guidelines by establishing, as Category Three, the offense severity for possession of a weapon other than a firearm or explosives in a prison facility or a community treatment center. The proposed revision would have graded possession of a firearm or explosives in a prison facility or a community treatment center as Category Five.

(b) Chapter 9 of the Offense Behavior Severity Index of 28 CFR 2.20 contains several subchapters and notes regarding the grading of offenses involving illicit drugs. For heroin, opiate and cocaine offenses, offense severity grading is derived from weight and purity figures. To make the guidelines more comprehensive, the Commission proposed to incorporate, as part of the rules, instructional material previously included in the Commission's internal Rules and Procedures Manual that provides the grading levels where drug weight, but not purity, is available.

(c) 21 U.S.C. 845(a) contains penalties for offenders who distribute controlled substances "in or on, or within one thousand feet of, the real property comprising a public or private elementary school . . . ." Such penalties can be up to twice that authorized by 21 U.S.C. 841(b) and "at least twice any special parole term" so authorized; the penalties for second offenders include a three year minimum sentence, a prohibition against sentence suspension and/or probation, and a requirement for the service of the minimum sentence before parole eligibility. The Parole Commission proposed to add an offense example covering this behavior to the Offense Behavior Severity Index of § 2.20 and requested public comment on the need for and the potential content of such an offense example.

B. Public Comment

In response to the proposed rule changes, the Parole Commission received three comments, two from Chief U.S. Probation Officers and one from a Regional Administrator from the U.S. Parole Commission.

One Chief U.S. Probation Officer noted approval of the proposal to incorporate, as part of the rules, the instructional material providing grading levels when drug weight, but not purity, is available. The second Chief U.S. Probation Officer counseled against the development of separate guidelines for 21 U.S.C. 845(a) offenses; he argued that, since there probably would be infrequent prosecutions under this statute, such offenses could be treated as aggravating case factors leading to decisions above the appropriate guideline ranges.

The Parole Commission Regional Administrator commented on the proposed grading of firearm and explosives possession in a correctional institution. He noted his belief that such offenses were quite serious and deserved a stronger deterrent sanction; he argued that the "only purpose for possessing a firearm in an institution is to commit murder or to effect an escape." He would grade such possesssion, therefore, as no less than Category Seven. And finally, he indicated that his views on this matter were shared by several U.S. Parole Commission hearing examiners.

C. Changes From the Proposed Rules

The Commission is revising the Note that accompanies § 2.36(a)(2)(ii) of the Rescission Guidelines in 28 CFR 2.36 to more appropriately sanction the possession of a firearm or explosives in a prison facility and to distinguish such possession in a prison facility from possession in a community treatment center.

The Commission has deferred for further study the development of separate guidelines for distributing controlled substances at or near an elementary school.

These rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

28 CFR Part 2 is amended as follows:

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Paragraph (d) of the Offense Example 212 in Chapter 2, subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 is amended by designating the existing text as paragraph (1) and adding new paragraph (2) to read as follows:

212 *Assault*

* * * * *

(d) *Exception:* * * * (2) If an assault is committed while resisting an arrest or detention initiated by a law enforcement officer or a civilian acting under color of law, grade conduct under (a) as Category Seven, (b) as Category Six, and (c) as Category Three.

* * * * *

3. The Notes to Chapter Nine of the Offense Behavior Severity Index of 28 CFR 2.20 are amended by adding a new Note 4 to read as follows:

Chapter Nine—Offenses Involving Illicit Drugs

* * * * *

Notes to Chapter Nine

* * * * *

(4) If weight, but not purity is available, the following grading may be used:

Heroin

Extremely large scale—6 kilograms or more
Very large scale—2–5.99 kilograms
Large scale—200 gms.–1.99 kilograms
Medium scale—28.35–199.99 gms.
Small scale—Less than 28.35 gms.

Cocaine

Extremely large scale—18.75 kilograms or more
Very large scale—6.25–18.74 kilograms
Large scale—1.25–6.24 kilograms
Medium scale—200 gms.–1.24 kilograms
Small scale—20 gms.–199.99 gms.
Very small scale—4 gms.–19.99 gms.
Extremely small scale—Less than 4 gms.

* * * * *

4. The Note in § (a)(2)(ii) of the Rescission Guidelines in 28 CFR 2.36 is revised to read as follows:

§ 2.36 Rescission guidelines.

(a) * * *
(2) * * *
(ii) * * *

Note: Grade unlawful possession of a firearm or explosives in a prison facility, other than a community treatment center, as Category Six. Grade unlawful possession of a firearm in a community treatment center as Category Four. Grade unlawful possession of a dangerous weapon other than a firearm or explosives (e.g., a knife) in a prison facility or community treatment center as Category Three.

* * * * *

Dated: August 15, 1986.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 86-20155 Filed 9-8-86; 8:45 am]

BILLING CODE 4410-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; amendment.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment extends the 706 agency charge processing jurisdiction of the Commonwealth of Puerto Rico Department of Labor to include national origin basis.

EFFECTIVE DATE: September 9, 1986.

FOR FURTHER INFORMATION CONTACT: Mike Torres, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual Compliance Programs, 2401 E Street NW., Washington, DC 20507, telephone 202/634–6922.

SUPPLEMENTARY INFORMATION: The Commission has determined that the Commonwealth of Puerto Rico Department of Labor has the statutory jurisdiction to investigate charges of employment discrimination based on national origin. Jurisdiction over the national origin basis was effectuated by Puerto Rico Public Law 67 of June 3, 1983, which amended Puerto Rico Public Law 100 of June 30, 1959.

Accordingly, the Director of Program Operations hereby issues a final determination extending the 706 Agency jurisdiction of the Commonwealth of Puerto Rico Department of Labor to include the processing of charges alleging a violation of Title VII on the basis of national origin. Publication of this amendment updates Footnote No. 4 of § 1601.74 by rescinding Exception No. (1).

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal Employment Opportunity, Intergovernmental relations.

PART 1601—[AMENDED]

1. The authority citation for Part 1601 continues to read as follows:

Authority: Secs. 709, 713; 78 Stat. 263, 265; 42 U.S.C. 2000e–8, 2000e–12.

§ 1601.74 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.74(a) by removing Exception No. (1) of Footnote No. 4. Exceptions (2), (3), (4) and (5) become (1), (2), (3) and (4), respectively.

Signed at Washington, DC this third day of September, 1986.

For the Commission.

Joseph S. Bennett,

Acting Director, Office of Program Operations.

[FR Doc. 86–20199 Filed 9–8–86; 8:45 am]

BILLING CODE 6570–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–011; A–4–FRL–3076–8]

Approval and Promulgation of Implementation Plans; North Carolina; Malfunction, Startup and Shutdown Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In response to EPA's request that States define their policy for handling excess emissions during periods of equipment malfunction, startup and shutdown, North Carolina had adopted e new regulation, 15 NCAC 2D.0535. EPA is approving the major part of this regulation, that which deals with excess emissions during equipment malfunctions. The approvable portion of the rule (15 NCAC 2D.0535(a)–(f)), was submitted to EPA on January 24, 1983, and is consistent with EPA's policy on excess emissions caused by malfunctioning equipment. Paragraph (g) of the rule deals specifically with startups and shutdowns and was submitted to EPA on April 17, 1984. EPA is disapproving 2D.0535(g) because it provides for automatic exemptions of excess emissions occurring during equipment startup and shutdown. Such automatic exemptions are not consistent with the provisions of the Clean Air Act. EPA is also approving the repeal of 2D.0904, which covered malfunctions, breakdowns and upsets for VOC sources. The essence of 2D.0904 has been incorporated into the new malfunction regulation. The effect of the portion of the new regulation concerning malfunctions will be to require sources in the State to report excess emissions to the State agency and provide a demonstration that those exceedances could not have been avoided. In the event an adequate justification is not submitted, the excursions will be treated as violations of the State Implementation Plan (SIP) and enforcement action could ensue.

EFFECTIVE DATE: October 9, 1986.

ADDRESSES: Copies of the State's submittal are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Programs Branch at the above address and telephone (404) 347–3286 (FTS 257–3286).

SUPPLEMENTARY INFORMATION: Occasionally air pollution sources may experience excessive emissions due to unforeseen malfunctions, equipment breakdowns, routine maintenance, startups or shutdowns. EPA recognizes that some types of exceedances are unavoidable and has enunciated a policy which permits States to use discretion when pursuing enforcement actions for excess emissions if they occurred under certain circumstances. Memoranda from former Assistant Administrator Kathleen Bennett to the Regional Administrators, dated September 28, 1982, and February 15, 1983, describe that policy as well as the rationale behind it. The policy interprets the Clean Air Act as allowing the exercise of enforcement discretion with respect to excess emissions during malfunctions, provided the source adequately shows that the criteria specified in the policy have been satisfied. The policy also reflects the requirements of the Act, in that excess emissions during startup and shutdown should be defined as violations. Enforcement discretion is allowed only if the source adequately shows that the excess emissions could not have been prevented through careful planning and design, and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury or severe property damage.

VOL 51 ISS 174 SE 9 1986 UMI

Submittal and Regulatory History

In response to EPA's request that the State define its policy for handling excess emissions, North Carolina has developed a new regulation titled 15 NCAC 2D.0535—Malfunction, Startup and Shutdown. This rule was submitted to EPA for approval on January 24, 1983. At that time North Carolina also requested that EPA approve the repeal of regulation 2D.0904 (Malfunctions, Breakdowns and Upsets for VOC sources) which would be superseded by the new malfunction rule.

On December 21, 1983 (48 FR 56412), EPA proposed to disapprove the entire regulation because paragraph (g) was not consistent with EPA's "Policy on Excess Emissions During Startup and Shutdown, Maintenance and Malfunction." Paragraph (g) dealt solely with excess emissions during periods of startup and shutdown and stated that those emissions would not be considered violations. This automatic exemption was clearly unapprovable by EPA.

Because North Carolina desired to have a fully approvable regulation, the State developed alternative language to address excess emissions during startups and shutdowns. A revised version of paragraph (g) was adopted by the Environmental Management Commission and submitted to EPA for approval on April 17, 1984. This new paragraph superseded the original version previously submitted on January 24, 1983.

The revised paragraph (g) continued to provide for automatic excusal of excess emissions occurring during startup and shutdown, and was still unapprovable.

EPA communicated this position to North Carolina and the State indicated they would again attempt to revise paragraph (g) to satisfy EPA's concerns. For this reason, action on 2D.0535 was deferred in the October 17, 1984, notice of proposed rulemaking (49 FR 40607).

On October 4, 1984, North Carolina sent a letter to EPA which stated they would not further revise their malfunction rule. The State felt that changing their startup and shutdown provisions to make them acceptable to EPA, would render them unmanageable at the State level. Therefore, the State asked that EPA reverse its original proposed disapproval of the entire regulation. If EPA could not approve the regulations as a whole, North Carolina requested that EPA approve all of 2D.0535 with the exception of paragraph (g).

Malfunction Provisions

EPA has reconsidered its original proposed disapproval of 2D.0535. The Agency finds that paragraphs (a) through (f) of the malfunction rule are largely consistent with the provisions of the Clean Air Act as applied in EPA's policy on excess emissions. (See Kathleen M. Bennett's September 28, 1982, and February 15, 1983, memoranda to the Regional Administrators.) Paragraphs (a) through (f) of 2D.0535, as submitted on January 24, 1983, are thus approvable. However, it should be noted that EPA is not approving in advance any determination made by the State under paragraph (c) of the rule, that a source's excess emissions during a malfunction were avoidable and excusable, but rather is approving the procedures and criteria set out in paragraph (c). Thus, EPA retains its authority to independently determine whether an enforcement action is appropriate in any particular case. EPA is also approving the repeal of 2D.0904, which is replaced by the new regulation 2D.0535.

Startup and Shutdown Provisions

Paragraph (g) of 2D.0535, as submitted on April 17, 1984, is not approvable by EPA. The paragraph provides sources with an automatic exemption for excess emissions which occur during startup and shutdown. The exemption is automatic because paragraph (g) does not make excess emissions violations of the applicable emission limit unless: (1) The director requests the source to explain the cause of the excess, and (2) the director determines that the excess could in fact have been avoided.

Thus, paragraph (g) not only describes how the State will respond to excess emissions during startup and shutdown, it defines those excess emissions as not being violations of the applicable emission limitation. Such automatic exemptions are not consistent with section 110(a)(2)(B) or section 110(a)(2)(D) of the Clean Air Act. These sections of the Clean Air Act require states to adopt and enforce emission limitations to ensure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). An emission limitation is defined in section 307(k) as "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction." The effect of paragraph (g), in the absence of a request by the director (a request which is discretionary and which presumes knowledge of excess emissions), is to negate the existing requirements of the North Carolina SIP, which must require its various emission regulations to be met on a continuous basis, if the State's requirements are to remain consistent with section 110(a)(2)(B) of the Act.

It should be noted that although SIPs are not required to have provisions specifying how a state may exercise its enforcement discretion with respect to excess emissions during malfunctions, startups and shutdowns, such provisions must meet the requirements of the Clean Air Act in order to be approved by EPA as part of the federally-approved SIP.

Further details supporting EPA action on North Carolina's malfunction, startup and shutdown rule are discussed in the technical support document which is available for public inspection at EPA's regional office in Atlanta, Georgia.

Public Comment

Numerous comments were received in response to the proposed rulemakings on December 21, 1983 (48 FR 56412), and August 28, 1985 (50 FR 34864). These comments expressed both support for and opposition to EPA's position. A summary of the major comments follows; interested parties may consult the technical support document for a detailed response to each individual comment received.

Several commenters argued that EPA should not disapprove 2D.0535 (g) on the basis of an internal policy memorandum. EPA is disapproving 2D.0535(g) because it defines excess emissions during startup and shutdown as not being violations of applicable emission limitations unless there is a request by the director to define the cause of those emissions and a subsequent finding of inexcusability. Such automatic exemptions are contrary to the language and intent of the Clean Air Act.

Several commenters claimed that 2D.0535(g) meets EPA's policy regarding excess emissions during startup and shutdown and should therefore be approved. Paragraph (g) does not conform to the policy or the Act because it does not use the enforcement discretion approach with regard to excess emissions during startup and shutdown. It defines, by rule, excess emissions during startup and shutdown as not being violations of the applicable emission limitation unless the director requests an explanation from the source and finds the excess emissions were avoidable. The effect of such a rule is to negate the continuous emission

reduction requirements of the North Carolina SIP. Such continuous emission limitations are required by sections (110)(a)(2)(B) and 302(k) of the Clean Air Act.

One commenter stated that there is no way to completely eliminate excess emissions during the startup and shutdown of large electric utility boilers without causing severe damage to operating equipment. EPA maintains that the startup and shutdown of process equipment must be considered part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedures for process and pollution control equipment. Equipment should at all times be operated so as to minimize air pollution and to stay within the applicable emission standards. If excess emissions occur during startup and shutdown and those emissions could not have been avoided by careful planning and design, then the source could present their case to the state agency or EPA and attempt to have the excess emissions excused. EPA does recognize that excess emissions may not be completely eliminated during periods of startup and shutdown and has acknowledged that the exceedances that could not have been avoided may be excused in certain instances. However, this determination must be made on a case-by-case basis taking into account the cause of each individual exceedance. Under no circumstances can those excess emissions be automatically excused, as is allowed under 2D.0535(g).

Severability

EPA has determined that 2D.0535(g) is severable from the remainder of the rule because it is completely independent of paragraphs (a)–(f). The State concurs with this determination and has requested EPA to approve paragraphs (a)–(f), even if it will not approve paragraph (g).

Final Action

EPA is today approving North Carolina's malfunction provisions (15 NCAC 2D.0535, paragraphs (a)–(f)), as submitted on January 24, 1983. EPA is also approving the repeal of 2D.0904. The Agency is disapproving North Carolina's startup and shutdown provisions (15 NCAC 2D.0535(g)).

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 10, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 3, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Regulations is amended as follows:

Subpart II—North Carolina

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1770 is revised by adding paragraph (c)(42) as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(42) A new regulation covering malfunctions, (2D.0535 (a)–(f)), and the repeal of a malfunction rule for VOC sources (2D.0904) which were submitted to EPA on January 24, 1983. (2D.0535(g) covering startups and shutdowns as submitted on April 17, 1984, is disapproved.)

(i) *Incorporation by reference.*

(A) New malfunction regulation 15 NCAC 2D.0535 paragraphs (a)–(f), as adopted by the Environmental Management Commission on December 9, 1982.

(ii) *Additional material.*

(A) Letter from Robert F. Helms, Director, Division of Environmental Management, dated January 24, 1983.

3. A new § 52.1775 is added as follows:

§ 52.1775 Rules and regulations.

Paragraph (g) of regulation 2D.0535 is disapproved because its automatic exemption for excess emissions during startup and shutdown is inconsistent with the Clean Air Act.

[FR Doc. 86–20255 Filed 9–8–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–5–FRL–3076–9]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a revision to the Wisconsin State Implementation Plan (SIP) for ozone. The revision allows the Continental Can Company to use internal offsets in conjunction with daily weighted emission limits at its Milwaukee and Racine can manufacturing plants. This revision to the Wisconsin SIP was submitted by the Wisconsin Department of Natural Resources (WDNR) on August 20, 1985. USEPA is approving the revision because it meets USEPA's requirements for can coating operations (December 8, 1980; 45 FR 80824), and does not interfere with the attainment of the National Ambient Air Quality Standards (NAAQS) for ozone in southeastern Wisconsin.

EFFECTIVE DATE: This action will be effective on November 10, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886–6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster, Madison, Wisconsin 53707.

Copies of this revision to the Wisconsin SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886–6034.

VOL 51 ISS 174 SE 9 1986 UMI

SUPPLEMENTARY INFORMATION:

Background

The Continental Can Company has can manufacturing plants in two cities in Wisconsin, Milwaukee and Racine. Both facilities are subject to the requirements for can coating operations identified at NR 154.13(4)(c) of the Wisconsin Administrative Code. On November 14, 1984, Continental Can requested permission from the State to use internal offsets as a method of compliance for both the Milwaukee and Racine facilities. The internal offset would be applicable to six can coating lines at the Milwaukee plant and two can coating lines at the Racine plant. The Wisconsin Department of Natural Resources (WDNR) approved the use of internal offsets for both plants, subject to certain conditions, and submitted the offsets to USEPA as a State Implementation Plan (SIP) revision on August 20, 1985. A discussion of the SIP revision is presented below.

Internal Offset

Continental Can Company has proposed the use of internal offsets at both its Milwaukee and Racine facilities, meaning that the VOC emissions from each facility would be limited to a daily weighted average emission limit from all can coating lines, as determined by the formula identified at NR 154.13(13)(b) of the Wisconsin Administrative Code. As such, there would likely be some actual increase in emissions over that which would have resulted had compliance been achieved continuously on a per line basis. The daily weighted average changes daily as production levels change. The combined emissions from all the coating lines at each facility have to meet that facility's computed daily weighted average for that day. The daily weighted average is computed using the allowable emission rate for each coating or printing line, as defined in Section NR 154.13(4)(c) of the Wisconsin Administrative Code. The proposed compliance plan also specifies maximum hourly VOC emission limits for each coating line, as required by NR 154.13(13)(b) 2.a. of the Wisconsin Administrative Code. These limits cannot be exceeded regardless of changes in production.

In addition, Continental Can is required to keep records of coating and solvent characteristics, as well as daily consumption of solvent and coatings, for both plants. The daily weighted average is federally enforceable based upon this recordkeeping requirement, which specifies that these records be available for inspection, as well as the emission limits contained in NR 154.13(4)(c). Continental Can has developed a computer program to aid the calculation of actual and allowable emissions and the scheduling of production, in order to comply with the emission limits contained in NR 154.13(4)(c). This computer program was developed based on the December 8, 1980 (45 FR 80824), **Federal Register**, which contains USEPA's policy regarding compliance with VOC emission limitations for can coaters.

The proposed compliance plan is subject to the following conditions:

(1) Continental Can will perform tests to determine the efficiencies of the capture system and emission reduction equipment of the sheet coating line at the Milwaukee plant.

(2) Continental Can will maintain records of coating and solvent characteristics, as well as daily consumption of coatings and solvents, for both plants. The records will contain sufficient detail for the WDNR to determine compliance with the daily allowable emission rate. These records will be maintained at each facility and will be available for inspection.

This internal offset became effective in the State of Wisconsin on September 11, 1985, when the civil enforcement action filed by USEPA against Continental Can was resolved. A consent decree was lodged on that date.

Conclusion

USEPA has reviewed a compliance plan for the Continental Can Company which consists of internal offsets for two can manufacturing plants located in Milwaukee and Racine, respectively. The compliance plan incorporates the use of a daily weighted average at each plant, a computer program to aid in emission calculation and production scheduling, as well as specified testing and recordkeeping conditions. USEPA has determined that the proposed compliance plan meets USEPA's requirements for air pollution control from can coating operations. USEPA has also determined that the use of internal offsets at the two facilities will not increase allowable VOC emissions and, consequently, will not interfere with attainment of the ozone NAAQS in southeastern Wisconsin.

USEPA considers today's action noncontroversial and routine. Therefore, it is being approved today without prior proposal. This action will become effective on November 10, 1986. However, if USEPA receives notice by October 9, 1986, that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action; and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 10, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 3, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart YY—Wisconsin

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2570 is amended by adding new paragraph (c)(44) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(44) Submittal from the State of Wisconsin dated August 20, 1985, requesting internal offsets for two can manufacturing plants owned by Continental Can.

(i) *Incorporation by reference.* (A) On August 20, 1985, the State of Wisconsin submitted a SIP revision pertaining to the use of internal offsets by the Continental Can Company at two of its can manufacturing facilities. The sources are now subject to the legally enforceable requirements stated in the August 20, 1985, letter from Mr. Donald Theiler, Director of the Bureau of Air Management, Wisconsin Department of Natural Resources, to Mr. Richard Torrito, Director of Governmental Affairs at Continental Can Company. The facilities are located in Milwaukee

and Racine. The revision allows the use of internal offsets in conjunction with a daily weighted average emission limit at each facility, hourly emission limits for each coating line, a computer program to aid in emission calculation and production scheduling, and specified testing and record keeping conditions.

[FR Doc. 86-20256 Filed 9-8-86; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50545A; FRL-3076-4]

Pentachloroethane; Determination of Significant New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of TSCA that requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of pentachloroethane (CAS Number 76-01-7) for any use. EPA believes that this action is necessary because pentachloroethane may be hazardous to human health, and any use of pentachloroethane may result in significant human exposure. The notice will furnish EPA with the information needed to evaluate an intended use, and the opportunity to protect against potentially adverse exposure to the chemical substance before it can occur.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on September 23, 1986. This rule becomes effective on October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they commence the manufacture, import, or processing of the substance for that use.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, the Agency may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed in detail in that **Federal Register** document, and interested persons should refer to that document for further information. These general provisions apply to this SNUR, except as provided in § 721.497(b)(1). On April 22, 1986 (51 FR 15104), EPA proposed revisions to the general provisions, some of which would apply to this SNUR.

III. Summary of This Rule

EPA is designating any use of pentachloroethane as a significant new use of the substance. This rule requires persons who intend to manufacture, import, or process pentachloroethane for this significant new use to notify EPA at least 90 days before such manufacture, import, or processing.

IV. Discussion of the Chemical Substance

A. Production and Use Data

The primary use of pentachloroethane has been as an intermediate in the production of tetrachloroethylene. Reporting for the TSCA Chemical Substances Initial Inventory showed that 1977 U.S. manufacture and import of pentachloroethane was between 10 and 50 million pounds.

The high toxicity of pentachloroethane, as well as the development of a new process for the manufacture of tetrachloroethylene has resulted in a rapid decline in demand for pentachloroethane. In 1984, EPA's Office of Toxic Substances surveyed those persons who reported production of pentachloroethane for the TSCA inventory. All firms who reported manufacturing or importing pentachloroethane for the TSCA inventory reported that they no longer manufactured or imported the substance as of the date of the survey. EPA is concerned that the chemical characteristics of pentachloroethane could lead to its use as a solvent (or chemical substitute such as a degreasing agent), especially as increasing attention is focused on several of the other halogenated short-chain aliphatics now in common use.

In the preamble to the proposed SNUR (March 24, 1986, 51 FR 10024) EPA noted the possibility that a new manufacturer or importer of pentachloroethane may have entered the marketplace between the time of the TSCA inventory reporting and the date the SNUR was proposed, and that there could have been an ongoing use for pentachloroethane that EPA was not aware of. No comments were received in response to the proposed rule, so the Agency assumes that there are no persons currently engaged in the manufacture, import, or processing of pentachloroethane.

B. Health Effects

Results of a National Toxicology Program (NTP) carcinogenesis bioassay on technical grade pentachloroethane published in April 1983, demonstrated limited evidence that pentachloroethane is carcinogenic in laboratory animals. Under the conditions of the bioassay, pentachloroethane was carcinogenic for male and female B6C3F$_1$ mice, inducing hepatocellular carcinomas in both sexes, and adenomas in females. NTP stated that the substance under test was not carcinogenic in F344/N rats, but added that the decreased survival of dosed rats

VOL 51 ISS 174 SE 9 1986 UMI

may have reduced the sensitivity for detecting a carcinogenic response.

The NTP held a Peer Review Panel and determined that the kidney was a target organ for short chain chlorinated hydrocarbons in male F344/N rats. Alerted to this, NTP reevaluated the kidneys of male rats from the pentachloroethane carcinogenesis bioassay, and found rare tubular cell adenomas, one carcinoma, and one adenocarcinoma. Because these data were discovered subsequent to peer review of the bioassay, these findings were added as a note attached to the bioassay report. Because of this finding, EPA views that pentachloroethane may also present a carcinogenic hazard for male F344/N rats by causing uncommon kidney tumors.

EPA published Proposed Guidelines for Carcinogen Risk Assessment in the **Federal Register** of November 23, 1984 (49 FR 46294). These proposed guidelines define as a possible human carcinogen agents exhibiting: ". . . (a) Definitive malignant tumor response in a single well-conducted experiment, (b) marginal tumor response in studies having inadequate design or reporting, (c) benign but not malignant tumors with an agent showing no response in a variety of short-term tests for mutagenicity, and (d) marginal responses in a tissue known to have a high and variable background rate. . . ."

A limited review of the results of the NTP carcinogenesis bioassay on pentachloroethane indicates that the substance has been found to induce a definitive malignant tumor response in male and female mice, and may therefore be a possible human carcinogen according to the Agency's proposed guidelines for carcinogen risk assessment.

Results from the NTP bioassay also demonstrate that pentachloroethane may be capable of causing rare renal adenomas in male rats. Studies on the chronic effects of pentachloroethane have demonstrated pathological changes in the lungs, liver, and kidneys of test animals. Two of the metabolites of pentachloroethane, trichloroethylene and tetrachloroethylene, both have evidence of carcinogenicity in animals. For these reasons, EPA has concluded that exposure to the chemical substance may present a risk of injury to human health.

C. Past and Current Exposure Data

EPA has little data on actual numbers of persons who have been exposed to pentachloroethane, or at what levels. Current exposures are limited to those resulting from any residues of previously manufactured or imported pentachloroethane in the environment.

D. Regulatory Background

Pentachloroethane is not subject to any Federal regulation that limits exposure to humans or the environment. Excluding this SNUR, no Federal regulation has been proposed or promulgated that would allow a governmental entity an opportunity to evaluate the potential human exposure to pentachloroethane originating from its manufacture, import, processing, and use and to protect human beings from potentially adverse exposures before they occur.

V. Objectives and Rationale for the Rule

Pentachloroethane is a possible human carcinogen and is not currently manufactured, imported, processed, or used for commercial purposes. Pentachloroethane is not subject to any Federal regulation that would notify the Federal government of activities that might result in adverse exposures to this substance or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occurred.

EPA believes that the resumption of any use of pentachloroethane, and the related manufacture, import, or processing, has a high potential to increase the magnitude and duration of exposure to this substance and to change the type or form of exposure from that which currently exists. Given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to pentachloroethane at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to designate any use of pentachloroethane as a significant new use of this chemical substance. Persons intending to manufacture, import, or process pentachloroethane for any use are required to notify EPA 90 days before they begin such manufacture, import, or processing. Advance notification will allow EPA the opportunity to evaluate the intended activities and to protect against adverse exposures to pentachloroethane before they can occur. Because EPA is concerned about potential exposure during the entire life cycle of pentachloroethane, the Agency has modified § 721.5(a)(2) for this rule to require any manufacturer, importer, or processor who intends to distribute pentachloroethane in commerce to submit a notice.

VI. Alternatives

In the proposed SNUR, EPA considered alternative regulatory actions for pentachloroethane. In the absence of comments on the proposed rule, EPA has decided to proceed with the promulgation of a SNUR for this substance.

VII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of the SNUR were considered ongoing as of the date of promulgation, it would be difficult for the Agency to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final.

Thus, persons who began commercial manufacture, import, or processing of pentachloroethane for a proposed significant new use designated in this rule between proposal and promulgation of the SNUR must cease that activity before the effective date of this rule. To resume their activities, these persons must comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential health risks that may be posed by a significant new use of pentachloroethane, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of the substance's toxic potential when utilized for an intended use. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed

according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health or environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure or environmental release that may result from the significant new use of pentachloroethane. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

IX. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of pentachloroethane. EPA estimates that the cost of filing a significant new use notice will be between $1,400 and $8,000. The Agency's complete economic analysis is available in the public record for this rule (OPTS–50545A).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50545A). The record includes the following basic information considered by the Agency in developing this rule:

1. Economic Analysis of Proposed Significant New Use Rule for Pentachloroethane. Economics and Technology Division, U.S.E.P.A., 1985.
2. Chemical Hazard Information Profile on Pentachloroethane. Existing Chemical Assessment Division, U.S.E.P.A., 1982.
3. National Toxicology Program Carcinogenesis Bioassay on Pentachloroethane. 1983.

A public version of this record is available in the OTS Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA estimates that the reporting cost for submitting a significant new use notice will be approximately $1,400 to $8,000. EPA believes that, because of the nature of the rule and the substance involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has a high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant impact on a substantial number of small businesses. The Agency has not determined whether parties affected by this rule are likely to be small businesses. However, EPA expects to receive few SNUR notices on the substance. Therefore, the Agency believes that the number of small businesses affected by this rule will not be substantial, even if all SNUR notice submitters are small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0038.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 27, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, 40 CFR Part 721 is amended as follows:

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.497 to read as follows:

§ 721.497 Pentachloroethane.

(a) *Chemical substance and significant new use subject to reporting.*

(1) The chemical substance pentachloroethane, CAS Number 76–01–7, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved].

(Approved by the Office of Management and Budget under control number 2070–0038)

[FR Doc. 86–20259 Filed 9–8–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 799

[OPTS–42043A; FRL–3042–6(a)]

Toxic Substances; 1,2-Dichloropropane; Testing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also Agency) is issuing a final test rule under section 4(a) of the Toxic Substances Control Act (TSCA) that requires manufacturers and processors of 1,2-dichloropropane (DCP; CAS Number 78–87–5) to test this chemical for neurotoxicity, mutagenicity (chromosomal aberrations), reproductive effects, developmental toxicity, acute toxicity to marine and freshwater algae and mysid shrimp, and chronic toxicity to mysid shrimp and *Daphnia magna*. Elsewhere in this issue of the **Federal Register**, the Agency is also proposing test standards and reporting deadlines for these tests.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on September 23, 1986. This rule shall become effective October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. NE–G004, 401 M St., SW., Washington, D.C. 20460. Toll free (800–424–9065). In Washington, DC: (554–1404). Outside the USA: (Operator–202–554–1404).

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VOL 51 ISS 174 SE 9 1986 UMI

SUPPLEMENTARY INFORMATION: On January 6, 1984, the EPA proposed, under section 4(a) of TSCA that manufacturers and processors of 1,2-dichloropropane conduct health and environmental effects testing of that chemical (49 FR 899). EPA is now issuing a final rule requiring health and environmental effects testing of 1,2-dichloropropane.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94–469; 90 Stat. 2006 *et seq.*; 15 U.S.C. 2603 *et seq.*) which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or to the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed test rule package (chloromethane and chlorinated benzenes, published in the **Federal Register** of July 18, 1980, (45 FR 48510)) and to the second package (dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published in the **Federal Register** of June 5, 1981; (46 FR 30300)) for in-depth discussions of the general issues applicable to this action.

II. Background

A. Profile

1,2-Dichloropropane ($C_3H_6Cl_2$; CAS No. 78–87–5) is a highly volatile, colorless, stable liquid with a chloroformlike odor. The uses of 1,2-dichloropropane (DCP) are as a captive intermediate in the production of perchloroethylene; as a solvent in ion exchange resin manufacture, toluene diisocyanate production, photographic film manufacture, paper coating, and petroleum catalyst regeneration; and in a mixture that is marketed as a soil fumigant (pesticide).

The Dow Chemical Company is the only manufacturer of isolated DCP in the United States. The estimated annual isolated production is approximately 75 million pounds for 1982 based on information supplied by the Dow Chemical Company (Refs. 1 and 2). Over 95 percent of this isolated production is used on site by Dow as a captive intermediate in the production of perchloroethylene. Approximately 3 million pounds of DCP is marketed by Dow annually as a specialty solvent for industrial use. An estimated 20 million pounds of DCP is also produced as a byproduct in a mixture marketed as a soil fumigant; the remaining 7 million pounds is incinerated. Small quantities of DCP are also produced inadvertently during the manufacture of several other low molecular weight chlorinated aliphatic compounds. As of 1982, Dow no longer sells DCP for consumer use in paint strippers, paint, varnish, and furniture finish removers (Ref. 1).

B. ITC Recommendations

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC designated 1,2-dichloropropane (DCP) for priority consideration in its Third Report published in the **Federal Register** of October 30, 1978 (43 FR 50630). The ITC recommended that 1,2-dichloropropane be tested for the following health effects: carcinogenicity, mutagenicity, teratogenicity, and other toxic effects (with emphasis on reproductive and neurological effects). The ITC also recommended that an epidemiological study be performed. The following environmental effects tests were recommended by the ITC: chronic toxicity to fish and invertebrates, effects on avian and mammalian reproduction and behavior, and effects on soil invertebrates and terrestrial insects.

The ITC's testing recommendations were based on high production volume (estimated at 71 million pounds), widespread use as a solvent, and potential for high environmental and human exposure. The ITC believed insufficient information was available to characterize the carcinogenic, mutagenic, and teratogenic potential of DCP. Reproductive and neurological effects testing was recommended because of a stated structural similarity to 1,2-dibromo-3-chloropropane (DBCP), a known human reproductive toxicant. An epidemiologic study was recommended for 1,2-dichloropropane because of insufficient information about the chemical's human health effects and a potentially large exposure pattern.

The ITC recommended environmental effects tests for 1,2-dichloropropane because of its belief that the chemical's volatility and high specific gravity may result in localized impacts on those environments receiving continuous exposure associated with this chemical's use and disposal. Also, according to the ITC, the potential for DCP to bioaccumulate suggested the need for environmental effects testing to determine the biological significance of exposure.

C. Proposed Rule

EPA issued a proposed rule, published in the **Federal Register** of January 6, 1984 (49 FR 899) which would require health and environmental effects testing for 1,2-dichloropropane.

In evaluating the ITC's testing recommendations for 1,2-dichloropropane (DCP), EPA considered all available relevant information including information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by the manufacturer of DCP under TSCA section 8(a) (40 CFR Part 712—Chemical Information Rule, Subpart B—Manufacturers Reporting—Preliminary Assessment Information); unpublished health and safety studies submitted by the manufacturer and processors of DCP under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and other published and unpublished data available to the Agency. On the basis of the evaluation, as described in the proposed rule and its accompanying technical support document (included in the public record for this action), EPA proposed nervous system effects, reproductive effects, teratogenicity (developmental toxicity), and mutagenicity testing requirements, as

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well as acute and chronic toxicity tests for aquatic invertebrates and an aquatic plant test for DCP under section 4(a)(1)(B) of TSCA. By these actions, EPA responded to the ITC's designation of 1,2-dichloropropane.

In basing its proposed DCP health and environmental effects testing on the authority of section 4(a)(1)(B) of TSCA, EPA found that 1,2-dichloropropane is manufactured, processed, and used in substantial quantities, and may result in substantial human exposure. EPA also found that 1,2-dichloropropane enters or may reasonably be anticipated to enter the environment in substantial quantitites. Furthermore, EPA found that there are insufficient data available to reasonably determine or predict the result of this exposure and release in the areas of mutagenic, teratogenic, reproductive, and neurotoxic effects, and acute and chronic toxicity for aquatic invertebrates and aquatic plants. Finally, EPA found that testing is necessary to develop the data needed to evaluate the Potential for DCP's exposure and release to cause these effects. These findings were based on the following information, as reported in the DCP Support Document:

1. Although Dow Chemical Company is the only manufacturer of 1,2-dichloropropane in the United States, the marketing volume (3 million pounds in 1982), the 1,2-dichloropropane production volume (an estimated 41 million pounds in 1981) and the 1,2-dichloropropane production capacity (41–144 million pounds, based on DCP co-product propylene oxide production capacity) were substantial.

2. Information available at that time indicated that a substantial number of consumers were potentially exposed to DCP, since DCP was then a component of 10 products available as paints, varnishes, and furniture finish removers. Also, a large number of workers in various occupations were potentially exposed to 1,2-dichloropropane. According to a 1972–74 National Occupational Hazard Survey, there are over 700,000 workers exposed to 1,2-dichloropropane resulting from its manufacture. This conclusion is based on the National Institute for Occupational Safety and Health's identification of 18 occupations in 17 industries, involving over 9,000 workers using 1,2-dichloropropane in nonagricultural applications. Furthermore, 1,2-dichloropropane had been identified as a contaminant of ground water and drinking water. The Suffolk County Department of Health Services, Long Island, New York, identified 1,2-dichloropropane from non-pesticidal sources in ground water. Also, the Philadelphia Water Department identified 1,2-dichloropropane in finished drinking water (6.1 μg/L). The estimated total annual load of 1,2-dichloropropane to the aquatic environment was approximately 4.9 million pounds. EPA concluded that this exposure pattern constituted "substantial exposure" as that term is used in section 4 of TSCA.

3. There were insufficient data on the teratogenic, reproductive, mutagenic, and neurotoxic effects upon which to reasonably determine or predict the effects of exposure. Health effects testing, therefore, was determined to be necessary to develop these data.

4. Acute, subchronic, and chronic effects tests and an oncogenicity test were not proposed for 1,2-dichloropropane. The Dow Chemical Company has conducted tests to determine the acute and subchronic effects of 1,2-dichloropropane by the inhalation route of exposure in rats, mice, and rabbits. NTP has performed a 90-day subchronic study, as well as a 2-year bioassay to determine the oncogenic potential of 1,2-dichloropropane. An epidemiological study was not proposed because the exposure pattern to 1,2-dichloropropane was so general EPA doubted that an exposed population could be identified that was not exposed to this chemical and other chemicals simultaneously.

5. Substantial quantities of 1,2-dichloropropane were released to the environment. The atmospheric compartment is readily contaminated with 1,2-dichloropropane because 1,2-dichloropropane is very volatile (vapor pressure = 50 mm Hg at 25 °C). Total atmospheric releases of 1,2-dichloropropane were estimated to be approximately 1.4×10^5 pounds per year. Also, quantities of 1,2-dichloropropane released to the aquatic environment were estimated to be 4.9 million pounds annually.

6. There were insufficient data to characterize the effects of 1,2-dichloropropane on aquatic invertebrates and aquatic plants. EPA proposed studies on acute and chronic toxicity to aquatic invertebrates and effects on algae. There were sufficient data to characterize the effects of 1,2-dichloropropane on soil invertebrates, terrestrial insects, and fish.

7. The Agency did not propose an avian reproduction test for 1,2-dichloropropane because then recent unpublished research at an EPA laboratory (ERL-Corvallis) had shown that a chemical as volatile as 1,2-dichloropropane is very unlikely to yield useful results if tested for avian toxicity according to available methodology.

III. Response to Public Comments

The comments received by the Agency in response to the proposed rule for 1,2-dichloropropane were from Dow Chemical Company. The Agency did not receive any comments which, in the Agency's judgment, rebutted the substantial production, human exposure, and environmental release findings for 1,2-dichloropropane. However, new information on the mutagenic effects of DCP has become available since publication of the proposed rule and has led EPA to reconsider its testing requirement for gene mutation. Major issues identified during the comment period are discussed below. All quotations are taken from Dow's written comments (Ref. 2).

A. Production, Release and Exposure

Dow concluded in its comments that there is neither substantial nor significant human exposure to 1,2-dichloropropane and that there is no substantial release to the environment, thus making the proposed testing unnecessary. This conclusion is based on "a comprehensive analysis of new information on the quantity of 1,2-dichloropropane produced, the limited amount released, and more importantly, the low exposure levels anticipated and preliminary results of recent and currently ongoing toxicological studies."

EPA disagrees with this conclusion and is now basing its section 4(a)(1)(b) finding on more recent production and exposure information (see Unit IV.A) contained in an exposure assessment document (Ref. 3) prepared by Versar, Inc. under contract with EPA. The isolated production volume cited by Dow in the comments (approximately 75 million pounds annually) is the same figure used in the Agency's analysis of release and exposure for isolated DCP. The Agency's analysis also examines releases and exposure from inadvertent production of DCP.

In discussing the aquatic release of DCP, Dow cited a figure (10,000 lbs/yr at <1 ppm) only for the release due to the propylene oxide process (DCP is a co-product of propylene oxide production). While acknowledging that "Dow cannot authoritatively comment on the releases from other ion exchange manufacturers," Dow did state that "Dow's ion exchange manufacturing process does not result in any release of 1,2-dichloropropane into the environment." The contention that DCP is released to the aquatic environment only as a result of Dow's on-site

processing is directly contradicted by the ongoing Philadelphia Geographic Area Multimedia Pollutant Survey conducted by EPA/IEMD (see Unit IV. A). This survey found levels of DCP in the ambient air of the city of Philadelphia, in air at the Northeast Water Pollution Control Plant, which receives the industrial discharge from the Rohm and Haas Company (an industrial user of DCP), and in the intake and treated water of the Baxter Water Treatment Plant, also on the Delaware River. The Agency believes that these monitoring data, along with other available exposure information, support its finding of significant release and exposure.

With regard to occupational exposure, Dow does not believe that there is significant or substantial human occupational exposure to 1,2-dichloropropane because "there are probably less than 500 persons potentially occupationally exposed to 1,2-dichloropropane." The Agency does not agree, because although that figure is probably a good estimate for the number of workers directly exposed via inhalation at DCP production and industrial use facilities, it does not take into account direct inhalation exposure to DCP due to industrial wastewater treatment, public wastewater treatment, and sewer maintenance, or indirect inhalation exposure to DCP by non-production workers employed at DCP production and use facilities (see Unit II.C).

B. Mutagenicity

1. In the proposed test rule for DCP, EPA had proposed requiring a *Drosophila* sex-linked recessive lethal test. Dow Chemical Company in its comments pointed out that the National Toxicology Program (NTP) had evaluated the mutagenic potential of DCP in *Drosophila* after injection and inhalation exposure. The Agency has reviewed the NTP *Drosophila* sex-linked recessive lethal (SLRL) test, which yielded negative results. The Agency finds that the gene mutation data on DCP are adequate to reasonably predict the potential of DCP to cause gene mutation. Therefore, EPA will not require further testing for gene mutation at this time.

2. Dow also commented on the proposed tiered testing scheme for determination of mutagenic effects, stating their belief that "EPA has not articulated which human risks are related to this testing and furthermore has not specified or described the methodology by which the data could be used to assess those risks." Dow also believes "the scheme incorporates a rigid decision tree that precludes any scientific judgement and evaluation to determine whether further testing is necessary." The Agency disagrees with these comments for the following reasons.

As described in detail in the final Phase I test rule for the C_9 aromatic hydrocarbon fraction (50 FR 20662, 20668–71), the Agency believes that there is a consensus in the scientific community on both the need for, and the manner of, identifying mammalian mutagens, and that its proposed scheme for identifying these agents is in keeping with those recommended by experts in the field of mammalian mutagenesis. Further, while EPA recognizes that there is, as yet, no generally accepted single methodology for estimating human risk from mutagenic agents, it is the Agency's view that appropriate methodologies do exist and are usable.

In the case of DCP, only the second tier of mutagenicity testing (dominant lethal assay) is being required at this time, without an automatic trigger to the end point test (heritable translocation assay). This decision is based on available information for a structurally similar chemical, 1,2-dibromo-3-chloropropane (DBCP), indicating that mice are not sensitive to DBCP in the dominant lethal assay (Ref. 5). The rat is therefore the recommended species to use in the dominant lethal assay for DCP, but cannot be recommended for the heritable translocation assay because a successful assay has not been conducted with the rat to date. Results from the dominant lethal assay will be reviewed by the Agency, and a decision made at that time concerning the need for any further chromosomal aberrations testing.

3. Dow Chemical Company believes that "if testing for chromosomal effects is to be done, the micronucleus assay is preferable to the dominant lethal test." In their written comments, Dow compares the two tests noting several "advantages" to the micronucleus assay compared to the dominant lethal test. The Agency does not believe that this substitution is acceptable, because the micronucleus assay in rats would provide information basically the same as that already provided by the NTP assays in both cytogenetic and sister chromatid exchange assays. It would not assess chromosomal effects on germ cell tissues which are measured by the dominant lethal assay.

C. Reproductive/Teratogenic Effects

Dow Chemical Co. cited several studies previously conducted or currently underway in support of their belief that "it is unnecessary to initiate an inhalation reproduction study" pending completion of a Dow subchronic (13-week) study. The other studies cited in the comments are a 10-week inhalation study of reproductive effects on male and female rats of Shell DD, a pesticide mixture, and the NTP carcinogen bioassay in which observations were made for reproductive effects.

The Agency does not agree with this comment for the following reasons. The Dow 13-week subchronic study has not yet been made available to the Agency, and the Agency does not believe a 13-week study can substitute for a two-generation study on reproduction. The comment notes that a testicular weight decrease was noted in rabbits dosed with 1,2-dichloropropane for 2 weeks; this effect had not been observed in the Dow 13-week study. Pending completion of histopathology in this latter study, Dow did not see a reason to undertake a reproduction study. The Agency does not agree because although some chemicals demonstrate testicular histopathology at lower dose levels than fertility effects, other chemicals cause fertility effects at lower dose levels than those doses which cause detectable testicular histopathology.

The test substance (Shell DD) used in the 10-week inhalation study cited by Dow is a mixture containing other compounds that are acutely toxic orally, and/or exhibit other toxicological effects that do not allow assessment of DCP by itself.

Since the carcinogen bioassay study is not a two generation study, the Agency believes it cannot substitute for a two-generation reproductive effects study, particularly in the case of DCP, a chemical with substantial release and exposure.

D. Neurotoxicity

For the proposed neurotoxicity testing, Dow commented that the only reported effects in an inhalation assay involved exposures at 1,000 and 1,500 ppm. Dow noted that no effects were seen in a 2-week study or in a NTP 2-year cancer bioassay. Lastly, Dow noted that a 13-week study is forthcoming. For the inhalation assay, the Agency believes that the methods used to assess neurotoxic effects are not sufficiently sensitive to detect possible effects. For the two other studies cited, neither was designed to detect neuropathological changes and thus the Agency believes that they are inappropriate for evaluating the possible effects.

VOL 51 ISS 174 SE 9 1986 UMI

E. Other Toxic Effects

Shell Oil Company submitted a report titled "Toxicology of five chemicals: The acute oral and percutaneous toxicity, skin and eye irritancy and skin sensitizing potential of DCP (light ends)", however, the data do not address any of the endpoints required in this test rule.

F. Environmental Effects

Dow Chemical Company believes that environmental effects testing is not necessary "because there are sufficient data already available to predict the effects of the current exposures of aquatic species to 1,2-dichloropropane." This conclusion relies on a national mean level for DCP to assert that exposure levels are 11,000 times below the no-observed-effects level (NOEL) and 26,000 times lower than the daphnid static acute LC_{50}, and on an "in general" rule of thumb to assert that algal testing is unnecessary. The Agency disagrees with this comment, however, because the daphnid test was conducted with unmeasured concentrations, thus making the results questionable if not invalid, and a "national mean" is an invalid basis for comparison. Site-specific data are needed for such a comparison, as now are available to the Agency for the Delaware River. Also, a NOEL has not been established for this chemical. The Agency does not believe that extrapolating fish or invertebrate data to estimate possible effects levels in algae is appropriate for this test rule, because although a correlation in toxic response may exist between the two groups of organisms for certain chemicals or categories of chemicals, no evidence is available to support the idea that this relationship holds true for all chemicals. The Agency is concerned in this test rule with the development of data to allow hazard assessment of a specific chemical, DCP, and does not believe data exist to support the extrapolation of fish or invertebrate data for DCP to possible effects level in algae.

IV. Final Test Rule for 1,2-Dichloropropane

A. Findings

EPA is basing its 1,2-dichloropropane health and environmental effect testing requirements on the authority of section 4(a)(1)(B) of TSCA. EPA finds that DCP is produced and released to the environment in substantial quantities, and that the manufacture, processing, use, and disposal may result in substantial human exposure to this chemical. These findings are based on the following information:

1. Although Dow Chemical Company is the only manufacturer of isolated DCP in the United States, the isolated production volume (estimated 74.9 million pounds in 1982), the marketing production volume (estimated at 3 million pounds in 1982), and the inadvertent (not isolated) production volume (estimated at 20 million pounds in 1982) are substantial (Refs. 1, 2 and 3).

2. In order to assess human and environmental exposure to 1,2-dichloropropane, the Agency contracted with Versar, Inc. to develop a comprehensive exposure assessment (Ref. 3). The document examined exposures as a result of TSCA-regulated environmental releases, including monitoring data from the Integrated Environmental Management Project for Philadelphia, Pennsylvania; releases and exposures related to the pesticidal use of DCP were not investigated. The following information is summarized from this document, and indicates the substantial release of and exposure to DCP:

a. The total estimated annual environmental releases from production and industrial use are 772,000 lbs to the air, 198,000 lbs to water, and 176,000 lbs to land disposal sites for a total of 1,146,000 lbs. These releases include process emissions to the air, secondary air emissions resulting from volatilization during wastewater treatment, releases to water in wastewater effluent, air release via incineration, and land disposal of solid waste residues, tars, and ash residues from incineration.

b. Occupational exposure to DCP involves approximately 500 workers exposed to direct inhalation (estimated to range from 31 to 410 g/person/yr) at DCP production and industrial use facilities. An estimated 900 workers may be exposed to direct inhalation (0.020 to 0.27 g/person/yr) as a result of the volatilization of DCP from wastewater during treatment operations. There is also potential for exposure (4.8 to 100 mg/yr) to DCP of non-production workers at DCP production and use facilities.

c. The general populations of five metropolitan areas are exposed to atmospheric concentrations of DCP as a result of airborne releases during production and industrial use of DCP, and volatilization of DCP during wastewater treatment. This atmospheric exposure results in doses estimated at 36 to 240 mg/person/yr. Approximately 880,000 people in the city of Philadelphia, PA are estimated to ingest an average of 0.043 μg/kg/day, or 1.1 mg/yr, and a maximum of 0.43 μg/kg/day, or 11 mg/yr, of DCP as a result of the consumption of drinking water contaminated with DCP from industrial wastewater discharge of the chemical.

d. Monitoring information has also been provided by the ongoing Philadelphia Geographic Area Multimedia Pollutant Survey, conducted by EPA/IEMD (Ref. 3). DCP was measured in Philadelphia at average levels of 0.2 to 3.5 $\mu g./m^3$ in the ambient air of various sectors of the city, and 36.7 to 569.8 $\mu g./m^3$ in air downwind of the Northeast Water Pollution Control Plant (NEWPCP), which receives the industrial discharge from the Rohm and Haas Company.

e. A monitoring study was conducted at the NEWPCP and in the Delaware River. Sampling sites were chosen (1) near the Baxter Drinking Water Plant upstream from the NEWPCP; (2) midway between the NEWPCP and the Baxter plant, to show upstream (tidal) movement of DCP from NEWPCP; and (3) two miles upstream of Baxter.

The data from the three locations indicate that diluted effluent from NEWPCP reaches the Baxter Drinking Water Plant, but that concentrations drop significantly upstream of the tidal excursion. Tidal excursion of the NEWPCP effluent affects the intake water for the Baxter Drinking Water Plant since the water is withdrawn during high tide. Data obtained from the Philadelphia Water Department during the IEMD monitoring study show that the average DCP concentration in the intake water over 1982 through 1983 was 1.6 μg/l, and the average concentration in the treated water was 1.5 μg/l.

3. There are insufficient data on the developmental, reproductive, mutagenic (chromosomal aberrations), and neurotoxic effects upon which to reasonably determine or predict the effects of exposure from the manufacturing, processing, use, and disposal of DCP. Health effects testing, therefore, is necessary to develop these data. As indicated in the proposed test rule (49 FR 899; January 6, 1984), there are sufficient data to characterize the acute, subchronic and chronic effects of DCP, and an NTP 2-year bioassay has been completed and is adequate to determine the oncogenic potential of DCP.

4. There are insufficient data to characterize the effects of DCP on aquatic invertebrates and aquatic plants from its manufacture, processing, and use. EPA is requiring that studies be conducted on acute and chronic toxicity to aquatic invertebrates and acute effects on algae. There are sufficient data to characterize the effects of DCP

on soil invertebrates, terrestrial insects, and fish.

B. Required Testing

EPA is requiring that 1,2-dichloropropane be tested for developmental, reproductive, mutagenic (chromosomal aberrations), and neurotoxic effects, as well as acute and chronic toxicity to aquatic invertebrates and acute toxicity to algae.

C. Test Substance

EPA is requiring that 1,2-dichloropropane of at least 99 percent purity be used as the test substance. DCP of this purity is available commercially. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributed to DCP itself. This requirement will increase the likelihood that any toxic effects observed are related to DCP and not to any impurities.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

Because EPA has found that available data are inadequate to reasonably determine or predict the effects on human health and the environment as a result of the manufacturing, processing, use, and disposal of DCP, EPA is requiring that persons who manufacture or process, or who intend to manufacture or process this chemical, at any time from the effective date of this test rule to the end of the reimbursement period, be subject to the rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data if more than 5 years after the submission of the last final report required under the test rule. As discussed in the Agency's test rule and exemption procedures (40 CFR Part 790), EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to a test rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement. The Agency anticipates that the current manufacturer of DCP will sponsor the required testing. Manufacturers and processors who are subject to the testing requirements of this rule must comply with the test rule and exemption procedures in 40 CFR Part 790. Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing. As noted in Unit IV. C., EPA is interested in evaluating the effects attributable to DCP itself and has specified a relatively pure substance for testing.

E. Test Rule Development and Exemptions

Elsewhere in today's **Federal Register**, the Agency is proposing that certain TSCA test guidelines be utilized as test standards for the development of data under this rule for 1,2-dichloropropane. As discussed in that notice and in previous notices (50 FR 20652), EPA has reviewed the method for development of test rules and has decided that for most section 4 rulemakings, the Agency will utilize single-phase rulemaking. In light of this decision, EPA has reevaluated the process for developing test standards for section 4 rulemakings initiated under a two-phase process and has determined that for certain of these two-phase rules, TSCA test guidelines are available for promulgation as relevant test standards. EPA has decided that where TSCA or other appropriate test guidelines are available, the Agency in most cases will propose the relevant guidelines as the test standards for those rules.

EPA believes that, in line with its commitment to expedite the section 4 rulemaking process, it is appropriate to propose the applicable TSCA test guidelines as test standards at the same time as a Phase I final test rule is issued. With regard to the rulemaking for DCP, TSCA test guidelines are available for all the testing requirements included in this Phase I final rule. Thus, in the accompanying notice, the Agency is proposing these TSCA test guidelines as test standards.

The public, including the manufacturers and processors subject to the Phase I rule, will have an opportunity to comment on the use of the TSCA test guidelines. The Agency will review the submitted comments and will modify the TSCA guidelines, where appropriate, when the test standards are promulgated.

During the development of a test rule under the two-phase process, persons subject to the Phase I final rule are normally required to submit proposed study plans within 90 days after the effective date of the Phase I rulemaking. See 40 CFR 790.50(a)(2). However, because EPA is proposing applicable TSCA test guidelines as the test standards for the studies required by this Phase I final rule, persons subject to the rule, i.e., manufacturers and processors of DCP, are not required to submit proposed study plans for the required testing at this time. Persons subject to this rule, however, are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45. For the rule, once the test standards are promulgated, persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test. Processors of DCP subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications, or study plans (before testing is initiated) unless manufacturers

fail to sponsor the required tests (see Unit IV. D).

Because persons subject to this rule for DCP are not required to submit proposed study plans for approval, EPA will grant conditional exemptions under this rule following EPA's receipt of a letter of intent to conduct the required tests, rather than after receipt and approval of a study plan. Notice of EPA's adoption of the proposed test standards and deadlines will be announced in a final Phase II test rule.

In the accompanying **Federal Register** notice, EPA is proposing deadlines for the submission of test data. Such deadlines are required under section 4(b)(1)(C) of TSCA. These proposed data submission deadlines are open for public comment and may be modified, where appropriate, when the final Phase II test rule is promulgated.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the EPA Good Laboratory Practice (GLP) standards pursuant to 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing these deadlines elsewhere in today's **Federal Register.**

TSCA section 12(b) requires that persons who export or intend to export to a foreign country any 1,2-dichloropropane subject to the testing requirements of this rule notify EPA of such exportation or intent to export. While the results of required testing may not be available for some time, a notice to the foreign government that these exported substances are subject to test rules serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities. Thus, upon the effective date of this rule, persons who export or intend to export DCP must submit notices to the Agency pursuant to TSCA section 12(b)(1) and 40 CFR Part 707. For additional information, see 49 FR 45581, November 19, 1984—Notification of Chemical Export; Applicability of Final Test Rules.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will announce the receipt within 15 days in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for DCP. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to the TSCA GLP standards and the test standards proposed rule of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data.

These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they had never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors who fail to submit a letter of intent or an exemption request and who continue manufacturing or processing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment of up to one year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as the other factors listed in section 16. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of DCP: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations.

Total direct testing costs for the final rule for DCP are projected to range from $325,620 to $416,670. Since DCP, as manufactured by the sole manufacturer.

VOL 51 ISS 174 SE 9 1986 UMI

is a byproduct of propylene oxide manufacture, the direct costs of testing have been dispersed over the annual production of propylene oxide. In addition, the costs for teratogenic effects testing for propylene oxide, required in a previous rule (Ref. 4), have been added to the corresponding costs for DCP.

The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $93,914 to $122,296. Based upon Dow Chemical's 1984 estimated production volume of 907 million pounds of propylene oxide, the estimated unit test costs for DCP and propylene oxide range from 0.010 to 0.013 cents per pound. These unit costs are equivalent to 0.02 to 0.03 percent of the current price of propylene oxide.

Based on these costs and the economic characteristics of the DCP industry, the economic analysis indicates that the potential for adverse economic effect due to the estimated test costs is low. This conclusion is based upon the following observations:

1. Propylene oxide, the main product in DCP production, is used mainly as a captive intermediate and has a relatively inelastic demand.

2. The market expectations for propylene oxide and many of its derivatives are favorable.

3. Dow manufactures DCP and propylene oxide at two highly integrated plants where minor cost increases can be dispersed over numerous end products.

4. The estimated total unit test costs (i.e., the test costs for DCP and propylene oxide) are negligible, or less than 0.013 cents per pound or 0.03 percent of propylene oxide price in the upper-bound case.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October, 1981, can be obtained through the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161 (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VII. Public Record

EPA has established a record for this rulemaking (docket number OPTS-42043). This record includes the basic information the Agency considered in developing this rule, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of proposed rule on 1,2-dichloropropane (January 6, 1984; 49 FR 899).

(b) Notice containing the ITC designation of 1,2-dichloropropane to the Priority List (October 30, 1978; 43 FR 50630).

(c) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (November 29, 1983; 48 FR 53922).

(d) Notice of final rule on test rule development and exemption procedures (October 10, 1984; 49 FR 39774).

(e) Interim final rule for test rule development and exemption procedures (May 17, 1985; 50 FR 20652).

(f) Notice of final rule concerning data reimbursement (July 11, 1983; 48 FR 31786).

(g) Notice of final rule on the C_9 aromatic hydrocarbon fraction (May 17, 1985; 50 FR 20662).

(2) Support documents consisting of:

(a) 1,2-Dichloropropane technical support document for proposed test rule.

(b) Economic impact analysis of final test rule for 1,2-dichloropropane.

(3) Communications consisting of:

(a) Written public comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials.

B. References

(1) Dow. The Dow Chemical Company. Letter to Mr. Steven D. Newburg-Rinn, Chief, Test Rules Development Branch (TS-778). Office of Toxic Substances, USEPA. Washington, DC. (1983)

(2) Dow. The Dow Chemical Company. Comments on 1,2-dichloropropane proposed test rule, **Federal Register** 49:899. Submitted to TSCA Public Information Office (TS-793). Office of Pesticides and Toxic Substances, USEPA. Washington, DC. Control Number OPTS-42043 (1984)

(3) Versar, Inc. Exposure Assessment for test rules development for 1,2-dichloropropane. Washington, DC: U.S. Environmental Protection Agency. Office of Toxic Substances. Contract No. 68-02-3968.

(4) EPA. Notice of final rule on propylene oxide testing requirements. **Federal Register** 50:48762. (November 27, 1985).

(5) USEPA. U.S. Environmental Protection Agency. Response to TRDB request on mutagenicity data review of 1,2-dichloropropane. Intra-agency memorandum to Katherine Hart, Existing Chemical Assessment Division, from the Toxic Effects Branch, Health and Environmental Review Division. May 13, 1986.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE-G004, 401 M Street SW., Washington, DC.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The regulation for this chemical substance is not major because it does not meet any of the criteria set forth in section 1(b) of the order. First, the annual costs of testing are expected to range from $93,914 to $122,296 over the expected market life of 1,2-dichloropropane. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on the producer's costs or users' prices for this chemical substance. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA certifies that this test rule will not have a significant impact on a substantial number of small business for the following reasons:

(1) There are no small manufacturers of 1,2-dichloropropane.

(2) Small processors are not expected to perform testing themselves, or to participate in the organization of the testing effort.

(3) Small processors will experience only minor costs if any in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements.

EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 2, 1986.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.1550 is added, to read as follows:

§ 799.1550 1,2-Dichloropropane.

(a) *Identification of test substance.* (1) 1,2-Dichloropropane (CAS No. 78–87–5) shall be tested in accordance with this section.

(2) 1,2-Dichloropropane of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* (1) All persons who manufacture or process 1,2-dichloropropane, from October 23, 1986 to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and shall conduct tests in accordance with Part 792 of this chapter and submit data as specified in paragraphs (a); (b) (1), (2), (3), and (4); (c) (1), (2), (3), and (4); and (d) of this section; Subpart A of this Part; and Parts 790 and 792 of this chapter for two-phase rulemaking.

(2) Persons subject to this section are not subject to the requirements of §§ 790.50(a) (2), (5), (6), and (b) (2) and (4), and 790.87 (a)(1)(ii) of this chapter.

(3) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of this section must submit plans for those tests no later than 45 days before the initiation of each of those tests.

(4) In addition to the requirements of § 790.87(a) (2) and (3) of this chapter, EPA will conditionally approve exemption applications for this rule if EPA has received a letter of intent to conduct the testing from which exemption is sought and EPA has adopted test standards and schedules in a final rule.

(c) *Health effects testing*—(1) *Neurotoxicity*—(i) *Required testing.* The following neurotoxicity testing shall be conducted for 1,2-dichloropropane:

(A) A neuropathology test.

(B) A motor activity test.

(C) A functional observational battery.

(ii) [Reserved]

(2) *Mutagenic effects*—(i) *Required testing.* A dominant lethal assay shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(3) *Developmental toxicity*—(i) *Required testing.* A developmental toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(4) *Reproductive effects*—(i) *Required testing.* A two-generation reproductive effects study shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(d) *Environmental effects testing*—(1) *Mysid acute toxicity*—(i) *Required testing.* A mysid shrimp acute toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(2) *Algal acute toxicity*—(i) *Required testing.* An algal acute toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(3) *Daphnid chronic toxicity*—(i) *Required testing.* A daphnid chronic toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(4) *Mysid shrimp chronic toxicity*—(i) *Required testing.* A mysid shrimp chronic toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved].

(Information collection requirements approved by the Office of Management and Budget under control number 2070–0033)

[FR Doc. 86–20280 Filed 9–8–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 73, and 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order amends broadcast regulations in 47 CFR Parts 73 and 74. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: September 9, 1986, except the amendment to § 74.402 for which an effective date is pending.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, (202) 632–5414.

SUPPLEMENTARY INFORMATION: The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this document may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) A number of FCC rules refer to the North American Regional Broadcasting Agreement (NARBA). Because of developments over the past several years, this Agreement is binding only as to the Bahamas and the Dominican Republic. As to the other signatories, Cuba denounced NARBA several years ago and Canada and the USA have entered into a new bilateral agreement superseding NARBA. A separate AM agreement exists between Mexico and the USA. Eventually it is anticipated that the rules will no longer need to refer to NARBA as it will be replaced by reference to the Region 2 AM Agreement reached in Rio de Janero in 1981 or to applicable bilateral/multilateral agreements. In the meantime, the rules

will be amended to reflect the changes which have already taken place. (See appendix items 2, 3, 4, 5, 6, and 12.)

(b) Pursuant to § 73.1670 broadcasters may "without further authority from the FCC, install and use *with the main antenna system* (emphasis added) one or more auxiliary transmitters . . . ".

The rule is silent on connecting the auxiliary transmitter *to an authorized auxiliary antenna*. That oversight is corrected here thus relieving licensees of filing a FCC Form 301 (340 for noncommercial educational stations) when using auxiliary transmitters with authorized auxiliary antennas. (See appendix item 7.)

(c) In July 1984, the Commission combined forms 302 (application for new commercial broadcast station license) and 341 (application for new noncommercial educational broadcast station license) into one license application, the revised Form 302, Application for New Broadcast Station License. References to Form 341 remain in the rules in §§ 73.1675, 73.3500, 73.3536 and 73.3537. Corrections are made herein. (See appendix items 8, 9, 10, and 11.)

(d) In the 2nd Report and Order in MMD 83–242, Elimination of Unnecessary Broadcast Regulation, § 73.1205, Fraudulent Billing Practices, was removed from the rules.

The policy pertaining to this rule was inadvertently allowed to remain in our listing of policies. Via this *Order*, this oversight is remedied and § 73.4115 Fraudulent Billing Practices, is removed from the listing of FCC policies. (See appendix item 13.)

(e) The opening words to § 74.402, paragraph (b)(3) are "VHS segments:" VHS is a typographical error which is corrected here to read VHF. (See appendix item 14.)

(f) Paragraph (a) of § 74.602, Frequency assignment, incorrectly cross references ". . . broadcast auxiliary stations as described in paragraph (i) of this section." The cross reference should read paragraph (g), and is corrected to state that herein. (See appendix item 15.)

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S C. 553(b)(3)(B).

4. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Accordingly, it is ordered, that pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth below, effective on the date of publication in the **Federal Register**, except the amendment to § 74.402 for which an effective date is pending.

List of Subjects

47 CFR Part 0

Government publications.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 73

Radio broadcasting.

47 CFR Part 74

Auxiliary services.

Rules Changes

1. The authority citation for Parts 0, 1, 73 and 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

PART 0—[AMENDED]

§ 0.432 [Removed]

2. 47 CFR 0.432, The NARBA List, is removed in its entirety.

§ 0.434 [Amended]

3. 47 CFR 0.434, Lists of authorized broadcast stations and pending broadcast applications, is amended by removing paragraph (a)(3).

PART 1—[AMENDED]

4. 47 CFR 1.201 is amended by revising the note following paragraph (b) to read as follows:

§ 1.201 Scope.

* * * * *

(b) * * *

Note.—For special provisions relating to AM broadcast station applications involving other North American countries see § 73.3570.

PART 73—[AMENDED]

§ 73.25 [Amended]

5. 47 CFR 73.25 is amended by removing Notes 1 and 3 following paragraph (a)(2)(iii) and redesignating Notes 2 and 4 as Notes 1 and 2.

§ 73.26 [Amended]

6. 47 CFR 73.26, Regional channels; Classes III–A and III–B stations, is amended by removing the note at the end of the section.

7. 47 CFR 73.1670 is amended by revising paragraph (b) to read as follows:

§ 73.1670 Auxiliary transmitters.

* * * * *

(b) Authorization to install an auxiliary transmitter for use with other than the main antenna or authorized auxiliary antenna must be obtained by filing an application for a construction permit on FCC form 301 (FCC form 340 for noncommercial educational stations).

* * * * *

8. 47 CFR 73.1675 is amended by revising paragraph (c) to read as follows:

§ 73.1675 Auxiliary antennas.

* * * * *

(c) Authority to use a formerly licensed main antenna without changes or modifications as an auxiliary antenna may be obtained by filing FCC Form 302.

§ 73.3500 [Amended]

9. 47 CFR 73.3500, Application and report forms, is amended by removing Form 341 and its title, Application for a New Noncommercial Educational Broadcast Station License; and by revising the title of Form 302 to read as follows:

Form No.	Title
302	Application for New Broadcast Station License.

10. 47 CFR 73.3536 is amended by revising paragraph (b)(1); removing paragraph (b)(5) and redesignating paragraphs (b) (6) and (7) as (b) (5) and (6):

§ 73.3536 Application for license to cover construction permit.

* * * * *

(b) * * *

(1) FCC Form 302, "Application for a New Broadcast Station License."

* * * * *

11. 47 CFR 73.3537 is revised to read as follows:

§ 73.3537 Application for license to use former main antenna as an auxiliary.

A licensee may apply on FCC Form 302 for authority to use a formerly licensed main antenna system as an auxiliary antenna.

12. 47 CFR 73.3570 is amended by revising paragraphs (a) and (d) to read

as follows and by removing Note 1 following paragraph (b)(3) and redesignating Notes 2 and 3 as Notes 1 and 2:

§ 73.3570 AM broadcast station applications involving other North American countries.

(a) *Applications involving conflicts with the U.S./Canadian Agreement, the U.S./Mexican Agreement or with countries which have ratified NARBA.* Except for applications falling within the provisions of paragraph (b) of this section, no application will be accepted for filing if authorization of the facilities requested would be inconsistent with the provisions of the U.S./Canadian Agreement, the North American Regional Broadcasting Agreement (NARBA), or the Agreement between the United States of America and the United Mexican States Concerning Radio Broadcasting in the Standard [AM] Broadcast Band (the U.S./Mexican Agreement). Any such application which has heretofore been accepted for filing or which is inadvertently accepted for filing will be dismissed.

* * * * *

(d) *Applications not involving conflict with the U.S./Canadian Agreement, NARBA or U.S./Mexican Agreement.* As a matter of general practice, applications which are consistent with the U.S./Canadian Agreement, NARBA and the U.S./Mexican Agreement and which would not involve objectionable interference to a duly notified Haitian assignment, will be considered and acted upon by the FCC in accordance with its established procedure. In particular cases, involving applications of this character but in which special international considerations require that a different procedure be followed, the applicant involved will be formally advised to this effect.

§ 73.4115 [Removed]

13. 47 CFR 73.4115, Fraudulent billing practices, is removed in its entirety.

PART 74—[AMENDED]

14. 47 CFR 74.402, Authorized frequencies, is amended by revising the introductory words of paragraph (b)(3) to read as follows:

§ 74.402 Authorized frequencies.

* * * * *

(b) * * *

(3) VHF segments: * * *

* * * * *

15. 47 CFR 74.602 is amended by revising paragraph (a) introductory text to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations. The band segments 17,700–18,580 and 19,260–19,700 MHz are available for broadcast auxiliary stations as described in paragraph (g) of this section. Additionally, the band 38.6–40.0 GHz is available for assignment without channel bandwidth limitation to TV pickup stations on a secondary basis to fixed stations.

Federal Communications Commission.

Roderick K. Porter,

Acting Chief, Mass Media Bureau.

[FR Doc. 86–19705 Filed 9–8–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–340; RM–5066]

Radio Broadcasting Services; Rockledge, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 274A to Rockledge, Florida, as the community's first local FM service, at the request of George Hachman and Jacqueline Thompson d/b/a Rockledge Community Broadcasters. With this action, this proceeding is terminated.

DATES: Effective October 6, 1986; the window period for filing applications will open on October 7, 1986, and close on November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–340, adopted August 22, 1986, and released August 29, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In paragraph (b) of § 73.202, the table of allotments is amended, by adding the entry for Rockledge, Florida, Channel 274A.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–20224 Filed 9–8–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 50946–6132]

Foreign Fishing; Poundage Fee Schedule

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA revises the 1986 poundage fee schedule for foreign vessels fishing in the fishery conservation zone (FCZ). This action revises the 1986 schedule to meet the requirements of Pub. L. 99–272 which among other things amended the Magnuson Fishery Conservation and Management Act (Magnuson Act). It establishes the fees certain fishing nations may be required to pay for their catch in the last quarter of calendar year 1986. This rule will ensure that the appropriate fees required by the Magnuson Act are returned to the general fund of the Treasury of the United States.

EFFECTIVE DATE: October 1, 1986.

ADDRESS: Send written requests for a copy of RIR on 1986 Foreign Fees to Fees, Permits, and Regulations Division. F/M12, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202–673–5315.

SUPPLEMENTARY INFORMATION: On January 3, 1986, NOAA published a final rule at 51 FR 202 which implemented the schedule of foreign fishing fees for 1986. That rule followed consideration of all comments received on a proposed rule published on October 11, 1985, at 50 FR 41533.

On April 7, 1986, the President signed into law Pub. L. 99–272, a budget reconciliation bill, which among other things amended section 204(b)(10) of the Magnuson Act. This amendment requires that any foreign nation

receiving an allocation of fish in the FCZ must pay fees at a higher level during the next fiscal year if the Secretary of Commerce finds that the foreign nation—

(i) Is harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary; or

(ii) Is failing to take sufficient action to benefit the conservation and development of United States fisheries.

NOAA is considering procedures for assessing country performance against these criteria. The procedures will be the basis for the Secretary's findings. These procedures, however, are not the subject of this final rule; this rule is only to establish the level at which the higher fees will be assessed on a nation's catch if that nation meets either one or both of the criteria.

Section 204(b)(10), as amended by Pub. L. 99–272, specifies that the higher fees will be determined to be "at least an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act during that fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic vessels within such zone during such preceding year."

NOAA has determined that the statutory text is clear. Higher fees will be determined by a ratio which does not consider the U.S. catch "within * * * territorial waters", the phrase contained in paragraph (B) to determine the fees for the catches of nations whose actions do not meet the criteria for higher fees. Since the 1984 fishery statistics used to establish the 1986 fee schedule, and used herein, were subject to notice and comment at 50 FR 41533, NOAA is taking this action as a final rule without further notice and comments.

In order to calculate the higher fee, NOAA has utilized Table 2 as published in 50 FR 41533, and removed the U.S. catch in territorial waters to calculate the new table, Table 2a, which follows:

TABLE 2a.—ESTIMATE OF RATIO OF FOREIGN CATCH, 1984

[Excluding inside 3 miles and all International Catches]

	Metric tons
Total U.S. reported catch [1]	3,761,282
Exclusions:	
International Waters (inc. Tunas)	261,242
Tunas (3–200 miles)	15,403
All catch inside 3 miles [2]	2,157,116
Total	2,433,761

TABLE 2a.—ESTIMATE OF RATIO OF FOREIGN CATCH, 1984—Continued

[Excluding inside 3 miles and all International Catches]

	Metric tons
U.S. commercial catch in Fishery Conservation Zone (FCZ)	1,327,521
Correction for mollusks [3]	634,622
Recreational catch [4]	[5] 91,200
Total U.S. catch, FCZ	2,053,343
Foreign catch, FCZ [6]	1,353,319
Total catch, FCZ	3,406,662

[1] This figure and all following figures for U.S. commercial catch from pages 8–11, "Fisheries of the United States, 1984."

[2] Except for Florida (West Coast), Texas and Puerto Rico which are extended to 9 miles. Also any internal waters.

[3] Addition of mollusk shells. U.S. statistics for internal use include only edible portions of mollusks, but international standard is whole animal.

[4] Based on Atlantic, Gulf, Pacific 1984 data, Western Pacific 1981 data, and Caribbean 1979 data. Includes catch types A and B1, assumes average weight of B1 is similar to A.

[5] Sportfish figures per Mark Holliday (Recreational Program).

[6] From page 22, "Fisheries of the United States, 1984."

NOTE.—Ratio of foreign catch to total catch is 39.7 percent.

The data and computational results shown in Table 2a indicate that the higher level fee target is to be 39.7 percent of the $222.812 million in total Magnuson Act costs for FY85. (Decimals in subsequent computations are rounded to the nearest tenth and tenths places may not add.) Total FY85 Magnuson Act costs were listed in Table 1 of the proposed rule (50 FR 41533) and adopted as the final costs in the final rule at 51 FR 202. The hypothetical fee collection target for calendar year 1986, based on a 39.7 percent foreign catch ratio and an assumption that all countries allocated fish would be found to meet the criteria, is $88.5 million, versus the existing target of $49.7 million.

Two hundred thousand dollars of the existing target are scheduled to be recovered from foreign fishing application fees. These fees are based on the administrative costs of processing applications. Since NOAA has not experienced higher administrative costs for processing applications in 1986, the additional fees would be recovered solely from the fees assessed for foreign catches of allocated fish and no change is made in the current permit application fee of $167.00/application. Thus, the *additional* fees which should be collected in 1986 if all countries met one or both criteria are $38.9 million ($88.5 million–$49.7 million), and would be derived solely from increased poundage fees.

Foreign poundage fees are a uniform fraction of the exvessel value of each species. This fraction is determined by the ratio of the costs to be recovered to the value of the foreign estimated catch during the calendar year of the fee schedule. Taking into account the reduction in the Atlantic mackerel exvessel value made in the final rule (51 FR 202), the value of the 1986 estimated foreign catch is $136.951 million. The standard fee assessment rate adopted at 51 FR 202 was 35.6 percent of the exvessel value of each species; the higher fee assessment rate as determined by this rule would be 63.6 percent of the exvessel value ($88.314 ÷ $138.951).

Pub. L. 99–272 requires that any additional fees collected as a result of the criteria be deposited in the general fund of the U.S. Treasury rather than the fisheries loan fund. NOAA has elected to collect such additional fees as an incremental amount rather than publish a separate fee table based on fees assessed at 63.6 percent of the exvessel values. In practice, NOAA will bill countries meeting one or both of the criteria at the lower fee rate, but add an incremental amount as a percentage of the total fee bill. The amount of 78.6 percent (or 38.8/49.5×100) of the lower fees for the tonnage caught will be added to each such bill and identified as the amount to be paid to the general fund of the U.S. Treasury. Section 611.22 of the foreign fishing regulations is amended by this action to implement this fee provision of Pub. L. 99–272 in a new subparagraph (c).

Classification

NOAA prepared a draft regulatory impact review (RIR) that discussed the economic consequences and impacts of the proposed 1986 fee schedule and what alternatives were considered. Copies of the final RIR are available at the above address. Based on the RIR, the Administrator, NOAA, determined that the schedule proposed and later implemented at 51 FR 202 does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrated that the fee schedule complied with the requirements of section 2 of E.O. 12291. This rule does not change the earlier conclusions because higher fees will be applied only when a nation has met the specific criteria established by law. If all nations avoid unacceptable harvesting of U.S. origin salmon and take significant actions to benefit the conservation and development of U.S. fisheries, there will be no increase in fees in 1986. The final RIR is therefore not revised.

Notice of proposed rulemaking and an opportunity for public comment upon this rule are unnecessary under 5 U.S.C.553(b)(B) because: (1) The ratio which this rule applies is fixed by statute and thus cannot be varied in response to public comment, and (2) the numerical value of the ratio contained in

this rule was calculated using the relevant 1984 fisheries statistics which were also used in formulating the 1986 fee schedule (adopted in a notice and comment proceeding at 50 FR 41533) to which the ratio is applied by this rule. Also, this rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

The proposed fee schedule had no direct effects on the fishery resources in the FCZ. This fee schedule amendment is not expected to affect the harvesting of the available total allowable level of foreign fishing (TALFF) because the incremental fees can be avoided by appropriate action by foreign fishing vessels and their flag nations. The environmental effects of harvesting the TALFF are described for each fishery management plan and no further environmental assessment is necessary.

A 30-day delay in implementation is required by the Administrative Procedure Act. This action partially waives that requirement, but provides a cooling off period because the revised fee schedule will not be made effective until October 1, 1986.

This final rule has no information collection provisions for purposes of the Paperwork Reduction Act. 44 U.S.C. 3501 et seq.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: September 4, 1986.

Carmen J. Blondin

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons above, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 971 et seq., 22 U.S.C. 1971 et seq. and 16 U.S.C. 1361 et seq.

§ 611.22 [Amended]

2. Section 611.22 is amended by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f) respectively and inserting a new paragraph (c) to read as follows:

§ 611.22 Fee schedule.

* * * * *

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(10)(C)). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1986 will be 78.6 percent of the total poundage fee in each quarter during which this provision applies.

* * * * *

[FR Doc. 86-20233 Filed 9-4-86; 12:33 pm]

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50 CFR Part 661

[Docket No. 60477-6077]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of commercial fishery closure and request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the commercial salmon fishery in the fishery conservation zone (FCZ) from Sisters Rocks to Mack Arch, Oregon, at midnight, August 29, 1986, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Directors of the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Game (CDFG) that the revised commercial fishery quota of 1,900 chinook salmon for the subarea will be reached by that time and date. The closure is necessary to conform to the preseason announcement of 1986 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Closure of the FCZ from Sisters Rocks to Mack Arch, Oregon, to commercial salmon fishing is effective at 2400 hours Pacific Daylight Time (PDT), August 29, 1986. Comments on this notice will be received until September 12, 1986.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the Office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, or E. Charles Fullerton at 213-514-6196.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1986 were made effective on April 30, 1986 (51 FR 15620, May 5, 1986). The 1986 commercial fishery for all salmon species except coho in the FCZ from Sisters Rocks to Mack Arch was scheduled to open the latest of August 7 or attainment of the commercial chinook quota for the area from Cape Blanco, Oregon, to Point Delgada, California, and close the earlier of September 15 or attainment of the subarea chinook quota of 7,500 fish. The commercial fishery from Cape Blanco to Point Delgada was closed effective midnight, August 26, 1986, when its quota of 75,000 chinook salmon was projected to have been reached.

Under the authority of the emergency rule which established inseason management provisions for the 1986 season (51 FR 18451, May 20, 1986; 51 FR 28717, August 11, 1986), the opening of the commercial fishery from Sisters Rocks to Mack Arch was delayed two days until 0001 hours PDT, August 29, 1986, to provide a break between the two fisheries for evaluating chinook landings in the earlier fishery (51 FR 30867, August 29, 1986). Based on the best available information through August 26, 1986, commercial landings in the earlier fishery from Cape Blanco to Point Delgada are estimated to be 85,600 chinook, exceeding its quota by 10,600 fish.

According to the 1986 preseason regulations, commercial and recreational fisheries between Cape Blanco, Oregon, and Point Delgada, California, are managed not to exceed 123,200 chinook salmon. On August 28, 1986, the Salmon Plan Development Team estimated that 27,000 chinook would be needed to complete the

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recreational season in the area, leaving 5,000 chinook in the recreational quota unharvested and available to offset the commercial overquota harvest.

An additional 5,600 chinook are needed to offset the commercial overquota harvest and, in accordance with preseason regulations, are subtracted from the Sisters Rocks to Mack Arch, Oregon, subarea commercial fishery. Thus, the revised subarea chinook quota is 1,900 fish. Based on the best available information, it is projected that the subarea quota could be reached in one day of fishing.

The Regional Director consulted with the Directors of ODFW and CDFG regarding the overquota harvest in the commercial fishery between Cape Blanco, Oregon, and Point Delgada, California; the revised commercial quota for the subarea between Sisters Rocks and Mack Arch, Oregon; and the need to close the commercial fishery when the revised subarea quota is projected to be reached. The ODFW Director confirmed that Oregon will close the commercial fishery in State waters adjacent to this area of the FCZ at 2400 hours PDT, August 29, 1986.

The Secretary therefore issues this notice closing the commercial fishery in the FCZ from Sisters Rocks to Mack Arch, Oregon, at 2400 hours PDT, August 29, 1986. This notice does not apply to other fisheries which may be operating in other areas.

Other Matters

This action is taken under the authority of 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: September 4, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20274 Filed 9-4-86; 3:38 pm]

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Proposed Rules

Federal Register
Vol. 51, No. 174
Tuesday, September 9, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children; Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend the WIC Program Regulations by inserting language describing in greater detail the formula through which the Department shall allocate program funds to State agencies. This proposed amendment would also entail a change in the formula itself. Because it is not possible to serve all eligible persons, a formula is needed that would place greater emphasis on the efficient use of funds, and on the targeting of available resources to serve persons most in need. In accordance with this amendment, which embodies the necessary formula, the Department would henceforth allocate funds to State agencies based not only on each State agency's current operating level, but also on its success reaching persons at greatest nutritional risk. The Department expects that the use of this formula would encourage State agencies to serve the maximum number of high risk persons within the limits of available funding.

DATE: Comments on the proposed rule must be received on or before October 9, 1986.

ADDRESS: Comments may be mailed to Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756-3746.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12297, and has been determined to be *not major*. The Department does not anticipate that this rule would have an impact on the economy of $100 million or more. This rule would not result in a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies, or geographic regions. Nor would this rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published June 24, 1983 (48 FR 29114)).

Background

Statutory Requirements

The Department's authority to prescribe a WIC funds allocation formula is found in section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786). Section 17(i) requires the Department to ". . . divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary." Section 17(g) authorizes the Secretary to use one-half of 1 percent of the funds appropriated each fiscal year for the WIC Program, not to exceed $3 million, ". . . for the purpose of evaluating program performance, evaluating health benefits, and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians and rural populations." Section 17(h)(1) then requires the Secretary to "make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency administrative costs." In summary, the authorizing legislation permits the Department to deduct "evaluation funds" from the total funding available, and requires that the balance be allocated to State agencies in a ratio of 80 percent for food and 20 percent for administration and program services.

Current Funding Formula

The formula currently in use emerged from extensive consultations between the Department and the State agencies, held during the latgter portion of Fiscal Year 1983. The State agencies generally agreed that the most equitable type of funds allocation would be one based on each State's relative number of potential WIC eligibles but that existing program operations should not be disrupted in order to achieve that objective. For example, a State agency that had already extended program benefits to a relatively large number of its potential eligibles should not be required to terminate paricipants solely to make funds available for program expansion in States which had not. These considerations led to the formulation of two basic funding principles: program stability and directed program growth. These principles form the basis for the two part formula currently in use.

1. Stability funding

In allocating funds to State agencies, first priority is given to maintaining each State agency's existing operating level to the extent that funds are available. Accordingly, every State agency receives an amount of founds for food costs based on the amount it received the prior year adjusted for anticipated inflation. This amount is reduced for any State agency that failed to use at least 95 percent of its prior year food funding

(stability and growth combined), as an inducement for State agencies to use all funds allocated to them (without overspending). The reduction is calculated by subtracting the State agency's actual, prior-year food cost from 95 percent of the food funds it received for the prior fiscal year. Funding for administration and program services costs is calculated as a percentage of the State agency's food funding level. Every State agency must be funded at the full stability level before any funds are allocated through the growth formula.

2. Growth funding

Once the stability funding requirements have been satisfied, any funds remaining available are allocated through the growth formula. This formula was designed to move the WIC Program toward the long-term objective of enabling each State agency to serve the same proportion of its eligible women, infants and children. Accordingly, the growth formula is based on each State's relative number of persons below 185 percent of the Poverty Income Guidelines, its infant mortality and its low-weight births. The Department uses the formula to determine what each State agency's proportionate share of the funds available for allocation would be if all such funds were allocated solely on the basis of these factors. A State agency qualifies for growth funding to the extent that (1) its share of the funds under the growth formula exceeds what is provided under the stability formula; and (2) funds are availabie for growth funding. As with the stability formula, each State agency receives an amount of food funds generated by the formula, plus a related amount of administrative funding.

As this discussion makes clear, the growth formula is based on the number of persons in each State who are *income eligible* for the WIC Program. The income-eligible population (i.e., the number of women, infants and children below 185 percent of the Poverty Income Guidelines) is derived from 1980 Census data. While more recent data on family incomes has been collected for some States, the 1980 Census data remains the only valid national, uniform dataset drawn from the universe of all States. Therefore, all operations discussed in this preamble in which the income-eligible population would be a factor would use the 1980 Census data.

Concerns About the Existing Formula

The Department first used the allocation formula described above to determine each State agency' Fiscal Year 1984 funding level, and has retained it in substantially the same from since that time. While the use of this formula has generally promoted the twin objectives of program stability and controlled program growth, it has not discriminated between those State agencies that have used their funds efficiently and effectively and those have not. All States have received stability grant increases based solely on an economic indicator (inflation). In addition, growth States received grant increases based on demographic data only. In neither case has consideration been given to how efficiently and effectively each State agency utilized the grant it received. There is one dimension of State efficiency and effectiveness that the Department considers most reflective of a State agency's management of its grant. This is the targeting of benefits to the highest risk eligibles.

Changes in the Formula

It is the Department's intent to initiate a revised formula when allocating Fiscal Year 1987 funds to State agencies. The revisions are intended to factor each State agency's performance in reaching the most high risk persons in an efficient fashion.

The Department does not contemplate developing a new formula for allocating administrative funds at this time. While the Department recognizes the need to allocate funds for administrative and program services costs on a basis that reflects efficiency in administrative expenditures, the allocation of funds for food is more immediate concern. As such, it must be addressed first. Therefore, the proposed formula described below pertains only to the allocation of food funds, and the existing formula for allocating administrative and program services funds would remain in place for Fiscal Year 1987. The Department will, however, consider revising the latter formula for Fiscal Year 1988. Consequently, the Department requests not only comments on the proposed food funds allocation formula, but also recommendations for future revisions to the forumla currently used to allocate administrative and program services funds. Commentators are requested to identify the points they passed as pertaining to the administrative funding formula or to the proposed food funding formula.

The revised formula would retain the stability funding concept, as the Department recognizes the importance of a certain guaranteed funding level to State planning and management efforts. However, stability would be redefined to exclude the annual adjustment for anticipated inflation. For Fiscal Year 1987, each State agency would receive stability food funding based on its unadjusted Fiscal Year 1986 food funding level, provided that sufficient funds are made available for allocation. In addition, the proposed formula would provide State agencies with an incentive to return unneded funds for reallocation. The Department would include 50 percent of the food funds returned by any State agency during the prior fiscal year in the calculation of that State agency's stability food funding level for the next fiscal year. Beyond these modifications to the stability funding process, all proposed formula revisions pertain to the allocation of residual funds (i.e., funds remaining available for allocation after every State agency has been funded at its full stability level).

The basis for allocating residual funds would be revised to reflect the Departmemt's concern that resources be used as efficiently and effectively as possible. Under the current arrangement, all residual funds are directed by the growth formula to certain States, with the long-term objective of giving every State agency the opportunity to serve the same proportion of its eligible population. By contrast, the revised formula would allocate the residual funds among *all* State agencies on the basis of their relative success in identifying and serving the highest risk person within their eligible populations. Every State agency would have the opportunity to "compete" for the available pool of residual funds.

In designing this funding formula the Department has had to address the question of what constitutes "relative success in identifying and serving the highest risk persons within their eligible populations." What measureable dimension of program performance can be used to determine "relative success," and hence be used as a factor in calculating States' shares in the residual funds? The Department believes that the participant priority system presented in § 246.7(d)(4) provides a sound framework for identifying eligibles who are at highest risk and are enrolled in the program. Under § 246.7(d)(4), local program operators assign applicants and participants to nutritional risk *priority groups* based on their assessment of each applicant's/participant's current nutritional status. The six mandatory *priority groups* recognized under that regulatory provision are described below:

Priority I. Pregnant women, breastfeeding women and infants at

nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the person's need for supplemental foods.

Priority II. Except those infants who qualify for Priority I, infants up to 6 months of age of WIC participants who participated during pregnancy, and infants up to 6 months of age born of women who were not WIC participants during pregnancy but whose medical records document that they were at nutritutional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions which demonstrate the person's need for supplemental foods.

Priority III. Children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for supplemental foods.

Priority IV. Pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

Priority V. Children at nutritional risk because of an adequate dietary pattern.

Priority VI. Postpartum women at nutritional risk.

In addition to prescribing the use of the six priority groups listed above, the regulations give State agencies several options in classifying their caseloads. Breastfeeding women and their infants may both be assigned the highest priority for which either qualifies; post-partum women deemed to be at high risk may be assigned to Priorities III, IV or V; and persons certified solely to prevent regression in their nutritional status may be classified in a separate Priority VII. States report semi-annually to the Food and Nutrition Service the number of persons enrolled by category (i.e., pregnant, breastfeeding, and postpartum women; infants; and children) within each of these priority levels. This is required under § 246.25(b). The States also report participation on a monthly basis. Participation is reported only under the categories of "women," "infants," and "children." The Department believes that it can gauge the "relative success" of each State in identifying and serving the highest risk persons within their eligible populations from this data.

How well targeted a State's program is may be determined by comparing the distribution of its caseload among the priority groups to the distribution of other States' caseloads. However, there are factors which make such a simple determination of how well each State targets its program problematic. These aer the relative amount of each State's grant to its income eligible population, and differences in how each State determines the existence of nutritional risk.

The first factor, the relative grant level, is a primary determinant of how many eligibles will be served. States are currently funded at levels which permit degrees of penetration into income eligible populations ranging from 16 percent to 76 percent, based on 1980 Census data.

This factor can best be explained by way of an example. Consider two States, each of which has 100,000 income eligibles. State A is funded at a level which would permit service to 16 percent of income eligibles. State B is funded at a level permitting 76 percent service. Their respective caseloads are 18,000 and 76,000.

Assume that infants at medical risk comprise 28 percent of all income eligibles. States A and B would each have 28,000 such eligibles. Logically State B, with 4 times as many participants, would be able to achieve a greater penetration into this category. It is unlikely, however, that State B would serve 4 times as high a proportion of infants. As funding increases, there is likely to be a diminishing rate of increase in service to this category, since it would become a saturated market for service. However, it is clear that expectations of service to targeted populations must be different due to the relative size of programs. Success is clearly a relative term. In advancing a funding formula to allocate funds to States on the basis of targeting success, the relative size of programs must be a consideration.

The second factor, differences in determination of nutritional risk, relates to the phenomenon of State agencies using different standards for determining placement in priority groups and the existence of nutritional risk. We must consider this lack of consistency in States' standards for determining the presence of nutrition-related medical conditions.

Having identified these factors as affecting assessment of States' relative success, we sought to identify data elements which would be least affected by these factors.

In response to the first consideration, the relative grant level, the Department believes that the number of persons in a State in a given priority group, compared to the number of such persons nationally, would serve as a fair gauge of how successfully each State was targeting that group. Using the absolute number of persons enrolled in that priority group would weight for relative grant level. One may logically expect to find a comparable frequency of persons *eligible for* Priority I in every State agency's potentially eligible population, despite variations in such State-specific factors as grant level, population or program size. While differential grant levels would figure prominently in generating different degrees of penetration into the total population of potential eligibles, the subset of that population that would qualify for Priority I in each State would be a constant. If, for example, State A and State B had 300,000 potential eligibles a piece but were funded to serve 100,000 and 50,000 persons, respectively, State A would in all probability show a higher absolute number of persons enrolled in Priority I. However, State B would not be disadvantaged by operation of the new formula. Even though it would be granted residual funds on the basis of a lower absolute number, the residual funds could be greater relative to State B's total grant than State A's residual funds might be relative to its total grant. A larger proportionate share of State B's caseload could be contributing to that State's earnings of residual funds because it would signify a higher level of service to Priority I persons relative to the total number of persons State B had been funded to serve. Therefore, use of the absolute Priority I figure would appropriately factor each State agency's performance relative to its grant level and related circumstances.

In response to the second consideration, differences in determination of nutritional risk, we sought to identify the data element which would be least impacted by this diversity and which would still reflect success in targeting benefits.

The General Accounting Office (GAO) report *Need to Foster Optimal Use of Resources in the Special Supplemental Food Program for Women, Infants and Children* (GAO/RECD–85–105, September 27, 1985) devoted an entire chapter to the relative merits of different classes of nutritional risk criteria. After interviewing officials involved in WIC at the Federal, State and local levels, the GAO reported finding "considerable agreement. . . that certain factors—particularly inadequate dietary pattern and risk of regressing to a previous 'risk' condition—are less reliable as indicators of nutritional risk." As we noted above, these criteria form the basis of eligibility for Priorities IV, V and VII, as well as for many postpartum women certified in Priority VI. Among the weaknesses cited were: Applicants'

VOL 51 ISS 174 SE 9 1986 UMI

difficulty recalling accurately and completely the types and quantities of foods they or their children had consumed in a prior time period; the lack of requisite training, specialized knowledge, and/or expert supervision of some of the WIC staff who interpret dietary information the applicants provide; and pressures on local agency officials to expand or maintain caseload levels through the use of inadequate diet as a basis for certification. The GAO also reported that "no agreed-upon standard exists against which to measure the adequacy of dietary intake. In addition, no individual dietary data collection method exists that can be shown to be consistently reliable, tolerant of untrained individual variability and changes therein, and usable by relatively untrained and inexperienced interviewers, including nonnutritionists." The GAO also recognized the lack of consensus in the application of hematological and anthropometric measurements and other medical criteria, used to certify applicants for Priorities I through III; however, it was pointed out that inadequate diet is a more subjective criterion whose application depends heavily upon the individual applicants' assertions. Given the foregoing discussion, the Department believes that the nature of the criteria used to assign participants to Priorities I through III limits the risk of bias from State by State variations in risk determination. Also, the Department plans to achieve even more consistency in determining placement in priority groups I, II and III through development and implementation of standard criteria for establishing the existence of nutrition-related medical conditions.

In addition, the *Study of WIC Participants and Program Characteristics* (USDA, 1986) reported that "about three-quarters (70 to 75 percent) of participants were in the first three priority levels. Almost all the pregnant women and infants were in the first two priority levels and most of the children were in Priority III." The high percentages of participants in these categories which the study authors inputed should be appropriately assigned to Priorities I through III also limits the effects of varying State risk criteria. Using enrollment in these priority groups as our measure of targeting success recognizes that women, infants and children who are deemed to be at nutritional risk on the basis of a nutrition-related medical condition are in the greatest need of the Program intervention. For these reasons and those discussed above, the Department has concluded that using the numbers of persons enrolled in the first three priority groups constitutes the best relative measure of States' success in targeting benefits.

Revised Formula for Allocating Residual Funds

Each State agency's enrollment in Priorities I, II and III would be weighted as described below, then expressed as a percentage of the national aggregate enrollment in these priority groups. This percentage would be applied to the pool of residual food funds to determine the dollar amount allocated to the State agency. Before this operation was performed, however, the enrollment of persons in Priorities I through III would be weighted by a factor that reflected the State agency's relative participation rate. This weighting is deemed appropriate because each State agency's ability to use it WIC grant efficiently is directly influenced by the extent to which participants keep their appointments to receive the food instruments prepared for them. The participation rate would be calculated by dividing the State agency's participation level by its enrollment, thus reflecting the State agency's success in serving the participants for whom it has obligated funds.

The following example illustrates how a State agency's Fiscal Year 1987 food funding level would be calculated under the formula discussed above. This illustration uses the following set of facts:

	State Agency	Nation
Total funds available for Fiscal Year 1987 food funding		$1,299,753,736
Fiscal Year 1986 food funding	$3,952,660	1,272,434,252
Residual funds available for Fiscal Year 1987 food funding		27,319,484
Persons enrolled in Priorities I, II and III	8,225	2,798,459
Participation	10,377	3,137,987
Weighted enrollment in Priorities I, II, and III		2,471,185
Total enrollment	10,577	3,553,569

Given the foregoing facts, the State agency's Fiscal Year 1987 food funding level would be calculated as follows:

Step a: Calculation of the adjustment for the State agency's participation rate:
$(10,377 \div 10,577) = 0.98109$

Step b: Calculation of the State agency's weighted enrollment in Priorities I, II and III:
$8,225 \times 0.98109 = 8,069$

Step c: Calculation of the State agency's share of the residual food funds:
$(8,069 \div 2,471,185) \times \$27,319,484 = \$89,204$

Step d: Calculation of the State agency's Fiscal Year 1987 food funding:
$\$3,952,660 + \$89,204 = \$4,041,864$

For commentors who are interested in reviewing the full formula database and mathmatical operations, an information package is available. Copies of the document will be forwarded to all State agencies administering the WIC Program and to all FNS regional offices. Copies will also be made available to other interested parties upon their request. Requests should be submitted in writing to the addressee identified at the opening of this preamble.

Other Considerations

Provision for a Formula Cap

There is one aspect of the existing growth formula that has relevance for the proposed formula: provision for a formula cap. Such a control is necessary to avoid allocating more funds to any State agency than that State agency can realistically expect to use. Accordingly, the amount generated for each State agency under the new formula would be subjected to the following test: The State agency's prior year food cost per person would be adjusted for anticipated inflation (as is currently done for stability funding); the adjusted food cost would be divided into the funding level generated by the new formula to obtain the number of persons supportable at the funding level; and the supportable caseload would be compared to the State agency's potentially income-eligible population (as estimated from 1980 Census data). The funding level for any State agency whose supportable caseload exceeded its potentially income-eligible population would be adjusted downward to a level commensurate with the latter figure. In thia way, no State agency would be held accountable under the 95 percent performance standard for failing to use funds it truly did not need.

Consultations With the State Agencies

Concerns have been expressed about the Department's intent to implement the new food funding formula in Fiscal Year 1987. It had been suggested that: (1) The Department has not obtained sufficient State agency input to proceed with the new formula; and (2) It would be unfair to proceed without first announcing a grace period, during which State agencies could improve their current positions with respect to Priorities I, II and III enrollment in anticipation of receiving funds on that basis.

The Department believes that there has already been long term communication with State agencies on

matters pertinent to the proposed food funding formula. In September 1984, all State agencies were requested to furnish data on the composition of their caseloads by participant category and priority group; some also submitted comments which reflected awareness that such data might eventually be used for funding purposes. The revised WIC Program Regulations, published February 13, 1985, not only refinded the priority system but also included a new requirement for semiannual reporting of the categorical and priority breakdown of State agencies' caseloads. In providing feeback on these developments, the State agencies drew the Department's attention to the wide range of criteria used from State to State in applying the priority system. The commentors correctly noted that data generated under varying criteria could not be validly compared. Accordingly, the Department encouraged the State WIC Directors to launch a program of reevaluating the nutritional risk criteria currently in use and moving them toward a greater measure of standardization. This effort was initiated in June 1985. The first official reports submitted under the new reporting requirement presented the composition of State agencies' caseloads as of October 1985. These events, taken as a whole, evidence an increased emphasis on the use of the priority system in Program management.

These events alone may have signalled to State agencies to anticipate the incorporation of the priority system into the funding process. However, the Department has also explicitly communicated this intent on a number of occasions. In March 1986, Associate FNS Administrator Sonia Crow announced to a meeting of the State WIC Directors that the Department had begun developing a funding formula based on service to particular priority groups. In May 1986, National WIC Director Patrick J. Clerkin delivered a presentation to the National Association of WIC Directors, in which he explained the Department's concerns about the existing funding formula, discussed the objectives the Department hoped to achieve by revising it, and outlined possible approaches to the problem then under consideration. Similar presentations were made to groups of State directors at regional meetings in Denver, Colorado; Atlanta, Georgia; and Dallas, Texas. These presentations precipitated extensive discussions with their audiences, which yielded valuable feedback to the Department.

As the result of these and other consultations, the Department has concluded that the interest of the WIC Program would best be served by a more systematic solicitation and analysis of imput from all State WIC Directors and other interested parties before the Department begins allocating funds on any basis other than the existing formula. In this way, the Department would not depart from a formula designed with systematic State participation until the replacement formula could meet that same standard. While this standard was achieved with respect to the existing formula by assembling a task force on which State officials were well represented, the Department believes it can be achieved equally well through the rulemaking process. Accordingly, the transition to the new formula will be made upon the effective date of a final rule promulgating it. Until that date, the Department intends to allocate funding using the existing formula.

Application of the Priority System

The Department would expect State agencies to adopt strategies for promoting the active recruitment of persons qualifying for Priorities I, II and III. One approach they could take would involve incorporating into their caseload management practices a procedure for periodically reassigning caseload slots among local agencies based on reviews of their service to such persons. Slots would be shifted from local agencies that had not demonstrated reasonable expectations of reaching additional highest risk persons to those that had. Such an approprach would provide an incentive for local agencies to seek out persons in their service areas that would qualify for these priority groups. State agencies need not, however, restrict their strategies to the management of caseload slots; their creative energies should be directed toward formulating innovative approaches to reaching the highest risk persons.

As the foregoing discussion makes clear, the proposed revision to the WIC funding formula would greatly enhance the importance of the priority system. The system would serve as a tool for reaching the persons at greatest nutritional risk in the populations served by all local agencies, rather than only those that had already reached their maximum authorized caseload levels. Directing active recruitment efforts toward the persons in the local population eligible for Priorities I, II and III would increase the volume of applications from such persons. The proposd rule would thus encourage State agencies to supplement the relatively passive waiting list system (prescribed by 7 CFR 246.7(d)(4)) with an active process of targeting, in order to direct Program benefits toward those most able to benefit from program intervention.

List of Subjects in 7 CFR Part 246

Food Assistance Programs, Food donations, Grant Programs—Social Programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public Assistance Programs, WIC, Women. Accordingly, it is proposed to amend 7 CFR Part 246 as follows:

PART 246—[AMENDED]

1. The authority citation for Part 246 continues to read as follows:

Authority: Sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599; sec. 815, Pub. L. 97–35, 95 Stat. 521.

2. In § 246.16, paragraphs (b) and (e) are revised to read as follows:

§ 246.16 Distribution of funds

* * * * *

(b) *Distribution of funds to State agencies.* (1) Funds made available to the Department for the Program in any fiscal year will be distributed by FNS on the basis of a funding formula which allocates funds to all State agencies for food costs and for administrative and program services costs. However, up to one-half of one percent of the sums appropriated for each fiscal year, not to exceed $3,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations. Each fiscal year, to the extent that funds are made available for allocation to State agencies, FNS shall allocate funds to each State agency in accordance with the following four-part formula:

(i) For food costs, the amount obtained by adding together all funds allocated to the State agency for food costs incurred in the preceding fiscal year, and subtracting therefrom 50 percent of any food funds recovered by FNS in the preceding fiscal year for reallocation under paragraph (e) of this section; *Provided, however,* that such amount shall be reduced for any State agency whose food costs for the preceding fiscal year did not equal or exceed 95 percent of the amount such State agency had been authorized to expend for such costs. Such reduction shall equal the difference between the State agency's preceding year food costs

and 95 percent of the amount the State agency had been authorized to expend for such costs.

(ii) For administrative and program services costs, the product obtained by applying, to the amount allocated to the State agency for food costs under paragraph (b)(1)(i) of this section, the lesser of (A) twenty-one (21) percent; or (B) the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year.

Funds returned by any State agency in the preceding fiscal year for reallocation under paragraph (e) of this section shall not be considered in the calculation of the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. FNS will allocate additional funds based on the individual needs of each State agency; *Provided, however,* that the aggregate amount allocated to all State agencies under this paragraph for administrative and program services costs shall not exceed twenty-five (25) percent of the aggregate amount allocated for food costs under paragraph (b)(1)(i) of this section.

(iii) Eighty (80) percent of any funds remaining after the allocations required by paragraphs (b)(1)(i) and (b)(1)(ii) of this section have been completed, shall be awarded as food funds based on the State agency's enrollment in Priorities I, II and III, adjusted by a factor that reflects the extent to which persons enrolled in the Program under the State agency's jurisdiction actually participate in the Program; *Provided, however;* that the sum of the amount allocated to any State agency for food costs under this paragraph and paragraph (b)(1)(i) of this section shall not exceed the amount required to serve all persons potentially income-eligible for the Program under the jurisdiction of such State agency.

(iv) Twenty (20) percent of any funds remaining after the allocations required by paragraphs (b)(1)(i) and (b)(1)(ii) of this section have been completed shall be awarded for administrative and program services costs. The amounts so awarded shall be based on a percentage of the funds awarded for food costs under paragraph (b)(1)(iii) of this section, in accordance with procedures to be determined by FNS.

(2) Each State agency's funds will be provided by means of a Letter of Credit unless another funding method is specified by FNS. State agencies shall use funds to cover those allowable and documented program costs, as defined in § 246.14, which are incurred by the State agency and participating local agencies within their jurisdictions.

* * * * *

(e) *Reallocation of Funds.* Any funds recovered under paragraph (d) of this section will be reallocated by FNS through application of the formulas set forth in paragraphs (b)(1)(iii) and (b)(1)(iv) of this section.

Dated: September 3, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86-20314 Filed 9-8-86; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket Nos. AO-267-A10 and AO-254-A9]

Limes Grown in Florida, Avocados Grown in South Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules and referendum orders.

SUMMARY: This decision would amend the Federal marketing agreements and orders for limes grown in Florida and avocados grown in South Florida. Florida lime and avocado producers will be given the opportunity to vote in separate referenda to determine if they favor the proposed changes in the respective marketing orders. The proposed amendments would: (1) Broaden handler representation on the Florida Lime Administrative Committee and the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts within the respective production area; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1990 to ascertain if producers favor continuation of the lime and avocado marketing orders; and (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels.

DATE: The voting period for purposes of the referenda herein ordered is September 22 through October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued December 24, 1984, and published in the December 31, 1984, issue of the **Federal Register** (49 FR 50731). Notice of Recommended Decision issued September 12, 1985, and published in the September 17, 1985, issue of the **Federal Register** (50 FR 37869).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

The Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) As stated in the notice of hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small business for purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in this decision.

During the fiscal year ending April 30, 1984, 26 handlers shipped limes under M.O. 911 for fresh market with an estimated crop value of $16.0 million, and 34 handlers shipped avocados under M.O. 915 for fresh market with an estimated crop value of $12.4 million. The average value per handler for limes and avocados was $615,385 and $364,706, respectively. Given the applicable definition of a small business concern, almost all of the handlers of limes and avocados would fall within that definition. Thus, few handlers can be considered large or predominant in a relative or absolute sense.

The Agricultural Marketing Agreement Act of 1937, as amended, requires the application of uniform rules to regulated handlers. Since handlers covered under M.O.'s 911 and 915 are predominantly small businesses, the orders themselves are tailored to the size and nature of small businesses.

The testimony presented at the hearing indicated that the proposal to broaden handler representation on the lime and avocado committees would benefit smaller handlers as it would afford them a greater opportunity to serve on these committees and participate in decision making. Adding a requirement to each order that a referendum be conducted every six years beginning in 1990 to ascertain if the orders continue to have the support of growers, would benefit lime and avocado growers, most of whom are small businesses, by providing such persons an opportunity to periodically evaluate and express support or

disapproval for the orders. The testimony indicated that adding authority to the order to require the dyeing of undersized limes would benefit lime growers and handlers, as such requirements would tend to prevent the sale of small, immature, unpalatable limes which bring low returns and fail to provide consumer satisfaction, thus damaging the market for good quality fruit. Such requirements should assure marketing of acceptable sizes of limes which would benefit all levels of the marketing chain.

Preliminary Statement

On January 15, 1985, a public hearing was held on proposed further amendment of the marketing agreements, as amended, and Order Nos. 911 and 915, as amended (7 CFR Parts 911 and 915). The hearing was held in Homestead, Florida, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereafter referred to as the "act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Notice of this hearing was published in the **Federal Register** on December 31, 1984, (49 FR 50731).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on September 12, 1985, filed with the Hearing Clerk, U.S. Department of Agriculture, the Recommended Decision containing the notice of the opportunity to file written exceptions thereto. That Recommended Decision was published in the **Federal Register** on September 17, 1985 (50 FR 37669). No exceptions were filed. However, material issue 2, as contained in the Recommended Decision; required some clarification as to the basis for producer approval in referenda. Accordingly, the findings and conclusions for material issue 2, and §§ 911.64 and 915.64 are revised. In addition a revision to the language contained in § 911.48 regarding the marketing of undersized limes is made for clarity. A new paragraph is added to the end of the findings and conclusions of material issue 3 and § 911.48 is revised. In addition, miscellaneous non-substantive changes are made to the findings and conclusions for clarity.

The material issues, findings and conclusions, rulings, and general findings of the Recommended Decision set forth in the September 17, 1985, issue of the **Federal Register** (50 FR 37669), revised and supplemented as specified above, are approved and adopted and are hereby set forth in full herein.

Material Issues

The material issues of record addressed in this decision are to: (1) Broaden handler representation on the Florida Lime Administrative Committee and the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts within the respective production areas; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1990 to ascertain if producers favor continuation of the lime and avocado marketing orders; (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels; and (4) make conforming changes.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on the evidence adduced at the hearing and record thereof, are as follows:

(1) Sections 911.20 and 915.20 of the lime and avocado marketing orders should be amended to provide that no handler may be represented on the Florida Lime Administrative Committee (FLAC) and the Avocado Administrative Committee (AAC) by more than one handler member and alternate from each district within the respective production area. Presently, there are two districts for both limes and avocados. The hearing record indicates that two problems exist as to handler representation on the respective committees. Under the present order provisions, a single handler or its employees may occupy more than one member and alternate position on each committee. The order language also permits handlers, who own a number of packinghouses or entities, to have a member and alternate from each packinghouse or entity.

Instances have recently occurred where more than one handler member and alternate on such committees have been affiliated with the same handler entity. For example, in the 1984–85 season, four handler members of AAC and one handler member and three alternates on the FLAC were all employees of one handler. This was made possible because, in voting for nominees to serve as handler members on these committees, the votes of handlers are weighted by the volume of limes or avocados, as the case may be, shipped by the handler during the preceding calendar year. At the present time, two handlers are predominant in the handling of fresh limes and avocados grown in Florida. The current provision of the orders which allows for weighting of votes of handlers in the nomination process is to assure that the interests of the major handlers are represented in committee recommendations and deliberations. However, it was not the intent of the orders that a handler or handler organization could dominate representation on these committees by virtue of the fact that it controls a majority of the fresh shipments of limes and avocados handled. Providing that no handler may be represented on a committee by more than one handler member and alternate for each district would rectify this situation. The amendment should also broaden handler representation on the committees and permit more handlers to participate in the decision making process.

It is not uncommon in the Florida lime and avocado industries for a single handler organization to own, have substantial interest in, or control a number of packinghouses. Thus, a limitation on the number of handler members representing a single packinghouse would not necessarily accomplish the purpose of the proposed amendments. It would therefore be appropriate and consistent with record evidence to have such limitation apply to each handler organization, regardless of the number of packinghouses or entities owned, controlled by, or in which such organization has a substantial interest. Information available to the committees from reports filed by handlers is considered to be adequate to determine the officers and employees of corporations and other business units owned or controlled by these handlers.

The production areas for limes and avocados are divided into two districts for purposes of representation on these committees. The orders currently provide that no handler shall participate in the election of nominees in more than one district in any one fiscal year. The proponents testified that a handler should be allowed to be represented on the committees by one handler member and alternate in each district. In adopting the amendments regarding handler representation, which would assure that handlers who have interests in each of the producing districts are adequately represented in each district, it also would be appropriate that the orders should be amended to remove, as necessary, the current restriction on participation in election of nominees in more than one district.

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At the present time, there are a sufficient number of handlers to fill all the handler member and alternate positions on each committee. However, the situation may change in the future and, though not likely, it is possible that the number of handlers could decline to the point where there is an insufficient number of handlers to fill all handler member positions. To provide for that contingency, the orders should provide for waiving of the requirement by the Secretary, that no handler or handler organization may be represented on the committee by more than one handler member and alternate from each district if an insufficient number of handlers are available to fill all handler member positions on these committees.

(2) The orders should be amended, as hereinafter set forth, to require referenda to be held relative to continuance of the orders every six years beginning in 1990.

Each order presently provides that the Secretary shall terminate the program if a majority of all producers favor termination. In addition, the act also requires that such majority has to produce more than 50 percent of the commodity for market. Since fewer than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support for termination of an order. In order to provide a basis for determining whether producers favor continuance of the orders, a new paragraph (d) should be added to §§ 911.64 and 915.64 to authorize continuance referenda. The results of such referenda should be based upon the same percentages set forth in section 8(c)(8) of the act with respect to producer approval of the issuance of a marketing agreement and order. This would require approval by two-thirds of the producers voting in the referendum or by producers who have produced two-thirds of the volume of production voted during a representative period. This is an appropriate basis for ascertaining whether lime and avocado growers favor continuation of the programs. In the event that the requisite majority of producers, by number or volume of production represented in the referenda, do not approve continuation of the orders, the Secretary should consider termination of the orders but would not be required to terminate. In evaluating the merits of termination, the Secretary should not only consider the results of the continuance referendum but also should consider all other relevant information concerning the operation of the orders and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the orders would tend to effectuate the declared policy of the act. In this regard, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) of the act requires the Secretary to terminate the orders whenever the Secretary finds that a majority of all producers favor termination, and such majority produced more than 50 percent of the commodity for market. To be effective, termination of the orders should be announced on or before March 15 of the then current fiscal year. This date precedes the beginning of each committee's operation for a new fiscal year and is considered to be appropriate under the circumstances. Current paragraph (d) of both §§ 911.64 and 915.64 should be redesignated as paragraph (e).

These amendments to the orders would provide lime and avocado producers with the opportunity periodically to indicate their support for or rejection of the orders, and the periodic continuance referenda provided for would help to ensure that the programs continue to be accountable to the producers. Such authority would also obligate producers to periodically evaluate their programs and so involve them more closely in their operation. These referenda will enable the industries to determine the effectiveness of marketing orders. Currently it is felt that there is strong support for the orders, but, as the market may change in the next six years, a vote on continuance would show if support with the industries for the orders still exists. Holding such referenda is in keeping with the Department's guidelines for marketing orders.

There were two objections expressed at the hearing to the proposed amendment of §§ 911.64 and 915.64. Both objections were aimed at the six-year interval between the referenda. Since it takes an avocado tree 12 to 15 years to fully mature, some opponents felt six years is too short of a time period to protect their capital investments. Testimony revealed that some producers favor a longer time period between referenda to better reflect the time required for avocados to reach maturity. They also felt that current provisions in the orders allow the industries to ask for referenda if the need arises.

Based on evidence and testimony submitted at the hearing relative to periodic referenda, the orders should be amended to include periodic referenda every six years. A period of time greater than a six-year period is too long an interval between referenda. The market for such commodities may change significantly in a relatively brief period of time. Adopting a time period between referenda corresponding to the maturity cycle for trees would not necessarily provide the protection for investments suggested by the testimony, since new plantings occur every year. A period of six years between referenda is reasonable and is more consistent with the objectives of such referenda. Thus, it is appropriate that each order should be amended to provide that a continuance referendum be held every six years beginning in 1990.

When the avocado and lime orders were promulgated in 1954 and 1955, respectively, each order specifically provided for a continuance referendum among producers and a poll among handlers to be held two years after the programs began. The provisions in the avocado order required a producer referendum and handler poll as soon as practicable after March 1, 1956, and the lime order required a producer referendum and handler poll as soon as practicable after March 1, 1957. Such provisions are now obsolete and should be removed from §§ 911.64 and 915.64. Miscellaneous nonsubstantive changes are also made to these sections for clarity.

(3) Section 911.48 of the lime marketing order should be amended to add authority to require that handlers mark undersized limes with a food dye approved by the Food and Drug Administration (FDA) to prevent such fruit from entering regulated marketing channels.

The record indicates that there have been instances of shipments of fresh limes which have not met the minimum size regulations in effect. This has generally occurred at certain times during the year, particularly in the winter and spring months, when prices for limes are relatively high. Undersized limes tend to have very low juice content and may be immature and unsuitable for fresh consumption. The presence of undersized limes in the marketplace has a price depressing effect on shipments of better quality larger sized limes and weakens consumer confidence in the overall quality of limes.

The marketing order authorizes establishment of minimum grade and size regulations to promote orderly marketing conditions for fresh shipments of limes. Those limes failing to meet such minimum requirements are customarily processed into limeade, lime oil, and other lime products. The marketing order also requires Federal or

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Federal-State inspection and certification that limes for the fresh market meet the applicable grade and size regulations in effect prior to shipment. Minimum grade and size regulations are currently in effect for Florida lime shipments.

Undersized limes are separated from marketable size limes during the packing process prior to being offered for inspection and certification. Undersized limes are customarily held for later processing into juice or conversion to other uses. The record indicates, however, that in some instances undersized limes are placed into fresh market channels contrary to marketing order requirements.

Proponents testified that marking undersized limes with an approved food dye could inhibit movement of such limes to fresh market destinations because it would be readily apparent to inspectors, handlers, and prospective buyers that any such limes so marked did not meet minimum requirements. Such marking of limes should take place at the handler's packinghouse, and only undersized limes should be so marked.

The record indicates that procedures for marking undersized limes with an FDA-approved food dye have been developed, and equipment for marking such limes is commercially available. Two methods of marking limes were discussed. One involves marking the limes with cord wicks as the fruit moves along a conveyor belt, and another involves rolling the fruit over a dye pad. However, the record also indicates that handlers should be able to select either of these methods or any other committee-approved method to mark undersized limes. Any such approval would be contingent on use of an FDA-approved food dye. It is anticipated that any method which may be used in marking the fruit can be integrated into handlers' existing packing lines without any appreciable difficulty. Disposition of undersized limes which are marked with dye into any of the outlets which customarily use such fruit would not be adversely affected by the use of such dye.

One major handler of limes conducted a research project in 1984, under the auspices of the Florida Lime Administrative Committee, to determine the feasibility of marking undersized limes with a food dye meeting FDA criteria. The results of the project were reported to the committee at the FLAC meeting on August 8, 1984. The results of the project indicate that marking such limes is practical and could be carried out at minimal cost.

The Dade County Supervisor of the State and Federal Inspection Service testified that that agency does not anticipate any problems with the proposal to dye undersized limes.

One witness commented that the lime dyeing requirements may be needed throughout the lime shipping season to accomplish the stated purposes. Another witness indicated that the diversion of undersized limes to fresh market tends to occur only during part of the season and any marking requirements should be made effective only during designated periods. In order that such marking requirements may be implemented when needed, the Secretary, upon the recommendations submitted by the committee or from other available information, should prescribe the periods when limes must be marked with an approved food dye and the terms and conditions under which such marking shall be performed.

Miscellaneous changes are being made to § 911.48 for clarity. Such changes would more accurately reflect the purposes for which the amendment to the order would be made.

(4) A proposal in the notice of hearing by the Department was that consideration be given to making such other changes in the orders as may be necessary to make the orders conform to any amendments that may result from this proceeding This proposal was supported at the hearing without opposition, and changes to §§ 911.22 and 915.22 as discussed in material issue 1 are incorporated into the order.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed February 4, 1985, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based on the evidence received at the hearing.

No briefs were filed.

Rulings on Exceptions

The Notice of Recommended Decision was published in the September 17, 1985, issue of the **Federal Register** (50 FR 37669). The final date for interested persons to file written exceptions was October 17, 1985.

No exceptions were filed.

Marketing Agreements and Orders

Annexed hereto and made a part hereof are four documents entitled, respectively, "Marketing Agreement, as Further Amended, Regulating the Handling of Limes Grown in Florida," "Order Amending the Order, as Amended, Regulating the Handling of Limes Grown in Florida," "Marketing Agreement, as Further Amended, Regulating the Handling of Avocados Grown in South Florida," and "Order Amending the Order, as Amended, Regulating the Handling of Avocados Grown in South Florida." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire decision, except the annexed marketing agreements, be published in the **Federal Register**. The regulatory provisions of the marketing agreements are identical with those contained in the orders as hereby proposed to be amended by the annexed orders which are published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted for each marketing order in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the issuance of the annexed orders as amended and as hereby proposed to be further amended, regulating the handling of limes and avocados grown in Florida, are approved or favored by the respective producers as defined under the terms of the orders, who during the representative period were engaged in the production of limes or avocados in the aforesaid production areas. The representative period for each such referendum is hereby determined to be April 1, 1985, through March 31, 1986.

The agents of the Secretary to conduct such referenda are hereby designated to be John R. Toth, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 9, Lakeland, Florida 33802; and Kenneth G. Johnson and Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250.

List of Subjects in 7 CFR Parts 911 and 915

Marketing Agreements and Orders, Limes, and Avocados.

Signed at Washington, DC, on September 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order as Amended, Regulating the Handling of Limes Grown in Florida[1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of

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and in addition to the findings and determinations made in connection with the issuance of the order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held in Homestead, Florida, on January 15, 1985, upon proposed amendments to the marketing agreement, as amended, and to Order No. 911, as amended, (7 CFR Part 911), regulating the handling of limes grown in Florida.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of limes grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area that is practicable consistent with carrying out the declared policy of the act;

(4) There are no differences in the production and marketing of limes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of limes grown in the designated production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date thereof, all handling of limes grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Deputy Administrator on September 12, 1985, and published in the **Federal Register** on September 17, 1985 (50 FR 37669), shall be and are the terms and provisions of this order amending the order, except for the revisions in § 911.64 specified in this decision.

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.20 is amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 911.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided,* That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

3. Section 911.22 is amended by revising paragraph (b)(3) to read as follows:

§ 911.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler is entitled to cast only one vote for each nominee to be elected in the district in which such handler handles limes. Each vote shall be weighted by the volume of limes shipped by such handler during the immediately preceding twelve-month period, January through December.

4. Section 911.48 is amended by adding a proviso at the end of paragraph (a)(1) to read as follows:

§ 911.48. Issuance of regulations.

(a) * * *

(1) * * * *Provided,* That such regulations may require that limes not meeting minimum size requirements established under this section be marked with a Food and Drug Administration approved food dye as a necessary and incidental safeguard to prevent such limes from entering fresh marketing channels for regulated limes.

* * * * *

5. Section 911.64 is amended by revising paragraph (c), redesignating current paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 911.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the producers: *Provided,* That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the limes produced within the production area: *And provided further,* That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, and at such time every sixth year thereafter, to ascertain whether continuance of this part is favored by lime producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of limes in the production area: *Provided,* That termination of this part shall be effective only if announced on or before March 15 of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

Order Amending the Order as Amended, Regulating the Handling of Avocados Grown in South Florida[1]

Findings and determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict

practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held in Homestead, Florida, on January 15, 1985, upon proposed amendments to the marketing agreement, as amended, and to Order No. 915, as amended, (7 CFR Part 915), regulating the handling of avocados grown in South Florida.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of avocados grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area that is practicable consistent with carrying out the declared policy of the act;

(4) The said order, as amended and as hereby further amended, prescribes. so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to differences in the production and marketing of avocados; and

(5) All handling of avocados grown in the designated production area is in the current of interstate or foreign commerce or directly burdens, obstructs. or affects such commerce.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date thereof, all handling of avocados grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Deputy Administrator on September 12, 1985, and published in the **Federal Register** on September 17, 1985 (50 FR 37669), shall be and are the terms and provisions of this order amending the order, except for the revisions in § 915.64 specified in this decision.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

6. The authority citation for 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

7. Section 915.20 is amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 915.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided,* That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

8. Section 915.22 is amended by revising paragraph (b)(3) to read as follows:.

§ 915.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which such handler handles avocados. Each vote shall be weighted by the volume of avocados shipped by such handler during the immediately preceding twelve-month period, January through December.

9. Section 915.64 is amended by revising paragraph (c), redesignating current paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 915.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the producers: *Provided,* That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the avocados produced within the production area: *And provided further,* That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, and at such time every sixth year thereafter, to ascertain whether continuance of this part is favored by avocado producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of avocados in the production area: *Provided,* That termination of this part shall be effective only if announced on or before March 15 of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[FR Doc. 86-20161 Filed 9-8-86; 8:45 am]
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7 CFR Part 981

Handling of Almonds Grown in California; Change in Administrative Rules and Regulations Governing Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to change the quality control provisions of the administrative rules and regulations established under the Federal marketing order for California almonds to increase the tolerance for inedible almonds from zero percent to three percent. The change would allow more almonds to be shipped in view of a projected short almond crop while maintaining acceptable quality standards.

DATE: Comments must be received by September 19, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS,

VOL 51 ISS 174 SE 9 1986 UMI

USDA, Washington, DC 20250; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder are unique in that they are brought. about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 70 handlers of California almonds under the marketing order for almonds grown in California will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. This proposal would increase the tolerance for inedible almonds from zero percent to three percent. An inedible almond is an almond kernel with any defect scored as serious damage or damage due to mold, gum, shrivel, or brown spot as defined in the U.S. Standards for Grades of Shelled Almonds or which has embedded dirt or other foreign material not easily removed by washing. This action would benefit both producers and consumers by allowing more almonds to be shipped in view of a projected short almond crop while maintaining acceptable quality standards not only for the current crop but also for future crop years.

It has been determined that this proposal should be published with less than a 30-day comment period. The change proposed by this action should apply to 1986 crop almonds, which handlers are currently receiving and processing. Therefore, handlers need to know as soon as possible what the basis will be for determining their inedible disposition obligation so that they can plan their processing and marketing operations accordingly.

This proposal would revise § 981.442 of Subpart—Administrative Rules and Regulations issued pursuant to the marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order". Section 981.442 is issued pursuant to § 981.42(a) of the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal is based on a recommendation of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order, and other information.

Section 981.42(a) of the almond order provides that each handler shall cause to be determined through the inspection agency and at handler expense the percent of inedible kernels in each variety received and shall report the determination to the Board. Section 981.442(a)(4) of the administrative rules and regulations provides that the weight of inedible kernels reported to the Board in excess of zero percent for each variety shall constitute a handler's disposition obligation. This weight must be accumulated by the handler during processing and delivered to the Board or Board-accepted crushers, feed manufacturers, feeders, or dealers in nut wastes.

It is proposed to revise § 981.442(a)(4) so that the quantity of inedible kernels in each variety in excess of three percent, instead of the current zero percent, shall constitute a handler's disposition obligation. The Board believes that this change would maintain acceptable quality standards while allowing more almonds to be shipped in view of a projected short almond crop.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds.

PART 981—[AMENDED]

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. It is proposed to revise § 981.442 Quality control by changing, in paragraph (a)(4), "zero percent" to "three percent" to read as follows:

§ 981.442 Quality control.

(a) * * *

(4) The weight of inedible kernels in excess of three percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. * * *

* * * * * *

Dated: September 2, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-20237 Filed 9-8-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1139

Milk in the Lake Mead Marketing Area; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed suspension of rules.

SUMMARY: This action terminates a proceeding that was initiated to consider a proposal to continue the suspension of certain diversion provisions of the Lake Mead Federal milk order. The suspension was requested by Lake Mead Cooperative Association, which supplies some of the market's fluid milk needs and handles most of the market's reserve supplies

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior Documents in this proceeding:

Notice of Hearing: Issued February 6, 1986; published February 11, 1986 (51 FR 5070).

Notice of Proposed Suspension: Issued July 29, 1986; published August 1, 1986 (51 FR 27555).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on August 1, 1986 (51 FR 27555) concerning a proposed suspension of certain diversion provisions of the Lake Mead Federal milk order. Interested persons were invited to comment on the proposal in writing by August 8, 1986. The proposal would have continued suspension of the provisions of the order that limit the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order, and that require at least

one day's production of each producer's milk to be received each month at a pool plant.

Statement of Consideration

The proposed suspension would have made inoperative the provisions of the Lake Mead order that limit the amount of milk not needed for fluid (bottling) use that may be delivered directly from farms to nonpool manufacturing plants and still be priced under the order to 50 percent of the milk pooled by a cooperative association during the months of March through July, and 40 percent in other months. Also proposed to be suspended was the "touch-base" requirement that at least one day's production of each producer's milk be received each month at a pool plant. Lake Mead Cooperative Association, which supplies some of the market's fluid needs and handles much of the market's reserve milk supply, had requested that suspension of the provisions be continued until a proceeding to consider the proposed merger of the Lake Mead and Great Basin orders has been completed. The provisions proposed to be suspended have been suspended since February 1986. Continued, suspension of the requested language would allow unlimited amounts of a cooperative's member milk supply to continue to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

A public hearing was held on March 18–20, 1986, in Salt Lake City, Utah, to consider a merger of the Great Basin and Lake Mead orders. The cooperative testified that the pooling provisions contained in the proposed merged order would offer a long-term solution to the problems of operating within the order's present diversion limits. The cooperative requested that suspension of the order's diversion limits and "touch-base" requirement be continued until the hearing proceeding is completed to assure that all of the member milk of the cooperative is eligible to participate in marketwide pooling and pricing under the Lake Mead Federal order. In its request the cooperative contended that the hearing record supports such action.

The record of the public hearing shows that milk production pooled under the Lake Mead order during 1985 increased by approximately 23 percent, while producer milk used in Class I increased only 5 percent. The record also shows that the cooperative would not have been able to pool all of the milk of its member producers in the absence of the prior suspension of the provisions in question without resorting to uneconomic and inefficient milk hauling and handling. However, objections to be proposed suspension were filed on behalf of Rockview Dairies, Inc. (Rockview), a nonmember producer shipping milk to Anderson Dairy from two farms.

The comments filed on behalf of Rockview stated that while the previous suspension had been in effect, Lake Mead Cooperative Association (LMCA) had pooled under the Lake Mead order milk from over 200 producers who had never previously supplied milk to the market. Rockview claimed that the additional volume of milk resulted in a decrease in the percentage of milk used in Class I sales by approximately 20 percentage points, and, correspondingly, caused an unwarranted decline in the prices paid to producers under the Lake Mead order.

Comments filed by Lake Mead Cooperative Association stated that the cooperative has performed the function of supplying the reserve needs of the market and removing excess milk from the market in a responsible manner since before the order became effective in 1973. LMCA stated that the necessity of transporting excess milk supplies considerable distances from the market has been costly, and entirely at the expense of the cooperative. None of the other market participants, according to the cooperative, has performed any service necessary to balance the market's reserve supply. The cooperative claimed that in addition to marketing the reserve milk supplies pooled under the order, it also provided the assurance that, if needed, milk supplies would be obtained from other markets as well. Therefore, the cooperative stated, other marketing areas have been carrying reserves of milk for the Lake Mead market.

LMCA pointed out that the increase in the number of producers pooled under the order did not necessarily represent increased volumes of milk pooled. The cooperative attributed the increase in number of producers to changes in the arrangements for marketing producers' milk for the purpose of effecting savings in transportation costs rather than for the purpose of disturbing the marketing of milk under the Lake Mead order. The association stated that the milk of many of its member producers had been pooled under the Lake Mead order in recent months, but that only a small share of many of the producers' total production had been pooled under the order. LMCA noted that the amount of milk available to the cooperative to pool might be perceived as affording the potential for the cooperative to dilute blend prices by pooling excessive milk supplies, but stated that the association has acted responsibly, and would continue to do so.

The cooperative attributed the increase in its member producer milk pooled under the Lake Mead order to an attempt to maintain its traditional percentage share of the market in response to an increase in the volume pooled under the order by Rockview Dairy, a nonmember producer in California. LMCA's view is that even with the additional milk the cooperative has pooled under the Lake Mead order, LMCA has a lost part of its share of the market's Class I sales because of the additional supplies of milk originating outside the historical supply area for the market.

Both Rockview Dairy and Lake Mead Cooperative Association included data supporting their views with the comments filed in response to the notice of proposed suspension. Much of the data submitted by Rockview described the sources of milk pooled under the Lake Mead order by county for the months preceding and during the February through July suspension of the diversion limits and "touch-base" requirement of the order. The statistics describing producer milk by county show clearly that a large volume of the milk pooled under the Lake Mead order during the months of February through May 1986 was not part of the regular supply of producer milk for the Lake Mead milk market. The additional volumes pooled from central and northern Utah counties were not offset by diminished volumes from southern Utah and Nevada. While these additional sources of milk may represent potential reserve supplies for the Lake Mead market, the data submitted show no evidence that they have ever served as actual reserve supplies. Indeed, the record of the public hearing and the data in the cooperative's request for suspension show clearly that the Lake Mead market's regular reserve supplies of milk in southern Utah have been exceeding the fluid needs of the market.

It is apparent that the large increases in milk supply, which include substantial increases in California-produced milk, resulted in a diminished percentage of producer milk used in Class I and a corresponding decline in the blend price to producers under the order. Although it is true, as LMCA observed, that the Lake Mead blend price never fell below the Great Basin blend price during the period in question, it is true only for the blend prices at Las Vegas and Salt Lake City. At locations where the additional milk

from central and northern Utah was actually received the traditional higher blend prices adjusted for those locations that were payable to producers under the Lake Mead order fell below the prices payable at those locations to producers pooled under the Great Basin order.

Lake Mead Cooperative Association indicated in its comments that the interrelated nature of the Lake Mead and Great Basin marketing areas is becoming more pronounced as fluid sales distributed within the Lake Mead area are increasingly distributed from milk plants regulated under the Great Basin order. The cooperative cited two examples of route dispositions in the Lake Mead area being supplied with fluid milk products processed by Great Basin—regulated handlers. One instance cited involved the closing of a fluid milk plant formerly regulated under the Lake Mead order. It is reasonable to suppose that the necessary reserve milk supplies formerly associated with these sales under the Lake Mead order would not become associated with the Great Basin order, which is deriving the benefit of the added Class I sales. Furthermore, in view of these marketing changes and the recent suspension of the diversion limits and "touch-base" requirements of the Great Basin order, there is no reason that any milk which is not eligible to be pooled within the limits of the Lake Mead order cannot be pooled under the Great Basin order.

Because of the changes in marketing practices, described above, since the suspension action was taken, the request for a continued suspension of the Lake Mead milk order's diversion limits and "touch-base" requirement is hereby denied and the proceeding is terminated.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1139 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC on: August 29, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–20299 Filed 9–8–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Reopening of Public Comment Period on Proposed Amendment to the Virginia Permanent Regulatory and Abandoned Mine Land Reclamation Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the reopening of the public comment period on the substantive adequacy of a proposed amendment and subsequent revisions submitted by the Commonwealth of Virginia as a modification to its permanent regulatory and abandoned mine land reclamation programs (hereinafter referred to as the Virginia programs) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of new regulations which, except for the regulation of certain existing operations, would completely replace those now implementing Chapter 19, Title 45.1 of the Code of Virginia, the Virginia Coal Surface Mining Control and Reclamation Act of 1979, as amended.

This notice sets forth the times and locations that the Virginia programs and proposed amendment will be available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments from the public not received by 4:00 p.m. on September 24, 1986, will not necessarily be considered in the decision process.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219.

Copies of the Virginia programs, the proposed modifications to the programs, and the administrative record of the Virginia programs are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment and subsequent modifications by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303

Office of Surface Mining Reclamation and Enforcement, Lebanon Area Office, Flannagan and Carroll Streets, P.O. Box 487, Lebanon, Virginia 24266, Telephone: (703) 889–4032

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5315, Washington, DC 20240, Telephone: (202) 343–5492

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone: (703) 523–2925.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Virginia programs on December 15, 1981. Information pertinent to the general background, revisions, modifications and amendments to the permanent program submissions, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia programs can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 946.11, 946.12, 946.13 and 946.15.

II. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17 (d) through (f), on March 25, 1985, the Director notified Virginia of the changes necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations, as revised since December 15, 1981, when the program was originally approved. To comply with this letter and to meet other needs and State objectives, the Commonwealth elected to undertake a complete rewrite of the regulations

governing its permanent regulatory and abandoned mine land reclamation programs.

By letter of November 8, 1985, Virginia submitted these regulations to OSMRE for review as a program amendment (Administrative Record No. VA 571). The proposed regulations, consisting of Parts 480–03–19.700 through 480–03–19.882, would replace Parts V700 through V882 of the currently approved regulations, although the current performance standards of Subchapters VK and the current permit application content requirements of Subchapter VG would remain in effect for mines operating under existing permits.

OSMRE announced receipt of this proposed amendment in the December 20, 1985 **Federal Register** (50 FR 51885–51886), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. No comments were received by January 21, 1986, the close of the comment period, and, since no one requested an opportunity to testify, the public hearing scheduled for January 8, 1986 was cancelled.

By letter of April 22, 1986 (Administrative Record No. VA 574), OSMRE notified Virginia of certain areas (the definitions of "affected area", "adverse physical impact", "fragile lands", "historic lands" and "valid existing rights"; permit application/requirements with respect to processing times, lands unsuitable determinations, standards for approval of existing structures, ground water monitoring frequency, sites eligible for listing on the National Register of Historic Places, and subsidence control plans; award of costs and attorney's fees; sampling techniques for evaluation of revegetation success; success standards for cropland; consultation with forestry and wildlife agencies on certain revegetation success standards; augumentative practices; the static safety factor for backfilled steep slopes; spillway requirements for sedimentation ponds; and certain aspects of the administrative and judicial review process) in which the proposed amendment appeared to be less effective than the Federal regulations or in conflict with the decisions in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action 79–1144, D.D.C. 1984 and 1985). By letter dated May 27, 1986 (Administrative Record No. VA 575) Virginia responded to these concerns, which were further discussed at a May 28, 1986 meeting of OSMRE and Virginia personnel. The minutes of this meeting have been entered in the Virginia administrative record as Document No. VA 576. By letter dated August 14, 1986 (Administrative Record No. VA 577), Virginia submitted additional proposed regulatory changes, policy statements and other clarifying materials designed to address all OSMRE concerns.

Therefore, in accordance with the provisions of 30 CFR 731.17 and 884.17, OSMRE is now seeking comment on whether the amendment, as proposed on November 8, 1985, and modified on August 14, 1986, fully satisfies the criteria for approval of State program amendments set forth at 30 CFR 732.15, 732.17, 884.14 and 884.15. If approved, the proposed amendment will become part of the Virginia permanent regulatory and abandoned mine land reclamation programs.

III. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 3, 1986.

Brent Walquist,

Assistant Director, Program Operations.

[FR Doc. 86–20270 Filed 9–8–86; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS–42043B; FRL–3042–6]

1,2-Dichloropropane; Proposed Test Rule; Proposed Testing Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that: (1) Pharmacokinetics (absorption, distribution, metabolism, and excretion) testing be conducted with 1,2-dichloropropane (CAS Number 78–87–5), (2) certain Toxic Substances Control Act (TSCA) test guidelines be utilized as the test standards for required studies for 1,2-dichloropropane, and (3) test data be submitted within specified time frames. Elsewhere in this issue of the **Federal Register**, EPA is also issuing a final test rule establishing certain testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of 1,2-dichloropropane.

DATES: Submit written comments on or before October 24, 1986. If persons request time for oral comment by October 9, 1986, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VI of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS–42043B), in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE–G004, 401 M Street SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room E–543, 401 M Street SW., Washington, DC 20460. Toll Free (800–424–9065). In Washington, DC: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: The EPA is proposing that pharmacokinetic testing be conducted with 1,2-dichloropropane (DCP) and is proposing test standards for DCP testing, including time frames for test data submission.

VOL 51 ISS 174 SE 9 1986 UMI

I. Background

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003; 15 U.S.C. 2601) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated 1,2-dichloropropane (DCP) for priority consideration in its Third Report published in the **Federal Register** on October 30, 1978 (43 FR 50630). The ITC recommended that 1,2-dichloropropane be tested for the following health effects: Carcinogenicity, mutagenicity, teratogenicity, and other toxic effects (with emphasis on reproductive and neurological effects). The ITC also recommended that an epidemiological study be performed. Also, the following environmental effects tests were recommended by the ITC: Chronic toxicity to fish and invertebrates, effects on avian and mammalian reproduction and behavior, and effects on soil invertebrates and terrestrial insects.

On January 6, 1984 (49 FR 899), the EPA issued a proposed test rule for DCP under section 4(a)(1)(B) of TSCA. The Agency proposed that manufacturers and processors of DCP conduct the following health and environmental effects tests for the chemical: Neurotoxicity (inhalation); mutagenic effects (chromosomal aberrations and gene mutation); teratogenicity (inhalation); reproductive effects (two-generation via inhalation); mysid shrimp acute toxicity (flow-through conditions); algal toxicity (marine and freshwater); and daphnia (*Daphnia magna*) and mysid chronic toxicity. The proposed test rule for DCP did not include pharmacokinetic testing of DCP.

Since the test rule for DCP was proposed, new information on the type and extent of human exposure has been obtained. Although the inhalation route of exposure is still of concern to the Agency because of occupational and general population exposure, several factors indicate the oral rather than inhalation (as proposed) route of exposure to be more appropriate for conducting the health effects tests: (1) The elimination of consumer exposure because Dow Chemical Co. no longer sells DCP for use in paint strippers, paint, varnish, and furniture finish removers; (2) the exposure of over 800,000 people in the city of Philadelphia, PA to drinking water contaminated with DCP; (3) concerns of the National Toxicology Program over DCP in drinking water; and (4) potential concerns of EPA's Office of Solid Waste and the Office of Emergency and Remedial Response over DCP in ground water. Therefore, the Agency is proposing at this time that health effects testing be conducted via the oral route of administration, and that an oral-inhalation comparative pharmacokinetic study be performed with DCP. This study will allow the Agency to reasonably predict and compare the distribution and metabolism of DCP in the body as a result of oral or inhalation exposure (See Unit III).

Elsewhere in this issue of the **Federal Register**, EPA is promulgating a Phase I final rule pursuant to TSCA section 4 that establishes certain testing requirements for manufacturers and processors of 1,2-dichloropropane (DCP). That Phase I rule specifies the following testing requirements for DCP: (1) Nervous system effects testing including a neuropathology test, a motor activity test, and a functional observation battery; (2) mutagenic effects (chromosomal aberrations); (3) developmental toxicity; (4) a 2-generation reproductive effects test; (5) mysid shrimp acute toxicity; (6) algal toxicity; and (7) daphnid and mysid chronic toxicity.

Once the Phase I test rule becomes effective, manufacturers and processors of DCP would normally be required, under the existing two-phase process, to submit proposed study plans and schedules for both the initiation of testing and the submission of study data in accordance with 40 CFR 790.50. EPA would review the submitted study plans and schedules and would thereafter issue them (with any necessary modifications) in a Phase II test rule proposal. That proposal would request comment on the ability of the proposed study plans to ensure that the resulting data would be reliable and adequate. After evaluating and responding to public comment, EPA would adopt, with any necessary modifications, the study plans and reporting schedules, in a Phase II final rule as the required test standards and data submission deadlines in 40 CFR 790.52.

However, in the case of the DCP test rule, which was initiated under the two-phase process, EPA has now decided to propose the relevant TSCA test guidelines in this document as the test standards (see Unit IV) and at the same time issue the DCP final rule. In addition, EPA is proposing that the data from the required studies be submitted within certain time periods. These time periods will serve as the data submission deadlines required by TSCA section 4(b)(1) (see Unit V). The reasons for this change in the test rule process for DCP are discussed below.

II. Change in the Test Rule Development Process

A. Test Standards and Data Submission Deadlines

TSCA section 4(b)(1) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under a two-phase process utilized by EPA since 1982 (March 26, 1982; 47 FR 13012) and formally adopted in the fall of 1984 (October 10, 1984; 49 FR 39774), test standards and data submission deadlines were to be adopted during the second phase of the rulemaking process. Upon issuance of the Phase I final rule, which established the effects and characteristics for which a given chemical substance must be tested, persons subject to the rule would be required by a specified date to submit study plans detailing the methodologies and protocols they intended to use to perform the required tests. Such study plans were to include proposed schedules for the initiation and completion of testing and submission of test data in accordance with 40 CFR 790.50 (a) and (c). The Agency would then publish these study plans and solicit public comment. In the second phase, after consideration of public comment, the Agency would promulgate the Phase II final rule adopting the study plans (with any necessary modifications) as the test standards for the development of test data and deadlines for submission of test data.

In December 1983, the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) filed an action under TSCA section 20 challenging, among other things, the use of the two-phase process. In an August 23, 1984 Opinion and Order, the U.S. District Court for the Southern District of New York found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time frame (*NRDC v. EPA*, 595 F Supp. 1255 (S.D.N.Y. 1984)).

Subsequent to the issuance of that Opinion, the Agency decided that in order to expedite the development of section 4 test rules, EPA would utilize a single-phase rulemaking process for most test rules. In the notice announcing this decision, published in the **Federal Register** of May 17, 1985 (50 FR 20652), EPA stated that the single-phase approach offers a number of advantages

over the two-phase process. In this single-phase approach, the Agency proposes (in one notice) not only the effects for which testing will be required but also proposes pertinent TSCA or other appropriate guidelines as the test standards and time frames for the submission of test data. After receiving and evaluating public comment on the proposed testing requirements, test guidelines, and data submission deadlines, EPA promulgates a final rule.

This single-phase approach shortens the rulemaking period and expedites the initiation of required testing relative to the two-phase rulemaking process. The single-phase process also eliminates the requirement under the two-phase approach for industry to submit test protocols for approval. Moreover, by allowing commenters to submit alternative testing methodologies during the comment period, the single-phase approach preserves the flexibility of the two-phase process.

These same advantages, i.e., expedited initiation of testing and the elimination of study plan submission requirements for persons subject to a Phase I rule, are factors EPA considered in deciding to modify the rulemaking process for DCP. By proposing both pertinent TSCA test guidelines as the test standards and data submission deadlines at the time of issuance of the Phase I final rule, EPA expects that the Phase II final rule will be issued 6 months sooner than would occur if the usual two-phase process was followed. Thus, required testing will be initiated on an expedited basis. In addition, for each of the required tests for DCP, appropriate TSCA test guidelines are available (Unit III). Thus, EPA believes that there is no need for manufacturers and processors of DCP to develop proposed study plans for EPA and public review during the rulemaking process. The pharmacokinetics test for DCP is being proposed under the single-phase test rule development process.

B. Modifications to Requirements Under a Phase I Final Rule for 1,2-Dichloropropane

As indicated in Unit II.A, persons subject to the DCP Phase I final rule and who have notified EPA of their intent to test would normally be required to submit proposed study plans and proposed data submission deadlines within a specified time of the final rule's effective date in accordance with 40 CFR 790.50(a) and (c). However, because EPA is proposing certain TSCA guidelines as the test standards, and data submission deadlines, persons subject to the Phase I final rule are not required at this time to submit study plans for the required testing or proposed dates for the initiation and completion of that testing. Manufacturers and processors of DCP are invited to comment on both the proposed test standards and the data submission deadlines. The Agency will consider these comments in issuing the Phase II final rule.

However, persons subject to the Phase I final rule for DCP are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45. Moreover, once the test standards and reporting deadlines are promulgated in the Phase II final rule, those persons who have notified EPA of their intent to test must submit specific study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test, 40 CFR 790.50(a)(1).

III. Proposed Test Rule

A. Data Contained in the Final Phase I Test Rule

The final Phase I test rule for 1,2-dichloropropane, appearing elsewhere in this issue of the **Federal Register**, contains (1) DCP's profile, (2) EPA's previous findings with respect to DCP, (3) a description of the persons who would be required to conduct the proposed health and environmental effects tests, and (4) a description of the test substance to be used for conducting the tests.

Since the proposed test rule for DCP was issued, new information on the production, use, and environmental distribution of DCP has become available. The sources of this information include public comment on the proposed rule, including current production and use information from the only U.S. producer of isolated DCP (Dow Chemical Company), and recent comprehensive monitoring data for the chemical in the vicinity of a major industrial user of DCP in Philadelphia, PA.

Testing of DCP was proposed under TSCA section 4(a)(1)(B). In support of this finding, the Agency contracted with Versar, Inc. to prepare a document assessing human and environmental exposure to DCP (Ref. 1). The document examined exposures as a result of TSCA-regulated environmental releases, including monitoring data from the Integrative Environmental Management Project for Philadelphia, PA; releases and exposures related to the pesticidal use of DCP were not investigated. A summary of this information is found in Unit IV of the final Phase I test rule for DCP.

B. Findings

EPA is basing its proposed oral-inhalation comparative pharmacokinetic testing requirement on the authority of section 4(a)(1)(B) of TSCA. EPA finds that DCP is produced and released to the environment in substantial quantities, and that the manufacture, processing, and use may result in substantial human exposure to this chemical. The detailed basis for this finding is found in Unit IV.A. of the final Phase I test rule for DCP, published elsewhere in this issue of the **Federal Register.**

The EPA also finds that there are insufficient data to reasonably predict and compare the distribution and metabolism of DCP in the body as a result of oral or inhalation exposure due to DCP's manufacture, processing, and use, and that an oral-inhalation comparative pharmacokinetic study of DCP is necessary to develop such data.

IV. Proposed Test Standards

EPA is proposing at this time that an oral-inhalation comparative pharmacokinetics test (absorption, distribution, metabolism, and excretion) be conducted, according to the pharmacokinetic guideline under 40 CFR 798.7475, published in the **Federal Register** proposed rule for cumene (50 FR 46104; November 6, 1985), a copy of which is in the docket for DCP, and as modified in § 798.1550(c)(5)(ii)(B). The proposed pharmacokinetic study will allow the Agency to reasonably predict and compare the distribution and metabolism of DCP in the body as a result of oral or inhalation exposure.

In the final Phase I test rule for DCP, the required testing includes neurotoxicity, mutagenic effects (chromosomal aberrations), developmental effects, reproductive effects, mysid shrimp acute toxicity, algal acute toxicity, and daphnid and mysid chronic toxicity.

The required nervous system effects testing falls into three categories. The data from the neuropathology testing will detect and characterize morphologic changes in the nervous system, if and when they occur, and determine a no-effect level for such changes.

Motor activity has been extensively studied in both behavioral pharmacology and behavioral toxicology (Refs. 2 through 5), through the use of rodents. The history of the development of psychoactive drugs indicates that the motor activities of rats and mice are predictive of psychoactive potential in humans (Refs. 4 through 7).

VOL 51 ISS 174 SE 9 1986 UMI

The functional observational battery is a non-invasive procedure designed to detect gross functional deficits in young adult rodents resulting from exposure to chemicals and to better quantify neurotoxic effects detected in other studies. While this battery of tests is not intended to provide a detailed evaluation of neurotoxicity, it is designed to be used in conjunction with neuropathologic evaluation and/or general toxicity testing. EPA is proposing that the neuropathology, motor activity, and functional observational battery testing be conducted according to 40 CFR 798.6400, 798.6200, and 798.6050, respectively.

EPA is proposing that the required dominant lethal assay be conducted for DCP according to 40 CFR 798.5450. Dominant lethal effects cause embryonic or fetal death. Induction of a dominant lethal event after exposure to a chemical substance indicates that the substance has affected germinal tissue of the test species. Dominant lethals are generally accepted to be the result of chromosomal damage (structural and numerical anomalies) but gene mutations and toxic effects cannot be excluded. As discussed in the DCP Phase I final test rule, available information for a structurally similar chemical, 1,2-dibromo-3-chloropropane (DBCP), indicates that mice are not sensitive to DBCP in the dominant lethal assay. The rat is therefore proposed as the test species for this assay.

The required developmental toxicity study is designed to determine the potential of DCP to induce structural and/or other abnormalities in the fetus which may arise from exposure of the mother during pregnancy. These developmental effects include permanent structural or functional abnormalities that occur during the period of embryonic development. EPA is proposing that the developmental toxicity study be conducted according to 40 CFR 798.4900.

The required two-generation reproductive effects testing is designed to provide general information concerning the effects of DCP on gonadal function, conception, parturition, and the growth and development of the offspring. The study may also provide information about effects of DCP on neonatal morbidity, mortality, and preliminary data on teratogenesis. EPA is proposing that the reproductive effects testing be conducted according to 40 CFR 798.4700.

EPA is proposing that the required health effects tests be conducted via the oral route of exposure, because the human exposure pattern described by the new information (see Unit III. B.) has led EPA to believe that the oral route of administration is now the most appropriate for conducting the required health effects tests.

The algal acute toxicity test is designed to develop data on the phytotoxicity of DCP to freshwater and marine algae. EPA is proposing that testing using systems that control for DCP evaporation be conducted with marine and freshwater algae according to 40 CFR 797.1050.

For the purpose of developing data on the acute toxicity of DCP to aquatic invertebrates, EPA is proposing that testing using flow-through systems and measured concentrations be conducted with mysid shrimp according to 40 CFR 797.1930. To develop data on the chronic toxicity of DCP to aquatic invertebrates, EPA is proposing that testing be conducted with *Daphnia magna* and the mysid shrimp according to 40 CFR 797.1330 and 797.1950, respectively.

V. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final TSCA Good Laboratory Practice (GLP) standards in 40 CFR Part 792.

In accordance with 40 CFR Part 790, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Specific reporting requirements for each of the proposed test standards follow:

1. The pharmacokinetic, neurotoxicity, dominant lethal assay, and all environmental effects tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final Phase II test rule. Progress reports on all studies shall be provided every 6 months.

2. The developmental toxicity tests shall be completed and the final results submitted to the Agency within 18 months of the effective date of the final Phase II test rule. Interim progress reports shall be provided every 6 months.

3. The two-generation reproductive effects toxicity test shall be completed and final results submitted to the Agency within 29 months of the effective date of the final Phase II test rule. Interim progress reports shall be provided every 6 months.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will announce the receipt within 15 days in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

VI. Issues for Comment

EPA invites comment on the following issues:

1. The proposed testing requirement for an oral:inhalation comparative pharmacokinetic study with DCP.

2. Requiring the oral, rather than inhalation, route of administration in conducting health effects tests with DCP.

3. The proposed use of the TSCA test guidelines as the test standards for the required testing of 1,2-dichloropropane.

4. The proposed schedule for the required testing.

VII. Economic Analysis of Proposed Rule

To assess the economic impact of this proposed rule, EPA has prepared an economic evaluation (Ref. 8) that examines the cost of the required testing, both for pharmacokinetics testing alone and in conjunction with testing required in the DCP final rule, and analyzes four market characteristics of DCP: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The economic evaluation for the DCP proposed test rule, which estimates a testing cost of $144,610 to $191,680 for pharmacokinetic testing, and a total testing cost of $470,230 to $608,350 for both the tests required in the final rule and the pharmacokinetic testing, indicates that the potential for adverse economic effects due to the estimated cost of testing is low. The annualized total test costs for DCP range from $121,855 to $157,648. This conclusion is based on the following observations (Ref. 8):

1. Propylene oxide (PO), the main product in DCP production, is used mainly as a captive intermediate and has a relatively inelastic demand.

2. The market expectations for PO and many of its derivatives are favorable.

3. Dow manufactures DCP and PO at two highly integrated plants where minor cost increases can be dispersed over numerous end products.

4. The estimated total unit test costs (i.e., the test costs for DCP and PO) are negligible, or less than 0.02 cents per pound or 0.04 percent of PO price in the upperbound case.

Refer to the economic analysis (Ref. 8) for a complete discussion of test cost

estimation and the potential for economic impact resulting from these costs.

VIII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study "Chemical Testing Industry; Profile of Toxicological Testing," October, 1981, can be obtained through the NTIS under publication number PB 82–140773.

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this proposed rule.

IX. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800–424–9065); In Washington, DC: (554–1404); Outside the U.S.A. (Operator–202–554–1404), by October 9, 1986. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency would transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

X. Public Record

EPA has established a record for this rulemaking, [docket number (OPTS–42043]. This record includes basic information considered by the Agency in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

The supporting documents for this rulemaking consist of the proposed and final Phase I test rules on 1,2-dichloropropane.

B. References

(1) Versar, Inc. Exposure Assessment for test rules development for 1,2-dichloropropane. Washington, DC: U.S. Environmental Protection Agency, Office of Toxic Substances. Contract No. 68–02–3968.

(2) Reiter, L.W. "Use of activity measures in behavioral toxicology." *Environmental Health Perspectives* 26:9–20. (1978)

(3) Reiter, L.W. and MacPhail, R.C. "Motor activity: A survey of methods with potential use in toxicity testing." *Neurobehavioral Toxicology*. 1:Suppl. 1, 53–66. (1979)

(4) Irwin, S. "Comprehensive observational assessment: Ia. A systematic, quantitative procedure for assessing the behavioral and physiologic state of the mouse." *Psychopharmacology*. 13:222—257. (1968)

(5) Kinnard, E.J. and Watzman, N. "Techniques utilized in the evaluation of psychotropic drugs on animals' activity." *Journal Pharmaceutical Science*. 55:995–1012. (1966)

(8) Dewa, P.B. "The measurement of the influence of drugs on voluntary activity in mice." *British Journal Pharmacology Chemotherapy*. 8:46–48. (1953)

(7) Turner, R.A. "Screening Methods in Pharmacology." New York: Academic Press, pp. 24–34. (1965)

(8) EPA. Economic Impact Analysis of Final and Proposed Test Rule for 1,2-Dichloropropane. U.S. Environmental Protection Agency, Washington, DC (1986)

The record is open for inspection from 8 a.m. to 4 p.m. Monday through Friday except legal holidays, in Rm. NE–G004, 401 M Street SW., Washington, DC 20460.

XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of 1,2-dichloropropane is discussed in the Phase I test rule appearing elsewhere in this issue of the **Federal Register** and Unit VII of this notice.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are no small manufacturers of 1,2-dichloropropane.

(2) Small processors are not expected to perform testing themselves, or to participate in the organization of the testing efforts.

(3) Small processors will experience only very minor costs if any in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA". The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 27, 1986.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By amending § 799.1550 by adding paragraphs (b)(5), (c)(1) (ii) and (iii), (2) (ii) and (iii), (3) (ii) and (iii), (4) (ii) and (iii) and (5), and (d)(1) (ii) and (iii), (2) (ii) and (iii), (3) (ii) and (iii), and (4) (ii) and (iii), to read as follows:

§ 799.1550 1,2-Dichloropropane.

* * * * *

(b) * * *

(5) All persons who manufacture or process 1,2-dichloropropane, from the effective date of the final rule for pharmacokinetics testing to the end of the reimbursement period, shall submit letters of intent to test, exemption applications, and shall conduct tests and submit data as specified in paragraphs (a), (b)(5), and (c)(5) of this section, Subpart A of this Part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) * * *

(1) * * *

(ii) *Test standards.* The neurotoxicity testing of 1,2-dichloropropane, consisting of a neuropathology test, a motor activity test, and a functional observational battery, shall be conducted in accordance with §§ 798.6400, 798.6200, and 798.6050 of this chapter, respectively, using the oral route of exposure. The animals shall be dosed with DCP for a minimum of 5 days per week, over a period of at least 90 days.

(iii) *Reporting requirements.* (A) The neurotoxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Interim progress reports shall be provided at 6 month intervals, beginning 6 months after the effective date of the final Phase II test rule and ending with the submission of the Final Test Report.

(2) * * *

(ii) *Test standards.* The dominant lethal assay shall be conducted with 1,2-dichloropropane using the rat in accordance with § 798.5450 of this chapter.

(iii) *Reporting requirements.* (A) The dominant lethal assay shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final Phase II test rule.

(B) Interim progress reports shall be provided at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule and ending with the submission of the Final Test Report.

(3) * * *

(ii) *Test standard.* The developmental toxicity testing shall be conducted with 1,2-dichloropropane in accordance with § 798.4900 of this chapter, using the oral route of exposure.

(iii) *Reporting requirements.* (A) The developmental toxicity study shall be completed and the final results submitted to the Agency within 18 months of the effective date of the Phase II final test rule.

(B) Interim progress reports shall be provided at 6 months intervals, beginning 6 months after the effective date of the Phase II final test rule and ending with the submission of the Final Test Report.

(4) * * *

(ii) *Test standard.* The two-generation reproductive effects testing shall be conducted with 1,2-dichloropropane in accordance with § 798.4700 of this chapter, using the oral route of exposure.

(iii) *Reporting requirements.* (A) The two-generation reproductive effects test shall be completed and the final results submitted to the Agency within 29 months of the effective date of the Phase II final test rule.

(B) Interim progress reports shall be provided at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule and ending with the submission of the Final Test Report.

(5) Pharmacokinetic studies—(i) *Required testing.* Oral and inhalation pharmacokinetic testing shall be conducted with 1,2-dichloropropane.

(ii) *Test standard.* (A) The oral and inhalation pharmacokinetic testing shall be conducted with 1,2-dichloropropane in accordance with § 798.7475 of this chapter and modifications specified in paragraph (c)(5)(ii)(B) of this section.

(B) Modifications.

(*1*) The requirement under § 798.7475(c)(2)(iii)(C) of this chapter for testing DCP is modified so that collection of excreta (urine, feces, and expired air) occurs at 0, 4, 8, 16, 24, and 48 hours posttreatment, or until 95 percent of the dose has been excreted.

(*2*) The requirement under § 798.7475(c)(2)(iii)(D) of this chapter for testing DCP is modified so that the concentration of hydrocarbon in inspired and expired air, and blood shall be measured at 0, 5, 10, 15, and 30 minutes, and at 1, 2, 4, 8, 16, 24, and 48 hours during and after inhalation exposure.

(*3*) The requirement under § 798.7475(c)(3)(i)(A) of this chapter for testing DCP is modified so that the levels of total ^{14}C-label shall be determined in whole blood and blood plasma or blood serum at 0, 4, 8, 16, 24, and 48 hours after dosing rats in groups A–B and F–H.

(*4*) The requirement under § 798.7475(c)(3)(i)(B) of this chapter for testing DCP is modified so that the quantities of total ^{14}C-label excreted in expired air, urine, and feces by rat groups A–B and F–H shall be determined at 0, 4, 8, 16, 24, and 48 hours after dosing and if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing, whichever occurs first.

(*5*) The requirement under § 798.7475(d)(3)(vi) of this chapter for testing DCP is modified to require the reporting of biotransformation pathways and quantities of the test substance and its metabolites in urine, feces, and expired air collected after oral administration (single, low, and high doses) and inhalation exposure (low, intermediate, and high concentrations).

(iii) *Reporting requirements.* (A) The pharmacokinetic test shall be completed and the final results submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Interim progress reports shall be provided at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule and ending with the submission of the Final Test Report.

(d) * * *

(1) * * *

(ii) *Test standard.* The mysid shrimp acute toxicity testing of 1,2-dichloropropane shall be conducted as a flow-through test using *Mysidopsis bahia* in accordance with § 797.1930 of this chapter.

(iii) *Reporting requirements.* (A) The mysid acute toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the Phase II final rule.

(B) Progress reports shall be submitted to the Agency at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule.

(2) * * *

(ii) *Test standard.* The algal acute toxicity testing of 1,2-dichloropropane shall be conducted with marine and freshwater algae using systems that control for 1,2-dichloropropane evaporation in accordance with § 797.1050 of this chapter.

(iii) *Reporting requirements.* (A) The algal acute toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Progress reports shall be submitted to the Agency at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule.

(3) * * *

(ii) *Test standard.* The daphnid chronic toxicity testing of 1,2-dichloropropane shall be conducted as a flow-through test using *Daphnia magna* in accordance with § 797.1330 of this chapter.

(iii) *Reporting requirements.* (A) The daphnid chronic toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Progress reports shall be submitted to the Agency at 6 month intervals,

beginning 6 months after the effective date of the Phase II final test rule.

(4) * * *

(ii) *Test standard.* The mysid shrimp chronic toxicity testing of 1,2-dichloropropane shall be conducted as a flow-through test using *Mysidopsis bahia* in accordance with § 797.1950 of this chapter.

(iii) *Reporting requirements.* (A) The mysid chronic toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Progress reports shall be submitted to the Agency at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033)

[FR Doc. 86–20261 Filed 9–8–86; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 85–229; Phase II]

Common Carrier Service; Replacing Structural Separation With Nonstructural Safeguards for the Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Extension of Time to File Reply Comments.

SUMMARY: This action extends the deadline for filing reply comments in Phase II of the Third Computer Inquiry, concerning the Commission's regulatory treatment of basic and enhanced services.

The extension is in response to a Joint Motion for Extension of Time filed by eight commenters in this proceeding on August 20, 1986.

This action will provide interested parties an opportunity to prepare more fully informed reply comments in this proceeding.

DATE: The final date for filing reply comments is extended to September 19, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Maher, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION: This action extends the due date for reply comments adopted in the Third Computer Inquiry Supplemental Notice of Proposed Rulemaking, CC Docket No. 85–229, Phase II, FCC 86–253 (51 FR 24410, July 3, 1986).

Order

In the Matter of amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); CC Docket No. 85–229, Phase II; Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; Communications Protocols under Sections 64.702 of the Commission's Rules and Regulations.

Adopted: August 25, 1986.

Released: August 27, 1986.

By the Chief, Common Carrier Bureau:

1. Before us is a Joint Motion for Extension of Time (the Motion), filed by eight commenters (the Movants) [1] in the above-captioned proceeding (*Computer III*, Phase II), asking that the deadline for filing reply comments in this proceeding be extended by three weeks, from September 8, 1986, to September 29, 1986.

2. The Motion states that at least 57 parties filed initial comments in *Computer III*, Phase II. It argues that, because those comments are voluminous and address fundamental technical, legal, and policy issues, more time is needed to review them adequately. Moreover, because summer vacations and Labor Day fall in the midst of the present reply period, it is difficult for the Movants' technical staffs and counsel to address such issues fully. The Motion points out that opposition to the petitions for reconsideration of the *Computer III Order* [2] are due on September 3, 1986,[3] and contends that under the current deadline for *Computer III*, Phase II reply comments, interested parties will be burdened with the near-simultaneous preparation of two sets of responsive pleadings. According to the Motion, grant of an extension would not prejudice any party because AT&T and several of the BOCs have challenged, through petitions for reconsideration, fundamental elements of the regulatory framework adopted in the *Computer III Order*.

3. Although it is the policy of this Commission that extensions of time shall not be routinely granted,[4] we acknowledge that the public interest would be served by permitting the Movants to prepare fully informed reply comments. However, in light of the public interest in early resolution of the significant issues raised in *Computer III*, Phase II, we find that an extension of the reply period to September 29, 1986, is not warranted. Instead, we shall extend the deadline for filing reply comments to September 19, 1986. This extension should provide all parties with sufficient time to prepare reply comments based on a considered analysis of the record, without delaying our resolution of the issues posed in this proceeding.

4. Accordingly, it is hereby ordered, pursuant to section 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, That the Motion is Denied in Part and Granted in Part as specified herein. Reply comments are due on or before September 19, 1986.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86–20225 Filed 9–8–86; 8:45 am]
BILLING CODE 6712–01–M

[1] The Movants are ADAPSO, Independent Data Communications Manufacturers Association, Inc., Tymnet, Ad Hoc Telecommunications Users Committee, Computer and Business Equipment Manufacturers Association, Digital Equipment Corporation, International Communications Association, and Telenet Communications Corporation.

[2] Amendment of §§ 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85–229, *Report and Order*, FCC 86–252 (released June 16, 1986).

[3] *See* 51 FR 29,609 (Aug. 19, 1986).

[4] Section 1.46(a) of the Commission's Rules 47 CFR 1.46(a) (1985).

47 CFR Part 73

[MM Docket No. 86–348; RM–5357]

Radio Broadcasting Services; Laurel, DE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 237A to Laurel, Delaware, as its first FM channel in response to a petition filed by Troy D. Hill.

DATES: Comments must be filed on or before October 20, 1986, and reply comments on or before November 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Troy D. Hill, Rt. 2, Box 58 A-1, Bridgeville, Delaware 19933 (petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-348, adopted August 22, 1986, and released August 29, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800. 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-20227 Filed 9-8-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-347; RM-5374]

Radio Broadcasting Services; Newberry, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Victor A. Michael, Jr. proposing the allocation of Channel 300B1 to Newberry, Pennsylvania, as the community's first local FM service. A site restriction of 9.1 kilometers (5.7 miles) west is required to avoid short-spacings to vacant Channels 297A and 300A at Northumberland and Tobyhanna, Pennsylvania, and to Station WRRB, Channel 300, Syracuse, New York. Canadian concurrence in the allotment is required.

DATES: Comments must be filed on or before October 20, 1986, and reply comments on or before November 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Victor A. Michael, Jr., R.D. 1, Box 59, Benton, Pennsylvania 17814 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-347, adopted August 22, 1986, and released August 29, 1986. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy snd Rules Division, Mass Media Bureau.

[FR Doc. 86-20228 Filed 9-8-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5316

Department of the Air Force Federal Acquisition Regulation Supplement; Types of Contracts

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: On December 4, 1985, the Air Force published (at 50 FR 49708) a proposal to amend Title 48 of the Code of Federal Regulations by establishing Chapter 53. DOD FAR Subpart 216.2, Fixed-Price Contracts, is being supplemented by the Air Force to require that economic price adjustment (EPA) clauses (abnormal cost index type) be structured in such a way that contract adjustments for fluctuations in the economy will include adjustments for future periods as well as completed periods.

DATE: Comments must be submitted in writing on or before October 24, 1986. Please cite AF Case No. 41-86 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to HQ USAF/RDCP, Room 4C251, Pentagon, Washington, DC 20330-5040.

FOR FURTHER INFORMATION CONTACT: Capt. Jeff Parsons, HQ USAF/RDCP, telephone (202) 697-6522.

SUPPLEMENTARY INFORMATION:

A. Background

The FY 1986 Department of Defense Appropriation Act deleted $375M from the Air Force budget request for various aircraft programs due to a Congressional Budget Office (CBO) report that indicated these funds were in excess due to declining inflation rates. The House Appropriation Committee (HAC) stated in their appropriation report that "The Committee has no intention of appropriating funds for inflation well above rational need, simply so the Department can declare funds to be excess at its convenience or to accelerate procurement of equipment that is not needed until later years." The Committee also said that the 1987 budget submitted by the Air Force must reflect the budgeted inflation and how that compares to the contract inflation on weapon systems which use EPA clauses in their contracts.

A change in the current EPA policy would allow the identification of future contract savings earlier and provide better fiscal management. This change

would require priced options, contract obligations, and contract funding requirements to be provisionally adjusted for future periods when EPA price adjustments for completed periods are made. Current policy is to only make adjustments to completed periods when actuals are available. However, since projected inflation indices have a compounding effect in determining forecasted prices, future prices should also be adjusted to reflect actual economic trends.

This change will allow the Air Force to reduce contract funding earlier during periods of declining inflation, and would allow early identification of additional funds required during periods of increasing inflation. Identifying and removing funds strictly through the budget estimating process is not possible without changing the actual contract prices. Programs would still have to fund their contract liability if prices were not changed.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, this rule does not have a significant impact on a substantial number of small entities because the rule applies to contracts exceeding $50,000,000.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 5316

Government procurement.

Therefore, it is proposed to amend Title 48 of the Code of Federal Regulations by adding Part 5316 to read as follows:

CHAPTER 53—DEPARTMENT OF THE AIR FORCE FEDERAL ACQUISITION REGULATIONS

Subchapter C—Contracting Methods and Contract Types

PART 5316—TYPES OF CONTRACTS

Authority: 5 U.S.C. 301 and FAR 1.301.

Subpart 5316.2—Fixed-Price Contracts

5316.203-4 Contract clauses.

(d)(3)(iii)(A) When using the abnormal escalation index method, on contracts in excess of $50,000,000, the clause shall provide that contract adjustments will include the compounding effect of actual indices for future periods. Since predicted economic trends have a compounding effect on the scheduled price, when calculating each economic price adjustment (EPA) for costs within a completed period, a further provisional adjustment shall be made to all future period costs. This provisional adjustment shall be calculated using the same percentage decrease (or increase) as was made in the adjustment for the completed period. Provisional adjustments for each period must be liquidated against the final adjustment for each period. For example, the following formula could be used in computing adjustments:

Adjustment = ((x−y)/y)[z] − s

where

x = actual index

y = projected index

z = sum of dollars subject to adjustment for all periods in which a final adjustment has not been made

s = sum of unliquidated provisional adjustments

(B) For those EPA clauses that do not use cumulative indices in computing the adjustment, but use projected annual increases, y would equal the projected annual increase and x would equal the actual annual increase. For those EPA clauses which include a dead band in which no adjustment is made, the upper end of the dead band becomes the projected index value during times of increasing inflation, and the lower end of the dead band becomes the projected index value during times of decreasing inflation. For those EPA clauses which provide for price adjustments only if the difference between the projected index value exceeds a predetermined threshold (trigger bands), no adjustment will be made for the future periods unless the actual index value exceeds the predetermined threshold. However, when the actual index exceeds the projected index by the predetermined threshold, then an adjustment must be made to future periods.

(C) The above requirement is optional on multinational contracts where the impact of multiple country index recalculations are extremely complex.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-20206 Filed 9-8-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[BMCS Notice No. 86-12]

Demonstration of Front Wheel Brakes on Trucks and Truck Tractors

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of demonstration project, and request for comments.

SUMMARY: The FHWA invites interested persons to view a demonstration of front wheel braking on trucks and truck tractors comparing the stopping distances of vehicles with and without front brakes under various conditions.

DATE: The demonstration will be held September 19, 1986, 9:00 a.m., e.t. Interested persons who view the demonstration are requested to submit written comments on or before September 26, 1986.

ADDRESS: The demonstration will be held at the National Highway Traffic Safety Administration's test facilities at the University of Ohio's Transportation Research Center in East Liberty, Ohio. Persons who view the demonstration are requested to submit comments to Mr. Bill Snow, Federal Highway Administration, Bureau of Motor Carrier Safety, HMC-20, Room 3404, 400 Seventh Street, SW., Washington, DC. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Snow, (202) 366-2996. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking published in the **Federal Register** on July 3, 1986 at 51 FR 24413, interested persons were invited to submit comments to BMCS Docket No. MC-124, Notice No. 86-8 concerning a revision to the brake rules which currently allows trucks and truck tractors having three or more axles to be operated with no brakes on the front wheel. Comments were due on or before August 4, 1986.

Interested persons who view the demonstration are requested to submit written comments on or before September 26, 1986, to Mr. Bill Snow at the above address in Washington, DC. A compilation of the statistics from this demonstration project will be available on October 31, 1986 from Federal Highway Administration, Bureau of Motor Carrier Safety, HMC-20, Room 3404, 400 Seventh Street SW., Washington, DC 20590, (202)366-2996.

Issued on: September 2, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 86-20198 Filed 9-8-86; 8:45 am]

BILLING CODE 4910-22-M

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Notices

Federal Register
Vol. 51, No. 174
Tuesday, September 9, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Federal Protection of Private Sector Health and Safety Whistleblowers; Public Hearing

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public hearing.

SUMMARY: The Administrative Conference is studying the operation of the federal whistleblowing statutes that protect from retaliation private sector employees who raise health and safety concerns. Statutes containing such provisions include various pollution control and waste disposal laws administered by EPA, the nuclear power licensing law by NRC, the strip mining law by the Department of the Interior, workplace safety, mine safety and migrant labor laws by the Department of Labor and trucking and railroad safety laws by the Department of Transportation. Most, but not all, cases are investigated by the Department of Labor's Wage and Hour Division and beard by the Department's administrative law judges. The study will include an examination of current agency investigative and adjudicative procedures and consideration of possible recommendations to Congress or relevant agencies. Preliminary findings of the study indicate that there is a great lack of uniformity among the statutes with respect to organizational responsibilities and procedures to be followed. To aid the Conference and its Committee on Adjudication in evaluating these issues, the Conference will conduct a public hearing. The public hearing will take place on Wednesday, October 1, 1986, in courtroom 10 of the United States Claims Court, 717 Madison Place, NW., Washington, DC, commencing at 9:30 a.m. Conference Chairman Marshall J. Breger will preside at the hearing.

Brief initial statements of views or relevant experiences will be followed by opportunities for questioning by the Chairman and Conference members in attendance. If time permits, witnesses may exchange views or reactions. The Conference is particularly interested in obtaining information and advice on the following questions:

1. Are current arrangements satisfactory for protecting private sector employees from retaliation for whistleblowing in connection with health and safety concerns? Should all private sector employment be covered? Should all government contracts be covered?

2. Responsibility for investigation and adjudication of whistleblowers' complaints is at present vested in several agencies. One possibility to be considered is to centralize investigative and/or adjudicative responsibilities with respect to whistleblowers in a single agency. How important is it that the *investigative* agency have expertise in the substantive area in which the whistleblowing arises? The *adjudicatory* body? If these functions were centralized what role should the agency that is responsible for administration of the underlying substantive regulatory scheme play in these proceedings?

3. Are there deficiencies in the Department of Labor's investigative, adjudicatory or review function?

4. Are current coordination arrangements between the program and investigative agencies satisfactory with regard to (a) training, (b) investigation, (c) conduct at hearings, (d) reporting of results, (e) follow-up?

5. Should it make a difference if the employee's belief that safety has been compromised is not well founded? Should the test be subjective or objective?

6. What remedies (damages, reinstatement, etc.) should be available?

7. Should there be uniform provisions regarding types of protected disclosures, temporary reinstatement, requirement of initial complaint to employer, employer conciliation programs, statutes of limitations, posting of workplace notices of protection, judicial review.

8. Should an employee be able to pursue federal whistleblowing remedies as well as state law remedies?

A number of public officials and other public figures have been invited to appear at the hearing to discuss their views. Other persons may be allowed to make presentations if time permits. Persons wishing to restify should apply to the Conference outlining their proposed testimony, relevant experience, or other interest. They must also be prepared to submit written submissions of testimony by September 26. However, written statements pertinent to the subject of the hearing may be submitted at any time, before or after the hearing, by any person whether or not appearing at the hearing.

DATE: October 1, 1986.

Location: The public hearing will be held in courtroom 10 of the U.S. Claims Court, 717 Madison Place, NW., Washington, DC, at 9:30 AM.

Public Participation: Attendance at the meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance. The chairman may permit members of the public to make oral statements at the meeting. Written statements may be submitted to the committee at any time.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037; telephone (202) 254–7065.

Dated: September 5, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86–20348 Filed 9–8–86; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Small-Craft Facility Questionnaire
Form number: Agency—NOAA; OMB—0648–0021
Type of request: Revision of a currently approved collection
Burden: 1,860 respondents; 202 reporting hours

Needs and uses: Information is collected on the availability of services at small-craft facilities. The information is used to revise nautical charting products listing such services for the boating public.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: Annually

Respondent's obligation: Voluntary

OMB Desk officer: 395–3785

Agency: National Oceanic and Atmospheric Administration

Title: Marine Mammal Taking by State/Local Governments

Form number: Agency—N/A; OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 100 respondents; 50 reporting hours

Needs and uses: State or local officials who take marine mammals in the course of their duties may do so without a permit. They are required to report such takings to the National Marine Fisheries Service. The information is used to study strandings and other problems faced by the species, and to determine whether or not management action is needed.

Affected public: State or local governments

Frequency: Semi-annually

Respondent's obligation: Mandatory

OMB Desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 3, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–20277 Filed 9–8–86; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Docket No. 24–86]

Foreign-Trade Zone 66, Wilmington, NC; Application for Subzone, American Hoist and Derrick Crane Manufacturing Plant; Extension of Comment Period

The period for comments on the above case, involving a special-purpose subzone for the crane manufacturing plant of American Hoist and Derrick Company in Wilmington, North Carolina (51 FR 26729, 7/25/86) is extended to October 17, 1986, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm. 1529, 14th & Pennsylvania, NW., Washington, DC 20230.

Dated: September 3, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86–20279 Filed 9–8–86; 8:45 am]

BILLING CODE 3510–05–M

International Trade Administration

[A–588–602]

Postponement of Final Antidumping Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from all of the respondents in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on these requests, we are postponing our final determination as to whether sales of certain carbon steel butt-weld pipe fittings from Japan have occurred at less than fair value until not later than December 19, 1986. We are also postponing our public hearing from September 3, 1986 until October 7, 1986.

EFFECTIVE DATE: September 9, 1986.

FOR FURTHER INFORMATION CONTACT: Karen DiBenedetto, (202–377–1778) or Mary S. Clapp, (202–377–1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

On March 24, 1986, we published a notice in the **Federal Register** (51 FR 10070) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether certain carbon steel butt-weld pipe fittings from Japan were being, or were likely to be, sold at less than fair value. On April 10, 1986, the International Trade Commission determined that there is a reasonable indication that imports of certain carbon steel butt-weld pipe fittings from Japan are materially injuring a U.S. industry. On August 11, 1986, we published a preliminary determination of sales at less than fair value with respect to this merchandise (51 FR 28734). The notice stated that if the investigation proceeded normally, we would make our final determination by October 20, 1986.

On August 6, 1986, Awaji Sangyo K.K., a respondent in this investigation requested a postponement of the final determination until not later than the 135th day after the date of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. On August 12, 1986, Nippon Benkan Kogyo Co. Ltd., another respondent in this investigation, requested a postponement of the final determination until not later than 135 days after our preliminary determination. The respondents are qualified to make such a request because they account for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the requests. Accordingly, we grant the request and postpone our final determination until not later than December 19, 1986.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on October 7, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B–099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's

ime, address, and telephone number; (2) The number of participants; (3) The reason for attending; and (4) A list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 30, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-20280 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-DS-M

Texas A&M University; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 85-277. Applicant: Texas A&M University, College Station, TX 77843. Instrument: Closed Loop Crystal Driver. Manufacturer: Solid State Equipment, New Zealand. Intended Use: See notice at 50 FR 38569.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign article simultaneously measures elastic modulus and internal friction to temperatures up to 1400°C. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-20278 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Subcommittee will convene separate public meetings at the Hotel Villa Esperanza, Vieques, PR, as follows:

Council—will convene its 57th regular meeting, October 15, 1986, from approximately 9 a.m. to 5 p.m., and reconvene October 16 from 9 a.m. to noon, to elect a Chairman; to consider fishery management plans development, as well as to discuss other technical and administrative matters related to Council operations.

Administrative Subcommittee—will convene October 14, 1986, from approximately 2 p.m. to 5 p.m. to discuss issues related to the Subcommittee's regular administrative operations. For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918; telephone: (809) 753-4926.

Dated: September 4, 1986.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86-20272 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Mackerel Advisory Panel will convene a public meeting, September 24, 1986, at the Ramada Inn, 5303 West Kennedy Boulevard, Tampa, FL, to review Amendment No. 2 to the Migratory Coastal Pelagic (Mackerel) Fishery Management Plan. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council 5401 West Kennedy Boulevard, Suite 881, Tampa FL 33609, telephone: (813) 228-2815.

Dated: September 4, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-20273 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:00 p.m. on September 29, 1986, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC (Public entrance to the building is on 14th Street, Pennsylvania Avenue and Constitution Avenue.)

The Council was estabished on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Proposed NTIA policy on allocation of multifunction spread spectrum systems.

(2) Proposed NTIA policy on Federal Government Trunked Land Mobile Radio.

(3) Discussion of recent developments relative to radio frequency radiation exposure guidelines.

(4) Preliminary considerations for space station frequency availability.

The meeting will be open to public observations; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before September 26, 1986. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

Inquiries may be addressed to the Executive Secretary, FMAC, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 4706, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 30330, telephone 202–377–0805.

Dated: September 2, 1986.

Charles L. Hutchison,

Executive Secretary, FMAC, National Telecommunications and Information Administration.

[FR Doc. 86–20275 Filed 9–8–86; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Export Visa Requirement and Exempt Certification for Certain Cotton, Wool and Man-Made Fiber Textile Products from Mexico

September 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 8, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On May 20, 1981 a notice was published in the **Federal Register** (46 FR 27516) announcing the establishment of an export visa and exempt certification mechanism for certain cotton, wool and man-made fiber textile and apparel products produced or manufactured in Mexico and exported on and after July 1, 1981. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, agreement has been reached to amend the existing export visa and exempt certification requirements to provide the following:

1. Commercial shipments valued at less than U.S. $250 will no longer be exempt from agreement limits. They will be charged to the quota limits established under the agreement and will require export visas. Sample shipments and shipments for the personal use of the importer will not be affected by this new provision.

2. Polyethylene film in the spool or in cartridges in Category 627 pt. (only TSUSA numbers 389.6260 and 389.6265) will not require an export visa.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

September 8, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 15, 1981 which directed you to prohibit, effective on July 1, 1981 and until further notice, entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Mexico and exported on and after July 1, 1981, which were not visaed or certified for exemption by the Government of Mexico.

Effective on September 8, 1986, the directive of May 15, 1981 is hereby amended to require an export visa for commercial shipments valued at less than U.S. $250. Sample shipments and shipments for the personal use of the importer will continue to be exempt from the visa requirement if properly certified for exemption by the Government of Mexico prior to exportation. Polyethylene film in the spool or in cartridges in Category 627 pt. (only TSUSA numbers 389.6260 and 389.6265) will not require an export visa.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–20391 Filed 9–8–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Ground Wave Emergency Network (GWEN); Intent To Prepare Programmatic Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; Council on Environmental Quality Regulations (40 CFR Part 1500); and 32 CFR Part 989 (AFR 19–2); the Air Force gives notice that a programmatic Environmental Impact Statement (EIS) is being prepared on the proposed deployment of the Ground Wave Emergency Network (GWEN) in its Final Operational Capability (FOC). The proposed action would establish a national communications link between the nation's military command authority and strategic military forces. The proposed communication system would consist of input/output and receive only stations at existing military installations and unmanned relay nodes situated on parcels of approximately 11 acres throughout the continental United States (CONUS).

With the proposed action, the Air Force would expand its current developmental program (Thin Line Connectivity Capability, or TLCC), which consists of less than 100 total sites. The proposed production and deployment of the GWEN at its Final Operations Capability would increase this number by approximately 200 fixed sites, including about 70 additional unmanned relay nodes.

Each proposed relay node would include a 299-foot main radio tower with an antenna tuning unit shelter at its base. The tower and antenna tuning unit would be enclosed by an 8-foot high chain link fence. The tower would be supported by 15 guy wires and include 12 top loading elements to increase the performance of the antenna. About 12 inches below the ground, a ground plane consisting of approximately 200 copper wires would extend up to 330 feet from the tower in a radial pattern resembling the spokes of a wheel. The wires would be plowed into the ground using equipment that replaces the sod as it lays the wire. A smaller, 30-foot UHF antenna and a 10-foot low-frequency receive antenna would also be installed on the site. A 4-foot high barbed or fabric wire fence would be installed around the perimeter of the ground plane. The relay node would contain a fenced-in equipment area with two

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enclosed shelters, each about the size of a truck-carried camper unit; one containing an emergency power generator and two diesel tanks, and the other housing radio equipment. The relay node would use commercial power sources.

The relay node would look similar to commercial radio and television broadcase transmitters. GWEN would broadcast low frequency radio signals in the 150–175 kilohertz band, well below the bottom of the commercial AM radio of 530 kilohertz. Its broadcast power would be approximately 2,000 to 3,000 watts. GWEN would not interfere with existing communications or electronic equipment.

Since proposed, input/output and receive only stations would consist mainly of communications and support equipment at existing military installations, the siting of the proposed relay nodes is of principal environmental concern. The Air Force proposes to mitigate protential adverse environmental impact through a detailed site selection process. Specific relay node sites to achieve GWEN FOC have not yet been selected. A programmatic Environmental Impact Statement will be prepared, followed by tiered, site-specific environmental studies after alternative sites have been identified. The Air Force estimates that the Draft Environmental Impact Statement will be available for public review by early 1987, and that the site-specific environmental studies would be prepared late in 1987.

The Air Force's Electronic Systems Division (ESD), located at Hanscom Air Force Base, Massachusetts, will conduct a public scoping process emphasizing written input. Because GWEN is a national program, a public scoping meeting will be conducted in Washington, DC on September 25, 1986, at 1 p.m. in the Auditorium, Department of Commerce Building, 14th Street and Constitution Ave. NW. Written inputs will be considered equally with those provided at the public scoping meeting. Inputs must be received by October 10, 1986, to be addressed in the draft Environmental Impact Statement. In support of the public scoping process, the scoping meeting, and enviornmental issues to be addressed in the proposed Environmental Impact Statement, individuals, organizations, and agencies should direct their inputs and questions to: HQ Electronic Systems Division, Deputy for Acqusition Civil Engineering, ATTN: GWEN Directorate (ESD/DE–3), Handscom Air Force Base, MA 01731–5000.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–20452 Filed 9–8–86; 12:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

September 5, 1986.

The European portion of the meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Airbase Performance, previously scheduled for September 12 through 21, 1986, has been postponed. The rescheduled dates are September 23 through October 1. (Previously announced in 51 FR 165, page 30392, on 26 Aug 86)

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–20371 Filed 9–8–86; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board Ad Hoc Subgroup; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 24–26 September 1986.

Times of Meeting: 0830–1630 hours.

Places: US Army Air Defense Artillery School, Fort Bliss, Texas.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for briefings by analytical agencies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–20241 Filed 9–8–86; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board Ad Hoc Subgroup; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 30 September-1 October 1986.

Times of Meeting: 0800–1700 hours.

Places: Pentagon.

Agenda: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for briefings on Exoatmospheric Reentry Intercept Systems (RIS) concept and lethality. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–20242 Filed 9–8–86; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Academic Advisory Board to the Superintendent; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, will meet on September 26, 1986, in Rickover Hall, Room 301, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 8:15 a.m. and terminate at 1:00 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him in improving education standards and in solving Academy problems. The meeting will be open to the public for observation to the extent that space is available.

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For further information concerning this meeting, contact: Major S.E. Leitch, USMC, Military Secretary to the Academic Advisory Board, Office of the Academic Dean, United States Naval Academy, Annapolis, Maryland 21402–5000, Telephone No. (301)–267–2500.

Dated: September 4, 1986.

H.L. Stoller,

CDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86–20220 Filed 9–8–86; 8:45 am]

BILLING CODE 3810-01-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on September 25 and 26, 1986, at the Submarine Base, New London, Connecticut. The meeting will commence at 8:15 a.m. on September 25, and terminate at 3:00 p.m. on September 26, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and tours for the Committee members on submarine operations. The agenda for the meeting will consist of briefings on submarine tactics and training, and an overnight ride on a submarine. These briefings and tours will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: September 4, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86–20221 Filed 9–8–86; 8:45 am]

BILLING CODE 3810-AE-M

Corps of Engineers, Department of the Army

Intent To Prepare A Draft Environmental Impact Statement (DEIS) for a Proposed Water Supply Impoundment Structure in Crump Creek at Hanover County, VA.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action:* Hanover County proposes to build an earthen fill impoundment structure across Crump Creek, a tributary of the Pamunkey River, near the Town of Hanover, Virginia. The impounded lake would have a normal pool area of 1000 acres with a maximum depth of 125 feet. As a water supply reservoir, the lake could supply a maximum safe yield of 33.8 million gallons per day with a minimum downstream release of 118.7 mgd (184cfs). A significant portion of the area to be flooded consists of wetlands.

2. *Alternatives:* Alternatives which will be investigated will include, but will not be limited to site alternatives in and around Hanover County, groundwater, conservation, and no project.

3. *Scoping Process:* Informal pre-application scoping meetings were held with State and Federal agencies in the spring of 1986. Significant issues which have already been identified include wetland destruction and mitigation, impacts on anadromous fish, and watershed development. A public notice requesting written scoping comments will be published in the near future.

4. *Public Meetings:* The public notice mentioned above will also announce that a public scoping meeting will be held on October 16, 1986, at the Hanover County Board of Supervisors, Board Room.

5. *DEIS Availability:* It is estimated that the DEIS will be available to the public for review and comments in late 1987.

ADDRESS: Questions about the proposed action and DEIS can be answered by Kenneth Kimidy, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510–1096, (804) 441–3832, 827–3832–FTS.

Dated: September 2, 1986.

Claude D. Boyd III,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86–20207 Filed 9–8–86; 8:45 am]

BILLING CODE 3710-EN-M

DEPARTMENT OF ENERGY

National Petroleum Council Historical Factors Task Group; Meeting

Notice is hereby given that the Historical Factors Task Group will meet in September 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Historical Factors Task Group is responsible for the identification and analysis of events, governmental policies, and actions (federal, state, and local), and the reactions of the oil and gas industries to such events, policies and actions (i.e., the "factors") that affect the supply of and demand for oil and gas in the U.S. since the end of World War II.

The Historical Factors Task Group will hold its seventh meeting on Monday and Tuesday, September 15–16, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street NW., Washington, DC.

The tentative agenda for the Historical Factors Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.

2. Discussion of the factors affecting petroleum supply and demand.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Historical Factors Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Historical Factors Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology, Extraction and Environmental Controls, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 2, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-20235 Filed 9-8-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-670-000 et al.]

Commonwealth Electric Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission.

1. Commonwealth Electric Co.

[Docket No. ER86-670-000]

September 3, 1986.

Take notice that on August 21, 1986, Commonwealth Electric Company ("Commonwealth") tendered for filing on behalf of itself, Montaup Electric Company, and Boston Edison Company supplemental data pertaining to their applicable gross investments, combined Federal income and franchise tax rates, and local tax rates for the twelve month period ending December 31, 1985. Commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E-7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1984.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, Northeast Utilities and the Massachusetts Department of Public Utilities.

Comment date: September 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Public Service Co.

[Docket No. ER86-671-000]

September 3, 1986

Take notice that on August 21, 1986, Iowa Public Service Company tendered for filing an Assignment for Capacity Schedule, whereby Iowa Public Service Company, Iowa-Illinois Gas and Electric Company, Corn Belt Power Cooperative, Algona Municipal Utilities, Bancroft Municipal Utilities, Coon Rapids Municipal Utilities, Graettinger Municipal Light Plant, Laurens Municipal Light & Power Plant, Milford Municipal Utilities, Spencer Municipal Utilities and the City of Webster City have assigned a Capacity Schedule of seven (7) megawatts to the Municipality of Waverly commencing October 1, 1983 and continuing through October 1, 1988. The Assignment of Capacity Schedule of seven (7) megawatts is taken from the Louisa Generating Unit, entering Lehigh-Webster Transmission at the Lehigh Terminal, and exiting Lehigh-Webster Transmission at the Webster Terminal.

Comment date: September 16, 1986, in accordance with Standard Paragraph E at the end of this document.

Iowa Public Service Co.

[Docket No. ER86-672-000]

September 3, 1986.

Take notice that on August 21, 1986, Iowa Public Service Company tendered for filing an executed Transmission Facilities and Operating Agreement dated June 26, 1974, and subsequently amended, whereby the following parties entered into an agreement to construct, own, and operate the George Neal Generating Station Unit No. 4 and are presently in agreement to construct, own, and operate transmission facilities for the above-mentioned Generating Station: Iowa Public Service Company, Interstate Power Company, Northwestern Public Service Company, Corn Belt Power Cooperative, Northwest Iowa Power Cooperative, Algona Municipal Utilities, Bancroft Municipal Utilities, Coon Rapids Municipal Utilities, Graettinger Municipal Light Plant, Laurens Municipal Light & Power Plant, Milford Municipal Utilities, Spencer Municipal Utilities, City of Webster City, and City of Cedar Falls.

Each of the parties owns electric facilities and is engaged in the generation, transmission, distribution and sale of electric power and energy within the geographical areas served by the parties and desire to implement an agreement regarding transmission facilities that they have jointly constructed.

Copies of the filing were served upon all parties to the agreement and the Iowa Utilities Board.

Comment date: September 16, 1986 in accordance with Standard Paragraph E at the end of this notice.

4. PacificCorp doing business as Pacific Power & Light Co.

[Docket No. ES86-56-000]

September 2, 1986.

Take notice that on August 26, 1986, PacificiCorp dba Pacific Power & Light Company (Pacific) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order (1) authorizing it to issue and sell not more than 25,000 additional shares of its common stock pursuant to its Bargaining Employees' Stock Ownership Plan and Trust and (2) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: September 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. System Energy Resources, Inc.

[Docket No. ER86-673-000]

September 3, 1986.

Take notice that on August 21, 1986, System Energy Resources, Inc. (SERI) tendered for filing pursuant to § 35.16 of the Federal Energy Regulatory Commission's Regulations a Notice of Succession through which SERI adopts Rate Schedule FERC No. 2, and Supplement No. 1 thereto, previously filed by Middle South Energy, Inc.

SERI states that the Notice of Succession is necessary to reflect the fact that it changed its name from Middle South Energy, Inc. effective as of July 28, 1986.

Comment date: September 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20302 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-876-001]

Equitable Gas Co., a division of Equitable Resources, Inc., Notice of Compliance Filing

September 4, 1986.

Take notice that on August 28, 1986, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable) tendered for filing the following tariff sheets for inclusion in its FERC Gas Tariff, First Revised Volume No. 1:

Fourteenth Revised Sheet No. 1
Second Revised Sheet No. 1-A
First Revised Sheet No. 10-CC
Original Sheet Nos. 10-EE, 10-FF, 10-GG, 10-HH, 10-JJ, 10-KK, 10-LL, 10-MM, 10-NN, 10-OO, 10-PP, 10-QQ, 10-RR.

Equitable states these tariff sheets comprise its Rate Schedules SS-1, SS-2, SS-3 and STS-1, as restated in accordance with the Commission's order issued July 31, 1986 in Docket No. CP85-876-000, et al.

Equitable requests waiver of any Commission rules and regulations as may be necessary to permit the tariff sheets to become effective as proposed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20305 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-34-000, 001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 4, 1986.

Take notice that on August 29, 1986, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001 tendered for filing the following tariff sheets to its FERC Gas Tariff.

First Revised Volume No. 1

4th Revised 10th Revised Sheet No. 8
5th Revised Sheet No. 9

Original Volume No. 2

4th Revised 33th Revised Sheet No. 128

Reason for Filing

4th Revised 10th Revised Sheet No. 8 and 4th Revised 33rd Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T-3, respectively to adjust: (i) The Primary Adjustment to reflect increases in FGT's average cost of gas purchased for sale and company use, net of amounts to be recovered through Incremental Pricing Surcharges; (ii) The Balancing Adjustment to amortize over the six-month adjustment period (October 1, 1986 through March 31, 1987), the balance in the current period Unrecovered Purchase Gas Cost Account as of June 30, 1986; and (iii) The Order 94 Surcharge to amortize retroactive Order 94 costs paid to producers subsequent to September 30, 1985 together with amounts expected to be paid prior to October 1, 1986 (Adjustment Date) over the twelve-month Adjustment Period commencing October 1, 1986.

5th Revised Sheet No. 9 contains the estimated Incremental Pricing Surcharges for the adjustment period.

4th Revised 10th Revised Sheet No. 8, 5th Revised Sheet No. 9 and 4th Revised 33rd Revised Sheet No. 128 are to be effective on October 1, 1986.

The above-mentioned changes to the Primary and Balancing Adjustments are being made pursuant to section 15 (Purchase Gas Adjustment and Incremental Pricing Provision) of the General Terms and Conditions of FGT's FERC Gas Tariff, First Revised Volume No. 1 and Section 154.38 *et seq.*, of the Commission's Regulations (18 CFR 38, *et seq.*).

The net effect of the adjustments being filed for Rate Schedules G and I, and for Rate Schedule T-3 are summarized below.

	Rate schedules		
	G	I	T-3
	(¢/therm)	(¢/therm)	(¢/Mcf)
Currently effective rates*	25.561	23.788	46.24
Primary adjustment	1.797	1.797	.53
Balancing adjustment	(1.196)	(1.196)	(.32)
Order 94 surcharge adj	(.312)	(.312)	(.16)
October 1, 1986 rates	25.850	24.077	46.29

*Reflects rates effective April 1, 1986 pursuant to Docket No. TA86-4-34-000.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 and interested state commissions and is being posted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211). All such motions or protests should be filed on or before September 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20307 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-8-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes In F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

September 4, 1986.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on August 27, 1986, tendered for filing Second Revised Sheet No. 57(i) and Second Revised Sheet No. 57(ii), First Revised Volume No. 1 to its FERC Gas Tariff to be effective August 1, 1986.

These tariff sheets reflect changes resulting from a substantial reduction in Great Lakes' purchased gas cost applicable to Michigan Consolidated Gas Company (Mich Con), ANR Pipeline Company (ANR), Inter-City Gas Company (Inter-City), Michigan Power Company and Peoples Natural Gas Company (Peoples).

The reduction in gas costs applicable to Mich Con results from a further price renegotiation among Great Lakes, Mich Con and TransCanada PipeLines Ltd. (Trans-Canada) effective August 1, 1986 pursuant to an agreement between the parties dated July 31, 1986. The revised pricing arrangements were approved by the National Energy Board of Canada (NEB) by Order dated July 30, 1986. The revised commodity rate for gas purchased by Great Lakes for resale to Mich Con effective August 1, 1986 is $2.15 per MMBtu for quantities up to 15,000 Mcf per day, $1.85 per MMBtu for quantities in excess of 15,000 Mcf per

day up to 62.5% of contract demand, $1.65 per MMBtu for quantities in excess of 62.5% of contract demand up to 100% of contract demand and $1.60 per MMBtu for all quantities of gas in excess of 100% of contract demand.

The gas purchased price reductions for ANR, Inter-City, Michigan Power, and Peoples amount to 48.133¢ per MMBtu, 35.397¢ per MMBtu, 42.264¢ per MMBtu and 38.683¢ per MMBtu respectively and resulted from the pricing index mechanism previously approved by the Commission for gas sales to these customers.

Great Lakes is requesting an effective date of August 1, 1986 for Second Revised Sheet No. 57(i) and Second Revised Sheet No. 57(ii). In aid thereof, Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing substantial reduction in purchased gas cost as soon as possible.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 10, 1986. Protests will be considered by the Commisison in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20313 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8804-001]

Mill Creek Associates; Surrender of Preliminary Permit

August 29, 1986.

Take notice that Mill Creek Associates, permittees for the Strawberry Flats Project No. 8804, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 8804 was issued on December 11, 1985, and would have expired on November 30, 1988. The project would have been located on the Rogue River in Jackson County, Oregon.

The permittees filed the request on August 11, 1986, and the preliminary permit for Project No. 8804 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20301 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-155-000]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

September 4, 1986.

Take notice that on August 28, 1986, Northwest Central Pipeline Corporation (Northwest Central) tendered for filing the following tariff sheets to Original Volume No. 2 of its FERC Gas Tariff to be effective on September 27, 1986:

Original Volume No. 2

Second Revised Sheet No. 2A
Third Revised Sheet No. 2B
First Revised Sheet Nos. 2C through 2P
Original Sheet Nos. 2Q through 2RR

Northwest Central states thai these tariff sheets will permit it to commence new NGPA section 311 firm and interruptible transportation services on an interim basis pending Commission action on the Stipulation and Agreement dated July 18, 1986 (Stipulation) in Docket Nos. RP86-32 and RP86-68, which Stipulation reflects a comprehensive proposal whereby Northwest Central will restructure its sales and transportation tariff to render open-access transportation services under the provisions of the Commission's Order Nos. 436, *et seq.* Northwest Central states that the filed tariff sheets applicable to the proposed interim Interruptible Transportation Service (ITS) reflect those revisions to the presently effective Rate Schedule T-1 as required to conform to the applicable conditions of Subpart A of Part 284 of the Commission's Regulations as amended by Order No. 436 and that the rates, terms and conditions applicable to such interim ITS service as well as to the proposed interim Firm Transportation Service (FTS) are in substance virtually identical to the corresponding tariff provisions applicable to the ITS and FTS services under the pending Stipulation.

To make these tariff sheets effective on an iterim basis Northwest Central requests that the Commission waive for the interim period (1) the contract demand reduction/conversion requirements of § 284.10 of the Commission's Regulations, (2) the "full requirements" provisions of Northwest Central's F, C, and I Rate Schedules and related service agreements and (3) the revenue crediting provisions of the Stipulation and Agreement dated February 14, 1984, in Docket No. RP82-114 applicable to transportation revenues under Rate Schedule T-1.

Northwest Central states that copies of the filing have been mailed to all of its customers and affected state commissions and to all parties upon which the Stipulation was required to be served.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20416, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September *10*, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 86-20308 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-59-005 and RP85-13-013]

Northwest Pipeline Corp.; Proposed Changes to FERC Gas Tariff

September 4, 1986.

Take notice that on August 29, 1986, Northwest Pipeline Corporation (Northwest) submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets.

First Revised Volume No. 1

Twenty-Eighth Revised Sheet No. 10
Alternate Twenty-Eighth Revised Sheet No. 10

Northwest states that the purpose of its filing is to place into effect a revised

Demand-1 rate and Special Demand-1 Surcharge rate to Rate Schedule ODL–1, in accordance with the provisions of the Joint Offer of Settlement filed in the above-captioned dockets on February 11, 1986 and approved by the Commission on June 4, 1986 (35 FERC ¶ 61,284).

Northwest states that the tariff sheets are being submitted in alternate forms, in conjunction with Northwest's July 31, 1986 filing in Docket No. RP86–145–000. In that filing, Northwest requested the Commission to approve a one-month delay in the filing date and the effective date of its regular semiannual PGA filing, in order to provide Northwest an opportunity to finalize contract negotiations with its Canadian pipeline supplier. Northwest therefore requests the Commission to accept Twenty-Eighth Revised Sheet No. 10 for filing effective November 1, 1986 (rather than October 1, 1986) and to allow Northwest to adjust the Demand-1 surcharge to cover the period April through October 1986 rather than April through September 1986. Northwest states that this would allow the proposed rates to become effective at the same time as Northwest's delayed PGA and would avoid two rate changes to Northwest's customers within one month.

In the event Northwest's request to make Twenty-Eighth Revised Sheet No. 10 effective as proposed is denied, Northwest in the alternative requests the Commission to accept Alternative Twenty-Eighth Revised Sheet No. 10 effective October 1, 1986, in accordance with the provision of the Joint Offer of Settlement in the above-captioned dockets. Northwest states that regardless of which tariff sheet is accepted for filing, the Special Demand-1 Surcharge rate to Rate Schedule ODL–1 would terminate on March 31, 1987.

Northwest requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective as proposed, and states that copies of the filing have been served upon all of its jurisdictional customers, all affected state regulatory commissions, and all intervenors in Docket Nos. RP84–59–000, *et al.* and Docket Nos. RP85–13–000 *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 11, 1986. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 86–20309 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–39–000, 001]

Pacific Interstate Transmission Co.; Rate Change

September 4, 1986.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on August 29, 1986, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheets:

Thirtieth Revised Sheet No. 4
Thirteenth Revised Sheet No. 4–A
Twenty-Fifth Revised Sheet No. 5

Pacific Interstate states that these tariff sheets are issued pursuant to Pacific Interstate's Purchased Gas Cost Adjustment (PGCA) Provision and Incremental Pricing Provision as set forth in section 16 and 17, respectively, of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of these tendered tariff sheets and the rates thereon is October 1, 1986.

Pacific Interstate also states that the above-tendered tariff sheets reflect a proposed October 1, 1986, Pacific Interstate Rate Schedule S–G–1 commodity rate of 421.70¢ per decatherm, an increase of 86.05¢ per decatherm from the 335.65¢ per decatherm rate effective April 1, 1986, the date of the last S–G–1 commodity rate change, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment. This is due to greater than anticipated production of section 102 gas and an 80% decrease in forecasted sales due to termination of the section 102 gas purchase contracts.

Pacific Interstate states that the current Gas Cost Adjustment is based on an annualized gas cost decrease of $93,434.00 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning October 1, 1986, an amount of $174,319.34, which is the amount of Pacific Interstate's Unrecovered Purchased Gas Cost Account at June 30, 1986. Furthermore, Pacific Interstate states that there is no incremental pricing surcharge adjustment applicable to this filing, since its only customer has no surcharge absorption capability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before 9–11–86. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20312 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–62–000,001]

Pacific Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Purchased Gas Cost Adjustment Provision

September 4, 1986.

Take notice that Pacific Offshore Pipeline Company (Pacific Offshore) on August 29, 1986, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheet:

Sixth Revised Sheet No. 4

Pacific Offshore requests an effective date of this tendered tariff sheet and the rates thereon of October 1, 1986.

As indicated below, the proposed increase is due in greatest part to the effect of the liquid revenue crediting mechanism in the PGA. Under the PGA, gas costs are credited with the average price of liquid by-product sold in January and July. Due to the seasonal nature of the liquid market, the two months represent the highest and lowest priced months. This device has recently resulted in exaggerated swings in POPCO's PGA. In addition, in April 1986, the price of liquid by-products dropped drastically. This has resulted in POPCO paying Exxon, its sole supplier, much more for its gas than it received from Southern California Gas Company (SoCalGas), its sole customer. POPCO will file a change in this PGA mechanism to reflect a moving annual average liquid revenue crediting provision in its Spring 1987 PGA.

Also, a portion of the increase is due to the escalation of NGPA §109 gas costs sold to POPCO by Exxon. However, commencing in January of 1986, POPCO started negotiations with Exxon to amend the gas purchase agreement in order to reduce gas costs. Negotiations have proceeded since that time through frequent meetings and sometime intense negotiations. To date, however, POPCO has been unsuccessful in achieving an agreement with Exxon.

Pacific Offshore also states that the above-tenderd tariff sheet reflects a proposed October 1, 1986, Pacific Offshore Rate Schedule G–1 commodity rate of $3.277 per decatherm, an increase of $1.258 per decatherm from the $2.019 per decatherm rate effective April 1, 1986, the date of the last revised commodity rate, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Offshore states that the current Gas Cost Adjustment is based on an annualized gas cost decrease of $1,193,749 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning October 1, 1986, an amount of $2,722,733.22 which is the amount of Pacific Offshore's Unrecovered Purchased Gas Cost account at June 30, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before 9–11–86. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20311 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–154–000]

Southern Natural Gas Co., Notice of Compliance Filing

September 4, 1986.

Take notice that on August 26, 1986, Southern Natural Gas Company (Southern) tendered for filing Eighth Revised Sheet No. 30D to its FERC Gas Tariff, Sixth Revised Volume No. 1. Southern states that this filing is being made pursuant to Ordering Paragraph (D) of the Federal Energy Regulatory Commission's June 3, 1986 order in Docket No. CP86–281–000 and that the revised sheet sets forth the rates to be effective under its Flexible Discount Rate Schedule during September of 1986. Southern is requesting an effective date of September 1, 1986.

Southern indicates that copies of the filing have been mailed to all of its jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20306 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–42–000, 001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 4, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on August 29, 1986 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

35th Revised Sheet No. 5
14th Revised Sheet No. 6A

The above tariff sheets are being filed pursuant to Transwestern's Purchased Gas Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected in these sheets represent a decrease of $0.2766/dth as measured against Transwestern's last regular semi-annual PGA filing Docket No. TA86–4–42–000 (PGA86–4) which became effective on April 1, 1986 and a decrease of $0.0278/dth as measured against Transwestern's "flex PGA" filing, Docket No. TF86–1–42–000 which became effective on August 1, 1986.

The rate change herein consists of:

(1) A decrease in the Cost of Gas Adjustment of $0.2960/dth as measured against Transwestern's last regular PGA filing, Docket No. TA86–4–42–000 (PGA86–4) which became effective on April 1, 1986 and a decrease of $0.0472/dth as measured against Transwestern's "flex PGA" filing, Docket No. TF86–1–42–000, which became effective on August 1, 1986.

(2) An increase in the Surcharge Adjustment of $0.194/dth due to a decrease in the balance in the Gas Cost Adjustment account as of June 30, 1986.

The proposed effective date of the above tariff sheets is October 1, 1986.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20310 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $37,000 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Gibbs Industries, Inc. of Revere, Massachusetts (Case No. HEF–0079). The fund will be available to customers who purchased petroleum

products from Gibbs during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed no later than 90 days after publication of this notice in the **Federal Register** and should be addressed to: Gibbs Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-0079.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585 (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Gibbs Industries, Inc. of Revere, Massachusetts. The Consent Order settled possible allocation violations with respect to the firm's sales of petroleum products during the months of May and June 1979, the consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued January 29, 1986. 51 FR 4971 (February 10, 1986).

As the Decision and Order indicates, applications for refund from the consent order fund may now be filed. Applications will be accepted provided that they are postmarked no later than 90 days after the publication of this Decision and Order in the **Federal Register**. Applications will be accepted from customers who purchased petroleum products from Gibbs during the consent order period. The specific information required in an application for refund is set forth in the Decision Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: September 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 2, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Gibbs Industries, Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0079

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Gibbs Industries, Inc. (Gibbs) of Revere, Massachusetts.

I. Background

Gibbs is engaged in the reselling and retailing of petroleum products and was therefore subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. An ERA audit of Gibbs revealed possible violations of the regulations governing the allocation of petroleum products, 10 CFR Part 211, Subparts A and F. The ERA specifically alleged that during the months of May and June 1979, Gibbs failed to supply certain of its customers with their adjusted price period allocation of motor gasoline.

In order to settle all claims and disputes between Gibbs and the DOE regarding the firm's allocation of motor gasoline during May and June 1979 (hereinafter referred to as the consent order period), Gibbs and the DOE entered into a Consent Order on January 7, 1981. The Consent Order refers to the ERA's allegations of allocation infractions, but notes that there was no formal finding that violations actually occurred. Additionally, the Consent Order states that Gibbs does not admit that it violated the regulations. Under the terms of the Consent Order, Gibbs remitted $37,000 to the DOE for deposit in an interest-bearing escrow account for ultimate distribution by the DOE.

On January 29, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 51 FR 4971 (February 10, 1986). We stated in PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from Gibbs' customers who can demonstrate that they were injured as a result of Gibbs' allocation practices during the consent order period. The PD&O was published in the **Federal Register** on February 10, 1986, and comments were solicited regarding the proposed refund procedures. We have received no comments regarding those procedures.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines that may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). As we stated in the PD&O, we have reviewed the record in the present proceeding and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Gibbs consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted.

The distribution of refunds in this proceeding will take place in two stages. In the first stage, we will accept claims from Gibbs' motor gasoline customers who may have been injured by the firm's allocation practices during the consent order period. The ERA audit file contains the names of Gibbs' base period customers who received less than their adjusted base period allocation of motor gasoline for May and/or June 1979. These are the parties most likely adversely affected by Gibbs' alleged allocation infractions. We will adopt the following standards and presumptions to assess the claims of these customers.[1]

First, we will generally assume that the customers listed in the ERA audit file were injured by Gibbs' alleged allocation violations. This assumption is different from our approach in other refund proceedings, where we have required detailed proof of injury, *see, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982) (*RFI*), but is justified in this case on the basis of the following factors. The first factor is the period of time covered by the Gibbs audit and Consent Order: May and June 1979. This was a period of severe supply shortages in the Petroleum industry, and firms generally were able to sell all the motor gasoline they were able to obtain. *Cf. Colony West Gulf*, No. DEE-4579 (June 22, 1979) (Proposed Decision), *finalized sub nom. AIA Exxon*, No. DEE-2426 (August 20, 1979), and *C&C Garage & Towing*, No. DEE-3362 (June 20, 1979) (Proposed Decision), *finalized* at 5 DOE

[1] Presumptions in refund cases are specifically authorized by § 205.282(e) of the DOE procedural regulations in order that refund applications may be considered in an efficient and equitable manner.

¶ 81,249 (1980) (when shortages exist, any firm that obtains additional quantities of product could sell it). Furthermore, we note that Gibbs Consent Order is focused on specific alleged allocation violations based upon a detailed audit. The ERA audit file identifies 147 customers of Gibbs who were affected by the firm's alleged allocation violations and indicates the difference between each customer's adjusted base period allocation of motor gasoline and the amount which it actually purchased from Gibbs. *See* the Appendix to this Decision. Therefore, we will adopt the presumption that each customer listed in the ERA audit file was injured with respect to any gallons of motor gasoline to which it was entitled, but did not receive from Gibbs.[2]

Second, we will use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. Under this methodology, we will presume that all customers experienced the same loss per gallon as a result of not receiving the correct adjusted base period allocation of motor gasoline from Gibbs during the consent order period. The assumption that the injury in this case was the same for each gallon lost is reasonable since the customers were in the same marketing area and is not inconsistent with the information contained in the audit file. As we have stated in prior cases, allocating refunds on a volumetric basis is efficient, treats all firms similarly and avoids detailed examination of the impact on each firm of the alleged violation. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,199 (1982).

Utilizing the volumetric refund presumption will also further our goal of granting restitution to as many claimants as possible by simplifying the process through which refund applications are prepared and analyzed. In this case, the volumetric refund amount is calculated by dividing the consent order settlement amount ($37,000) by the total volume of misallocated motor gasoline (383,670 gallons), yielding a per gallon volumetric refund amount, exclusive of interest, of $0.096437. An eligible claimant will receive a refund determined by multiplying the volumetric refund amount by the number of gallons to which it was entitled, but did not receive from Gibbs during the consent order period (excluding any gallons obtained from alternative sources).[3] In addition, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

All refund applicants will be required to indicate, for each month of the consent order period, their adjusted base period allocation of motor gasoline and the number of gallons actually purchased from Gibbs, and the adjusted base period allocation and gallons purchased from other suppliers. If a claimant lacks these data, but is listed in the attached Appendix, it may certify that, during May and June 1979, (i) it had a supplier-purchaser relationship with Gibbs pursuant to 10 CFR Part 211, and (ii) it did not receive motor gasoline from another supplier.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

In the unlikely event that the total amount of valid claims exceeds the funds available in the escrow account, all refunds will be reduced proportionately. If, on the other hand, money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent second-stage proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the intitial stage of this refund proceeding has been completed.

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Gibbs consent order fund. Accordingly, we shall now accept Applications for Refund from eligible purchasers of Gibbs motor gasoline during the consent order period. As proposed, the consent order funds will be distributed to claimants that are identified in the ERA audit file as having been affected by Gibbs' alleged allocation violations, as well as to any other eligible customers of Gibbs who apply for a refund. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund:

1. The name of the consent order firm: Gibbs Industries, Inc., the case number: HEF-0079, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. A schedule of the applicant's purchases of motor gasoline from Gibbs and other suppliers during the months of May and June 1979 and its adjusted base period allocation from Gibbs and other suppliers for those months. In the alternative, an applicant may submit a statement certifying that during those months it has a supplier-purchaser relationship with Gibbs and did not receive motor gasoline from another supplier.

4. A statement of whether the applicant was in any way affiliated with Gibbs. If so, the applicant should state the nature of the affiliation.

5. A statement of whether there has been any change in ownership of the entity that purchased the motor gasoline from Gibbs since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

6. A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

7. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be confidential.

All Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Gibbs Industries, Inc. pursuant to the Consent Order executed on January 7, 1981 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: September 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

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[2] This presumption will not apply to firms which were able to obtain sufficient quantities of motor gasoline elsewhere. The acquisition of product from other sources would have mitigated the injury which such customers experienced as a result of Gibbs' alleged failure to supply them with their full allocation. However, a claimant which purchased product from alternative sources will still be eligible for a refund, if, for example, it shows that it paid a significantly higher price for the product and was not able to pass the higher price through to its customers.

[3] Some customers may claim that they suffered an injury greater than that which has been approximated by the volumetric refund amount. These firms must make the showings required of allocation claimants in other Subpart V proceedings. *See, e.g., RFI; cf. Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984) (refund above volumetric level approved for price violation claim). Specifically, they must document the net profits lost as a result of not receiving their adjusted base period allocation of motor gasoline during the consent order period.

APPENDIX

I. GIBB'S WHOLESALE ACCOUNTS

Name of customer	Gallons not received	
	May 1979	June 1979
A. Address Known		
Arsenault, Harold	7,705	
Clean Machine	282	
Coviello & Son *	149	
Deering Lumber		156
Eddy, James	20	
Hallman Chevrolet	270	
Pleasant Park Yacht Club *		98
Richardson, Harold	1,684	
B. Address Unknown		
Acorni Corporation	6,665	
Aranosian Oil Co	1,912	
Avellino, Silveo	11,100	
B&D Enterprises	276	
Ballard Oil	2,001	
Barnes, William	2,531	
C&C Elliot	951	
CDC, Inc	1,564	
Carl Oil Company	2,362	
Center Market, Inc	1,262	
Chapman Oil Co	157	
Charles Auto Body and Tire *	20	
Charles C. Towne and Sons	270	81
Charles Deemers, Inc	249	
Chelmsford Fuel Trans	1,449	
City of Saco, Maine	1,047	51
Colonial Express	232	
Conway, Clinton	5,552	
Cray Oil	5,031	
Daigle, Claude *	108	
Davis, Frank Jr.*	28	
Dennis K. Burke, Inc	5,806	
Derring, Albert *	43	
Dinola Fuels, Inc	711	
Disilva Truck Service	80	
Duquette, O	2,333	
Dutton Tire and Auto Dist	622	1,670
Duval, Robert L	1,212	12,635
Dystart Service	2,178	4,672
Ecology Oil Corp	4,837	
Edgemont Garage and Oil	2,919	
Freed Oil Co	269	
Gasland (Good Hope)	18,129	
Geo. E. Warren Co	2,992	
Goldman Paper *	68	
Gorham Town Garage	252	
Green Brothers Oil and Co., Inc	126	
Hall, Hoyt T	7,490	
Harbor Supply	186	
Hill Oil Company	5,227	19,228
Hoole, Richard E	1,865	
JBB, Inc	9,839	
Kartland, Inc	23	
L.J. Bouchard & Son	2,113	
Lovetere, Angelo	376	
Lucus, James	1,202	
Maier, Paul	5,583	
Maine Coal Sales	630	
Malden Taxi	750	
McCollister	436	
Milliard, Fred *	52	
Montgomery, A	988	
Moore, Tom	617	
Mosher Farm *	27	
Mullerkey, Paul	1,715	
Munces Superior Petroleum	564	
Pages Service, Inc	4,478	3,120
Paul Martin, Inc	205	289
Piglet Market	1,312	
Prentiss, Arthur Jr.*	30	
Pressman, Melvin	212	
R.L. Greenlaw and Sons, Inc	630	79
Red's Inc	6,006	
Remi Fortin Construction	730	
Rent A Tool, Inc	273	
Richdale Dames	3,206	
Riverdside Anchorage *	90	
Rohner Service, Inc	1,257	
Romanchuk, Al	2,725	
Rossi, Steve	1,431	
Rousseau, G.A	3,612	
Roy's Garage	685	
Saco Brick *	84	

APPENDIX—Continued

Name of customer	Gallons not received	
	May 1979	June 1979
Schlager, Joseph	1,777	
Spang, Phil *	96	
Stevens, Walter *	44	
Stop-N-Go *	150	
Sweetster's Home *	106	
Teixeira, E	2,771	
Terry Oil and Heating	275	
Thibeault Oil	540	440
United Tire	1,501	
Wakefield Moving & Storage	472	
Wayfra Realty	11,688	
Welch, Frank	1,123	
Woonsocket Consumer Coal	527	

* Using the volumetric method of calculating refunds, these firms do not qualify for the $15 minimum required to file a refund application.

II. GIBB'S DEALER ACCOUNTS

Name of customer	Gallons not received	
	May 1979	June 1979
A. Address Known		
Beers, Richard R		7,408
Berube, Jos	6,587	11,558
Bourassa, William	4,744	233
Clean Machine		953
Cote's Garage, Inc	552	
Daniels, Warren C		4,228
Martines, Joseph	200	3,957
B. Address Unknown		
A & G Auto		856
Arthur Wolfe Tire Co	1,698	
Arundel Tulsa	469	
Bartlett, Clarence	7,829	
Bates, Clifford		578
Bill and Andy's	3,734	5,561
Bob Brest Buick		329
Brighton Auto Service	174	1,834
Bruhms, Arthur	610	508
Buster's Service	1,260	
Cormier, Ronald	1,304	1,505
O. Duquette		5,288
Donovan, Thomas		366
Duff's Littleton		6,205
Ferris, Thomas*	66	
Forbes, George	4,132	1,983
Foster, Charlie	7,936	
Granite State Gas Station		241
Greenier, Andrew		8,999
Hodge, William		2,498
Jiffy Mart		171
L.J. Bouchard & Son		177
Lampron, Hubert	3,016	
Latorella & Frongell		1,361
Lemieux, Hercules	215	
Levyssohn, J.V. Permus		2,049
Maier, Paul		105
Morel, Edmund		779
Mullarkey, P		934
Nierberle, Ernest	1,547	
North Reading BP		6,403
Oliver, G		3,552
Pressman, Melvin		130
Ray, Leonard		4,060
Reggie's BP		594
Rohner Service		1,295
Rossi, Steve		1,302
Samson, Lionel	1,777	145
Schlager, Joseph		1,323
Sebago, Portland		2,967
Steelstone Industries, Inc	266	
Sullaway, Sam		8,969
Venuti, Robert	421	
Welch, Frank		4,777
York Oldsmobile*		130
Zannini, David	2,159	5,470

*Using the volumetric method of calculating refunds, these firms do not qualify for the $15 minimum required to file a refund application.

[FR Doc. 86-20298 Filed 9-8-86; 8:45 am]
BILLING CODE 6450-01-m

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim Basis; Cumberland Basin System of Projects

AGENCY: Southeastern Power Administration (SEPA), DOE.

ACTION: Notice of order confirming and approving power rates on an interim basis for the Cumberland Basin System of Projects.

SUMMARY: Notice is given of Rate Order No. SEPA-23 of the Under Secretary of the Department of Energy, confirming and approving, on an interim basis, Rate Schedule CC-1-B for the Cumberland Basin System of Projects. The rates were approved on an interim basis through June 30, 1989, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

EFFECTIVE DATE: Approval of rates on an interim basis is effective on September 1, 1986.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

J. Emerson Harper, Office of Management and Review, CE-41, Department of Energy, James Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued December 27, 1984, in Docket No. EF84-3021 confirmed and approved Wholesale Power Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CM-1-A, CK-1-A, CTV-1-A and CC-1-A through June 30, 1989. Rate Schedule CC-1-B replaces CC-1-A.

Issued in Washington, DC, August 29, 1986

Joseph F. Salgado,

Under Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

In the matter of: Southeastern Power Administration—Cumberland Basin Projects' Power Rates; Rate Order SEPA-23.

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior and the Federal Power Commission

under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued pursuant to the delegation to the Under Secretary.

Background

Power from the Cumberland Basin Projects is presently sold under Wholesale Power Rate Schedules CBR–1–A, CSI–1–A, CEK–1–A, CM–1–A, CK–1–A, CTV–1–A and CC–1–A confirmed and approved through June 30, 1989. These rate schedules were approved by the Federal Energy Regulatory Commission by order issued December 27, 1984, for a period beginning July 1, 1984, and ending June 30, 1989.

Public Notice and Comment

Opportunities for public review and comment on Rate Schudule CC–1–A were provided during the period March 12, 1984, through May 11, 1984. Comments and discussion of those comments were provided in FERC Docket No. EF84–3021.

Discussion

System Repayment

The repayment study supporting Rate Schedule CC–1–A in the original rate filing is included in FERC Docket No. EF84–3021. Repayment studies prepared with actual data through fiscal years 1984 and 1985 show that the amortization is less than anticipated in the 1984 rate filing because of lower than average water conditions. However, the repayment studies continue to show that present revenues are adequate to recover the total costs in accordance with the repayment criteria.

Additionally, it appears that Rate Schedule CC–1–B is designed so as to produce revenue adequate to recover on a timely basis all system power costs. The Administrator of SEPA has certified that the rates are consistent with the applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Rate Design

Rate Schedule CC–1–A was originally designed to recover costs for power delivered on the Tennessee Valley Authority (TVA)—Carolina Power & Light Company (CP&L) border. This rate schedule was designed prior to final contractual arrangements with CP&L to deliver the power to SEPA's preference customers. Recently, arrangements have been completed, and CP&L has requested reserves and losses to deliver the power. Therefore, we have adjusted rates on Rate Schedule CC–1–A to provide the same revenues through reduced capacity and energy delivered. In addition, CP&L is charging a transmission charge which SEPA is passing directly to the affected customers through a new transmission charge.

Environmental Impact

SEPA has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding this rate schedule, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Office of the Director of Management and Review of Conservation and Renewable Energy, Forrestal Building, 1000 Independent Avenue SW., Room 6B–070, Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning September 1, 1986, and ending no later than June 30, 1989.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective September 1, 1986, attached Wholesale Power Rate Schedule CC–1–B. The rate schedule shall remain in effect on an interim basis through June 30, 1989, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves it or a substitute rate schedule on a final basis.

Issued in Washington, DC, August 29, 1986.

Joseph F. Salgado,

Under Secretary.

Wholesale Power Rate Schedule CC–1–B

Availability

This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery

The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rote

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

$1.71 per kilowatt of total contract demand.

Energy Charge

5.74 mills per kilowatt-hour.

Transmission Charge

1.91 per kilowatt of total contract demand.

The transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government-Carolina Power & Light Company contract.

Energy to be Furnished by the Government

The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to

Carolina Power & Light Company (less six percent (6%) losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Carolina Power & Light Company's, Western Division transmission system.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

September 1, 1986.

[FR Doc. 86-20236 Filed 9-8-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3076-7]

Science Advisory Board Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Conference Room #3 North (on the Ground Floor, near the EPA Washington Information Center), Waterside Mall, 401 M Street SW., Washington, DC on September 29-30, 1986. The meeting will begin at 9:00 a.m. each day, and last until 5:00 p.m. on September 29, and until 1:00 p.m. on September 30.

The purpose of the meeting will be to continue review of technical documents supporting Agency regulations for the reuse and disposal of municipal treatment plant sludges under section 405(d) of the Clean Water Act, and proposed revisions to the Agency's Ocean Dumping Regulations (40 CFR Parts 220 through 229).

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Mrs. Kathleen Conway, Deputy Director, at (202) 382-2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mrs. Conway prior to September 22, 1986 in order to be placed on the agenda. Any member of the public wishing to attend should contact Ms. Renee Butler at (202) 382-2552.

Dated: August 29, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-20262 Filed 9-8-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3076-6]

Science Advisory Board Radiation Advisory Committee National Radon Survey Design Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the National Radon Survey Design Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held at the Capitol Holiday Inn, Gemini Conference Room, 550 C Street SW., Washington, DC 20024 on September 24, 1986. The meeting will begin at 9:00 a.m. and adjourn no later than 5:00 p.m.

The Subcommittee will review the *Design of the National Survey of Radon Levels in Residential Structures* for the Office of Radiation Programs. Copies of the documents being reviewed may be obtained by calling or writing Daniel Egan (202) 475-9605 at the Office of Radiation Programs, ANR-460, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The meeting is open to the public; however, seating is limited. Any member wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on September 21, 1986. The telephone number is (202) 382-2552.

Dated: August 29, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-20263 Filed 9-8-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36125; FRL-3067-3]

Pesticide Registration Standards; Notice of Availability

Correction

In FR Doc. 86-18757 beginning on page 29693 in the issue of Wednesday, August 20, 1986, make the following corrections:

1. On page 29693, in the second column in the table in the **SUPPLEMENTARY INFORMATION**, the fifteenth entry in the first column should read "Bolstar (Sulprofos)"; and

2. On the same page, the same column and table, the NTIS order No. opposite the entry "Chlorobenzilate" should read "PB 85-107605".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1616]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

September 3, 1986.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules for Rural Cellular Service. (CC Docket No. 85-388, RM-5167). Number of petitions received: 13.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-20230 Filed 9-8-86; 8:45 am]

BILLING CODE 6712-01-M

Radio Broadcasting Advisory Committee; Meeting

The next meeting of the Advisory Committee on Radio Broadcasting will be held at 1:30 p.m., Wednesday, September 24, 1986, at the McCollough Room, National Association of Broadcasters, 1771 N Street, Washington, DC.

The Committee will consider:

—Possible improvements to the AM service through revisions to the AM Broadcast Rules. (See the Staff Report to the Commission on this subject dated April 3, 1986);

—Preparations for the 1988 Second Session of the ITU Regional Administrative Radio Conference on the Expansion of the Band Allocated to AM Broadcasting;

—Implementation of the recently signed United States-Mexican Agreement on AM Broadcasting; and
—Other Business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for September 24, 1986 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Louis C. Stephens at FCC Headquarters. His telephone number has been changed to (202) 254–3394.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–20229 Filed 9–8–86; 8:45 am]

BILLING CODE 6712–01–M

New TV Stations; Applications for Consolidated Hearing; Interface Productions et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No.	MM Docket No.
A. Interface Productions, Inc., Bluefield, WV.	BPCT–860401KE	86–345
B. Paul Lambert, Limited, Bluefield, WV.	BPCT–860505KE	
C. Living Farth Ministries, Inc., Bluefield, WV.	BPCT–860529KF	
D. Blue Sky Broadcasting, Inc., Bluefield, WV.	BPCT–860530KY	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, C,D
Multiple Ownership, C
Standard Comparative (Commercial), A,B,C,D
Ultimate, A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Stephen F. Sewell,

Assistant Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–20231 Filed 9–8–86; 8:45 am]

BILLING CODE 6712–01–M

New TV Stations; Applications for Consolidated Hearing; Meredith Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No.	MM docket No.
A. Meredith Corporation, Bunnell, FL.	BPCT–860306LH	86–343
B. Pollack Broadcasting Company, Bunnell, FL.	BPCT–860421KK	
C. Glenda McLeod, Bunnell, FL.	BPCT–860422KH	
D. Bunnell Broadcasting, Corp., Bunnell, FL.	BPCT–860422KI	
E. Press Broadcasting, Company, Bunnell, FL.	BPCT–860422KJ	
F. Bunnell Communications, Inc., Bunnell, FL.	BPCT–860530KK	
G. Bunnell Television Company, Bunnell, FL.	BPCT–860530KM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, A,B,C,D,E,F,G
Satellite, A,E
Comparative, A,B,C,D,E,F,G
Ultimate, A,B,C,D,E,F,G

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–20232 Filed 9–8–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Martime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010987.

Title: United States/Central America Liner Association.

Parties:

Coordinated Caribbean Transport
Seaboard Marine, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed agreement would establish a conference arrangement in the trade between United States Atlantic, Gulf and Puerto Rico ports and ports in Costa Rica, El Salvador, Guatemala and Honduras and inland points via all such ports (excluding Alaska and Hawaii).

Agreement No.: 217–010988.

Title: Tecomar, S.A./Flagship Container line, Inc. Space Charter Agreement.

Parties:

Flagship Container Line, Inc. (FCL)
Tecomar, S.A. (Tecomar)

Synopsis: The proposed agreement would permit FCL to charter space on Tecomar vessels in the trade between United States Gulf and Florida ports, and ports in Belize, Guatemala, El Salvador, Honduras and Costa Rica. The parties have requested a shortened review period.

Dated: September 3, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-20200 Filed 9-8-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Peoples National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(a) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 2, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Peoples National Bancorp, Inc.*, State College, Pennsylvania; to acquire 24.90 percent of the voting shares of Heritage Financial Services Corporation, Lewistown, Pennsylvania, and thereby indirectly acquire The Russell National Bank, Lewistown, Pennsylvania.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F&M Bankshares of Reedsburg, Inc.*, Reedsburg, Wisconsin; to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers and Merchants Bank, Reedsburg, Wisconsin.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grant Avenue, Kansas City, Missiouri 64198:

1. *Robinson Bancshares, Inc.*, Robinson, Kansas; to acquire 80 percent or more of the voting shares of Morrill and Janes Bancshares, Inc., Hiawatha, Kansas, and thereby indirectly acquire Morrill and Janes Bank and Trust Company, Hiawatha, Kansas.

Board of Governors of the Federal Reserve System, September 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20211 Filed 9-8-86; 8:45 am]

BILLING CODE 6210-01-M

Unibancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23)a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activiteis will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Unibancorp, Inc.*, Chicago, Illinois; to engage *de novo* through its subsidiary, Unibanc Brokerage Services, Inc., Chicago, Illinois, in security brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20212 Filed 9-8-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Disease Control

National Symposium on the Prevention of the Leading Work-Related Diseases and Injuries; Open Meeting

A National Symposium on the Prevention of Leading Work-Related Diseases and Injuries will be held October 28-31, 1986, at the Hyatt Regency Hotel, Cincinnati, Ohio. This symposium is sponsored by the Association of Schools of Public Health (ASPH) and the Association of University Programs in Occupational Health and Safety under a cooperative agreement with the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control. NIOSH developed and published a suggested list of the Leading Work-Related Diseases and Injuries, and in cooperation with ASPH, convened the first symposium in Atlanta, Georgia, in May 1985. Proposed strategies for the prevention of occupational lung diseases, musculoskeletal injuries, occupational cancers, occupational traumatic injuries, and cardiovascular diseases were introduced and discussed by professionals from all sectors of occupational safety and health. These deliberations have resulted in a publication of these five strategies by the ASPH.

The second symposium is scheduled to begin at 9 a.m., Wednesday, October 29, with an opening session and continue through 3 p.m., Friday, October 31. Beginning at 2:30 p.m., Wednesday, and continuing on Thursday until 5 p.m., there will be five concurrent workshops

with a panel of national experts on the following proposed draft prevention strategies:

Workshop I: Prevention of Disorders of Reproduction
Workshop II: Prevention of Neurotoxic Disorders
Workshop III: Prevention of Noise-Induced Hearing Loss
Workshop IV: Prevention of Dermatologic Conditions
Workshop V: Prevention of Psychologic Disorders

On Friday, October 31, there will be summaries of the above five prevention strategies followed by a panel of national leaders who will discuss the utility of these strategies for the future.

FOR FURTHER INFORMATION CONTACT: Roger W. Turenne, NIOSH, CDC, Building 1, Room 3040, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Telephones: FTS: 236-3794, Commercial: 404/329-3794.

Dated: September 3, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-20240 Filed 9-8-86; 8:45 am]

BILLING CODE 4160-19-M

Reproductive Effects of Low Frequency Radiofrequency Radiation in Rats; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers of Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: September 23, 1986
Time: 9 a.m.—4p.m.
Place: Room B-56, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226
Purpose: To review and discuss the scientific merit of an experimental investigation designed to determine the effects of acute and subchronic exposure to low frequency radiation on the reproductive systems of male and female rats. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Joseph M. Lary, Ph.D., Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8482, Commercial: 513/533-8482.

Dated: September 3, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-20239 Filed 9-8-86; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 86M-0344]

Elscint, Inc.; Premarket Approval of GYREX™ (Nuclear Magnetic Resonance (NMR) Device)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Elscint, Inc., Boston, MA, for premarket approval, under the Medical Device Amendments of 1976, of the GYREX™. After reviewing the recommendation of the Radiologic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 9, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7514.

SUPPLEMENTARY INFORMATION: On May 16, 1985, Elscint, Inc., Boston MA 02215, submitted to CDRH an application for premarket approval of the GYREX™. The GYREX™ is a nuclear magnetic resonance (NMR) device with multi-slice operation and a 0.6 and 0.67 tesla (T) superconducting magnet operating at 0.5T. The device is indicated for use as a diagnostic imaging system that produces transverse, coronal, and sagittal images of the internal structure of the head or body. These images depict the spatial distribution of protons (hydrogen nuclei) exhibiting nuclear magnetic resonance, and are based upon NMR properties of body tissues and fluids (proton density, flow velocity, spin-lattice relaxation time (T1), and spin-spin relaxation time (T2)). When interpreted by a trained physician, the images yield information that can be useful in the determination of a diagnosis. All other uses of the GYREX™ remain investigational.

On September 30, 1985, the Radiologic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ-430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 9, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 29, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-20218 Filed 9-8-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-86-0822]

Office of the Manager, Milwaukee Office; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of succession.

SUMMARY: The Manager is designating officials who may serve as the Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: The designation is effective August 14, 1986.

FOR FURTHER INFORMATION CONTACT: Walter Ratzki, Director, Management and Budget Division, Office of Regional Administration, Chicago Regional Office, Department of Housing and Urban Development, 300 South Wacker Drive, Chicago, Illinois 60606-6765, 312-353-8477. (This is not a toll-free number.)

Designation: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability or vacancy in the position.

1. Deputy Manager
2. Chief Counsel
3. Director, Housing Management
4. Director, CPD Division
5. Director, Housing Development
6. Director, FH&EO
7. Chief, Loan Management
8. Chief, AE&C
9. Chief, Property Disposition

This designation supersedes the designation published at Docket No. D-84-753, Federal Register Vol. 49, No. 95, dated Tuesday, May 15, 1984 (49 FR 20572).

Authority: Delegation of Authority, 27 FR 4319 (1962); Sec. 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order II, 31 FR 615 (1966).

Michael T. Scanlon,

Acting Manager, Milwaukee Office.

Lewis Nixon,

Acting Regional Administrator-Regional Housing Commissioner, Region No. 5.

[FR Doc. 86-20276 Filed 9-8-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under Paperwork Reduction Act

August 26, 1986.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Procedures for Establishing that an American Indian Group Exists as an Indian Tribe, 25 CFR Part 83.

Abstract: The regulations contain seven criteria to be addressed by American Indian groups seeking Federal acknowledgment. The process provides groups an opportunity to present their arguments for recognition.

Bureau Form Number: BIA-8304, BIA-8305, BIA-8306.

Frequency: One-time only

Description of Respondents: Unrecognized American Indian groups

Annual Responses: 4

Annual Burden Hours: 10,528

Bureau Clearance Office: Ann Bolton 202-343-3577

Hazel E. Elbert,

Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).

[FR Doc. 86-20208 Filed 9-8-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Minerals Management Service

[AA-630-86-4111-02-2410]

Review of Forms for Information Collection for Onshore and Offshore Oil and Gas Operations

AGENCY: Bureau of Land Management and Minerals Management Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management and the Minerals Management Service are conducting a joint review of several onshore and offshore reporting forms used to propose or to report on oil and gas operational activities. This effort is part of the periodic review of all information collection requirements and is designed to eliminate duplicative and/or unnecessary information collection. The relationship between the six forms that are the subject of this review will also be studied. In the case of offshore operations, the review is concurrent with the proposed rulemaking published in the Federal Register of March 18, 1986 (51 FR 9316), that would revise the offshore operating regulations in 30 CFR Part 250 and 256.

DATE: Comments should be submitted by November 10, 1986.

ADDRESS: Comments should be submitted to: Director (630), Bureau of Land Management, Room 5640, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

The original comments will be available for public review in Room 5640 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday. A duplicate set of the comments will be available for public review at the Minerals Management Service, 12203 Sunrise Valley Drive, Room 6A110, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Stephen Spector, Bureau of Land Management, (202) 653-2147

or

John Mirabella, Minerals Management Service, (703) 648-7815.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management and the Minerals Management Service are jointly conducting a review of six of the current forms used by the oil and gas industry in proposing or reporting on oil and gas operational activities. The forms being reviewed are:

Onshore—3160–3 (OMB No. 1004—0136) Application for Permit to Drill, Deepen or Plug Back
Onshore—3160–4 (OMB No. 1004—0137) Well Completion or Recompletion Report and Log
Onshore—3160–5 (OMB No. 1004—0135) Sundry Notice and Reports on Wells
Offshore—MMS–331C (OMB No. 1010—0044) Application for Permit to Drill, Deepen or Plug Back
Offshore—MMS–331 (OMB No. 1010—0045) Sundry Notice and Report on Wells
Offshore—MMS–331 (OMB No. 1010—0046) Well Completion or Recompletion Report and Log

During the late 1950's, the above listed forms and counterpart forms used by the States were developed by representatives of the Department of the Interior, officials of various States working through the Interstate Oil Compact Commission, and representatives of the petroleum industry. The forms used by the Federal agencies were issued in 1963. As a result of reorganizations within the Department of the Interior in 1982, responsibility for onshore and offshore operations were separated and assigned to the Bureau of Land Management and the Minerals Management Service, respectively, and each agency thereafter issued its own separate forms. Although the onshore and offshore forms have been assigned new numbers by the respective agencies, the format of the forms is essentially unchanged from that adopted in 1963 and the information collection requirements of the corresponding onshore and offshore forms are basically the same. This notice requests comments from the public on several contemplated changes so that any warranted changes of the forms may be made comprehensively. This will minimize the burden of the conversion to the new forms by industry and also will eliminate the propspect of the additional burden of making changes on a piecemeal basis. The comments may address any of the specific items set out in this notice and may be directed to onshore or offshore operations, or both, on all of the listed forms.

Specific Items of Discussion

A. Duplication of Information Used for Identification

The three forms which each agency utilizes contain the same basic informational items which identify the specific well to which the information required by the forms applies. While it is essential to evaluate proposed and ongoing activities with the correct well and lease, information that is duplicative or unnecessary should not be required. In light of this discussion, please answer the following questions:

1. Is there any further need on later filings to supply all of the items of identification supplied as part of an inital filing on forms 3160–3 or MMS–331C?

2. Would sufficient information for identification be supplied if only the name of the operator, the lease Communitization Agreement or Unit Agreement designation and the API well number were supplied?

3. If only the information set forth in question 2 above were required, could the elimination of other information now required by the forms cause any problems in assuring that the report woul be related to the proper well and lease or Agreement?

4. For onshore operations, would any problems arise in relating a report to the proper well and lease or Agreement when operations involve a well for which no API well number has been assigned?

B. Use of Proper Form

There has been some confusion about the proper form for recompletions in a new zone. Both of the Applications for Permit to Drill (3160–3 and MMS–331C) clearly state that they are the forms to be used for reporting recompletions in a new zone and that both Sundry Notice Forms (3160–5 and MMS–330) state that they are not be used for this purpose. In light of this discussion, please answer the following questions:

1. Is there confusion as to the proper form to be used for any desired actions?

2. Is anything to be gained from continuing to having multiple use forms for several types of actions?

3. Could any of the forms be simplified and used for only one type of action?

4. Would such simplification be beneficial?

C. Revision of Offshore Operating Regulations

On March 18, 1986, the Minerals Management Service issued a proposed rulemaking that would revise its offshore operating regulations. An analysis of the comments on that proposed rulemaking may result in changes in the use of some offshore forms. Those comments and the comments received in response to this notice will be jointly analyzed to determine what changes, if any, should be made in the offshore forms and their use

D. Relationship between Onshore, Offshore and State Forms

The forms identified in this notice were originally developed for use for both onshore and offshore operations. This was changed when the Federal responsibility for oil and gas operations was delegated to two agencies. When the forms were originally issued, a number of States also issued corresponding forms of identical design. In light of this discussion, please answer the following questions:

1. Do the benefits of designing separate Federal forms to meet the specific needs of onshore and offshore operations outweigh the benefits of retaining similar forms for both types of operations?

2. Are there any substantial differences between onshore and offshore operational proposals and activities that would dictate the revision of individual items on the onshore form but not on the offshore form, or vice versa?

3. Is there a continuing benefit from retaining a close relationship between Federal onshore forms and the various State forms which serve essentially the same purpose?

Robert F. Burford,
Director, Bureau of Land Management
September 3, 1986.

John B. Rigg,
Acting Director, Minerals Management Service.
August 28, 1986.

[FR Doc. 86–20264 Filed 9–8–86; 8:45 am]
BILLING CODE 4310–MR–M

Bureau of Land Management

New Mexico; Filing of Plat of Survey

September 2, 1986.

The supplemental plats described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on September 2, 1986.

The supplemental plats show the corrected bearings and distances and longitude in section 30, Township 15 North, Range 7 West and sections 25 and 35, Township 15 North, Range 8 West, NMPM, New Mexico.

These supplemental plats were requested by the Director, Bureau of Land Management.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the

plat may be obtained from that office upon payment of $2.50 per sheet.

William S. DeGroot,

Acting Chief, Branch of Cadastral Survey

[FR Doc. 86-20209 Filed 9-8-86; 8:45 am]

BILLING CODE 4310-FR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 30, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 24, 1986

Carol D. Shull,

Chief of Registration National Register.

Alabama

Perry County

Marion, *Henry House*, S. Washington St.

Connecticut

Fairfield County

Danbury, *Union Station*, White St. & Patriot Dr.

Hawaii

Kauai County

Kukui Heiau

Maui County

Pu'upehe Platform (#50-La-19)

Michigan

Lapeer County

Hadley Township, *Hadley Flour and Feed Mill*, 3633 Hadley Rd.

Montana

Custer County

Miles City, *Harmon, William, House*, 1005 Palmer

Granite County

Philipsburg, *Anderson Lumber Company (Philipsburg Montana MRA)*, Roughly bounded by Brown, First, & Holland Sts.

Philipsburg, *Doe, M.E., House (Philipsburg Montana MRA)*, Dearborn & Montgomery Sts.

Philipsburg, *Philipsburg, Grade School (Philipsburg Montana MRA)*, W of Schnepel St.

Philipsburg, *Philipsburg, Historic District (Philipsburg Montana MRA)*, Roughly bounded by Gamma, Cleveland Ave., Montgomery, Madison, Daly, Broadway & Cedar Sts

Philipsburg, *Ringeling House (Philipsburg Montana MRA)*, Caledonian Mining Claim, E of Doe and Morse Addition

Sanders County

Thompson Falls, *Ainsworth House (Thompson Falls MRA)*, 911 Maiden Lane

Thompson Falls, *Bedard House (Thompson Falls MRA)*, 207 Spruce St.

Thompson Falls, *Gem Saloon (Thompson Falls MRA)*, 808 Main St.

Thompson Falls, *Grandchamp House (Thompson Falls MRA)*, 1012 Preston Ave.

Thompson Falls, *Griffen House (Thompson Falls MRA)*, 205 Gallatin St.

Thompson Falls, *House at 112 Park Street (Thompson Falls MRA)*, 112 Park St.

Thompson Falls, *House at 916 Preston Avenue (Thompson Falls MRA)*, 916 Preston Ave.

Thompson Falls, *Hoyt House (Thompson Falls MRA)*, 204 Gallatin St.

Thompson Falls, *100F Lodge (Thompson Falls MRA)*, 520 Main St.

Thompson Falls, *Norby House (Thompson Falls MRA)*, 13 Pond St.

Thompson Falls, *Northern Pacific Warehouse (Thompson Falls MRA)*, Bounded by Preston Ave. & Main St. along Burlington Northern Right-of-Way

Thompson Falls, *Preston House (Thompson Falls MRA)*, 250 Ferry St.

Thompson Falls, *Rinard House (Thompson Falls MRA)*, 210 Jefferson St.

Thompson Falls, *Sanders County Jail (Thompson Falls MRA)*, Madison & Maiden Lane

Thompson Falls, *Thayer House (Thompson Falls MRA)*, 109 Jefferson St.

Thompson Falls, *Thompson Falls Hydroelectric Dam Historic District (Thompson Falls MRA)*, U.S ALT 10 at Clark Fork River within NW part of Thompson Falls

Thompson Falls, *Tourist Hotel (Thompson Falls MRA)*, 101 Main St.

Thompson Falls, *Ward Hotel (Thompson Falls MRA)*, 919 Main St.

Thompson Falls, *Weber's Store (Thompson Falls MRA)*, 510 Main St.

New York

Cortland County

McGraw, *Main Street Historic District*, Roughly on Main St. between South and Washington Sts.

Orange County

Montgomery vicinity, *Bull, William III, House*, Bart Bull Rd.

North Dakota

Divide County

Noonan vicinity, *Nielsen, Niels, Fourteen-Side Barn Form (North Dakota Round Barns TR)*, ND 38

Eddy County

New Rockford vicinity, *Marriage, Sylvanus, Octagonal Barn (North Dakota Round Barns TR)*, ND 38

New Rockford vicinity, *Myhre, Jens, Round Barn (North Dakota Round Barns TR)*, ND 30

Emmons County

Strasburg, *SS Peter and Paul Catholic Church Complex*, First Ave.

Foster County

McHenry vicinity, *McHenry Railroad Loop*, E side of ND 20

Grand Forks County

Kempton vicinity, *Funseth, Carlott, Round Barn (North Dakota Round Barns TR)*, ND 38

Grant County

Medicine Rock State Historic Site

LaMoure County

Edgeley vicinity, *Rodman Octagonal Barn (North Dakota Round Barns TR)*, ND 30

Logan County

Burnstad vicinity, *Abell, Robert, Round Barn (North Dakota Round Barns TR)*, ND 38

Rolette County

Dunseith vicinity, *Cote, Urbain, Round Barn (North Dakota Round Barns TR)*, ND 38

Stark County

Gladstone vicinity, *Gerhardt Octagonal Pig House (North Dakota Round Barns TR)*, ND 38

Stutsman County

Kensal vicinity, *Baker, Cecil, Round Barn (North Dakota Round Barns TR)*, ND 38

Ward County

Surrey vicinity, *Glick, Levi, Round Barn (North Dakota Round Barns TR)*, ND 38

Puerto Rico

Arecibo County

Arecibo, *Casa Alcaldia de Arecibo*, Jose de Diego Ave.

Arecibo, *Edificio Oliver*, 64 Jose de Diego Ave.

Ponce County

Ponce, Iglesia de la Santisima *Trinidad*, Marina St., at intersection of Mayor & Abolicion St.

Ponce, *Rosaly-Batiz House*, 125 Villa St.

Texas

Ellis County

Waxahachie, *Vickery, Richard, House (Waxahachie MRA)*, 1104 E. Marvin

Victoria County

Victoria, *Lane—Tarkington House (Victoria MRA)*, 1207 N. Bridge

[FR Doc. 86-2027 Filed 9-8-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-269 (Sub-No. 1X]

Iowa Terminal Railroad Co.; Abandonment Exemption; Cerro Gordo and Floyd Counties, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Iowa Terminal Railroad Co. of three line segments totalling 15.7 miles of railroad in Cerro Gordo and Floyd Counties, IA, subject to standard employee protective conditions, a historic resource condition, and a salvage condition.

DATES: This exemption will be effective on October 9, 1986. Petitions to stay must be filed by September 19, 1986, and petitions for reconsideration must be filed by September 29, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-269 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Roger W. Corner, P.O. Box 450, Mason City, IA 50401

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre and Lamboley. Commissioner Lamboley joined by Vice Chairman Simmons, dissented with a separate expression.

Kathleen King,

Acting Secretary.

[FR Doc. 86-20335 Filed 9-8-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-269]

Iowa Terminal Railroad Co.; Abandonment in Cerro Gordo and Floyd Counties, IA; Notice of Findings

The Commission has issued a certificate authorizing Iowa Terminal Railroad Co. to abandon its 10.4-mile rail line, as follows: (a) The Mason City Division between milepost 0.0 near Mason City and milepost 5.5 near Emery, in Cerro Gordo, IA a distance of 5.5 miles; and (b) the Charles City Division between milepost 2.1 near North Charles City, and milepost 7.0, in Floyd County, IA, a distance of 4.9 miles. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made msut be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1127.

Kathleen M. King,

Acting Secretary.

[FR Doc. 86-20374 Filed 9-8-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, telephone (202) 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Request for State or Federal Workers' Compensation Information
1215-0060; CM-905
On occasion
State or local governments; Federal agencies or employees
3,000 responses, .25 hr., 1 form

30 U.S.C. 922 and 20 CFR 725.535 specify that beneficiaries of DCMWC have their benefits reduced by those amounts which they may receive from State or other Federal workers' compensation programs.

Notice of Intent to Employ Homeworkers in a Restricted Industry
1219-0159; Letter or Optional Form WH-46
Initial Report Only
Businesses or other for-profit; small businesses or organizations
62 responses; 7 hours; 1 form

Regulations 29 CFR 530.4(c) permit the employment of homeworkers in a restricted industry, provided employers notify the Department of Labor of their intent to employ such homeworkers and obtain authorization to do so. We believe this collection is not an "information collection" pursuant to 5 CFR 1320.7(k), but are requesting a final determination by OMB. Notice can be provided to DOL by a letter or an optional form.

Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops
1215–0120; FLSA 575
On occasion
Farms
1 response; 3 hrs.; 1 form

Agricultural employers are required to supply certain information to DOL when applying for a waiver of the FLSA child labor provisions to employ 10 and 11 year old minors in hand harvesting of short season crops. Agricultural employers granted waivers are required to maintain certain records regarding compliance with the waiver.

Employment and Training Administration
Monthly Determinations, Allowance Activities and Employability Services under the Trade Act
1205–0016; ETA 563
Monthly
State or local governments
50 respondents; 1,229 hours; 1 form

Monthly data on trade adjustment assistance activity is needed for timely program evaluation necessary for competent administration and for providing legally mandated reports to the Congress on the trade adjustment assistance program.

Signed at Washington, DC, this 3rd day of September, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–20291 Filed 9–8–86; 8:45 am]

BILLING CODE 4510–27–M

Senior Executive Service; Appointment of Members to the Performance Review Board

This Notice amends Department of Labor Notice published on December 9, 1983 (48 FR 55199), listing Department of Labor members of the Performance Review Board of the Senior Executive Service.

The following executives are hereby appointed to three-year terms effective September 7, 1986: Alan D. Lebowitz and David O. Williams.

Mr. Lebowitz replaces Ms. Janice M. Sawyer, who resigned from the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, DC 20210.

Signed at Washington, DC, this 4th day of September 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–20293 Filed 9–8–86; 8:45 am]

BILLING CODE 4510–23–M

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Postponement of Meeting

Notice is hereby given that the meeting of the Federal Advisory Council on Occupational Safety and Health, scheduled for August 28, 1986, is postponed until October 8, 1986.

All communications regarding this Advisory Council should be addressed to Mr. John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, Room N3613, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–9329.

Signed at Washington, DC, this 29th day of August 1986.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 86–20292 Filed 9–8–86; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–3114]

Withdrawal of the Proposed Exemption Involving Alaska Laborers-Employers Retirement Trust Fund (the Plan) Located in Anchorage, Alaska

In the Federal Register dated April 1, 1983 (48 FR 14075), the Department of Labor published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of proposed exemption concerned the participation by the Plan in a loan made on February 17, 1976 to Anchorage Hotel Associates, a California limited partnership, in which a party in interest with respect to the Plan was a 10% limited partner.

The applicants have requested that the exemption application be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 2nd day of September, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–20215 Filed 9–8–86; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–6101 et al.]

Proposed Exemptions; Fresh Retirement Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code)

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested

BEST COPY AVAILABLE

persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Fresh Retirement Plan (the Plan) Located in Salinas, CA

[Application No. D–6101]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the leasing, effective July 1, 1986, of a portion of a ranch (the Property), known as the Estel Ranch (the Ranch) from July 1, 1986 until June 30, 1991, by the Plan to Bruce Church, Inc. (BCI), a party in interest with respect to the Plan, provided the terms and conditions of the transactions are at least as favorable to the Plan as the Plan could obtain in dealing with an unrelated third party.

EFFECTIVE DATES: If this proposed exemption is granted, the effective dates will be July 1, 1986 to June 30, 1991.

Summary of Facts and Representations

1. The Plan is a money purchase plan covering non-union and non-agricultural field employees established in 1975. As of December 31, 1983, the Plan had approximately 225 participants. As of December 31, 1984, the Plan had assets valued at $2,041,034.58. The trustee (the Trustee) of the Plan is Valley National Bank of Arizona, N.A.

2. BCI is a California corporation, and a member of the Fresh International Corp. (Fresh) controlled group of corporations, engaged in the farming of vegetable produce in the western United States. BCI is the largest operating subsidiary of Fresh.

3. The Property had previously been leased to BCI by the Fresh Profit Sharing Plan (the Profit Sharing Plan) from 1955 to June 30, 1986. The latest lease was entered into on March 1, 1984, for a period of five years. The applicant represents that the leasing by the Profit Sharing Plan was exempt until June 30, 1984, from the restrictions of section 406 of the Act by reason of section 414(c)(2) *. The Profit Sharing Plan was merged into the Plan on July 1, 1986, and the Plan will now be the owner and lessor of the Property. The total assets of the Plan as of that date were approximately $4.7 million.

4. The lease entered into on July 1, 1986 (the Lease) contains the following terms: (a) It is for a term of five years, commencing July 1, 1986, through June 30, 1991; (2) rent is triple net, $92,000 annually for the first three years, after which time the rental will be adjusted upward for the final two years if the fair market rental value of the Property is higher than $92,000 annually, as determined by a qualified independent real estate appraiser; (3) the Plan may terminate the Lease on 60 days notice or adequate time to remove crops growing on the Property. The Property was last appraised on December 31, 1984 by Robert J. Moody, A.R.A., and independent appraiser from Yuma, Arizona, who has done annual appraisals of the Ranch since 1976. Mr. Moody appraised the fair market value of the Ranch at $1,600,000, an increase of approximately $100,000 from the 1983 appraisal, with the Property's value being approximately $1,050,000, an increase of $67,000 from 1983. As of November 6, 1984, Mr. Moody represented that a $92,000 annual rental for the Property was in the upper end for current rentals of this type in the Yuma area.

5. The Trustee represents that the only current relationship it has to BCI or any of its affiliates is one loan on a corporate jet owned by Fresh, with a balance of $226,445.69 out of a total commercial loan portfolio of $697,499,993.39, as of May 14, 1985. The applicant represents that neither Fresh nor any of its subsidiaries will engage in any other commercial relationships with the Trustee, other than small checking accounts, for the duration of the transaction. The Trustee represents that the Ranch represents 32% of the Plan's assets and that the Property represents 21% of its assets. This is the only real property owned by the Plan, and the Trustee represents that its investments are well-diversified. In addition, the Trustee represents that Fresh and its subsidiaries have a high reputation as farm operators and have managed the Property well. The Trustee is the largest agricultural lender in Arizona and is represented to be very familiar with the rental markets for agricultural property in general and the Property in particular. The Trustee reviewed the Lease, the 1983 appraisal of the Property and the market in the spring of 1984, and represents that the terms and conditions have been and are arm's-length terms and conditions, that the rental has been and is in the upper range for similar rentals in the Yuma areas, and that the yield is adequate to the Plan. On this basis, the Trustee represents that the continuation of the Lease is in the best interests of the Plans' participants and beneficiaries. The Trustee will also monitor BCI's performance under the Lease and take any steps necessary to protect and enforce the Plan's rights.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because: (a) The Plan will receive rent at the upper range of similar rentals in the geographic area as determined by an independent appraiser; and (b) The Trustee has determined that the Lease is in the best interests of the Plan and will enforce the Plan's rights under the Lease.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

* The Department expresses no opinion herein whether the conditions of section 414(c)(2) have been met. The applicant represents that it will file Form 5330 with the Internal Revenue Service and pay any applicable excise tax for the period of July 1, 1984 to June 30, 1986 within 60 days of the grant of this proposed exemption.

VOL 51 ISS 174 SE 9 1986 UMI

Diamond Shamrock Employee Stock Ownership Plan (the PAYSOP) and the Employee Shareholding and Investment Plan of Diamond Shamrock Corporation (the Savings Plan; collectively the Plans) Located in Cleveland, Ohio

[Application Nos. D–6380 and D–6381]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1985). If the exemption is granted the restrictions of sections 406(a) and 407(a) of the Act shall not apply, effective October 30, 1985, to (1) the acquisition and holding by the Plans of certain Units (the Units) representing limited partnership interests in Diamond Shamrock Offshore Partners, Ltd. (the Partnership) distributed as dividends to the Plans as shareholders of Diamond Shamrock Corporation (DSC) Common Stock (the Stock); and (2) the acquisition and holding by the Plans of Units acquired on the open market as a result of either the Plans' reinvestment of cash distributions made with respect to the Units or the purchase by the Savings Plan of Units with contributions from participants of the Savings Plan in accordance with directions given by those participants.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective October 30, 1985.

Summary of Facts and Representations

1. The PAYSOP is a stock bonus plan which, as of December 31, 1985, had approximately 6,424 participants. The Savings Plan is a profit-sharing plan which, as of December 31, 1985, had approximately 6,006 participants. As of May 31, 1985, the PAYSOP had total assets of $7,708,956 and the Savings Plan had total assets of $55,268,397. The trustee for the Plans is the AmeriTrust Company, N.A., a national bank located in Cleveland, Ohio (the Trustee). The Plans are sponsored by DSC. The Applicants referred to herein are the Trustee, DSC, and the Diamond Shamrock Employee Benefits Committee.

2. The Partnership is a Delaware limited partnership which was created for the purpose of succeeding to a portion of the business of Diamond Shamrock Exploration Company (DSEC), a wholly-owned subsidiary of DSC. On September 6, 1985, DSEC transferred to the Partnership all of its oil and gas exploration and production interests in federal offshore fields off the Gulf Coast of Texas and Louisiana (the Partnership Properties). In exchange for the Partnership Properties, DSEC received Units representing approximately 88.2 percent of the total outstanding Units issued by the Partnership. The remaining 11.8 percent of the Units were sold to the public in a public offering. The Units are traded on the New York Stock Exchange and are freely transferable to United States citizens and qualified United States entities, except as otherwise restricted by federal and state securities laws.

The Applicants state that the Partnership intends to continue DSEC's current production, exploration, and development activities with respect to the Partnership Properties and will bid in future federal offshore lease sales. Oil production from the Partnership Properties will continue to be sold to a subsidiary of DSC.

The Applicants state further that additional Units will be issued to DSC from time to time in exchange for cash. However, DSC's total percentage ownership of all outstanding Units will decline over time as DSC distributes Units to its shareholders as dividends. The Applicants expect that the percentage of Units held by the public, including DSC shareholders, will increase from approximately 11.8 percent to approximately 25 percent by the end of 1986. DSC's total interest in the Partnership will not fall below 50 percent at any time. As of December 31, 1985, DSC owned 37,500,000 Units representing approximately 83 percent of the total Units outstanding.

3. On July 10, 1985, DSC announced that beginning with the fourth quarter of 1985 quarterly dividends on the Stock would include Units. DSC also announced that a special dividend distribution of Units would be made on October 30, 1985, to all shareholders of the Stock. Thus, since October 30, 1985, the Plans, as stockholders of DSC, have received noncash dividends in the form of Units in addition to cash dividends. The Plans have also received cash distributions on the Units as part of the Partnership's cash distributions to unitholders. When Partnership cash has been distributed to unitholders, such cash received by the Plans has been reinvested in additional Units through open market purchases for the accounts of those participants whose accounts held Units on which the cash distribution was received.*

*The Applicants represent that reinvestment of Partnership cash distributions on Units held by the Plans in additional Units is consistent with the Plans' treatment of cash dividends on the Stock, which are reinvested in additional Stock.

4. Prior to the receipt of the Units as dividends, the assets of the PAYSOP consisted only of shares of the Stock and cash. The PAYSOP owned 341,397 shares of the Stock as of October 30, 1985. Each PAYSOP participant has an individual Stock Ownership Account. There are no participant contributions to the PAYSOP.

The Applicants state that prior to any distribution of Units to the PAYSOP, each participant was provided with a written form on which the participant could direct the Trustee to sell any Units received as dividends for his or her account and reinvest the proceeds of such sales in the Stock. If a participant did not direct the Trustee to sell the Units, the Units were retained for the participant's account. PAYSOP Participants who have directed that dividend Units be retained for their accounts may change their previous instructions to the Trustee during a 10 day window period after each quarterly dividend distribution. The change of instruction applies to all Units received by the participant's account after the window period expires. If a participant directs that Units to be received for his or her account in the future as dividends on the Stock be sold, then all Units that have been credited to the account are sold and the proceeds reinvested in the Stock.

When Units acquired or held by a PAYSOP participant's account are directed to be sold, the Units are sold on the open market. In addition, the reinvestment of all Partnership cash distributions which are received by the participant's account on Units presently held is accomplished through the purchase of additional Units on the open market.

5. The Savings Plan invests in the Stock and other investments in accordance with elections made by participants. The Savings Plan owned 2,053,531 shares of the Stock as of October 30, 1985. The Savings Plan receives both participant contributions and employer contributions. The employer's contributions are invested by the Trustee in an investment fund containing only the Stock (the Stock Fund). Participant's contributions may be invested in either the Stock Fund or a government bond fund, a general corporate stock fund, or a fund investing solely in "[illegible] income contracts" of major insurance companies. Units distributed as dividends to the Savings Plan are held in a newly created investment fund containing only Units (the Unit Fund).

The Applicants represent that, in addition to the receipt of Units by the

Savings Plan as dividends, the Savings Plan will be amended to allow participants to direct the Trustee to allocate their own contributions to the Savings Plan into the Unit Fund. The contributions to the Unit Fund will be used to purchase additional Units on the open market for the participant's account.

6. The Applicants state that prior to any distribution of Units to the Savings Plan, each participant was provided with a written form on which the participant could direct the Trustee to sell any Units received as dividends for his or her account and reinvest the proceeds of such sales in the Stock Fund. If the participant did not direct the Trustee to sell the Units, then all Units allocable to the participant's account were retained in the Unit Fund.

Savings Plan participants who have directed that dividend-Units be retained for their accounts may change their previous instructions to the Trustee during the 10 day window period after each quarterly dividend distribution. The change of instruction applies to all Units received by the participant's account in the Savings Plan after the window period expires. Where a participant executes a change of instruction directing that Units to be received as dividends for his or her account be sold, then all Units that have previously been credited to the account are sold and the proceeds reinvested in the Stock Fund.

When Units acquired or held by the Savings Plan are directed to be sold, the Units are sold on the open market. In addition, the reinvestment of all Partnership cash distributions which are received by the participant's account on Units presently held is accomplished through the purchase of additional Units on the open market.

7. The Applicants represent that the Units issued by the Partnership are "employer securities" as defined under section 407(d)(1) of the Act. However, the Applicants state that relief from section 406(a) and 407(a) of the Act for the acquisition and holding of the Units is necessary since the Units are not "qualifying employer securities" as defined under section 407(d)(5) of the Act. The Applicants considered prohibiting the Plans from receiving the Units as dividends, but this would have resulted in a loss to the Plans equal to the market value of the Units. The decision to acquire and hold Units is made by each participant prior to the receipt of the Units by the participant's account in either the PAYSOP or Savings Plan. In addition, with respect to the Savings Plan, the decision to acquire additional Units with the participant's contributions is made in accordance with the participant's instructions designating the Trustee to allocate such contributions for his or her account into the Unit Fund.

8. In summary, the Applicants represent that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) The acquisition and holding of the Units by the Plans is the result of DSC's quarterly dividend distributions to all shareholders of the Stock; (2) The decision to acquire additional Units and the decision to hold or dispose of all Units is made by the participants in the Plans in accordance with directions given to the Trustee by each participant for his or her account in the Plans; (3) The participants may change their previous instructions to the Trustee regarding the receipt or disposition of the Units; and (4) All transactions concerning the Units, other than the distribution of the Units by DSC as dividends on the Stock, are conducted on the open market.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Drs. Williams & Harper Profit Sharing Plan and Drs. Williams & Harper Money Purchase Pension Plan (the Plans) Located in Fort Lauderdale, Florida

[Application Nos. D-6448 and D-6449]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale of beneficial interest in a trust to the Plans by Drs. John I. Williams and John M. Harper (the Doctors), provided that the terms of the transaction are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated person.

Summary of Facts and Representations

1. The Plans are a profit sharing and a money purchase pension plan, with 8 participants in each Plan. Effective December 1, 1984, the Plans were combined into a single trust fund and plan document (the Fund). As of November 30, 1984, the Fund had total assets of $943,990. Drs. Williams & Harper, Professional Association (the Employer), is engaged in the practice of medicine in Fort Lauderdale, Florida. The Doctors are the sole shareholders of the Employer, as well as, officers and directors of the Employer and trustees of the Plans.

2. The Doctors propose to sell their respective 25% beneficial interest in the WHB Trust (the Trust) to the Fund. The Trust was created to facilitate the investment by the Trust's beneficiaries* in Lake Wales Golf Estates, Ltd., a Florida limited partnership (the Partnership). The Trust has no liabilities and, except for a minimal amount of cash, its sole asset is an 8.7912% interest in the Partnership. Originally, the Trust owned an 8% interest in the Partnership however, this interest was increased to its current level by the assignment by two other limited partners of their Partnership interests to the remaining partners.

3. Dr. Williams serves as trustee of the Trust. After sale of the beneficial interests in the Trust, Dr. Williams will continue to serve as trustee for the convenience of the Trust's beneficiaries, however, he won't be able to transfer any assets of the Trust without the beneficiaries' consent. The applicant represents that once the sale takes place, there is no potential for abuse since Dr. Williams, as trustee merely holds legal title and must act in accordance with the wishes of the beneficiaries.

4. The Doctors desire to transfer their beneficial interest in the Trust to the Fund, so that Fund's participants can benefit from the substantial appreciation in value which is expected on the Partnership property. The Partnership, which was formed in 1973, owns 614 acres of raw land in Polk County Florida. Mr. Hubbard K. Biggs, SRA, an independent appraiser located in Lake Wales, Florida, states that the fair market value of the Partnership's property is $2.8 million as of September 13, 1985. The Partnership has total assets of $2,846,000.

5. Since the Trust owns an 8.7912% Partnership interest, the value attributable to this ownership amount is $250,198 (2,846,000 x 8.7912%). Thus, the value of each of the Doctor's 25% interests in the Trust is $62,550. The Doctors will sell their beneficial interests in the Trust to the Fund for $62,550 each. The purchase price will be paid in cash by the Fund, and all expenses incurred in connection with

*The beneficiaries of the Trust and their respective beneficial interests are as follows: Dr. Williams, 25%; Dr. Harper, 25%; Robert C. Bishop (deceased), 25%; Laverne G. White, 25%.

the purchase will be paid by the Doctors. As additional protection to the Fund, the Doctors have executed a loss guaranty agreement in which they agree to make the Fund whole if any economic loss is suffered through sale or decline in value of the beneficial interest in the Trust. The Doctors have total combined net worth in excess of $2 million.

6. The Fund has appointed James S. Welzien (Mr. Welzien), a certified public accountant with the firm of Professional Consultants, Inc., Fort Lauderdale, Florida, to serve as independent fiduciary with respect to the proposed transaction. Mr. Welzien has no interest in the subject property nor any prior dealings with the Employer or any other party involved in the transaction. Mr. Welzien represents that he is aware of his duties, responsibilities and potential liabilities under the Act as a result of his prior work experience as an agent for the Internal Revenue Service and as a compliance officer for the Department.

Mr. Welzien represents that the proposed purchase of the beneficial interest in the Trust would be an excellent investment opportunity for the Fund. The property owned by the Partnership is in an excellent location, between the rapidly expanding areas of Orlando and Tampa, and the price being paid is a good price for this investment. Also, completion of this transaction would improve the investment mix and increase the diversification of the Fund's assets. The Doctors have agreed to personally indemnify the Fund against loss associated with this transaction. After analyzing the exemption application and exhibits, Mr. Welzien has concluded that the transaction represents a prudent investment for the Fund. Mr. Welzien represents that that transaction is in the best interest of the Fund's participants and will enhance diversification of the Fund's assets.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Fund's independent fiduciary has determined that the proposed transaction is appropriate and suitable for the Fund;

(b) All costs involved in the proposed sale will be paid by the Doctors; and

(c) The price to be paid by the Fund for the beneficial interest in the Trust is equal to its current fair market value.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Meister-Neiberg Co. Pension Plan and Trust (the Plan) Located in Chicago, IL

[Application No. D–6502]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective May 14, 1986, to the proposed loans (the Loans) by the Plan, for a period of 6 years, of up to 25% of its assets to Meister-Neiberg Co. (the Employer), the Plan sponsor, provided that the terms of the Loans are at least as favorable to the Plan as those between unrelated parties would be.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire 6 years after May 14, 1986 with respect to the making of any Loan. Subsequent to the expiration of this exemption, the Plan may hold Loans originated during this 6 year period until the Loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the 6 year period, the applicant may submit another application for exemption.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with four participants and approximately $1,500,000 in assets. The Employer is a home builder in the Chicago metropolitan area.

2. The applicant requests an exemption that will permit the Plan to make Loans to the Employer, for 6 years, for the purchase of unimproved real property. The Employer will then develop the land and sell homes to third party buyers. The Loans will be for terms not to exceed five years. The interest rate will be three percent over the prime rate of Continental Bank of Chicago and will be adjusted quarterly, but only if the new rate would differ by at least one percent from the current rate. The Loans will have an interest floor of ten percent. The Loans will be repaid as follows: (1) In the first year, interest will be compounded and paid quarterly; and (2) In years two through five, equal principal and interest payments will be made quarterly. The Employer may full or partially prepay the Loans at any time. The Loans will be secured by first mortgages on the real property purchased by the Employer with each such Loan. Each property will be appraised prior to any Loan and the collateral for each Loan will equal at least 150% of such Loan. If the collateral falls below 150% of the outstanding balance of a Loan, additional collateral will be pledged so that the collateral will be equal to at least 150% of the outstanding balance. The Plan will make no Loan that would cause the cumulative amount of such outstanding Loans to exceed 25% of the Plan's assets.

3. The Employer has entered into a contract to purchase a 6½ acre parcel of land in Glenview, Illinois (the Property) for $575,000. Twenty-five houses will be built on the Property. The Employer estimates the costs for improvements such as water and sewer lines at $356,000 and for construction of the houses at $118,000 to $120,000 each. The sales price of each house will be $222,900 to $227,900. The applicant proposes that the Plan loan the Employer $375,000 (the First Loan) for the purchase of the Property. The purchase price for the Property, which serves as collateral for the Loan, is equal to 153% of the proposed First Loan amount.

4. The Property was appraised by Michael S. MaRous, MAI, SRPA, an independent appraiser in the Chicago area, on April 8, 1986. At that time some of the improvements such as utilities were being extended to the individual lots. Mr. MaRous appraised the fair market value of the Property, with utilties extented to each lot and the Property graded for construction, at $1,200,000 to a single buyer. This amount represents 320% of the proposed Loan.

5. Joseph Gurdak has agreed to act as Independent fiduciary for the Plan with respect to the proposed Loans. Mr. Gurdak is the president of Bates & Rogers Construction Co. (Bates) a general construction company not actively involved in the home building business. He is also a certified public accountant and is familiar with the home building industry and the financial transactions related to it. Mr. Gurdak has also been a trustee for the Bates & Rogers Construction Co. Pension Plan and Trust for four years and represents that he is familiar with the Act and the duties of a fiduciary thereunder. There are no ownership or business connections between Mr. Gurdak or Bates and the Employer or its principals. Mr. Gurdak reviewed the terms of the proposed First Loan on May 14, 1986 and made the following findings: (a) The

VOL 51 ISS 174 SE 9 1986 UMI

First Loan of $375,000 will help diversify the Plan's investments, which are currently all in Treasury Bills; (b) The Plan has little need for liquidity in the near future, since the vested benefits of the two principals of the Employer are a significant portion of the Plan's assets and neither intends to retire soon; (c) The rate of return on the First Loan will initially be 14%, significantly higher than the 7% to 7.5% being earned on Treasury Bills and is an excellent return in the current real estate market; (d) The First Loan will be well secured by the first mortgage on the Property; and (e) The payment terms are satisfactory to the Plan in that the First Loan will be paid back more quickly than the costs of development. Mr. Gurdak will review the proposed terms of any future Loan and determine whether the Plan should enter into the Loan. Mr. Gurdak also has the authority to alter the terms of the Loans if he determines that it is in the Plan's interest to do so. Furthermore, Mr. Gurdak will monitor the Loans and enforce the terms and conditions of the Loans on behalf of the Plan. In the event of a default, he will take any actions necessary to protect the Plan's interest.

6. The applicant requests that this proposed exemption, if granted, be retroactive to May 14, 1986, the date Mr. Gurdak concluded that the First proposed Loan would be in the interests of the Plan, since the Employer's contract to purchase the Property would have expired soon after that date. This investment opportunity would therefore have been lost to the Plan. The applicant also represents that all safeguards discussed above were in place on the date the transaction was entered into.

7. In summary, the applicant represents that the proposed transactions meet the criteria of section 408(a) of the Act because: (a) The rate of return to the Plan on the Loans will be substantially higher than its other investments; (b) Each Loan will be secured by land having an appraised fair market value of at least 150% of such Loan; (c) No more than 25% of the Plan's assets will be invested in the Loans; and (d) Mr. Gurdak has and will continue to review and approve the terms of the Loans before the Plan enters into any Loan and will take any action necessary to protect the Plan.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

First National Bank of Mapleton Employees' Profit Sharing Retirement Trust (the Mapleton Plan) Located in Mapleton Depot, PA

[Application No. D–6669]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of the section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Mapleton Plan for the total cash consideration of $610,879, of certain mortgage and vehicular loan receivables (the Receivables) to First National Bank of Mapleton (Mapleton), provided the amount paid for the Receivables is not less than fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Mapleton Plan is a profit sharing plan with 38 participants and total assets of $1,128,380 as of December 31, 1984. The trustees of the Mapleton Plan (the Trustees) and decision-makers with respect to Plan investments are Messrs. John M. Diffenderfer, Tedd Crotsley and Robert Donahue. Mapleton is a banking association maintaining various branches throughout the State of Pennsylvania.

2. On November 15, 1984, Mellon Bank (Central) National Association (Mellon), which is principally located in State College, Pennsylvania, entered into a plan of merger (the Merger) with Mapleton under which Mellon was to be merged with Mapleton and Mapleton was to become the surviving bank. The Merger, which took place on November 1, 1985, was conducted in compliance with National Banking Act provisions. Upon its consummation, Mapleton adopted Mellon's name.

3. Under the terms of the Merger, the employee benefit plans sponsored by Mapleton and Mellon will be consolidated upon the granting of this proposed exemption. These plans include the Mapleton Plan and the Profit Sharing Plan for Salaried Employees of Mellon Bank (Central) National Association (the Mellon Plan). The Mellon Plan will be merged into the Mapleton Plan as Mapleton is the surviving bank. Then, the Mellon Plan will be readopted as the sole plan for all employees of both Mapleton and Mellon.

4. As of March 7, 1986, approximately 54 percent of the total assets of the Mapleton Plan was invested in the Receivables consisting of 26 mortgage loans secured by real property and one vehicular (truck) loan secured by personal property. The loans were originated between the Mapleton Plan and unrelated parties and funded directly by the Mapleton Plan from August 1973 to May 1985. They range in amounts of between $1,600 and $84,000, their durations are from 8 to 15 years and they have maturities between 1986 and 1999. To date, none of the loans has ever fallen into default. For the most part, the loans carry fixed interest rates ranging from 9.25 percent to 17 percent per annum. In two situations, the loans have adjustable interest rates. As of March 7, 1986, the Receivables had a total outstanding principal balance of $597,012.

5. In funding the Receivables, a lending officer of Mapleton who received loan applications would present them to the Trustees for their review as possible investments for the Mapleton Plan. It was the policy of the loan officer and the Trustees to consider only the best loan applications from the standpoint of their financial soundness, rate of return, loan to value ratio, safety and liquidity. These criteria ensured that inappropriate loan applications would not be selected for investment purposes inasmuch as the Trustees were authorized to approve or reject each loan application they reviewed. In addition, properties covered by the Receivables were of a type well known to both Mapleton and the Trustees. Repayment ability was calculated on the same basis as Mapleton-funded loans.

The Trustees never obtained any Receivables for construction financing nor were permanent loans ever used to retire construction loans made by Mapleton. In addition, no origination, servicing or other fees were ever paid by the Mapleton Plan nor were documents ever executed in connection with the payment of fees. Mapleton bore all such costs.[1]

6. An exemption is requested to allow the Mapleton Plan to sell the Receivables for cash to Mapleton for the higher of their remaining cost basis or their fair market value. The applicant believes the liquidation of the

[1] In this proposed exemption, the Department expresses no opinion on whether the acquisition, pursuant to the procedures utilized to select the Receivables for the Mapleton Plan, and the holding of the Receivables by the Plan, violated any provision of Part 4 of Title I of the Act.

Receivables will enable Mapleton Plan participants to invest their account balances in any one or more of four investment funds currently being offered by the Mellon Plan and it will minimize any cash flow problems the Mapleton Plan may experience when it distributes accrued benefits to its participants. The Mapleton Plan will not incur any fees or commissions in connection with the proposed transaction.

7. The Receivables have been valued by PaineWebber Real Estate Securities, Inc. (PaineWebber), a subsidiary of one of the largest investment brokerage firms in the United States. PaineWebber is totally independent of and has no interest in either Mellon or Mapleton. Neither Mellon nor Mapleton have any interest in PaineWebber nor do any of its subsidiaries. In an appraisal dated March 27, 1986, PaineWebber has placed the fair market value of the Receivables at $610,879 as of March 7, 1986. The valuation PaineWebber utilizes reflects the secondary mortgage market values which are based on an independent source, the Federal National Mortgage Association rates in effect on March 7, 1986. The fair market value of the Receivables will be recalculated prior to the sale to Mapleton.

8. In summary, it is represented that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) The sales price for the Receivables will be based on the higher of their cost basis or their fair market value as determined by an independent appraiser; (c) The Mapleton Plan will not be required to pay any fees or commissions in connection therewith; and (d) The sale of the Receivables will result in increased liquidity for the Mapleton Plan and allow its participants the benefit of selecting their own investments from one or more investment funds currently being offered by the Mellon Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Profit Sharing Plan and Trust of L.R. Mannausa, M.D., P.C. (the Profit Sharing Plan) and Amended and Restated Pension Retirement Plan and Trust of L.R. Mannausa, M.D., P.C. (the Pension Plan; together, the Plans) Located in East Lansing, Michigan

[Application Nos. D–6677 & D–6678]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plans of certain unimproved real property (the Property) to Lawrence R. Mannausa, M.D. (Dr. Mannausa), a disqualified person with respect to the Plans; provided that such sale is on terms no less favorable to the Plans than the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Profit Sharing Plan is a defined contribution plan with one participant and net assets of $128,586 as of June 17, 1986. The Pension Plan is a defined benefit pension plan with one participant and net assets of $155,078 as of June 17, 1986. Dr. Mannausa is the sole participant and trustee of the Plans. Dr. Mannausa is also the sole shareholder of the Plans' sponsor, Lawrence R. Mannausa, M.D., P.C., a Michigan professional corporation engaged in the general practice of medicine in East Lansing, Michigan.[1] Dr. Mannausa has partially retired from the practice of medicine and the Plans are frozen in preparation for termination.

2. Among the assets of the Plans is the Property, a vacant tract of 104 acres of land located at West St. Joe Highway and Canal Road in Delta Township, Eaton County, Michigan. Acting as trustee, Dr. Mannausa purchased the Property in 1978 from unrelated parties under a land contract (the Contract). Under the Contract, executed June 9, 1978, the sellers agreed to transfer the Property for a purchase price of $174,400, payable in one installment of $43,000 upon signing the Contract and semiannual installments of $9,000 commencing January 15, 1979, with interest at the rate of seven percent per annum. The Plans hold the Property as tenants in common. As of June 17, 1986, the Plans' cash investment in the Property, including principal and interest under the Contract and real property taxes, totalled $179,355. As of January 31, 1986, the balance due under the Contract was $54,948. The Property had a fair market value of $228,000 as of April 15, 1986, according to Terrell R. Oetzel, MAI (Oetzel), an independent professional real estate appraiser in Lansing, Michigan. The Property remains vacant and Dr. Mannausa represents that at no time has the Property been used by parties related to him or the Plans.

3. The Plans are now frozen and Dr. Mannausa expects to prepare for distribution of the Plans' assets in the near future. In order to achieve liquidity of the Plans' assets and to realize the appreciation of the Property since its original acquisition, Dr. Mannausa proposes to purchase the Property from the Plans and is requesting an exemption to permit such purchase. Dr. Mannausa proposes to pay the Plans cash for the Property in the amount of the greater of (1) $230,000, (2) the Property's fair market value, or (3) the Plans' total investment in the Property including the balance due under the Contract. Commensurate with the sale, Oetzel will review his appraisal of the Property to determine any changes in the Property's fair market value since his appraisal of April 15, 1986. Simultaneously, Dr. Mannausa will review the Plans' records to determine the Plans' total investment in the Property to that date, including the balance due under the Contract. The purchase price will be the greater of these two amounts but not less than $230,000. Dr. Mannausa will bear all costs and expenses related to the proposed sale transaction.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plans will receive cash for the Property in an amount which will be no less than the Property's fair market value; (2) The Plans will recover their total investment in the Property, including the balance due under the Contract; and (3) As the trustee and sole participant of the Plans, Dr. Mannausa will be the only party affected by the proposed transaction and he desires that the transaction be consummated.

Notice to Interested Persons

Because Dr. Lawrence R. Mannausa is the sole shareholder of the Plans' sponsor and the only participant in the Plans, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department,

[1] Since Dr. Mannausa is the sole stockholder of the Plans' sponsor and the only participant in the Plans, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an adminstrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 1986.

Elliot I. Daniel,

Assistant Adminstrator of Regulations and Interpretations Pension and Welfare Benefits Adminstration U.S. Department of Labor.

[FR Doc. 86–20216 Filed 9–8–86; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 86–103; Exemption Application No. D–6071 et al.]

Grant of Individual Exemptions; United Parcel Service Thrift Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

United Parcel Service Thrift Plan (the Thrift Plan) and United Parcel Service Retirement Plan (the Retirement Plan; together, the Plans) Located in Greenwich, Connecticut

[Prohibited Tranaaction Exemption 86–103; Exemption Application Nos. D–6071 and D–6366]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the acquisition by the Plans of six aircraft from United Parcel Service Co. (UPS Co.), provided the Plans pay no more than the fair market value of the aircraft on the date of acquisition; (2) the leaseback of the aircraft by the Plans to UPS Co., under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plans than those terms obtainable in an arm's-length transaction with an unrelated party; (3) the guarantee of UPS Co.'s payments under the lease by United Parcel Service Company of America, Inc. (UPS); (4) the acquisition of notes issued by the Plans by Overseas Partners, Ltd., in connection with the transaction; and (5) the possible future reacquisition of the aircraft by UPS Co. for cash pursuant to the terms of the lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 6, 1986 at 51 FR 16756.

Written Comments and Hearing Requests

The Department received eight written comments with respect to the proposed exemption including four requests for a hearing. The hearing requests were subsequently withdrawn.

Four of the written comments were in favor of the Department's granting the exemption as it was proposed. Three of the other four comments raised a complaint that notification of interested persons had not been furnished in a timely fashion.

The applicants represent that posting of the notice of proposed exemption was accomplished in timely fashion in all but one location out of the numerous UPS facilities throughout the country. However, posting at one location was not accomplished within the time period set forth in the notice of proposed exemption. Pursuant to discussions with the Department, the applicants notified

interested persons in the location (Earth City, Missouri, the work site of the three commentators) that the period for written comments and hearing requests would be extended until July 7, 1986. The applicants represent that interested persons at the work site were notified by June 5, 1986, and that notice of the extension of the comment period remained posted until July 6, 1986.

Two of the commentators submitted comments that did not address the merits of the subject transaction. Another commentator wrote that the percentage of the Thrift Plan's assets involved in the transaction, 19.7% was too high. The Plans' independent fiduciary, Connecticut National Bank (the Bank) responded to this comment. The Bank states that it has considered the percentage of plan assets involved and considers the amount appropriate. The Bank also indicates that the percentage of the Thrift Plan's assets involved will be less than anticipated due to increases in the Thrift Plan's assets.

One commentator stated that the rate of return to the Thrift Plan for the subject transactions would be less than the Thrift Plan had earned in the past. The applicants state that the commentator had confused the return on investment of Thrift Plan assets with total growth of Plan assets, including both earnings on investments and employer contributions. In any event, the Bank represents that it has carefully considered the return to the Plan from the subject transactions, and that the return compares favorably with other types of investments of similar quality generally available to the Plans. The Bank reiterates its view that the proposed transactions are appropriate for, and in the best interests of, the Plans.

One commentator questioned why the Thrift Plan is to take a two-thirds participation in the subject transactions, while the Retirement Plan is to take a one-third participation. The applicants respond that the Thrift Plan participants would derive more benefit from the transactions because the Retirement Plan is a defined benefit plan while the Thrift Plan is a defined contribution plan, to which UPS Co. makes only voluntary contributions. Thus, the applicants represent, the excellent return to be derived from the transactions would have no effect on the benefits received by the Retirement Plan participants. However, the Thrift Plan participants would benefit because benefits of the transactions would be passed through to their individual accounts. In addition, the benefits of the return on the transactions would be shared under the Thrift Plan with more employees than would be the case if all the return were to be allocated to the Retirement Plan.

The Department has considered the entire record, including the comments submitted and the responses to the comments submitted by the applicants and the Bank, and has determined to grant the exemption as it was proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Emanuel Klimpl Pension Plan (the Plan) Located in New York, NY

[Prohibited Transaction Exemption 86–104; Exemption Application No. D–6462]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the contribution to the Plan of certain promissory notes by Emanuel Klimpl, a disqualified person with respect to the Plan;[1] provided that (1) the notes are valued at their fair market value at the time contributed, and (2) the notes represent no more than 10% of the total assets of the Plan at the time of contribution.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 11, 1986 at 51 FR 25271.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Peter M. Pencheff Co., LPA, Defined Benefit Pension Plan (the Plan) Located in Columbus, Ohio

[Prohibited Transaction Exemption 86–105; Exemption Application No. D–6475]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of a certain parcel of real property (the Property) to Mr. Peter M. Pencheff, a party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the higher of either $220,000 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 22996.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

David F. Smith, M.D., P.C. Money Purchase Plan (the Plan) Located in Sacramento, California

[Prohibited Transaction Exemption 86–106; Exemption Application No. D–6501]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain improved real property to David F. Smith and Regina Smith, disqualified persons with respect to the Plan; provided that such sale is on terms at least as favorable to the Plan as the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decison to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 22996.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Kalihi Medical Center, Inc. Money Purchase Pension Plan, and Kalihi Medical Center, Inc. Profit Sharing Plan (the Plans) Located in Honolulu, Hawaii

[Prohibited Transaction Exemption 86–107; Exemption Application No. D–6504]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The lease of space in a building (the Building) by the Plans to Kalihi Medical Center, Inc. (Kalihi), for the period from July 1, 1984 until the date of sale of the Building, under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party; and (2) The sale of the Building by the Plans

[1] Since Mr. Klimpl is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

to Kalihi Partners for $855,800 in cash, provided such amount is not less than the fair market value of the Building on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 22997.

Effective date: With respect to the lease, the exemption is effective from July 1, 1984 until the date of sale of the Building.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Michael J. Gianturco, M.D., P.C. Profit Sharing Plan and Michael J. Gianturco, M.D., P.C. Money Purchase Pension Plan (collectively, the Plans) Located in Cheektowaga, New York

[Prohibited Transaction Exemption 86–108; Exemption Application Nos. D–6551 and D–6552]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the purchase of a certain parcel of improved real property (the Property) by the individually directed accounts (the Accounts) of Michael J. Gianturco, M.D. (Dr. Gianturco) and Geraldine Gianturco (Ms. Gianturco) in the Plans for $253,000 in cash from Dr. Gianturco and Mr. Joseph Romanello, Jr., an unrelated party, provided that such amount is not greater than the fair market value of the Property at the time of its acquisition by the Accounts; (2) the subsequent lease of the Property by the Accounts to Ms. Gianturco, provided that the lease terms are not less favorable to the Accounts than those obtainable in an arm's-length transaction with an unrelated party; and (3) the possible cash sale of the Property by the Accounts to Ms. Gianturco, provided that the sales price is not less than the fair market value of the Property at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 2, 1986 at 51 FR 24245.

Written Comments. The notice of proposed exemption states that the Property will represent no more than approximately 22 percent of the assests of each of the Accounts. The applicant has advised the Department that recent changes in the stock market may decrease the value of the Accounts' total assets and, thereby, increase the percentage of such assets that the Property will represent to more than 22 percent. However, the applicant states that the Property will not represent more than 25 percent of the total assets of any of the Accounts at the time of the transaction. Accordingly, the Department has determined to grant the requested exemption.

For Further Information Contact: Mr. E.F Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Sagara Trucking, Inc. Defined Benefit Pension Plan (the Plan) Located in Woodland, California

[Prohibited Transaction Exemption 86–109; Exemption Application No. D–6561]

Exemption

The restrictions of section 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of certain unimproved real property to Mr. and Mrs. Kay K. Sagara, parties in interest with respect to the Plan, provided the amount paid for the property is no less than fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 22998.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Teamsters Joint Council No. 83 of Virginia Pension Fund (the Pension Fund) Teamsters Joint Council No. 83 of Virginia Health and Welfare Fund (the Welfare Fund) Located in Richmond, Virginia

[Prohibited Transaction Exemption 86–110; Exemption Application No. D–6561]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) The lease (the Lease) of office space by the above named funds (the Funds) to On-Line Financial Systems, Inc. (the Tenant), which provides services to the Funds, and (2) the Tenant's occupancy (the Occupancy) of office space provided by the Funds during the period subsequent to the execution of a software license agreement on February 15, 1984, between the Funds and the Tenant and prior to the commencement of the Lease, provided the terms of the Lease and the Occupancy were and are at least as favorable to the Funds as the terms the Funds could obtain in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 23002.

Effective date: This exemption is effective as of February 15, 1984.

Notice To Interested Persons

The applicants advise that although they intended to furnish notice of the proposed exemption to interested persons by July 9, 1986, they were unable to do so until July 14, 1986. Therefore, they also provided a supplemental notice informing the interested persons that they had 30 days from July 14, 1986 to comment on the proposed exemption.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-20217 Filed 9-8-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86-64)]

Calendar Year 1985 Report of Closed Meeting Activities of Advisory Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of reports.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, the NASA advisory committees that held close or partially closed meetings in 1985, consistent with the policy of 5 U.S.C. 552b(c), have prepared reports on activities of these meetings. Copies of the reports have been filed and are available for public inspection at the Library of Congress, Federal Advisory Committee Desk, Washington, DC 20540; and the National Aeronautics and Space Administration, Headquarters Information Center, Washington, DC 20546. The names of the committees are: NASA Advisory Council (NAC), NAC History Advisory Committee, NAC Life Sciences Advisory Committee, NAC Space Applications Advisory Committee, NAC Space and Earth Science Advisory Committee, National Commission on Space and NASA Wage Committee.

FOR FURTHER INFORMATION CONTACT: Mary R. Lippolis, Code NI, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2986).

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

August 28, 1986.

[FR Doc. 86-20205 Filed 9-8-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-60)]

NASA Advisory Council, Aeronautics Advisory Committee, (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee Ad Hoc Task Team on Aircraft Automation.

DATE AND TIME: September 24, 1986, 8:30 a.m. to 5 p.m., and September 25, 1986, 8:30 a.m. to 12:30 p.m.

ADDRESS: Ames Research Center, Building 200, Center Committee Room, Moffett Field, CA.

FOR FURTHER INFORMATION CONTACT: Dr. Carol Roberts, Code RC, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2745).

SUPPLEMENTARY INFORMATION: The Aeronautics Advisory Committee (AAC) Ad Hoc Task Team on Aircraft Automation was established to assess the quality and direction of the NASA program in aircraft automation. This team, chaired by Mr. Duane McRuer, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

AGENDA:

September 24, 1986

8:30 a.m.—Ames Research Center technical briefing on aircraft automation.

1 p.m.—Continue technical briefings with planning discussions.

September 25, 1986

8:30 a.m.—Planning of study team activities and task assignments.

12:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86-20201 Filed 9-8-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-61)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Informal Space Life Sciences Committee.

DATE AND TIME: September 24, 1986, 8:30 a.m. to 5 p.m., and September 25, 1986, 8:30 a.m. to 2 p.m.

ADDRESS: National Aeronautics and Space Administration, NASA Headquarters Building, 600 Independence Avenue, SW., Conference Room 226-A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. James H. Bredt, Code EBR, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1540).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council, Informal Space Life Sciences Committee was established to formulate a comprehensive strategic plan for space life sciences, identify essential efforts with appropriately phased objectives, and define efficient implementing strategies to pursue these goals. The committee, chaired by Dr. Frederick C. Robbins, has 17 members.

The meeting will be open to the public up to the seating capacity of the room (approximately 35 persons including Committee members and other participants). Visitors will be requested to sign a register.

Type of Meeting: Open.

AGENDA:

September 24, 1986

8:30 a.m. Swearing in Ceremony and Opening Remarks.

9:30 a.m. Charge to the Committee.

10:00 a.m. Presentations on Other Past and Present Advisory Activities on Life Sciences in Space.

11:00 a.m. Presentation of Current Life Science Activities in the Space Program.

3:00 p.m. Discussion of Study Structure, Assignments to Committee Members.

5:00 p.m. Adjourn.

September 25, 1986

8:30 a.m. Planning and Scheduling of Study Activities.

2:00 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86-20202 Filed 9-8-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-62)]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Task Team on Propulsion Technology.

DATE AND TIME: September 26, 1986, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 215, Cleveland, Ohio 44135.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Facey, Office of Aeronautics and Space Technology; Telephone: 202/453–2857.

For Further Information: The Aeronautics Advisory Committee was established to provide overall guidelines and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc subcommittees are formed to address specific topics. This ad hoc subcommittee on Propulsion Technology, chaired by Dr. Eugene Covert, is comprised of 10 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the subcommittee members and other participants).

Type of Meeting: Open.

AGENDA:

September 28, 1986

8:30 a.m—Welcome and introductory remarks.

9 a.m.—Discussion of ad hoc subcommittee charter and organization.

10 a.m.—Technical presentation by Lewis Research Center.

2:30 p.m.—Discussion of presentation.

3 p.m.—Discuss future actions and task assignments.

4:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86–20203 Filed 9–8–86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-63)]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Task Team on Aviation Safety Research.

DATE AND TIME: September 25, 1986, 8:30 a.m. to 4:30 p.m., September 26, 1986, 8:30 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Code RJ, National Aeronautics and Space Administration, Office of Aeronautics and Space Technology, Washington, DC 20546 (202)/453–2812).

SUPPLEMENTARY INFORMATION: The Aeronautics Advisory Committee (AAC), Ad Hoc Task Team on Aviation Safety Research was established to assess NASA's safety related research efforts and explore possibilities for joint programs with the Federal Aviation Administration, other organizations and industry. This team, chaired by Mr. Donald E. Pritchett, is comprised of nine members and was formed to provide a review of critical areas of aviation safety research and determine whether that research is taking maximum advantage of NASA's expertise and unique facilities. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

AGENDA:

September 25, 1986

8:30 a.m.—Organization of Study Plan.

10:30 a.m.—Briefing on Langley Research Center Aviation Safety Research Program.

4:30 p.m.—Adjourn.

September 26, 1986

8:30 a.m.—Assignment of specific study tasks to team members.

12:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86–20204 Filed 9–8–86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee For Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences

Date: September 25, 26 and 27, 1986

Time: 8:30 a.m. to 5:30 p.m. on September 25 and 26; 9:00 a.m. to 12:00 p.m. on September 27 (tentative)

Place: The National Science Foundation, Room 1243, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: Open.

Contact Person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550 Telephone: (202) 357–7958

Purpose of Committee: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earth Sciences

Agenda:

Thursday, 25 September 1986

8:30 a.m.–12:00 p.m. Introduction; Review of FY 1986 Actions; Update on Continental Lithosphere Activities; Reports on Selected Earth Sciences Programs

2:00 p.m.–5:30 p.m. Reports on Selected Earth Sciences Programs (cont.); Long-Range Planning Process

Friday, 26 September 1986

8:30 a.m.–12:00 p.m. Committee Discussion of Issues and Long-Range Planning

2:00 p.m.–5:30 p.m. Committee Discussion of Issues and Long-Range Planning (cont.); Formulation of Committee Statements and Recommendations

Saturday, 27 September 1986

9:00 a.m.–12:00 p.m. Formulation of

Committee Statements and Recommendations (cont.)

M. Rebecca Winkler,
Committee Management Officer.
September 3, 1986.
[FR Doc. 86-20244 Filed 9-8-86; 8:45 am]
BILLING CODE 7555-01-M

Advisory Committee for Physics Subcommittee for Review of the NSF Elementary Particle Physics Program; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics; Subcommittee for the Review of the NSF Elementary Particle Physics Program.

Date and time: September 25, 1986; 9:00 a.m. to 6:00 p.m.; September 26, 1986; 8:00 a.m. to 4:00 p.m.

Place: Room 341, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Harvey B. Willard, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7985.

Purpose of Subcommittee: To provide oversight concerning NSF support and planning for research in elementary particle physics.

Agenda: To review NSF Elementary Particle Physics Program documentation as part of the program oversight function.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Mr. Rebecca Winkler,
Committee Management Officer.
September 4, 1986.
[FR Doc. 86-20245 Filed 9-8-86; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Alabama Power Co.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-348]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Alabama Power Company, (the licensee), for the Joseph M. Farley Nuclear Unit No. 1 located near the City of Dothan, Alabama.

Environmental Assessment

Identification of Proposed Action: The exemption would permit alternatives to the technical requirements of Appendix R concerning certain specifically identified fir areas in Farley Unit No. 1.

The exemption is responsive to the licensee's application for exemption dated May 31, 1985, supplemented October 18, 1985, and July 16, 1986.

The Need for the Proposed Action: The proposed exemption is needed because the features described in the licensee's request regarding the existing fire protection at the plant for these items are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemption and modifications to be made will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with section III.G of Appendix R requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Joseph M. Farley Nuclear Plant, Unit No. 1.

Agencies and Persons Consulted: The NRC staff reviewed the licensee' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated May 31, 1985, supplemented October 18, 1985, and July 16, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room, located at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama.

Dated at Bethesda, Maryland, this 4th day of September, 1986.

For The Nuclear Regulatory Commission.

Lester S. Rubenstein,
Director, PWR Project Directorate #2 Division of PWR Licensing-A.
[FR Doc. 86-20288 Filed 9-8-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-410]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment and Final Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing exemptions from certain requirements of 10 CFR Part 50 to the Niagara Mohawk Power Corporation (the applicant) for the Nine Mile Point Nuclear Station, Unit 2

VOL 51 ISS 174 SE 9 1986 UMI

(NMP–2), located at the applicant's site in Scriba, New York.

Environmental Assessment

A. Deferral of the Completion of the Turbine Electrohydraulic Control System

Identification of Proposed Action

The proposed action would exempt the applicant from having the turbine electrohydraulic control (EHC) system operable prior to fuel load. The request for deferral and supporting justification are contained in a submittals from the applicant, dated July 2, and August 29, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 29 requires the protection and reactivity control systems to be designed to assure an extremely high probability of accomplishing their safety functions in the event of anticipated operational occurrences. The Code of Federal Regulations Title 10 Part 50, Appendix A, GDC 4 is also dependent, in part, upon the EHC system to reduce the turbine missile risk.

GDC 4 requires that structures, systems, and components important to safety shall be appropriately protected against dynamic effects, including the effects of missiles. The evaluation of the turbine missile risk is based, in part, on the availability of the EHC system. Therefore, the EHC system is required to be operable to meet GDC 4.

The applicant has stated that the EHC system controls the bypass valves, the control valves, and the turbine stop valve position switches that supply a scram signal to the reactor protective system. However, since there will be no steam in the main steam lines prior to reactor heatup, there is no need to initiate a scram from stop valve closure. Therefore, the turbine electrohydraulic control system is not required to be operational prior to reactor heatup. In addition, before opening both of the MSIVs the turbine cannot be brought to an overspeed condition, therefore, the EHC system would not be needed to reduce the probability of a turbine missile.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the turbine EHC system operational. Preoperational testing of this system will be completed prior to opening both of the MSIVs, when the system is required to be operational. This exemption would provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer operability of the turbine EHC system until after the fuel is loaded but prior to opening both of the MSIVs.

Since no steam exists in the main steam lines prior to opening both of the MSIVs after reactor heatup, the staff concludes that granting the proposed relief will not increase the probability of an accident and will not result in post-accident radiological releases that are greater than those previously determined for the Nine Mile Point Nuclear Station, Unit 2. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

B. Deferral of the Completion of the Off-Gas System Identification of Proposed Action

The proposed action would exempt the applicant from having the off-gas system operable prior to fuel load. The request for deferral and supporting justifications are contained in letters from the applicant dated May 7, July 3, and August 29, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 60 and Part 50, Appendix I require, in part, that the nuclear power unit design include means to control the release of radioactive materials in gaseous effluents.

Prior to opening both of the MSIVs, steam will not be introduced into the main turbine condenser and no radioactive gaseous effluents can be generated, therefore the off-gas system is not needed.

Need for Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the off-gas system operational. Preoperational testing of the off-gas system will be completed prior to opening both of the MSIVs after initial startup. This exemption would provide the applicant with greater flexibility and, therefore, expedite the start of power operations.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer operability of the off-gas system until after fuel loading, but prior to opening both of the MSIVs after initial startup.

Prior to opening both of the MSIVs after startup, this system is not required, and the main turbine condenser is not utilized.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined as a result of the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

C. Deferral of the Completion of Portions of the Containment Atmospheric Monitoring System

Identification of Proposed Action

The proposed action would exempt the applicant from having portions of the containment atmospheric monitoring system related to the humidity monitors, containment and drywell H_2/O_2 concentration monitors, containment pressure monitors, and suppression pool and drywell excess flow instrument line check valves operable until after fuel load. The specific requests for deferral and supporting justifications are

contained in submittals from the applicant dated May 7, 1986, July 3, 1986, and June 18, 1986 (date should read July 18, 1986).

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 41 requires that, in part, systems to control fission products, hydrogen, oxygen, and other substances in the reactor containment be provided. GDC 64 requires, in part, that means be provided for monitoring the reactor containment atmosphere for radioactive releases.

The applicant has stated that the monitors identified above, for which the deferrals are being requested, are not needed prior to initial criticality. Since the reactor coolant temperature during open vessel testing is maintained at less than 140°F, no decay heat is present so a loss of coolant accident would not result in the formation of hydrogen and prior to initial criticality no appreciable quantities of fission products are present in the fuel. Therefore, no significant release of radioactivity is possible.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having fully operational portions of the containment monitoring system as identified in the applicant's May 7, 1986 submittal. The operational testing of the portions of the containment monitoring system identified will be complete prior to initial criticality. This exemption would provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: Requiring that the portions of the containment monitoring system identified in the applicant's May 7, 1986, submittal to be fully operational at fuel load would result in a hardship for the applicant without a compensating increase in safety. The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

D. Deferral of the Completion of the Reactor Coolant and ECCS Leak Detection System

Identification of Proposed Action

The proposed action would exempt the applicant from having the reactor coolant and ECCS leak detection system operable prior to fuel load. The specific requests for deferral and supporting justification are contained in submittals from the applicant dated May 7, 1986, and July 3, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 30 requires, in part, that means be provided for detecting and identifying the location of the source of reactor coolant leakage. GDC 64 requires, in part, that means be provided for monitoring the containment atmosphere, spaces containing components for recirculation of loss-of-coolant accident fluids, effluent discharge paths and plant environs for radioactivity. Operability of the leak detection system is normally demonstrated during the preoperational testing based on the acceptance criteria specified in these operational test specifications.

Until the reactor attains initial criticality, significant fuel exposure or buildup of radioactive fission products in the core should not occur. Hence, there should not be significant heat generation in the core from fuel or fission products, nor a significant buildup of the radioactivity in the coolant. Therefore, the applicant has stated that the reactor coolant and ECCS leak detection system, for which the deferral is being requested, is not required prior to initial criticality.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the reactor coolant and ECCS leak detection system operational. Preoperational testing of this system will be completed prior to initial criticality. This exemption would provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: The proposed exemption would allow the applicant to defer the operability of the reactor coolant and ECCS leak detection system until after fuel loading but before initial criticality. During initial fuel loading and precritical testing, the reactor will remain at essentially ambient temperatures and atmosphere conditions. Under these conditions, no radioactive species will be produced; therefore, there are no environmental impacts associated with the proposed action.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined as a result of the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

E. Deferral of the Completion of the Design Basis Accident (DBA) Hydrogen Recombiner System

Identification of Proposed Action

The proposed action would exempt the applicant from having the DBA hydrogen recombiner system operable prior to fuel load. The request for deferral and the supporting justification are contained in submittals from the applicant, dated June 13, 1986 and July 3, 1986.

GDC 41 requires a containment atmosphere cleanup system to control hydrogen and oxygen following a DBA to ensure that containment integrity is maintained. Inspection and periodic testing of the containment atmosphere cleanup system are required by GDC 42 and GDC 43, respectively. 10 CFR 50.44 contains requirements for combustible gas control systems which will be met,

VOL 51 ISS 174 SE 9 1986 UMI

in part, by the DBA hydrogen recombiner system when it is fully tested.

The applicant has stated that the DBA recombiners can only perform a function during a post-LOCA with degraded core condition. The applicant further stated that this condition is not possible until after initial power operation.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the DBA hydrogen recombiner system operational. Preoperational testing of this system will be completed prior to initial criticality. This exemption would provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operations.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer operability of the DBA hydrogen recombiner system until after the fuel is loaded but prior to initial criticality.

Since prior to initial criticality the DBA hydrogen recombiner system performs no function as DBA-post LOCA conditions are not possible until after initial criticality, the staff concludes that granting the proposed relief will not increase the probability of an accident and will not result in post-accident radiological releases that are greater than those previously determined for the Nine Mile Point Nuclear Station, Unit 2. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiologicl or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the proposed exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: These actions associated with the granting of the proposed exemptions as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 2", dated May 1985.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's submittals that support the requested exemptions A through E above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessments, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemptions as listed herein, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Penfield Library, State University College, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 3rd day of September 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86-20289 Filed 9-8-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Seabrook and Occupational and Environmental Protection Systems

The ACRS Subcommittees on Seabrook and Occupational and Environmenal Protection Systems will hold a joint meeting on September 25, 1986, in Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, September 25, 1986—1:00 p.m. until the conclusion of business.*

The Subcommittees will gather and exchange information with the NRC Staff and PSNH. The Subcommittees will review preliminary efforts by the applicant to reduce the size of the emergency planning zone (EPZ). This effort uses results of the Seabrook Probabilistic Safety Assessment to justify a smaller EPZ. A primary focus will be the credit taken for the strength and leak tightness of the Seabrook containment. A status report on emergency planning around Seabrook will also be heard.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the intial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the Public Service Company of New Hampshire, the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 3, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-20287 Filed 9-8-86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Advisory Committee Meeting; Correction Notice

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4; correction.

SUMMARY: This document corrects the meeting date published on August 20, 1986 at 51 FR 29728 as September 11, 1986. The correct date is September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Jim Ruff at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–20213 Filed 9–8–86; 8:45 am]

BILLING CODE 6080-60-M

SECURITIES AND EXCHANGE COMMISSION

[FILE NO. 22–15590]

Application and Opportunity for Hearing; Chrysler Financial Corporation

September 2, 1986.

Notice is hereby given that Chrysler Financial Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the successor trusteeship of J. Henry Schroder Bank and Trust Company (the "Bank") under (i) an indenture, dated as of July 15, 1985, between the company and Bankers Trust Company, (ii) an indenture, dated as of August 1, 1984, as supplemented and amended by a First Supplemental Indenture dated as of August 1, 1984, between the Company and Bankers Trust Company and (iii) an indenture, dated as of September 1, 1977, between the Company and Fidata Trust Company New York (formerly Bradford Trust Company), as successor trustee to Chemical Bank, all of which were heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges that:

1. The Company had outstanding as of June 25, 1986, $26,365,000 of its 9⅜% Subordinated Notes Due 1987 (the "9⅜% Notes") issued under an indenture dated as of September 1, 1977 (the "1977 Indenture"), between the Applicant and Fidata Trust Company New York (formerly Bradford Trust Company), as successor trustee to Chemical Bank, which was qualified under the Act. The 9⅜% Notes were registered under the Securities Act of 1933.

2. The Company had outstanding as of June 25, 1986, $100,000,000 of its 12⅛% Subordinated Notes Due February 15, 1990 (the "12⅛% Notes") and $200,000,000 of its Subordinated Exchangeable Variable Rate Notes Due 1994 (the "Variable Rate Notes") both issued under an indenture dated as of August 1, 1984, as amended and supplemented by a First Supplemental Indenture, dated as of August 1, 1984 (as so amended and supplemented the "1984 Indenture") between the Applicant and Bankers Trust Company ("Bankers Trust"), which was qualified under the Act. The 12⅛% Notes and the Variable Rate Notes were both registered under the Securities Act of 1933.

3. The Company has outstanding as of June 25, 1986, $60,000,000 of its Floating Rate Subordinated Notes Due August 15, 1990 (the "1990 Floating Rate Notes"), $125,000,000 of its Floating Rate Extendible Subordinated Notes Due 1992 (the "1992 Floating Rate Notes") and $150,000,000 of its 9¼% Subordinated Notes Due March 1, 1991 (the "9¼% Notes") all issued under an indenture, dated as of July 15, 1985, between the Company and Bankers Trust, which was qualified under the Act. The 1990 Floating Rate Notes, the 1992 Floating Rate Notes and the 9¼% Notes were each registered under the Securities Act of 1933. The 1977 Indenture, the 1984 Indenture and the 1985 Indenture each contain the provisions required by section 310(b)(1)(ii) under the Act.

4. On April 11, 1986 the Bank was appointed successor trustee under the 1977 Indenture.

5. The Company on June 26, 1986 appointed the bank to act as successor trustee under the 1984 Indenture and 1985 Indentures.

6. The Company is not in default under any of the Indentures.

7. The Company's obligations under the indentures and the debentures issued thereunder are wholly unsecured and rank *pari passu inter se*. There are no material differences between the 1985 Indenture, the 1984 Indenture and the 1977 Indenture except for variations as to aggregate principal amounts, dates of issue, maturity and interest payment dates, interst rates, redemption prices, convertibility and sinking fund provisions.

8. In the opinion of the Company, the provisions of the aforementioned indentures are not so likely ot involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any of the debentures issued under such indentures to disqualify Bank from continuing to act as successor trustee under the 1985 Indenture, the 1984 Indenture and the 1977 Indenture. The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, File Number 22–15590, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than September 24, 1986 request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20248 Filed 9–8–86; 8:45 am]

BILLING CODE 8010-01-M

VOL 51 ISS 174 SEP 9 1986 UMI

[Release No. IC-15280; (File No. 812-6418)]

Equus Investments II, L.P.; Application

August 29, 1986.

Notice is hereby given that Equus Investments II, L.P. ("Partnership"), River Oaks Bank Tower, 2001 Kirby, Suite 1114, Houston, Texas 77219, filed an application on June 26, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), declaring that the Independent General Partners of the Partnership are not "interested persons" of the Partnership as defined in section 2(a)(19) of the Act solely by reason of their being general partners of the Partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the applicable provisions.

Applicant states that it was organized as a Delaware limited partnership, pursuant to a Certificate of Limited Partnership dated May 30, 1986 ("Partnership Agreement"), and that it will elect to become a business development company, pursuant to section 54(a) under the Act. Applicant further states that its investment objective is to seek capital appreciation by making equity, and to a lesser extent, equity-oriented investments in leveraged buyouts of established medium-sized companies or divisions thereof. The application states that the Partnership has filed a registration statement under the Securities Act of 1933 with respect to a proposed public offering of up to 5,000,000 units of Limited Partnership Interests. The proceeds of the offering will be invested in leveraged buy-out investments over a period of three to four years. Each investment will be liquidated once it reaches a state of maturity when disposition can be considered (typically within four to seven years of the date of investment). The proceeds of liquidation will not be reinvested (except in limited circumstances) but will be distributed to the Partners. The Partnership will have a duration of not more than 14 years.

Applicant represents that Equus Capital Corporation will serve as managing general partner of the Partnership ("Managing General Partner") and will be responsible for selecting the Partnership's investments and arranging financing for leveraged buy-outs. Equus Capital Management Corporation ("ECMC") will serve as the Partnership's management company and, pursuant to a management agreement with the Partnership, will negotiate, structure, monitor, and liquidate the Partnership's investments and perform, or arrange for third parties to perform, the management, certain administrative, and certain investment advisory services necessary for the operation of the Partnership. According to the application, both the Managing General Partner and ECMC are registered investment advisers under the Investment Advisers Act of 1940. The Managing General Partner is controlled by ECMC, which is controlled by EI Incorporated, a Texas corporation engaged in a variety of investment activities, including leveraged buyouts. The application indicates that the Managing General Partner will not resign or withdraw from the Partnership unless certain specific procedures are followed and a successor is appointed and consented to by the Limited Partners of the Partnership.

The application states that the General Partners of the Partnership consist of four Individual General Partners (three Independent General Partners, defined as individuals who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act, and one affiliated individual) and the Managing General Partner. According to the application, the Partnership will be managed exclusively by the Independent General Partners, except that the Managing General Partner, subject to the supervision of the Independent General Partners, will be responsible, *inter alia,* for the management of the Partnership's investments. The application states that the General Partners will perform the same functions as directors of a corporation and the Independent General partners will assume the responsibilities and obligations imposed upon the non-interested directors of a corporate business development company by the Act. The application further states that the number of persons serving as Individual General Partners will be fixed from time to time by the Independent General Partners, provided, however, that the number of Individual General Partners will in no event be less than three. Additionally, a majority of the General Partners will at all times be Independent General Partners who are not "interested persons" of the Partnership (as defined in the Act). The Partnership Agreement provides that the Independent General Partners may be removed either (i) for cause by the action of a majority of the remaining Independent General Partners, or (ii) with the consent of a majority in interest of the Limited Partners. The Managing General Partner may be removed either (i) by a majority of the Independent General Partners, or (ii) by the vote of a majority in interest of the Limited Partners.

The application indicates that the Partnership's Limited Partners have no right to control or otherwise participate in the management of the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and giving consents and approvals. The Partnership further states that it does not presently have an insurance policy that would provide coverage to persons who become Limited Partners, but it undertakes that it will periodically review the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

Applicant represents that the Independent General Partners are "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act by virtue of being partners of the Partnership, which makes them "affiliated persons" of the Partnership within the meaning of section 2(a)(3)(D) of the Act. It is requested that the Partnership and its Independent General Partners be exempted from the provisions of section 2(a)(19) of the Act to the extent the Independent General Partners would otherwise be deemed to be interested persons of the Partnership solely because the Independent General Partners are general partners of the Partnership. According to the application, the Partnership has been structured so that the Independent General Partners are the functional equivalents of non-interested directors of an incorporated investment company. The application states that section 2(a)(19) of the Act excludes from the definition of interested persons of an investment company those individuals who would be interested persons solely because they are directors of an investment company. It is submitted that it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemption from the provisions of section 2(a)(19) of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 22, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington,

DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20249 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-10-M

[Release No. IC-15284; File No. 812-6431]

Application and Opportunity for Hearing; Hartford Life Insurance Co. et al.

September 2, 1986.

Notice is hereby given that Hartford Life Insurance Company ("Company"), a Connecticut stock life insurance company with offices at Hartford Plaza, Hartford, Connecticut 06115, Hartford Life Insurance Company Separate Account Two ("Account"), registered under the Investment Company Act of 1940 ("Act") as a unit investment trust; and Harford Equity Sales Company, Inc., the principal underwriter of the individual and group flexible premium deferred combination fixed/variable annuity contracts ("contracts") offered through the Account, (together, "Applicants"), filed an application on July 10, and amendments thereto on July 29 and August 29, 1986, requesting an order pursuant to section 6(c) of the Act, exempting them from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants request exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) to offer the contracts subject to a daily asset charge at the rate of 1.25% per annum paid to the Company for mortality and expense guarantees, estimated at .90% and .35%, respectively.

Applicants state that the contractowner has the right to allocate purchase payments to any one of seven underlying funds. Applicants further state that a sales charge is not deducted at the time of purchase. Each premium payment, net of any applicable premium tax, is credited to the contract. A contingent deferred sales charge may be assessed against contract values upon partial and/or full surrender. The time from receipt of a premium payment to the time of surrender determines the contingent deferred sales charge; and the charge equals 5% of the amount withdrawn for the first two years, 4% for the third year, 3% for the fourth year, 2% for the fifth year, and 0% for the sixth year. A single partial surrender may be made each year after the first full contract year of up to 10% of the aggregate premium payments without the application of the contingent deferred sales charge.

Applicants state that an annual maintenance fee of $25 is deducted on each contract anniversary from contract values. The contracts issued with respect to the Account will provide a 1.25% annual asset charge paid to the Company on a daily basis for providing mortality and expense guarantees with respect to the contracts.

Applicants state that the mortality undertaking provided by the Company under the contracts, assuming the selection of one of the forms of life annuities, is to make monthly annuity payments (determined in accordance with the 1983(a) Individual Annuity Table with ages set back one year and other provisions in the contract) regardless of how long an annuitant may live, and regardless of how long all annuitants as a group may live. The Company also assumes the liability for payment of a minimum death benefit. The expense undertaking is the risk assumed that the contingent deferred sales charges and the annual maintenance fee may be insufficient to cover the actual costs.

Applicants request exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) in order that they may offer the contracts subject to the mortality and expense risk charge. The Company represents that:

(a) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. These contracts are similar in that current charge levels are approximately the same; all provide minimum death benefit guarantees the same as or lower than the Applicants' contract; all have guaranteed annuity purchase rates; all have the same special accounting system for separate account unit value administration; and all are offered in the same market. The Company will undertake to maintain and make available to the Commission upon request a memorandum underlying this representation;

(b) There is the likelihood that the proceeds from explicit sales loads will be insufficient to cover the expected costs of distributing the contracts. The Company has concluded that there is a reasonable likelihood that the Account's distribution financing arrangement will benefit the Account and contractowners, and that it will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation; and

(c) The Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Applicants submit the exemption requested to permit the deduction for mortality and expense guarantees is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is given that any interested person wishing to request a hearing on the application may, not later than September 29, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed to: Secretary, Securities Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon the Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 86-20250 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

VOL 51 ISS 174 SE 9 1986 UMI

[File No. 22-15661]

Application and Opportunity for Hearing; Oglethorpe Power Corp.

August 29, 1986.

Notice is hereby given that Oglethorpe Power Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Trust Company Bank (the "Bank") under an indenture dated as of September, 1986 (the "September Indenture") between Company and Bank, which is to be qualified under the Act, and under nine separate Trust Indentures, (Pollution Control Indentures), between Company and Bank, which have not been qualified under the Act, under which Pollution Control Bonds were issued as set forth below:

(1) Trust Indenture from Development Authority of Applying County to Trust Company Bank, as Trustee, dated as of November 1, 1978, pursuant to which were issued $10,540,000 aggregate principal amount of Development Authority of Appling County Pollution Control Revenue Bonds Series 1978;

(2) Trust Indenture from Development Authority of Heard County to Trust Company Bank, as Trustee, dated as of November 1, 1978, pursuant to which were issued $18,460,000 aggregate principal amount of Development Authority of Heard County Pollution Control Revenue Bonds Series 1978;

(3) Trust Indenture from Development Authority of Monroe County to Trust Company Bank, as Trustee, dated as of September 15, 1982, pursuant to which were issued $190,000,000 aggregate principal amount of Development Authority of Monroe County Pollution Control Revenue Bonds Series 1982;

(4) Trust Indenture from Development Authority of Burke County to Trust Company Bank, as Trustee, dated as of September 15, 1982, pursuant to which were issued $110,000,000 aggregate principal amount of Development Authority of Burke County Pollution Control Revenue Bonds Series 1982;

(5) Trust Indenture from Development Authority of Appling County to Trust Company Bank, as Trustee, dated as of November 1, 1984, pursuant to which were issued $24,000,000 aggregate principal amount of Development Authority of Appling County Pollution Control Revenue Bonds Series 1984;

(6) Trust Indenture from Development Authority of Burke County to Trust Company Bank, as Trustee, dated as of November 1, 1984, pursuant to which were issued $416,000,000 aggregate principal amount of Development Authority of Burke County Pollution Control Revenue Bonds Series 1984;

(7) Trust Indenture from Development Authority of Burke County to Trust Company Bank, as Trustee, dated as of December 1, 1984, pursuant to which were issued $174,000,000 aggregate principal amount of Development Authority of Burke County Pollution Control Revenue Bonds Series 1984;

(8) Trust Indenture from Development Authority of Appling County to Trust Company Bank, as Trustee, dated as of October 15, 1985, pursuant to which were issued $25,000,000 aggregate principal amount of Development Authority of Appling County Pollution Control Revenue Bonds Series 1985; and

(9) Trust Indenture from Development Authority of Burke County to Trust Company Bank, as Trustee, dated as of October 15, 1985, pursuant to which were issued $200,000,000 aggregate principal amount of Development Authority of Burke County Pollution Control Revenue Bonds Series 1985, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that is has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) The Pollution Control Bonds were not registered under the Securities Act of 1933 (the "1933 Act") and the corresponding Indentures were not qualified under the Act.

(2) The Company is not in default under the Pollution Control Bonds. The Company's obligations under the Pollution Control Indentures and September Indenture are wholly secured by separate collateral. All series to be issued under the September Indenture will rank *pari passu*.

(3) The provisions of the Pollution Control Bond Indentures and September Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under said Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of practice of the Commission in the connection with this matter.

For a more detailed statement of the matters of fact and law ascertained, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-15746, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than September 22, 1986, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20251 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15281; File No. 812-6329]

Oxford Acceptance Corporation; Notice of Application

August 29, 1986.

Notice is hereby given that Oxford Acceptance Corporation ("Applicant") 4550 Montgomery Avenue, Suite 300, Bethesda, Maryland 20814, filed an application on March 31, 1986, and amendments thereto on June 2 and July 24, 1986, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein and to the Act and rules thereunder for the text of all applicable provisions.

According to the application, Applicant is a Delaware company, all of the common stock of which is owned by Leo Zickler individually. Mr. Zickler is also the 100 percent owner of Oxford Corporation, a holding company that owns all the common stock of Oxford Development Corporation ("Oxford Development"). Oxford Development is engaged in the businesses of real estate development and mortgage finance. Mr. Zickler is the chairman, president and chief executive officer of Oxford Development.

Applicant states that it has been formed for the purpose of serving as a conduit vehicle through which it will provide a source of funds to entities or affiliates of such entities engaged in mortgage finance by issuing bonds or other evidences of indebtedness ("Bonds") collateralized by mortgage-backed securities, mortgage loans and funding agreements secured by such mortgage-backed securities and mortgage loans ("Mortgage Collateral"). Applicant may in the future sell authorized shares of its captial stock in private placements exempt from registration under the Securities Act of 1933, as amended ("Securities Act"), or in public offerings pursuant to a registration statement filed under the Securities Act. Applicant states that in the event Applicant sells its equity interest in the future, it will comply with any position so established by the Commission at such time with respect to the sale of equity interests.

Applicant represents that each series of Bonds will consist of one or more classes of Bonds and will be issued pursuant to an indenture between Applicant and an independent trustee ("Trustee"), as supplemented by a supplemental indenture for such series ("Indenture"). Applicant represents that each series of Bonds will be separately secured primarily by some combination of the following (collectively, "Mortgage Collateral"): (i) "Fully-modified pass-through" certificates fully guarateed as to principal and interest by the Government National Mortgage Association, mortgage participation certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation or mortgage pass through certificates issued and guaranteed by the Federal National Mortgage Association (collectively, "Mortgage Certificates"); (ii) mortgage loans secured by first liens on single family (one- to four-family) residences ("Mortgage Loans"); and (iii) funding agreements and, if provided in such funding agreements, one or more related promissory notes ("Funding Agreements") evidencing loans made by the Applicant to entities engaged in real estate and mortgage finance that are primarily in the business of originating mortgage loans, such as savings and loans, savings banks, commerical banks, mortgage bankers, life insurance companies and homebuilders or their affiliates. (Such entities and affiliates of such entities are referred to herein as the "Participants"). Affiliates of the Applicant may act as such a Participant. All or a portion of the Mortgage Certificates pledged as collateral for a series of Bonds may consist of "partial pool" Certificates. Applicants represent that the Funding Agreements will be secured by some combination of Mortgage Certificates and Mortgage Loans.

Applicant states that each series of Bonds may also be secured by certain accounts, certain reserve funds, and a minumum principal payment agreement. Additionally, Applicant states that funds in a collection account will be reinvested in eligible investments, pending the next bond payment date. Further, Applicant represents that all such reinvestments will mature on or prior to such bond payment date, and on such bond payment date such payments and the earnings thereon will be distributed to make required payments on the Bonds as required by the Indenture.

Applicant states that each series of Bonds will registered under the Securities Act unless an appropriate exemption from such registration is available. The Indenture of each public offering will be qualified under the provisions of the Trust Indenture Act of 1939, unless an appropriate exemption thereform is available.

Applicant represents that at the time of issuance of a series of Bonds, the Mortgage Collateral for each such series of Bonds will have a scheduled cash flow sufficient, together with reinvestment income thereon at assumed rates acceptable to the rating agency that initially rates the Bonds (or the contractually agreed rate provided by a guaranteed investment contract) to make payment on the Bonds of each series in accordance with their terms. Applicant further represents that the Indenture will require that an independent public accountant certify to the Trustee at least annually that the remaining collateral is sufficient, together with such reinvestment income, to make all such required payments on the Bonds.

Applicant submits that the relief requested is necessary and appropriate in the public interest because: (1) Applicant should not be deemed to be an entity to which the provisions of the Act were intended to be applied; (2) Applicant submits that the safeguards afforded to purchasers of the Bonds fully protect investors; and (3) Applicant's activities will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation. Applicant requests this relief with respect to the issuance of any series of its Bonds collateralized by Mortgage Certificates, Mortgage Loans or Funding Agreements secured by Mortgage Certificates or Mortgage Loans.

In addition, Applicant has consented to the imposition of seven conditions, set forth below, as specific conditions to granting the requested exemptive order:

(1) Each series of Bonds will be registered under the Securities Act unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

(2) The Bonds will be "Mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the Mortgage Collateral underlying the Bonds (whether owned by Applicant or pledged pursuant to collateralized obligations) will be limited to: the Mortgage Certificates, the Pledged Loans and the Funding Agreements.

(3) If new Mortgage Collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraphs (2), (4), and (6). In addition, new collateral may not be substituted for more than 20 percent of the aggregate face amount of the Mortgage Loans or Funding Agreements initially pledged as Mortgage Collateral or for more than 40 percent of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. New Mortgage Loans or Funding Agreements may be substituted for Mortgage Loans or Funding Agreements initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All collateral securing a series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian that is not an affiliate of the Applicant (as the term "affiliate" is defined in Rule 405 of the Securities Act (17 CFR 230.405)) and the Trustee will have a first priority perfected security or lien interest in and to the Bond Collateral;

(5) Each series of Bonds will be rated in one of the two highest rating categories by at

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least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the Act.

(6) The master servicer of any Mortgage Loans that are pledged as Mortgage Collateral may not be an affiliate of the Trustee. If there is no master servicer, no servicer of those mortgages may be an affiliate of the Trustee. Any master servicer and services of such Mortgages will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage laons. The agreement governing the servicing of such Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to those Mortgage Loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

(7) No less often than annually, an indpendent public accountant will audit the books and records of the Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continues to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the trustee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 22, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20252 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15283; File No. 812-6315]

Oxford Acceptance Corporation III; Notice of Application

August 29, 1986.

Notice is hereby given that Oxford Acceptance Corporation III ("Applicant"), 4550 Montgomery Avenue, Suite 340, Bethesda, Maryland 20814, filed an application on March 7, 1986, and amendments thereto on June 2, 1986, and July 24, 1986, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein and to the Act and the rules thereunder for the text of all applicable provisions.

According to the application, Applicant is a limited purpose corporation incorporated under the laws of the State of Maryland. Applicant states that it was organized for the purpose of (i) issuing and selling one or more series of bonds, under one or more indentures, secured primarily by mortgage certificates, investing in certain mortgage certificates to be purchased with the proceeds of bonds secured by such mortgage collateral, acquiring, owning, holding and pledging mortgage certificates in connection therewith and investing cash balances on an interim basis in certain short term investments; (ii) investing on a non-recourse basis in operating subsidiaries; (iii) issuing and selling certain subordinated indebtedness; (iv) becoming the general partner in a limited partnership issuing and selling bonds secured by mortgage certificates, provided that no such action will result in the reduction in the ratings then assigned to applicant's bonds; (v) transferring its rights to any amounts remitted or to be remitted to Applicant by the trustee under any indenture; and (vi) engaging in other activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith. However, Applicant states that although its Articles of Incorporation permit it to engage in the activities enumerated above, Applicant represents as a condition of the application that (1) it will not invest on a non-recourse basis in operating subsidiaries and (2) will not become the general partner in a limited partnership. The Applicant may at times issue and sell subordinated indebtedness provided that such issuance or sale does not result in the downgrading of the bonds of any series by the rating agency rating the bonds. The Applicant may also, from time to time, transfer its rights to amounts remitted or to be remitted to it by the trustee under any indenture. Such amounts may represent fees or excess cash flow due the Applicant which would be free from the lien of the indenture.

Applicant states that all of its issued and outstanding shares of capital stock are owned by one stockholder, Leo E. Zickler. Applicant states that it may in the future, however, sell authorized shares of its capital stock in private placements exempt from registration under the Securities Act of 1933 ("1933 Act") or in public offerings pursuant to a registration statement filed under the 1933 Act. Applicant further states that in the event Applicant sells its equity interest in the future, it will comply with any position so established by the Commission at such time with respect to the sale of equity interest.

Applicant proposes to issue and sell bonds ("Bonds") in series (the "Series") from time to time under a prospectus ("Prospectus") and related prospectus supplements ("Prospectus Supplement"). A registration statement with respect to the Bonds has been filed with the Commission. Also, the Bonds may be sold pursuant to private placement memoranda. Each Series of Bonds will consist of one or more classes ("Classes") of Bonds, one or more of which may be Classes of current-pay Bonds or compound interest Bonds. Each Class will bear a separate bond interest rate and stated maturity date as indicated in the Prospectus Supplement for such Series. Applicant represents that it will not issue any Bonds unless they are rated in the highest bond rating category by an unaffiliated nationally recognized rating agency.

The Applicant states that each Series of Bonds will be issued pursuant to an indenture ("Indenture") between Applicant and an independent trustee under the Indenture ("Trustee"), as supplemented by one or more supplemental indentures. The Indenture for each Series of Bonds will be qualified under the Trust Indenture Act of 1939, unless an appropriate exemption is available. The Indenture will not provide for redemption of the Bonds at the option of the Bondholders.

Applicant states that each Series of Bonds will be secured separately by assignments to the Trustee of any combination of mortgage-backed certificates ("GNMA Certificates") guaranteed by the Government National Mortgage Association, mortgage participation certificates ("FHLMC Certificates") issued by the Federal Home Loan Mortgage Corporation, and guaranteed mortgage pass-through certificates ("FNMA Certificates") issued by the Federal National Mortgage Association. (As used herein, the term "Mortgage Certificates" includes the

GNMA Certificates, the FHLMC Certificates and the FNMA Certificates.) Applicant states that each Series of Bonds may also be secured by certain collection proceeds accounts, debt service funds and reserve funds.

The collateral pledge to the Trustee to collateralize the Bonds of any Series will consist of (a) Mortgage Certificates having initial collateral value equal to at least 100% of the initial principal amount of the Bonds and (b) to the extent applicable a Reserve Fund, a GPM Fund and a Minimum Principal Payment Agreement, all as defined more fully in the application. The collateral securing each Series of Bonds will serve as collateral only for that Series of Bonds. Applicant further states that the projected cash flow derived from payments of principal and interest on the Mortgatge Certificates, together with reinvestment income thereon at the assumed reinvestment rate established by Applicant and approved by the rating agency and payments from the Reserve or GPM Funds or Minimum Principal Payment Agreement (see above), if any, is calculated to be sufficient to pay accrued interest on the Bonds and to amortize the entire principal amount of each Class by its respective stated maturity.

Applicant represents that it will have the limited right to substitute up to 40% of the aggregate face amount of the Mortgage Certificates initially pledged as collateral with new Mortgage Certificates. Unless otherwise provided in a Series Supplement, any substitute Mortgage Certificate must have a collateral value that is at least equal to the collateral value of the Mortgage Certificate for which it is substituted, an annual interest rate within one-half of one percentage point of the Certificate for which it is substituted, and a maturity date within 180 days of the maturity date of the Certificate for which it is substituted. Applicant further represents that it will be a further condition of any such substitution that the stated maturity of any Class of Bonds not be delayed by such substitution. Unless otherwise provided in a Series Supplement, Applicant will be permitted to substitute only a like kind of Mortgage Certificate for any Mortgage Certificate and will not be able to substitute for any substitute Mortgage Certificate.

Applicant submits that the relief requested is necessary and appropriate in the public interest because: (1) Applicant should not be deemed to be an entity to which the provisions fo the Act were intended to be applied: (2) Applicant submits that the safeguards afforded to purchasers of the Bonds fully protect investors; and (3) Applicant's activities will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation. In addition, Applicant has consented to the imposition of seven conditions, set forth below, as specific conditions to granting the requested exemption:

(1) Each Series of Bonds will be registered under the Securities Act of 1933 (the "Securities Act") unless offered in a transaction exempt from registration pursuant to Section 4(2) of the Securities Act;

(2) Bonds will be "mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934. However, the Mortgage Certificates pledged to secure a Series of Bonds will be Mortgage Certificates guaranteed or insured by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(3) If new Mortgage Certificates are substituted for Mortgage Certificates initially pledged for a Series of Bonds the substituted Mortgage Certificates will (a) be of equal or better quality than the Mortgage Certificates replaced, (b) have similar payment terms and cash flows as the Mortgage Certificates replaced, (c) be insured or guaranteed to the same extent as the Mortgage Certificates replaced, (d) meet the conditions of "(2)" and "(4)" herein, and (e) no more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as collateral may be substituted with new Mortgage Certificates. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) All collateral securing a Series of Bonds will be held by the Trustee or on behalf of the Trustee by an independent custodian which is not an affiliate of the Applicant (as the term "Affiliate" is defined in Securities Act—Rule 405 17 CFR 230.405) and the Trustee will have a first priority perfected security or lien interest in and to the Mortgage Collateral;

(5) Each Series will be reated in the highest rating category by an unaffiliated nationally recognized statistical rating agency; and the Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the Act.

(6) At least annually, an independent public accountant will audit the books and records of the Applicant and will report on whether the anticipated payments of principal and interest on the Mortgage Certificates together with the other collateral pledged to secure a Series of Bonds, continues to be adequate to pay principal and interest on such Bonds in accordance with their terms. Copies of the auditor's report will be provided to the trustee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 22, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20253 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23584; File No. SR-CBOE-86-13]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

On May 15, 1986, the Chicago Board Options Exchange, Inc. ("CBOE"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that will provide one-year access to its foreign currency options markets and short and long term incentives to encourage market makers and floor brokers to trade currency options.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 23437 (July 14, 1986), 51 FR 26322. No comments were received on the proposed rule change.

II. Description

A. Foreign Currency Options Permits

Under the proposed permit plan, the CBOE will issue, at no cost, 50 market maker and 20 floor broker non-transferable permits that will enable

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[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] On August 6, 1986 the CBOE submitted an amendment to its filing. The amendment allows CBOE flexibility in allocating the short term incentive program discussed below.

holders to trade currency options through August 31, 1987. Under the plan, permit holders would not be charged any dues or currency options transaction fees through August 31, 1987. All market maker permit holders are required to accommodate at least 300 non-market maker currency options contracts every consecutive three month period. Similarly, floor brokers must execute at least 300 non-market maker currency options contracts every consecutive three months period. Failure of permit holders to meet these requirements will result in automatic recall of the permit, which then may be reissued to another participant for the remaining time in the one-year program. Market maker permit holders are also required to do 75% of their currency transactions in person and must be able to carry currency options positions requiring a haircut of at least $100,000 or their permits will be recalled.

Under CBOE's existing foreign currency options access plan, free permits and foreign currency options trading rights have been issued. CBOE has stated that these permits and rights holders may convert their positions to the new permit plan.

Under the rule, permit holders would be subject to all CBOE rules, policies and procedures that regular members are subject to including customer protection rules and business conduct standards. If there are more than 50 market maker or 20 floor broker applications the CBOE's membership committee will select the most qualified.

B. Short-Term Incentives Plans

The CBOE also has proposed to institute two short-term incentive programs and one long-term incentive plan.

First, the 50 market makers and 20 floor broker permits that would be issued pursuant to approval of the permit plan discussed above could be converted into transferable, non-leasable currency options memberships if these holders accommodate or execute 50,000 non-market maker currency options contracts betwen June 1, 1986 and August 31, 1987.[4] CBOE also will make available seventy additional currency memberships, and any unearned memberships by the existing 70 permit holders, to regular members and permit holders that also accommodate at least 50,000 non-market maker currency during the same period noted above.

Second, the CBOE is proposing to extend its existing six month currency options incentive program, which expired on August 29, 1986, for an additional one-year period as of September 1, 1986. Under the program, the CBOE will compute for each market maker, from trade match data in each currency class, the total number of in-person, market maker trades with off-floor orders. Based on this information, incentive credits will be allocated among market makers for each options class. The rule provides for a $50 contract cap so that if a market maker trades only one contract, the maximum incentive credit that can be gained is $50. The credits can be applied by the market maker toward the payment of dues, fees and open market seat purchases. There is one change from the existing incentive program. Under the existing program, CBOE set forth the specific allocations for each currency option class and provided that they would not exceed $120,000 in any one month for all classes [5] under the proposed extenstion of the program, CBOE has not set forth a monthly limit of the credits or set forth an allocation for each class. Nevertheless, CBOE will not be allowed over the one-year program to allocate more than $908,750.00 in incentive credits.[6] CBOE believes this approach will provide it with necessary flexibility in setting the monthly allocation totals in each options class included in the incentive program. All allocations under the program will, however, be announced in advance.

C. Long-Term Incentive Plan

Finally, the CBOE is proposing a long-term incentive program to reward regular members and currency permit holders who elect to meet certain trading requirements. Under this program, regular members and currency options permit holders can receive on a pro rata basis a share in exchange currency options transactions fees for a five year period beginning September 1, 1987, according to a schedule set forth in the rule. Members and permit holders must elect to participate in this program, in writing, before November 1986.[7] In addition, participants in the long-term incentive program may receive double credits for accommodating non-market maker orders that can be used to obtain currency options memberships, as discussed above. Under this part of the proposal, participants would receive two credits instead of one, for every non-market maker currency options contract accommodated, that can be used toward the 50,000 credits needed to receive a currency option membership. Under the proposal, in order for participants to rceive a share of transaction fees and double credits toward a currency options membership, they must, from the day following their election to the end of the five year period:

(1) Maintain quotes and markets in one group of three currency options classes, (2) be present continuously (nominees are interchangeable intra-day) in the trading crowd during currency options trading hours on ninety percent of the business days in each year or partial year and (3) maintain a minimum of $350,000 in currency trading capital.

III. Discussion

In its filing, the CBOE has stated that the purpose of the foreign currency options permit, short-term and long-term incentive programs is to attract additional market makers and floor brokers to trade currency options. For example, CBOE states that the membership permit incentive should help develop a currency. In addition, CBOE states that its long-term incentive plan will reward those market makers who meet certain requirements and make a commitment to trade currency options by September 1, 1986. CBOE believes that additional market makers and floor brokers in currency options will provide an increased capacity to accommodate public customer and firm proprietary currency options orders thereby attracting more order flow so that a deep and liquid market in currency options develops.

The Commission has reviewed carefully the CBOE's proposals. As noted above, the seventy one-year currency options permits (50 market maker permits and 20 floor broker permits) would be issued at no cost. In addition, during the one-year period, permit holders would not be charged dues or currency transaction fees. Nevertheless, as discussed above permit holders must meet certain conditions including a requirement to accommodate or execute 300 non-market maker currency option contracts in a three month period. The Commission believes

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[4] One credit is earned for every non-market maker contract accommodated or executed. Under the proposal, 50,000 credits are necessary to convert a permit to a foreign currency options membership.

[5] The monthly allocations were increased to $300,000 during the months of June, July and August.

[6] CBOE has indicated for example, that if it allocates the total amount in the first nine months, the incentive program will simply end early.

[7] The original filing provided for notification by September 1, 1986. CBOE has proposed to extend this date to November 1, 1986. *See* letter from Anne Taylor, Associate General Counsel, CBOE, to Eneida Rosa, Branch Chief, SEC, dated August 27, 1986.

that the CBOE has attempted through its plan to facilitate increased participation in its currently launched foreign currency options market by permitting non-members, in addition to members, access to its market and by providing relatively inexpensive access that might encourage greater participation in a product that has, to now, not attracted substantial market maker or other floor participation. The Commission believes that, consistent with sections 6(b)(2), 6(b)(4), 6(b)(5) and 6(b)(8) of the Act, CBOE is seeking to implement a start-up program for a relatively new product designed to allow access to qualified persons, to remove impediments to a free and open market and to foster competition among a wide variety of market participants. Accordingly, after carefully reviewing CBOE's proposed foreign currency permit plan, the Commission has concluded that the proposal is consistent with the requirements of the Act.

The two short-term incentive programs provide benefits based on a market makers accommodation of non-market maker currency options contracts. Both of these programs create concerns because the incentives (in either the form of dollar credits or credits toward the purchase of a foreign currency options membership), that are based on a market makers' volume in foreign currency options could encourage so-called chumming [8] or other artificial forms of trading by which market makers might attempt to inflate their volume in order to earn the credits.

The Commission, however, has determined that these short-term incentive programs should be approved. First, we note that the programs only will exist for a one-year period. Second, under the proposal, permit holders can only receive credits for non-market maker accommodation trades. Accordingly, the proposal should not create incentives for market-makers to enter into transactions with each other solely for the purpose of obtaining credits. Third, CBOE will monitor the foreign currency options trading of market makers with a large accommodation volume to ensure that their volume consists of actual accommodations that should be counted toward the market maker's credits. CBOE also has indicated that it will provide the Commission with a report after the first six months of the programs on any abuses detected and, generally, on foreign currency options activity during the incentive programs. We also note that the CBOE has indicated that, to date, no abuses involving chumming or pre-arranged trading has been found in CBOE's foreign currency options market during the existing six month incentive program. Moreover, CBOE's general surveillance of pre-arranged trading should capture any transaction effected for the purpose of increasing a market maker's volume. On balance, therefore, the Commission believes that the one-year currency options incentive programs proposed by CBOE for the limited purpose of attracting more market makers to a relatively new product traded mostly by institutional investors should be approved.

Finally, the Commission has reviewed carefully CBOE's long-term incentive proposal. As noted above, the share in transactions fees will occur over a five year period. CBOE is seeking to develop a longer term committment to its currency options market by providing this long-term incentive for market makers that meet certain requirements. The requirements are not volume related. Instead, they include requirements such as the maintenance of quotes and markets in one group of three currency options classes. The Commission does not believe that this program creates any signfiicant concerns. The requirements are related to encouraging a continued presence of market makers that will maintain markets in foreign currency options and this should benefit all market participants in foreign currency options. Participants in the long-term incentive program also may receive double credits for accommodating non-market maker orders. These credits can be used to obtain acurrency options membership. As noted above, this creates certain concerns regarding chumming and prearranged trades for the purpose of earning credits. For the reasons stated above, including the increased monitoring of such market maker activity by the CBOE, the Commission believes the issuance of double credits under the long-term incentive program also should be approved. Of course, if significant abuses were observed the Commission expects to be notified immediately by the CBOE.[9]

[8] Chumming is a broad term that covers a variety of activity including prearranged trades, wash sales and trade reversals, to provide the appearance of increased trading volume. *See* Securities Exchange Commission, *Report of the Special Study of the Options Markets*, H.R. Rep. No. 1FC3, 96th Cong., 1st Sess. (Comm. Print 1978) at 169–72.

[9] In addition, CBOE has represented that during the program it will monitor whether increased market maker participation in foreign currency options results from market makers leaving lower volume equity options classes thereby decreasing the liquidity in those options classes. The CBOE has stated, however, that it does not believe such an effect is likely to occur because of the expertise and capital required to trade foreign currency options.

Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: September 2, 1986.

Shirley E. Hollis

Assistant Secretary.

[FR Doc. 86–20246 Filed 9–8–86; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f (1982).

[11] 15 U.S.C. 78s(b)(2)(1982).

[12] 17 CFR 200.30–3 (a)(12)(1985).

[Release No. 34–23583; File No. SR–Phlx–86–16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On June 4, 1986, the Philadelphia Stock Exchange, Inc., submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] a proposed rule change that would narrow the maximum allowable bid-ask differential in nine and twelve month term series of foreign currency options except for options on the European Currency Unit ("ECU").

The proposed rule change was noticed in Securities Exchange Act Release No. 23436 (July 14, 1986), 51 FR 26326 (July 22, 1986). No comments were received on the proposed rule change.

Under current Phlx rules, the bid/ask differentials in Phlx Rule 1014 apply to foreign currency options series of less than nine months. For nine and twelve months series, the differentials are twice the size of those provided in the rule for series of less than nine months. Phlx's proposal would narrow the bid/ask differentials in the nine and twelve month term foreign currency options, except for options on the ECU, by applying to these longer-term options the narrower differentials that currently apply to series of less than nine months.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240–19b–4 (1985).

In its filing, Phlx states that the change should improve posted quotations in the longer term foreign currency options. Phlx believes, however, that the wider differentials (twice the size of those stated in the proposed rule) should continue to apply to the two longest term series (nine and twelve months) on the ECU for the following reasons. First, the ECU option contract is more volatile when compared to other foreign currency options contracts. Second, the ECU options contract is approximately twice as large as options on other foreign currency options.

The Commission has reviewed carefully the proposal and believes that the narrowing of bid/ask differentials in the nine and twelve month term series of foreign currency options open for trading may improve quotations in foreign currency options. In addition, the larger differentials for the two longest term series in ECU options appear to be appropriate because of the contract's size and volatility, especially as compared to other foreign currency options.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: September 2, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20247 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15282 (812-6372)]

Thrift Financing Corp.; Application

August 29, 1986.

Notice is hereby given that Thrift Financing Corporation, 814 East Main Street, Richmond, Virginia 23219 ("Applicant"), filed an application on May 6, 1986, and an amendment thereto on June 2, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") to amend an order of the Commission dated March 14, 1985 (Rel. No. IC-14418) ("1985 Order") to continue to exempt Applicant from all provisions of the Act if it engages in certain additional activities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for its relevant provisions.

According to the application, Applicant is a Virginia limited purpose finance corporation organized by Craigie Incorporated ("Craigie"), an investment banking firm headquartered in Richmond, Virginia, and 9 financial institutions, the deposit accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") (collectively, "FSLIC Institutions"). Fifty-one percent of the voting non-dividend paying stock of Applicant is owned by Craigie and the remaining 49% is owned by subsidiaries of the FSLIC Institutions. Twenty percent of Applicant's non-voting dividend paying stock is owned by Craigie and the FSLIC Institutions each own 8.9%. Applicant is registered and files periodic reports with the Commission under the Securities Exchange Act of 1934 ("Exchange Act").

Applicant proposes to issue bonds ("Bonds") in series form, each series separately secured primarily by mortgage collateral consisting of (1) first lien mortgage loans on single (one-to-four) family residences ("Mortgages"), (2) mortgage pass-through certificates evidencing an undivided interest in pools of first lien mortgage loans on single (one-to-four) family residences ("Conventional Certificates"), (3) Federal Home Loan Mortgage Corporation ("FHLMC") Guaranteed Mortgage Pass-Through Certificates ("FHLMC Certificates"), (4) Federal National Mortgage Association ("FNMA") Mortgage participation certificates ("FNMA Certificates"), and (5) Government National Mortgage Association ("GNMA") "fully-modified" pass-through mortgage backed certificates ("GNMA Certificates") (FHLMC Certificates, FNMA Certificates and GNMA Certificates collectively, "Agency Certificates") (Agency Certificates and Conventional Certificates collectively, "Certificates") (Mortgages, Conventional and Agency Certificates collectively, "Mortgage Collateral") and/or Funding Agreements with Borrowers (both of which as defined below) which are secured by Mortgage Collateral. "Funding Agreements" will consist of notes, bonds or other evidences of indebtedness issued, in exchange for a loan of a proportionate share of Bond proceeds, by Borrowers which are owners of Mortgages, Conventional Certificates and/or Agency Certificates and which are secured by such Mortgage Collateral. The application states that the payment terms of Funding Agreements will be identical in all material respects to the payment terms of the series of Bonds which they secure. Mortgage Collateral pledged to secure Funding Agreements will be pledged by Applicant to, and held by, the trustee for holders of the Bonds ("Bond Trustee") in the same manner as Mortgage Collateral acquired directly be Applicant and pledged to secure its Bonds.

Applicant seeks to amend the 1985 Order that exempt it from all provisions of the Act but limited its initial business to (1) making loans to FSLIC Institutions secured by Mortgage Collateral and (2) bonds payable out of the payments and secured primarily by Mortgage Collateral pledged to the Applicant under the Funding Agreements. The Applicant now seeks to engage in the following additional activities: (i) Make loans pursuant to Funding Agreements secured by Mortgage Collateral to commercial banks and savings banks with respect to their mortgage lending activities, the deposit accounts of which banks are insured by the Federal Deposit Insurance Corporation ("FDIC"), and to affiliates of such FDIC insured financial institutions (collectively, "FDIC Institutions"); (ii) acquire Mortgage Collateral in the open market and from affiliates or others engaged in mortgage originating, financing or funding activities, without regard to whether any Conventional Certificates or Agency Certificates are whole pool Certificates, and pledging such Mortgage Collateral to secure Applicant's Bonds; (iii) make loans to entities which are neither FSLIC Institutions nor FDIC Institutions but which are engaged directly, or through the owners of such entities or their affiliates, in mortgage financing, originating or funding activities, including mortgage bankers, home builders, and state agencies, which loans are secured by Mortgage Collateral pursuant to Funding Agreements (such entities, FDIC Institutions, FSLIC Institutions and their subsidiaries collectively, "Borrowers"); and (iv) issue Bonds to provide funds for the additional activities described above.

Applicant represents that it does not expect to have any significant assets other than the Funding Agreements of Borrowers and Mortgage Collateral acquired by Applicant and pledged to secure a particular series of Bonds.

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[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1985).

Additional security for a series will be provided by one or more reserve funds and/or insurance policies as required by the rating agencies rating such series.

According to the application, each series of Bonds will be issued pursuant to one or more indentures between Applicant and a Bond Trustee under the Trust Indenture Act of 1939, as supplemented by one or more supplemental indentures for each such series. Applicant states that neither the Bond Trustee nor any successor will be affiliated with the Applicant.

Applicant represents that its future securities offerings will be limited to Bond offerings under the following conditions:

(1) Each series of bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Exchange Act. However, the Mortgage Collateral underlying the Bonds will be limited to (i) Mortgages, (ii) Conventional Certificates, and (iii) Agency Certificates.

(3) If new Mortgage Collateral owned by the Applicant or pledged pursuant to Funding Agreements is substituted, the substitute collateral must: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in paragraphs numbered (2), (4) and (6). In addition, new collateral may not be substituted for more than 20% of the aggregate face amount of the Mortgages initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Certificates initially pledged as Mortgage Collateral. New Mortgages may be substituted for Mortgages initially pledged as Mortgage Collateral only in the event of default, late payments or default in the collateral being replaced. New Conventional Certificates may be substituted for Conventional Certificates initially pledged as Mortgage Collateral only in the even of default, late payments, or defect in the collateral being replaced. In no event may any new Mortgage Collateral be substituted for any Mortgage Collateral. New Funding Agreements may be substituted for Funding Agreements initially pledged only if substitution of the Mortgage Collateral underlying these instruments would be permitted under this condition.

(4) All Mortgages, Conventional Certificates, Agency Certificates, funds, accounts and other collateral securing a series of Bonds ("Bond Collateral") will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. The custodian shall not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of the Applicant, or of the master servicer or originating lender of any Mortgages that are pledged as Mortgage Collateral. If there is no master servicer, no servicer of the Mortgages will be an affiliate of the custodian. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a) (32) of the Act.

(6) The master servicer of any Mortgages (including, for purposes of this paragraph, Mortgages underlying any Conventional Certificates) or Conventional Certificates that are pledged as Mortgage Collateral, may not be an affiliate of the Bond Trustee. If there is no master servicer, no servicer of any such Mortgages may be an affiliate of the Bond Trustee. Any master servicer or servicer of any such Mortgage will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing servicing of such Mortgages shall obligate the servicer to provide substantially the same services with respect to those Mortgages as it is then currently required to provide in connection with the servicing of Mortgages insured by the Federal Housing Administration, guaranteed by the Veterans Administration or eligible for purchase by FNMA or FHLMC.

(7) No less often than annually, an independent public accountant will audit the books and records of the Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral for each Series of Bonds continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

With respect to each series of its Bonds, Applicant represents that the payments on the pledged Mortgage Collateral will be the primary source of funds for payments of principal and interest on that series; and, that a first lien priority security interest in collateral, consisting principally of Mortgage Collateral with an aggregate principal amount at least equal to the initial principal amount of such series of Bonds, will secure the Bonds.

According to the application, certain series of Bonds or classes within a series may provide for redemption at the option of the Bondholder, but the option will be exercisable only to the extent that payments received on the Mortgage Collateral for such Bonds are available for such redemptions. Applicant represents that under no circumstances will Bondholders be permitted to compel the liquidation of Mortgage Collateral or reserve funds in order to redeem Bonds prior to maturity. Applicant states such redemptions do not create reedeemable securities as defined by the Act.

Applicant submits it will facilitate the mortgage financing, funding and origination activities of additional entities than those permitted under the 1985 Order and thereby will provide financing for housing. Applicant's activities will enable a number of small participants in mortgage funding and financing activities to achieve economies of scale in their financing efforts. Applicant concludes that the requested exemption is necessary and appropriate in the public interest, is consistent with the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 22, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact of law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20296 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Copies of forms, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-6623

OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231

Title: Grants Management Reporting and Recordkeeping Requirements

Frequency: On occasion

Description of Respondents: SBA requires the recipients of Federal dollars to report both programmatic and financial status for prudent monitoring by Federal officials.

Annual Responses: 2000

Annual Burden Hours: 10600

Type of Request: Reinstatement

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 86-20282 Filed 9-8-86; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Portland, Oregon, will hold a public meeting at 9:00 a.m. on Friday, October 10, 1986, in the Memorial Union Building, Board Room, Oregon State University, Corvallis, Oregon, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Mr. John L. Gilman, District Director, U.S. Small Business Administration, 1220 SW. Third Avenue, Room 676, Portland, Oregon 97204-2882-(503) 294-5221.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 2, 1986.

[FR Doc. 86-20284 Filed 9-8-86; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of San Antonio, Texas, will hold a public meeting at 9:00 a.m. on Friday, September 19, 1986, at the Federal Building, Room A-206, 727 E. Durango, San Antonio, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Julio G. Perez, District Director, U.S. Small Business Administration, Federal Building, Room A-513, 727 E. Durango, San Antonio, Texas, (512) 229-6105.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 2, 1986.

[FR Doc. 86-20285 Filed 9-8-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas; Partially Closed Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that a meeting of the Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas will be held on October 1 and 2, 1986 beginning at 9:30 a.m. The meetings will be held at the offices of the National Marine Fisheries Service, Room 929, Universal Building (South), 1825 Connecticut Avenue NW., Washington, DC.

On October 1 and the morning of October 2 the meeting will be open to the public, and the public may participate in the discussions subject to the instructions of the Committee Chairman. Items on the agenda include overview of preparations for the Standing Committee on Research and Statistics (SCRS) meeting, review of research concerning Bluefin Tuna and Billfish, review of ICCAT Activities with respect to Tropical Tunas and Albacore, report of Bluefin Tuna Fishery conducted in the U.S. and Canadian Zones, and estimates of Japanese Harvest of Tunas and Billfish in the U.S. EEZ.

The Advisory Committee will meet in closed session on the afternoon of October 2, 1986. At this session documents classified in accordance with Executive Order 12356 of April 2, 1982 will be circulated and discussed and matters will be considered which the public interest requires be withheld from disclosure. Accordingly, a determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, s.10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information should be directed to Barbara Rothschild, Office of International Fisheries Affairs, National Marine Fisheries Service, Department of Commerce. She may be reached by telephone on (202) 673-5281.

Dated: August 28, 1986.

Edward E. Wolfe,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 86-20266 Filed 9-8-86; 8:45 am]

BILLING CODE 4710-09-M

Advisory Committee to United States Section International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on September 27, 1986, at the Sheraton Anchorage Hotel, Anchorage, Alaska, at 9:00 a.m. This session will discuss the Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public.

The Advisory Committee will also meet from 1:00 p.m. to 5:00 p.m. on September 27, 1986. These sessions will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States' negotiating position to be taken at the 33rd Annual Meeting of the International North Pacific Fisheries Commission to be held in Anchorage, Alaska, November 3–7, 1986. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee . . . shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section", the members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Robert J. Ford, Pacific Fisheries Officer, OES-OFA Room 5806, U.S. Department of State, Washington, DC 20520. Mr. Ford can be reached by telephone on (202) 647–2009.

Dated: August 26, 1986.

Edward E. Wolfe,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 86–20267 Filed 9–8–86; 8:45 am]

BILLING CODE 4710-09-M

Shipping Coordinating Committee; Committee on Ocean Dumping; Meeting

The Committee on Ocean Dumping, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting on Tuesday, September 23, 1986, at the Environmental Protection Agency, Waterside Mall, 401 M Street SW., Washington, DC. The meeting will convene at 2:00 p.m. in the EPA Conference Center, room 4. The Conference Center is located on the first floor, with entrance through the Mall commercial area.

The purpose of the meeting is to review and discuss the draft U.S. position documents for the Tenth Consultative Meeting of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Dumping Convention), to be held in London on October 13–17, 1986.

For further information contact Ms. Norma A. Hughes, Executive Secretary, Committee on Ocean Dumping (WH–556M), Environmental Protection Agency, Washington, DC 20460. Telephone (202) 475–7113.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

August 26, 1986.

[FR Doc. 86–20268 Filed 9–8–86; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Rulemaking, Research, and Enforcement Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on November 5, 1986, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by October 23, 1986. If sufficient time is available, questions received after the October 23, date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by October 23, and the issues to be discussed will be mailed to interested persons on October 30, 1986, and will be available at the meeting.

ADDRESS: Questions for the November 5 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590.

The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on November 5, 1986. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–20297 Filed 9–8–86; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 USC Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that

such a submission has been made. USIA is requesting approval of information collection activities in support of the evaluation of the IIE publications *Open Doors* and *Profiles*.

DATE: Comments must be received by September 15, 1986. If you intend to comment but cannot before the deadline, please advise the OMB Reviewer and the Agency Clearance Officer promptly.

Copies: Copies of the request for clearance (SF–83), supporting statement, cover letters and questionnaires submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Office, Retta Graham-Hall, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485–7501. And OMB review: Mr. Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: Title: evaluation of IIE Publications, *Open Doors* and *Profiles*.

Abstract: In the interest of sound program management and effective resource allocation, USIA's Bureau of Educational and Cultural Affairs will evaluate the quality and usefulness of these publications, which are widely distributed domestically and abroad to the foreign student affairs community. Surveys of foreign student advisors in U.S. colleges and universities, educational research organizations, State Education Department, businesses, and foreign Embassies will be undertaken in support of this goal.

Dated: August 29, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–20210 Filed 9–8–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 174

Tuesday, September 9, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Equal Employment Opportunity Commission	1
Farm Credit Administration	2
Federal Energy Regulatory Commission	3
Federal Mine Safety and Health Review Commission	4
Federal Reserve System	5
National Credit Union Administration	6
National Transportation Safety Board	7
Securities and Exchange Commission	8
Tennessee Valley Authority	9

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 31880, dated September 5, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:000 p.m. (Eastern Time), Monday, September 15, 1986.

CHANGE IN THE MEETING: The following matter has been added to the open portion of the meeting.

"PROPOSED COMPLIANCE MANUAL SECTION 632, VOLUME II:
Advertising Recordkeeping, and Notice

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Mattews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: September 4, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretoriot.

[FR Doc. 86–20360 Filed 9–5–86; 2:23 pm]

BILLING CODE 6750–06–M

2

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board ("Board").

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 3, 1986, from 4:30 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, McLean, Virginia 22102–5090.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters at the meeting are:

1. Approval of Minutes of August Meeting
2. Regulations
   Final:
   Part 615—Amendments to Subpart E, Investments (Sections 615.5135, 615.5136, 615.5140, 615.5141, 615.5142, and 615.5144)
3. Implementation of At-Large District Director Elections
4. Consideration of Proposed Agency Budget for FY 1988
5. Examination and Supervision Matters*

Dated: September 3, 1986.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration Board.

[FR Doc. 86–20332 Filed 9–5–86; 8:45 am]

BILLING CODE 6705–01–M

3

FEDERAL ENERGY REGULATORY COMMISSION

September 3, 1986.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., September 10, 1986.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Consent Power Agenda, 841st Meeting—September 10, 1986, Regular Meeting (10:00 a.m.)

CAP–1.
Project Nos. 9573–003 and 005, Upper Slate Creek Associates
CAP–2.
Project Nos. 9940–003 and 9725–003, Birch Power Company
CAP–3.
Project No. 199–040, South Carolina Public Service Authority
CAP–4.
Project No. 7306–005, Arnold Irrigation District
CAP–5.
Project No. 8546–001, Howard and Mildred Carter
CAP–6.
Project No. 9940–002, Birch Power Company
CAP–7.
Project No. 9866–001, Birch Power Company, Inc.
CAP–8.
Project No. 9608–001, McCallum Hydro Enterprises
Project No. 9982–001, Bridgeport Hydraulic Company
CAP–9.
Project No. 8080–003, High Rock Hydro Partners
CAP–10.
Project No. 2548–009, Georgia-Pacific Corporation
CAP–11.
Project No. 9817–001, Cash Flow Systems
CAP–12.
Project No. 5756–006, Mega Hydro, Inc.
CAP–13.
Project No. 8203–001, Falls Hydro Associates
CAP–14.
Project No. 8136–003, Friends of Keeseville, Inc.
CAP–15.
Omitted
CAP–16.
Project No. 8332–000, city of Ellensburg, Washington
Project No. 9605–001, Kittitas Reclamation District
CAP–17.
Project No. 184–011, Pacific Gas and Electric Company
CAP–18.
Project No. 8823–001, city of New York, New York
CAP–19.
Docket No. HBO5–86–1–001, Montana Power Company
CAP–20.
Project No. 3239–002, Puget Sound Power & Light Company
Project Nos. 6373–000 and 6374–000, McMaster & Schroder
CAP–21.

Docket No. ER86-629-000, New England Hydro-Transmission Corporation and New England Hydro-Transmission Electric Company, Inc.

CAP-22.
Docket No. ER86-444-001, Citizens Energy Corporation

CAP-23.
Docket No. ER86-504-002, Pennsylvania Power and Light Company

CAP-24.
Docket Nos. ER86-506-002, and 003, Southeastern Electric Power Company

CAP-25.
Docket Nos. EL85-18-002, 003, 004 and 005, city of Tacoma, Washington, v. the Washington Water Power Company, the Montana Power Company, Portland General Electric Company, Pacific Power and Light Company, and Puget Sound Power and Light Company

CAP-26.
Docket No. ER86-386-001, Washington Water Power Company

CAP-27.
Docket No. ER86-204-001, Pennsylvania Electric Company

CAP-28.
Docket No. ER83-628-000, Kansas Gas and Electric Company

CAP-29.
Docket No. ER85-18-001, Puget Sound Power & Light Company

CAP-30.
Docket No. EL86-33-001, Eua Power Corporation

CAP-31.
Docket No. EL85-46-001, Eua Power Corporation

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA83-4-001, Duke Power Company

CAM-2.
Docket No. FA85-18-000, Dáyton Power and Light Company

CAM-3.
Docket No. RI83-9-001, Northern Natural Gas Company

CAM-4.
Docket No. RA83-11-000, Dow Chemical U.S.A.
Docket No. RA83-13-000, Texas City Refining, Inc.

Consent Gas Agenda

CAG-1.
Docket No. RP86-151-000, Seagull Interstate Corporation

CAG-2.
Docket No. RP86-124-001, Alabama-Tennessee Natural Gas Company

CAG-3.
Docket No. RP86-127-002, Colorado Interstate Gas Company

CAG-4.
Docket No. RP86-57-003, Northwest Pipeline Corporation

CAG-5.
Docket Nos. RP81-54-023, 024, 025, 026, 027, 029, 030, 031, 032, and RP82-12-014, 015, 016, 017, 018, 019, 020, 021, Tennessee Gas Pipeline Company

CAG-6.
Docket No. CP86-17-010, Colorado Interstate Gas Company

CAG-7.
Omitted

CAG-8.
Docket No. RP85-178-012, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CAG-9.
Docket Nos. TA86-4-46-000, and 002, Kentucky West Virginia Gas Company

CAG-10.
Docket No. RP86-139-000, Mississippi River Transmission Corporation

CAG-11.
Docket No. RP86-5-000, Northwest Pipeline Corporation

CAG-12.
Docket Nos. ST86-921-000, ST83-93-000 and ST84-444-000, South Texas Gathering Company

CAG-13.
Docket Nos. ST81-260-009, CP82-206-000 and ST86-1308-000, Mustang Fuel Corporation

CAG-14.
Docket Nos. ST86-1321-000, ST81-105-003, ST84-1138-001, ST85-70-001, ST85-71-001, Producer's Gas Company

CAG-15.
Docket Nos. RP82-125-018 and RP82-121-002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CAG-16.
Docket No. RP84-108-005, Texas Eastern Transmission Corporation

CAG-17.
Docket No. CI64-26-021, Chevron U.S.A. Inc. (formerly Gulf Oil Corporation)

CAG-18.
Docket No. CP85-710-000, Northern Natural Gas Company

CAG-19.
Docket Nos. CI86-371-000 and CI86-392-000, Southern Natural Gas Company

CAG-20.
Docket Nos. CI86-254-000, and CI86-265-000, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., and Tenneco Exploration II, Ltd.

CAG-21.
Docket Nos. CI86-276-000 and CI86-283-000, Phillips Petroleum Company

CAG-22.
Docket Nos. CI86-278-000 and CI86-296-000, Trans-Continental Gas Pipe Line Corporation and Transco Gas Supply Company

CAG-23.
Docket No. CP84-386-005, ANR Pipeline Company
Docket No. CP86-394-004, Techstaff Transmission Company

CAG-24.
Docket Nos. CP86-439-000, 001 and 003, Southern Natural Gas Company

CAG-25.
Docket No. CP86-316-001, Interstate Power Company

CAG-26.
Docket No. CP86-410-001, Trunkline Gas Company

CAG-27.
Docket No. CP86-383-000, Colorado Interstate Gas Company

CAG-28.
Docket No. CP86-539-000, Transcontinental Gas Pipe Line Corporation

CAG-29.
Docket No. CP86-530-000, Panhandle Eastern Pipe Line Company

CAG-30.
Docket No. CP85-891-000, Valley Gas Transmission, Inc.

CAG-31.
Docket No. CP85-189-000, Sea Robin Pipeline Company
Docket No. CP85-825-000, Southern Natural Gas Company

CAG-32.
Docket No. CP86-195-000, United Gas Pipe Line Company

CAG-33.
Docket No. CP85-741-000, National Fuel Gas Supply Corporation
Docket No. CP85-597-000, Empire Exploration, Inc.

CAG-34.
Docket No. CP86-477-000, Mississippi River Transmission Corporation

CAG-35.
Docket No. CP80-72-005, Columbia Gulf Transmission Company, Columbia Gas Transmission Corporation and Southern Natural Gas Company

CAG-36.
Docket No. CP74-126-016, El Paso Natural Gas Company
Docket No. CP74-162-018, Natural Gas Pipeline Company of America

CAG-37.
Docket No. CP86-524-000, Iroquois Gas Transmission System

CAG-38.
Docket No. CP83-219-001, ANR Pipeline Company
Docket No. CP60-44-007, Texas Gas Transmission Corporation

CAG-39.
Docket No. CP86-528-000, Shell Gas Pipeline Company

CAG-40.
Docket Nos. RI74-188-084 and RI75-21-079, Independent Oil & Gas Association of West Virginia

CAG-41.
Docket No. CI86-428-000, Mobil Oil Corporation, Mobil Producing Texas & New Mexico Inc., Mobil Oil Exploration & Producing Southeast Inc., and Mobil Exploration and Producing North America Inc.
Docket No. CI86-429-000, Phillips Petroleum Company
Docket No. CI86-535-000, Zapata Exploration Company

I. Licensed Project Matters

P-1.
Project No. 2890-011, Kings River Conservation District

P-2.
Project No. 7669-003, John L. Symons

P-3.
Project No. 9631-001, Robert Z. Walker and John N. Foster

II. Electric Rate Matters

ER-1.
Docket No. ER79-97-006, Alamito Company
Docket Nos. EL86-26-000 and 001, San Diego Gas and Electric Company v. Alamito Company

Docket No. EL86-34-000, San Diego Gas and Electric Company v. Alamito Company, Osceola Energy, Inc., and Alamito Holdings, Inc.

ER-2.
Docket Nos. EF81-2011-003 and EF82-2011-003, United States Department of Energy-Bonneville Power Administration

ER-3.
Docket Nos. EL86-30-000, Oxbow Geothermal Corporation

Miscellaneous Agendo

M-1.
Reserved

M-2.
Reserved

M-3.
Docket Nos. RM83-8-001 through 010, Ratemaking Treatment of Investment Tax Credits for Natural Gas Pipeline Companies

M-4.
Docket No. GP86-32-000, Minerals Management Service, Louisiana, § 102(d) NGPA Determination, Taylor Energy Company, West Delta Block 133, MMS Docket G4-4440; FERC No. JD85-31411, MMS Docket G4-4581; FERC No. JD86-01397; MMS Docket G4-4433; FERC No. JD86-01398, MMS Docket G4-4328; FERC No. JD86-01399

M-5.
Docket No. RM85-1-178, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Corporation)

I. Pipeline Rate Matters

RP-1.
Docket Nos. TA82-2-9-000 and TA83-1-9-000, Tennessee Gas Pipeline Company, a Division on Tenneco, Inc.

RP-2.
Docket Nos. TA85-3-29-000, TA86-1-29-002, CP85-190-000, TA85-1-29-000, TA86-1-29-000, TA86-5-29-002, RP83-137-000 and TA85-3-29-009, Transcontinental Gas Pipe Line Corporation

RP-3.
Docket No. RP85-149-009, East Tennessee Natural Gas Company

II. Producer Matters

CI-1.
Docket No. CI86-307-000, Sea Robin Pipeline Company

CI-2.
Docket No. CI86-168-000, Tenngasco Corporation and Tenngasco Exchange Corporation

CI-3.
Docket No. CI86-376-000, ARKLA Exploration Company
Docket No. CI86-377-000, ARKLA Energy Marketing Company

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP86-329-000 and CP86-330-000, Erie Pipeline System
Docket Nos. CP86-422-000 and CP86-423-000, Great Lakes Gas Transmission Company
Docket Nos. CP86-452-000 and CP86-455-000, Transco Gas Services Company, Inc.
Docket No. CP86-419-000, ANR Pipeline Company
Docket Nos. CP86-333-000 and CP86-334-000, Transylvania Gas Pipeline Company
Docket No. CP85-453-000, Transco Gas Services Company, Inc., and Transcontinental Gas Pipe Line Corporation

CP-2.
Docket No. CP86-465-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CP-3.
Docket No. CP86-444-000 and CP86-445-000, Washtenaw Pipeline Company

CP-4.
Docket Nos. CP85-756-000 and 001, Consolidated Gas Transmission Corporation
Docket No. CP85-806-000, Texas Eastern Transmission Corporation
Docket Nos. CP86-208-000 and 001, Consolidated System LNG Company and Consolidated Gas Transmission Corporation
Docket No. CP86-454-000, Columbia Gas Transmission Corporation

CP-5.
Docket No. CP86-261-000, National Fuel Gas Supply Corporation

CP-6.
Omitted

CP-7.
Docket Nos. CP86-345-000 and 001, Northwest Pipeline Corporation

CP-8.
Docket Nos. CP84-4-002 and CP86-264-000, Natural Gas Pipeline Company of America

CP-9.
Docket No. CP86-349-001, Texas Gas Transmission Company
Docket No. CP86-177-004 (Not Consolidated), Northwest Pipeline Corporation

CP-10.
Docket Nos. CP86-277-001, CP86-306-001, CP86-308-001, CP86-318-001, CP86-336-001, CP86-358-001, CP86-359-001, CP86-365-001, CP86-392-001, CP86-400-001, CP86-408-001, CP86-409-001, CP86-432-001, CP86-439-002, CP86-458-001, CP86-459-001, CP86-460-001, CP86-461-001, CP86-466-001, CP86-467-001, CP86-500-001, CP86-558-001, CP86-559-001, CP86-560-001, CP86-561-001, CP86-562-001, CP86-563-001, CP86-564-001, CP86-565-001, CP86-566-001, CP86-567-001, CP88-568-001, CP86-569-001, CP86-592-001, CP86-594-001, CP86-609-001, CP86-611-001, and CP86-614-001, Southern Natural Gas Company
Docket Nos. CP86-366-001, CP86-382-001, CP86-401-001, CP86-595-001, and CP88-610-001, Southern Natural Gas Company and South Georgia Natural Gas Company

CP-11
Docket Nos.CP86-232-000, CP86-486-000, CP86-504-000, CP86-551-000, CP86-573-000 and CP86-598-000, Panhandle Eastern Pipe Line Company
Docket No. CP86-584-000, Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Company
Docket No. CP86-663-000, Independent Petroleum Association of Mountain States v. Colorado Interstate Gas Company

CP-12.
Docket No. CP86-395-000, Northern Border Pipeline Company

Kenneth F. Plumb,
Secretary

[FR Doc. 86-20303 Filed 9-5-86; 8:51 am]
BILLING CODE 6717-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 4, 1986.

TIME AND DATE: 2:00 p.m., Thursday, September 11, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Corbin, etc., v. Sugartree Corporation, Terco, Inc., etc., Docket No. KENT 84-255-D. (Issues include whether the administrative law judge properly determined that Terco, Inc. was liable for damages resulting from discriminatory conduct by Sugartree Corporation.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86-20375 Filed 9-5-86; 3:32 pm]
BILLING CODE 6735-01-M

5

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 11:00 a.m., Monday, September 15, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Implementation of the Board's Program Improvement Project.

2. Personnel actions (appointments, promotions, assignments, reassignments,

and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–20383 Filed 9–5–86; 3:55 pm]

BILLING CODE 6210–01–M

6

NATIONAL CREDIT UNION ADMINISTRATION

The following items have been deleted from a previously announced open meeting of the National Credit Union Administration on September 10, 1986 and have tentatively been rescheduled for consideration at the Board's October 15, 1986 open meeting:

Charter Conversion: Multi-occupational to community for IRCO Employees Federal Credit Union #17395, Phillipsburg, NJ

Charter Amendment: Expansion of Field of Membership for Signey Federal Credit Union #6011, Sidney, NY

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Final Rule: Deletion of Part 709, NCUA Rules and Regulations: Division of Assets, Liabilities and Capital.

The meeting is scheduled for September 10, 1986 at 9:30 a.m., in the Filene Board Room, 7th Floor, 1776 G Street, NW, Washington, DC.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board

[FR Doc. 86–20358 Filed 9–5–86; 2:17 pm]

BILLING CODE 7535–01–M

7

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, September 16, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report*: Collapse of the U.S. Mobile Offshore Drilling Unit PENROD 60/61, Gulf of Mexico, October 27, 1985.
2. *Marine Accident Report*: The Near Capsizing of the Charter Passenger Vessel MERRY JANE at Bodega Bay, California on February 8, 1986.
3. *Aircraft Incident Summary Report*: USAir, Flight 4381 McDonnell-Douglas DC–9, N965VJ, Erie, Pennsylvania October 14, 1984.

FOR MORE INFORMATION CONTACT: H. Ray Smith (202) 382–6525.

H. Ray Smith,

Federal Register Liaison Officer.

September 4, 1986.

[FR Doc. 86–20382 Filed 9–5–86; 3:48 pm]

BILLING CODE 7533–01–M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 8, 1986:

A closed meeting will be held on Tuesday, September 9, 1986, at 2:30 p.m. An open meeting will be held on Wednesday, September 10, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 9, 1986, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceeding of an enforcement nature.

Institution of injunction action.

Regulatory matter regarding financial institution.

Opinion.

The subject matter of the open meeting scheduled for Wednesday, September 10, 1986, at 10:00 a.m., will be:

1. Consideration of whether to issue an interpretive release concerning the application of Rule 10b–6 under the Securities Exchange Act of 1934 to participants in secondary shelf distributions. The interpretive release would modify and clarify the extent to which Rule 10b–6 applies to shelf distribution participants and broker-dealers who sell shares on behalf of shelf distribution participants. For further information, please contact Larry E. Bergmann at (202) 272–2874 or Elizabeth Jacobs at (202) 272–2848.

2. Consideration of whether to propose for public comment new rules and rule and form amendments relating to advertising by investment companies. For further information, please contact Robert E. Plaze at (202) 272–7309.

3. Consideration of whether to propose for public comment alternative amendments to Rule 2(e)(7) of the Commission's Rules of Practice, the provision governing whether hearings in proceedings against professionals brought pursuant to Rule 2(e) shall be public or non-public. The proposed amendments relate to the current provision which provides that administrative proceedings instituted pursuant to Rule 2(e) shall be non-public unless the Commission otherwise orders. For further information, please contact Phillip D. Parker at (202) 272–2214.

4. Consideration of whether to propose for public comment rule 6c–9 under the Investment Company Act of 1940. Rule 6c–9 would, under certain conditions, provide an exemption from that Act to permit a foreign bank or the bank's finance subsidiary to offer or sell its own debt securities or non-voting preferred stock in the United States without registering as an investment company. For further information, please contact Philip J. Niehoff at (202) 272–2048.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272–3077.

Shirley E. Hollis,

Assistant Secretary.

September 3, 1986.

[FR Doc. 86–20295 Filed 9–5–86; 8:47 am]

BILLING CODE 8010–01

9

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1374]

TIME AND DATE: 10:00 a.m. (EDT), Thursday, September 11, 1986.

PLACE: Norris Community Center, Chestnut Drive, Norris, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on August 29, 1986.

Discussion Item

1. Reservoir Resource Improvement Studies: A Progress Report.

Action Items

A—Budget and Financing

A1. Payment from net power proceeds for fiscal year 1986 to the Treasury of the United States.

B—Purchase Awards

B1. Req. 15—Term coal for John Sevier Steam Plant.

B2. Req. 16—Term coal for Allen Steam Plant.

C—Power Items

C1. Cooperative Agreement No. TV-68699A with the United States Nuclear Regulatory Commission covering arrangements for a research project for implementation of continuous acoustic emission monitoring of light water reactor pressure boundaries at TVA's Watts Bar Nuclear Plant.

C2. Supplement No. 6 to Contract No. TV-62313A with the State of Alabama for cooperation in the development and implementation of radiological emergency plans as required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

D—Personnel Items

D1. Amendment to Board policy relating to overtime pay.

D2. Resolution relating to short-term employment of students from foreign universities.

D3. Personal Services Contract with Manpower Temporary Services, Chattanooga, Tennessee, for intermittent part-time automatic data processing personnel, requested by the Division of Management Systems.

E—Real Property Transactions

E1. Filing of condemnation cases.

F—Unclassified

F1. Contract No. TV-70283A with Mid-Cumberland Council of Governments to provide operating engineer training to unemployed or underemployed residents of Cheatham, Dickson, Houston, Humphreys, Montgomery, Robertson, Stewart, Sumner, Trousdale, Williamson, and Wilson Counties in Tennessee.

F2. Resolution rescinding designation of William E. Mason as Assistant Secretary of the Tennessee Valley Authority.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: September 4, 1986.

W.T. Willis,
General Manager.

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Part II

Environmental Protection Agency

40 CFR Parts 51 and 52

Air Quality Implementation Plans, Preparation, Adoption, and Submittal; Air Quality Models Guideline; Final Rule and Supplemental Notice of Proposed Rulemaking

VOL 51 ISS 174 SE 9 1986 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH-FRL-3011-6, Docket No. A-80-46]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 7, 1984 [49 FR 48018] EPA proposed to amend 40 CFR 51.24 and 52.21 to substitute by reference the "Guideline on Air Quality Models (Revised)," EPA 450/2-78-027R for the April 1978 version. The guideline lists the air quality models and data bases required to assess impact and to estimate ambient concentrations due to certain sources of air pollutants. Today's action establishes those revisions and incorporates changes as a result of public comment.

EFFECTIVE DATE: October 9, 1986. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-5561 or Jawad S. Touma, telephone (919) 541-5681.

ADDRESSES: All documents relevant to development of this rule have been placed in Docket A-80-46, located in the Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the address above. A reasonable fee may be charged for copying.

The "Guideline on Air Quality Models (Revised)" (1986), Publication No. EPA 450/2-78-027R is for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia, 22161. This document is also available for public inspection at the libraries of each of the ten EPA Regional Offices and at the EPA library at 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

Section 165(e)(3)(D) of the Clean Air Act (CAA) requires the Administrator to adopt regulations specifying with reasonable particularity each model or models to be used to comply with the Act's prevention of significant deterioration (PSD) requirements. To carry out these requirements, the Guideline on Air Quality Models was incorporated by reference in regulations promulgated for PSD [40 CFR 51.24]. Because of its incorporation, revisions to the guideline must satisfy the rulemaking requirements of section 307(d) of the Act.

In March 1980, EPA issued a notice soliciting air quality models developed outside the Agency for potential inclusion in the planned revisions to the Guideline on Air Quality Models [45 FR 20157]. EPA received nearly 30 air quality models from private model developers. These were reviewed for technical feasibility and for utility to potential users. In addition to a review by EPA for technical merit, documentation, validation, and coding, the submitted models are also subjected to public review and comment.

On December 7, 1984 [49 FR 48018], EPA proposed amendments to its regulations concerning air quality models and announced that it would hold a public hearing on these proposed amendments and on the revised guideline.

EPA also invited the public to participate and provide advice and comment on the proposed revisions to the Guideline on Air Quality Models. On December 20, 1984 [49 FR 49484]. EPA announced the Third Conference on Air Quality Modeling to provide a forum for public review. A transcript of all oral comments received at the conference, as well as a record of all written comments, is maintained in Docket A-80-46. The written comment period was extended to April 1, 1985, and the rebuttal comment period was held open until April 30, 1985.

Response to Comments

Specific comments received can be found in Docket A-80-46, in items IV-D and IV-H. All comments were consolidated according to the issues raised and are discussed, along with full EPA responses in the "Summary of Comments and Responses on the December 1984 Proposed Revisions to the Guideline on Air Quality Models, January 1986," (Docket Item IV-G-26). Certain comments raised significant issues that are fundamental to the development of this guideline. These issues are summarized below, along with EPA responses.

A. Consistency and Accuracy

A number of commenters urged that use of the most accurate models should be promoted and that the need for consistency was overstated. They noted that: (1) The regulatory program should not require use of a single model, (2) use of a single model was based on an arbitrary selection process, and (3) this selection made the Agency inflexible in allowing use of nonguideline models.

EPA's position reflects Congressional concerns that permitting different requirements in different parts of the country could lead to the inequitable location of some industries. Section 165(e)(3)(D) of the CAA specifically requires that EPA ". . . shall specify with reasonable particularity each air quality model or models to be used under specified sets of conditions . . ." Also, section 301(a)(2)(A) of the CAA requires EPA "to assure fairness and uniformity in the criteria, procedures, and policies applied by the various regions in implementing and enforcing the Act." EPA uses the term "consistency" to mean that the same model is used in determining emission limitations for similar sources of air pollution. The result is a uniform approach to modeling-based decisions. Such consistency is not, however, promoted at the expense of model and data base accuracy. In selecting the models listed in Appendix A of the revised guideline, EPA conducted several evaluations of model performance using air quality monitoring data, and peer scientific reviews of modeling techniques. The findings lead to a conclusion that the models listed in Appendix A are at least as accurate as, if not better than, other available models, that these preferred models are statistically unbiased, and that they are familiar to the modeling community. Every effort has been made to ensure within the revised guideline that the realism, flexibility, accuracy and best technical judgments, sought by both regulatory agencies and the regulated community, can be provided. Suitable mechanisms have been provided to assure such accuracy, and flexibility, and to allow the use of alternate or new models.

B. Use of Non-Guideline Models in Particular Areas (The Texas Models)

Many commenters urged EPA to make provisions in the guideline for use of new models, for improvements to existing models, and for models that are otherwise more appropriate in specific cases. In particular, the Texas Models were cited as meeting EPA's criteria for selection and being more economical to run. Concern was also expressed that failure to include these as preferred models would have an adverse effect on

the consistency of PSD permitting analyses in Texas where these models are currently used.

EPA has made provision in CFR 51.24 and 52.21 and the guideline for using alternative and improved models. The final rules provide that modification or substitution of an approved model may occur on either a case-by-case basis or on a generic basis within a state's regulatory program. However, EPA will only give generic approval where a state demonstrates that generic usage is appropriate under defined circumstances. For example, a state may be able to show that a model is appropriate for the entire state or some portion thereof based on geographic and meteorological characteristics. EPA encourages the use of these provisions and does not intend to place an undue burden on states that use alternative models, or to delay implementation of scientific advances that are appropriate for regulatory use. EPA has discussed these issues with representatives of the Texas Air Control Board and has indicated that it may be possible for them to demonstrate that certain versions of the Texas Models TEM and TCM (possibly with some modification and clarification in the way these models are applied) may be approvable for generic use in their program. EPA anticipates that these models will be tested by the State of Texas using a protocol developed by them and agreed to by EPA. If the demonstration requirements are satisfied, EPA will announce for public comment in the **Federal Register** its intention to approve these models for generic use by Texas. For a limited interim period, to be jointly agreed to by Texas and EPA, the Texas Models may continue to be used there because of long prior use based on approval under the previous version of the guideline.

C. Urban Airshed Model

Several commenters requested justification for selection of the Urban Airshed Model as the preferred model for photochemical or reactive pollutant modeling applications involving entire urban areas.

The Urban Airshed Model is the most widely applied and evaluated photochemical dispersion model in existence. EPA believes the evaluation studies referenced in Appendix A of the revised guideline represent sufficient justification for the selection of the Urban Airshed Model as the preferred model for the specified applications.

D. Bjorklund and Bowers Stack-tip Downwash Algorithm

EPA's proposed use of this algorithm was opposed by numerous commenters. Many of these commenters objected to the Bjorklund and Bowers algorithm on the grounds that it was semi-empirical and that it was insufficiently tested by EPA.

EPA is withdrawing its proposal to use the Bjorklund and Bowers stack-tip downwash algorithm pending further evaluation. In the interim, EPA continues to recommend the use of the Briggs stack-tip downwash correction for those cases when the use of stack-tip downwash is appropriate.

E. Definition of Emission Rates

Many commenters said that the use of maximum hourly emission rates is unrealistic and overestimates air quality impact. Alternatives such as using actual emissions, highest historical (e.g., three years), or system-wide limitations on load (for power plants) were suggested.

EPA is required, according to 40 CFR 51.22, to adopt "[e]mission limitations and other measures necessary for attainment and maintenance of any national standard." To achieve this, stationary source control strategies for State Implementation Plans (SIP's) must be determined using the maximum emission rate allowed under the federally enforceable permit. An actual emission rate based on past record may be used only if it is federally enforceable. This requirement applies to the source(s) subject to the SIP emission limit and to nearby sources that have a joint impact. The emission rate for "other sources," defined in the guideline, which generally contribute only to the background has been modified to indicate actual, instead of the maximum, rate to reflect real production or firing rate and hours of operations.

F. Length of Record

A number of commenters disagreed with the requirement for using five years of meteorological data from nearby National Weather Service (NWS) stations.

The Clean Air Act requires EPA to assure that the standards will be attained and maintained. The length of record must be sufficient to include the climatological variability needed to determine emission limitations used to meet the standards. EPA has previously presented its analysis on the length of record in the 1984 Summary of Comments and Responses document (II–G–5). Results from recent EPA research support the position that five years of meteorological data is appropriate. Moreover, commenters did not present factual information which would lead EPA to alter its position.

G. Use of On-site Meteorological Data

Some commenters recommended that if one year of quality assured on-site data is available, the guideline should require its use and eliminate the source's option of using the most beneficial result of either on-site or NWS data.

EPA agrees with these suggestions and recommends that if quality assured on-site data are available, they are preferable to NWS data and should be used.

H. Model Uncertainty

Commenters stated that EPA should incorporate model uncertainty when setting emission limitations based on estimated concentrations. Other factors such as the uncertainty in emissions and meteorological data inputs should also be considered. No viable recommendations on how to implement this concept were given.

EPA has sponsored research on improving methods to assess how uncertainty might be used to set emission limitations. However, this methodology is still being tested. Thus, it does not appear appropriate to extend the use of model uncertainty in the guideline at this time; such a method will be considered for proposal at a future date.

I. Additional Models

Many commenters recommended that the guideline include three new models, the Rough Terrain Diffusion Model (RTDM), a modified version of the building downwash algorithm in the Industrial Source Complex (ISC) model, and the Offshore and Coastal Dispersion Model (OCD).

EPA agrees with these recommendations; however, the application of these models has the potential to change emission limitations set for sources using current models. EPA, therefore, is preparing a supplemental notice of proposed rulemaking that seeks public comment on inclusion of these three new models in the guideline.

J. Other Comments

There was at least one comment on every section of the proposed revisions. Many comments have been incorporated in the revised guidance. EPA has complied with the request of model developers to withdraw their models from Appendix B of the guideline. The

models are: IMPACT (Sklarew), MESOPLUME, and RTDM (version 3.00). Issues not specifically addressed in the guideline, such as those associated with new methods or techniques will be investigated and future guidance issued, subject to public comment, as necessary.

K. Other Issues

Although the December 7 proposal solicited, in particular, advice and comment on eight issues, several of these topics received little or no comment. Both EPA and the commenters found it easier to include these comments under appropriate sections in the guideline instead of listing these issues separately. Responses to public comments on the eight issues are contained in the Summary of Comments and Responses document (IV–G–26) as follows:

(1) Specific changes to 40 CFR Parts 51 and 52 (no comment received);

(2) Revised format of the guideline (Chapters 1 and 3);

(3) Recommendations for ozone models (Chapter 6);

(4) Proposed changes to preferred models (Chapters 4, 5, and Appendices A and B);

(5) Improving performance evaluations (Chapters 3 and 10);

(6) Modeling uncertainty (Chapter 10);

(7) Degree to which State or local regulatory agencies can have authority to use nonguideline models (Chapters 1 and 3); and

(8) Degree of oversight or approval authority retained by EPA (Chapters 1 and 3).

E.O. 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Administrator finds this rule not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation will result in no significant environmental or energy impacts. Thus, no Regulatory Impact Analysis was conducted.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. This rule merely updates existing technical requirements for air quality modeling analyses required by other Clean Air Act programs (prevention of significant deterioration, new source review, SIP-revisions) and imposes no new regulatory burdens.

Economic Impact Assessment

The requirement for performing an economic impact assessment in section 317 of the Act, 42 U.S.C. 7617, does not apply to this action since the revisions included do not constitute a substantial change in the regulatory burden imposed by the regulation. However, since the guidance includes more sophisticated models, and addresses the use of site-specific data (required under a different section of the PSD regulations), an analysis of the relative costs of using some of the 1978 models and data bases versus the models and data bases specified in the 1980 updated guidance was prepared. This report, "Cost Analysis of Proposed Changes to the Air Quality Modeling Guideline" is available for inspection in Docket A–80–46 at the Central Docket Section whose address is given above, or from the National Technical Information Service as NTIS No. PB 83–112177.

Paperwork Reduction Act

This rule does not contain any information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.* EPA has submitted this regulation to OMB for review under Executive Order 12291 and their written comments on the revisions and any EPA responses have been placed in the docket for this proceeding.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead.

This notice of final rulemaking is issued under the authority granted by sections 165(e) and 320 of the Clean Air Act, 42 U.S.C. 7475(e), 7620.

Dated: August 19, 1986.

Lee M. Thomas,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

Part 51, Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7475(e), 7620.

2. Section 51.24 is amended by revising paragraph (l) to read as follows:

§ 51.24 Prevention of significant deterioration of air quality.

* * * * * *

(l) *Air quality models.* The plan shall provide for procedures which specify that—

(1) All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) which is incorporated by reference. It is EPA Publication No. 450/2–78–027R and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia, 22161. It is also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street, NW., Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on October 9, 1986. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52, Chapter I of Title 40 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7475(e), 7620.

2. Section 52.21 is amended by revising paragraph (l) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(l) *Air quality models.* (1) All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) which is incorporated by reference. It is EPA publication No. 450/2–78–027R and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia, 22161. It is also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street, NW., Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on October 9, 1986. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

[FR Doc. 86–19498 Filed 9–8–86; 8:45 am]

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VOL 51 ISS 174 SE 9 1986 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH-FRL-3030-4, Docket No. A-80-46]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is issuing a supplement to the notice of proposed rulemaking that was published on December 7, 1984 [49 FR 48018]. Today's notice proposes to include (1) addition of a specific version of the Rough Terrain Dispersion Model (RTDM) as a screening model, (2) modification of the downwash algorithm in the Industrial Source Complex (ISC) model, (3) addition of the Offshore and Coastal Dispersion (OCD) model to EPA's list of preferred models, and (4) addition of the AVACTA II model as an alternative model in the "Guideline on Air Quality Models, Revised," EPA 450/2-78-027R. The revised guideline lists the air quality models required to estimate air quality impact for sources of air pollutants which appear at 40 CFR 51.24 and 52.21. The purpose of the proposed changes is to augment the guidance in response to a substantial number of public comments urging the Agency to do so. EPA is soliciting public comments on these four proposed changes only.

DATES: The period for comment on these proposed changes closes October 9, 1986.

ADDRESSES: Written comments should be submitted to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention: Docket A-80-46.

Copies of reports referenced herein, as well as all public comments are maintained at Docket A-80-46. The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the address above. A reasonable fee may be charged for copying. A copy of the proposed revised pages to the guideline may be obtained from the Docket or the address below.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-5581 or Jawad S. Touma, telephone (919) 541-5681.

SUPPLEMENTARY INFORMATION:

Background

In March 1980, EPA issued a Notice soliciting air quality models developed outside the Agency for potential inclusion in the planned revisions to the Guideline on Air Quality Models [45 FR 20157]. EPA received nearly 30 air quality models from private model developers. These were reviewed for technical feasibility and for utility to potential users. In addition to a review by EPA for technical merit, documentation, validation, and coding, a submitted model is open to public review and comment.

On December 7, 1984 [49 FR 48018], EPA proposed amendments to its regulations concerning air quality models and announced that it would hold a public hearing on these proposed amendments. On December 20, 1984 [49 FR 49484], EPA announced the Third Conference on Air Quality Modeling to provide a forum for public review. A transcript of all oral comments received at the conference, as well as a record of all written comments, is maintained in Docket A-80-46. EPA is in the final stages of the rulemaking process on the revisions to the Guideline on Air Quality Models and will announce these revisions in a separate Federal Register notice.

During the public comment period, EPA received requests to consider several additional new modeling techniques. However, the developers did not submit those models to EPA until much later. Due to insufficient time for public review, these models could not be included in the revised guideline. In this separate regulatory proposal, EPA is seeking public comment on four additional models as described below. These four additions, when promulgated, will require modifications to the "Guideline on Air Quality Models, Revised." A copy of those pages proposed for revision is also available in Docket A-80-46, Item IV-J-2 for public review and comment.

Proposed Action

A. Rough Terrain Diffusion Model

The "Guideline on Air Quality Models, Revised" describes two levels of sophistication of models: Screening and refined. Screening models provide a conservative estimate of the air quality impact of a source. The purpose of screening models is to eliminate from further consideration those sources that clearly will not cause or contribute to ambient concentrations in excess of either the National Ambient Air Quality Standards (NAAQS) or the allowable prevention of significant deterioration (PSD) concentration increments. Refined models consist of those analytical techniques that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide more specialized concentration estimates. As a result, they provide a more accurate estimate of source impact and the effectiveness of control strategies.

Due to a lack of scientifically sound and proven techniques, the guideline does not recommend any refined air quality model for determining pollutant concentrations from sources in "complex terrain" areas (where the height of the terrain exceeds the height of the source being modeled). Such a model would apply in situations where the impaction of effluent plumes on terrain at elevations equal to or greater than plume centerline during stable atmospheric conditions are believed to cause air quality problems. In the absence of an approved case-specific, refined, complex terrain model, the guideline specifies screening models in two categories, depending on the level of sophistication and the amount of input data required. The Valley Screening Technique is recommended for first level screening with an assumed worst case; COMPLEX I and the SHORTZ/LONGZ models are recommended with hourly measured meteorological data as second level screening techniques for rural and urban applications, respectively.

Because there is perceived to be an immediate need, EPA received numerous public comments suggesting that it place a high priority on accelerating the development of a refined complex terrain model based on current research and/or recommend such a model based on review of candidate models. Many commenters, notably from the utility industry, proposed the Rough Terrain Diffusion Model (RTDM) as a preferred, refined model that can fill this need. One of the technical improvements in RTDM is the ability to determine the critical streamline, i.e., whether a plume will likely flow over, around or impact on a terrain obstacle. Further discussion on this model is contained in Docket Items IV-D-22 and 27; IV-H-21; IV-K-8 and 11; and IV-B-1.

EPA recognizes the efforts of many groups to develop a refined model for complex terrain applications and, EPA has been conducting, over the last five years, the Complex Terrain Model Development program as documented in the Fourth Milestone Report [EPA/600/

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3–84/110]. While this program is a significant step toward the solution of a complicated problem, completion of the research project is not expected before late 1986. In addition, EPA has also been evaluating the performance of eight currently available complex terrain models that were submitted as a result of 45 FR 20157. The first available data base developed under this program, Cinder Cone Butte, and also the Westvaco-Luke Mill data base were used to compare model predictions with observed air quality data. The performance of these models was evaluated using an extensive set of statistical measures recommended by the American Meteorological Society. Of the eight models tested, RTDM showed the best overall performance for both data sets. For more detail see "Evaluation of Complex Terrain Air Quality Simulation Models," EPA–450/4–84–017.

RTDM requires an extensive set of meteorological data input such as horizontal and vertical turbulence measurements and measured vertical temperature profiles (delta-T). A survey by the Utility Air Regulatory Group (UARG) has shown that this type of data is not presently collected at most power plant facilities in complex terrain areas [Docket Item IV–E–3] and model inputs would therefore be restricted to more routine meteorological measurements. At the January 1985 Conference on Air Quality Modeling, EPA expressed concern about how well RTDM would perform without the use of the more sophisticated on-site meteorological data. Also, EPA asked for more information on how well RTDM would perform relative to COMPLEX I for distances beyond two kilometers from the source. To respond to EPA's concerns about the use of RTDM with more routine data, UARG further evaluated RTDM model performance using the Cinder Cone Butte and Westvaco-Luke Mill data bases. Three meteorological input sets were used. First, for the full on-site case, meteorological inputs included on-site turbulence, wind profile and temperature profile measurements. Second, for the default case, only on-site temperature, wind speed, and wind direction measurements were used as model inputs. All other parameters were based on default values specified in the model. Third, for delta-T/default case, on-site temperature profiles were used, in addition to other model inputs being the same as case two above. The results indicated that RTDM only with default input sets (case 2 above) did not underpredict the highest concentrations. The other two (full on-site and delta-T/default) did underpredict high concentrations for some comparisons with observed data. For more detail refer to Docket Item IV–K–9.

In addition, UARG also evaluated RTDM model performance using 2 years of data from the Tennessee Valley Authority's Widows Creek power plant, located in northeastern Alabama where the number of monitoring sites is sufficient. A description of this evaluation is contained in Docket Item IV–K–8. The conclusion drawn from this study is that for the primary averaging times, there were instances of underpredictions of maximum concentrations while for the default data input set, the model overpredicted. The delta-T/default case was not tested.

Independent of these model evaluation studies, a considerable amount of high quality, research grade data were being collected under the EPA's continuing Complex Terrain Model Development program at the Tracy Power Plant east of Reno, Nevada. This area is surrounded by complex terrain in many directions. For 21 hours of data that had previously undergone full data quality control checks, UARG further tested RTDM. The analysis showed that RTDM with full on-site data, substantially underpredicted the concentrations, but RTDM with default data almost exactly predicted maximum concentrations. For more detail see Docket Item IV–K–11.

These evaluations indicate that, although RTDM may be technically superior to other models, including EPA's COMPLEX I screening model, when all the necessary on-site data are available, there is a potential for underpredictions. In the default mode, RTDM is not as sophisticated but provides a margin of safety necessary to ensure the protection of ambient air quality standards. In this mode, RTDM can more properly be characterized as a screening model. If on-site temperature, stability, wind speed and direction data are input to this model, RTDM may be classified as a third level screen—more sophisticated than the present second level screen, COMPLEX I, yet not as sophisticated as the model developers had assumed.

EPA is therefore seeking public comment on its proposal to further modify the revised guideline to list RTDM as a third level screen for estimating air quality impact from stationary point sources in rural complex terrain. EPA believes that this proposal has several good aspects. First, since it has been demonstrated that RTDM with full on-site data can underpredict concentrations substantially, EPA cannot recommend RTDM as a refined model at this time. EPA believes that it is more prudent to await results from its Complex Terrain Model Development program before recommending a refined model. Second, many users may not wish to commit the additional resources necessary to use RTDM as a third level screen, and EPA believes they should not presently be required to do so; less sophisticated screening techniques (i.e., more conservative) remain available. Finally, the RTDM model with full on-site data is an available option for users, subject to case-by-case approval.

B. Modifications to the Industrial Source Complex Model (ISC)

EPA received comments from the American Petroleum Institute (API) requesting the approval of a modified version of the building downwash algorithm in the Industrial Source Complex (ISC) model. A current shortcoming of ISC is that the effect of building wakes on plume dispersion occurs abruptly for effective stack heights less than Good Engineering Practice (GEP). That is, for any plume height greater than either 2.5 building heights or the building height plus 1.5 times the lesser of the building height or width, the building wake is assumed to have no effect on dispersion. For a plume height slightly less than GEP the full wake effect is assumed. This leads to an unrealistic physical discontinuity which is not duplicated either in physical simulation (e.g., wind tunnel) or by observation. For meteorological conditions under which downwash does not occur, the ISC model would be unchanged. The effect of the proposed changes to ISC is to replace the present "full downwash/no downwash" model with one that predicts progressively-increasing downwash with decreases in stack heights at and below GEP. The proposed modifications to ISC include: (1) The enhancement of the dispersion coefficients through the introduction of a linearly decreasing decay factor as a function of plume height (at two building heights downwind) above building height, instead of the current step function behavior at a specific height; (2) final plume rise reduced by initial plume dilution instead of the current approach where final plume height is unaffected by building downwash; (3) different effective building widths and heights for every ten degree wind sector; (4) optional input of hourly stack temperature, velocity and emission rates. For more detailed discussions of

these changes, see Docket Items IV-D-28 and IV-1-23.

The modifications to ISC were evaluated by API with two sets of field data. The first set consists of tracer experiments at two natural gas compressor stations and the second consists of one year of air quality data collected at a 600 MW power plant. Model evaluation results indicated that the short-term version of the existing (unmodified) ISC model was underpredicting maximum ground-level concentrations, under moderate to high wind speeds and neutral stability conditions, by a factor of 2-4. The proposed modifications improve the physics of the model (i.e. do better than the ISC model at matching the meteorological conditions of the highest observed concentrations), although the results indicate a slight overprediction.

EPA proposes therefore to revise the downwash algorithm for the ISC model in the guideline by using the API modifications for applications to stacks shorter than the Good Engineering Practice (GEP) stack height. EPA recommends this change for the following reasons. First, EPA's own model evaluation program [An Evaluation Study for the Industrial Source Complex Dispersion Model, EPA-450/4-81-002] has indicated an apparent systematic tendency to underestimate the concentrations produced near the source by buoyant stack emissions subject to building wake effects. API's findings support these conclusions and have provided constructive help to develop realistic algorithms to accurately predict ground level concentrations. Second, although many other commenters stated that the ISC model's current downwash algorithm overpredicts ground level concentrations, this conclusion has not been supported by a comparison of actual measured versus predicted concentrations.

C. Offshore and Coastal Dispersion Model

EPA received comments from the Minerals Management Service (MMS) requesting the inclusion of the Offshore and Coastal Dispersion (OCD) model in the revised guideline as a recommended model for application to sources located over water [Docket Item IV-D-9]. This model has been approved for use by the MMS in 50 FR 12248. In subsequent communications between EPA and MMS, MMS has agreed that the application of this model should be limited to estimating air quality impact from offshore sources on onshore flat terrain areas. This model is not recommended by EPA for use in air quality impact assessments for onshore sources.

The OCD model was evaluated by the model developers in order to determine whether its performance was better than the original MMS model (CRSTER with stability classes A and B collapsed into C). Further discussion of this model is contained in Docket Items IV-D-9 and IV-I-22. Aerometric data from three separate offshore and coastal diffusion experiments were used in this evaluation. Two versions of the OCD model were tested. One required measurements of parameters (turbulence intensities) that are not made on a routine basis; the other version was run without the turbulence intensity data. The results indicated that both versions of the OCD model performed better than the original MMS model. Even without turbulence intensity data, the OCD model is a good screening model for assessing air quality impact from offshore sources under very stable atmospheric conditions. When these conditions are present, the highest onshore concentrations are expected from these offshore sources.

EPA is proposing to list the OCD model as a preferred model, in the revised guideline, for estimating air quality impact from offshore sources on onshore flat terrain areas. EPA's recommendation of this action is based on the findings that the materials submitted in support of this model meet the six requirements outlined by EPA in its notice soliciting air quality models developed outside the Agency in 45 FR 20157.

D. AVACTA II Model

EPA received a comment from the model developer AeroVironment, Inc. requesting the inclusion of the AVACTA II model as an alternative model in Appendix B of the revised guideline [Docket Item IV-K-13]. Models listed in Appendix B must meet the six criteria outlined in 45 FR 20157 and may be considered for use on a case-by-case basis subject to a demonstration.

EPA has determined that the material submitted in support of the model meets the six criteria and is proposing to list this model as an alternative model in the revised guideline.

Classification

The revisions being proposed herein to the previous proposal will not change the conclusions regarding Executive Order 12291, Regulatory Flexibility Act, Economic Impact Assessment, or Paperwork Reduction Act which were previously stated. Consequently this action is not considered major under E.O. 12291.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead.

Authority: Secs. 165(e) and 320, Clean Air Act, 42 U.S.C. 7475(e), 7620.

Dated: August 11, 1986.

Don R. Clay,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-19497 Filed 9-8-86; 8:45 am]

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Federal Register

Tuesday
September 9, 1986

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Research on the Effects of the Deinstitutionalization of Status Offenders; Notice

VOL 51 ISS 174 SE 9 1986 UMI

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Announcement: Research on the Effects of the Deinstitutionalization of Status Offenders

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of reissuance of solicitation of applications to conduct research on the effects of the deinstitutionalization of status offenders.

SUMMARY: This notice announces a new Office of Juvenile Justice and Delinquency Prevention (OJJDP) research program entitled, "Research on the Effects of Deinstitutionalization of Status Offenders."

One of the major issues which has shaped the development of American juvenile justice policy and practice is the concern for "status offenders." The removal of minor, non-criminal juvenile offenders from secure detention and correctional facilities was heralded as the solution to providing fair, more humane treatment for these youth and to reserving the resources of the juvenile justice system for dealing with more serious offenders.

It has been approximately 20 years since the movement to deinstitutionalize status offenders (DSO) began. As each state moved to DSO there were legislative changes, policy developments and revision, and practice changes in various sequences. These changes, in most cases, led to changes in the way in which youth who committed status offenses were responded to by different systems in the community.

Given the tremendous amount of energy and resources that have been committed to DSO, OJJDP feels it is necessary to systematically examine the positive and negative impact that deinstitutionalization of status offenders has had on youth, both in terms of risk of exploitation and subsequent delinquency and on youth-serving public institutions and private agencies.

Public or private, not-for-profit and for-profit, organizations are invited to submit applications to receive a grant from OJJDP.

OJJDP will select the applicant which presents the soundest and most cost-effective approach, and which best demonstrates the organizational capability to condust large scale, multi-site research; and research on the policies and practices of the juvenile justice system, and other public and private youth serving systems, and/or the criminal justice system. The project period is for thirty-six months. OJJDP has allocated up to $800,000 for the first twenty-four month budget period. Up to $200,000 will be made available for the third year. Applicants are encouraged to present cost-competitive proposals. The deadline for submission is November 15, 1986.

This competition will be conducted according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart A, published August 2, 1985 at 50 FR 31365–31367.

FOR FURTHER INFORMATION CONTACT: Richard Sutton, Research and Program Development Division, NIJJDP, OJJDP, 633 Indiana Avenue, NW., Room 778, Washington, DC 20531; telephone (202) 724–5929.

SUPPLEMENTARY INFORMATION:

Request for Proposals—Research on the Impact of Deinstitutionalization of Status Offenders

I. Introduction.
II. Background.
III. Program goal & major objectives.
IV. Strategy.
V. Eligibility criteria.
VI. Minimum program application requirements.
VII. Procedures & criteria for selection.
VIII. Submission requirements.
IX. Civil rights compliance.

I. Introduction

This solicitation to conduct research on the Impact of Deinstitutionalization of Status Offenders is reissued by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice. The OJJDP was established by the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. This program is pursuant to Part C, section 243, of the JJDP Act which authorizes OJJDP to "conduct, encourage and coordinate research and evaluation into any aspect of juvenile delinquency, . . . " and ". . . provide for the evaluation of all juvenile delinquency programs assisted under this title in order to determine the results and effectiveness of such programs."

Public or private agencies are invited to submit applications proposing research designs to examine the impact of a major policy thrust in juvenile justice: deinstitutionalization of status offenders. The approved funding level will be based on the scope of work. One project will be funded as a result of this competition. The project period is three years. Based on the need for additional research or refinement and the availability of funds, a six month project period extension may be considered.

II. Background

One of the major issues which has shaped the development of American juvenile justice policy and practice is the concern for "status offenders." By the late 1960's, there was growing concern over the capability of the juvenile justice system to serve the needs of children and protect the public. The removal of minor, non-criminal juvenile offenders from correctional facilities was heralded as the solution to providing fair, more humane treatment for these youth, and to reserving the resources of the system for dealing with more serious offenders.

The movement to remove non-criminal offenders from secure detention and correctional facilities began at the state and local level, and was embraced at the Federal level by the Juvenile Justice and Delinquency Prevention Act of 1974 (P.L. 93–415). A major mandate of the Act was to encourage the deinstitutionalization of status offenders and the development of community-based alternatives to secure detention and correctional facilities for these youth. (Formula Grants for Juvenile Justice: Notice of Final Regulation, **Federal Register**, 28 CFR Part 31, Volume 50, Number 119, June 20, 1985, pp. 25550–25561; Policy and Criteria for de Minimus Exceptions to Full Compliance with Deinstitutionalization Requirement of the Juvenile Justice and Delinquency Prevention Act, 1974, as amended, **Federal Register**, Volume 46, Number 6; January 9, 1981.)

There has been considerable debate over the concept and definition of a "status offender." Most of the recent research suggests that juvenile offenders engage in a variety of delinquent and non-delinquent, but socially troublesome, acts. This program will focus on youth who commit acts which would not be criminal if committed by an adult: e.g., running away, curfew violation, incorrigibility, alcohol consumption and truancy.

The National Academy of Sciences (NAS) conducted a major assessment of the development and implementation of the deinstitutionalization policy *(Neither Angles* nor *Thieves: Studies in the Deinstitutionalization of Status Offenders*, National Academy Press, Washington, DC 1982). The NAS concluded that while the Federal Government served as a significant catalyst and provided resources; legislation, policies and programs were developed primarily at the state and local levels. Deinstitutionalization of status offenders assumed different forms. The major strategies consisted of:

decarceration (removal of status offenders from secure detention and correctional facilities); diversion (prevention of status offenders from entering secure detention or correctional facilities); divestiture (removal of status offenders from court jurisdiction); and "no arrest" policy (police policy to ignore or divert status offenders). States and localities have implemented various strategies or combinations of these strategies.

Each strategy may have involved all or some of the following changes, in varying sequence: legislative changes, policy development and revision, and changes in operational practices. These changes, in most cases, led to changes in the way in which youth who commit status offenses are responded to by different systems in the community today.

All of the strategies generally reduced the role of one or more parts of the juvenile justice system in dealing with these youth and thereby had implications for families, and public and private youth-serving agencies including welfare, mental health, education, volunteer organizations, etc. While a major goal of the deinstitutionalization movement was to "help" status offenders, there is considerable debate as to whether or not this policy has inadvertently created problems for many of the youth it was designed to help. There is concern that children who are victims of neglect, chronic runaways who become exploited and non-serious offenders are often diverted away from the system or released with no requirement to be involved in programs they may need to be safe and become productive citizens. Without adequate self-control, discipline or structure in their lives, many of them continue committing status and more serious offenses until they ultimately penetrate the system as delinquents.

There was considerable variation in the amount of existing and new resources available to other organizations to handle new clientele. It is assmed that the particular deinstitutionalization strategy, the process through which deinstitutionalization was implemented, and the resources and response of other youth-serving agencies, independently and jointly affect the juveniles they are aimed at helping.

National data on juvenile detention and correctional facilities indicated that the number of status offenders in public correctional institutions decreased by 67% from 1974 to 1983. However, there has been an increase in commitments to private facilities. OJJDP has also sponsored several studies which focused on legislative and policy-based efforts to document and assess the process of deinstitutionalization. These included an evaluation of a multi-site demonstration program to deinstitutionalize status offenders and develop alternatives to secure confinement *(National Evaluation of the Deinstitutionalization of Status Offender Programs,* Kobrin and Klein, 1982); an assessment of the reform of the Washington juvenile justice code (*An Assessment of Juvenile Justice Reform in Washington State,* Schneider and Schram, grant #79–JN–AX–0028); and an assessment of California's AB3121 legislation *(Implementation of New Juvenile Justice Legislation,* Teilman et. al., grant #78–JN–AX–0034). A recent review entitled *The Impact of Deinstitutionalization on Recidivism and Secure Confinement of Status Offenders* (Schneider, A.L., 1985) revealed that deinstutionalizing status offenders had virtually no effect on recidivism. (Recidivism was not a primary focus of most evaluations, and there were serious methodological flaws in those that analyzed recidivism.) Note: Copies of these materials are available from the Juvenile Justice Clearinghouse, NCJRS, at (800) 638–8736.

Overall, there have been relatively few attempts to systematically evaluate a policy which has been, at least in many jurisdictions, central to the recent development of the juvenile justice system in this country. Moreover there is a growing concern regarding the potential unintended consequences of deinstitutionalization of status offenders, and particularly chronic status offenders. Some of the most important questions which need to be answered include: are there some juveniles who need protection or services who, at least in part as a result of DSO, are "falling through the cracks"? Have alternative service networks developed and how do they identify potential clients? Are providers being held accountable for meeting the needs of these youth? Do children who commit status offenses become involved in more serious crime because of a lack of appropriate intervention? Is the use of alcohol and drugs extensive among this population? Is the extent of their involvement related to the level of supervision or services they receive? What are the effects of valid court order provisions on youth who commit status offenses?

Given the tremendous amount of energy and resources that have been committed to DSO and the development of alternatives, OJJDP feels it is essential to systematically examine the impact that deinstitutionalization of status offenders has had on youth, and on youth-serving public institutions and private agencies. The Federal legislation will be intensively reviewed in the course of considering 1988 re-authorization. It is expected that this research will inform the debate on this policy at the Federal, state and local level.

III. Program Goal

To determine the impact that DSO has had on youth, their parents, the juvenile justice system, other youth-serving agencies.

Major Objectives

1. To identify the range of current philosophies, policy (legislative, judicial and administrative) and practice with regard to deinstitutionalization of status offenders in the country and to select a number of local jurisdictions representative of the range of philosophies and implementation strategies and to document the extent to which the policies are being implemented.

2. To identify the barriers to effective implementation and significant unanticipated consequences of Federal and local policies for youth, parents, justice and youth serving agencies.

3. Within these jurisdictions, determine the extent to which youth involved in non-criminal misbehavior are viewed by parents and personnel in justice agencies, schools and youth-serving agencies, to be at risk of exploitation and therefore in need of protection, and/or at risk of involvement in delinquent or criminal activities and therefore in need of control and supervision.

4. To examine the availability and appropriateness of resources devoted to these populations and to assess the effectiveness of alternative dispositions on delinquency and exploitation among youth who commit status offenses.

5. To identify and assess the adequacy of the community accountability structure for ensuring that the needs of youth who commit status offenses are being met.

IV. Strategy

The research should be designed to determine the effects, positive and negative, that deinstitutionalization of status offenders has had on youth, their families, the juvenile justice system, other public and private youth serving agencies. It should be designed to assess current policy and practice, in local jurisdictions that are representative of the wide range of philosophies and implementation strategies. Jurisdictions

should be selected based on well-justified criteria. Consideration should be given to variation in: (1) Philosophy and policy, (2) strategies of implementation, (3) the level of resources committed to DSO, and (4) population density. The nature and quality of available data should be carefully considered when selecting the jurisdictions for this research, and in developing the research strategy.

Applicants are encouraged to be creative in their approach to this research program, and to maximize the potential for building upon previous research efforts and existing resources. Proposals should highlight short term and long term products and their potential utility for policy makers, legislators, judges and school officials. Specifically, applicants should take into account the need for preliminary results to inform the Federal policy debates surrounding the 1988 reauthorization of the JJDP Act.

Efforts should be made to identify DSO strategies which have effectively addressed the issues of appropriate handling of status offenders, particularly chronic status offenders.

V. Eligibility Criteria

Eligible applicants include public and private not-for-profit and for profit research agencies or organizations. Applicant agencies or organizations may submit joint proposals with other organizations provided one is designated in the application as the applicant and any co-applicants are designated as such. Together, co-applicants must meet the eligibility requirements specified below.

The applicant must demonstrate in the application that they have experience in the following areas in order to be eligible for consideration:

A. Prior experience in the design and implementation of large scale, multisite research, policy analysis, and research on the juvenile justice system, the criminal justice system, and other related public systems.

B. Demonstrated knowledge of the issues associated with the deinstitutionalization of status offenders.

C. Prior experience in the development, maintenance and analysis of a large computerized data base.

D. The applicant must have the management and financial capability to effectively implement a project of this scope and complexity.

In order to maximize competition in the award of this research grant, for-profit organizations are eligible to apply, provided that they certify compliance with the following two agency policy requirements:

A. The OJJDP grant award must not be used to support the normal profit making operations of the organization, but must serve to stimulate the legislatively authorized research and evaluation objectives of OJJDP.

B. For at least one year following the termination of this award the recipient will not compete or accept any procurement or assistance award supported by OJJDP funds which may have resulted or been derived from the original award.

VI. Minimum Program Application Requirements

Applicants must complete all parts of the Application for Federal Assistance, (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. All applications must also include the information described in this section of the solicitation. The program narrative shall not exceed 125 *double-spaced* pages in length. Applications which propose non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000. The budget must include funds for a three person project advisory committee to meet three times during the study. Applicants should highlight cost effective features of their proposals.

In submitting applications which contain more than one organization, the applicant must clarify the relationships among the parties in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the program application:

(1) A concise description of your organizational experience which would qualify you to achieve the goal and objectives of this research and demonstrates substantive and financial capability to effectively administer the project.

(2) A succinct statement of your understanding of the goal and objectives of research on the impact of deinstitutionalization of status offenders.

(3) The specific objectives and conceptual framework which will guide the proposed approach to the research must be articulated. An analytical review of the relevant theoretical and empirical research should support the major research questions that the proposal addresses.

(4) A detailed description of the research design should be presented including jurisdiction selection criteria, sampling plans, data collection activities, and preliminary analysis plans.

(5) An implementation plan which describes how the research will be managed and includes an organizational chart depicting the roles of key staff (and subcontractors, if relevant); a list of key personnel responsible for conducting the study. Position descriptions, qualifications and selection criteria must be presented for each position. Individuals' resumes may be submitted as appendices. Please note that OJJDP will attach a special condition that requires prior OJJDP approval for hiring all key project personnel.

(6) A discussion of how data access and privacy issues will be addressed including a Privacy Certificate describing procedures to be followed to assure confidentiality of data in accordance with funding agency regulations, examples of which are available on request.

(7) A detailed time-task plan which includes major milestones and a schedule for product completion. A schedule for completion of interim reports will be established as a condition of award.

(8) A description of interim and final products, including purpose, audience, and usefulness to the field.

(9) A detailed budget with a narrative which justifies the proposed project cost for the entire project period with the budget divided between the first 24 months and the last 12 months. Applicants are encouraged to highlight cost effective aspects of their approach;

VOL 51 ISS 174 SE 9 1986 UMI

such as the utilization of existing survey instruments, etc.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues in research implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

(1) The problem to be addressed by the project is clearly stated—(5 points)
(2) Understanding of the goal and objectives of the DSO research project—(10 points)
(3) Soundness of the research design—appropriatenss and innovativeness of the research design and data collection strategy for meeting the goals and objectives. Potential utility of proposed products—(35 points)
(4) Qualifications of key staff—extent and relevance of the qualifications and experience of key staff to manage and conduct this research—(15 points)
(5) Organizational capability—The extent and quality of experience in conducting policy impact research and in conducting multi-site research of similar scope—(10 points)
(6) Budget—completeness, reasonableness, and appropriateness of the costs in relation to the proposed strategy—(10 points)
(7) Clarity and appropriateness of the implementation plan—soundness of project management structure and feasibility of the time-task plan—(15 points)

The results of peer review will be a relative aggregate ranking of applications in the form of "Summary Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator in considering competing applications and in selecting of the application for funding.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to NIJJDP/OJJDP by September 30, 1986. Such notification should specify: the name of the applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the co-applicants are to provide the above information. The submission of this notification is optional. It is requested to assist NIJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and three copies to NIJJDP/OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

3. The NIJJDP/OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as March, 1987.

4. Applications must be received by mail or hand delivered to the NIJJDP/OJJDP by 5:30 p.m. EST on November 15, 1986. Those applications sent by mail should be addressed to Richard Sutton NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the NIJJDP/OJJDP, Room 780, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:30 p.m. except Saturdays, Sundays or Federal holidays.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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BILLING CODE 4410–18–M

VOL
51
ISS
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FEDER

31089–3
31309–3
31605–3
31757–3
31925–3
32407–3

Reader Aids

Federal Register

Vol. 51, No. 174

Tuesday, September 9, 1986

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
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Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308.....2
31309-31604.....3
31605-31756.....4
31757-31924.....5
31925-32046.....8
32407-32188.....9

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12532 (See Notice of September 4, 1986).....31925
Administrative Orders:
Notice:
September 4, 1986.....31925
Proclamations:
5519.....31309
5520.....31311
5521.....32047

5 CFR

831.....31927
Proposed Rules
300.....31954

7 CFR

2.....31757
226.....31313
301.....31605
729.....32049
908.....31758
1136.....31759
1137.....32056
1230.....31898
1475.....31316
Proposed Rules:
246.....32093
301.....31958
911.....32098
915.....32096
981.....32103
1065.....31133
1068.....31133
1079.....31133
1137.....31340
1139.....32104

8 CFR

Proposed Rules:
214.....31637

9 CFR

319.....32057
322.....31937
Proposed Rules:
92.....31637

10 CFR

477.....31316
Proposed Rules:
2.....31340
50.....31341

14 CFR

21.....31317
39.....31089, 31090, 31607, 31608
71.....31097
75.....31097
91.....31098
95.....31319
97.....31322
Proposed Rules:
21.....31644
23.....31644
39.....31133-31137, 31342, 31343, 31647, 31779
71.....31138, 31648

17 CFR

Proposed Rules:
150.....31648

18 CFR

Proposed Rules:
37.....31651, 31781

19 CFR

111.....31760
171.....31760
178.....31760

21 CFR

81.....31323
175.....31098
178.....31099, 31760
193.....31324
357.....31763
369.....31763
510.....31100
558.....31763

24 CFR

201.....32059
511.....31764

26 CFR

1.....31610, 31613, 32061
20.....31938, 32071
25.....31938
602.....31610, 31613, 31938

28 CFR

0.....31939, 31940
2.....32071
Proposed Rules:
16.....31781

29 CFR

1601.....32073
2200.....32002

30 CFR

901.....31940
938.....31942
Proposed Rules:
733.....31139
946.....32106

32 CFR

199.....31100

VOL 51 ISS 174 SE 9 1986 UMI

205.....31325
286g.....31103
706.....31103–31112
Proposed Rules:
40.....31651

33 CFR

117.....31112, 31113, 31946
165.....31113, 31114, 31946
Proposed Rules:
165.....31958

34 CFR

Proposed Rules:
614.....31754

36 CFR

13.....31619
800.....31115
1254.....31617

38 CFR

Proposed Rules:
21.....31782

39 CFR

10.....31325
233.....31328
Proposed Rules:
111.....31673

40 CFR

51.....32176
52.....31125, 31127, 31129, 31328, 32073, 32075, 32176
261.....31330
271.....31618
721.....32077
799.....32079
Proposed Rules:
51.....32180
52.....32180
86.....31783, 31959, 32032
260.....31783
261.....31140, 31783
262.....31783
264.....31783
265.....31783
268.....31783
270.....31783
271.....31783
799.....32107

41 CFR

Proposed Rules:
201–33.....31674

42 CFR

23.....31947
405.....31454
412.....31454
Proposed Rules:
57.....31920

43 CFR

36.....31619
2880.....31764
Proposed Rules:
2800.....31886
2880.....31886

44 CFR

64.....31330
65.....31635, 31950
67.....31951
Proposed Rules:
10.....31788
67.....31675, 31678

47 CFR

0.....31303, 32087
1.....31303, 32087
2.....31303
13.....31303
21.....31303
22.....31335
63.....31303
73.....32087, 32089
74.....32087
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303
Proposed Rules:
15.....31147
64.....32113
67.....31149
68.....31149
73.....32113, 32114
76.....31147
80.....31306

48 CFR

5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
47.....31424
50.....31424
52.....31424
223.....31765
228.....31765
242.....31765
252.....31765
914.....31335
933.....31335
952.....31335
970.....31335
Proposed Rules:
32.....31194
45.....31196
48.....31197
52.....31194, 31197
515.....31344
538.....31344
552.....31344
1317.....31687
1352.....31687
5316.....32114

49 CFR

571.....31765
Proposed Rules
391.....31150
393.....32115

50 CFR

17.....31412
20.....31430
23.....31130
36.....31619
611.....32089
655.....31774, 31775
661.....32091
663.....31776
Proposed Rules
630.....31151

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 5, 1986.

VOL
51

ISS
1
7
4

SE
9

1986

UMI

VOL
51
ISS
1
7
5
SE
10
1986
UMI

9-10-8
Vol. 51

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Vol. 51 No. 175

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Wednesday
September 10, 1986

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VOL
51
ISS
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9-10-86
Vol. 51
Pages

9-10-86
Vol. 51 No. 175
Pages 32189-32296

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Wednesday
September 10, 1986

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VOL
51
ISS
175
SEP
10
1986
UMI

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See als
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RULES
Freedo
NOTICES
Agency
32

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RULES
Freedo
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NOTICES
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RULES
Custom
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Defens
See als

Contents

Federal Register

Vol. 51, No. 175

Wednesday, September 10, 1986

Agricultural Marketing Service
PROPOSED RULES
Raisins produced from grapes grown in California, 32216

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service
RULES
Freedom of Information Act; implementation, 32189
NOTICES
Agency information collection activities under OMB review, 32236

Animal and Plant Health Inspection Service
NOTICES
Tobacco plants, genetically altered insect resistant; plant pest status determination, 32236

Antitrust Division
NOTICES
National cooperative research notifications:
Industry-University Center for Glass Research, 32262
Microelectronics & Computer Technology Corp., 32263

Army Department
NOTICES
Meetings:
Military personal property symposium, 32240

Arts and Humanities, National Foundation
See National Foundation on the Arts and Humanities

Bonneville Power Administration
NOTICES
Energy-efficient awards; refrigerators and freezers; correction, 32240

Centers for Disease Control
NOTICES
Meetings:
Injury Research Grant Review Committee, 32251

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration
RULES
Freedom of Information Act; implementation, 32204
Privacy Act; implementation, 32206

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 32291

Customs Service
RULES
Customs brokers:
Single license, separate permits, grounds for license suspension or revocation, monetary penalty, etc.
Correction, 32208

Defense Department
See also Army Department
NOTICES
Meetings:
Science Board, 32239

Energy Department
See also Bonneville Power Administration; Federal Energy Regulatory Commission
NOTICES
Grant awards:
University of Virginia, 32240

Environmental Protection Agency
RULES
Pesticide chemicals in or on raw agricultural commodities, tolerances and exemptions, etc.:
Definition and interpretation, etc.—
Peas, 32212
PROPOSED RULES
Hazardous waste:
Identification and listing—
Exclusions, 32217
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Sulfur dioxide air analyzer, 32244
Pesticide programs:
Confidential information and data transfer to—
Contractors, 32249
Pesticides; temporary tolerances:
Ethephon, 32248
Toxic and hazardous substances control:
Confidential business information and data transfer to contractors, 32244
Premanufacture exemption applications, 32249
Premanufacture notices receipts, 32245, 32248
(2 documents)

Federal Aviation Administration
RULES
Airworthiness directives:
Arctic Aircraft Co., 32200
Beech, 32202
Grob-Werke, 32199
Sperry Corp., 32198

Federal Communications Commission
RULES
Radio stations; table of assignments:
Oklahoma, 32213
Wisconsin, 32213
PROPOSED RULES
Common carrier services:
Satellite communications—
Automatic transmitter identification system for radio transmitting equipment, 32223
Frequency allocations and radio treaty matters:
Equipment authorization procedures, 32222
Radio stations; table of assignments:
Florida, 32225
Georgia, 32225
Hawaii, 32226

Idaho, 32224
Vermont, 32225

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Montana Power Co. et al., 32240
Natural gas companies:
Small producer certificates, applications, 32243
Applications, hearings, determinations, etc.:
Phillips Petroleum Co. et al., 32243

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Northern Trust Corp. et al., 32250
Signet Banking Corp. et al., 32250

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
Olefin polymers, 32211
Human drugs:
Antacid and antiflatulent drug products (CTC): monograph amendments
Correction, 32212
NOTICES
Meetings:
Small business participation, 32251

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Washington, 32237, 32238
(2 documents)

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration

Immigration and Naturalization Service
RULES
Nonimmigrants; documentary requirements; waivers, etc.:
Admission of inadmissible aliens; parole, 32294

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 32291

Interior Department
See Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Meetings:
Exporters' Textile Advisory Committee, 32238

International Trade Commission
NOTICES
Import investigations:
Brass sheets and strips from—
Brazil, 32255
Cast-iron pipe fittings from—
Japan and Thailand, 32256
Oil country tubular goods from—
Israel, 32258
Paint filters and strainers from Brazil, 32257
Small aluminum flashlights and components, 32257
Urea from East Germany, Romania, and U.S.S.R., 32259

Interstate Commerce Commission
NOTICES
Rail carriers:
Waybill data; release for use, 32261, 32262
(2 documents)
Railroad operation, acquisition, construction, etc.:
Abernathy, G. Richard, 32262
Dakota, Minnesota & Eastern Railroad Corp., 32260
Railtex, Inc., 32260
Soo Line Railroad Co., 32261
Railroad services abandonment:
Union Pacific Railroad Co. et al., 32261

Justice Department
See Antitrust Division; Immigration and Naturalization Service

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 32252
Idaho, 32251
Nevada, 32253
Wyoming, 32252, 32253
(2 documents)

National Foundation on the Arts and Humanities
NOTICES
Agency information collection activities under OMB review
32263

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
High seas salmon off Alaska, 32214
Western Pacific bottomfish and seamount groundfish
Correction, 32215
PROPOSED RULES
Fishery conservation and management:
Foreign fishing—
Fee criteria, 32228
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 32239
Permits:
Marine mammals, 32239
(2 documents)

National Park Service
NOTICES
Concession contract negotiations:
Arizona Economic Security Department, 32254

Nuclear Regulatory Commission
PROPOSED RULES
Source material; domestic licensing:
Uranium mill tailings; ground-water protection, etc., 32217
NOTICES
Meetings; Sunshine Act, 32291
Operating licenses, amendments; no significant hazards considerations:
Bi-weekly notices, 32264

VOL 51 ISS 175 SE 10 1986 UMI

Applications, hearings, determinations, etc.:
Philadelphia Electric Co., 32288

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings; Sunshine Act, 32291

Public Health Service
See Centers for Disease Control; Food and Drug Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 32289
Midwest Stock Exchange, Inc., 32289
Applications, hearings, determinations, etc.:
Public utility holding company filings, 32289

Small Business Administration
RULES
Disaster loans:
Agricultural enterprises; physical disaster loan authority withdrawn from SBA, etc., 32197

State Department
RULES
Visas, nonimmigrant documentation:
INS admission of ineligible aliens; temporary, 32295

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 32254

Transportation Department
See Federal Aviation Administration

Treasury Department
See Customs Service

Veterans Administration
NOTICES
Meetings:
Women Veterans Advisory Committee, 32290

Separate Parts In This Issue

Part II
Department of Justice, Immigration and Naturalization Service; Department of State, 32294

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

VOL 51 ISS 175 SEP 10 1986 UMI

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1..... 32189
Proposed Rules:
989..... 32216

8 CFR
212..... 32294

10 CFR
Proposed Rules:
40..... 32217

13 CFR
121..... 32197
123..... 32197

14 CFR
39 (4 documents)..... 32198-32200, 32202

15 CFR
4..... 32204
4b..... 32206

19 CFR
111..... 32208
171..... 32208
178..... 32208

21 CFR
178..... 32211
331..... 32212
332..... 32212

22 CFR
41..... 32295

40 CFR
180..... 32212
Proposed Rules:
261..... 32217

47 CFR
73 (2 documents)..... 32213
Proposed Rules:
2..... 32222
15..... 32222
25..... 32223
73 (5 documents)... 32224-32226

50 CFR
674..... 32214
683..... 32215
Proposed Rules:
611..... 32226

Rules and Regulations

Federal Register
Vol. 51, No. 175
Wednesday, September 10, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Freedom of Information Act Implementing Regulations

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This notice sets forth the revisions to the Department of Agriculture's regulations (7 CFR Part 1, Subpart A) implementing the Freedom of Information Act (FOIA). The regulations as proposed were published in the **Federal Register** on March 6, 1986, at 51 FR 7799.

The revisions to those regulations are the result of comments received in the Department during the public comment period and are intended to simplify and clarify the Department's guidelines for assisting the public in accessing information, promoting consistency in obtaining access, rendering additional assistance to Department agencies, establishing clear-cut business notification procedures, and assessing product and service fees. The **"SUPPLEMENTARY INFORMATION"** below provides a detailed explanation of the revisions.

DATE: The regulations become effective October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Milton Sloane, U.S. Department of Agriculture, Office of Governmental and Public Affairs, Office of Information, Special Programs Division, Washington, DC 20250; (202) 447–8164.

SUPPLEMENTARY INFORMATION: This rule does not constitute a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations) nor will these regulations cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

I. Analysis of Comments

A total of six comments was postmarked or received within the comment period as extended. Comments were received from the following:

- Law offices of McGrath, North, O'Malley & Kratz, P.C.
- Law offices of Preston, Ellis & Holman
- Forest Service, USDA
- Office of Governmental and Public Affairs, USDA
- National Forest Products Association
- Law offices of Saltman & Stevens, P.C.

Comments requesting an extension of time for the public comment period which was scheduled to expire on April 7, 1986, were also received from the National Forest Products Association and the law firm of Saltman & Stevens, P.C. By notice in the **Federal Register** (51 FR 11930, dated April 8, 1986), the initial comment period was extended to April 21, 1986. Following is an analysis of the comments.

1. Agency implementing regulations (proposed § 1.3). One commenter suggested that each USDA agency be required to write its implementing regulations in a manner promoting uniformity both within and among Department agencies. The commenter also suggested that § 1.3 include a review system by which the Assistant General Counsel would review each agency's regulations before they become final.

As a matter of course, currently, all notices or regulations destined for publication in the **Federal Register** and which outline agency policy and procedures are reviewed by the Office of the General Counsel, as well as by other Department agencies. Turning to the commenter's first suggestion, the Department notes that the very essence of § 1.3 (indeed, of the entire regulations) is to foster uniformity by requiring publication of standardized information regarding the locations and operating hours of offices where individuals may access agency records, the titles and mailing addresses of officials responsible for acting on initial requests and appeals, the officials responsible for making discretionary releases of information, as well as other data for accessing information.

2. Public access to certain materials (proposed § 1.5). One commenter suggested that § 1.5 be amended to set forth guidelines on what is and is not releasable under the FOIA.

The Department believes the FOIA quite clearly establishes the parameters for the types of data which may or may not be released under the Act, and which effectively standardize the manner in which agencies must operate. Further, since many exempt documents may be released by agency discretion, it would be inappropriate to denominate "non-releasable" documents. It is, therefore, this Department's decision that § 1.5 stand as proposed, and that requesters pursue existing procedures in accessing USDA documents.

3. Requests for records (proposed § 1.6(h)). One commenter suggested that the phrase "and address" be deleted from this section on the basis that the information would increase some agencies' workload and would lead to an unwarranted invasion of personal privacy.

While there is some disagreement with that argument, § 1.6(h) has been amended by deletion of the phrase "and address" for the benefit of agencies not wishing or needing that information.

4. Agency response to requests for records (proposed § 1.7). One commenter suggested adding a new § 1.7(g) to indicate that "where a requester has previously failed to pay a fee charged under this part, the requester must pay the agency the full amount owed and make an advance deposit of the estimated fee before an agency shall be required to process a new request or a pending request from that requester."

Rather than add a whole new section as suggested, the Department has amended proposed § 1.7(d) to incorporate the commenter's suggestion. The second sentence of § 1.7(d) is amended to read: "It may, in accordance with Appendix A of this subpart, require payment of the entire fee, or a portion thereof, or full payment of a delinquent fee, before it provides the requested records."

5. Handling information from a private business (proposed § 1.8). Generating the most comments on the proposed regulations was this section on the business notification process. These comments generally suggested that the proposed notification procedure be

made mandatory and be expanded to include all requests for such information regardless of the ability of the Department to "readily determine" whether to release the information.

Careful consideration was given to each comment and the comments as a whole. The Department has decided to change the notification procedures from a discretionary procedure to a mandatory one in certain cases. The Department has decided to retain the ability not to notify submitters of information of FOIA requests when it is readily determined that the information either should not be disclosed or should be released. While the overall policy of the Department is to notify the submitters of such requests and to seek their views, it is the responsibility of the Department under the FOIA to make the final determination with regard to the disclosure or nondisclosure of information submitted by a business. Therefore, in those circumstances where the Department has no doubts as to the nature of the determination it is obliged to make under the law, the notification procedures to submitters will remain discretionary. Specific comments follow:

(a) One commenter suggested amending § 1.8(a) to require an agency to notify a business of, and allow the business to respond to, any request for business information generated by an agency.

Under the regulations as proposed, agencies would only have to give notice in cases where business information is submitted to an agency. The commenter's suggestion would require notice for business information generated by an agency. Given the language of the FOIA, and existing case law, the Department has decided to limit the business notification process strictly to information submitted to an agency.

(b) One commenter suggested that § 1.8 be expanded to require agencies to notify submitters of business data of any request for information that:

(1) The submitter has specifically designated as confidential; or

(2) Was submitted to the agency under compulsion of a statute, regulation, or contract; or

(3) The government has assured it will hold in confidence; or

(4) Is subject to a statutory, regulatory, or contractual requirement of reasonable notice to the submitter prior to its disclosure.

As stated above, the Department has decided not to adopt the suggestions to expand the notification procedures. It is the USDA view that the mandatory provisions of § 1.8 supply ample protection to the business information submitter. All the factors covered by the suggestions would be considered in the agency review of the information when deciding whether a ready determination not to disclose or to release could be made.

(c) One commenter requested that USDA "obtain and consider the views of the submitter of business information, as well as provide an opportunity to object, even in cases where the agency believes it can readily make a determination as to the disclosure or nondisclosure of information."

The comment refers to § 1.8(a)(1). The Department has determined that such a system would be unduly burdensome in instances where the decision to release or not to disclose may be "readily determined." Business information submitters should not interpret "readily determined" as indicating any laxity in the decisionmaking process or any failure to consider potential harm to submitters' positions.

(d) One commenter suggested that § 1.8(a) be amended to read: "Where the USDA receives a request for information submitted by a business, all agencies of the Department should:

(1) Provide the business information submitter with prompt notification of the request. Afford the submitter time in which to present its views and any objections to the request prior to the agency decision;

(2) Notify the requester of the need to inform the submitter of the request for submitted business information and of the submitter's appeal process;

(3) After making a final determination to disclose, notwithstanding the objection of the submitter, provide the business information submitter notification of what the agency intends to disclose, and a ten (10) day period prior to any actual disclosure within which it may take any additional efforts to protect its data from disclosure."

The mandatory provisions of § 1.8 already cover these suggestions, with the exceptions that not every request will require notification of submitters and time limits for notification are not specified. The decision not to notify submitters of every request is discussed in comments (b) and (c) above. The decision not to specify time limits is based upon the lack of any authorized extensions in the FOIA for notifying submitters. The commenter's suggestions were not incorporated.

(e) One commenter requested that the word "should" in § 1.8(a) be changed to "shall" to make it mandatory for agencies to perform the tasks set out in § 1.8(a)(1) through § 1.8(a)(5).

Section 1.8(a) is so amended, despite the fact that the provisions under § 1.8 are not statutorily mandated.

(f) One commenter requested that § 1.8(a)(1) be amended to require agencies to notify business data submitters of a request for information which at the time of submission was identified as sensitive or confidential.

As noted in the response to comment (b), above, confidentiality markings would be considered in the agency review of the information when deciding whether a ready determination not to disclose or to release could be made.

(g) One commenter suggested that the phrase "privileged and confidential," in § 1.8(a) be changed to "privileged or confidential."

Section 1.8(a) is so amended. Use of the conjunction "or" is consistent with the test of exemption in 5 U.S.C. 552(b)(4).

(h) Two commenters suggested that the proposed test in § 1.8(a)(1) as to when an agency need not notify submitters of requests for submitted data be changed from "readily determined" to "clearly apparent."

The Department believes that a standard of "readily determined" is more appropriate for an agency decision regarding the release or nondisclosure of documents, than is a standard of "clearly apparent." The standard will remain unchanged.

6. Compulsory process (proposed § 1.18). One commenter requested that agencies notify a business information submitter of any compulsion or demand (subpoena, order, or other compulsory process) for that information, whether or not the government is a party to litigation seeking disclosure.

In keeping with the provisions of § 1.8 of this subpart, that section is amended by adding the following after the word "request" in the third sentence of § 1.8(a): "(including any "demand" as defined in § 1.18)". This will make clearer that USDA agencies are required to follow the provisions of § 1.8 when a § 1.18 "demand" is made for business submitted information.

7. General photographic reproduction prices (proposed § 15(b), Appendix A). One commenter suggested deleting the second sentence which read: "All sizes are approximate." The commenter also noted that a portion of the fee schedule printed in this proposed section was incorrect. The commenter submitted a list of corrected rates for inclusion in these final regulations.

The sentence referred to has been deleted, and the revised rates have been adopted.

II. Other Change

One other change has been made in the proposed regulations:

- The room number for the Photography Division in proposed section 10(b) Appendix A has been changed. The new room number is 4407 South Building.

List of Subjects in 7 CFR Part 1

Freedom of Information

7 CFR Part 1, Subpart A is revised to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Sec.

1.1 Purpose and scope.
1.2 Policy.
1.3 Agency implementing regulations.
1.4 Implementing regulations for the Office of the Secretary.
1.5 Public access to certain materials.
1.6 Requests for records.
1.7 Agency response to requests for records.
1.8 Handling information from a private business.
1.9 Date of receipt of requests or appeals.
1.10 Appeals.
1.11 Extension of administrative deadlines.
1.12 Failure to meet administrative deadlines.
1.13 Fee schedule.
1.14 Exemptions and discretionary release.
1.15 Annual report.
1.16 Compilation of new records.
1.17 Authentication.
1.18 Compulsory process.
1.19 Records in formal adjudication proceedings.
Appendix A—Fee Schedule

Authority: 5 U.S.C. 301 and 552. Appendix A also issued under 7 U.S.C. 2244; 31 U.S.C. 9701, and 7 CFR 2.75(a)(6)(xiii).

Subpart A—Official Records

§ 1.1 Purpose and scope.

This subpart establishes policy, procedures, requirements, and responsibilities for administration and coordination of the Freedom of Information Act (FOIA), 5 U.S.C. 552, pursuant to which official records may be obtained by any person. It also provides rules pertaining to the disclosure of records pursuant to compulsory process. This subpart also serves as the implementing regulations (referred to in § 1.3, "Agency implementing regulations") for the Office of the Secretary (the immediate offices of the Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) and for the Office of Governmental and Public Affairs. The Office of Governmental and Public Affairs has the primary administrative responsibility for the FOIA in the Department of Agriculture (USDA). The term "agency" or "agencies" is used throughout this subpart to include both USDA program agencies and staff offices.

§ 1.2 Policy.

(a) Agencies of USDA shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals for agency documents, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(B). An agency shall notify a requester whenever it is unable to respond to or process a request or appeal within the time limits established by the FOIA.

(b) All agencies of the Department shall comply with the fee schedule provided as Appendix A of this regulation, with regard to the charging of fees for providing copies of documents and related services to requesters.

§1.3 Agency implementing regulations.

(a) Each agency of the Department shall promulgate regulations setting forth the following:

(1) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by § 1.5 to be made available for public inspection and copying.

(2) Information regarding the publication and distribution (by sale or otherwise of indexes and supplements thereto which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b).

(b) The title(s) and mailing address(es) of the official(s) of the agency who is/are authorized to receive requests for records submitted in accordance with § 1.6(a), and to make determinations regarding whether to grant or deny such requests. Authority to make such determinations includes authority to:

(1) Extend the 10-day administrative deadline for reply pursuant to §1.11;

(2) Make discretionary releases pursuant to § 1.14(b); and

(3) Make determinations regarding the charging of fee pursuant to Appendix A of this subpart.

(c) The title and mailing address of the official of the agency who is authorized to receive appeals from denials of requests for records submitted in accordance with § 1.6(e) and to make determinations regarding whether to grant or deny such appeals. Authority to determine appeals includes authority to:

(1) Extend the 20-day administrative deadline for reply pursuant to § 1.11 (to the extent the maximum extension authorized by § 1.11(c) was not used with regard to the initial request);

(2) Make discretionary releases pursuant to § 1.14(b); and

(3) Make determinations regarding the charging of fees pursuant to Appendix A of this subpart.

(d) Other information which would be of concern to a person wishing to request records from that agency in accordance with this subpart.

§ 1.4 Implementing regulations for the Office of the Secretary.

For the Office of the Secretary and for the Office of Governmental and Public Affairs, the information required by § 1.3 is as follows:

(a) Records available for public inspection and copying may be obtained in Room 547–A, Administration Building, USDA, Washington, DC 20250 during the hours of 8:45 a.m. to 5:15 p.m.

(b) Any indexes and supplements which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b) will also be available in Room 547–A, Administration Building, USDA, Washington, DC 20250 during the hours of 8:45 a.m. to 5:15 p.m.

(c) The person authorized to receive FOIA requests and to determine whether to grant or deny such requests is the Director of Information, Office of Governmental and Public Affairs, USDA, Washington, DC 20250.

(d) The official authorized to receive appeals from denials of FOIA requests and to determine whether to grant or deny such appeals is the Deputy Assistant Secretary for Governmental and Public Affairs, USDA, Washington, DC 20250.

§ 1.5 Public access to certain materials.

(a) In accordance with 5 U.S.C. 552(a)(2), each agency within the Department shall make the following materials available for public inspection and copying (unless they are published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register**; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) Each agency of the Department shall also maintain and make available current indexes providing identifying information regarding any matter issued, adopted, or promulgated after July 4, 1967, and required by paragraph (a) of this section to be made available or

VOL 51 ISS 175 SE 10 1986 UMI

published. Each agency shall publish and make available for distribution copies of such indexes and supplements thereto at least quarterly, unless it determines by Notice published in the **Federal Register** that publication would be unnecessary and impracticable. After issuance of such Notice, the agency shall provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

§ 1.6 Requests for records.

(a) Any person who wishes to inspect or obtain copies of any record of any agency of the Department shall submit a request in writing and address the request to the official designated in regulations promulgated by the agency. The requester may in his or her petition ask for a fee waiver if there is likely to be a charge for the requested information. To inspect or obtain copies of records of the Office of the Secretary or the Office of Governmental and Public Affairs, requesters should submit their requests to the Director of Information, Office of Governmental and Public Affairs, U.S. Department of Agriculture, Washington, DC 20250. All such requests for records shall be deemed to have been made pursuant to the Freedom of Information Act, regardless of whether that Act is specifically mentioned. To facilitate processing of a request, the phrase "FOIA REQUEST" should be placed in capital letters on the front of the envelope.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, etc., which may help identify the records. If the request relates to a matter in pending litigation, the court and its location should be identified.

(c) If an agency determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records he or she is seeking. The "date of receipt" in such instances, for purposes of § 1.9(a), shall be the date of receipt of the amended or clarified request.

(d) Nothing in this subpart shall be interpreted to preclude an agency from honoring an oral request for information, but, if the requester is dissatisfied with the response, the agency official involved shall advise the requester to submit a written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request for purposes of § 1.9(a) shall be the date of receipt of the written request. For recordkeeping purposes, an agency responding to an oral request for information may ask the requester to also submit his or her request in writing.

(e) If a request for records made under this subpart is denied, the person making the request shall have the right to appeal the denial. This appeal must be in writing and addressed to the official designated in regulations promulgated by the agency which denied the request. To facilitate processing of an appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

(f) Requests that are nonagency-specific, i.e., are not addressed to a specific agency in USDA, or which pertain to more than one USDA agency or which are sent to the wrong agency of USDA, should be forwarded to the Department's central processing unit for FOIA in the Office of Governmental and Public Affairs, Office of Information, Special Programs Division, U.S. Department of Agriculture, Washington, DC 20250.

(g) The central processing unit will determine which agency or agencies should process the request, and, where necessary, refer the request to the appropriate agency (agencies). The unit will also notify the requester of the referral and of the name of each agency to which the request has been referred.

(h) Each agency shall develop and maintain a record of all written and oral requests and appeals received in that agency, which shall include, in addition to any other information, the name of the requester, brief summary of the information requested, an indication of whether the request or appeal was denied or partially denied, the exemption(s) for making any denials, and the amount of fees associated with the request or appeal.

§ 1.7 Agency response to requests for records.

(a) 5 U.S.C. 552(a)(6)(A)(i) provides that each agency of the Department to which a request for records or a fee waiver is submitted in accordance with § 1.6(a) shall inform the requester of its determination concerning that request within 10 days of its date of receipt (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized under § 1.11. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If it grants only a portion of the request, it shall treat the portion not granted as a denial. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and of the following:

(1) The reasons for the denial;

(2) The name and title or position of each person responsible for denial of the request;

(3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be made within 45 days of the date of the denial.

(b) If the reason for not fulfilling a request is that the records requested are in the custody of another agency outside USDA, the agency shall inform the requester of this fact and shall forward the request to that agency or Department for processing in accordance with its regulations. If the agency has no knowledge of requested records or if no records exist, the agency shall notify the requester of that fact.

(c) 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which appeal of a denial is submitted in accordance with § 1.6(e) shall inform the requester of its determination concerning that appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized by § 1.11, of its date of receipt. If the agency determines to grant the appeal, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If it grants only a portion of the appeal, it shall treat the portion not granted as a denial. If it determines to deny the appeal either in part or in whole, it shall inform the requester of that decision and of the following:

(1) The reasons for denial;

(2) The name and title or position of each person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(d) If in compliance with the request a charge is to be made in accordance with Appendix A of this subpart, the agency's response shall inform the requester of the amount and basis for the charge. It may, in accordance with Appendix A of this subpart, require payment of the entire fee, or a portion thereof, or full payment of a delinquent fee before it provides the requested records. In instances where a requester refuses to

remit payment in advance, an agency may likewise refuse to process the request with written notice to that effect forwarded to the requester. The "date of receipt" of a request for which advance payment has been required shall be the date that payment is received.

(e) In the event compliance with the request involves inspection of records by the requester rather than the forwarding of copies, the agency response shall include the name, mailing address, and telephone number of the person to be contacted to arrange a mutually convenient time for such inspection.

(f) In the event the records requested contain some portions which are exempt from mandatory disclosure and others which are not, the official responding to the request shall insure that all nonexempt portions are disclosed, and that all exempt portions are identified according to the nature of information contained and the specific exemption or exemptions which are applicable.

§ 1.8 Handling information from a private business.

(a) The USDA is responsible for making the final determination with regard to the disclosure or nondisclosure of information submitted by a business. When, in the course of responding to an FOIA request, an agency cannot readily determine whether the information obtained from a person is privileged or confidential business information, the policy of USDA is to obtain and consider the views of the submitter of the information and to provide the submitter an opportunity to object to any decision to disclose the information. Whenever a request (including any "demand" as defined in § 1.18) is received in USDA for information which has been submitted by a business, all agencies of the Department shall:

(1) Provide the business information submitter with prompt notification of a request for that information (unless it is readily determined by the agency that the information requested should not be disclosed or, on the other hand, that the information is not exempt by law from disclosure).

(2) Notify the requester of the need to inform the submitter of a request for submitted business information.

(3) Afford business information submitters time in which to object to the disclosure of any specified portion of the information. The submitter must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain item-by-item why disclosure would cause such harm. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

(4) Provide business information submitters with notice of any determination to disclose such records prior to the disclosure date, in order that the matter may be considered for possible judicial intervention.

(5) Notify business information submitters promptly of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

§ 1.9 Date of receipt of requests or appeals.

(a) The date of receipt of a request or appeal, which contains the phrase FOIA REQUEST or FOIA APPEAL and is addressed in accordance with applicable agency regulations, shall be the date it is received in the office responsible for the administrative processing of FOIA requests or appeals.

(b) The date of receipt of a request or appeal which is hand-delivered to the address specified in agency regulations shall be the date of such hand-delivery.

(c) The date of receipt of a request or appeal which does not comply with paragraphs (a) or (b) of this section shall be the date it is received by the official designated in agency regulations to make the applicable determination.

§ 1.10 Appeals.

(a) Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

(b) Each agency, upon a determination that it wishes to deny an appeal, shall send a copy of the records requested and of all correspondence relating to the request to the Assistant General Counsel, Research and Operations Division, Office of the General Counsel. When the volume of records is so large as to make sending a copy impracticable, the agency shall enclose an informative summary of those records. The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel.

(c) The Assistant General Counsel shall promptly review the matter (including necessary consultation with the Department of Justice and coordination with the Office of Governmental and Public Affairs) and render all necessary assistance to enable the agency to respond to the appeal within the administrative deadline or any extension thereof.

§ 1.11 Extension of administrative deadlines.

(a) In unusual circumstances as specified in this section, either of the administrative deadlines prescribed in § 1.7 may be extended by an authorized agency official. Written notice of the extension shall be sent to the requester within the applicable deadline, setting forth the reasons for such extension and the date a determination is expected to be dispatched. In no event shall the extension exceed a total of 10 working days.

(b) As used in this section, "unusual circumstances" shall be limited to the following:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

[Note: consultation regarding policy or legal issues between an agency and the Office of the General Counsel, Office of Governmental and Public Affairs, or the Department of Justice is not a basis for extension under this section.]

(c) The 10-day extension authorized by this section may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement shall be confirmed in writing and shall specify clearly the total time agreed upon.

§ 1.12 Failure to meet administrative deadlines.

In the event an agency fails to meet either of the administrative deadlines set forth in § 1.7, plus any extension authorized by § 1.11, it shall notify the requester, state the reasons for the delay, and the date by which it expects to dispatch a determination. Although the requester may be deemed to have exhausted his or her administrative remedies under 5 U.S.C. 552(a)(6)(C), the agency shall continue processing the request as expeditiously as possible and dispatch the determination when it is

VOL 51 ISS 175 SEP 10 1986 UMI

reached in the same manner and form as if it had been reached within the applicable deadline.

§ 1.13 Fee schedule.

Pursuant to authority delegated in § 2.75 of this title, the Director, Office of Finance and Management, has issued regulations, following notice and public comment, setting forth a uniform schedule of fees applicable to all agencies of the Department regarding requests for records under this subpart. (See Appendix A of this subpart.) Any amendments thereto will be made by the Director pursuant to notice and opportunity for comment. Said regulations provide reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such duplication. The regulations provide that documents may be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 1.14 Exemptions and discretionary release.

(a) All agency records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), shall be made promptly available to any person submitting a request under this subpart.

(b) Except where disclosure is specifically prohibited by Executive Order, statute, or applicable regulations, an agency may release records exempt from mandatory disclosure under 5 U.S.C. 552(b) whenever it determines that such disclosure would be in the public interest.

§ 1.15 Annual report.

(a) Each agency of the Department shall compile the following information for each calendar year:

(1) The number of determinations made by such agency not to comply with initial requests for records made to it under § 1.6(a), and the reasons for each such determination;

(2) The number of appeals made by persons under § 1.7(d), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The name and title or position of each person responsible for the denial of records requested under this subpart and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of every rule made by the agency regarding this subpart;

(6) The total amount of fees collected by the agency for making records available under this subpart; and

(7) Such other information as indicates efforts to administer fully this subpart.

(b) Each agency shall compile the information required by paragraph (a) of this section for the preceding calendar year into a report and submit this report to the Director of Information, Office of Governmental and Public Affairs, by February 1 of each year.

(c) The Director of Information shall combine the reports from the various agencies within USDA into a Departmental report, and shall arrange for submission of this report to the President of the Senate and the Speaker of the House of Representatives by March 1 of each year in accordance with 5 U.S.C. 552(d).

§ 1.16 Compilation of new records.

Nothing in 5 U.S.C. 552 or this subpart requires that any agency compile a new record in order to fulfill a request for records. Such compilation may be undertaken voluntarily if the agency determines this action to be in the public interest.

§ 1.17 Authentication.

When a request is received for an authenticated copy of a document which the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk may authenticate copies of documents in the records of the Hearing Clerk.

§ 1.18 Compulsory process.

(a)(1) In any case where it is sought by subpoena, order, or other compulsory process (hereinafter in this section referred to as a "demand") to require the production or disclosure of any record or material which is exempt from disclosure under 5 U.S.C. 552(b) or information related thereto acquired by an employee of this Department in the performance of his or her official duties, the matter shall be referred to an official authorized by agency regulations to make releases pursuant to § 1.14(b). For the Office of the Secretary and for the Office of Governmental and Public Affairs, this official is the Deputy Assistant Secretary for Governmental and Public Affairs.

(2) Such official may authorize release. However, if such official determines that it would be improper to comply with the demand, the official shall refer it to the agency head. The agency head may authorize release; however, if the agency head concurs with the initial conclusion, the matter shall be referred to the Secretary through the General Counsel for final determination.

(3) If the Secretary determines that the records, material, or information should not be produced, or if no final determination has been made, the employee shall be notified not to produce or disclose the records. The employee who appears in answer to the demand shall respectfully decline to produce or disclose the records, material, or information demanded on the ground that the disclosure is prohibited by this section. The employee shall provide the court or other authority with a copy of this subpart and a copy (when available) of the Secretary's determination, and shall respectfully request the court or other authority to withdraw or stay the demand.

(b)(1) Whenever a demand of the type described in paragraph (a) of this section is made upon an employee of this Department not authorized to make releases pursuant to § 1.14(b), by a court or other authority while he/she is appearing before, or is otherwise in the presence of the court or other authority, the employee, or other appropriate Government official or attorney acting on behalf of the employee, shall (i) immediately inform the court or other authority that this section prohibits the employee from producing or disclosing the information or material demanded and (ii) offer to refer the demand for the prompt consideration of authorized officials, providing the court or other authority a copy of this subpart and respectfully requesting that the demand be stayed pending his/her receipt of appropriate instructions concerning the demand.

(2) If the employee is authorized to make a release pursuant to § 1.14(b), but determines that such release would be improper, the employee shall offer to refer the demand for the prompt consideration of the agency head and/or Secretary and shall otherwise comply with paragraph (b)(1)(ii) of this section.

(c) If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with paragraphs (a) or (b) of this section pending the receipt by the

employee of instructions or directions, or if the court or other authority rules adversely on any assertion made in conformity with the provisions of this subpart, the employee upon whom the demand has been made may tender the records, material, or information demanded with a request they be held in camera until an appeal can be taken from the adverse ruling.

§ 1.19 Records in formal adjudication proceedings.

Records in formal adjudication proceedings are on file in the Hearing Clerk's office, Office of Information Resources Management, U.S. Department of Agriculture, Washington, DC 20250, and shall be made available to the public.

Appendix A—Fee Schedule

Sec. 1. *General.* This schedule sets forth fees to be charged for providing copies of records, including photographic reproductions, microfilm, maps and mosaics, and related services. The fees set forth in this schedule are applicable to all agencies of the Department of Agriculture.

Sec. 2. *Facilities.* Records and related services are available at the locations specified by the agencies in their statements of procedures to facilitate public inspection and copying of their records. Any material offered for sale by the Government Printing Office should be purchased from that source. Departmental agencies will not stock such material for public sale. Agencies do not stock copies of forms and publications or maintain records at any facility which does not require these materials in its operations.

Sec. 3. *Fees for materials and services.* All agencies of the Department shall comply with the fees set forth herein. Any changes or additions to this fee schedule shall be made by amendment to or revision of this schedule.

Sec. 4. *Fees for records and related services.*

a. The fee for photocopies of pages 8½" x 14" or smaller shall be $0.10 for the first copy and $0.10 for each additional copy of the same page.

b. The fee for photocopies larger than 8½" x 14" shall be $0.25 per linear foot of the longest side of the copy.

c. Manual searches will be charged for at the rate of $8.00 per hour for clerical time and $14.60 per hour for supervisory or professional time. Charges will be computed to the nearest quarter hour required for the search. A search may involve both clerical and supervisory or professional time.

d. Other direct costs incurred will be assessed the requester at the actual cost to the Government, e.g., where records are required to be shipped from one office to another by commercial carrier in order to timely answer the request, the actual freight charge will be assessed the requester.

e. Computer services will be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed, except that where commercial time-sharing computer sources are the required search media, the contract rate charged by the commercial source to the Government will be charged. A listing follows showing where those rates are published and the office from which copies may be obtained or at which the rates may be examined.

Fort Collins Computer Center Users Manual: Fort Collins Computer Center, U.S. Department of Agriculture, 3825 East Mulberry Street (P.O. Box 1206), Fort Collins, Colo. 80521.

National Finance Center, Cost, Productivity & Analysis Section, U.S. Department of Agriculture, 13800 Old Gentilly Road, New Orleans, La. 70129.

Kansas City Computer Center Users Manual: Kansas City Computer Center, U.S. Department of Agriculture, 8930 Ward Parkway (P.O. Box 205), Kansas City, Mo. 64141.

Washington Computer Center Users Handbook: Washington Computer Center, U.S. Department of Agriculture, Room S-100, South Building, 12th Street and Independence Avenue, S.W., Washington, D.C. 20250.

St. Louis Computer Center. Charges for the St. Louis Computer Center will be based on actual expenses incurred in performing the search. Address is: St. Louis Computer Center, U.S. Department of Agriculture, 1520 Market Street, St. Louis, Mo. 63103.

f. The fees do not include, and no charge shall be made for, (a) time spent examining records to determine whether an exemption can and should be asserted, (b) time spent deleting exempt matter being withheld from records to be furnished, (c) time spent in resolving legal or policy issues, or (d) time spent in monitoring a requester's inspection of agency records.

g. The fee for Certifications shall be $2.00 each: Authentications under Department Seal (including aerial photographs), $5.00 each.

h. Except as provided in Section 9 below, for services not subject to the Freedom of Information Act and not covered by (g) above, agencies may set their own fees in accordance with applicable law.

i. The fees specified in paragraphs a through f of this Section apply to all requests for services under the Freedom of Information Act, as amended (5 U.S.C. 552), unless no fee is to be charged, or the agency has determined to waive or reduce those fees pursuant to Section 5. No higher fees nor charges in addition to those provided for in this schedule may be charged a party requesting search or duplication services under the Freedom of Information Act.

j. The fees specified in paragraphs g and h of this Section and in Sections 9 through 15 of this schedule apply to requests for services other than those subject to the Freedom of Information Act. The authority for establishment of these fees is at 31 U.S.C. 9701 (formerly 31 U.S.C. 483a) and other applicable laws.

Sec. 5. *Circumstances governing exceptions to the charging of fees for records and related services.* (For photographic reproductions, see Sec. 11 of this Appendix.)

a. *Waiver of fees for records and related services.* Fees may be waived in whole or in part under the following conditions:

(1) Where individual collections are $25.00 or less;

(2) Where the furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country or an international organization;

(3) Where the recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare;

(4) Where the agency determines that payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program involved;

(5) When the furnishing of records and related services is determined by the agency to be in the public interest as primarily benefiting the general public.

(6) In determining whether a fee waiver is appropriate for purposes of paragraph (a)(5) of this Section, an agency should consider the following factors:

(i) Whether there is a genuine public interest in the subject matter of the documents for which a fee waiver or reduction is sought;

(ii) The value to the public of the records themselves;

(iii) Whether the requested information is already available in the public domain;

(iv) The requester's specific qualifications, nature of research, and the purposes for which the requested materials will be used (the identity of a requester is usually not a proper factor to consider in granting or denying access, but should be considered in acting on a request for a fee waiver);

(v) The amount of personal benefit expected to accrue to the requester as the result of disclosure, compared with any discernible public benefit (FOIA fee waiver or reduction is appropriate only where the benefit to the general public is primary).

(7) An agency may, at its discretion, waive or reduce fees associated with a request for disclosure regardless of whether a waiver or reduction has been requested if the agency determines that disclosure will primarily benefit the general public.

b. *Fees not to be charged for records and related services.* Documents shall be furnished without charge under the following conditions:

(1) When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number;

(2) When members of the public provide their own copying equipment, in which case no copying fee will be charged (although search fees may still be assessed);

(3) When any notices, decisions, orders, or other materials are required by law to be served on a party in any proceedings or matter before any Department agency.

c. Where both paragraphs a and b above apply to a matter, paragraph b shall be controlling.

Sec. 6. *Limitations of copies.*

a. Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring

any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

b. Single or multiple copies of transcripts, provided the Department under a reporting service contract, may be obtained from the contractor at a cost not to exceed the cost per page charged to the Department for extra copies. The contractor may add a postage charge when mailing orders to the public but no other charge may be added.

Sec. 7. *Search services.*

a. Search services are services of agency personnel—clerical, supervisory, or professional salary level—used in trying to find the records sought by the requester. They include time spent examining records for the purpose of finding records which are within the scope of the request. They also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

b. Because of the nature of the Department's business and records, the normal location of a record in a file or other facility will not be considered a search. This would be the same as quickly locating a piece of material for purposes of answering a letter or telephone inquiry, and is based on the Department's obligation to respond to requests furnishing a reasonably specific description of the record.

Sec. 8. *Payments of fees and charges.*

a. Payments will be collected to the fullest extent possible in advance or at the time the requested materials are furnished.

b. Payment shall be made by check, draft, or money order payable to the Treasury of the United States, but small amounts may be paid in cash, particularly where services are performed in response to a visit to a Department office.

c. Where the estimated fees to be charged exceed $50.00, a deposit of 50 percent of the estimated amount shall be collected from the requester before any of the requested materials are reproduced.

d. Where a request for records indicates the necessity of an extensive search that could result in a high search cost, the requester should be notified of that fact and of the possibility of an unproductive search. The notification should offer the requester the opportunity to confer with agency personnel to reform the request to meet the needs at a lower fee. When an extensive search still appears necessary, unless the agency determines that the request is in the public interest in accordance with Section 5a(5), it shall inform the requester that no search will be undertaken until an agreement to pay applicable fees is received, including a deposit of 50 percent of the estimated fee where appropriate.

Sec. 9. *Photographic reproduction, microfilm, mosaic and maps.* Reproduction of such aerial or other photographic microfilm, mosaic and maps as have been obtained in connection with the authorized work of the Department may be sold at the estimated cost of furnishing such reproductions as prescribed in this schedule.

Sec. 10. *Agencies which furnish photographic reproductions.*

a. *Aerial photographic reproductions.* The following agencies of the Department furnish aerial photographic reproductions:

Agricultural Stabilization and Conservation Service (ASCS), APFO, USDA-ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

Soil Conservation Service (SCS), USDA, Cartographic Division, Washington, DC 20250, or Cartographic Facility in nearest SCS Technical Service Center.

b. *Other photographic reproductions.* Other types of photographic reproductions may be obtained from the following agencies of the Department:

Agricultural Stabilization and Conservation Service (ASCS) (Address above).

Forest Service (FS), USDA, P.O. Box 2417, Washington, DC 20013, or nearest Forest Service Regional Office.

Office of Governmental and Public Affairs, USDA, Photography Division, Room 4407 South Building, Washington, DC 20250.

Soil Conservation Service, USDA, Information Division, Audio Visual Branch, Washington, DC 20250.

National Agricultural Library, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, Md. 20705.

Sec. 11. *Circumstances under which photographic reproductions may be provided free.* Reproductions may be furnished free at the discretion of the agency, if it determines this action to be in the public interest, to:

a. Press, radio, television, and newsreel representatives for dissemination to the general public.

b. Agencies of State and local governments carrying on a function related to that of the Department when it will help to accomplish an objective of the Department.

c. Cooperators and others furthering agricultural programs. Generally, only one print of each photograph should be provided free.

Sec. 12. *Loans.* Aerial photographic film negatives or reproductions may not be loaned outside the Federal Government.

Sec. 13. *Sales of positive prints under government contracts.* The annual contract for furnishing single and double frame slide film negatives and positive prints to agencies of the Department, County Extension Agents, and others cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

Sec. 14. *Procedure for handling orders.* In order to expedite handling, all orders should contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

Sec. 15. *Reproduction prices.* The prices for reproductions listed here are for the most generally requested items.

a. National Agriculture Library. The following prices are applicable to National Agricultural Library items only: Reproduction of electrostatic, microfilm, and microfiche copy—$3.00 for the first 10 pages or fraction thereof, and $2.00 for each additional 10 pages or fraction thereof. Duplication of NAL-owned microfilm—$10.00 per reel. Duplication of NAL-owned microfiche—$3.00 for the first fiche, and $0.50 for each additional fiche. Magnetic tape containing bibliographic files—$45 per reel. Charges for manual and automated data base searches for bibliographic or other research information will be made in accordance with Section 4, subsections c–e of this fee schedule. The contract rate charged by the commercial source to the National Agricultural Library for computer services is available at the National Agricultural Library, Room 111, Information Access Division, USDA, Beltsville, Maryland 20705 (301–344–3834).

b. General photographic reproductions. Minimum charge $1 per order. An extra charge may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

Class of work and unit	Price
1. Black and white Line Negatives:	
4 by 5 (each)	$6.00
8 by 10 (each)	8.50
11 by 14 (each)	11.00
2. Black and white Continuous Tone Negatives:	
4 by 5 (each)	8.50
8 by 10 (each)	11.00
3. Black and White Enlargements:	
8 by 10 and smaller (each)	6.50
11 by 14 (each)	11.00
Larger sizes and quantities	(1)
4. Black and White Slides:	
2x2 cardboard mounted (from copy negative) (each)	4.00
Blue ozalid slides (each)	5.00
5. Color Slides: (2x2 cardboard mounted) Duplicate color slides:	
Display quality (each)	.65
(Display color slides are slides copies from 35mm color slides only.)	
Repro quality (each)	(1)
Original color slides (from flat copy) (each)	6.50
6. Color Enlargements and Transparencies:	
4 by 5 and larger	(1)
7. Slide Sets:	
1 to 50 frames	14.50
51 to 60 frames	16.50
61 to 75 frames	18.50
76 to 95 frames	21.50
96 to 105 frames	23.00
106 to 130 frames	26.50
(Prices include printed narrative guide.)	
8. Cassettes: (for the corresponding slide sets above)	3.00

(1) By quotation.

c. Aerial photographic reproductions. There is no minimum charge on aerial photography orders. The prices for various types of aerial photographic reproductions are set forth below. Size measurements refer to the approximate size in inches of the paper required to produce the print.

Size	Price each
1. Black-and-white contact prints:	
10x10 Paper	$3.00
10x10 Diapositive (film)	6.00
10x10 Copy Negative	4.00
2. Aerial photo index sheets:	
20x24 RC (Resin coated base) paper	5.00
24x36 Ozalid	4.00
Microfilm (Photo indexes):	
Aperture Cards	1.00
Microfiche	2.00

Size	Price each	
	RC paper	Film positive transparency
3. Black-and-white enlargement (projection prints):		
12x12	$6.00	$12.00
17x17	8.00	14.00
24x24	12.00	20.00
38x38	25.00	35.00

Size	Price each	
	RC color paper	Color film positive transparency
4. Reproductions from color negatives.		
10x10 contact	$5.00	$15.00
12x12 enlargement	20.00	.....
20x20 enlargement	25.00	.....
24x24 enlargement	30.00	.....
38x38 enlargement	45.00	.....

Size	Price each	
	White opaque base color print film	Color film positive transparency
5. Reproductions from color positive transparencies (natural color or color infrared).		
10x10 contact	$8.00	$12.00
12x12 enlargement	25.00	.....
20x20 enlargement	30.00	.....
24x24 enlargement	35.00	.....
38x38 enlargement	50.00	.....

6. Special need. For special needs not covered above, persons desiring aerial photographic reproductions should contact the agencies listed in section 10a or the Departmental aerial photography coordinator, Aerial Photography Field Office, USDA-ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84130.

d. Audio and videotape reproductions. For reproductions of audio or videotapes, requesters must supply their own recording tape, and will be assessed a fee of $20.00 an hour for copying work requested. There is a one-hour minimum charge. Payment is required at the time videotapes or audiotapes are accepted by the requester.

(5 U.S.C. 301; 5 U.S.C. 552; 7 U.S.C. 2244; 31 U.S.C. 9701; and 7 CFR 2.75(a)(6)(xiii).)

Dated: September 4, 1986.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 86-20398 Filed 9-9-86; 8:45 am]

BILLING CODE 3410-13-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

[Rev. 14, Amdt. 12 for Part 121; Rev. 11, Amdt. 6 for Part 123]

Withdrawal of Physical Disaster Loan Authority From SBA

AGENCY: Small Business Administration.

ACTION: Final regulation.

SUMMARY: On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act (Pub. L. 99-272) was enacted (100 Stat. 82) which, among its other purposes, amended the Small Business Act (15 U.S.C. 631 *et seq.*) to withdraw physical disaster loan authority for agricultural enterprises from SBA.

Pub. L. 99-272 § 18006, as amended by Pub. L. 99-349, approved July 2, 1986 (100 Stat. 710) provides that agricultural enterprises shall not be eligible for disaster assistance at SBA in respect of any disaster for which a request for a disaster declaration was submitted by the Governor of the disaster State on or after October 1, 1985. Such disaster victims remain eligible for emergency assistance at the Farmers Home Administration, Department of Agriculture [FmHA]. These final rules implement this statutory requirement.

Another section of Pub. L. 99-272, section 18016, amended the definition of "small-business concern" in section 3(a) of the Small Business Act, 15 U.S.C. 632(a), by adding a proviso that fixed the maximum size of an eligible agricultural enterprise at annual receipts "not in excess of $500,000." Accordingly, another final rule amends Part 121, Small Business Size Regulations, to set the size standard for agricultural production at $500,000 in annual receipts. It should be noted that the new size standard is prospective only, and has no application to disasters occurring before its effective date.

EFFECTIVE DATE: April 8, 1986.

FOR FURTHER INFORMATION CONTACT: Regarding Disaster Loans, Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L Street N.W., Washington, D.C. 20416; telephone (202) 653-6879. Regarding size regulation, Andrew A. Canellas, Director, Size Standards Staff, at the same address; telephone (202) 653-6373.

SUPPLEMENTARY INFORMATION:

Disaster Loans

Above cited section 18006 amended section 18(a) of the Small Business Act [15 U.S.C. 647(a)] by striking therefrom the clauses which exempted agricultural enterprises from that section's general prohibition against the duplication by SBA of the activity of any other department or agency of the Federal Government. A corresponding insertion in section 7(b) makes clear that SBA has no disaster loan authority with respect to agricultural enterprises. These industries are generally eligible for disaster assistance at FmHA. These amendments made agricultural enterprises ineligible for loans to alleviate physical damage, or economic injury resulting from such damage, at SBA. The statute, amended subsequently by Pub. L. 99-349, *supra*, provides that the ineligibility shall begin with disasters for which a disaster declaration was requested on or after October 1, 1985.

Sections 123.17 and 123.40 of SBA regulations are amended herein to reflect the above-described statutory changes. These changes are promulgated in final form pursuant to 5 U.S.C. 553(b)(B) in order to implement the nondiscretionary aspects of the statutory changes affecting the disaster loan program of SBA. Because implementation of these rules is mandated by the statute which became effective on April 7, 1986, notice and public comment on them is impractical and unnecessary.

These regulatory changes will have a significant economic impact on a substantial number of small entities, as they will limit all agricultural enterprises to eligibility at FmHA after April 7, 1986, for disasters occurring on or after October 1, 1985, and for which a declaration was requested on or after that date. As these changes are mandated by Pub. L. 99-272 and Pub. L. 99-349, there is no alternative to their promulgation. There are no reporting, recordkeeping or compliance burdens inherent in these regulations and they do not duplicate or overlap other regulations.

These amendments to Part 123, taken together, do not constitute a major rule for purposes of E.O. 12291. While it is the nature of the disaster program that neither demand nor eligibility can be predicted, we are confident that this rule change will not have an economic effect exceeding $100 million. In the last completed fiscal year (1985) our agricultural disaster loans aggregated $73.2 million. It must also be noted that these amendments do not inhibit agricultural disaster lending by the Federal Government; they merely centralize such lending at FmHA.

Size Regulation

Section 18016 of the above-cited Pub. L. 99–272 enacted a size standard for agricultural enterprises (effective April 8, 1986), by adding a proviso at the end of the first sentence of section 3(a) of the Small Business Act, 15 U.S.C. 632(a), the definition of small-business concern, which deems "an agricultural enterprise . . . a small business concern if it (including its affiliates) has annual receipts not in excess of $500,000." Accordingly, it is necessary to amend the size standard rule, § 121.2, Final Rule Size Standards by SIC Industry, Division A, Agriculture, by setting a maximum annual earnings standard of $500,000. This change is likewise promulgated in final form pursuant to 5 U.S.C. 553(b)(B) for the same reasons as set forth above. This change also will have a significant economic impact on a substantial number of small entities, but here also there is no alternative to its promulgation. This rule change likewise creates no reporting, recordkeeping or compliance burden not presently in existence, and does not duplicate or overlap other regulations. This amendment to Part 121 does not constitute a major rule for purposes of E.O. 12291. While it is not possible to estimate the increase in business loan volume resulting from an increased size standard, our volume for agricultural business loans for recent fiscal years has been as follows: 1982—$6.8 million, 1983—$17.5 million, 1984—$21.7 million. We are therefore confident that the impact of the increased size standard on the economy cannot reach $100 million.

List of Subjects in Parts 121 and 123

Disaster assistance, Loan Programs/business, Small businesses, Standard Industrial Classification Codes.

Disaster Loans

Accordingly, Part 123 of Chapter I of Title 13, Code of Federal Regulations is amended as follows:

PART 123—[AMENDED]

1. The Authority citation is amended by adding at the end thereof before the words "unless otherwise noted":

Authority * * * Pub. L. 99–272, § 18006; Pub. L. 99–349, Amdt. No. 59, * * *.

2. Section 123.17 is revised to read as follows:

§ 123.17 Loans to agricultural enterprises.

"Agricultural enterprises" means those businesses engaged in the production of food and fiber, ranching and raising of livestock, aquaculture, and all other similar farming and agriculture-related industries. An agricultural enterprise is eligible for loan assistance under Subpart B (physical disaster) to repair or replace property other than residences and personal property only if the relevant disaster declaration application was submitted before October 1, 1985, and the applicant is not eligible for emergency loan assistance from Farmers Home Administration (FmHA) at a substantially similar interest rate (for example, because of (a) alien status; (b) being a corporation, partnership or cooperative not primarily engaged in farming; or (c) being owned by an individual who does not operate the farm). Applicants declined by FmHA for reasons other than ineligibility (*e.g.*, unfavorable credit determination, or lack of repayment ability), are not eligible for SBA disaster loan assistance. All agricultural enterprise applicants for such assistance must present a letter of referral from FmHA which specifies the particular reason for ineligibility, provided the loan request is $100,000 or less. See § 123.27 for computation of loss. Agricultural enterprises applying for assistance under Subpart C (economic injury disaster loans—see § 123.40) are eligible, without more, only if the relevant disaster declaration application was submitted before October 1, 1985.

3. Subpart C, Economic Injury Disaster Loans, is amended by revising § 123.40 to read as follows:

Subpart C—Economic Injury Disaster Loans

§ 123.40 Introduction.

Loans to which this subpart applies are available only to small business concerns and small agricultural cooperatives situated in a Disaster Area which have suffered or are likely to suffer substantial economic injury (as defined in § 123.41(a)) as a result of that specific Disaster (see § 123.23). Agricultural enterprises meeting the requirements of § 123.17 of this Part are eligible only if the relevant disaster declaration application was submitted before October 1, 1985. For description of an eligible "small agricultural cooperative" see § 123.41(b)(3). For definition of capitalized terms, see § 123.3.

Further, Part 121 of Chapter I, Title 13 of the Code of Federal Regulations is amended as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR Part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) Small Business Act, (15 U.S.C. 632(a) and 634(b)(6).

§ 121.2 [Amended]

The table at the end of § 121.2 Standard Industrial Classification and Size Standards is amended as to "Major Group 01—Agricultural Production—Crops" by striking the table for said Major Group 01 and substituting therefor:

FINAL RULE SIZE STANDARDS BY SIC INDUSTRY

(See footnotes at end of table)

SIC	Description	Size standards in number of employees or millions of dollars
		Final Rule
Division A—Agriculture		
Major Group 01—Agricultural Production—Crops		
0111-0191	Agricultural Production—Crops	[1] $0.5

[1] Size standards preceded by a dollar sign ($) are in millions of dollars. All others are in number of employees unless specified otherwise.

(Catalog of Federal Domestic Assistance Programs, No. 59.029 Disaster Assistance).

Dated: August 21, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86–20286 Filed 9–9–86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–26–AD; Amdt. 39–5411]

Airworthiness Directive: Sperry SPZ–7000 Digital Automatic Flight Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to the Sperry SPZ–7000 Digital Automatic Flight Control System installed in any helicopter, including, but not limited to, Sikorsky and S.N.I.A.S. helicopters. The existing AD imposes a restriction on use of the Sperry SPZ–7000 Digital Automatic Flight Control System in the instrument landing system (ILS) mode, and includes terminating action for the Sikorsky helicopter. This amendment is needed to provide terminating action for the restriction on the S.N.I.A.S. Model AS–365N helicopter.

EFFECTIVE DATE: September 15, 1986.

ADDRESSES: The applicable service information may be obtained from Sperry Corporation, Aerospace and Marine Group, P.O. Box 29000, Phoenix, Arizona 85038. This information may be examined at the Federal Aviation Administration (FAA), Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Thompson, Aerospace Engineer, Systems & Equipment Section, ANM–173W, FAA, Northwest Mountain Region, Western Aircraft Certification Office; telephone (213) 297–1375. Mailing Address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM–173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend Airworthiness Directive (AD) 85–07–03, which would provide terminating action for a certain operating restriction on S.N.I.A.S. Model AS–365 helicopters, was published in the Federal Register on May 1, 1986 (51 FR 16178). The comment period for the proposal closed June 23, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. Since this amendment relieves a restriction by providing operators with an optional terminating action to certain operating limitations, and imposes no additional burden on any person, the amendment may be made effective in less than 30 days.

It is estimated that five helicopters of U.S. registry will be affected by this AD, that it will take approximately two manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on the U.S. operators is estimated to be $400.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance involved in removing the restriction. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By amending Airworthiness Directive 85–07–03, Amendment 39–5028 (50 FR 13015; April 2, 1985), by revising paragraph B. to read as follows:

B. Installation of FZ–700 computers, Part Number (P/N) 7003138–902 with modification "E" incorporated, on Sikorsky S–76A helicopters; or P/N 7003138–901 with modification "F" incorporated, on S.N.I.A.S. Model AS–365N helicopters; constitutes terminating action for the requirement of paragraph A. of this AD.

All person affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Sperry Corporation, Aerospace and Marine Group, P.O. Box 29000, Phoenix, Arizona 85038. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This amendment becomes effective September 15, 1986.

Issued in Seattle, Washington, on August 27, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–19862 Filed 9–9–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–ANE–36; Amdt. 39–5410]

Airworthiness Directives; Grob Werke GmbH & Co. KG (Burkhart Grob), Model G103 TWIN ASTIR Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) to Grob-Werke GmbH G103 TWIN ASTIR gliders which requires a visual inspection and replacement of the rudder control rear parallel lever. This action was prompted by the determination that the rudder control rear parallel lever can fail from vibrational loads in the rudder control system. This condition, if not corrected, could result in the loss of rudder control.

DATES: Effective September 15, 1986.

Compliance schedule. As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on September 15, 1986.

ADDRESSES: The technical information and modification parts specified in this AD may be obtained from Grob Systems, Inc., Aircraft Division, I–75 and Airport Drive, Bluffton, Ohio 45817. A copy of the technical notes is contained in the Rules Docket, FAA, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts, 08103.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium, Telephone 513.38.30 ext. 2710, or John J. Maher, ANE–172, New York Aircraft Certification Office, Aircraft Certification Division, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, Telephone No. (516) 791–6221.

SUPPLEMENTARY INFORMATION: Grob-Werke GmbH has determined that cracks may develop in the rear parallel lever at the rear pedal support of the rudder control. The manufacturer has

VOL 51 ISS 175 SE 10 1986 UMI

issued Technical Information, TM 315–30, dated Octoberr 1, 1985, which recommends the visual inspection and replacement of the rudder control rear parallel lever on certain serial numbered gliders. The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of Technical Information No. TM 315–30 on gliders operated under the Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Grob Technical Information No. TM 315–30 and the issuance of Airworthiness Directive No. 85–191 Grob by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Grob Technical Information No. TM 315–30 is an unsafe that may exist on other products of the same type design certificated for operation in the United States. Applicability information is provided because not all aircraft serial numbers of the named models are affected by the AD.

Therefore, an AD is being issued to require a visual inspection and replacement of the rudder control system rear parallel lever on certain serial numbered Grob-Werke GmbH Model G103 TWIN ASTIR glides. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Conclusion: The FAA has determined that this regulation is an emergency regulation that is not considered to be major Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

Grob Werke GmbH (Burkhart Grob): Applies to Model G103 TWIN ASTIR gliders serial numbers 3000 through 3291, and 3000–T–1 through 3284–T–44, certified in any category.

Compliance is required as indicated unless already accomplished.

To prevent failure to the rudder control rear parallel lever P/N II 103–4320.05 which could result in loss of rudder control, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 10 hours time-in-service after the last inspection, until compliance with Paragraph (c) is accomplished, visually inspect the rear parallel lever in the area of the left and right boreholes, using a 10 power or greater magnifying glass, for cracks in accordance with Part 1 of the "Instructions" section of Grob Technical Information No. TM 315–30, dated October 1, 1985.

(b) If a cracked lever is found during the inspection required by Paragraph (a) of this AD, before further flight, replace the rear parallel lever with a stronger new parallel lever in accordance with part 2 of the "Instructions" section of Grob Technical Information No. TM 315–30, dated October 1, 1985, and Grob Repair Instruction No. 315–30, dated October 1, 1985.

(c) Within the next 30 hours time-in-service but no later than 60 days after the effective date of this AD, replace any rear parallel lever not replaced in accordance with Paragraph (b) of this AD, with a stronger rear parallel lever in accordance with Part 2 of the "Instructions" section of Grob Technical Information No. TM 315–30, dated October 1, 1985, and Grob Repair "Instructions" No. 315–30, dated October 1, 1985.

Note.—Stronger rear parallel lever does not have a new part number. It can be identified as it is made of stock aluminum, not a casting as the original part.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium, Telephone No. 513.38.30 ext. 2710 or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, Telephone No. 516–791–6680.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Grob Technical Information No. TM 315–30 dated October 1, 1985, and Grob Repair Instruction No. TM 315–30 dated October 1, 1985, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Grob Systems, Inc., Aircraft Division, I–75 and Airport Drive, Bluffton, Ohio 45817. These documents also may be examined at the Office of Regional Counsel, ANE–7, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 86–ANE–36, between the hours of 8:00 am and 4:30 pm; Monday thru Friday, except Federal holidays.

This amendment becomes effective on September 15, 1986.

Issued in Burlington, Massachusetts on August 22, 1986.

Clyde Dehart Jr.,

Acting Director, New England Region.

[FR Doc. 86–20321 Filed 9–9–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–CE–15–AD; Amdt. 39–5412]

Airworthiness Directives; Arctic Aircraft Company Model Interstate S–1B2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment adopts a new Airworthiness Directive (AD), applicable to Arctic Aircraft Company Model Interstate S–1B2 airplanes. It requires that the glide or dive operating airspeed limit (hereinafter referred to as the never-exceed speed) of these

airplanes when operated as landplanes be reduced from its present value of 160 miles per hour to 142 miles per hour. This speed reduction will preclude the possibility of catastrophic flutter by limiting the airplane operation to a speed range with an upper limit too low to excite flutter of the elevators and/or ailerons even when those elevators and/or ailerons have no balance weights installed.

EFFECTIVE DATE: October 12, 1986.

COMPLIANCE: Required within the next 100 hours time-in-service (TIS) or within 31 calendar days after the effective date of this AD, whichever comes first, unless already accomplished.

ADDRESSES: Arctic Aircraft Company Service Bulletin No. 5 dated April 15, 1986, and the FAA Approved Airplane Flight Manual for the Arctic Model Interstate S–1B2 Airplane, Revision 7 dated April 15, 1986 applicable to this AD may be obtained from the Arctic Aircraft Company, P.O. Box 6–141, Anchorage, Alaska 99502, telephone (907) 243–1580; or from the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–15–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Copies of the service bulletin and the airplane flight manual may be inspected at the Rules Docket between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon K. Mandell, Federal Aviation Administration, Aircraft Certification Office, ANM–100A, 701 C Street, Box 14, Anchorage, Alaska 99513; telephone (907) 271–5927.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a reduction of the never-exceed speed of Arctic Interstate S–1B2 airplanes operated as landplanes from its present value of 160 miles per hour to 142 miles per hour, was published in the **Federal Register** on June 23, 1986 (51 FR 22820).

The proposal was prompted by a Malfunction or Defect (M or D) Report and two related Service Difficulty Reports received by the FAA on June 12, 1985, in which the submitter stated that he had discovered the balance weights to be missing from both elevators of an Arctic Model Interstate S–1B2 airplane, when replacing the covering fabric. The reports were forwarded to the FAA Anchorage Aircraft Certification Office (ACO) for further investigation. Upon contacting the Arctic Aircraft Company (hereinafter referred to as the manufacturer), the FAA was informed that several Interstate S–1B2 airplanes had been built without balance weights, as well as without aileron balance weights. These weights are required as part of the approved type design of the Model Interstate S–1B2 airplane, and were deemed essential during the original certification of the landplane version of the airplane, to assure freedom from flutter at all speeds up to and including the never-exceed speed of 160 miles per hour (MPH). The manufacturer incorrectly believed that (1) the weights were not essential to flutter prevention, (2) deletion of the weights had been approved, and (3) no drawing changes showing the deletion of balance weights from the elevators were required. The manufacturer also informed the FAA that all 29 Arctic Interstate S–1B2 airplanes manufactured as of September 1985, had been built without either elevator or aileron balance weights, and claimed that early in the certification program a flight test had been successfully conducted to the maximum design dive airspeed to demonstrate that the skiplane version of the Model Interstate S–1B2 without the balance weights is free from flutter. However, the manufacturer's own Statements of Conformity contradict its contention that the particular test airplane was presented for fight testing with the balance weights removed. The FAA determined, after further investigation, that the manufacturer possessed no data substantiating the deletion of the weights from the Model Interstate S–1B2 type design. During January, 1986 the manufacturer performed a ground vibration survey of a production airplane and determined that the moments and products of inertia of the elevators and ailerons without the balance weights installed, but was unable to show that the Interstate S–1B2 airplane design complies with the flutter prevention criteria of its original certification basis at a never-exceed speed of 160 miles per hour, without the elevator and aileron balance weights installed. The manufacturer was able to show that the Interstate S–1B2 airplane without balance weights complies with the flutter prevention criteria of its original certification basis at a never-exceed speed of 142 MPH and proposed that corrective action consist of a reduction in the never-exceed speed of the Interstate S–1B2 landplane.

Since the condition described herein is likely to exist or develop in other Arctic Model Interstate S–1B2 airplanes of the same design, this AD requires, on all these airplanes, the incorporation of Arctic Aircraft Company Service Bulletin No. 5 which requires: (1) Re-marking the airspeed indicators so that the upper limit of the yellow arc and the location of the red radial line is 142 MPH (123 knots), (2) issuing revised FAA approved Airplane Flight Manuals, and (3) replacing the placards reading "SEAPLANE MANEUVERING SPEED 105 MPH (CAS)" and "SEAPLANE MAXIMUM SPEED 142 MPH (CAS)" with placards reading only "SEAPLANE MANEUVERING SPEED 105 MPH (CAS)".

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The FAA has determined there are approximately 29 airplanes affected by the AD. The cost of complying with the AD is estimated to be $350 per airplane. The total cost is estimated to be $10,150 to the private sector. The cost is so small that compliance with the AD will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the FAR (14 CFR 39.13) is amended as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Arctic Aircraft Company: Applies to Arctic Model Interstate S–1B2 "Tern" (Serial Numbers 1001 through 1029) airplanes certificated in any category. Compliance: Required within the next 100 hours time-in-service (TIS) or within 31 calendar days after

the effective date of this AD, whichever comes first, unless already accomplished.

To preclude the possibility of catastrophic flutter of the ailerons and/or the elevators during flight at high speeds, resulting in possible loss of the airplane, accomplish the following:

(a) Re-mark the airspeed indicator by removing that portion of the yellow arc that presently extends from 142 miles per hour (123 knots) to 160 miles per hour (139 knots), and the red radial line presently located at 160 miles per hour (139 knots), and marking a red radial line located at 142 miles per hour (123 knots).

(b) Replace the existing Airplane Flight Manual (AFM) with the FAA approved Airplane Flight Manual for the Arctic Model Interstate S-1B2 airplane, Revision 7 dated April 15, 1986. If the airplane is currently operated as a seaplane, detach the FAA approved Seaplane Flight Manual Supplement from the existing Airplane Flight Manual and attach it to the new Manual. Also, detach any FAA approved Airplane Flight Manual Supplements, required with currently-installed major alterations, from the existing Airplane Flight Manual and attach them to the new Manual.

(c) Check the airplane's instrument panel to determine if there is a placard reading "SEAPLANE MANEUVERING SPEED 105 MPH (CAS)" and "SEAPLANE MAXIMUM SPEED 142 MPH (CAS)". If so, remove the existing placard and replace it with the placard reading "SEAPLANE MANEUVERING SPEED 105 MPH (CAS)", supplied with Arctic Aircraft Company Service Bulletin No. 5.

(d) Accomplish the actions required in paragraph (a) of this AD at a certificated repair station with a Class 1 instrument rating or an appropriate limited instrument rating. The checks and actions required in paragraphs (b) and (c) of this AD may be accomplished by the owner/operator. Make the entries in the airplane's maintenance records documenting the accomplishment of the inspections, checks and actions required by this AD as prescribed by FAR 91.173.

(e) An equivalent means of compliance with the AD may be used if approved by the Manager, Anchorage Aircraft Certification Office (ANM-100A); FAA; 701 C Street, Box 14; Anchorage, Alaska 99513. All persons affected by this directive may obtain copies of the documents referred to herein upon request to Arctic Aircraft Company, Post Office Box 6-141, Anchorage, Alaska 99502; Telephone (907) 243-1580; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on October 12, 1986.

Issued in Kansas City, Missouri on August 28, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-20319 Filed 9-9-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-32-AD; Amdt. 39-5413]

Airworthiness Directives; Beech Models 65-90; 65-A90; 65-A90-1 (U-21A), (JU-21A), (U-21G), (RU-21A); 65-A90-2 (RU-21B); 65-A90-3 (RU-21C); 65-A90-4 (RU-21H); B90; C90; C90A; E90; F90; H90 (T-44A); 200; B200; 200C; B200C; 200CT; B200CT; 200T; B200T; A200 (C-12A), (C-12C); A200C (UC-12B); A200CT (C-12D), (RC-12D), (RC-12G), (FWC-12D); 300; 1900; and 1900C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Beech Models 65-90; 65-A90; 65-A90-1 (U-21A), (JU-21A), (U-21G), (RU-21A); 65-A90-2 (RU-21B); 65-A90-3 (RU-21C); 56-A90-4 (RU-21H); B90; C90; C90A; E90; F90; H90 (T-44A); 200; B200; 200C; B200C; 200CT; B200CT; 200T; B200T; A200 (C-12A), (C-12C); A200C (UC-12B); A200CT (C-12D), (RC-12D), (RC-12G), (FWC-12D); 300; 1900; and 1900C airplanes. It requires modification of the elevator trim cable system. Beech Aircraft Corporation has received reports of the elevator trim cable becoming partially disengaged from the manual or electric trim cable drum which inhibits movement of the trim tab and increases the elevator control forces. The modification would preclude disengagement of the trim cable and subsequent loss of control of the airplane.

EFFECTIVE DATE: October 15, 1986.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Beechcraft Mandatory Service Bulletin No. 2028, Rev. 11, dated November 1985, applicable to this AD may be obtained from Beechcraft Aero and Aviation Centers, Beech Aircraft Corporation, 9709 East Central, P.O. Box 85, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Dale A. Vassalli, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring installation of a redesigned cable(s) guard on the elevator trim tab control system on certain Beech Model 65-90; 65-A90; 65-A90-1 (U-21A), (JU-21A), (U-21G), (RU-21A); 65-A90-2 (RU-21B); 65-A90-3 (RU-21C); 65-A90-4 (RU-21H); B90; C90; C90A; E90; F90; H90 (T-44A); 200; B200; 200C; B200C; 200CT; B200CT; 200T; B200T; A200 (C-12A), (C-12C); A200C (UC-12B); A200CT (C-12D), (RC-12D), (RC-12G), (FWC-12D); 300; 1900; and 1900C airplanes was published in the **Federal Register** on April 17, 1986 (51 FR 11749). The proposal resulted from reports the manufacturer has received of the elevator trim cable becoming disengaged from the manual and electric trim cable drum which can inhibit movement of the trim tab and increase the elevator control forces. Beech, in its evaluation of the elevator trim system as a result of these reports, determined through ground testing that the trim cable may partially come off its cable drum when the system is operated beyond its stop limits. In addition, Beech determined that the condition could result when the system is operated by the pilot trimming manually, utilizing the optional manually controlled electric elevator trim, or when the trim is activated by an autopilot. Beech also ascertained that the cable guards (2 each) are not consistently preventing the cable from being misplaced or fouled on the cable drum. If the trim cable disengages from the cable drum, the resulting elevator control forces can become excessive thereby resulting in an unsafe condition.

The manufacturers' evaluation substantiated that the system functions properly until the cable stop limits (nose down or up) are exceeded. When the stop limits are exceeded, the cable stretches and the resulting backlash, when force is removed from the cable, could cause the trim cable to get past the cable guard and partially wind off the drum and/or bind between the cable guard and a loop of the cable still on the drum, thereby preventing further movement of the trim tab. With subsequent movement of the elevator trim, the trim indicator may return to a normal range, and there may be no indication to the pilot that the elevator trim tab is in a mistrimmed position.

Since the Notice of Proposed Rulemaking was published in the **Federal Register**, Beech has issued Rev II, dated November 1985, to Beechcraft Mandatory Service Bulletin No. 2028. This revision limits installation of new cable guards on the electric trim actuators to airplanes that are equipped with Beech Aircraft Corporation, P/N 33-524023 and P/N 50-524496 electric trim actuators. Any other Beech Aircraft Corporation Part Number actuator or

autopilot manufacturer actuator will not require a kit for the electric trim actuator. Therefore, the AD references Beechcraft Mandatory Service Bulletin No. 2028, Revision II. Also, since the NPRM was published the FAA has been advised that necessary parts required for the modification will not be immediately available. However, the FAA will proceed with issuance of an AD to require modification of the elevator trim tab control system when the necessary parts are available. In the interval, between the effective date of this AD and the date required for the modification to be completed, the AD will require a mandatory preflight check of the elevator trim tab control system prior to each flight until the modification has been completed.

Beech has issued service instructions for equivalent military airplanes. These military airplanes may be eligible for civil certification under the Type Certificate; therefore, the FAA is listing in the applicability statement of the AD those airplane models and service instructions as appropriate.

Interested persons have been afforded an opportunity to comment on the proposal.

No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted with Beech Mandatory Service Bulletin No. 2028, Revision II, dated November 1985, in lieu of Revision I as referenced in the Notice, including a mandatory pre-flight check of the elevator trim system to be performed until Part III of Service Bulletin is accomplished.

The FAA has determined that this regulation involves 3151 airplanes at a one-time average estimated cost of $700 for each airplane or a total one-time fleet cost of $2,205,700.

The cost of compliance with the proposed AD is so small that it would be necessary that a small entity own four or more of the affected airplanes for there to be a significant financial impact on these entities. Few, it any, small entities will own this many of the affected airplanes.

Therefore, I certify that this action (1) is not a major rule under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained in contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following AD:

Beech Aircraft Corporation: Applies to the following Beech Airplanes certificated in any category:

Model	Serial numbers S/N	Reference service instruction No.
65-90, 65-A90, B90, C90, C90A; E90; F90; 200, B200; 200C, B200C; 200CT, B200CT; 200T, B200T.	LJ-1 thru LJ-1110; LW-1 thru LW-347; LA-2 thru LA-236; BB-2 thru BB-1217; BL-1 thru BL-112 and BL-124; BN-1 thru BN-4; BT-1 thru BT-30.	Beechcraft Mandatory Service Instruction No. 2028, Rev. 11, dated November 1985.
300	FA-1 thru FA-38 and FA-40 thru FA-50.	
1900	UA-1 thru UA-3	
1900C Airliner.	UB-1 thru UB-44	
H90 (T-44A)	LL-1 thru LL-18, LL-20 thru LL-31, LL-33 thru LL-40, LL-42 thru LL-48, and LL-50 thru LL-61.	Beech T-44A Service Instructions No. T-44A-0058.
A200 (C-12A).	BD-1 thru BD-30	Beech C-12 Service Instructions No. C-12-0103.
A200 (C-12C).	BC-1 thru BC-75;	
A200CT (C-12D).	BP-1, BP-22, BP-24 thru BP-39; BP-40 and BP-45.	
A200CT (RC-12D).	GR-1 thru GR-13	
A200CT (RC-12G).	FC-1 thru FC-3	
A200CT (FWC-12D).	BP-7 thru BP-11	
A200C (UC-12B).	BJ-1 thru BJ-66	
65-A90-1 (U-21A).	LM-1 thru LM-63, LM-65, LM-67 thru LM-69, LM-71 thru LM-107, and LM-112 thru LM-124.	Beech U-21 Service Instruction No. U-21-0002.
65-A90-1 (JU-21A).	LM-64, LM-66, LM-70.	
65-A90-1 (U-21G).	LM-125 thru LM-141	
65-A90-1 (RU-21A).	LM-108 thru LM-111	
65-A90-2 (RU-21B).	LS-1 thru LS-3	
65-A90-3 (RU-21C).	LT-1 and LT-2	
65-A90-4 (RU-21H).	LU-1 thru LU-16	

Compliance: Required as indicated after the effective date of this AD, unless previously accomplished.

To preclude improper operation of the elevator trim system, accomplish the following:

(a) Within the next 25 hours time-in-service, perform the following:

(1) Check the operation of the elevator trim system and mark the elevator trim indicator scale in accordance with Part I or Part II of Beech Service Bulletin No. 2028, Rev. II, dated November 1985.

(2) For the Models 65-90, 65-90A, B90, C90, C90A, and E90 airplanes, mark the elevator trim tab push rods in accordance with Part I or Part II of Beech Service Bulletin No. 2028, Rev. II, dated November 1985.

Note.—The following airplanes have been previously marked by the manufacturer per paragraphs (a)(1) and (a)(2) of this AD:

Models C90A (S/N LJ-1077 thru LJ-1110), F90 (S/N LA-223 thru LA-236), B200 (S/N BB-1193 thru BB-1217), B200C (S/N BL-72 thru BL-112 and BL-124), 300 (S/N FA-1, FA-38 and FA-40 thru FA-50), and 1900 (S/N UB-9 thru UB-44).

(3) Place the Elevator Trim System Preflight Check Procedure, shown in Attachment 1 to this AD, in the Limitations Section of the FAA Approved Airplane Flight Manual for the Models 65-90, 65-A90, B90, C90, E90, and 200T/200CT airplanes; and the Limitations Section of the Pilot's Operating Handbook and the FAA Approved Airplane Flight Manual for the Models C90, C90A, F90, 200/200C, B200T, B200CT, 300, and 1900/1900C airplanes.

(b) Prior to March 1, 1987, modify the elevator trim system in accordance with the instructions contained in Beechcraft Service Bulletin No. 2028, Rev. II, Part III, dated November 1985.

(c) The requirements of paragraph (a) of this AD are not required after the modification required by paragraph (b) of this AD is accomplished.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used, if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, 9709 East Central, P.O. Box 85, Wichita, Kansas 67201; or the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on October 15, 1986.

BEST COPY AVAILABLE

Issued in Kansas City, Missouri, on August 29, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

Attachment 1

Operating Limitotion:

The Elevator Trim System Preflight Check procedure, as defined below, must be conducted prior to each flight.

To verify that the elevator trim cable is not fouled or disengaged from the cable drum the following Elevator Trim System Preflight Check is required prior to each flight of the Beech Models 65–90, 65–A90, B90, C90, C90A, E90, F90, 200, B200, 200C, B200C, 200CT, B200CT, 200T, B200T, 300, 1900 and 1900C airplanes:

Cockpit

1. Control Locks—REMOVE.
2. Elevator Trim:

a. All airplanes except 1900/1900C—SET TO "0" UNITS

b. 1900/1900C airplanes—SET TWO UNITS NOSE UP

Caution

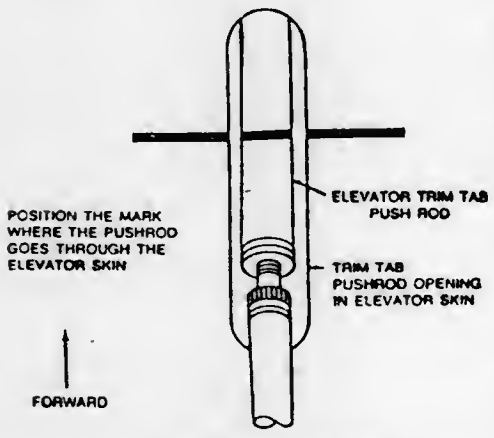
The elevator trim system must not be forced past the limits which are indicated on the elevator trim indicator scale either manually, electrically (except Model 300) or by action of the autopilot (except Model 300).

Toil Section

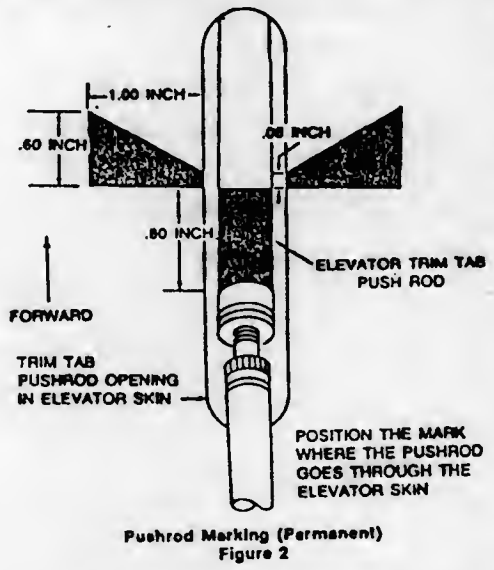
1. Elevator Trim Tab.

a. VERIFY "0" (NEUTRAL) POSITION.

1. On Model 65–90, 65–A90, B90, C90, C90A and E90 airplanes, the elevator trim tab "0" (neutral) position is determined by observing that the alignment marks on the elevator trim tab pushrods align with the alignment marks on the elevator (See Figure 1 or 2 below), when the elevator is resting against the downstops.



Pushrod Marking (Temporary)
Figure 1



Pushrod Marking (Permanent)
Figure 2

2. On F90, 200 Series, 300 and 1900/1900C airplanes, the elevator trim tab "0" (neutral position is determined by observing that the trailing edge of the elevator trim tab aligns with the trailing edge of the elevator, when the elevator is resting against the downstops.

Warning

The above Preflight Inspection check *must* be repeated prior to take-off if the elevator trim is allowed to reach limit travel at any time prior to take-off as a result of MANUAL, ELECTRICAL (except Model 300) OR AUTOPILOT (except Model 300) OPERATION of the trim system.

[FR Doc. 86–20320 Filed 9–9–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

Update of Location of Freedom of Information Act Reference Facilities and Delegation of Initial Denial Authority

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce revises Appendices B and C of its Freedom of Information Act rules. Appendix B contains the names and addresses of the Department's Freedom of Information public facilities. Appendix C lists the officials authorized to make initial denials for Freedom of Information requests.

EFFECTIVE DATE: September 10, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. Geraldine P. LeBoo, U.S. Department of Commerce, Herbert C. Hoover Building, Room 6622, Office of Information Resources Management, Washington, DC 20230 (202) 377–4217.

SUPPLEMENTARY INFORMATION: Appendices B and C are revised to reflect changes, due to redelegation or reorganization, of officials authorized to make initial denials, and changes, due to relocation, of several Freedom of Information public facilities. Since these revisions involve internal agency procedures, the Administrative Procedures Act (5 U.S.C. 553) provisions requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are, inapplicable. Also, this regulation is not significant under Executive Order 12291. This revision does not require a change of burden or imposition of a new burden on the public as defined by the Paperwork Reduction Act of 1980, Public Law 96–511.

The revisions to the Department of Commerce Freedom of Information Act rules, Appendices B and C, are as follows: Revisions to Appendix B are: changes in address and/or telephone number of the public reference facilities within the Bureau of Economic Analysis, Economic Development Administration, International Trade Administration, Minority Business Development Agency, National Oceanic and Atmospheric Administration, National Technical Information Service, and Patent and Trademark Office.

Revisions to Appendix C reflect organizational changes or the selection of different officials with initial denial authority in the following Departmental components: Bureau of Economic Analysis, International Trade Administration, Minority Business Development Agency, National Oceanic and Atmospheric Administration, and National Technical Information Service.

List of Subjects in 15 CFR Part 4

Freedom of information.

For the reasons set out in the Preamble, 15 CFR Part 4 is amended as set forth below.

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 552, 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, unless otherwise voted.

2. Appendix B is revised to read as follows:

Appendix B—Freedom of Information Public Facilities and Addresses for Requests for Records

The following public reference facilities have been established within the Department

of Commerce (a) for the public inspection and copying of materials of particular units of the Department under 5 U.S.C. 552(a)(2), or determined to be available for response to requests made under 5 U.S.C. 552(a)(3); (b) for furnishing information and otherwise assisting the public concerning Departmental operations under the Freedom of Information Act; and (c) as addresses, in some instances, for the receipt and processing of requests for records under 5 U.S.C. 552(a)(3). Units having separate mailing addresses are noted below. Requests should be addressed to the unit which the requestor knows or has reason to believe has possession or control or has primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility.

Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, Room 6628, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, D.C. 20230. Phone (202) 377–4217. This facility serves the Office of the Secretary and all other units of the Department not identified below as explained at Section 15 CFR 4.4(c) and (d).

Bureau of the Census, Freedom of Information Request Control Desk, Room 2428, Federal Building 3, Washington, D.C. 20233.

The Bureau of the Census maintains a separate facility for inspection of (a)(2) records. The location is Room 2455, Federal Building 3, Washington, D.C. 20233.

Bureau of Economic Analysis. Public Reference Facility, Room 1115, Tower Building, 1401 K Street, N.W., Washington, D.C. Mailing Address: Freedom of Information Control Desk, Office of Administration, Office of Economic Affairs, Room 4079 Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Phone (202) 377–5161.

Economic Development Administration, Freedom of Information Records Inspection Facility, Room 7001, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Phone (202) 377–4687. Mailing address of Regional EDA offices:

Philadelphia Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106.

Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 750, 1365 Peachtree Street, N.E., Atlanta, Georgia 30309.

Denver Regional Office, EDA U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 200, 333 West Colfax, Denver, Colorado 80202.

Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 175 West Jackson Boulevard, Suite A–1630, Chicago, Illinois 60604.

Seattle Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 1700 Westlake North, Suite 500, Seattle, Washington 98109.

Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Grant Building, Suite 201 611 East 6th Street, Austin, Texas 78701.

International Trade Administration, Freedom of Information Records Inspection Facility, Room 4102, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Phone (202) 377–3031.

Minority Business Development Agency, Freedom of Information Officer, Room 6273, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Phone (202) 377–8015.

The Minority Business Development Agency maintains a separate facility for public inspection of (a)(2) records. The location is Room 5078B, Herbert C. Hoover Building, Washington, D.C. 20230.

National Bureau of Standards, Freedom of Information Records Inspection Facility, Room E106, Administration Building, Gaithersburg, Maryland. Phone (301) 921–3444. Mailing address: National Bureau of Standards, Freedom of Information Request Control Desk, Room A1105, U.S. Department of Commerce, Washington, D.C. 20234 (Gaithersburg, Maryland).

The National Bureau of Standards maintains a separate facility for public inspection of (a)(2) records. The location is Room E–106 Administration Building, Gaithersburg, Maryland 20899.

National Oceanic and Atmospheric Administration, Public Reference Facility, Room 1111, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

National Technical Information Service, Freedom of Information Records Inspection Facility, 5285 Port Royal Road, Springfield, Virginia 22161, Phone (703) 487–4634.

National Telecommunications and Information Administration, Freedom of Information Request Control Desk, Room 4717, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, N.W., Washington, D.C. 20504. Phone (202) 377–1816.

Patent and Trademark Office, Freedom of Information Records Inspection Facility, Room 12C06, Building 2, Crystal Gateway 2, Arlington, Virginia. Phone (703) 557–4035. Mailing address: Patent and Trademark Office, Freedom of Information Request Control Desk, Box 50, Washington, D.C. 20231.

United States Travel and Tourism Administration, Freedom of Information Request Control Desk, Room 1524, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Phone (202) 377–3811.

3. Appendix C is revised to read as follows:

Appendix C—Officials Authorized To Make Initial Denials of Requests for Records

The following officials of the Department have been delegated authority to initially deny requests for records of their respective units for which they are responsible. (The listings are subject to change because of organizational changes or new delegations. Accordingly, the Chief, Information Management Division, is specifically authorized to amend or revise this Appendix from time to time in order to reflect such changes).

Office of the Secretary:

Office of the Deputy Secretary: Associate Deputy Secretary
Office of Business Liaison: Director
Office of Consumer Affairs: Director
Office of the Assistant Secretary for Congressional and Intergovernmental Affairs: Deputy Assistant Secretary for Congressional Affairs
Office of the Inspector General: Counsel to the Inspector General, Deputy Counsel to the Inspector General
Office of the General Counsel: Deputy General Counsel, Assistant General Counsel for Administration Director, Office of Intelligence Liaison
Office of Public Affairs: Deputy Director
Office of the Under Secretary for Economic Affairs: Administrative Officer

Office of the Assistant Secretary for Administration:

Office of the Administrative Law Judge: Office Manager
Office of Finance and Federal Assistance: Director, Chief, Federal Assistance Division. Chief, Financial Management Division.
Office of Management and Organization: Director
Office of the Director for Planning, Budget and Evaluation: Director
Office of Budget: Director
Office of Program Planning and Evaluation: Director
Office of the Director for Personnel and Civil Rights: Director
Office of Personnel: Director
Office of Personnel Operations: Director
Office of Civil Rights: Director
Office of the Director for Management and Information Systems: Director
Chief, Information Management Division.
Office of the Director for Procurement and Administration Services: Director
Office of Procurement Management: Director
Office of Procurement Operations: Director
Office of Administrative Services Operations: Director
Office of Real Property Programs: Director
Office of Security: Director
Office of Small and Disadvantaged Business Utilization: Director

Bureau of the Census:

Associate Director for Management Services

Bureau of Economic Analysis:

Director

Economic Development Administration:

Chief Counsel
Assistant Chief Counsel
Regional Counsels

International Trade Administration:

International Economic Policy:
Director, Office of Policy Coordination
Director, Office of Multilateral Affairs
Director, Office of Africa
Director, Office of the Near East
Director, Office of South Asia
Director, Office of Western Europe
Director, Office of European Community Affairs
Director, Office of Eastern Europe and Soviet Affairs
Director, Office of South America
Director, Office of Mexico and the Caribbean Basin
Director, Office of Canada
Director, Office of the PRC and Hong Kong
Director, Office of the Pacific Basin
Director, Office of Japan
Trade Development:
Director, Office of World Fairs and International Expositions
Director, Office of Planning and Coordination
Director, Office of Computers and Business Equipment
Director, Office of Microelectronics and Instrumentation
Director, Office of Telecommunications
Director, Office of General Industrial Machinery
Director, Office of Special Industrial Machinery
Director, Office of International Major Projects
Director, Office of Trade and Investment Analysis
Director, Office of Industry Assessment
Director, Office of Trade Finance
Director, Office of Program and Resources Management
Director, Office of Service Industries
Director, Office of Export Trading Company Affairs
Director, Office of Forest Products and Domestic Construction
Director, Office of Metals, Minerals and Commodities
Director, Office of Energy
Director, Office of Chemicals and Allied Products
Director, Office of Automotive Industry Affairs
Director, Office of Consumer Goods
Director, Office of Textiles and Apparel
Deputy Assistant Secretary for Trade Adjustment Assistance
Director, Office of Aerospace Market Development
Director, Office of Aerospace Policy and Analysis
Trade Administration:
Director, Program Review Staff/Export Administration
Director, Office of Technology and Policy Analysis
Director, Office of Foreign Availability
Director, Office of Export Licensing
Director, Office of Industrial Resource Administration
Director, Office of Export Enforcement
Director, Office of Antiboycott Compliance
Director, Foreign Trade Zone Staff
Director, Statutory Import Programs Staff
Director, Office of Compliance
Director, Office of Investigations
Director, Office of Policy
Director, Office of Agreements Compliance
U.S. and Foreign Commercial Service:
Director, Caribbean Basin Business Information Center
Director, Office of Foreign Service Personnel
Deputy Assistant Secretary for Foreign Operations
Director, Office of Planning and Management
Director, Office of Marketing Programs
Director, Office of Information Support Systems
Director, Office of Information Product Development and Distribution
Manager of Export Promotion Services
Deputy Assistant Secretary for Domestic Operations
Administration:
Director, Office of Organization and Management Support
Director, Office of Personnel
Director, Office of Financial Management
Director, Office of Information Resources Management
Deputy Under Secretary for International Trade:
Director, Office of Public Affairs
Director, Congressional Affairs Staff

Minority Business Development Agency:

Assistant Director for Operations

National Bureau of Standards:

Deputy Director of Administration

National Oceanic and Atmospheric Administration:

Administrator
Associate Administrator
Director, Office of Public Affairs
Director, NOAA Corps
Assistant Administrator for Ocean Services and Coastal Zone Management
Assistant Administrator for Fisheries
Assistant Administrator for Weather Service
Assistant Administrator for Environmental Satellite, Data, and Information Service
Assistant Administrator for Oceanic and Atmospheric Research
Director, Environmental Research Laboratories
Director, Office of Administration
Director, National Capital Administrative Support Center
Director, Eastern Administrative Support Center
Director, Central Administrative Support Center
Director, Mountain Administrative Support Center
Director, Western Administrative Support Center

National Technical Information Services:

Director
Associate Director for Administration
Director, Office of Administrative Management
Manager, Management Analysis Division

National Telecommunications and Information Administration:

Deputy Assistant Secretary
Chief Counsel

Patent and Trademark Office:

Solicitor of Patents
Deputy Solicitor of Patents

United States Travel and Tourism Administration:

Under Secretary
Director, Office of Management and Administration

Dated: September 14, 1986.

Jessica J. Rickenbach,

Acting Chief, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-20281 Filed 9-9-86; 8:45 am]
BILLING CODE 3510-CW-M

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15 CFR Part 4b

Privacy Act of 1984, Amendments to Appendices of Privacy Act Rules

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce revises Appendices A, B, and C to its Privacy Act Rules (15 CFR 4b.14). Appendices A and B list Department officials to whom individuals should address requests and appeals. Appendix C lists Government-wide systems of records noticed by other agencies.

EFFECTIVE DATE: September 10, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. Geraldine P. LeBoo, U.S. Department of Commerce, Office of Information Resources Management, Room 6622, Herbert C. Hoover Building, Washington, D.C. 20230 (202) 377-4217.

SUPPLEMENTARY INFORMATION: Revision to Appendices A and B were last published in the **Federal Register** at 47 FR 33680-33681. Since then, changes such as the position title of a Departmental official, redelegations, and internal reorganizations of the Department of Commerce have occurred.

Appendix A entitled "Officials to Receive Inquiries, Requests for Access and Requests for Correction or Amendment," is amended as follows:

i. The designation of Privacy Officer for the Office of the Inspector General and the Economic Development Administration was redelegated to a legal official within those organizations.

ii. An internal reorganization within the National Oceanic and Atmospheric Administration resulted in the redelegation of Privacy Officer to the Director, Office of Administration.

iii. An organizational title change occurred within an entity of the

International Trade Administration having Privacy Officer responsibility.

iv. The position title of the Privacy Officer for the Census Bureau was changed to Associate Director for Management Services.

v. Within the Minority Business Development Agency, the Privacy Officer responsibility was redelegated to the Assistant Director for Operations.

Appendix B, "Officials to Receive Appeals from Adverse Determination on Correction or Amendment," is amended as follows:

i. The Associate Director for Administration within the National Technical Information Service has been delegated as the Privacy Appeals Officer.

Appendix C entitled "Systems of Records Noticed by Other Agencies * * *" is revised to reflect reorganizations, and/or function transfers of applicable government agencies having government-wide systems of records.

The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date do not apply since these revisions of Appendices A and B pertain soley to internal agency management. This regulation is not significant under Executive Order 12291, "Federal Regulations."

List of Subjects in 15 CFR Part 4b

Privacy.

PART 4b—PRIVACY ACT

1. The authority citation for Part 4b continues to read as follows:

Authority: 5 USC 552a.

2. Appendices A, B, and C to Part 4b of Title 15 of the Code of Federal Regulations are revised to read as follows:

Appendix A—Officials To Receive Inquiries, Requests for Access and Requests for Correction or Amendment

For records in systems of records located in [1]—	*Privacy Officer*
The Office of the Secretary and all departmental staff offices	Chief, Information Management Division, Room 6622, Herbert C. Hoover Building, Washington, D.C. 20230.
Office of the Inspector General	Counsel to the Inspector General, Office of the Inspector General, Room 7892, Herbert C. Hoover Building, Washington, D.C. 20230.
Economic Affairs [2]	Privacy Act Officer, Office of Administration, Economic Affairs, Room 4079, Herbert C. Hoover Building, Washington, D.C. 20230.
Bureau of the Census	Associate Director for Management Services, Bureau of the Census, Room 2027, Federal Building 3, Washington, D.C. 20233.
Economic Development Administration	Assistant Chief Counsel, Economic Development Administration, Room 7001, Herbert C. Hoover Building, Washington, D.C. 20230.
International Trade Administration	Privacy Act Officer, Office of Organization and Management Support, International Trade Administration, Room 4102, Herbert C. Hoover Building, Washington, D.C. 20230.
Minority Business Development Agency	Assistant Director for Operations, Minority Business Development Agency, Room 6723, Herbert C. Hoover Building, Washington, D.C. 20230.
National Bureau of Standards	Deputy Director of Administration, National Bureau of Standards, Room A1105, Administration Building, Washington, D.C. 20234.
National Oceanic and Atmospheric Administration	Director, Office of Administration, National Oceanic and Atmospheric Administration, Room 1109, Herbert C. Hoover Building, Washington, D.C. 20230.
National Telecommunications and Information Administration	Director of Administration, National Telecommunications and Information Administration, Room 4717, Herbert C. Hoover Building, Washington, D.C. 20230.
National Technical Information Service	Manager, Management Analysis Division, National Technical Information Service, Room 209, Forbes Building, Springfield, Virginia 22161.
Patent and Trademark Office	Solicitor, Patent and Trademark Office, Room 12C08 Gateway 2, Crystal City, Virginia 20231.
United States Travel and Tourism Administration	Director, Office of Management and Administration, United States Travel and Tourism Administration, Room 1524, Herbert C. Hoover Building, Washington, D.C. 20230.

[1] If the location of the records within the Department is unknown, address the inquiry to the Privacy Officer for the Office of the Secretary.
[2] Economic Affairs includes: Office of the Under Secretary for Economic Affairs; Office of the Assistant Secretary for Productivity, Technology and Innovation; Office of Chief Economist; Office of Strategic Resources; Office of Business Analysis; Bureau of Economic Analysis. The Bureau of the Census, and the National Technical Information Service, which also fall organizationally under Economic Affairs, are listed separately.

Appendix B—Officials To Receive Appeals From Adverse Determination on Correction or Amendment

For records in systems of records located in—	*Privacy Appeals Officer*
The Office of the Secretary and all departmental staff offices	Assistant Secretary for Administration, Room 5830, Herbert C. Hoover Building, Washington, D.C. 20230.
Office of the Inspector General	Inspector General, Room 7898C, Herbert C. Hoover Building, Washington, D.C. 20230.
Economic Affairs	Under Secretary for Economic Affairs, Room 4848, Herbert C. Hoover Building, Washington, D.C. 20230.
Bureau of Economic Analysis	Director, Bureau of Economic Analysis, 1401 K Street, NW., Tower Building, Washington, D.C. 20230.
Bureau of the Census	Director, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

Appendix B—Officials To Receive Appeals From Adverse Determination on Correction or Amendment—Continued

For records in systems of records located in—	*Privacy Appeals Officer*
Economic Development Administration	Assistant Secretary for Economic Development, Room 7800, Herbert C. Hoover Building, Washington, D.C. 20230.
International Trade Administration	Under Secretary for International Trade, Room 3850, Herbert C. Hoover Building, Washington, D.C. 20230.
Minority Business Development Agency	Director, Minority Business Development Agency, Herbert C. Hoover Building, Washington, D.C. 20230.
National Bureau of Standards	Director, National Bureau of Standards, Administration Building, Room A-1134, Washington, D.C. 20234.
National Oceanic and Atmospheric Administration	Administrator, National Oceanic and Atmospheric Administration, Herbert C. Hoover Building, Washington, D.C. 20230.
National Telecommunications and Information Administration	Assistant Secretary for Communications and Information, Room 4898, Herbert C. Hoover Building, Washington, D.C. 20230.
National Technical Information Service	Associate Director for Administration, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.
Patent and Trademark Office	Commissioner, Patent and Trademark Office, Washington, D.C. 20231.
United States Travel and Tourism Administration	Under Secretary for Travel and Tourism, Herbert C. Hoover Building, Washington, D.C. 20230.

Appendix C—Systems of Records Noticed by Other Federal Agencies and Applicable to Records of the Department and Applicability of This Part Thereto

Category of Records	*Other Federal Agency*
Federal Personnel Records	Office of Personnel Management.[1]
Federal Employee Compensation Act Program	Department of Labor.[2]
Equal Employment Opportunity Appeal Complaints	Equal Employment Opportunity Commission.[3]
Formal Complaints/Appeals of Adverse Personnel Actions	Merit Systems Protection Board.[4]

[1] The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.

[2] The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that Department attach at the point of any denial for access or for correction or amendment.

[3] The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.

[4] The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

Dated: September 4, 1986.

Jessica J. Rickenbach,

Acting Chief, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-20315 Filed 9-9-86; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 111, 171, and 178

[T.D. 86-161]

Customs Regulations Amendments Relating to Customs Brokers; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 86-19256, published as T.D. 86-161 on August 26, 1986 (51 FR 30336), Parts 111, 171 and 178, Customs Regulations (19 CFR Parts 111, 171, 178), were extensively revised to implement the statutory changes made by the Trade and Tariff Act of 1984 relating to the regulations of customs brokers. Under the heading "Cancellation, Suspension or Revocation of License" on page 30339 of the **Federal Register**, top of the second column, it states that Customs has drafted guidelines for determining the maximum penalties for certain types of violations by brokers based upon the degree of culpability and seriousness of the violation, and that such guidelines are attached to the document to be incorporated as Appendix C of Part 171, Customs Regulations. However, these guidelines were inadvertently omitted from the document when it was published. Accordingly, this document further revises Part 171 to include the guidelines for the imposition of penalties for violation of 19 U.S.C. 1641, relating to brokers.

EFFECTIVE DATE: September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter or Fred Burns O'Brien, Entry, Licensing and Restricted Merchandise Branch (202-566-5765).

Amendment to The Regulations

Part 171, Customs Regulations (19 CFR Part 171), as amended by T.D. 86-161, published in the **Federal Register** on August 26, 1986 (51 FR 30336), is further amended by adding the following on page 30346 in the third column preceding the amendments to Part 178, Customs Regulations (19 CFR Part 178).

PART 171—[AMENDED]

4. Part 171 is amended by adding Appendix C to read as follows:

Appendix C to Part 171, Customs Regulations—Guidelines for the Imposition of Penalties for Violations of 19 U.S.C. 1641

The Trade and Tariff Act of 1984 promulgated numerous changes to the current statute relating to customs brokers. Pursuant to the revised section 19 U.S.C. 1641, monetary penalties may be assessed against brokers or parties acting as brokers. The language of the new statute does not enumerate specific penalty amounts to be assessed for various transgressions. The following document attempts to define that conduct which is to be proscribed and to suggest penalty amounts to be assessed for such violations.

It should be noted that penalties for a violation or violations of the statute are limited to amounts not to exceed $30,000. EXCEPTION: Penalties incurred under section 1641(b)(6) are limited to $10,000 for each violation. Aggregate penalties under this section are limited to $30,000.

Note.—Unless otherwise noted, the assessment of penalties is an alternative sanction to revocation or suspension of the broker's license. The imposition of these penalties is always done at the discretion of the district director.

Section 1641(b)(6)—Conducting customs business without a license.

A. Customs business, as defined in subsection 1641(a), includes all transactions relating to entry and admissibility of merchandise including classification and valuation and the payment of duties, taxes or other charges assessed or collected by Customs. It also includes transactions relating to refund, rebate or drawback. Customs business does not relate to those transactions relating solely to the exportation or transportation of goods.

B. This section provides for a monetary penalty not to exceed $10,000 to be imposed against "Any person who intentionally transacts customs business, other than solely on the behalf of that person, without holding a valid customs broker's license granted to that person under this subsection . . . ". Separate penalties, each not exceeding $10,000 to a maximum aggregate of $30,000, may be imposed for each transaction occurring in violation of this provision. The $10,000 penalty also may be imposed for each violation of any other provision of section 1641.

C. Penalty amounts to be imposed for transacting customs business without a license are as follows:

1. No penalty action when importation is conducted on behalf of a family member. For purposes of this subsection "family member" is defined as a parent, child, spouse, sibling, grandparent, or grandchild.

2. No penalty action when *all* of the following are evident:

a. First violation
b. One time transaction
c. Non-commercial in nature (goods for personal use of another person other than a family member—not for resale)
d. Violator not remunerated for his action

Note.—A letter of warning should be issued indicating that further like conduct will result in penalty action

3. $250 penalty for:

a. Each repeat violation made under conditions listed above under subsection (2), or
b. First violation when transaction is non-commercial in nature but is conducted on behalf of any business entity (including associations, corporations and partnerships), for example:
i. an importation of office supplies made on behalf of a business entity is a non-commercial importation that would fall under this category of violation because the supplies would be used by business entity and are not for resale
ii. an importation of raw material or parts of merchandise that is to be manufactured, refined, or assembled here before resale would not be a non-commercial entry because the merchandise eventually will be resold, albeit in another form than that which it was entered
c. First violation where the importation is commercial in nature (i.e., imported merchandise is for resale), *or* where the violator is compensated for his action

4. $1,000 penalty for each repeat violation involving:

a. Commercial importation
b. Non-commercial importation made on behalf of a business entity
c. Non-commercial importation for which compensation is received by the violator

5. $10,000 penalty when:

a. Violator falsely holds himself out as being a licensed customs broker
b. A continuing course of conduct can be shown (determined by frequency of violations and/or number of entries involved) which would indicate that the violator is entering merchandise for others on a regular commercial basis

e.g., if the violator has incurred numerous penalties under subsections (2) and (3) above, but the smaller penalties have had no deterrent effect, the $10,000 penalty under this subsection should be assessed in an action separate from those smaller penalties

D. Important: As a general rule, a separate penalty should not be imposed for each unlawful Customs business transaction if numerous transactions occur contemporaneously. For example:

1. If an unlicensed individual files six commercial entries at one time, that should be treated as one violation. It should not be treated as six violations because the entries were presented contemporaneously.

2. However, if evidence exists to indicate that an unlicensed individual is filing numerous entries or is conducting numerous contemporaneous transactions so as to avoid multiple penalties, then the deciding official may, at his discretion, choose to impose multiple penalties.

3. If Customs discovers that an individual has conducted Customs business without a license on numerous occasions, but such individual acted without knowledge of the prohibition on such conduct, those numerous transactions should be treated as one violation for purposes of imposition of any penalty.

E. In no case involving a first violation should mitigation from the imposition of the penalty be granted, unless extraordinary mitigating circumstances can be shown.

F. Mitigation may be granted from penalties arising from a second or subsequent violation. For example, a significant lapse of time between violations would be considered a mitigating factor in the disposition of such penalties.

G. Intent to violate the law is not an element of this violation. Reference to "intentionally transacts customs business" in subsection 1641(b)(6) relates to the intentional transaction of the business itself, not to any intentional attempt to violate the terms of the statute.

Section 1641(d)(1)(A)—Making a false or misleading statement or an omission as to material fact in any application for a license or a permit.

A. If the license would not have been issued but for the false statement, the proper sanction would be suspension or revocation of the license. If the false or misleading statement would not have absolutely resulted in the denial, revocation or suspension of a license, then penalty sanctions are proper.

B. Material facts include but are not limited to:

1. Facts as to identity.
2. Facts as to citizenship status of an individual.
3. Facts as to moral character of an individual which relate to his fitness to conduct Customs business.
4. The organization of any corporation, association, or partnership.
5. The status of the license of a license holder who is a corporate officer or partner.

C. $5,000 penalty for each false statement.

D. Mitigation may be granted in these cases.

Section 1641(d)(1)(B)—Conviction of a broker of certain felonies or misdemeanors subsequent to filing an application for a license.

A. As a general rule, license revocation is the standard sanction for these violations. If monetary penalties are assessed, the following criteria should be used.

B. Unlawful conduct must relate to:

1. Importation or exportation of merchandise.
2. Conduct of customs business (this shall include violations relating to taxes and duties and documents required to be filed with regard to such taxes and duties).
3. For example, relevant convictions would be:

a. 18 U.S.C. 1001—making a false statement to Customs or any other agency with regard to any relevant transaction
b. 18 U.S.C. 545—unlawful importation of merchandise
c. 18 U.S.C. 542—unlawful importation by means of a fraudulent act or omission
d. 22 U.S.C. 2778—illegal exportation of munitions

C. Monetary penalties may not be imposed in connection with convictions relating to conduct described in subsection 1641(d)(1)(B)(iii). Either suspension or revocation is the appropriate penalty for these infractions.

D. $15,000 penalty for each misdemeanor conviction.

E. $30,000 penalty for each felony conviction.

F. Any sanction to be imposed under this subsection must be approved by Headquarters.

Section 1641(d)(1)(C)—Violation of any law enforced by the Customs Service or the rules or regulations issued under any such provision.

A. As a general rule, no penalty will be issued under this subsection when a personal penalty (*not* a claim for liquidated damages) against the violator is provided for by the other law being enforced by Customs.

Exception: If the violation of the other law enforced by Customs is intentional in nature, then penalties may be assessed under this subsection in addition to any sanctions provided by that other law.

VOL 51 ISS 175 SE 10 1986 UMI

e.g., a broker intentionally falsifies entry documents and presents them to Customs. He is found to have committed an intentional fraudulent violation under 19 U.S.C. 1592. He shall be liable for sanctions under this subsection in addition to any 1592 penalties. Had the 1592 violation been found to have resulted because of gross negligence or negligence, penalties pursuant to this subsection should not be imposed.

B. A penalty shall be imposed in situations where the other law violated only moves against property or the violator has demonstrated a continuing course of illegal conduct or evidence exists which indicates repeated violations of other statutes or regulations.

C. If the other law violated moves only against property, the violator shall incur a monetary penalty equal to the domestic value of such property or $30,000, whichever is less. e.g., violations of 22 U.S.C. 401 for unlawful exportation of merchandise result in seizure and forfeiture of the violative merchandise. There are no penalty provisions which Customs enforces against parties responsible for the seizable offense. If brokers are recalcitrant and are constantly responsible for offenses which result in seizure of merchandise, a penalty equal to the domestic value of such merchandise (in no case to exceed $30,000) should be imposed.

D. If the evidence supports the finding of repeated statutory or regulatory violations or the intentional violation of any statute or regulation, penalties in addition to those provided for by the statute or regulation violated should be imposed as follows:

1. First violation involving a finding of a pattern of violations or a finding of an intentional violation—$1,000.

2. Second violation—$5,000 penalty.

3. Third and subsequent violations—$10,000.

E. Mitigation based on negligence standards is appropriate in these types of cases.

F. Examples of violations for which penalties described under subpart D are appropriate.

1. A broker continually submits incomplete entry summaries resulting in a high rejection rate. He incurs numerous claims for liquidated damages for late filing of entry summaries. Rather than revoke his ID privileges and place him on a cash only basis, the option is available to assess monetary penalties pursuant to this section for his continuing course of conduct in violating the Customs Regulations.

2. A broker consistently files entries claiming duty free entry of merchandise under GSP. He does not submit Forms A at the time of filing of the entry summary, relying on his bond assuring production of missing documents. The broker continually fails to submit the forms, resulting in liquidation of the entries as dutiable. Significant delay occurs between the filing of the original entry, payment of duties and liquidation. This consistent failure to comply with the Regulations with regard to filing of missing documents would warrant imposition of penalties under this subsection.

Section 1641(d)(1)(D)—Counseling, commanding, inducing, procuring or knowingly aiding and abetting violations by any other person of any law enforced by the Customs Service.

A. If the law violated by another moves only against property, a monetary penalty equal to the domestic value of such property or $30,000, whichever is less, may be imposed against the broker who counsels, commands, aids or abets such violation.

B. If the law violated provides for only a personal penalty against the actual violator, a penalty may be imposed against the broker in an amount equal to that assessed against the violator, but in no case can the penalty exceed $30,000.

C. All penalties assessed under this subsection may be imposed in addition to any penalties that may be assessed against the broker under the provisions of title 19, United States Code, section 1595a(b).

D. Examples of violations of this subsection:

1. A broker counsels a client that certain gemstones are absolutely free of duty and need not be declared upon entry into the United States. The client arrives in the United States and fails to declare a quantity of gemstones worth $45,000. A penalty of $30,000 may be imposed against the broker for such counseling. The client would incur a personal penalty of $45,000 under the provisions of title 19, United States Code, section 1497, but the penalty against the broker cannot exceed $30,000.

2. A client imports $15,000 worth of merchandise by vessel. The merchandise is unladen at the wharf but Customs has not appraised or released it. The broker informs the client that the merchandise can be moved and delivered to the consignee. The broker assures his client that he will handle all the necessary paperwork. The merchandise is moved from the wharf. The broker is subject to a $15,000 penalty for counseling and inducing his client to violate the provisions of title 19, United States Code, section 1448.

E. All penalties imposed under this subsection are subject to mitigation.

Section 1641(d)(1)(E)—Knowingly employing or continuing to employ any person who has been convicted of a felony, without written approval of such employment from the Secretary of the Treasury.

Ordinarily revocation or suspension of the license would be the appropriate remedy for this violation. Should such sanctions not be pursued then the following penalties should be assessed:

A. $25,000 penalty for knowingly employing any convicted felon without seeking approval for employment.

B. $30,000 penalty for knowingly employing any convicted felon and continuing to employ same after approval has been denied.

C. $5,000 penalty for knowingly employing any convicted felon and failing to make application with the Secretary approving such employment within 30 days of the date of discovery of the felony conviction.

D. Example: If a broker unknowingly employs a convicted felon and 1 year after employment discovers the existence of such a conviction, the following actions would dictate imposition of penalties:

1. He has 30 days to seek approval of the Secretary for such employment. If he seeks the approval within such time, no penalty action would lie.

2. If he seeks approval at some time after 30 days from the date of discovery, at $5,000 penalty would lie.

3. If he does not seek approval until after Customs becomes aware of the violation, a $25,000 penalty would lie.

4. If he seeks approval but is denied, and continues to employ the convicted felon, a $30,000 penalty would lie.

E. Mitigation will only be permitted from the $5,000 penalty.

F. The age of the conviction will not be a factor which would obviate the imposition of any penalty. It will be a factor when considering the grant of approval of employment that would be made by the Secretary.

G. Violation of this section will be *prima facie* evidence of a violation of section 1641(b)(4) relating to responsible supervision of customs business.

Section 1641(d)(1)(F)—In the course of customs business, with intent to defraud, knowingly deceiving, misleading or threatening any client or prospective client.

Ordinarily, revocation or suspension of the license would be the appropriate remedy for this violation. Should such sanctions not be pursued then the following guidelines with regard to assessment of penalties should be followed:

A. An unsubstantiated accusation by a client is inadequate reason to assess any penalty under this section.

B. A $30,000 penalty should be imposed for any violation of this subsection.

C. Inasmuch as evidence of intent must be shown before a penalty can be imposed, no mitigation should be permitted if a violation is found to lie. A petition for mitigation could be entertained only on the issue of whether such violation did, in fact, occur.

Section 1641(b)(5)—The failure of a customs broker that is licensed as a corporation, association or partnership to have, for any continuous period of 120 days, at least one officer of the corporation or association or one member of the partnership validly licensed.

A. Important: Violation of this section results in the revocation of the broker's license by operation of law.

B. A penalty of $10,000 pursuant to section 1641(b)(6) should be imposed because the revocation by operation of law results in the broker conducting Customs business without a license. No penalty liability would be incurred specifically under section 1641(b)(5).

Section 1641(c)(3)—Failure of a customs broker granted a permit to conduct business in a certain district to employ, for a continuous period of 180 days, at least one individual who is licensed within the district or region.

A. Important: Violation of this section results in the revocation of the permit by operation of law.

B. The same parameters should be followed for imposition of penalties under this section as those established under section 1641(b)(5).

C. Important: The new law as it pertains to permits (sections 1641(c)(1)(B) and 1641(c)(2)) does not take effect until October 12, 1987. Penalties or sanctions for violation of this section can only be issued if the violation occurs subsequent to that effective date.

Section 1641(b)(4)—Failure of a licensed broker to exercise responsible suspervision and control over the business it conducts.

A. Standards of responsiblc supervision and control shall be issued by Commissioner of Customs. Regulatory authority to set such standards is provided by new section 1641(f).

B. The following penalty amounts shall be assessed against brokers who fail to exercise responsible supervision and control over business conducted at a district level:

1. A penalty of $1,000 against any broker employing an individual who violates any provision of section 1641. Such violation shall be *prima facie* evidence of a failure to exercise responsible control.

2. A penalty of $5,000 against any broker who, when requested, is unable to produce documents relating to specific Customs business.

3. A penalty of $5,000 against any broker who is unable to satisfy the deciding Customs official that he has a working knowledge of any operation for which he is licensed to do business. Failure to have such working knowlege shall be *prima facie* evidence of a lack of responsible supervision and control. Such working knowledge must include:

a. A working knowledge of all automated systems in use in the district including ABI, where applicable
b. A knowledge of the cash flow procedures in each district of operation
c. Retention of all surety bonds in the proper form and in sufficient dollar amounts
d. Continuous monitoring to ensure timely payment of all obligations including duties, taxes and refunds
e. Knowledge of backgrounds and performance of all employed personnel in the region (failure to perform this function could result in penalties assessed under 1641(d)(1)(E))
f. Knowledge of filing systems and document record storage in each district
g. Knowledge of any other ancillary operation of which the district director has reason to inquire

4. A penalty of $10,000 against any broker who is found to have failed to maintain satisfactory accounting records or records of documents filed with Customs on any matter.

C. Penalties issued in accordance with subsection (B) are subject to mitigation through use of a standard of culpability based on negligence.

D. The following factors shall be indicative of a lack of supervision or lack of working knowledge of Customs procedures (the list is not conclusive):

1. A high rate of entry rejections.
2. A high rate of late filing liquidated damages cases.
3. A high number of missing document cases.
4. An inordinate number of entries for which free entry is claimed, but no documentation supporting such claim is submitted, resulting in liquidation of the entries as dutiable.
5. Inability to assist or failure to cooperate with an audit, including failure to provide all records and any other necessary information to assist auditors.
6. Incurrence of liquidated damages claims which exceed the amount of any term bonds.
7. Evidence to indicate that timely duty refunds to clients are not made and adequate records of same are not kept.
8. Employing a licensed individual for a minimal number of days each 120 or 180-day period (see, sections 1641(b)(5) and 1641(c)(3)) so as to avoid violation of the statute.

a. For purposes of imposition of penalties under this subsection, a minimal number of days shall be 10 working days per each 120-day period or 15 working days per each 180-day period
b. It shall be presumed that temporary employment of such a licensed individual is undertaken solely to avoid revocation of a license or permit. Such minimal employment shall be *prima facie* evidence of lack of supervision

E. The provisions of new section 1641(c)(2) do not take effect until 3 years from the date of enactment of the statute. As such, no penalties imposed in accordance with the preceding subsection (D) of this outline can be assessed until that time.

Monetary penalties are not appropriate for any violation involving the mere failure to file the triennial report as required by new section 1641(g); however, failure to file such a document could result in revocation or suspension of the broker's license.

Notwithstanding any current delegation of authority, authority to impose penalties under 19 U.S.C. 1641 shall be retained by the Commissioner until formal delegation occurs.

Dated: August 29, 1986.

Marvin M. Amernick,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 86-20393 Filed 9-9-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86N-0277]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Editorial Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations by removing certain limitations on the use of an additive as a component of olefin polymers intended to contact food. FDA adopted a final rule removing these limitations in the **Federal Register** of August 29, 1983 (48 FR 39058), but inadvertently included them when it republished the regulation in the **Federal Register** of April 4, 1984 (49 FR 13345). FDA is now correcting that inadvertent error.

DATES: Effective September 10, 1986; objections by October 10, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: FDA recently discovered that the codified version of one of its regulations contains limitations that the agency eliminated several years ago. In a final rule published in the **Federal Register** of August 29, 1983 (48 FR 39058), FDA amended § 178.2010 (21 CFR 178.2010) to remove certain temperature limitations on the use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as a component of olefin polymers intended to contact food. In the **Federal Register** of April 4, 1984 (49 FR 13345), FDA again amended § 178.2010, this time to provide for a new use of this additive as an antioxidant and/or stabilizer in polycarbonate resins complying with 21 CFR 177.1580. However, the April 4, 1984, regulation inadvertently contained the food use limitations that the agency had deleted in the August 29, 1983, final rule. To remedy this situation, FDA is amending § 178.2010 to remove the limitations that were inadvertently reimposed on April 4, 1984.

This final rule is being promulgated under the authority of sections 201 and 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 and 348), which require that the agency consider objections to final rulemaking. The act also requires that FDA propose any changes that it makes on its own initiative in the regulations. However, FDA is dispensing with such notice in

this case because it is not making a substantive change but is merely correcting an inadvertent error.

Any person who will be adversely affected by this regulation may at any time on or before (October 10, 1986) file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010(b) table by revising limitation 1 for "Di-*tert*-butylphenyl phosphonite condensation product with biphenyl" to read as follows. The substance entry in the first column is republished.

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
Di-*tert*-butylphenyl phosphonite condensation product with biphenyl (CAS Reg. No. 38613-77-3) produced by the condensation of 2,4-di-*tert*-butylphenol with the Friedel-Crafts addition product (phosphorus trichloride and biphenyl) so that the food additive has a minimum phosphorus content of 5.4 percent, an acid value not exceeding 10 mg KOH/gm, and a melting range of 85 °C to 110°C (185°F to 320 °F).	For use only: 1. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 1.1, 2.1, 2.2, 3.1, or 3.2.
* * *	* * *

Dated: September 2, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-20325 Filed 9-9-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 331 and 332

[Docket No. 84N-0144]

Antacid and Antiflatulent Drug Products for Over-the-Counter Human Use; Amendment of Monographs; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the monographs for over-the-counter (OTC) antacid and antiflatulent drug products by adding new sections that will exempt certain antacid, antiflatulent, and antacid/antiflatulent combination drug products from that part of the accidental overdose warning required by § 330.1(g) (21 CFR 330.1(g)) that states, "In case of accidental overdose, seek professional assistance or contact a poison control center immediately" (51 FR 27762; August 1, 1986). The docket number appeared incorrectly. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-17181 appearing at page 27762 in the Federal Register of Friday, August 1, 1986, at the top of the first column, "Docket No. 85N-0093" is corrected to read "Docket No. 84N-0144."

Dated: September 2, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-20324 Filed 9-9-86; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300147A/300148A; FRL-3076-5]

Technical Amendments; Definition and Interpretation of Certain Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR 180.1(h) by defining the crop terms "endive" and "peas, peas (dry) and peas (succulent)". The amendments, to clarify and update the relationship between crops' general category definitions and specific commodities under each definition, was submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on September 10, 1986.

ADDRESS: Written objections, identified by the document control number [OPP-300147A/300148A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Jack Housenger, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:

Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: The EPA issued notices of proposed rulemaking, published in the Federal Register of June 11, 1986, which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted requests to EPA on behalf of Dr. Robert H. Kupelian, National Director and the IR-4 Technical Committee, requesting that the Agency, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose

that 40 CFR 180.1(h) be amended by adding: (1) The general crop category "endive" to column A and the specific raw agricultural commodities "endive, escarole" to column B (51 FR 21186); and (2) the general categories, "peas, peas (dry) and peas (succulent)" to column A and the specific raw agricultural commodities *Cajanus cajan* (includes pigeon peas); *Cicer* spp (includes chick peas and garbanzo beans); *Pisum* spp (includes dwarf peas, garden peas, green peas, English peas, field peas, and edible pod peas) to column B (51 FR 21187).

As stated in the proposed rule, IR–4 supports the amendment in the case of endive in that (1) endive and escarole are of the same species, *Cichorium endivia;* (2) both are listed in the crop group "leafy vegetables (except *Brassica* vegetables)" in 40 CFR 180.34(f)(9)(iv) as "endive (escarole)"; and (3) the growth habits and cultural practices for endive and escarole are similar.

In the case of peas, IR–4 pointed out that (1) "peas" should be precisely defined, as follows: *Cajanus cajan* (includes pigeon peas); *Cicer* spp (includes chick peas and garbanzo beans); *Pisum* spp (includes dwarf peas, garden peas, green peas, English peas, field peas and edible pod peas)"; (2) chick peas and garbanzo beans would be classified in both the bean and pea categories and would receive dual, i.e., pea and bean, classification; and (3) the plants are similar in growth habits, and their cultural practices are similar.

There were no comments or requests for referral to an advisory committee received in response to the proposed rules.

Based on the information considered, the Agency concludes that the amendments will protect the public health. Therefore, 40 CFR 180.1(h) is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objectives. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 27, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1(h) is amended by alphabetically inserting "endive" and "pea, peas (dry) and peas (succulent)" in column A and adding the specific raw agricultural commodity definitions in the corresponding column B to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
Endive	Endive, escarole.
Peas	*Cajanus cajan* (includes pigeon peas); *Cicer* spp (includes chick peas and garbanzo beans); *Pisum* spp (includes dwarf peas, garden peas, green peas, English peas, field peas, and edible pod peas). [Note: A variety of pesticide tolerances have been previously established for peas and/or beans. Chick peas/garbanzo beans are now classified in both the bean and the pea categories. For garbanzo beans/chick peas, ONLY the highest established pea or bean tolerance will apply to pesticide residues found on this commodity.]
Peas (dry)	All peas in dry form only.
Peas (succulent)	All peas in succulent form only.

[FR Doc. 86–20258 Filed 9–9–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–378; RM–4978]

Radio Broadcasting Services; Sturgeon Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allots FM Class C2 Channel 259 as a substitute for Channel 261A at Sturgeon Bay, Wisconsin and modifies the license of Station WSBW(FM) (Channel 261A) to specify operation on channel 259C2. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–378, adopted August 8, 1986, and released September 3, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202, the table of allotments is amended, under Wisconsin, by revising Channel 261A to 259C2 for Sturgeon Bay.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–20351 Filed 9–9–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86–31, RM–5173]

Radio Broadcasting Services; Lahoma, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 239A to Lahoma, Oklahoma, as the community's first local FM service, at the request of Donna Clark. The channel can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site

VOL 51 ISS 175 SE 10 1986 UMI

restriction. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 6, 1986. The period for filing applications will open on October 7, 1986, and close on November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–31, adopted August 22, 1986, and released August 29, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202, paragraph (b), the table of allotments is amended by adding Lahoma, Oklahoma, Channel 239A.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–20350 Filed 9–9–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 50694–5094]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of commercial fishery opening.

SUMMARY: NOAA issues this notice opening the fishery conservation zone (FCZ) off Southeastern Alaska to commercial fishing for chinook salmon. This action is necessary to allow fishermen more time to harvest the number of chinook salmon authorized by the Pacific Salmon Commission. This action is a conservation and management measure intended to fully utilize the chinook salmon resources available.

DATES: Effective 0001 hours Alaska Daylight Time (ADT), September 1, 1986, through 2400 hours ADT on September 20, 1986. Public comments on this notice are invited until September 20, 1986.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the comment period, the data upon which this notice is based will be available for public inspection during business hours (0800 to 1630 ADT, Monday through Friday) at the NMFS Alaska Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Chief, Fisheries Management Division, NMFS), 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the FCZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

In March 1986, the Pacific Salmon Commission limited the 1986 chinook salmon harvest by all fisheries in Southeastern Alaska to 254,000 fish, exclusive of the harvest of chinook salmon resulting from Alaska' s new enhancement activities. A final rule announcing this limit and setting the 1986 base fishing periods for salmon was published on July 21, 1986 (51 FR 26159). The commercial salmon fishery in the FCZ began on June 20, 1986.

On July 9, 1986, the Secretary of Commerce (Secretary) closed a small area of the FCZ to commercial salmon fishing (51 FR 25528, July 15, 1986) to slow the rate at which chinook salmon were being harvested so that the number harvested did not exceed the limit imposed by the Pacific Salmon Commission. The notice stated that if the actual number of chinook salmon harvested fell considerably short of the limit before the season ended on September 20, 1986, then NMFS might reopen the closed area to allow the troll fishery to harvest the remainder of its quota.

On July 30, 1986, the Secretary closed an area between Cape Cross and Cape Fairweather to all commercial salmon fishing to protect coho salmon returning to the northern inside areas of Southeastern Alaska (51 FR 27860, August 4, 1986).

On August 11, 1986, NOAA closed the entire FCZ to all commercial salmon fishing for 10 days (51 FR 29107, August 14, 1986). This closure was intended to allow coho salmon to escape the ocean and coastal fishery so they could move to inside waters and the spawning grounds.

As of August 20, 1986, the estimated harvest of chinook salmon in Southeastern Alaska by all fisheries amounted to 211,000, exclusive of the harvest of 9,000 chinook salmon from Alaska's new enhancement facilities. Thus, the 211,000 harvest of chinook salmon as of August 20 fell short of the 254,000 chinook salmon limit set by the Pacific Salmon Commission by approximately 43,000 chinook salmon. Because a substantial number of chinook salmon remained available for harvest, the Secretary reopened the troll fishing season for chinook salmon for 6 days from August 21 until August 26 (51 FR 30365, August 26, 1986).

Analyses of catches from the 6-day period between August 21 and 26 show a marked decrease in catch rate of chinook salmon. Alaska Department of Fish and Game salmon managers now estimate that 15,000 to 20,000 chinook salmon remain to be caught under the Pacific salmon treaty provisions. Therefore, the Secretary is again opening the FCZ off Southeastern Alaska to commercial fishing for chinook salmon until the scheduled end of the commercial salmon fishing season on September 20, 1986, or until the 254,000 plus hatchery add-on chinook salmon quota is achieved, whichever occurs first.

Regulations implementing the FMP at § 674.23(a) provide that the Secretary may modify the time and area limitations governing the fishery whenever such modification is based upon a determination by the NMFS Director, Alaska Region (Regional Director) that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP and this difference reasonably requires a modification of time or an area limitation if salmon of any species are to be adequately conserved and managed. In making this determination, the Regional Director may consider any of the following factors:

(a) The effect of overall fishing effort within any part of the management area;

(b) Catch-per-unit-of-effort and rate of harvest;

(c) Relative abundance of salmon stocks within the management area;

(d) Condition of salmon stocks throughout their ranges; and

(e) Any other factors relevant to the conservation of salmon.

Having reviewed the evidence of the 1986 harvest of chinook salmon, the Secretary has determined that the effect of overall fishing effort in the FCZ, the catch-per-unit-of-effort, the high rate of harvest, and the relative abundance of chinook stocks within the FCZ portion of the management area indicate that the condition of chinook stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of time or area limitations if chinook stocks are to be conserved and managed adequately. Therefore, the Secretary is implementing reopening of the chinook fishery as prescribed by this action.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the chinook harvest in Southeastern Alaska will fall short of the Pacific Salmon Treaty limit unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c).

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 5, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20327 Filed 9-5-86; 10:27 am]

BILLING CODE 3510-22-M

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50 CFR Part 683

[Docket No. 60583-6128]

Western Pacific Bottomfish and Seamount Groundfish Fisheries; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects paragraph designations in the regulatory text of the final rule implementing the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region which was published July 31, 1986, 51 FR 27413.

FOR FURTHER INFORMATION CONTACT: William B. Jackson, Fisheries Management Officer, NMFS, 202-673-5315.

Dated: September 5, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

The following corrections are made in FR Doc. 86-17211 appearing on page 27418 in the issue of July 31, 1986:

§ 683.9 [Corrected]

In § 683.9 on page 27418, column 1, paragraphs "(d)" through "(h)" are correctly designated "(e)" through "(i)" respectively.

[FR Doc. 86-20381 Filed 9-9-86; 8:45 am]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 51, No. 175
Wednesday, September 10, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Amendment to the Weight Adjustment (Moisture) System for Certain Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on an amendment to the weight adjustment (moisture) system for certain seedless raisins. Currently, producers who deliver raisins to handlers with moisture levels between 10.0 and 13.9 percent moisture receive a weight credit (bonus tonnage) for such raisins. This action would allow producers to also receive a weight credit for raisins delivered below the 10 percent moisture level, thereby receiving a larger payment for those raisins. This proposal was unanimously recommended by the Raisin Administrative Committee, which works with the USDA in administering the marketing order.

DATE: Comments must be received by September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447–5697.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 23 handlers of California raisins under the marketing order for raisins produced from grapes grown in California will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. This action would lower the minimum moisture level allowable for producers to reveive a weight credit under the weight adjustment system for Natural (sundried) Seedless and Monukka raisins. Producers are paid for their raisins by weight, so a weight credit increases their returns and encourages the delivery of additional low moisture raisins. Handlers will benefit from this proposed regulation since more low moisture raisins are expected to be delivered. The Committee believes that new processing technology and improved blending of raisins have reduced the problems of processing and packing lower moisture raisins.

The weight adjustment (moisture) system was established on August 28, 1985, (50 FR 35769) to encourage raisin producers to deliver lower moisture Natural (sun-dried) Seedless and Monukka raisins to handlers (i.e., in the 10 to 14 percent moisture range). The industry has found that higher maturity raisins of these varietal types with a moisture level in excess of 14 percent tend to sugar if held in storage for extended periods of time. Sugaring is an undesirable characteristics because the raisins feel gritty, rather than soft and pliable, when eaten. Increasing the storage life of raisins is important to the industry because of the industry's current oversupply situation and the potential for continued levels of overproduction in the immediate future. This situation has resulted in raisins being held for longer periods of time in the industry's reserve pools.

Under the current system, growers delivering lots of raisins to handlers containing 14.1 through 16.0 percent moisture receive a weight dockage, whereas growers delivering raisins with 12.1 through 13.9 percent moisture receive a weight credit of 2 pounds of raisins per ton for each 1/10 percent moisture under 14.0 percent. Raisins with a moisture percentage of 10.0 through 12.0 percent receive a weight credit for 40 pounds per ton.

The Committee has recommended that the minimum allowable percentage (10.0 percent) to obtain a weight credit be eliminated. Currently, producers who deliver raisins below the 10.0 percent moisture receive no such weight credit. This change would allow producers to also receive a weight credit for raisins delivered below the 10.0 percent moisture level. Therefore, raisin deliveries with a moisture level of 12.0 percent or lower would receive a weight credit of 40 pounds per ton.

Comments on this proposal will be accepted until September 25, 1986. A 15-day comment period is considered adequate because the final rule should be issued prior to deliveries of the 1986–87 raisin crop in order to allow producers to plan accordingly. Deliveries of raisins usually begin in mid-September.

This proposed rule is issued under Marketing Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins.

PART 989—[AMENDED]

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.211, paragraphs (a) and (c) would be revised to read as follows:

Subpart—Supplementary Regulations

§ 989.211 Weight adjustment (moisture) system.

(a) *General.* Natural (sun-dried) Seedless, and Monukka raisins containing from 14.1 percent through 16.0 percent moisture or 13.9 percent or lower moisture may be acquired by a handler under a weight adjustment system. The creditable weight of each lot of raisins acquired under this adjustment system shall be obtained by multiplying the net weight of the raisins in the lot by the applicable factor prescribed in paragraphs (b) or (c) of this section.

(b) * * *

(c) *Adjustment table for Natural (sun-dried) Seedless and Monukka raisins with 13.9 percent moisture or lower:*

Percent moisture	Adjustment factor
14.0	1.000
13.9	1.001
13.8	1.002
13.7	1.003
13.6	1.004
13.5	1.005
13.4	1.006
13.3	1.007
13.2	1.008
13.1	1.009
13.0	1.010
12.9	1.011
12.8	1.012
12.7	1.013
12.6	1.014
12.5	1.015
12.4	1.016
12.3	1.017
12.2	1.018
12.1	1.019
12.0—or lower	1.020

Note.—No adjustment for deliveries at 14 percent moisture.

Dated: September 4, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86–20331 Filed 9–9–86; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

Uranium Mill Tailings Regulations; Extension of Comment Period for Ground-water Protection and Other Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 8, 1986 (51 FR 24697), the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule to amend its regulations governing the disposal of uranium mill tailings. The proposed changes are intended to incorporate into existing NRC regulations the ground-water protection regulations published by the Environmental Protection Agency for these wastes. The comment period for this proposed rule was to have expired on September 8, 1986. The American Mining Congress has requested a 60-day extension of the comment period to allow the results of its workshop held on August 26 and 27 to be factored into its comments. In view of the complexity and importance of the proposed rule and the desire of the Commission to allow all parties to fully express their views, the NRC has decided to extend the comment period as requested. The extended comment period now expires on Friday, November 7, 1986.

DATES: The comment period has been extended and now expires November 7, 1986. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Fonner, Office of the General Counsel, on (301) 492–8692, or Kitty S. Dragonette, Division of Waste Management on (301) 427–4300, U.S. Nuclear Regulatory Commission, Washington, DC. 20555.

Dated at Washington, DC. this 5th day of September, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary to the Commission.

[FR Doc. 86–20372 Filed 9–9–86; 8:45 am]

BILLING CODE 7550-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3077-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at one facility from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste line. The effect of this action, if promulgated, would be to exclude certain wastes generated at one particular facility from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated the petition which is discussed in today's notice. Based on our review at that time, this petitioner was granted a temporary exclusion. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition for which we propose to grant an exclusion has been evaluated both for the factors for which the wastes were originally listed, as well as all other factors and toxicants which might reasonably cause the wastes to be hazardous.

DATES: EPA will accept public comments on this proposed exclusion until October 10, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed exclusion by filing a request with Bruce R. Weddle, whose address appears below, by September 25, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent

VOL 51 ISS 175 SE 10 1986 UMI

to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests for a hearing should be addressed to Bruce R. Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Communications should identify the regulatory docket number: "F-86-GCPE-FFFFF".

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement) Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) That the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate the bioaccumulate, their presistence in the environment once released from the waste, plausible types of management of

the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted at the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilutation of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petition discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a final exclusion. Thus, a final exclusion will not be granted for the petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusion published today involves the following petitioners:

General Cable, Muncie, Indiana.

I. General Cable Company

A. Petition for Exclusion

General Cable Company, Indiana Steel and Wire Division (General Cable), operates a steel wire finishing facility in Muncie, Indiana. General Cable has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Wastes Nos. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) Tin plating on carbon steel; (3) Zinc plating (segregated basis) on carbon steel; (4) Aluminum or zinc-aluminum plating on carbon steel; (5) Cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) Chemical etching and milling of aluminum; and K062—Spent pickle liquor from steel finishing operations.[3] The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed), while the listed constituents for EPA Hazardous Waste No. K062 are hexavalent chromium and lead.

Based on the Agency's original review of the petition, General Cable was granted a temporary exclusion on December 16, 1981 (see 46 FR 61277). The basis for granting the temporary exclusion (at that time) was the low levels of the constituents of concern—namely, cadmium, hexavalent chromium, lead, nickel, and complexed cyanides. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was originally listed, if the Agency has a reasonable basis to believe that such factors are present and could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated General Cable's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) Evaluate the waste for other factors (other than those for which the waste was listed) to determine if the waste is non-hazardous. Today's notice is the result of our re-evaluation of the petition.

In support of their petition, General Cable has submitted a detailed description of its manufacturing and wastewater treatment processes (including schematic diagrams); total constituent analysis and EP toxicity test results of the sludge for cadmium, total chromium, nickel, and lead; and total constituent analyses and distilled water leach test results for cyanide. General Cable also has submitted results from total constituent and EP toxicity tests of the sludge for arsenic, barium, mercury, selenium, and silver; reactive sulfides analysis and total oil and grease analysis on representative waste samples. General Cable further submitted a list of raw materials used in the manufacturing process, and material

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[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] General Cable petitioned the Agency to exclude both their wastewater treatment sludge and their clarifier supernatant. This proposed exclusion applies only to the wastewater treatment sludges and not to the clarifier supernatant.

safety data sheets on all chemicals that may contribute to the waste stream being petitioned for exclusion. As noted above, the Agency requested much of this information to determine whether hazardous constituents, other than those for which the waste was listed originally, are present in the waste at levels of regulatory concern.

General Cable operates a steel wire finishing facility. The production processes which contribute process waters to the treatment system include sulfuric acid pickling, muriatic acid cleaning, copper fluoboric acid plating, lead fluoboric acid plating, and ammoniacal zinc chloride plating of steel wire. In addition, non-process wastewaters, including blowdown from intake water strainers, boilers, hot lime softeners, and non-contact cooling waters, are processed through the treatment system.

General Cable's wastewater treatment system includes lime neutralization, aeration, flocculation, and clarification. The sludge is produced continuously; however, it is only removed from the clarifier on the average of three 8-hour periods per week. During the rest of the time, the clarifier sweep arms provide some mixing of the sludge. The settled solids are then pumped to a centrifuge for dewatering. A non-ionic polymer is added at the centrifuge and the dewatered sludge is shipped offsite to the secure section of the Adam Center Landfill, Fort Wayne, Indiana under a letter of approval from the Indiana State Board of Health. The effluent from the clarifier (*i.e.*, the supernatant) flows to a finishing pond. General Cable claims that cadmium and nickel are not used in the pickling and electroplating processes. General Cable also claims that although cyanide is used in the copper plating lines, the cyanide-bearing wastes are segregated from the wastewater treatment system and are discharged to the Muncie municipal publicly owned treatment works. General Cable also maintains that the constituents of concern are present in the waste in an essentially immobile form, after passage through the wastewater treatment system. General Cable also claims that the wastes are not hazardous for any other reason.

Eight sludge samples were collected from the centrifuge for constituent analysis. Four of these samples were collected in January 1981 and submitted with General Cable's original petition for exclusion dated May 20, 1981. A second set of four sludge samples was collected in November 1984 and submitted with General Cable's supplemental petition of January 23, 1985. General Cable claims that the samples were collected over a period of time when all the non-continuous, concentrated process waste streams were dumped as a result of normal operations. In this way, the maximum concentrations of constituents of regulatory concern which might occur in the wastes as a result of such dumps would be observed. General Cable further claims that the use of raw materials does not vary over time. General Cable claims, therefore, that the samples collected and analyzed adequately characterize the variability of the wastes.

Total constituent and leachate analyses of the sludge for the listed constituents of concern revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CENTRIFUGED SLUDGE CONCENTRATIONS (PPM)

Listed constituents	Total constituent analyses	Leachate analyses
Cadmium	<1.1	<0.01
Chromium	160	0.06
Nickel	60	0.24
Lead	2,000	0.38
Cyanide	1.8	<0.005

Total constituent and EP toxicity analyses for the non-listed metals revealed the maximum concentrations in the sludge reported in Table 2.

TABLE 2.—MAXIMUM SLUDGE CONCENTRATIONS (PPM)

Non-listed constituents	Total constituent analyses	EP Leachate analyses
Arsenic	3.0	0.023
Barium	200	1.8
Mercury	1.9	0.003
Selenium	2.0	0.020
Silver	3.0	0.08

Reported values for total oil and grease were less than 0.015 percent for the sludge. General Cable also analyzed their wastes for reactive sulfides; the maximum concentration in the sludge was 2 ppm. General Cable also submitted a list of raw materials and material safety data sheets for all raw materials used in the process which reasonably might enter the waste stream petitioned for exclusion. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of these constituents is highly unlikely. General Cable provided test data indicating that the waste is not ignitable or corrosive. General Cable claims that the maximum volume of sludge genrated from its centrifuge, at approximately 30 percent solids content, is 2,000 cubic yards per year.[4]

B. Agency Analysis and Action

General Cable has demonstrated that its wastewater treatment system produces a non-hazardous sludge. The Agency believes that the samples of the sludge collected from the centrifuge were non-biased and adequately reflect any variation which may occur in the wastestream petitioned for exclusion. The key factor which could vary constituent concentrations in the continuously generated waste would be the use of different raw materials due to changes in the product line being manufactured. Variations in raw materials can be expected when a facility either performs as a job shop or changes its product line on a seasonal basis. Since this facility does not perform as a job shop or have seasonal variations, the Agency believes that General Cable's claim of uniformity in manufacturing and treatment process is substantiated. Also, the mixing of the sludge with the sweep arms of the clarifier helps to minimize any fluctuations in the sludge composition which might occur. The samples, therefore, are believed to be representative of the maximum levels of hazardous constituents expected to be present in the dewatered sludge from the full array of raw materials used by General Cable.

The Agency has evaluated the mobility of the hazardous constituents from General Cable's waste using the vertical and horizontal spread (VHS) model.[5] Using the 2,000 cubic yards of centrifuge sludge generated annually, and the maximum reported extract levels as input to the VHS model, the Agency generated the compliance point concentrations presented in Table 5.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION

Listed constituents	Centrifuge sludge (ppm)	Regulatory standards (ppm)
Cadmium	<0.0013	0.01
Chromium	0.008	0.05
Nickel	0.027	0.35
Lead	0.049	0.05
Cyanide	<0.0006	0.2

[4] General Cable claims that the maximum volume of sludge generated in 1985 was 620 cubic yards per year. The Agency intends, however, to consider the maximum as 2,000 cubic yards because sludge generation may resume to previous volumes.

[5] See 50 FR 7882, Appendix I, February 26, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48886, Appendix, November 27, 1985.

The dewatered sludge exhibited cadmium, chromium, and lead levels (at the compliance point) less than the National Interim Primary Drinking Water Standards. The predicted maximum nickel value is also less than the Agency's interim health-based standard;[6] and cyanide levels are less than the U.S. Public Health Service's suggested drinking water standard [7] (*i.e.*, if all the cyanide were to leach, even in a single concentrated slug, it would not exceed the regulatory standard for cyanide). In addition, the cyanide content is not considered to pose any hazards from an atmospheric exposure route since it is less than the air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).[8] These constituents, therefore, are not of regulatory concern.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION

Non-listed constituents	Centrifuge sludge (ppm)	Regulatory standards (ppm)
Arsenic	0.0026	0.05
Barium	0.20	1.0
Mercury	0.0004	0.002
Selenium	0.002	0.01
Silver	0.009	0.05

Sulfide concentrations in the sludge were less than 10 ppm which is below the threshold limit value for hydrogen sulfide in workplace air [9] and below the Agency's level of concern for reactive sulfide.[10] The Agency also has concluded that no organic hazardous constituents are present in the sludge at levels of regulatory concern. This conclusions is based on a review of the raw materials used by General Cable in their manufacturing process.

[6] The Agency previously used 632 ppb as the regulatory standard for nickel. Pending the completion of current EPA studies on the health effects of nickel, the Agency is using 350 ppb for the purpose of evaluating delisting petitions. The basis for this standard is explained in 50 FR 20239–48, May 15, 1985.

[7] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

[8] See *Documentotion of the Threshold Limit Values for Substances in Workroom Air;* American Conference of Governmental Industrial Hygienists; Third Edition, 1971, Cincinnati, Ohio.

[9] The calculations are available from the public docket for this notice.

[10] Memo for Eileen Claussen, Director of the Characterization and Assessment Branch to Solid Waste Branch Chiefs, Regions I to X, on The Agency's Interim Threshold for Toxic Gas Generation Reactivity (§ 261.33(a)(5)). See the public docket for a full explanation of the standard's derivation.

The Agency believes, based upon the constituents and factors evaluated, that General Cable's waste is not hazardous, and, as such, should be excluded from hazardous waste control. The Agency proposes, therefore, to grant an exclusion to General Cable Company, Indiana Steel and Wire Division, located in Muncie, Indiana, for its centrifuge sludge as described in their petition. This proposed exclusion specifically does not apply to General Cable's effluent from its centrifuge. (The Agency notes that the exclusion when made final will remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[11] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulaton is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

[11] The current proposed exclusion applies only to the process covered by the original demonstrations. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous until a new exclusion is granted.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect wil be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: September 4, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
General Cable Company.	Muncie, Indiana.....	Dewatered Wastewater treatment sludge (EPA Hazardous Wastes Nos. F006 and K062) generated from electroplating operations and steel finishing operations after (insert date of final rule's publication).

[FR Doc. 86-20362 Filed 9-9-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[GEN Docket 86-339; FCC 86-368]

Marketing Regulations; Equipment Authorization Procedures

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, on its own motion as a continuing effort to reduce burdensome administrative regulations, proposes to relax the equipment authorization procedure applicable to the receiver portion of a transceiver, the transmitter portion of which is type accepted or certified.

DATES: Comments must be filed on or before October 20, 1986, and reply comments on or before November 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George Harenberg, Technical Standards Branch, Office of Engineering and Technology, (202) 653-7314.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, GEN Docket 86-339, adopted August 2, 1986, released August 27, 1986.

The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. On its own motion, the Commission is initiating this Notice of Proposed Rule Making proposing to change the equipment authorization required for the receiver portion of a type accepted or certified transceiver. The proposal would relax the equipment authorization required for the receiver portion of such transceivers from notification to verification. The Commission's past experience with the FCC equipment authorization program has shown that the receiver portion of these transceivers currently being authorized under the notification process are demonstrating an excellent record of compliance with technical standards set forth in the Rules. In addition, the Commission has the option of sampling and testing these receivers, before the issuance of a grant.

2. For purposes of this Notice, a transceiver shall be defined as a radio frequency transmitter and a radio frequency receiver which is housed in the same cabinet and, which is marketed as one complete unit and, which is covered by a single FCC ID number under § 2.925(b)(1). Common circuit components for transmitting and receiving shall not be required. This proposal is limited to receivers which are required to comply with the Commission's notification procedures and which are associated with a transmitter which is type accepted or certified.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities because it relaxes the Commission's rules and reduces the Commission's application burden.

4. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 20, 1986, and reply comments on or before November 4, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects

47 CFR Part 2

Communications equipment,

47 CFR Part 15

Communications equipment, Reporting and recordkeeping requirements.

William J. Tricarico,
Secretary.

A. It is proposed to amend Subpart J of Part 2 of Title 47 of the Code of Federal Regulations as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart J—Equipment Authorization Procedures

1. The authority citation for Subpart J of Part 2 is amended to read as follows:

Authority: Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; sec. 302, 82 Stat. 290; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. The authority citations for §§ 2.925 and 2.926 are removed.

3. In § 2.925, paragraph (b)(4) is added to read as follows:

§ 2.925 Identification of equipment.

* * * * *

(b) * * *

(4) For a transceiver, the receiver portion of which is subject to verification pursuant to § 15.69(c) of this chapter, the FCC identifier required for the transmitter portion shall be preceded by the term "TX FCC ID:".

* * * * *

4. In § 2.926, paragraph (e) is revised to read as follows:

§ 2.926 FCC identifier.

* * * * *

(e) No FCC Identifier may be used on equipment to be marketed unless that specific identifier shall have been validated by a grant of equipment authorization issued by the Commission. This shall not prohibit placement of an FCC identifier on a transceiver which includes a verified receiver subject to § 15.69(c), provided that the transmitter portion of such transceiver is covered by a valid grant of type acceptance or certification. The FCC Identifier is uniquely assigned to the grantee and may not be placed on the equipment without authorization by the grantee. See § 2.803 for conditions applicable to display at trade shows of equipment which has not been granted equipment authorization where such grant is required prior to marketing. Labelling of such equipment may include model or type numbers, but shall not include a purported FCC Identifier.

* * * * *

B. It is proposed to amend Part 15 of Title 47 of the Code of Federal Regulations as follows:

PART 15—[AMENDED]

1. The authority citation for Part 15 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301, unless otherwise noted.

2. In § 15.69, paragraph (c) is redesignated as paragraph (d), and new paragraph (c) is added to read as follows:

§ 15.69 Equipment authorization for a receiver.

(c) Notwithstanding the requirement of paragraph (b) of this section, receivers which are not subject to certification and are part of a transceiver, the transmitter portion of which is subject to type acceptance or certification, shall be verified.

* * * * *

[FR Doc. 86-20226 Filed 9-9-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 25

[General Docket No. 86-337; FCC 86-356]

An Automatic Transmitter Identification System for Radio Transmitting Equipment

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule and inquiry.

SUMMARY: This action proposes that all video satellite uplink transmissions, licensed under Part 25, be encoded with a signal to identify the station. It also requests comments on the costs, benefits and methodology for extending automatic transmitter identification to equipment licensed in all radio services. The need for better radio spectrum management to control interference, allow flexibility to deal with new technology and standardize the proliferating number of pseudo-automatic identification systems now coming into use make this item necessary. The intended effect is improved radio spectrum management.

DATES: Comments must be filed on or before October 20, 1986, and reply comments on or before November 19, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John R. Hudak, tele: (202) 632-6977.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking and Notice of Inquiry* in General Docket 86-337, FCC 86-356, Adopted August 7, 1986, and Released August 19, 1986.

The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking and Notice of Inquiry

1. In this *Notice of Proposed Rulemoking ond Notice of Inquiry*, we are considering establishing a means by which all radio emissions might be encoded with a distinct automatically transmitted identifier (ATIS). The satellite industry, through the FCC Advisory Committee on Reduced Orbital Spacing, developed guidelines for an ATIS system. The guidelines are adopted as a proposed rule for video satellite uplinks regulated under Part 25.

2. For all other services, the Commission is interested in comments on how to proceed with regard to an automatic transmitter identification system. The formation of groups to address the issues would be welcomed.

3. Initial Regulatory Flexibility Act

I. Reason for Action

Radio transmissions continue to increase in volume, complexity and other methods that make identification of radiated signals difficult and often impossible. Recognizing that the Commission can no longer afford the resources needed for investigations to determine the identity of stations involved in all interference or technical violation problems, we are seeking relief through a user supported system of automatic identification.

II. Objectives

The purpose of this Commission action is to develop and implement an effective method of identifying the transmission source of received radio signals.

III. Legal Basis

The action taken by this *Notice* is authorized by sections 4 (i) and (j), 302, 303, and 403 of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

This Notice of Proposed Rulemaking outlines a method of automatic transmitter identification for satellite video uplinks. Every operator of a satellite video uplink would be required to purchase and operate a device to insert identification on all transmissions. Approximately 1,000 stations would be involved. Each encoder would cost under $2000. Operating upkeep expenses should be minimal.

V. Recording, Record Keeping and Other Complionce Requirements

None mandated.

VI. Federal Rules Which Overlap, Duplicate or Conflict with this Rule

None.

VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives

None.

Ex Parte Consideration

4. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rule, 47 CFR 1.1231.

BEST COPY AVAILABLE

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before October 20, 1986, and reply comments on or before November 19, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. It is ordered, That a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Satellite radio communications.

PART 25—[AMENDED]

Proposed Rule Changes

Part 25 of the Commission's Rules is proposed to be amended as follows:

1. The authority citation for Part 25, Subpart C, continues to read:

Authority: Sec. 4, 48 stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 stat. 1082, as amended; 47 U.S.C. 303.

2. Section 25.206 is proposed to be revised to read as follows:

§ 25.206 Station identification.

The requirement for transmission of station identification is waived for all radio stations licensed under this part with the exception of video satellite uplinks which are addresses under § 25.308 of these Rules.

3. Section 25.308 is proposed to be added to read as follows:

§ 25.308 Automatic transmitter identification system (ATIS).

All video satellite uplink transmissions shall incorporate an automatic transmitter identification system as specified below on all operation after December 31, 1987.

(a) The identification (ID) signal shall not degrade the existing transmission system;

(b) The ID signal injection method shall not produce harmful interference to other existing transmission systems;

(c) Every effort shall be exerted to utilize unclassified technology;

(d) The ID signal shall contain certain information, including owner/operator identification which uniquely identifies the transmitter;

(e) The ID message format may or may not be the same as the existing modulating signal format. For example, in NTSC FM television, the ID may be injected in a vertical line, in digital form, or as a separate SCPC transmission within the transponder passband, or as a multi-line plain language identifier in the vertical blanking interval;

(f) In secured transmission (scrambled or encrypted), the ID signal transmission format shall be such that all ID information may be extracted without the need for a descrambler or decryptor. ATIS methods for secured transmissions must be submitted to and recognized by the Commission;

(g) The ID generation equipment shall easily interface with existing uplink equipment;

(h) Seven-bit ASCII is the recommended format to be used to allow traffic monitoring;

(i) The ID signal injection equipment shall be operational at all times, continuously encoding the uplink transmission, and shall not be bypassed; and

(j) In the case of unscrambled transmissions, the Vertical Blanking Interval is the appropriate place for the relevant information. Line 20, field 1, frames 02 through 29 should be used in a single line technique. Multiple line techniques are permissible provided they comply with FCC regulations for incidental radiation from terrestrial broadcasters. Multiple line and other techniques may be submitted to the Commission for recognition.

(k) All requests for Commission recognition of an ATIS system shall be submitted to the Secretary, Federal Communications Commission. A recommended or authorized ATIS system that is recognized by the Commission must be employed.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86-20356 Filed 9-9-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-350; RM-5340]

Radio Broadcasting Services; McCall, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to allot Channel 266C1 to McCall, Idaho, as its first FM service, in response to a petition filed by Dean C. Hagerman.

DATES: Comments must be filed on or before October 27, 1986; and reply comments on or before November 12, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David M. Hunsaker, Putbrese and Hunsaker, 6800 Fleetwood Road, P.O. Box 539, McLean, Virginia 22101 (counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making. MM Docket No. 86-350 adopted August 21, 1986, and released September 3, 1986. The full text of this Commission decison is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140. Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-20352 Filed 9-9-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-346, RM-5459]

Radio Broadcasting Services; Safety Harbor, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Entertainment Communications, Inc., which seeks to substitute Channel 223C2 for Channel 221A at Safety Harbor, Florida, and to modify the license for Station WXCR(FM) to specify the Class C2 channel. A 12.3 mile southwest site restriction must be imposed on Channel 223C2. Additionally, we propose to delete the listing in the Table of Allotments for Channel 221A at Dunedin, since the channel is being used at Safety Harbor (under the old 10-mile rule).

DATES: Comments must be filed on or before October 20, 1986, and reply comments on or before November 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Brian M. Madden, Cohen and Marks, 1333 New Hampshire Avenue NW., Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-346, adopted August 22, 1986, and released August 29, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-20355 Filed 9-9-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-349; RM-5358]

Radio Broadcasting Services; Valdosta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute Channel 239C2 for Channel 240A at Valdosta, Georgia, and to modify the Class A license for Station WLGA(FM) accordingly, in response to a petition filed by Metro Media Broadcasting, Inc.

DATES: Comments must be filed on or before October 27, 1986, and reply comments on or before November 12, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Howard W. Simcox, Jr., Borsari and Paxson, 2100 M Street NW., Suite 610, Washington, D.C. 20037 (attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-349, adopted August 21, 1986, and released September 3, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments. See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-20353 Filed 9-9-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-352, RM-5285]

Radio Broadcasting Services; Derby Center, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Steele Communications Co., proposing the allotment of FM Channel 221A to Derby Center, Vermont, as that community's first FM service. A site restriction of 5.4 kilometers (3.4 miles) northeast of the community is required.

DATES: Comments must be filed on or before October 27, 1986, and reply comments on or before November 12, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Edgar F. Czarra, Jr., Esquire, Benjamin F.P. Ivins, Esquire,

Covington and Burling, 1201 Pennsylvania Avenue NW., P.O. Box 7566, Washington, DC 20044 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–352, adopted August 15, 1986, and released September 3, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. see 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–20354 Filed 9–9–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85–377; RM–5017]

Radio Broadcasting Services; Kapaa, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document dismisses a proposal (50 FR 51562, December 18, 1985) to allot Channel 278 to Kapaa, Hawaii, at the request of the petitioner Native Hawaiian Broadcasting Company. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Montrose Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–377, adopted August 21, 1986, and released September 3, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–20349 Filed 9–9–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 50946–61631]

Foreign Fishing; Fee Criteria

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice and Request for Comments.

SUMMARY: NOAA requests comments on the performance of foreign fishing nations against the foreign fee criteria of the Magnuson Fishery Conservation and Management Act (Magnuson Act) which requires that the Secretary review the performance before the end of each fiscal year. The comments will be considered by the Secretary in making a final decision on which foreign nations will be assessed higher fishing fees.

DATE: Comments must be received on or before September 26, 1986.

ADDRESSES: Send comments to Stephen P. Freese, International Fisheries Development and Services Division F/M32, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT:

Office of Regional Director, National Marine Fisheries Service, 9450 Koger Blvd, St Petersburg, FL 33702, (813) 893–3141

Office of Regional Director, National Marine Fisheries Service, 7600 Sand Point Way, NE, Seattle, WA 98115–0070, (206) 526–6150

Office of Regional Director, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731–7415, (213) 514–6196

Office of Regional Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802 (907) 586–7221

Office of Regional Director, National Marine Fisheries Service, 14 Elm St., Federal Bldg., Gloucester, MA 01930

Stephen P. Freese, National Marine Fisheries Service, International Fisheries Development and Services Division F/M32, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 202–5300.

SUPPLEMENTARY INFORMATION: On April 7, 1986, the President signed into law Pub. L. 99–272, a budget reconciliation bill, which among other things amended section 204(b)(10) of the Magnuson Act. This amendment requires that any foreign nation receiving an allocation of fish in the exclusive economic zone must pay fees at the higher of two levels during the next fiscal year if the Secretary of Commerce finds that the foreign nation—

"(i) is harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary; or

(ii) is failing to take sufficient action to benefit the conservation and development of United States fisheries."

For the low fee the standard fee assessment rate is 35.6 percent of the species ex-vessel value established in 51 FR 202 while the high fee is 63.8 percent of that value. For example the foreign fee for Alaska pollock under the low fee level is 35.6 percent of the species ex-vessel value while the high fee is 63.8 percent of that value, that is, the foreign fee for Alaska pollock under the low fee level is $43/mt and under the high level, $78/mt.

On September 9, 1986, NOAA published a revision of the 1986 foreign fishing fee schedules. That revision noted that NOAA is considering the procedure for assessing country performance against these criteria. This notice is part of the consideration.

By August 12, NOAA asked foreign fishing nations to provide information related to their performance against these criteria. Copies of the information provided by responding nations are available at the offices listed above.

NOAA requests public comment by September 26, 1986, on the information provided below and requests any additional information that would have a bearing on what level of fees a country should pay. NOAA will review the

comments received and consult with the Department of State prior to a decision on which countries will pay the higher fees. After this consultation, as required by the Magnuson Act, a final report will be sent to Congress by September 30, 1986.

Countries receiving allocations in 1986 with 1985 total allocations in parentheses are: People's Republic of China (0 mt), German Democratic Republic (28,563 mt), Japan (901,968 mt) Italy (7,145 mt), Poland (89,295 mt), Soviet Union (10,782 mt), Republic of Korea (250,219 mt), Netherlands (10,105 mt), Spain (5,839), and Taiwan (0 mt).

It should be noted that in discussing U.S. imports of products made from total allowable level of foreign fishing (TALFF) species that are allocated to foreign nations, NMFS has utilized U.S. Customs trade data and made a careful analysis of the various tariff codes under which fishery products are categorized. Because of "basket categories" which combine TALFF and non-TALFF species, exact identification of the amounts of TALFF species products being imported into the United States is impossible. Therefore, NMFS has isolated those categories that include only TALFF species products ro which include a majority of TALFF species with the remaining items being very similar and competitive with TALFF species products.

It should also be noted that in the Northwest Atlantic, the major foreign fisheries have been managed on a April 1 to March 31 fishing year and corresponsing joint venture statistics have been provided. However, for 1986, in preparation for a permanent change to a January 1 to December 31 fishing year, the interim fishing year is from April 1 to December 31.

With respect to Atlantic harvests of andromous species of U.S. origin, the primary instrument for international management of salmon in the Atlantic Ocean is the North Atlantic Salmon Conservation Organization (NASCO). NASCO manages salmon through its North American, West Greenland, and Northeast Atlantic Commissions. Agreements on acceptable levels of salmon harvesting are presently in effect in all but the Northeast Atlantic Commission area. Of the foreign countries holding or expected to hold fish allocations in the Atlantic portion of the U.S. exclusive economic zone, none intercepts appreciable amounts of North American origin salmon.

Presented here in summary of information on the incidental catch of salmon in Pacific groundfish fisheries.

Nation	Bering Sea		Gulf of Alaska	
	1985	1986 [1]	1985	1986 [1]
	Numbers (1000's)			
China		0.1		
Japan	7.3	0.2	0.3	
Korea	1.0	0.1	0.1	
Poland	1.2			
USSR	0.1			
Foreign Total	9.6	0.4	0.4	

[1] Incidental catch through June.

Below is the compilation of information collected by NMFS on foreign performance. The information is organized according to the following outline; if no information is available for an element of the outline, that element is omitted.

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Product
Sales of TALFF and Similar Species Products into U.S. Markets
Trade Facilitation Activities
Investments in the U.S. Industry
At-Sea Purchases From U.S. Fishermen-Joint Ventures

Conservation of U.S. Fishery Resources

Operations and Enforcement
Research

Harvest of Anadromous Species of U.S. Origin

Industry Activities
Other Areas of Cooperation

FOREIGN PERFORMANCE

Japan

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Products—Japan is the largest market for U.S. fishery products. The real value of U.S. exports to Japan has doubled since 1977 and in 1985 Japan imported 64 percent of the total U.S. export of edible and non-edible fishery products. The U.S. exports of edible and non-edible fishery products to Japan from January to June 1986, totaled $237.1 million, a 58 percent increase over the $149.8 million exported during the same period of 1985. Exports to Japan for all of 1985 were a record $696.6 million. (Fisheries of U.S., 1985, p. 59)

As in past years, the bulk of Japan's fishery imports from the United States consisted of high-value traditional species. Through June of 1986, the major fish export to Japan was frozen crabs. This group comprised $66.1 million, consisting mainly of snow crab, opilio ($30.1 million), other snow crab, chiefly bairdi ($21.9 million), other frozen crabs ($14.0 million) and modest amounts ($137 thousand) of dungeness crab.

Next in order came frozen salmon ($32.0 million) of which about half was sockeye salmon. The bulk of salmon exports to Japan takes place in the second half of the year. In addition, the U.S. exported various fish and shellfish roes (pollock, herring, salmon, sea urchin roe, and others, totaling ($16.5 million); several species of frozen fish ($11.6 million), which could include some underutilized species; frozen shrimp ($4.9 million); sablefish ($17.4 million); herring ($37.2 million); and king crab ($3.7 million).

Sales of underutilized TALFF species to Japan accounted for a relatively small share of total exports. (Sablefish is no longer considered a TALFF species because U.S. fishermen now harvest the entire optimum yield and sablefish is only allocated to foreign nations as bycatch.) Through June of 1986, exports of TALFF species were pollock ($871 thousand); pollock roe ($2.2 million); and squid ($555 thousand). The total amount of purchases of TALFF species about $3.6 million for six months. Although sales of TALFF species to Japan are relatively small compared to total exports, Japan is the only significant importer of these species among countries fishing in the U.S. EEZ.

It is still not certain whether Japan will be able to purchase the level of processed products agreed to in the industry-to-industry meetings with representatives of the North Pacific fishing industry in late 1985. At that meeting, the Japanese delegation agreed to purchase and take delivery of 74,000 mt (round weight equivalent) of U.S. harvested and processed products in 1986–40,000 mt of pollock-based surimi (approximately 8,000 mt product weight) and 34,000 mt of pollock and other species. The surimi purchase commitment amounts to 8,000 mt of product weight. Much of this commitment was expected to be fulfilled by two Alaskan surimi plants (discussed below) in which the Japanese have invested.

Also, U.S.-owned surimi producer has signed a contract to sell to Japan 10,000 mt of surimi block in the second half of 1986 and during 1987. This producer projects that it will have produced 3,000 mt of surimi by year's end. The working Alaska based surimi plant with Japanese investments had produced 1,925 mt of surimi product by the end of August with expectation of 3,000 mt by the end of the year. Most of this is being marketed domestically.

Sales of TALFF and Similar Species Products Into U.S. Markets—Japanese firms export a number of items to the United States which are made from U.S.-

origin fish or from similar species found in non-U.S. waters. Total U.S. imports from Japan of TALFF species during the first six months of 1986 were approximately $58.7 million. The key product is surimi, including both the intermediary product (surimi block) and finished seafood analogs. Japan exported an estimated $100 million of pollock blocks, surimi, and surimi-based end-products to the United States in 1985. In the first six months of 1986, U.S. imports of these items exceeded $52.2 million, suggesting that the growth in Japanese sales of surimi products to the United States may be leveling off due to shortage in the supply of Alaska pollock.

Trade Facilitation Activities—Last year Japan accelerated the tariff reduction schedule rates agreed upon during the Multilateral Trade Negotiations for a number of fishery products important to the U.S. industry such as cod, herring, pollock, pollock roe and hake. This year, there have been no important changes in Japan's tariff and non-tariff barriers against imports of fish products made from TALFF species. The most important single trade restriction on imports of pollock products is the global import quota (IQ) on pollock products. In consultations which took place in Tokyo this summer, NMFS/NOAA raised a number of concerns about the administration of this IQ and asked whether Japan would consider abolishing the barrier. The Japanese Government spokesman indicated that they could not, for political and economic reasons, eliminate the quota. Discussions are ongoing on this issue. The amount allocated under the pollock IQ for the first half of FY86 indicated that the quota has been administered in a way which reserves the large bulk of imports to a small group of Japanese distant water fishing companies; whereas the share of secondary processors had been inadequate. New "set-asides" have been added to accommodate increased imports from non-GATT suppliers, such as North Korea and the Soviet Union.

Investments in the U.S. Industry—The surimi purchase targets agreed to in the industry to industry agreement with the North Pacific Fishing industry (See discussion above) were to be reached by purchasing surimi produced in U.S.-Japanese jointly owned processing facilities in Alaska. Last year, the Japanese invested in two shore-side processing facilities. Estimates of the processing capacity of each plant when completed range from 20,000 mt to 25,000 mt (round weight) per year. Current information indicates that only one of these plants is in operation, and as of the end of August, this plant had produced 1,925 mt of surimi towards a projected year-end level of 3,000 mt. The second plant is scheduled to commence its operations in late November or December. There have been delays due to construction permit problems with U.S. authorities, and there have been problems in contracting U.S. fishing vessels to deliver adequate amounts of fish to the plants. Thus it is difficult to say whether the 1986 sales target under the industry-to-industry agreement will be met.

At-Sea Purchases From U.S. Fishermen-Joint Ventures—Japanese joint venture purchases of Alaska bottomfish continued their rapid growth from initial 1981 levels of 11,000 mt. In 1985 over-the-side purchases from U.S. fishermen at-sea totaled 463,778 mt (valued at $46.0 million), a 35 percent increase over 1984 and well above the target of 448,077 mt. As of mid-July 1986, evaluations of joint venture operations with Japan are positive, with U.S. partners reporting continued smooth operations. The Japanese have agreed to purchase 581,000 mt over-the-side in 1986, and there is every indication this commitment will be met. As of July 12, Japan had purchased over 341,000 mt, including a significant quantity of species other than pollock. Over 80 percent of Japans yellowfin sole commitment had been caught. The Japanese Government reports that their 1986 bottomfish joint venture operations will employ 96 U.S. catcher vessels, an increase of 30 vessels over the 64 vessels employed last year.

The Japanese long-line fleet has also participated in herring and salmon joint ventures. A Japanese long-line program for the purchase of herring from Togiak, Alaska fishermen has been in progress since 1981. The purchase amount has increased from 953 mt in 1981 to 2,632 mt in 1983 and 1,230 mt in 1984. The purchase amount in 1985 is a total of 2,371 mt and supported 188 U.S. vessels of the Bristol Bay herring marketing Cooperative. This year 2,280 mt of herring has been purchased. These purchases provided the only reliable market for the native gillnet fishermen, more than 600 of which were employed in the operations. Over the years, this joint venture has proven to be a source of much needed capital to an economically depressed area of the state and a means for the native fishermen to diversify their fishing operations away from their traditional reliance on salmon as their sole source of income.

Purchase of 350 mt of chum and pink salmon involving 70 U.S. fishing vessels who otherwise would have had no market for their salmon was also made by Japanese long-line vessels in Norton Sound in Alaska this year. Last year 299 mt of salmon was purchased. This year, the Japanese long-line fleet also plans to purchase Pacific cod from approximately 15 U.S. fishing vessels.

During the 1985–86 fishing year for the squids in the Northwest Atlantic, Japan purchased approximately 1,200 mt of *Loligo* and *Illex* squid from U.S. harvesters. Almost 100 percent of all U.S. butterfish exports go to Japan. Japan has not yet initiated joint venture fishing for this fishing year.

Other Development Efforts—Last year, Japan signed a cooperative agreement with the Governor of Alaska to provide assistance in studying: (1) The feasibility of scallop aquaculture in Kodiak, (2) the feasibility of growing kelp, and (3) the training of personnel in surimi manufacturing in the Dutch Harbor area for their two new plants in Dutch Harbor, Alaska.

The Japanese fishing industry has also been involved in a cooperative fisheries development program with the fishermen of the Pribilof Islands since 1982. Pribilof natives have received technical training in Japan in harvesting and processing techniques. Technicians have visited the islands on several occasions. Fishing and processing equipment for halibut and Korean hair crab have been provided for both St. George Island and St. Paul Island. This cooperative project is ongoing. This year, the Japanese Hokuten trawlers donated, 2 tons of octopus worth approximately $6,500 to St. George Island to be used as bait for the local halibut fishery.

In addition to purchasing salmon through joint ventures in Norton Sound, Alaska, the Japanese long-line fleet has agreed, at the request of the State of Alaska, to conduct fishing experiments with the Norton Sound fishermen to see whether other species, such as yellowfin sole and flounder, are available in the area.

Conservation of U.S. Fishery Resources

Operations and Enforcement—There were minor problems with Japanese operations and enforcement in 1985. No fishery enforcement violations for Japan were noted within the U.S. 200-mile zone through July of 1986.

The Japanese long-line fleet has voluntarily restricted its 1986 operations in the Gulf of Alaska to the first four and

last three months of the year. By restricting operations during these time periods, the Japanese long-line vessels are out of the Gulf during prime fishing months for U.S. longline vessels. The Japanese long-line vessels, therefore, will be fishing in the remaining months when bycatches of fully utilized species such as sablefish, can be kept to an minimum. Similarly, in the Bering Sea, the Japanese long-line vessels agreed to limit their fishing operations to the area northwest of the Pribilof Islands—an area which is several hundred miles away from the primary fishing areas of U.S. fishermen and one in which U.S. vessels do not operate due to the low catch levels historically encountered there.

Research—As in the past, Japan is conducting major research on U.S. Alaska bottomfish resources through the provision of scientists and four research vessels. Japan cooperates in two major survey cruises, the U.S.-Japan Trawl Survey and the U.S.-Japan Longline Survey. These Japanese research efforts continue to be the most valuable in terms of quality, quantity, and relevance to the research responsibilities of the Northwest and Alaska Fisheries Center of NMFS. During 1986, Japanese research vessels spent an excess of 300 days accessing fish status and testing gear modifications to reduce bycatches in the GOA and Eastern Bering Sea.

NMFS/NOAA was successful in arranging a cooperative high seas squid fishery observer agreement with the Japan Fisheries Association. A U.S. scientist spent 55 days aboard a Japanese commercial driftnet vessel operating in the high seas squid fishing area. The information gathered on this voyage is expected to prove useful to NMFS/NOAA scientists who are investigating the catch per unit effort of the squid fishery, interceptions of marine mammals, seabirds, and pelagic species, and the effects of lost or discarded fishing gear upon the marine environment.

The Japanese have also participated in the research of fishery resources including squid in the Gulf of Mexico by providing fishing trawlers to do survey work. In 1984 the research cruise lasted 38 days and in 1985 48 days. In conjunction with this survey the butterfish were analyzed for fat content and parasites. This research resulted in sizable survey catches of butterfish which has led to exploratory fishing by U.S. East Coast factory trawlers this year.

Harvest of Anadromous Species of U.S. Origin

Industry Activities

INTERCEPTION OF NORTH AMERICAN SALMON IN THE JAPANESE HIGH SEAS MOTHERSHIP FISHERY [1]

Species	1985 numbers (1000's)
Sockeye	410
Chum	38
Pink	
Coho	[2] NA
Chinook	52
Total	500

[1] Estimates are not available for 1986.
[2] Estimate is not available because of lack of detailed information on interception rates.

JAPANESE LAND-BASED SALMON FISHERY [1]

Species	1985 Numbers (1000's)
Sockeye	13
Chum	0
Pink	0
Coho	[2] NA
Chinook	[3] 68
Total	81

[1] Estimates are not available for 1986.
[2] Estimate is not available because of lack of detailed information on interception rates.
[3] Estimate based on interception rates from the mothership fishery.

As a result of discussions held in April 1986, in Vancouver, Canada, by the Contracting Parties of the International North Pacific Fisheries Commission (Commission) a recommendation to amend the Annex to the International Convention for the High Seas Fisheries of the North Pacific Ocean was sent by the Commission to the Governments of Japan, Canada, and the United States. This amended Annex was based upon an agreement reached between Japan and the United States on March 8, 1986, to strengthen the conservation of North American origin salmonids. Shortly thereafter, the three Governments approved the Commission's recommendation and the amended Annex went into force in May. A summary of the content of the Annex is as follows:

Regarding the mothership fishery: Fishing in the eastern half of the Bering Sea will be phased out in 3 years; in the western half, it will be phased out completely by 1994. The total mothership allowed within the U.S. 200 mile exclusive economic zone will be 140 for 1986 through 1993, with the fishery ending on July 31. For 1994 and thereafter, the mothership fleet days will be 144 with an earlier closure of the fishery (July 26).

Regarding the land-based fishery: The present eastern limit will be moved to the west by 1 degree. This limit may be modified in accordance with the results of information from scientific studies to be initiated with the beginning of the 1986 fishing season. The studies will be performed over a 3- to 5-year period.

U.S. scientists believe conservation measures developed in the amended Annex will decrease significantly the incidental harvest of North American origin salmon by Japanese salmon fishing vessels and result in a substantial increase in the returns of salmon to U.S. waters, especially for high-value species as chinook.

In addition to the amendment of the Convention Annex, two Memoranda of Understanding (MOUs) which also stem from the U.S.-Japan agreement of March 8 were signed in Vancouver in April 1986. The first MOU, regarding scientific research, will enable fishery biologists to conduct further research on anadromous Salmonidae to determine accurately the continent of origin of salmonids migrating in the Convention area of the land-based driftnet fishery south of 46 degrees North Latitude so that the movement of the eastern limit of that fishery may be negotiated no later than the beginning of the 1991 season. The second MOU on enforcement establishes greater cooperation between the Commission member-countries in enforcing the provisions of the Convention, especially in regard to the new measures on the eastern limit of the land-based fishing area.

Between June 30 and July 17, 1985 U.S. Coast Guard aerial patrols sighted 17 gillnet vessels of the Japanese land based gillnet type east of the abstention line. Thirteen other vessels of the same type were sighted underway in a westerly direction just west of the abstention line in the presence of a Japanese patrol vessel. The Japanese Government responded promptly to a Department of State request for an investigation into this activity. The Japanese informed the United States that the violators were not salmon gillnet vessels, but were vessels from the squid fishery. They assured U.S. officials that penalties were to be assigned to those vessels found in violation of the domestic fishing regulations. In addition, a fishery enforcement vessel was assigned to patrol the northern boundary of the squid fishery to assist in preventing any further violations.

On June 27, 1986, the U.S. Coast Guard boarded two Japanese land based gillnetters which had steelhead on board that were being retained and logged as chinook salmon. This is in violation of the Memorandum of Understanding on Scientific Research which states that

VOL 51 ISS 175 SE 10 1986 UMI

Japan will provide accurate catch statistics for all salmonids. The Department of State requested an investigation into this activity. A response received from the Japanese Government stated that the vessels were questioned by Fisheries Agency officials and denied mislabeling steelhead as chinook because it would affect adversely the ability to fulfill the quota for the higher valued chinook and offer no economic incentive for the fishermen.

Although very few catch data exist for salmon taken in the squid gillnet fisheries in the North Pacific, it is known that large numbers of salmon have been taken by the Taiwanese. The number of these salmon that are of North American origin is unknown. Although there are very few catch data from these fisheries, the high seas distribution of salmon and the oceanographic structure of the North Pacific suggest that if squid vessels fish in compliance with national fishing regulations, the impact on North American stocks is probably minimal.

Both Taiwan and Japan have adopted regulatory boundaries which, if observed, should minimize the chances of salmon harvest for most years with average oceanographic conditions. The Republic of Korea has not yet adopted such regulations, however, retention of salmon is prohibited. Compliance with each country's national regulations is not yet satisfactory.

Available information shows that the NMFS Northwest Region Law Enforcement Division is currently investigating seventeen shipments of salmon which presumably were shipped from Taiwan, through Tacoma, Washington, with Japan the final destination. Such shipments would violate the laws of all three nations. The path of the shipments led U.S. agents to presume that the intent was to mask Taiwan as the country of origin and give false impression that the salmon originated in the U.S. Two of the shipments totaling 269 metric tons (mt) have been seized. The remaining shipments totaling 1,354 mt left the U.S. prior to investigation. The shipments were packaged in containers imprinted with a U.S. company name and U.S. origin. The total values of all the shipments is estimated at $5 million.

Between July 30 and August 29, 1985, U.S. Coast Guard aerial patrols sighted 46 Japanese squid gillnet vessels fishing north of the Japanese northern boundary in apparent violation of Japanese regulations. Between June 27 and August 10, 1986, U.S. Coast Guard aerial patrols sighted 15 Japanese squid gillnetters north of the boundary. U.S. Coast Guard surface patrols boarded three gillnetters, one of which was 139 miles north of the boundary, and inspection of the vessel logs of the other two vessels revealed that they, too, had fished north of the boundary.

After the 1985 incident, the Japanese informed the State Department that it would investigate the information supplied by the Coast Guard and impose penalties on each of the violators. In addition, a Japanese fishery enforcement vessel was dispatched to the area to enforce the domestic regulations that ban fishing north of the boundary. Following the 1986 incidents, the Fisheries Agency of Japan reported that six of the vessels in question were north of the squid gillnet boundary for the purpose of measuring water temperatures in order to seek out the most suitable fishing grounds. The Japanese authorities report that the vessels had no salmon onboard and their log books indicated no fishing north of the boundary. The Fisheries Agency intends, nevertheless, to issue written warnings to these vessels and instruct all squid gillnet vessels to refrain from crossing over the northern boundary. The vessels that reportedly fished above the northern boundary have not yet returned to port, but upon their return will also face an investigation, and possible penalties, by Japanese authorities.

An estimated 14,000 steelhead were taken in the Japanese landbased gillnet fishery, nearly all of which are presumed to be of North American origin.

Other Areas of Cooperation—Japanese Customs and Fisheries Agency officials are currently cooperating fully with the United States in gathering evidence on a salmon shipping scheme which raises questions about possible efforts to conceal Taiwan as the country of origin for salmon in foreign commerce. The Japanese have given timely information regarding where these shipments are in Japan and have requested the manifest documents for these shipments. Japan has regulations in place which prohibit the import of salmon from Taiwan.

Republic of Korea (ROK)

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Product—The U.S. exports of edible and non-edible fish products to ROK for the first six months of 1986 totaled $20.3 million, a 46 percent increase from the $13.7 million exported during the same period of 1985. Most of these exports were edible–4.5 percent of all U.S. edible fish products exported during the January-June 1986. Total U.S. fishery exports to Korea in 1985 were $25.2 million.

Three categories accounted for nearly all U.S. exports to ROK through June herring ($12.4 million), salmon ($2.2 million), and frozen crabs ($4.0 million). The ROK did not import any TALFF species from the United States during the first six months of 1986. This is consistent with past performance where, over the years, ROK imports of TALFF species have been insignificant. No fully processed U.S. products or U.S. headed and gutted (H&G) products are presently being exported to ROK.

Sales of TALFF and Similar Species Products into U.S. Markets—Total imports of TALFF and TALFF-like species during the first six months of 1986 were approximately $29.7 million. The ROK sales of bottomfish fillets, especially pollock and Pacific cod shatter-pack frozen fillets compete directly in the U.S. market with the U.S. freezer trawlers. In the January-June 1986, period, ROK exported $8.9 million of flatfish fillets of which an undetermined share is competing head-to-head with U.S. production.

U.S. imports from ROK of pollock blocks from January through June 1986, were $10.1 million. (U.S. imports of frozen pollock block from ROK in all of 1985 were $21 million). During the first six months of 1986, Korea also exported to the United States $356 thousand of canned pollock, and $277 thousand of squid. The ROK also shipped $458 thousand of surimi-based analogs to the U.S. during the first six months of 1986, an indication that countries other than Japan are getting into this market.

The ROK exports an estimated 15 to 20 percent of their total pollock supply, which has averaged 400,000 mt in recent years. That is, ROK exports of pollock have averaged about 75,000 to 80,000 mt, but seem to be declining. Exports of pollock to all destinations in 1986 have been projected by the ROK Government at 70,000 metric tons.

Trade Facilitation Activities—The Korean Embassy has informed NOAA/NMFS of changes implemented in the administration of the tariff rate quota on frozen fish products. Until recently, the tariff rate quota allowed for a reduction from 20 to 10 percent ad valorem in the duty applied to 15,000 metric tons of several species of frozen fish, including pollock, and, most significantly, provided this reduction on a global basis, i.e. to all suppliers.

The recent change introduced by the Korean Government is to terminate the global availability of this benefit, and to provide it only to suppliers from four countries, one of which is the United

States. (The other three are New Zealand, Argentina, and Chile.) Thus, this proposal amounts to the creation of a new "set-aside", and further restricts, rather than relaxes, the frozen fish quota.

The United States strongly prefers the elimination or relaxation of the quota. The NOAA/NMFS request made in consultations in Washington and Seoul was that processed pollock be removed from the frozen fish quota and placed on the automatic approval list. This is consistent with U.S. policy which supports the elimination and/or substantial relaxation of tariff and non-tariff barriers as a means toward improved liberalization of international trade.

The Korean Government has announced that the 15 members of the Korea Deep Sea Fisheries Association have been appointed as the private sector advisers on the consultative committee. The Import Coordination Council which has been set up to advise the Administrator of the National Fisheries Administration in carrying out his responsibilities under Korean trade law concerning the importation of fisheries products. It is not clear if the main purpose of the Council is to give advice or to propose specific trade measures. The membership of the Council is confined to representatives of fishing companies.

The Korean Government is also proposing that Korean firms be allowed to purchase processed fish products directly from U.S. factory processor vessels. According to this proposal, Korean fishing vessels operating in the U.S. EEZ would purchase products in Free Alongside (FAS) highseas transactions. Such purchases would "require action by the Korean foreign exchange authorities."

Trade Facilitation Activities—Earlier this year, the ROK announced that at least three "Equity joint ventures" are being negotiated between Korean and U.S. firms operating in the North Pacific.

At-Sea Purchases From U.S. Fishermen-Joint Ventures—The ROK joint venture purchases in 1985 totaled 189,062 mt, an increase over 1984 purchases of 100,430 mt. American joint venture partners indicated that operations were satisfactory although certain operations encountered problems with fish weights and payments to fishermen.

Reaction by the U.S. industry to ROK joint ventures in 1986 has been unusually positive. The ROK is nearing its original obligation for over-the-side purchases of 275,000 mt, and has since agreed to increase its total purchases to 397,000 mt in both the Eastern Bering Sea and Aleutian Islands area and the Gulf of Alaska. As of July 12, 1986, Korean joint ventures had purchased over 244,000 mt. There is some doubt as to whether the Koreans will be able to meet their new joint venture target since they plan to take pollock in the Gulf of Alaska where there is no additional pollock available. A more realistic target for Korean joint ventures, according to the NMFS Alaska Region, is 348,000 mt.

U.S. partners have noted that Korean prices are competitive and that cooperation has generally been good. Some problems were reported with the Korean Wongyang Fisheries joint venture, with processing ships diverting to directed fishing, leaving American catcher vessels standing by for transfer of codends. Earlier this year, the Koreans agreed to convert several processors to surimi, which would allow them to accept smaller pollock from U.S. catcher vessels which was previously rejected.

Other Development Efforts—The first U.S.-Korean Fisheries Development Conference was held in July 1985, to examine possibilities for future cooperation. Although no concrete proposal resulted from the Conference, the ROK has since been exploring potential expanded joint venture operations off Alaska, including investments in offshore floating factory processing. The second Conference is planned for the first week of December 1986 in Anchorage, Alaska.

Conservation of U.S. Fishery Resources

Operations and Enforcement—There have been no major enforcement problems with the ROK fleet off Alaska.

Research—Korean research efforts in the GOA changed as a result of a research vessel being sent to the area in 1985. The ROK will not send a vessel to the GOA in 1986, but instead will direct a vessel to survey squid resources and study gillnetting research on squid and its interaction with salmon in the Northwest Pacific.

The NMFS/NOAA was able to place two U.S. scientists aboard the Korean research vessel operating in the high seas squid driftnet fishery this summer. Observers believe that the scientific information gathered on this voyage may be important to both fishery and marine mammal biologists seeking information about the effects of driftnet fishing on the marine environment. The Korean Fisheries Ministry was instrumental in arranging this cooperative voyage with the Northwest and Alaska Fisheries Center.

Harvest of Anadromous Species of U.S. Origin

Industry Activities—On July 8, 1986, a U.S. Coast Guard patrol vessel boarded a Korean gillnetter accompanied by five other Korean gillnetters and found 70 salmon onboard in apparent violation of Korean regulations. Korean vessels have been cooperative in allowing consensual boardings. The Korean Government, after being informed of the salmon retention incident by the DOS, conducted an immediate investigation and the captain of the vessel retaining salmon was penalized. In addition, the Korean National Fisheries Administration sent a letter to the squid gillnet vessel owners through the Korean Deep Sea Fisheries Association instructing the vessel captains to avoid any future violations of domestic fishery regulations prohibiting retention of salmon.

Poland

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Product—The United States did not export any fish products to Poland in the first six months of 1986. There were no exports of fishery products to Poland in 1985 and exports in 1984 totaled 19 mt.

Sales of TALFF and Similar Species Products Into U.S. Markets—Trade in TALFF species consists of Polish exports of pollock blocks to the United States. In the first six months of 1986, Poland exported $6.3 million of pollock blocks to the United States. At this rate, Poland may surpass its 1985 U.S. sales of pollock blocks, which totaled $9.1 million. Total U.S. imports of fish products from Poland were $10.9 million in 1985. One concern is that Polish pollock products, due to their low price, have pre-empted U.S. entry into the European fillet market.

Trade Facilitation Activities—Poland does not impose any tariff or non-tariff barriers. Trade is strictly controlled by the Polish Ministry of Foreign Trade. Poland's lack of hard currency has severely impeded their ability to purchase finished U.S. products. Poland potentially could pay for U.S. goods by bartering, however, the Soviet Union purchases virtually all potentially exportable goods from Poland (coal, machinery, etc.).

Investments in the U.S. Industry—There has reportedly been some talk within the U.S. industry of possible equity joint ventures with Poland. (Equity joint ventures are agreements in which the American partner, in addition to providing catcher vessels,

participates in either the processing or final sale of the final product.) Reports indicate that one equity joint venture is in a very preliminary discussion stage. Agreement on the nature of the joint venture arrangement is not expected before early 1987.

At-Sea Purchases From U.S. Fishermen-Joint Ventures—In 1985, Poland purchased 35,460 mt, valued at $3.5 million, of its 50,000 mt joint venture request. Although the Poles did not meet their request, joint venture purchases were up 175 percent over 1984 levels. Poland requested a 1986 joint venture allocation of 48,000 mt off Alaska. This would represent a 35 percent increase over the 35,000 mt purchased in 1985. Thus far in 1986, good performance has been reported. The Poles report that quotas are expected to be completed in the Fall, but past experience indicates that this is less than certain. Through July 12, Poland had purchased approximately 8,425 mt, about 18 percent of its joint venture obligation. Fishing operations off Alaska have stopped and the fleet is operating the Washington-Oregon-California area to participate in directed and joint venture fisheries.

The Poles have recently requested a 5,000 mt increase in their joint venture request for Pacific whiting off Washington-Oregon-California. This would bring their total whiting request to 35,000 mt which is a large increase from joint venture commitments of 7,000 mt in 1984 and 20,000 mt in 1985. This year, the Poles are working with three joint venture companies and have purchased through August nearly all of their original total request.

Other Development Efforts—Polish fleets purchased fuel and other supplies from U.S. companies both in Alaska and in the Washington-Oregon-California area in 1985 and continue to do so in 1986. The Poles claim that in 1985, they purchased $5.3 million in fuel and $1 million in packaging materials from U.S. companies. In the Northwest Atlantic, over the past two years, the Poles have conducted 4 day demonstration cruises for fishery management council members and interested fishermen. These demonstrations included all aspects of the searching, harvesting, and processing of Atlantic mackerel.

Conservotion of U.S. Fishery Resources

Operations and Enforcement—There were no major enforcement problems with Poland.

Research—Poland did not participate in any research activities in Alaska during 1985. However, the Poles continue to provide valuable research and assistance in the Northwest Atlantic. In 1985, in exchange for directed fishing allocations, the Poles supplied a commercial fishing vessel for use by NMFS scientists in Atlantic mackerel stock assessment. U.S. scientists and Polish technicians cooperated to: (1) Obtain length and age data, (2) define the geographic distribution of overwintering mackerel and measure related environmental parameters, (3) identify the general migration patterns, and (4) collect other relevant data on mackerel and other species. The Poles also supplied a research vessel where several cruises were made over a 45 day period. Information on sharks, swordfish, billfish, tuna, herring, butterfish, cod, and haddock was collected.

In 1986, the Poles are making available to the NMFS Northeast Center the same research resources. In addition, Poland provide 195 days of mackerel research earlier this year. The Poles are also expanding the research vessel activities to a total of 95 days of operation so that information on the distribution and biology of pelagic sharks from Florida to George Bank can be collected. These research activities are highly regarded by the Northeast Center. Much of the scientific information is of a direct benefit to the fishery councils in the management of existing fishery management plans and the preparations of proposed plans.

Harvest of Anadromous Species of U.S. Origin

Industry Activities—In the WOC area, Polish joint ventures have encountered high salmon bycatches. Salmon is a prohibited species, but no upper limit of bycatch has been set.

People's Republic of China (PRC)

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Product—U.S. exports of fish products to the PRC have never been very great, consisting mainly of roe herring which is sent to the PRC where roe is stipped and re-exported to Japan. In the first six months of 1986, U.S. exports of roe herring to the PRC totaled $1.0 million and $2.6 million of herring (whole or eviserated, fresh, and chilled). There were no U.S. exports to the PRC of products made from TALFF species.

Sales of TALFF and Similar Species Products Into U.S. Markets—There is some concern that the PRC is processing U.S. origin pollock, transferring the product to a U.S. vessel just outside the 12-mile limit, then importing the product through Seattle. In the January through June 1986 period, the PRC sold $734 thousand of pollock blocks, to the United States. PRC exports to the United States in the comparable period of 1985 were $389 thousand. Imports from the PRC of pollock blocks totaled $457 thousand last year, out of total imports from that country of just over $30 million. Sales of all TALFF species products, or competing products, into the United States for the first six months of 1986 were $968 thousand.

The Chinese, however, claim that the three Chinese companies fishing in the U.S. EEZ have sold into the United States far less than the figures reported above, which are official U.S. Customs figures. They claim that they expect to sell into the United States a total of approximately 200 mt of TALFF related products by the end of the year.

Trade Facilitation Activities—The Chinese report that Chinese companies have travelled to the U.S west coast to investigate direct purchase of U.S. fishery products. The Chinese report they have initiated formal talks with the Alaska State Department of Commerce and Economic Development to establish a permanent organization for the exchange of information and to identify opportunities for mutual trade and fishery development.

Investments in the U.S. Industry—The Chinese Government has reported that they are currently actively searching for equity joint venture partners to establish a U.S. based joint venture company.

At-Sea Purchases From U.S. Fisherman-Joint Ventures—The PRC is new to U.S fisheries, with the Governing International Fishery Agreement going into effect in November 1985. The PRC has made efforts to develop three joint venture arrangements with American companies. The one U.S. partner contacted in May 1986, had no complaints and said the Chinese "appear to be learning fast." As of June 28, the PRC purchased 6,197 mt through joint ventures.

Other Development Efforts—Chinese information states that PRC fishing companies are currently engaged in discussions with the representatives of the Unalaska Municipal government concerning plans to develop an aquaculture project in the Dutch Harbor-Unalaska area. The Chinese also report that virtually all resupply of their fleet has been accomplished through U.S. suppliers. In purchasing fish, bunkers, packaging materials, stores, and services, they estimate that $1.2 million was spent during the first six months of the year. This is unconfirmed by U.S. parties.

Conservation of U.S. Fishery Resources

Operations and Enforcement—The PRC commenced fishing operations for the first time in early 1986 with joint ventures. Directed fishing began May 24, 1986. As of June 4, 1986, PRC vessels had already accumulated 9 violations, a significant number given the small number of vessels in the fishery and the short time period involved. NMFS enforcement officials point out that the number of violations, while high, is not unusual for a country new to the fishery and they expect the violations to decrease in the future. However, the PRC exceeded its prohibited species catch limit for halibut and was closed from directed fishing in mid-June.

Research—The PRC is interested in engaging in two different studies: (1) A comparative study of the fishery ecosystems in the Bering Sea and the Yellow Sea and (2) a fishery resource investigation of the Bering Sea. The NMFS Northwest Center has a scientific interest in both studies, and would welcome the opportunity to evaluate the state of Chinese fishery science and the performance of the PRC research vessel. Research contributions have been valued at $10 thousand for 1986. There were no research contributions in 1985.

The PRC intends to send two scientists to participate on some of the NMFS groundfish cruises. China wanted to send a research vessel to the Bering Sea this year, but the Northwest Fisheries Center discouraged this. There is one aspect of China's cooperation not credited to research. Recently, China voluntarily provided us the catch statistics for its pollock fishery in the "international doughnut area" of the Bering Sea, while other countries that fish in this zone have not. This voluntary action is very positive, because the pollock fishery in this zone may have significant implications for the exploitation of the stocks in the U.S. 200-mile zone of the Bering Sea/Aleutians region. The Northwest Center is encouraging other countries to supply similar data.

Harvest of Anadromous Species of U.S. Origin

No information to report.

Taiwan

Contributions to U.S Fishing Industry Development

Purchases of U.S. Processed Product—Exports of edible and nonedible fish products to Taiwan were $4.4 million in the first six months of 1986, a 13 percent increase over the $3.9 sold to Taiwan in the comparable period of 1985. Of the total. $3.7 million was edible commodities. As in the past, the most important single item in this trade is mullet roe, a luxury product which is processed in Taiwan into *Kazunoko,* a dried and cured roe commodity. In the first six months of 1986, 23 percent of all U.S. exports of fish products to Taiwan consisted of mullet roe. In 1985, mullet roe exports were valued at $3.6 million out of total edible exports of $5.8 million. The United States does not export TALFF species products to Taiwan.

Sales of TALFF and Similar Species Products Into U.S. Markets—Taiwan does, however, sell modest amounts of products made from TALFF species to the United States. In the January through June 1986 period, for example, Taiwan exported $2.1 million of various squid products, and $21 thousand of other frozen flatfish fillets to the United States. In addition, U.S. trade statistics show imports of $72 thousand of seafood analogs, surimi structured products, cakes and puddings from Taiwan in the January through June 1986 period.

Trade Facilitation Activities—Taiwan's tariffs on fish imports are extremely high, many of them as high as 65 percent ad valorem. The most important item from the U.S. industry's perspective is mullet roe, which is subject to a 35 percent rate. U.S. efforts late last year to reduce that rate in bilateral trade discussions with Taiwan produced no results.

At-Sea Purchases From U.S. Fishermen-Joint Ventures—In 1985, Taiwan purchased 4,058 mt, worth an estimated $520,000, through joint venture operations, falling short of their 8,900 mt target. This compares to purchases of 7,300 mt in 1984. Taiwan has not participated in any joint venture activities in 1986.

Conservation of U.S. Fishery Resources

Operations and Enforcement—Taiwan vessels have not operated within U.S. waters and, as such, no Taiwanese vessels have been noted violating U.S. fisheries enforcement regulations in the 200-mile zone through July.

Research—Taiwan has responded positively and beyond the data requirements of the Magnuson Act by providing catch and catch-per-unit effort data in the high seas squid fleet that operated in 1982 and 1983 in the North Pacific. The Northwest and Alaska Fisheries Center has worked in cooperation with the authorities in Taiwan to place a U.S. scientist aboard a Taiwan research vessel operating in the high seas squid driftnet fishing area in the Northwest Pacific to survey squid and study squid-salmon-ocean temperature interactions.

Harvest Anadromous Species of U.S. Origin

Industry Activities—Available incidence indicates that salmon coming into Port of Tacoma was originally exported from Taiwan in violation of Taiwan's domestic regulations. This investigation is continuing.

In May, 1985, a U.S. Coast Guard aerial patrol observed four gillnet vessels that appeared to be processing salmon. On July 12, 1986, a single gillnet vessel refused to acknowledge a request for boarding from a U.S. Coast Guard patrol vessel. The evidence collected by the Coast Guard aerial patrol was sent to the Taiwan authorities. Subsequently, following the delay of fishery allocations to Taiwan, representatives from Taiwan met with DOS, NMFS, and Congressional Staff officials and agreed to establish regulations prohibiting the harvest of salmon by the squid gillnet fleet operating in the North Pacific. These regulations are in place for the 1986 season.

German Democratic Republic (GDR)

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Product—The German Democratic Republic (GDR) improved their trade performance substantially in 1985 by increasing their purchases from 8 mt worth $41,000 in 1984 to 394 mt worth $190,000 in 1985. These purchases consisted entirely of edible fishery products, including modest purchases of frozen salmon and other frozen fish. The GDR joint venture partner has reported that during the 1985–86 fishing year, that the East Germans purchased 603 mt of processed mackerel during the 1985–86 fishing year and approximately 280 mt from January 1 to mid-August 1986.

Trade Facilitation Activities—The GDR is a Socialist Block country, whose main and highly significant trade barrier is a system of State trading. There is no evidence that this State trading system has changed or will change in the foreseeable future.

At-Sea Purchases From U.S. Fishermen-Joint Ventures—The U.S./GDR joint venture for mackerel was excellent this year. East German vessels have purchased 5,760 mt of mackerel over the side in the 1985–86 fishing year. These joint venture purchases are significantly greater than in previous years and have exceeded the joint venture purchase-processed product-allocation ratios recommended by the

Mid-Atlantic and New England Fishery Management Councils. From April 1 until the season ended this May, they additionally purchased 429 mt and are expected to resume fishing this fall. Domestic vessel operators have been very satisfied with the cooperation received from this venture and consider it a very important economic plus because the joint venture operations occur when other options for fishing are scarce.

Conservation of U.S. Fishery Resources

Operations and Enforcement—The GDR had no enforcement violations during the 1985–86 fishing year.

Harvest of Anadromous Species of U.S. Origin

No information to report.

Netherlands

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Product—In 1985, Dutch importers bought $34.8 million of fishery products from the United States, a decline of 43 percent from the value of their 1984 purchases. This included $25.5 million of non-edible menhaden oil. The principal edible products purchased were frozen salmon ($1.2 million) and canned salmon ($4.5 million). Imports of TALFF species, valued at $245,000, were mainly frozen squid products. Through June 1986, the Netherlands has purchased $13.4 million of edible and non-edible fishery products, a decline of 30 percent from the same period in 1985. The majority of these imports were menhaden oil products ($6.9 million) and can salmon products ($3.1 million). Purchases of TALFF species products totaled $92 thousand (an increase of 9 percent from last year), which was comprised of frozen *Loligo* squid ($43 thousand), pollock ($27 thousand) and other frozen squid (22 thousand).

Sales of TALFF and Similar Species Products Into U.S. Markets—The Netherlands sold into the United States through June 1986 a total of $7.6 million of these products, the majority of which were frozen flatfish fillets ($7.1 million) and cod fillets ($367 thousand). Through June of 1985, the Netherlands had sold $7.2 million of TALF species products.

Trade Facilitation Activities—The Netherlands maintains the trade barriers of the European Economic Community. These barriers have not changed in any appreciable way during the last year.

At-Sea Purchases From U.S. Fishermen-Joint Ventures—The Netherlands Atlantic mackerel joint venture request for the 1986 fishing year was initially approved, but the Netherlands did not send any vessels to the Northwest Atlantic to make these purchases or to fish the associated allocations.

Conservation of U.S. Fishery Resources

Operations and Enforcement—During the 1985–86 fishing year, there were no major enforcement problems. In the 1986–87 fishing year, the Netherlands did not fish.

Harvest of Anadromous Species of U.S. Origin

No information to report.

Italy

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Product—Italian imports of fishery products from the United States increased in value in January–June 1986 from January–June 1985 levels of $1.8 million. For all of 1985, total purchases were $3.3 million. Almost all of these imports were edible fisheries products. Italy's purchases included $1.4 million worth of TALFF species, including $1.0 million worth of frozen squid. The Italians have made a commitment to purchase U.S. processed squid this year. Through June 1986 Italy has imported $190 thousand of *Loligo* squid products and $269 thousand of other squid products, 20 percent more than January–June 1985 levels of $382 thousand. Additional purchases are expected to occur.

Sales of TALFF and Similar Species Products Into U.S. Markets—Through June 1986 Italy has not sold any TALFF or similar species products into the United States.

Trade Facilitation Activities—Italy employs the tariff and non-tariff barriers, such as reference prices of the European Community. Documents of the 1985 and 1986 EC trade barriers do not reveal any significant changes in these barriers that may increase U.S. exports.

At-Sea Purchases From U.S. Fishermen-Joint Ventures—The Italians performance has been good during the past few years. In the 1985–86 fishing year approximately a total of 1,500 mt of *Loligo* and *Illex* joint venture purchases were made. Italy's joint venture performance has continued to be very good in the 1986 fishing year The *Loligo* JV has proposed well, and, for the first time, a joint venture reached the cap amount allocated when Italian processing vessels purchased 1,500 mt of *Loligo* over-the-side by August 19. Small amounts of *Illex* have been purchased through mid-August and it is expected that both *Loligo* and *Illex* joint venture purchases will continue.

Other Development Efforts—Last year the Italians operated an experimental joint venture for dogfish and as a result for this year have requested 1,000 mt of joint venture processing for this underutilized species.

Conservation of U.S. Fishery Resources

Operations and Enforcement—The Italians had no enforcement violations in the past two years.

Harvest of Anadromous Species of U.S. Origin

No information to report.

Spain

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Product—Spanish imports of fishery products from the United States increased in value in January–June 1986, from January–June 1985 level of $274 thousand. During 1985 edible and non-edible fishery product exports to Spain were worth $689 thousand. Exports through June 1986 are valued at $2.5 million. Spanish purchases of TALFF species during January to June 1986 were $514,000 of frozen *Loligo* and $640,00 of other frozen squid products. In 1985, Spain purchased to total of $224,000 of frozen squid products. U.S. processors have verified that additional Spanish purchases of purchased *Loligo* squid will continue to occur in 1986.

Sales of TALFF and Similar Species Products Into U.S. Markets—Through June, 1986 Spain has sold into the United States a total of $1.3 million of TALFF or similar species including $1.0 million of frozen flatfish fillets, $68 thousand of squid products, and $106 thousand of analog surimi products.

Trade Facilitation Activities—Spain maintains tariff and non-tariff barriers on fish imports, but has recently joined the European Community. Spanish non-tariff barriers like import quotas will probably continue on severl products for a certain period of time after joining the EC.

At-Sea Purchases From U.S. Fishermen–Joint Ventures—In the 1985–86 fishing year Spanish vessels purchased from U.S. harvesters approximately 1,100 mt of squid. Spain requested 300 mt of *Loligo* JVP and 1,500 mt of *Illex* JVP for 1986. Spain has purchased during the 1986 fishing year through mid-August, 229 mt of *Loligo* and 290 mt of *Illex*. The Spanish have requested that their joint venture request be increased to 600 mt of *Loligo*.

VOL 51 ISS 175 SE 10 1986 UMI

Conservation of U.S. Fishery Resources

Operations and Enforcement—In the 1985–86 fishing year, Spanish vessels were served 11 notices of violation. The Spanish during this year also severely exceeded their butterfish bycatch allocations and required supplemental butterfish allocations in order to complete their fishery for squid.

Harvest of Anadromous Species of U.S. Origin

No information to report.

Soviet Union

Contributions to U.S. Fishing Industry Development

Purchases of U.S. Processed Product—There were no exports of U.S. fish products to the Soviet Union in the first six months of 1985 and 1986.

Trade Facilitation Activities—The U.S. joint venture continues to be extremely good. Soviet joint venture activities doubled off Alaska in 1985 as Soviet effort shifted to the north from Washington-Oregon-California area. Soviet joint venture catch was 187,400 mt worth an estimated $28 million, some 95 percent of the Soviet request. Thus far in 1986, good performance has been reported, and operations have been running smoothly, with purchases reaching 148,105 mt in July. The Pacific whiting joint ventures off Washington-Oregon-California area are running smoothly so far in 1986. The initial Soviet joint venture request of 40,000 mt is approximately 4 times their 1985 purchases.

In the Northwest Atlantic the Soviet Union requested a joint venture for silver and red hake. While Soviet processing vessels were available, U.S. vessels couldn't find any concentrations of fish. After a couple of weeks the Russians left for Canadian waters without providing any of the required reports required by the foreign fishing regulations. The performance of this joint venture was poor.

Joint venture purchase in 1985 declined severely for 2 reasons, first, the initial request for whiting in 1985 was lower due in part to product quality concerns. Second, when directed fish allocated was reduced by one-half due to whaling certification, the Soviets responded by reducing joint ventures one-half.

Conservation of U.S. Fishery Resources

Operations and Enforcement—No significant enforcement problems were reported in 1985 and with the Soviet joint ventures off Alaska this year. (The Soviet Union does not have any foreign fishing allocations this year due to the Secretary of Commerce's certification of the Soviet Union for whaling). The Soviet Union, however, had operational problems early in 1985 in its yellowfin sole fishery. A large number of Soviet vessels targeting yellowfin sole caught an excessive amount of king crab in their trawls.

Research—In the past, the USSR spread its research effort evenly in 3 zones, the Pacific Coast, GOA, and Bering Sea. The USSR will not survey the Pacific Coast this year. This has been an important survey because of the ichthyoplankton work that was conducted. In addition, the USSR did not send a dedicated vessel to survey the GOA in 1986. Instead, the vessel was directed from the Bering Sea to the GOA for a 35 day survey. In total, Soviet vessels will spend in excess of 100 days accessing fish stocks in the EEZ during 1986.

Harvest of Anadromous Species of U.S. Origin

There have been periodic high salmon bycatches in joint ventures for whiting. However, Soviet processing vessels have moved to other areas to avoid salmon bycatch whenever the problem has arisen.

Dated: September 5, 1986.

William G. Gordon,

Assistant Administrator for Fisheries.

[FR Doc. 86–20394 Filed 9–5–86; 4:39 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 51, No. 175
Wednesday, September 10, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 5, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promply, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Animal and Plant Health Inspection Service

Endangered Species Regulations and Forfeiture Procedures
PPQ Forms 621, 623, 625, 626
Recordkeeping; On occasion
Businesses or other for-profit; Small businesses or organizations; 16,657 responses; 3,154 hours; not applicable under 3504(h)
Don Thompson (301) 436–8295

- Forest Service

Forest Industries Data Collection System
Annually
Businesses or other for-profit; 2,312 responses; 1,733 hours; not applicable under 3504(h)
Bill McLain (801) 625–5381

Revision

- Food and Nutrition Service

Food Stamp Program Operations Study—Phase II
One-time survey
State or local governments; 380 responses; 570 hours; not applicable under 3504(h)
Boyd Kowal (703) 756–3115

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 86–20376 Filed 9–9–86; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 86–352]

Genetically Altered Tobacco Plant; Determination of Plant Pest Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has reviewed a protocol submitted by the Rohm and Haas Company, Philadelphia, Pennsylvania, for the field testing of genetically altered insect resistant tobacco plants. Based upon the data submitted in the protocol, APHIS has made a determination of the plant pest status of the genetically altered tobacco Plants. APHIS has concluded that the genetically altered tobacco plants are not plant pests.

ADDRESS: Copies of the APHIS opinion letter and the Rohm and Haas protocol may be obtained by contacting Shirley Ingebritsen, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 600, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8896.

FOR FURTHER INFORMATION CONTACT: John R. Wood, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 600, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8896.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1986, the Rohm and Haas Company, of Philadelphia, Pennsylvania, submitted to the Animal and Plant Health Inspection Service (APHIS) a protocol for the field testing of genetically altered insect resistant tobacco plants at Cleveland, Mississippi, and Homestead, Florida. The genetically altered tobacco plants were altered by the addition of a single gene from the organism *Bacillus thuringiensis* (B.t.), for the purpose of making the plants resistant to larvae or caterpillars of the order *Lepidoptera*.

The field testing is designed to evaluate the performance of the tobacco plants which contain a protein antagonistic to Lepidopteran larvae that are feeding on the genetically altered tobacco plants, specifically tobacco hornworm (*Manduca sexta*) and tobacco budworm (*Heliothus virescens*). Survival of larvae feeding on these plants will be compared to the survival of larvae after application of normal and subnormal rate of Dipel®, or Thuricide®, B.t.-based commercial insecticides. A successful test will determine whether modified plants are protected against those feeding insect populations as effectively as those plants that have received applications of commerical insecticide.

Pursuant to the authority granted by the Federal Plant Pest Act, as amended, (7 U.S.C. 150aa through 150jj), and regulations issued thereunder APHIS is required to prevent the introduction and dissemination of plant pests in the United States. Consistent with this authority APHIS has reviewed the Rohm

and Haas protocol to determine the plant pest status of the genetically altered tobacco plants. APHIS has concluded that the genetically altered tobacco pants are not plant pests. The APHIS determination is not in the form of an "approval" or a "permit", but rather is an option letter which concludes that the genetically altered tobacco plants are not plant pests.

The basis for this determination was as follows:

1. The plasmid of *Agrobacterium tunefaciens* used to infest and transform the subject tobacco plants was biologically "disarmed". Thus, it was extremely unlikely that the plasmid used to transfer the B.t.2 gene and the associated antibiotic marker would also be able to incite crown gall disease.

2. There was no evidence of a pathogenic Ti plasmid in the subject tobacco strains. Thus it was possible to conclude that the plasmid was not retained and transmitted to subsequent plant cell generations.

3. There do not appear to be any instances in which the B.t.2 gene has not been incorporated into the plants' genome.

4. It appears that the subject plants will grow in such a way that there will be no significant risk of plant material from field testing surviving in the environment beyond the termination of the experiment, or becoming mixed with the genetic material of other tobacco populations outside of the test site. At both the Dade County, Florida, and the Cleveland, Mississippi, facilities the combination of physical environment and management practices outlined in the protocol would create a nonpropogative environment that would provide the necessary degree of biological and genetic containment.

Done in Washington, DC, this 5th day of September 1986.

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-20377 File 9-9-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 334]

Resolution and Order Approving the Application of the Lummi Indian Business Council for a Foreign-Trade Zone on the Lummi Indian Reservation, Whatcom County, WA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Lummi Indian Business Council, the governing body of the Lummi Indian Tribe, filed with the Foreign-Trade Zones Board (the Board) on May 10, 1985, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone on the Lummi Indian Reservation in Whatcom County, Washington, adjacent to the Bellingham Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant; To Establish, Operate, and Maintain a Foreign-Trade Zone on the Lummi Indian Reservation in Whatcom County, Washington

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 USC 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Lummi Indian business Council (the Grantee), the governing body of the Lummi Indian Tribe, has made application (filed May 10, 1985, Docket No. 9–85, 50 FR 20817) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone on the Lummi Indian Reservation in Whatcom County, Washington, adjacent to the Bellingham Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 128 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C., this 4th day of September 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.
Malcolm Baldridge,
Chairman and Executive Officer.

Attest:
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 86-20389 Filed 9-9-86; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 335]

Resolution and Order Approving the Application of the Port of Bellingham of Whatcom County, Washington, for Foreign-Trade Zones in Bellingham, Blaine, and Sumas, WA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Bellingham County, Washington, filed with the Foreign-Trade Zones Board (the Board) on May 10, 1985, as amended April 2, 1986, requesting a grant of authority for establishing, operating, and maintaining general-purpose foreign-trade zones in Whatcom County, Washington, at sites in the Bellingham, Blaine, and Sumas Customs ports of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zones. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant; To Establish, Operate, and Maintain Foreign-Trade Zones in Bellingham, and Sumas, Washington

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintanance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 USC 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Port of Bellingham of Whatcom County, Washington (the Grantee), has made application (filed May 10, 1985, Docket No. 10–85, 50 FR 20817) in due and proper form to the Board, requesting the establishment, operation, and maintenance of foreign-trade zones in Bellingham, Blaine, and Sumas, all in Whatcom County, Washington, within the Bellingham, Blaine, and Sumas Customs ports of entry;

Whereas, notice of said applications has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining foreign-trade zones, designated on the records of the Board as Zone Nos. 129, 130, and 131, respectively, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zones shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zones sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operation within the zones.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC., this 4th day of September 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.
Malcolm Baldridge,
Chairmon and Executive Officer.

Attest:
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 86-20390 Filed 9-9-86; 8:45 am]
BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on October 7, 1986 from 10:00 A.M. to 12:00 Noon, in Room 1414 of the U.S. Department of Commerce Building at 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The Committee provides advice about ways to promote increased exports in U.S. textiles and apparel.

Agenda

Review of export data; report on conditions in the export market; recent foreign restrictions affecting textiles; export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Helen LaGrande (202) 377–3737.

Dated: August 29, 1986.
Ronald I. Levin,
Acting Deputy Assistant Secretary for Textiles and Apparel.
[FR Doc. 86-20392 Filed 9-9-86; 8:45 am]
BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Proposed Marine Mammals Permit Modification; Dr. Donald B. Siniff (P5F)

Notice is hereby given that *Dr. Donald B. Siniff, Department of Ecology & Behavioral Biology, University of Minnesota, Minneapolis, Minnesota 55455* has requested a modification to permit No. 479 issued on *July 25, 1984* (50 F.R. 18283), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting *to radio tag, using a interperitoneal implant, five (5) Weddell seals (Leptonychotes weddelli) to compare activity patterns, growth data, and other data of implanted versus non-implanted pups.*

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisherieis Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930.

Dated: September 4, 1986.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86–20379 Filed 9–9–86; 8:45 am]

BILLING CODE 3510-22-M

Application for Marine Mammals Permit; Janice M. Straley (P263A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:
   a. Name: Janice M. Straley.
   b. Address: P.O. Box 273, Sitka, Alaska 99835
2. Type of Permit: Scientific Research.
3. Name and Number of Marine Mammals:
   Humpback whale (Megaptera novaeangliae), 400.
   Killer whale (Orcinus orca), 50.
   Minke whale (Balaenoptera acutorostrata), 20.
4. Type of Activity: Inadvertent harassment during photo-identification.
5. Location of Activity: Southeastern Alaska.
6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Commission of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individual's requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue, NW., Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: September 4, 1986.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86–20380 Filed 9–9–86; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Intent and Scoping Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of change of location for a scoping meeting.

SUMMARY: In reference to a notice of a scoping meeting that was published August 29, 1986, 51 FR 30897, the Gulf of Mexico Fishery Management Council has changed the location for the meeting to be held September 10, 1986, at 4:00 p.m. The scoping meeting is being held to obtain comments and recommendations for use in preparation of an environmental impact statement and a fishery management plan for the red drum fishery resources of the Gulf of Mexico .

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida, 813–228–2815.

In FR Doc. 86–19559, appearing on page 30897 in the issue of August 29, 1986, the following change is made: In column 3 under the "**ADDRESS**" heading, the location for the scoping meeting scheduled for September 10, 1986, is changed to the Fort Brown Motor Hotel, 1900 East Elizabeth Street, Brownsville, Texas.

Dated: September 5, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–20347 Filed 9–9–86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on October 1–2, 1986 in the Pentagon, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering

on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Panel meetings, concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Lawson,

OSD Federal Register Liaison Officer, Department of Defense.

September 4, 1986.

[FR Doc. 86–20333 Filed 9–9–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 25 September 1986 at the Stouffer Concourse Hotel, Crystal City, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation (DOD 4500.34R), and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0800–1500 hours. Topics to be discussed should be received on or before 19 September 1986.

Dated: September 3, 1986.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 86–20361 Filed 9–9–86; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate, Restriction of Eligibility for Grant Award; University of Virginia

AGENCY: Department of Energy, (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b) it is renewing on a restricted eligibility basis its grant to The University of Virginia for continued effort in carrying out a nuclear reactor operator training program for socially or economically disadvantaged Americans. The renewal is for 16 months and is in the amount of $141,000.

Procurement Request No. 05–86ER75116.001

Project Scope: The University of Virginia was awarded the grant on February 28, 1984, and has been performing the defined effort since March 1, 1984; therefore, renewal of the grant is based on The University of Virginia having an established nuclear reactor operator's training program and having satisfactorily administered the grant effort at UV and at other participating universities at nominal cost. Eligibility for continuation of the grant effort is, therefore, restricted to The University of Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Harold H. Young, ER–44, Division of University and Industry Programs, Office of Field Operations Management, Office of Energy Research, U.S. Department of Energy, 1000 Independence Avenue SW., Forrestal Building, Washington, DC 20585. Telephone Number: (202) 252–6833.

Issued in Oak Ridge, Tennessee, August 8, 1986.

Peter D. Dayton,

Director, Procurement and Contracts Division.

[FR Doc. 86–20357 Filed 9–9–86; 8:45 am]

BILLING CODE 6450–0–M

Bonneville Power Administration

[BPA File No.: AEP-1]

Awards for the Most Energy-Efficient Refrigerators and Freezers

Correction

In FR Doc. 86–19338 beginning on page 30530 in the issue of Wednesday, August 27, 1986, make the following correction on page 30534:

In Table 1, under *Compact Refrigerators,* the second entry is corrected to read as follows:

Group No.	Size Range (cubic feet)	Number of Models in group	EEQL (cubic feet/kwh/day)	AECL (@6.75¢/kwh)	Number of qualifying models
Compact Refrigerators					
R1b	2.5 to 4.4	32	▶4 0	23	1

BILLING CODE 1505–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER86–656–000, etc.]

Montana Power Co., et al., Electric Rate and Corporate Regulation Filings

September 4, 1986.

Take notice that the following filings have been made with the Commission:

1. Montana Power Company

[Docket No. ER86–656–000]

Take notice that on August 14, 1986, Montana Power Company (Montana) tendered for filing pursuant to section 205 of the Federal Power Act and the Commission's regulations a transfer agreement between Montana and the Bonneville Power Administration (BPA) along with several revisions of the agreement and a further letter agreement. Montana states that the transfer agreement provides a basis for transfer of power generated by BPA over the facilities of Montana to an interconnection between Montana and the Western Area Power Administration for redelivery to Glacier Electric Cooperative, Inc.

Montana reguests waiver of the notice period specified in the Commission's regulations to permit the transfer agreement to be made effective as of January, 1978 and to permit the revisions to be made effective on the dates specified thereon. Montana further requests waiver to permit the letter agreement to become effective as of July 1, 1986. BPA states that a copy of the filing has been mailed to the Montana District Manager for BPA.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation

[Docket No. ER86-601-000]

Take notice that on September 2, 1986, Central Vermont Public Service (CVPS) tendered for filing additional information relative to its power sales contract with UNITIL Power Corporation which was originally tendered in this docket on July 17, 1986. The Additional information more fully explains the derivation of the energy charges that will apply whenever Vermont Yankee is out of service.

The contract between CVPS and UNITIL provides for a September 30, 1986 effective date. CVPS has asked the Commission to waive the sixty day notice requirement and to allow the September 30, 1986 effective date.

Copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as the Vermont Public Service Board and the New Hampshire Public Utilities Commission. CVPS further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: September 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Connecticut Light and Power Company

[Docket No. ER86-680-000]

Take notice that on August 25, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with respect to various gas turbine units between CL&P, Western Massachusetts Electric Company (WMECO), and the Town of Wallingford, Connecticut (Wallingford), dated as of June 1, 1986. CL&P states that the Purchase Agreement provides for a sale to Wallingford of capacity and energy from gas turbine units of CL&P and WMECO during the period June 1, 1986 until 30 days written notice by either party to the other party. CL&P requests that the Commission permit the rate schedule filed to become effective as of June 1, 1986.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Connecticut Light and Power Company

[Docket No. ER86-677-000]

Take notice that on August 25, 1986, Connecticut Light and Power Company (CL&P) tendered for fling a proposed rate schedule pertaining to a Purchase Agreement with Respect to Various Gas Turbine Units between CL&P, Western Massachusetts Electric Company (WMECO), and the City of Chicopee, Municipal Light Plant (Chicopee), dated as of December 1, 1985.

CL&P states that the rate schedule provides for a sale to Chicipee of capacity and energy from gas turbine units of CL&P and WMECO during the period December 1, 1985 until 30 days written notice by either party, together with related transmission service. CL&P requests that the Commission permit the rate schedule filed to become effective as of December 1, 1985.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER86-675-000]

Take notice that on August 22, 1986, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Nineteen to Revised Agreement to Provide Specified Transmission Service between Florida Power & Light Company and Fort Pierce Utilities Authority (Rate Schedule FERC No. 68). FPL also tendered for filing the Schedule TX Operating Agreement Between FPL and the Fort Pierce Utilities Authority. FPL requests that the Commission grant waiver of its notice requirements to allow the proposed Amendment and the Operating Agreement to be made effective immediately.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Gulf States Utilities Company v. Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Company Services, Inc.

[Docket No. EL86-57-000]

Take notice that on August 28, 1986, Gulf States Utilities Company (Gulf States), pursuant to Section 206 of the Federal Power Act, 16 U.S.C. 824e and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, filed a Complaint and Request for Evidentiary Hearing (Complaint) seeking a declaration that the Unit Power Sales Agreement (Agreement) and Schedule E to the Interchange Contract (Schedule E) between Gulf States, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Company Services, Inc. have became unlawful and void under section 206 of the circumstances that were not and could not reasonably have been foreseen by the parties. Gulf States requests that the Commission set the issues raised by its complaint for evidentiary hearing and that it expeditiously hear and decide such issues and grant the relief sought by Gulf States in its complaint.

Gulf States certifies that it has mailed copies of its complaint and request for evidentiary hearing to an official of Southern Company Services, Inc. and to counsel for Southern Company Services, Inc.

Comment date: October 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER86-681-000]

Take notice that on August 26, 1986, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during June 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company,
Supplement No. 55
Sierra Pacific Power Company,
Supplement No. 52
Portland General Electric Company,
Supplement No. 48
Washington Water Power Company,
Supplement No. 40
Puget Sound Power & Light Company,
Supplement No. 23
Montana Power Company, Supplement No. 42
Pacific Power & Light Company,
Supplement No. 18

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this document.

8. Mississippi Power & Light Company

[Docket No. ER86-679-000]

Take notice that on August 25, 1986, Mississippi Power & Light Company (MP&L) tendered for filing an executed Service Schedule J—Replacement Energy, along with an amending July 31, 1986, letter agreement between MP&L and the Municipal Energy Agency of Mississippi (MEAM); and (b) an executed July 21, 1986 Letter Agreement for Short-Term Firm Power, along with an amending July 31, 1986, letter agreement, between MP&L and MEAM. MP&L requests waiver of the Commission's advance notice

requirements to allow the agreements to go into effect on the stated date.

MP&L states that copies of the filing have been mailed to MEAM and the Mississippi Public Service Commission.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER86-687-000]

Take notice that on August 29, 1986, New England Power Company ("NEP") filed revised tariff sheets constituting a new rate W-8 for its Primary Service for Resale. NEP states that its W-8 revised tariff sheets will increase jurisdictional revenues by approximately $87.6 million on the basis of a 1987 test year. NEP states that the W-8 rate reflects the completion, and the inclusion in rate base, of NEP's investment in the Seabrook 1 nuclear project and the costs associated with operation of that unit beginning on May 1, 1987. NEP requests an effective date of November 1, 1986, for the W-8 rate.

As an alternative to the full W-8 rate, NEP has filed a bifurcated rate. Step 1, the W-8(a) rate, would increase jurisdictional revenues by approximately $43 million. NEP requests that the W-8(a) rate be suspended for two months and made effective January 1, 1987. The second step, the W-8(b) rate, would increase jurisdictional revenues by an additional $5.3 million per month. NEP requests that the W-8(b) rate be suspended for the full five months and that it now be given permission to defer billing under that rate until the date on which Seabrook 1 nuclear unit enters commercial service. NEP estimates that the unit will enter service on May 1, 1987 but that commercial operation could be delayed beyond that date. If the Commission does not accept the bifurcated rate, NEP requests that the full W-8 rate be suspended for two months and that it be permitted to bill under that rate on January 1, 1987.

According to NEP, the filing also includes rate provisions and terms and conditions for a new form of service under Tariff No. 1—Service for Resale to Interruptible Customers. Further, NEP states that it is proposing for the first time marginal cost rates, including a time-of-use marginal rate, to be made effective upon final Commission approval.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER86-688-000]

Take notice that on August 29, 1986, New England Power Company ("NEP") tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with The Narragansett Electric Company ("NARRAGANSETT"). The proposed change would decrease the fixed credits allowed Narragansett on its purchased power billing by NEP in the amount of $85,300 annually based on the 12 month period ending December 31, 1987.

NEP requests an effective date of November 1, 1986. However, NEP requests that the amendment be suspended for no longer than two months to become effective January 1, 1987, in order to coincide with the effective date of its W-8 wholesale rate filing.

Copies of the filing were served upon Narragansett and the Rhode Island Public Utilities Commission.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. San Diego Gas & Electric Company

[Docket No. ER86-678-000]

Take notice that on August 25, 1986, San Diego Gas & Electric Company (SDG&E) tendered for filing Amendment No. 1 to the Interchange Agreement between SDG&E and State of California Department of Water Resources, dated July 8, 1986.

SDG&E requests waiver of the Commission's notice regulations to allow the filing to become effective as of July 8, 1986.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. EL86-53-000]

Take notice that on August 25, 1986, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (the Southern companies), filed a petition for a declaratory order to terminate a controversy and remove uncertainty and a request for order to show cause. The petition states that uncertainty exists regarding a unit power sales agreement and an interchange contract between Southern Companies and Gulf States utilities Company (Gulf States). The petition describes the controversy that has resulted in the uncertainty and asks the Commission to issue an order to terminate the controversy and to remove the uncertainty. The petition also asks further or in the alternative that the Commission issue an order pursuant to Rule 209(a)(2) of the Rule of Practice and Procedure (18 CFR 385.209(a)(2)) directing Gulf States to show cause why it is not performing in accordance with its contractual obligations and why its actions do not constitute an attempt to avoid, circumvent, and frustrate the jurisdiction and authority of the Commission.

Southern Companies certify that copies of the petition have been served upon counsel for Gulf States.

Comment date: September 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

13. Tucson Electric Power Company

[Docket No. ER86-676-000]

Take notice that on August 22, 1986, Tucson Electric Power Company (Tucson) tendered for filing an Interconnection Agreement between Tucson and Rocky Mountain Generating Cooperative, Inc. (Rocky Mountain). The primary purpose of this Agreement is to provide the terms and conditions relating to the interconnection of the electrical systems of Tucson and Rocky Mountain and the exchange of capacity and energy between the two systems. Tucson states that services may be provided under Service Schedule A to the Agreement, entitled Economy Energy Interchange.

Tucson states that copies of the filling were served upon Rocky Mountain. Tucson requests an effective date of November 1, 1986.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

14. Western Massachusetts Electric Company

[Docket No. ER86-378-000]

Take notice that on August 11, 1986, Western Massachusetts Electric Company (WMECO) tendered for filing revised information to support the calculation in the proposed rate schedule under a Distribution Line Agreement dated February 4, 1985 between (1) WMECO and (2) Chicopee Hydroelectric Limited Partnership (CHLP) (Distribution Agreement). The calculation which require definition in order for the basis of the calculation to be supported. Pursuant to FERC's request, the definition for one of the components is now revised. WMECO renews its request that the Commission waive its standard notice period and permit the Distribution Agreement to become effective as of February 4, 1985.

WMECO states that a copy of this filing has been mailed to CHLP,

Portland, Maine. WMECO further states that this filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: September 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20395 Filed 9-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS68-49, etc.]

Don O. Chapell, Inc. (Don O. Chapell), et al.; Applications for Small Producer Certificates [1]

September 4, 1986.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before September 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.122, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS68-49	[1] 8-13-86	Don O. Chapell, Inc. (Don O. Chapell) 2230 Republic Bank Tower, Dallas, Texas 75201
CS71-1144	[2] 8-11-86	J. M. Fullinwider d/b/a V-F Petroleum Inc. (J. M. Fullinwider) Suite 580, One Marienfeld Place, Midland, Texas 79701
CS73-134	[3] 8-8-86	Vernon Greene and V.H. Funk (Greene & Funk Oil Company) 202—10th Street, Levelland, Texas 79336
CS79-470-001	[4] 7-25-86	Houston Oil Fields Company, Houston Oil Fields Company (South Texas) and Houston Oil Fields Company (East Texas), a Texas corporation (Houston Oil Fields Co.) 1600 Smith Street, Suite 4300, Houston, Texas 77002
CS86-85-000	7-25-86	Oil Brokers, Tennessee, Inc., 330 North Belt East, Suite 215, Houston, Texas 77060
CS86-87-000	7-29-86	Everett L. Ashley, William D. Heldmar, Robert H. Mase, Robert J. Wurtzbacher, Jr. and WHAM, a partnership, 8801 South Yale, Suite 150, Tulsa, Oklahoma 74137
CS86-88-000	8-4-86	Pi Energy, P.O. Box 19591, Houston, Texas 77224
CS86-90-000	8-18-86	Delaware Royalty Company, Inc., 1212 Main Street, Suite 1400, Houston, Texas 77002
CS86-91-000	8-18-86	Riseden Ltd, Inc., 1300 Cashco Tower, 8 Greenway Plaza, Houston, Texas 77046
CS86-92-000	8-27-86	Citation Oil & Gas Corp., 16800 Greenspoint Park Drive, Suite 300 South, Houston, Texas 77060

[1] By letter dated August 8, 1986, Applicant states it has succeeded to all of the working interests in jurisdictional sales of natural gas previously made by Don O. Chapell, and requests that the small producer certificate issued to Don O. Chapell in Docket No. CS68-49 be redesignated under the name of Don O. Chapell, Inc.

[2] By letter dated July 29, 1986, Applicant states J. M. Fullinwider is the sole owner and operates as V-F Petroleum Inc. Applicant requests the small producer certificate issued in Docket No. CS71-1144 be amended to read J. M. Fullinwider d/b/a V-F Petroleum Inc.

[3] By letter dated August 5, 1986, Applicants state that on May 1, 1986 Greene & Funk Oil Company was dissolved in a friendly dissolution and Mr. Vernon Greene and Mr. V. H. Funk would like to redesignate the small producer certificate issued to Greene & Funk Oil Company under their own names.

[4] Applicants request redesignation of small producer certificate to reflect that Houston Oil Fields Company merged with Houston Oil Fields Co. in June 1983. Applicants further request the small producer certificate issued in Docket No. CS79-470 cover Houston Oil Fields Company's subsidiaries, Houston Oil Fields Company (South Texas) and Houston Oil Fields Company (East Texas), a Texas corporation. Applicants also state that Encino Energy & Development Corporation merged with Houston Oil Fields Company (South Texas) in August 1984, and Applicants therefore request that the small producer certificate issued to Encino in Docket No. CS84-115-000 be terminated.

[FR Doc. 86-20396 Filed 9-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2621-001, etc.]

Phillips Petroleum Co., et al.; Applications for Abandonment and Blanket Limited-Term Certificate With Pre-Granted Abandonment Authorization

September 5, 1986.

Take notice that Phillips Petroleum Company has filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service or for a blanket limited-term certificate with pre-granted abandonment authorization to sell natural gas in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protests with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-2621-001, B, August 28, 1986	Phillips Petroleum Company, 336 Home Savings & Loan Building, Bartlesville, OK 74004.	Northern Natural Gas Company, Puckett Ellenberger Field, Pecos County Texas.	(1)	
G-11990-000, B, August 28, 1986	do	Northern Natural Gas Company, Vinegarone Field, Val Verde County, Texas.	(2)	
G-12690-000, B, August 28, 1986	do	Northern Natural Gas Company, East Hansford Area, Hansford County, Texas.	(3)	
CI86-709-000, A, August 28, 1986	do	(4)		
CI86-710-000, A, August 28, 1986	do	(4)		
CI86-711-000, A, August 28, 1986	do	(4)		

[1] Applicant requests a limited-term abandonment for a period of two-years of certain sales to Northern Natural Gas Company covered under contract dated February 8, 1952, and Applicant's FERC Gas Rate Schedule No. 18. Applicant states that it has continued to experience substantially reduced takes without payment. Applicant states that the gas qualifies under NGPA sections 104 flowing gas, 104 1973-1974 biennium gas and 108, and that the estimated deliverability is approximately 60,000 Mcf/day. Applicant proposes to sell the gas on the interstate spot market and has therefore filed for a blanket certificate in Docket No. CI86-709-000.

[2] Applicant requests a limited-term abandonment for a period of two-years of certain sales to Northern Natural Gas Company covered under contract dated June 10, 1982, and Applicant's FERC Gas Rate Schedule No. 291. Applicant states that it has continued to experience substantially reduced takes without payment. Applicant states that the gas qualifies under NGPA sections 104, 1973-1974 biennium gas and 106(a)(2), and that the estimated deliverability is approximately 4,000 Mcf/day. Applicant proposes to sell the gas on the interstate spot market and has therefore filed for a blanket certificate in Docket No. CI86-711-000.

[3] Applicant requests a limited-term abandonment for a period of two-years of certain sales to Northern Natural Gas Company covered under contract dated July 1, 1982, and Applicant's FERC Gas Rate Schedule No. 294. Applicant states that it has continued to experience substantially reduced takes without payment. Applicant states that the gas qualifies under NGPA sections 106(a)(2) and 108, and that the estimated deliverability is approximately 3,000 Mcf/day. Applicant proposes to sell the gas on the interstate spot market and has therefore filed for a blanket certificate in Docket No. CI86-710-000.

[4] Applicant requests in Docket Nos. CI86-709-000, CI86-710-000 and CI86-711-000 blanket limited-term certificates with pre-granted abandonment for a period of two-years to make sales for resale in interstate commerce for gas subject to the limited-term abandonments in Docket Nos. G-2621-001, G-12690-000, and G-11990-000, respectively. Applicant states that it will file any rate schedules required by the order granting the certificates, however Applicant requests a reporting requirement in lieu thereof.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-20397 Filed 9-9-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140078; FRL-3077-5]

Access to Confidential Business Information by the National Archives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized an employee of the National Archives for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than September 24, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll-free: (800-424-9065), in Washington, DC: (554-1404). Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: In a letter to EPA, dated July 28, 1986, the Director of the Records Appraisal and Disposition Division of the National Archives requested that an employee on his staff be authorized for access to TSCA CBI to review and appraise the OTS records listed on a disposition schedule submitted to the National Archives and Records Administration (NARA) by EPA.

In reviewing the disposition schedules NARA will determine whether records proposed for permanent retention have sufficient continuing value to warrant eventual transfer to the National Archives or if records proposed for disposal do not have sufficient value for purposes of historical or other research, functional documentation, or the protection of individual rights to warrant permanent retention by the Government.

In accordance with 40 CFR 2.306(j), EPA has determined that the National Archives employee will require access to CBI submitted to EPA under TSCA to examine efficiently records covered by proposed schedules. The appraisal will involve examining a cross-section of files to determine the content and value of the records. The National Archives employee will be given access to the TSCA Chemical Inventory File, Premanufacture Notices and TSCA Chemical Substances Inventory and other Section 8 Files.

EPA is issuing this notice to inform submitters of information under sections 5 and 8 of TSCA that EPA may provide the National Archives employee access to these CBI materials on a need-to-know basis. All access to TSCA CBI will take place at EPA Headquarters. The National Archives employee will not remove any CBI materials from EPA premises.

Clearance for this access to TSCA CBI is scheduled to expire on February 28, 1987.

The National Archives employee will be briefed on appropriate security procedures, be given a CBI test, and be required to submit a completed and signed TSCA CBI Access Request Form before access to TSCA CBI is permitted.

Dated: September 3, 1986.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 86-20369 Filed 9-9-86; 8:45 am]

BILLING CODE 6560-50-M

[ORD-FRL-3077-2]

Ambient Air Monitoring Reference and Equivalent Methods; Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7049, 41 FR 11255), has designated another equivalent method for the measurement of ambient concentrations of sulfur dioxide. The new equivalent method is an automated method (analyzer) which utilizes a measurement principle based on fluorescence detection of SO_2. The new designated method is:

EQSA-1086-061, "Dasibi Model 4108 U.V. Fluorescence SO_2 Analyzer," operated with a range of 0-100 ppb*, 0-200ppb*, 0-500 ppb, or 0-1000 ppb, with a Teflon-coated particulate filter and a continuous hydrocarbon removal system, with or without any of the following options:

a. Rack Mounting Brackets and Slides

b. RS 232 C Interface

c. Temperature Correction

* Note.—Users should be aware that the designation of ranges less than 500 ppb are based on meeting the same absolute performance specifications required for the 0-500 ppb range. Thus, designation of these lower ranges does not guarantee commensurably better performance than that obtained on the 0-500 ppb. range.

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This method is available from Dasibi Environmental Corporation, 515 West Colorado Street, Glendale, California 92204. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 51, February 18, 1986, page 5802.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of Appendix C to 40 CFR Part 58 (Modifications of Methods by Users).

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. The contact for information is C. Frederick Smith at (919) 541–4599.

Designation of this equivalent method will provide assistance to the states in establishing and operating their air quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above. Technical questions concerning the method should be directed to the manufacturer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation because it imposes no additional regulatory requirements, but instead announces the designation of an additional equivalent method that is acceptable for use by states and other control agencies for purposes of 40 CFR Part 58, Ambient Air Quality Surveillance or other applications where use of a reference or equivalent method is required.

This notice was exempted by the Office of Management and Budget for review as required by Executive Order 12291.

Courtney Riorden,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86–20363 Filed 9–9–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51639; FRL–3077–9]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substance Control Act (TSCA) requries any person who intends to manufacture or import a new chemical substance to submit a permanufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-eight such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86–1583, 86–1584, 86–1585, 86–1586 and 86–1587, November 20, 1986

P 86–1588 and 86–1589, November 23, 1986

P 86–1590 and 86–1591, September 22, 1986

P 86–1592, 86–1593, 86–1594, 86–1595, 86–1596, 86–1597, 86–1598, 86–1599, 86–1600 and 86–1601, November 24, 1986

P 86–1602, 86–1603, 86–1604, 86–1605, 86–1606 and 86–1607, November 25, 1986

P 86–1608, 86–1609 and 86–1610, November 26, 1986

Written comments by:

P 86–1583, 86–1584, 86–1585, 86–1586 and 86–1587, October 21, 1986

P 86–1588 and 86–1589, October 24, 1986

P 86–1590 and 86–1591, August 23, 1986

P 86–1592, 86–1593, 86–1594, 86–1595, 86–1596, 86–1597, 86–1598, 86–1599, 86–1600 and 86–1601, October 25, 1986

P 86–1602, 86–1603, 86–1604, 86–1605, 86–1606 and 86–1607, October 26, 1986

P 86–1608, 86–1609 and 86–1610, October 27, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–51639]" and the specific PMN number should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances,

VOL 51 ISS 175 SE 10 1986 UMI

Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidenital document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1583

Manufacturer. Confidential.
Chemical. (G) Alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential

P 86-1584

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1585

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Dermal, a total of 9 workers.
Environmental Release/Disposal. Confidential.

P 86-1586

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Dermal, a total of 9 workers.
Environmental Release/Disposal. Confidential.

P 86-1587

Manufacturer. Sherex Chemical Company, Inc.
Chemical. (G) Dilaurylmethyl amine, methyl dilauryl amine.
Use/Production. (S) Catalyst. Prod. range: Confidential.
Toxicity Data. Skin-corrosive.
Exposure: Dermal, a total of 7 workers, up to 10 hrs/day, up to 9 day/yr.
Environmental Release/Disposal. Minimal release to water by privately owned treatment work (POTW).

P 86-1588

Manufacturer. Borg-Warner Chemical.
Chemical. (G) Modified styrene-olefin copolymer.
Use/Production. (G) Telelectronics, appliances and general electrical applications. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 gm/kg; Irritation: Skin-Mild.
Exposure: Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 0 to 2 kg/day, released to land in an approved landfill. 2 to 6 kg/batch, released to water. Disposal by water to treatment pond (wastewater facility). Confidential.

P 86-1589

Manufacturer. Confidential.
Chemical. (G) Modified styrene-diene-olefin copolymer.
Use/Production. (G) Telelectronics, appliances and general electrical applications. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 gm/kg; Irritant: Skin-Mild.
Exposure: Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 0 to 2 kg/day, released to land in an approved landfill. 2 to 6 kg/batch, released to water. Disposal by water to treatment pond (wastewater facility).

P 86-1590

Manufacturer. National Starch and Chemical Corporation.
Chemical. (G) Acrylate copolymer; sulfonated acrylate copolymer; sulfonated acrylate telomer, sodium salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. Confidential.

P 86-1591

Manufacturer. National Starch and Chemical Corporation.
Chemical. (G) Acrylated copolymer; sulfonated acrylate copolymer; sulfonated acrylate telomer, potassium salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. Confidential.

P 86-1592

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Halogenated substituted ethylene copolymer.
Use/Production. (G) Coatings, separators, and insulators. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 gm/kg; Irritation: Skin-Non-irritant, Eye-Non-irritant.
Exposure: Confidential.
Environmental Release/Disposal. Confidential.

P 86-1593

Importer. Confidential.
Chemical. (G) Substituted Benzophenone.
Use/Import. (S) Industrial UV absorber. Import range: 800 to 1500 kg/yr.
Toxicity Data. No data submitted.
Exposure: No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-1594

Manufacturer. Confidential.
Chemical. (S) 3-[3 ', 4'(methylenedioxy) phenyl]-2-methyl-N-(2''-carbomethoxyphenyl)-1-imino-propane.
Use/Production. (S) Commercial fragrance component. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Manufacture: dermal, a total of 4 workers, up to 0.15 hrs/da, up to 34 day/yr.
Environmental Release/Disposal. No data submitted.

P 86-1595

Importer. Confidential.
Chemical. (G) Alkoxy substituted carboxy acetonitrile.
Use/Import. (G) Destructive use. Import. range: Confidential.
Toxicity Data. No data submitted.
Exposure: Confidential.
Environmental Release/Disposal. 0.05 to <2.5 kg/batch released to land. Disposal by approval landfill.

P 86-1596

Manufacturer. Confidential.
Chemical. (S) Z-3-hexene-1-bromo.
Use/Production. (G) Site limited chemical intermediate. Prod. range: 1200 to 2000 kg/yr.

Toxicity data. No data submitted.
Exposure. Manufacture: dermal, a total of 10 workers, up to 0.5 hrs/da, up to 24 da/yr.
Environmental Release/Disposal. No data submitted.

P 86-1597

Manufacturer. Nuodex, Inc.
Chemical. (G) Alkyl cycloalkyl trimellitate.
Use/Production. (G) Plastics additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 15 workers, up to 8 hrs/da, up to 83 da/yr.
Environmental Release/Disposal. 10^{-6} kg/batch released to air with 0.1 kg/batch to water and 70 kg/batch to land. Disposal by landfill and navigable waterway.

P 86-1598

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Intermediate for paint and electrical insulation. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1599

Importer. BP Chemicals Americas, Inc.
Chemical. (G) Pentaerythritol type ester.
Use/Importer. (G) Plasticiser. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-1600

Manufacturer. King Industries, Inc.
Chemical. (G) Alkyl naphthalene sulfonic acid, compound with amine.
Use/Production. (G) Coatings additive. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0g/kg; Irritation: Skin—Moderate, Eye—Corrosive; Inhalation: >200 mg/1; Acute dermal: >2 g/kg.
Exposure. Manufacture: a total of 2 workers, up to 2 hrs/da, 30 da/yr.
Environmental Release/Disposal. Confidential.

P 86-1601

Manufacturer. Alzo, Inc.
Chemical. (S) Dimethyl lauramine dimer dilinoleate, dilauryldimethylamine, 9,12-octadecadienoate (Z,Z-Dimer).
Use/Production. (S) Softener for hair products. Prod. range: 2,500 to 10,000 kg/yr

Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 16 workers, up to 2 hrs/day, up to 4 day/yr.
Environmental Release/Disposal. 1 to 20 kg/batch released to water. Disposed by publicly owned treatment work (POTW).

P 86-1602

Importer. Stockhausen, Inc.
Chemical. (G) N-alkylaminoacrylamide.
Use/Import. (S) Starting monomer for high molecular weight polymers. Import. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: a total of 4 workers, up to 2 hrs/da, up to 13 day/yr.
Environmental Release/Disposal. Confidential.

P 86-1603

Importer. Stockhausen, Inc.
Chemical. (G) N-alkylaminoacrylamide, hydrochloric acid salt.
Use/Import. (S) Starting monomer for high molecular weight polymers. Import. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: a total of 4 workers, up to 2 hrs/da, up to 13 day/yr.
Environmental Release/Disposal. No data submitted.

P 86-1604

Importer. Stockhausen, Inc.
Chemical. (G) N-alkylaminoacrylamide, sulfuric acid salt.
Use/Import. (S) Starting monomer for high molecular weight polymers. Import. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: A total of 4 workers, up to 2 hrs/da, up to 25 da/yr.
Environmental Release/Disposal. No data submitted.

P 86-1605

Importer. Stockhausen, Inc.
Chemical. (G) N-alkylaminoacrylamide, quaternary salt.
Use/Import. (S) Starting monomer for high molecular weight polymers, Import. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: a total of 4 worker, up to 2 hrs/day, up to 13 day/yr.
Environmental Release/Disposal. No data submitted.

P 86-1606

Importer. Stockhausen, Inc.
Chemical. (G) N-alkylaminoacrylamide, alkylsulfate salt.
Use/Import. (S) Starting monomer for high molecular weight polymers. Import. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Processing: a total of 4 worker, up to 2 hrs/day, up to 13 day/yr.
Environmental Release/Disposal. No data submitted.

P 86-1607

Importer. Confidential
Chemical. (G) Brominated Isocyanurates additive.
Use/Import. (G) Additive for plastic products. Import. range: Confidential.
Toxicity Data. Acute oral: > 7,000 mg/kg; Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86-1608

Manufacturer. Synthetics Products Company.
Chemical. (G) Calcium carboxyalte.
Use/Production. (G) Additive for Polymer compounds. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. 50 kg/batch released to air and land. Disposal by air dust collection system and landfill.

P 86-1609

Manufacturer. Jim Walter Research Corporation.
Chemical. (G) Polyester of aliphatic acid.
Use/Production. (G) Industrial processing aid. Prod. range: 100,000 to 1,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 10 workers, up to 1 hr/day, up to 180 day/yr.
Environmental Release/Disposal. 10 to 95 kg/batch released to effluent system then to water. Disposal by POTW.

P 86-1610

Manufacturer. Confidential.
Chemical. (G) Methacrylated polybutadiene.
Use/Production. (S) Commercial printing plate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: August 29, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86-20366 Filed 9-9-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59783; FRL-3077-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires that any person who intends to manufacture or import a new chemical substance to submit a premanufacture noitice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-227, September 11, 1986
Y 86-228, September 14, 1986
Y 86-229, September 15, 1986
Y 86-230, 86-231 and 86-232, September 16, 1986
Y 86-233, September 17, 1986

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Manangement Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-227

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of an aryl ester, alkyl dicarboxylic acid an alkyl diol.
Use/Import. (S) Industrial hot melt adhedsive for bonding vinyl film to rigid substrates and solution cured with an isocyanate for bonding vinyl film rigid substrates. Import range: 30,000 to 50,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-228

Importer. Confidential.
Chemical. (G) Hydroxy functional styrenated acrylate methacrylate.
Use/Import. (G) Industrially used coating having a dispersive use. Import range: 1,500 to 3,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-229

Manufacturer. NL Industries, Inc.
Chemical. (G) Water dispersible polyester resin.
Use-Production. (G) A polyester resin to be used in an open, non-dispersive manner. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-230

Manufacturer. Confidential.
Chemical. (G) Acrylic solution.
Use/Production. (S) Industrial protection resin used on exterior of closures (lids of jars) etc. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 14 hrs/da, up to 6 day/yr.
Environmental Release/Disposal. No release.

Y 86-231

Manufacturer. Confidential.
Chemical. (G) Styrenic-methacrylic copolymer.
Use/Production. (S) Industrial, commercial and consumer polymer for use in coatings, inks and adhesives. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 86-232

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester polymer.
Use/Production. (S) Blending resin for use with other vinyl monomer-modified polyester resins to improve flexibility and coating resin flexible sheeting and traffic paints for concrete. Prod. range: Confidential.
Toxicity Data. No Date submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-233

Importer. Velco Enterprises LTD.
Chemical. (G) Ethylene oxide-propylene oxide copolymer ether with sorbitol.
Use/Import.(S) Industrial polyol component in structural rigid polyurethane. Import range: Confidential.
Toxicity Data. No date submitted.
Exposure. Processing: demal and ocular, a total of 1 worker, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

Dated: August 29, 1986.

V. Paul Fuschini,
Acting Division Director, Information Management Division.

[FR Doc. 86-20367 Filed 9-9-86; 8:45 am]
BILLING CODE 6560-50-M

[PP 0G2360/T528; FRL-3077-8]

Ethephon; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended a temporary tolerance for residues of the plant regulator ethephon in or on the raw agricultural commodity sugarcane.

DATE: This temporary tolerance expires July 14, 1988.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 17, 1984 (49 FR 40662), stating that a temporary tolerance had been renewed for residues of the plant regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the raw agricultural commodity sugarcane at 0.6 part per million (ppm). This tolerance was issued in response to pesticide petition PP 0G2360, submitted by Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709. A related document (FAP 0H5263), food additive regulation for residues of the plant regulator in sugarcane molasses at 7.0

parts per million (ppm) has been extended.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 264-EUP-59, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires July 14, 1988. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 28, 1986.

James W. Akerman,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-20365 Filed 9-9-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59229; FRL-3077-6]

Substituted Amide; Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirments for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice issued under section 5(h)(6) of TSCA, announces receipt of one application for examption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: September 25, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59229]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-58

Close of Review Period. October 9, 1986.

Manufacturer. Monsanto Company.

Chemical. (G) Substituted amide.

Use/Production. (G) Chelating agent for chemical process in closed system. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal 5,000 mg/kg; Irritation: Skin—Moderate, Eye—Moderate: LC_{50} 96 hr (fathead minnow): 32 mg/1, LC_{50} 48 hr (daphnia magna): 5.6 mg/1.

Exposure. Manufacture: total of less than 5 workers.

Environmental Release/Disposal. 0.002 kg/batch released to air with 0.5 to 2.7 kg/batch to water. Disposal by publicly owned treatment work (POWT) and biological treatment system.

Dated: August 29, 1986.

V. Paul Fuschini,

Acting Division Director, Informotion Management Division.

[FR Doc. 86-20368 Filed 9-9-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100036; FRL-3077-2]

Pesticide Programs; Sycom, Inc. and Logic Unlimited, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Sycom, Inc. and its subcontractor, Logic Unlimited, Inc. have been awarded a contract to perform work for EPA's Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Sycom, Inc. and Logic Unlimited, Inc. consistent with the requirements of 40 CFR 2.307(h) and 2.308(h)(2) respectively. This action will enable Sycom, Inc. and Logic Unlimited, Inc. to fulfill the obligations of the contract and serves to notify affected persons.

DATE: Sycom, Inc. and Logic Unlimited, Inc. will be given access to this information no sooner than September 15, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

Office location and telephone number: Rm. 222, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-01-6919, Sycom, Inc. and Logic Unlimited, Inc. will assist OPP in the conversion of existing ADP systems to an ADABAS environment, and in the design and development of new ADP systems for use by OPP and its user community.

OPP has determined that access by Sycom, Inc. and Logic Unlimited, Inc. to information on all pesticide chemicals is necessary for the performance of the contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.301(h)(2), the contract with Sycom, Inc. and Logic Unlimited, Inc. prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, Sycom, Inc. and Logic Unlimited, Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and subcontractor until the above requirements have been fully satisfied. Records for information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Sycom, Inc. and Logic Unlimited, Inc. by EPA for use in connection with this contract will be returned to EPA when Sycom, Inc. and Logic Unlimited, Inc. have completed their work.

Dated: August 27, 1986.

Douglas D. Campt,

Director, Office of Pesticide. Programs.

[FR Doc. 86-20370 Filed 9-9-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Northern Trust Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 2, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation,* Chicago, Illinois; to acquire through its subsidiary, Nortrust of Arizona Holding Corporation, Phoenix, Arizona, 100 percent of the voting shares of Phoenix National Bank, Phoenix, Arizona.

In connection with this application Nortrust of Arizona Holding Corporation has applied to become a bank holding company by acquiring Phoenix National Bank.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *WVB Bancorp,* Vincennes, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of Wabash Valley Bank of Vincennes, Vincennes, Indiana.

Board of Governors of the Federal Reserve System, September 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20330 Filed 9-9-86; 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have failed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 30, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation,* Richmond, Virginia; to expand the geographic scope of its general insurance activities through its subsidiary, Bank of Virginia Insurance Agency, Ic., Richmond, Virginia, pursuant to section 4(c)(8)(6) of the Bank Holding Company Act.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice

President) 101 Market Street, San Francisco, California 94105:

1. *Frontier Group Incorporated,* Buena Park, California; to engage *de novo* through its subsidiary, FG Leasing Inc., Buena Park, California, in personal property leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in California.

2. *Frontier Group Incorporated,* Buena Park, California; to engage *de novo* through its subsidiary, Frontier Services, Inc., Buena Park, California, in offering portfolio investment advice to other financial institutions pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y. These activities will be conducted in California.

Board of Governors of the Federal Reserve System, September 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20329 Filed 9-9-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Injury Research Grant Review Committee
Dates: September 24-26, 1986
Place: Hotel Tower Place, 3340 Peachtree Road, N.E., Atlanta, Georgia 30026
Time: 8:30 a.m.-5:00 p.m.
Type of meeting: Open 8:30 a.m.-9:30 a.m., September 24, 1986. Closed 10:00 a.m., September 24—5:00 p.m., September 26, 1986
Contact Person: Mark L. Rosenberg, M.D., Executive Secretary of the Committee, Center for Environmental Health, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, GA 30333, telephones: FTS: 236-4542; Commercial: (404) 454-4542.

Purpose: This Committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, Centers for Disease Control, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Agenda: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 10:00 a.m., Wednesday, September 24, through 5:00 p.m., Friday, September 26, the Committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92-463.

Agenda items are subject to change as priorities dictate.

Dated: September 3, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-20238 Filed 9-9-86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing a forthcoming small business exchange meeting to be chaired by Joseph J. Faline, Acting Director, Brooklyn District Office.

DATE: The meeting will be held at 1 p.m., Wednesday, October 1, 1986.

ADDRESS: The meeting will be held at the White Plains Public Library, 100 Martine Ave., White Plains, NY 10601-2599.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Representative, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018-2195, 201-645-6466.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small business and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: September 3, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-20326 Filed 9-9-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-06-4212-11; I-8878]

Realty Action; Ada County, ID

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Realty Action, Classification for Recreation and Public Purposes Lease and Conveyance of Public Land in Ada County, Idaho.

SUMMARY: The below-described public land has been examined and found suitable for Recreation and Public Purposes lease and conveyance.

The following land is hereby classified as suitable for lease with an option to purchase under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended.

T. 1 N., R. 2 E., Boise Meridian, Idaho

Sec. 1, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, S½.

Containing 602.5 acres.

DATES: The effective date of this classification will be 60 days from the date of **Federal Register** publication provided no protests or adverse comments are received as provided below.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the conditions of the lease/sale can be obtained by contacting Peter T. Cizmich, Realty Specialist, at (208) 334-1582.

SUPPLEMENTARY INFORMATION: The lease/conveyance will be subject to the following terms, conditions, covenants, and reservations:

Lease

1. Implementation in accordance with the approved plan of development.
2. Civil rights requirements.
3. Site specific stipulations.

Patent

1. Ditches and canals.
2. All minerals.
3. Special pricing clause.
4. Reversionary clause.
5. Buried telephone cable right-of-way to Mountain States Telephone and Telegraph (I-20978).

The classification is based on the following reasons:

1. The land is physically suitable for an outdoor recreational vehicle park development.

2. The land meets the guidelines for conveyances and leases as contained in 43 CFR 2741.5.

3. The land is valuable for public purposes as stated in 43 CFR 2430.4(a) and may properly be classified for lease and sale under the Recreation and Public Purposes Act as stated in 43 CFR 2430.4(c).

The previously described land is hereby segregated from appropriation under the public land laws, except the Recreation and Public Purposes Act, including the mining laws for a period of 18 months.

The Desert Land Entry Applications of Mary B. Bevan (I–4417) as to the W½SW¼, Donald Jesse Davis (I–4612) as to lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, and Marvel K. Davis (I–4613) as to the E½SW¼, SE¼ will be rejected upon this classification becoming final.

For a period of 60 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

The following petition for classification is hereby approved.

Name of Petitioner: City of Boise, Idaho
Type of Petition: Recreation and Public Purposes Act of June 14, 1926, as amended

Dated: August 27, 1986.

J. David Brunner,

District Manager.

[FR Doc. 86–19982 Filed 9–9–86; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-020-06-4212-11]

Realty Action, Arizona; Lease or Conveyance of Public Lands for Recreation and Public Purpose

The following lands, near the city of Flagstaff, Coconino County, Arizona have been found suitable for lease or conveyance to the state of Arizona for use as a state park and will be so classified under the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 et seq.):

Gila and Salt River Meridian

T. 23 N., R. 10 E.,
Section 36:
Containing 640.00 acres, more or less.

These lands are not needed for federal purposes. Through the environmental assessment process it has been determined that the lease or conveyance of these lands would not affect any BLM programs and would be in the public interest.

The lease or conveyance, would be subject to the following conditions:

1. Provisions of the Recreation and Public Purpose Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

Upon publication of this Notice in the Federal Register, these lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purpose Act. For a period of 45 days from the date of publication of this Notice, interested persons may submit comments regarding the lease/conveyance or classification of these lands to the District Manager, Phoenix District, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. Any objection will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. Further information concerning the realty action can be obtained from the Phoenix Resource Area, Phoenix District (606–863–4464).

Dated: September 4, 1986.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 86–20336 Filed 9–9–86; 8:45 am]

BILLING CODE 4310-32-M

[WY 920 06 4133–14]

Detailed Statement of Sodium Lease Sale; Sodium Lease Applications W–98419, W–98420, W–98421

At 2:00 p.m., on September 30, 1986, an authorized officer of the Bureau of Land Management, Wyoming State Office, will offer the following described lands for competitive lease by sealed bid to the qualified bidder submitting the highest cash amount per acre or fraction thereof in accordance with the provisions of the Mineral Lands Leasing Act of 1920, as amended (30 UCS.C. 181 et seq.). No bid will be considered which is less than $200.00 per acre and bids should be formulated on the basis of 1,596 acres for Parcel 1, 1,933 acres for Parcel 2, and 1,666 acres for Parcel 3. The minimum bid is not intended to represent fair market value.

Sodium Offered

The sodium resource to be offered consists of all the recoverable sodium in the following described lands located in Sweetwater County, Wyoming:

Parcel 1

T. 21 N., R. 108 W., 6th P.M., WY
Sec. 20: All;
Sec. 30: Lots 5–8, E½, E½W½;
T. 20 N., R. 109 W., 6th P.M., WY
Sec. 2: Lots 5–12 inclusive.
Containing 1,595.34 acres

Parcel 2

T. 17 N., R. 109 W., 6th P.M., WY
Sec. 6: Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
T. 18 N., R. 109 W., 6th P.M., WY
Sec. 32: All;
T. 17 N., R. 110 W., 6th P.M., WY
Sec. 2: Lots 1–4, S½N½, S½.
Containing 1,932.91 acres

Parcel 3

T. 17 N., R. 109 W., 6th P.M., WY
Sec. 2: Lot 4, S½NW¼, SW¼,S½SE¼;
Sec. 4: Lots 1–4, S½N½, S½;
T. 18 N., R. 109 W., 6th P.M., WY
Sec. 34: All.
Containing 1,665.58 acres

The estimated total sodium recoverable reserves for Parcel 1: 69 million tones with an estimated quality average of 89.9% in two sodium beds averaging between 8 and 18 feet in thickness; for Parcel 2: 133.18 million tons with an estimated quality average of 86% in five sodium beds averaging between 8 and 12 feet in thickness; and, for Parcel 3: 136.13 million tons with an estimated quality average of 86% in four sodium beds averaging beween 8 and 13 feet in thickness.

Rental and Royalty

Leases issued as a result of this offering will provide for payment of annual rentals for each acre or fraction thereof covered thereby as follows: 25 cents for the first calendar year or fraction thereof; 50 cents for the second, third, fourth and firth calendar years, respectively; and, one dollar for the sixth and each and every calendar year thereafter during the continuance of the leases, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid, and a royalty of 5 percent of the gross value of the output of sodium deposits and related productions at the point of shipment to market.

Advance Royalty

Each lease shall require a minimum annual production or the payment of minimum royalty in lieu of production for any particular lease year, beginning with the sixth lease year. Minimum royalty payments shall be credited to production royalties for that year only. The rate of the minimum royalty shall be $3.00 per acre or fraction thereof per year, payable in advance.

When and Where to Submit Bids

Sealed bids must be submitted on or before 1:00 p.m., September 30, 1986, to the Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Sealed bids received after the hour specified will not be considered. The envelope used for the sealed bid should be plainly marked that it is not to be opened before the hour and date of the sale and should show that the bid is for Sodium Lease Application W-98419, W-98420 *or* W-98421. Sealed bids may not be modified or withdrawn unless the modification or withdrawal is received before 1:00 p.m., September 30, 1986, at the above address.

Sealed Bidding Requirements

No special form of sealed bid is required. However, all bids must show that amount bid per acre, the total amount bid, the amount submitted with the bid, and must be signed by the bidder or a person authorized to act for the bidder. Each sealed bid must be accompanied by the following:

1. A bid deposit of one-fifth of the amount bid in cash, cashier's check, certified check, bank draft, money order, or personal check made payable to the order of the Bureau of Land Management;

2. A statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in 43 CFR Part 3502 and a statement as to the sole party in interest as specified in 43 CFR 3502.3. A lease will not be issued to a bidder who holds or controls more than 5,120 acres of Federal sodium leases in any one state;

3. A completed and signed Form 1140-6, Independent Price Determination Certificate, to the effect that the bid was arrived at by the bidder independently and was tendered without collusion with any other bidder.

Bidders are warned against violation of section 1860, Title 18, U.S.C. prohibiting unlawful combination or intimidation of bidders.

Bid Opening

At 2:00 p.m., September 30, 1986, in the third floor conference room, 2515 Warren Avenue, Cheyenne, Wyoming, the authorized officer will open and read all sealed bids. If identical sealed bids are received for any one tract, the tying high bidders will be asked to submit follow-up sealed bids until a high bid is recieved. An apparent high bidder submitting a tie-breaking sealed bid shall tender, at the close of the sale, any additional amount necessary to bring the amount submitted with the original bid up to one-fifth of the final bid. The highest bid will be announced and the successful high bidder will be formally notified in writing after the State Director has made his determination. The Department of the Interior reserves the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason. If any bid is rejected, the deposit made on the day of the sale will be returned.

Lease Issuance Requirements

Prior to the issuance of a lease, the successful bidder will be required to furnish the following items:

1. The proportionate cost of advertising the sales notice in a local newspaper;

2. The balance of the bonus bid;

3. Four executed copies of the lease form;

4. First year's rental in the amount of: $399.00 for Parcel 1; $483.25 for Parcel 2; $416.50 for Parcel 3;

5. A lease bond in the amount of $5,000. The lease bond will be reviewed when production begins and will be adjusted as necessary.

Lease Form and Stipulations

The attention of all prospective bidders is directed to the attached copies of the proposed sodium leases and stipulations.

Hillary A. Oden,

State Director.

[FR Doc. 86-20316 Filed 9-9-86; 8:45 am]

BILLING CODE 4130-22-M

[NV-030-06-4212-11; N-43262]

Mineral County, NV; Realty Action; Lease or Sale of Public Land for Recreation and Public Purposes, Mineral County, NV

The following described public land has been identified as suitable and will be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.):

Mount Diablo Meridian, Nevada

T. 8 N., R. 34 E.,
sec. 34, NW¼NW¼SW¼.

A 10-year lease for the subject 10 acres of public land to be used as a sanitary landfill will be offered to Mineral County. The land is not required for federal purposes. Disposal is consistent with Bureau planning for this area and would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the said land, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for transmission line purposes granted to Sierra Pacific Power Company by Permit No. CC-013875.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon pubication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws and the general mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: August 27, 1986.

Norman L. Murray,

District Manager.

[FR Doc. 86-20318 Filed 9-9-86; 8:45 am]

BILLING CODE 4310-HC-M

[WY 920 06 4133-14; W-98419, W-98420, W-98421]

Wyoming; Sodium Lease Offerings By Sealed Bid

U.S. Department of the Interior, Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Notice is hereby given that certain sodium

resources in the lands hereinafter described, located in Sweetwater County, Wyoming, will be offered for competitive lease by sealed bid. These offerings are being made as a result of expressions of interest filed in accordance with the provisions of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.). The sale will be held at 2:00 p.m., September 30, 1986, in the third floor conference room, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming.

The parcels will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the parcels. The minimum bid is $200.00 per acre. No bid less than $200.00 per acre will be considered. The minimum bid is not intended to represent fair market values. The fair market value will be determined by the Authorized Officer after the sale. Sealed bids must be submitted on or before 1:00 p.m., September 30, 1986, to the Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Bids received after that time will not be considered.

Sodium Offered:

Parcel 1

T. 21 N., R. 108 W., 6th P.M., WY
Sec. 20: All;
Sec. 30: Lots 5–8, E½, E½W½;
T. 20 N., R. 109 W., 6th P.M., WY
Sec. 2: Lots 5–12 inclusive.
Containing 1,595.34 acres

The 1,595.34 acre parcel contains an estimated 69 million tons of recoverable sodium with an estimated quality average of 89.9%.

Parcel 2

T. 17 N., R. 109 W., 6th P.M., WY
Sec. 6: Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
T. 18 N., R. 109 W., 6th P.M., WY
Sec. 32: All;
T. 17 N., R. 110 W., 6th P.M., WY
Sec. 2: Lots 1–4, S½N½, S½.Q02
Containing 1,932.91 acres

The 1,932.91 acre parcel contains an estimated 133.18 million tons of recoverable sodium with an estimated quality average of 86%.

Parcel 3

T. 17 N., R. 109 W., 6th P.M., WY
Sec. 2: Lot 4, S½NW¼, SW¼, S½SE¼;
Sec. 4: Lots 1–4, S½N½, S½;
T. 18 N., R. 109 W., 6th P.M., WY
Sec. 35: All.
Containing 1,665.58 acres

The 1,665.58 acre parcel contains an estimated 136.13 million tons of recoverable sodium with an estimated quality average of 86%.

Rental and Royalty

The leases issued as a result of this offering will provide for payment of annual rentals for each acre or fraction thereof covered thereby as follows: 25 cents for the first calendar year or fraction thereof; 50 cents for the second, third, fourth and fifth calendar years, respectively; and, one dollar for the sixth and each and every calendar year thereafter during the continuance of the leases, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid, and a royalty of 5 percent of the gross value of the output of sodium deposits and related productions at the point of shipment to market.

Notice of Availability

Bidding instructions for the offered tracts are included in the Detailed Statement of Lease Sale. Copies of the statement and of the proposed sodium leases are available at the Wyoming State Office. Case file documents are also available at that office for public inspection. Sodium resource information pertaining to these tracts is also available for public inspection in the Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming 82901.

Hillary A. Oden,
State Director.
[FR Doc. 86–20317 Filed 9–9–86; 8:45 am]
BILLING CODE 4130–22–M

National Park Serice

Intention To Negotiate Concession Permit; Arizona Department of Economic Security

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with the State of Arizona, Department of Economic Security, authorizing it to continue to provide gift shop facilities and services for the public at Glen Canyon National Recreation Area for a period of five (5) years from January 1, 1986 through December 31, 1990.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given perference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, Denver, Colorado, for information as to the requirements of the proposed permit.

Dated: December 23, 1985.

Jack W. Neckels,
Acting Regionol Director, Rocky Mountain Region.
[FR Doc. 86–20386 Filed 9–9–86; 8:45 am]
BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget For Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 395–7313.

Title: Bond and Issuance Requirements for Surface Coal
Mining and Reclamation Operations under Regulatory Programs
30 CFR Part 800

Abstract: This information is needed to implement section 509 and 519 of Pub. L. 95–87. The information is used in determining whether bonding is being properly regulated and to avoid a break

in the chain of liability which flows from the time the permit application is approved until completion of the permit reclamation.

Bureau Form Number: None
Frequency: On Occasion
Description of Respondents: Coal Mine Operators
Annual Responses: 5,950
Annual Burden Hours: 27,779

Bureau Clearance Office: Darlene Grose Boyd 343–5447.

Dated: August 22, 1986.

Donald Hinderliter,

Acting Assistant Director, Budget and Administration.

[FR Doc. 86–20378 Filed 9–9–86; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–270 (Final) and 731–TA–311 through 317 (Final)]

Certain Brass Sheet and Strip From Brazil, Canada, France, Italy, The Republic of Korea, Sweden, and West Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations and with countervailing duty investigation No. 701–TA–270 (Final).

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–311 through 317 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil (investigation No. 731–TA–311 (Final)); Canada (investigation No. 731–TA–312 (Final)); France (investigation No. 731–TA–313 (Final); Italy (investigation No. 731–TA–314 (Final)); the Republic of Korea (investigation No. 731–TA–315 (Final)); Sweden (investigation No. 731–TA–316 (Final)); and West Germany (investigation No. 731–TA–317 (Final)); of brass sheet and strip, other than leaded brass and tin brass sheet and strip,[1] not cut, pressed, or stamped to nonrectangular shape, provided for in item 612.39 of the Tariff Schedule of the United States, which have been found by the Department of Commerce, in preliminary determinations, to be sold, or likely to be sold, in the United States at less than fair value (LTFV). The Commission also gives notice of the scheduling of a hearing in connection with these investigations and with countervailing duty investigation No. 701–TA–270 (Final), Certain Brass Sheet and Strip from France, which the Commission instituted on June 9, 1986 (51 FR 24237, July 2, 1986). The schedules for investigation No. 701–TA–270 (Final) and for the subject antidumping investigations will be identical, pursuant to Commerce's extension of the countervailing duty investigation (51 FR 25379, July 14, 1986). Commerce will make its final countervailing duty and antidumping determinations on or before November 3, 1986. The Commission will make its final injury determinations within 45 days after receipt of Commerce final determinations (see sections 705(a) and 705(b) and sections 735(a) and 735(b) of the Act (19 U.S.C. 1671d(a) and 167d(b) and 19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedures, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 22, 1986.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–523–0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103.

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain brass sheet and strip from Brazil, Canada, France, Italy, the Republic of Korea, Sweden, and West Germany are being, or are likely to be, sold in the United States at LTFV. The Commission's schedule for these investigations and for investigation No. 701–TA–270 (Final) has been made in accordance with Commerce's notice of extension of its final countervailing duty determination. The investigations were requested in a petition filed on March 10, 1986, by counsel on behalf of American Brass, Buffalo, NY; Bridgeport Brass Corp., Indianapolis, IN; Chase Brass & Copper Co., Solon, OH; Hussey Copper Ltd., Leetsdale, PA; The Miller Co., Meriden, CT; Olin Corp. (Brass Group), East Alton, IL; and Revere Copper Products, Inc., Rome, NY. In response to that petition the Commission conducted preliminary investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise from Brazil, Canada, France, Italy, the Republic of Korea, Sweden, and West Germany (51 FR 16235, May 1, 1986).

Participation in the investigations

Persons wishing to participate in the antidumping investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry. (Persons wishing to participate in investigation No. 701–TA–270 (Final) should have already filed an entry of appearance, pursuant to the Commission's notice of institution of this investigation in the **Federal Register** of July 2, 1986.)

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the subject antidumping investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service

[1] The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report for the subject antidumping investigations and for investigation No. 701–TA–270 (Final will be placed in the public record on October 27, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with the subject antidumping investigations and for investigation No. 701–TA–270 (Final) beginning at 9:30 a.m. on November 13, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 31, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 6, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing perhearing briefs is November 6, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 20, 1986. In addition, any person who has not entered an appearance as a party to these investigations may submit a written statement of information pertinent to the subject of the investigations on or before November 20, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submission except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 5, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–20399 Filed 9–9–86; 8:40 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–347 and 348 (Preliminary)]

Certain Malleable Cast-Iron Pipe Fittings From Japan and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–347 and 348 (Preliminary) under section 733(a) or the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan and Thailand of certain nonalloy, malleable cast-iron pipe fittings,[1] whether or not advanced in condition by operations or processes (such as threading) subsequent to the casting process, provided for in items 610.70 and 610.74 of the Tarff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 14, 1986.

For further infomation concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 29, 1986.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202–523–4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on August 29, 1986 by the Cast Iron Pipe Fittings Committee.[2]

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations

[1] The malleable cast-iron pipe fittings covered by these investigations are those with standard pressure ratings of 150 pounds per square inch (psi) or heavy-duty pressure ratings of 300 psi. Groove-lock fittings are not included.

[2] The 5 member producers of this committee are Stanley G. Flagg & Co., Inc., ITT–Grinnell Corp., Stockham Valves & Fittings Co., U-Brand Corp., and Ward Foundry Division of Clevepak Corp.

upon the expiration of the period for filing enteries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on September 19, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Ilene Hersher (202–523–4616) not later than September 16, 1986 to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before September 23, 1986 a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submission except for confidential business data will be availabe for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment if desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to §207.12 of the Commission's rules (19 CFR 207.12)

By order of the Commission.

Issued: September 4, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–20400 Filed 9–9–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–280 (Preliminary) and 731–TA–337 (Preliminary)]

Certain Paint Filters and Strainers From Brazil

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] by reason of imports from Brazil of disposable paint filters and strainers of paper, containing cotton gauze, provided for in item 256.90 of the Tariff Schedules of the United States (TSUS), or of cotton gauze, containing paper, provided for in TSUS Item 386.53, or of nylon mesh, containing paper, provided for in TSUS item 389.62, which are alleged to be subsidized by the Government of Brazil.[3] The Commission also determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] by reason of imports from Brazil of these disposable paint filters and strainers, provided for in TSUS items 256.90, 386.53, and 389.62, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 15, 1986, a petition was filed with the Commission and the Department of Commerce by Louis M. Gerson Co., Inc., Middleboro, MA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and LTFV imports of certain paint filters and strainers from Brazil. Accordingly, efective July 15, 1986, the Commission instituted countervailing duty investigation No. 701–TA–280 (Preliminary) and preliminary antidumping investigation No. 731–TA–337 (Preliminary).

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Stern determines that there is a reasonable indication that an industry in the United States is threatened with material injury.

[3] The Department of Commerce notified the Commission on August 21, 1986, that it was modifying the scope of investigation to reflect nylon mesh strainers provided for in TSUS item 389.62.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 23, 1986 (51 FR 26476). The conference was held in Washington, DC, on August 6, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 29, 1986. The views of the Commission are contained in USITC Publication 1890 (September 1986), entitled "Certain Paint Filters and Strainers from Brazil: Determinations of the Commission in Investigations Nos. 701–TA–280 (Preliminary) and 731–TA–337 (Preliminary) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigations."

By order of the Commission.

Issued: August 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–20402 Filed 9–9–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–254]

Certain Small Aluminum Flashlights and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 30, 1986, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Mag Instrument, Inc., 1635 South Sacramento Avenue, Ontario, California 91761. The complaint alleges unfair methods of competition and unfair acts in the importation into the United States of certain small aluminum flashlights and components thereof, and in their sale, by reason of alleged (1) direct and contributory infringement of all four claims of U.S. Letters Patent 4,577,363; and (2) misappropriation of trade dress. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Steven H. Schwartz, Esq., or Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–4877 or 202–523–0419, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 27, 1986, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain small aluminum flashlights and components thereof, or in their sale, by reason of alleged (1) direct and contributory infringement of all four claims of U.S. Letters Patent 4,577,263; and (2) common law trademark infringement, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Mag Instrument, INc., 1635 South Sacramento Avenue, Ontario, California 91761.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Farstar Industrial Company, Ltd., P.O. Box 81–505, Taipei, Taiwan
Kassnar Imports, Inc., 5480 Linglestown Road, Harrisburg, Pennsylvania 17112
Normark, Inc., P.O. Box 800408, Dallas, Texas 75380
Big Time, Inc., 5 Terminal Road, West Hempstead, New York 11552
Brinkmann International, Ltd., Room 706 Houston Centre, 63 Mody Road, Tsimshatsui East, Kowloon, Hong Kong
J. Baxter Brinkmann, International Corporation, 4215 McEwen Road, Dallas, Texas 75234
The Brinkmann Corporation, 4215 McEwen Road, Dallas, Texas 75234

(c) Steven H. Schwartz, Esq., and Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 201.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 am to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: September 2, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–20404 Filed 9–9–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–271 (Final) and 731–TA–318 (Final)]

Oil Country Tubular Goods From Israel

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation and with countervailing duty investigation No. 701–TA–271 (Final).

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–318 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Israel of oil country tubular goods,[1] provided for items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). The Commission also gives notice of the scheduling of a hearing in connection with this investigation and with countervailing duty investigation No. 701–TA–271 (Final), Oil Country Tubular Goods from Israel, which the Commission instituted on June 11, 1986 (51 FR 24947, July 9, 1986). The schedules for investigation No. 701–TA–271 (Final) and for the subject antidumping investigation will be identical, pursuant to Commerce's extension of the countervailing duty investigation (51 FR 25382, July 14, 1986). Commerce will make its final countervailing duty and antidumping determinations on or before November 3, 1986. The Commission will make its final injury determinations within 45 days after receipt of Commerce's final determinations (see sections 705(a) and 705(b) and sections 735(a) and 735(b) of the Act (19 U.S.C. 1671d)(a) and 1671d(b) and 19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 25, 1986.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202–523–0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

[1] For purposes of this investigation, "oil country tubular goods" includes drill pipe, casing, and tubing for drilling oil and gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specification

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of oil country tubular goods from Israel are being sold in the United States at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). The Commission's schedule for this investigation and for investigation No. 701-TA-271 (Final) has been made in accordance with Commerce's notice of extension of its final countervailing duty determination. The investigations were requested in a petition filed on March 12, 1986, by the Lone Star Steel Company, Dallas, TX and CF&I Steel Corporation, Pueblo, CO. In response to that petition the Commission conducted preliminary investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 16907, May 7, 1986).

Participation in the investigation

Persons wishing to participate in the antidumping investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry. [Persons wishing to participate in investigation No. 701-TA-271 (Final) should have already filed an entry of appearance, pursuant to the Commission's notice of institution of this investigation in the Federal Register of July 9, 1986.]

Service list

Pursuant to § 201.11(d) of the Commission's rules [19 CFR 201.11(d)], the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the subject antidumping investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules [19 CFR 201.16(c) and 207.3], each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report for the subject antidumping investigation and for investigation No. 701-TA-271 (Final) will be placed in the public record on October 27, 1986, pursuant to § 207.21 of the Commission's rules [19 CFR 207.21].

Hearing

The Commission will hold a hearing in connection with the subject antidumping investigation and for investigation 701-TA-271 (Final) beginning at 9:30 a.m. on November 12, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 31, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 5, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 6, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules [19 CFR 207.23]. This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing [see § 201.6(b)(2) of the Commission's rules CFR 201.6(b)(2)]).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 of the Commission's rules [19 CFR 207.22]. Posthearing briefs must conform with the provisions of § 207.24[19 CFR 207.24] and must be submitted not later than the close of business on November 19, 1986. In addition, any person who has not entered an appearance as a party to these investigations may submit a written statement of information pertinent to the subject of the investigations on or before November 19, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 5, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-20401 Filed 9-9-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 721-TA-338 through 340 (Preliminary)]

Urea From the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the German Democratic Republic [East Germany], Romania, and the Union of Soviet Socialist Republics (U.S.S.R.) of urea, provided for in item 480.30 [3] of the Tariff

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Stern did not participate in these investigations.

[3] The petition referred only to solid urea in Tariff Schedules of the United States (TSUS) item 480.30. When Commerce instituted its investigations effective Aug. 12, 1986, it also included Tariff Schedules of the United States Annotated (TSUSA) items 480.3000, 480.6550, and 480.8030 within the

Continued

Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 16, 1986, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Committee of Domestic Nitrogen Producers,[4] alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of solid urea from East Germany, Romania, and the U.S.S.R. Accordingly, effective July 16, 1986, the Commission instituted preliminary antidumping investigations Nos. 731–TA–338 (Preliminary) (East Germany), 731–TA–339 (Preliminary) (Romania), and 731–TA–340 (Preliminary) (U.S.S.R.).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 23, 1986 (51 FR 26477). The conference was held in Washington, DC, on August 8, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 2, 1986. The views of the Commission are contained in USITC Publication 1891 (September 1986), entitled "Urea from the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics: Determinations of the Commission in Investigations Nos. 731–TA–338 through 340 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: September 2, 1986.

Kennth R. Mason,

Secretary.

[FR Doc. 86–20403 Filed 9–9–86; 8:45 am]

BILLING CODE 7020–02–M

"scope" of its investigations (51 FR 28854). Commerce stated that merchandise classified in TSUSA items 480.6550 and 480.6030 would be subject to its investigations only if the predominant component was urea. Commerce, in a letter dated Aug. 26, 1986, informed the Commission that the scope of Commerce's investigations was being narrowed to include only solid urea in TSUS item 480.30.

[4] The Ad Hoc Committee of Domestic Nitrogen Producers is composed of the following: Agrico Chemical Co., Tulsa, OK; American Cyanamid Co., Wayne, NJ; CF Industries, Long Grove, IL; Farmland Industries, Inc., Kansas City, MO; First Mississippi Corp., Jackson, MS; Mississippi Chemical Corp., Yazoo City, MS; Terra Chemicals International, Sioux City, IA; and W.R. Grace & Co., New York, NY.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30889]

Dakota, Minnesota and Eastern Railroad Corp.; Acquisition and Operation Exemption; Chicago and North Western Transportation

Dakota, Minnesota and Eastern Railroad Corporation (DME) has filed a notice of exemption to acquire and operate portions of the Chicago and North Western Transportation Company's (CNW's) lines between Rapid City, SD, and Winona, MN, including branch lines to Onida and Watertown, SD, and Comfrey, Hartland, and Plainview, MN; from Redfield to Mansfield, SD; and from Aberdeen, SD, to Oakes, ND. The transaction covered by the notice of exemption includes incidental trackage rights, to be granted or assigned by CNW at Rapid City, SD, and at Mankato, Owatonna, and Winona, MN; between Wolsey and Aberdeen, SD; and between Hartland, MN, and Mason City, IA. A total of 965.7 route-miles are being acquired by DME, including both the lines being purchased and the trackage rights being granted or assigned. CNW will retain limited easements in the lines between Tracy and Mankato, Mankato and Waseca, Waseca and Owatonna, and Waseca and Hartland, MN, but CNW will not be entitled to make any use of those easements for any purpose, including common carrier service, except on the occurrence of certain conditions subsequent, and subject to any required regulatory approval or exemption. Any comments must be filed with the Commission and served on Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036–2661.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information the exemption is void *ob initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not delay the effective date of the notice. Petitions to stay will not automatically stay the transaction.

Decided: August 27, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–20334 Filed 9–9–86; 8:45 am]

BILLING CODE 7035–01M

[Finance Docket No. 30886]

Railtex, Inc.; Continuance in Control; Exemption; Austin Railroad Co., Inc. and the San Diego and Imperial Valley Railroad Co.

Railtex, Inc. (Railtex) has filed a notice of exemption to continue in control of the Austin Railroad Company, Inc. (AR), and the San Diego & Imperial Valley Railroad Company (SD&IV).[1]

Railtex is the sole stockholder of both AR and SD&IV. SD&IV is a common carrier operating over about 153 miles of track in southern California and Mexico. AR is a non-carrier that intends to operate over about 163 miles of rail line in Texas under an operating contract with the City of Austin, TX, which has agreed to purchase the line from the Southern Pacific Transportation Company.[2] Upon commencing operations, AR will become a carrier and Railtex will then control two carriers.

AR and SD&IV do not connect. They operate in different markets and the distance between them is over 1,350 miles. Railtex states that the transaction is not a part of a series of anticipated transactions that would lead to a connection between AR and SD&IV. The continuance in control of these nonconnecting carriers is exempt from 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

Railroad employees affected by the transaction will be protected by the conditions in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). This will satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at

[1] By petition filed June 6, 1986, in Finance Docket No. 30848, Railtex sought an exemption under 49 U.S.C. 10505 for this continuance in control, but withdraw its petition and, instead, filed this notice of exemption pursuant to the expanded class exemption in 49 CFR 1180.2(d)(2). *See* Ex Parte No. 282 (Sub-No. 1), *Rail Consolidation Procedures—Continuance in Control of a Nonconnecting Carrier*, ——— *I.C.C. 2d* ———, *served July 7, 1986.*

[2] AR and the City of Austin have each filed a notice of exemption in Finance Docket No. 30861, under 49 CFR 1150.31, for the City of Austin to purchase, and for AR to operate, the line. The City of Austin simultaneously filed a motion to dismiss its notice for want of jurisdiction by this Commission.

any time. The filing of a petition to revoke will not stay the transaction.

Decided: September 4, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 86-20342 Filed 9-9-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30703]

Soo Line Railroad Co.; Joint Use of Lines; Chesapeake and Ohio Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, and 49 CFR 1180.2(d)(7), the Commission exempts Soo Line Railroad Company (Soo) and the Chesapeake and Ohio Railway Company (C&O) from the requirements of 49 U.S.C. 11343 in connection with Soo's trackage rights over joint use of C&O lines between Chicago, IL and Detroit, MI, a distance of 340 miles, subject to standard employee protective conditions. This exemption replaces the exemption published under 49 CFR 1180.2(d)(5), which was effective on August 7, 1985. The exemption granted here will be made retroactive to that effective date.

DATES: This action is effective as of August 7, 1985. Petitions for reconsideration are due September 30, 1986.

FOR ADDITIONAL INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll free (800) 424-5403.

Decided: August 22, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners, Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley dissented in part with separate expressions.

Kathleen M. King,

Acting Secretary.

[FR Doc. 86-20341 Filed 9-9-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-33 (Sub-No. 41X and AB-37 (Sub-No. 21X)]

Union Pacific Railroad Co.; Exemption; Discontinuance of Service in Grays Harbor County, WA; and Oregon-Washington Railroad and Navigation Co.; Exemption; Abandonment in Grays Harbor County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the discontinuance of service by the Union Pacific Railroad Company over, and the abandonment by the Oregon-Washington Railroad & Navigation Company of a 2.41-mile segment of the Grays Harbor branch line in Grays Harbor County, WA, subject to standard labor protection.

DATES: This exemption will be effective on October 10, 1986. Petitions for stay must be filed by September 22, 1986, and petitions for reconsideration must be filed by September 30, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-33 [Sub-No. 41X] and AB-37 [Sub-No. 21Z] to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' Representatives, Joseph D. Anthofer, Jeanna L. Regier, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7650.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissoners Sterrett, Andre, and Lamboley.

Kathleen M. King,

Acting Secretary.

[FR Doc. 86-20340 Filed 9-9-86; 8:45 am]

BILLING CODE 7035-02-M

Release of Waybill Data for Use by the Association of American Railroads

The Commission has received a request from the Intermodal Policy Division of the Association of American Railroads (AAR) to use the 1985 ICC Waybill Sample in its economic and policy research and analysis work. The waybill data will be used exclusively as input to the AAR Intermodal Competition Model. This model is the chief means by which the AAR and rail industry determine the impact on rail traffic and revenue of changes in rail, truck, or barge costs. It aggregates all rail shipments as if they were part of one large nationwide or State railroad. The waybill data actually required are the six and seven digit SPLC and STCC codes, car types, and route miles.

The computer output of AAR's model runs are always reported in a highly aggregated form so no individual railroad, shipper, or car owner information is revealed. Moreover, these aggregated results are not reported outside of AAR.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of propriatary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202–275–6864).

Kathleen M. King,

Acting Secretary.

[FR Doc. 86–20338 Filed 9–9–86; 8:45 am]

BILLING CODE 7035–01–M

Release of Waybill Data For Use in Analyzing the Feasibility of Acquiring Certain Lines and Trackage Rights of Conrail

The Commission has received a request from DNS Associates, Inc. (DNS) for permission to use the 1985 ICC Waybill Sample in connection with an analysis pertaining to the competitive impacts and viability of certain lines and trackage rights that the Pittsburgh and Lake Erie Railroad (P&LE) wishes to acquire as part of the anticipated sale of Conrail by public offering. DNS states that both the Ohio Department of Transportation and the Indiana Department of Transportation have requested that P&LE conduct such an analysis. DNS indicates that such an analysis would also be used in response to anticipated questions from the House Energy and Commerce Committee.

Two consultants are involved: (1) DNS and (2) P&LE's consultant, Mr. Donald Mattzie of the Carnegie Mellon Institute, who would be responsible for performing the actual analysis. P&LE has asked DNS to provide Mr. Mattzie with traffic data to and from certain stations in the northeastern United States. Accordingly, DNS seeks permission to access the Commission's full 1985 Waybill Sample to extract pertinent data elements which DNS will then provide to Dr. Mattzie in order to conduct the P&LE analysis. Specifically, the needed data elements are: (1) origin railroad, (2) origin freight station (Freight Station Accounting Code (FSAC), (3) origin Standard Point Location Code (SPLC), (4) destination railroad, (5) destination freight station (FSAC), (6) destination SPLC, (7) 5-digit Standard Transportation Commodity Code, (8) number of cars (factored), (9) tons (factored), (10) revenue (factored).

DNS states that P&LE would not obtain access to any confidential waybill data and that any traffic analyzed would not be publicly disclosed in other than summary form. Also, we should emphasize that if this request is permitted, both DNS and Dr. Mattzie would be required to sign agreements containing strict requirements designed to protect the data's confidentiality.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275–7003.

Kathleen M. King,

Acting Secretary.

[FR Doc. 86–20339 Filed 9–9–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30835]

G. Richard Abernathy; Exemption for Continuance of Control of Railroad Companies

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343, the continuance in control by G. Richard Abernathy of Sequatchie Valley Railroad Co., Inc., Columbia and Silver Creek Railroad Company, Inc., and Walking Horse and Eastern Railroad Company, Inc.

DATES: The decision is effective on September 22, 1986. Petitions to reopen must be filed by September 30, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30835 to:

(1) Office of the Secretary; Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Eric D. Gerst, Philadelphia Boruse, Suite 900, 21 South 5th Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: September 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Kathleen King,

Acting Secretary.

[FR Doc. 86–20337 Filed 9–9–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notification; Industry-University Center for Glass Research

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"), written notice has been filed by the Industry-University Center for Glass Research at the New York State College of Ceramics, Alfred University, Alfred, New York (the "Center") disclosing (1) the identities of the parties to the Center and (2) the nature and objectives of the Center. The notice was filed simultaneously with the Attorney General and the Federal Trade Commission.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Center and its general areas of planned activity are given below.

The Center is a joint venture comprised of the following parties:

PPG Industries Inc.
Ford Motor Company

Manville Building Materials Corporation
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc.
E.I. DuPont DeNemours, Inc.
AFG Industries Inc.
Specialty Products Company
Corning Glass Works
Alfred University

The objectives of the Center are as follows:

(a) To advance, develop and promote research applicable to the principles and technology of glass manufacturing and melting;

(b) To offer individuals the opportunity to develop their expertise in areas suitable for industrial application; and

(c) To involve the faculty of Alfred University in research in areas of interest to industrial sponsors and Alfred University.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 86-20387 Filed 9-9-86; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Microelectronics and Computer Technology Corp.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 (the "Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on July 30, 1986, disclosing a change in the membership of MCC, a change of ownership of a present party to MCC and a change of name of a present party to MCC. The additional written notification was filed for the purpose of extending the protection of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On June 4, 1986, Westinghouse Electric Corporation and each of its subsidiaries became parties to MCC. On June 9, 1986, RCA Corporation, an MCC shareholder, became a wholly-owned subsidiary of General Electric Company. The name of Mostek Corporation, an original party to MCC, has been changed to CTU of Delaware, Inc.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 86-20388 Filed 9-9-86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before October 10, 1986.

ADDRESSES: Send comments to Mrs. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786-0233) and Ms. Judy McIntosh, Office of Management and Budget, New Executvie Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Mrs. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania, Avenue NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Guidelines and applications forms for Directors in the Summer Seminars for College Teachers Program
Form Number: OMB 3136-0093
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines
Respondents: College teachers/professors who are recognized scholars in their fields and are also well qualified by virture of their interest and ability in undergraduate teaching or the pertinence of their work to the interests of undergraduate teachers
Use: Application, evaluation, and award process for NEH Summer Seminars for College Teachers
Estimated Number of Respondents: 200
Estimated Hours for Respondents to Provide Information: 2.3

Title: Guidelines and applications Forms for Participants in the Summer Seminars for College Teachers Program
Form Number: OMB 3136-0096
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines
Respondents: Teachers in two-year, four-year, and five year colleges
Use: Application, evaluation, and award process for participants in the NEH Summer Seminars for College Teachers
Estimated Number of Respondents: 2,000
Estimated Hours for Respondents to Provide Information: 3.

Title: Guidelines and applications Forms for Directors in the Summer Seminars for Secondary School Teachers Program
Form Number: OMB 3136-0095
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines
Respondents: College and secondary school personnel
Use: Application, evaluation, and award process for Directors in the Summer Seminars for Secondary School Teachers Program.
Estimated Number of Respondents: 175
Estimated Hours for Respondents to Provide Information: 2.3

Title: Guidelines and applications Forms for Participants in the Summer Seminars for Secondary School Teachers Program
Form Number: OMB 3136-0097
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines
Respondents: College and secondary school personnel
Use: Application, evaluation, and award process for participants in the Summer Seminars for Secondary School Teachers Program
Estimated Number of Respondents: 2,300
Estimated Hours for Respondents to Provide Information: 3.

Susan Metts,

Acting Director of Administration.

[FR Doc. 86-20359 Filed 9-9-86; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on August 27, 1986 (51 FR 30561) through August 29, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice.

By October 10, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

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Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 29, 1985.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) for the H.B. Robinson Steam Electric Plant Unit No. 2. The proposed revision involves adding new sections 3.18 and 4.18 to the Technical Specifications which add operability and surveillance requirements for systems and components concerned with Dedicated/Alternate shutdown.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed this request and has determined that the proposed amendment involves no significant hazards considerations because the amendment adds additional limitations, restrictions, and controls (example ii, 51 FR 7751) and because the change is needed to govern an approved methodology which conforms to the requirements of the NRC's regulations (10 CFR 50, Appendix R). The NRC staff has reviewed the licensee's determination and agrees that the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in the margin of safety.

Based on the above information, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Commonwealth Edison Company, Docket No. STN 50-454, Byron Station, Unit 1 Ogle County, Illinois

Date of application for amendment: August 5, 1986.

Description of amendment request: The amendment would revise Technical Specification Section 4.3.3.3.1d on page 3/4 3-44 and Section 3.7.1.2 on page 3/4 7-4.

Section 4.3.3.3.1d would be revised to delete the words "during shutdown" for the 18-month surveillance of seismic monitoring instrumentation. Deleting these words, which were originally imposed to reduce personnel exposure, allows the option of performing these surveillances while the units are in operation. Section 3.7.1.2 would be revised to remove the reference to the minimum level for the Diesel Fuel Supply System day tank, but leave the minimum number of gallons. This change would accommodate differences in the instruments and dimensions of the day tanks for Units 1 and 2.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated this proposed amendment in accordance with the criteria of 10 CFR 50.92 and determined that it involves no significant hazards consideration. The first change, deleting "during shutdown," will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment does not alter the manner in which the surveillances are performed. The change merely allows the option of doing the seismic instrumentation surveillances while the units are in operation. The seismic instrumentation does not perform a protective function; changing the mode of operation during which the surveillances are performed does not cause a significant increase in the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from an accident previously evaluated; because:

(a) The sole purpose of these instruments is to perform a monitoring function. Therefore, changing the mode of operation during which these tests are done does not create the possibility of a new or different kind of accident from an accident previously evaluated.

(b) This is an administrative change which would permit surveillances to be performed while the units are operating.

(3) Involve a significant reduction in the margin of safety, because there is no margin of safety associated with these seismic monitoring instruments.

The second change, deleting the reference to day tank level will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) The proposed amendment does not alter the minimum required level of fuel in the diesel fuel supply system for the direct driven diesel auxiliary feedwater pump.

(b) The amendment merely deletes references to "71%" to eliminate confusion due to different instrument spans and physical tank capacity on Unit 1 and Unit 2.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

(a) The proposed amendment does not allow any new equipment or modes of operation which could initiate or effect the control of a transient or accident because the minimum required level of fuel for the day tank is not being altered.

(3) Involve a significant reduction in the margin of safety, because:

(a) There are no changes being made to hardware, or in the manner that the system is being operated. Hence, the margin of safety is not being compromised or changed. This proposed licensing amendment should be considered an administrative change.

Based on the preceding assessment, the staff has determined that this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney for licensee: Michael Miller, Isham, Lincoln and Beal, One First National Plaza, 42nd floor, Chicago, Illinois 60603.

NRC Project Director: Vincent S. Noonan.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 5, 1977, as modified February 16, 1984, and July 18, 1986.

Description of amendment request: The amendment would revise the Technical Specifications to reflect provisions consistent with the appropriate Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code. Specifically the amendment would replace the inservice inspection requirements in Section 4.2 of the Technical Specifications with a commitment to an in-service program as specified in 10 CFR 50.55a. The request for this amendment was initially noticed October 27, 1983 (48 FR 49713). The February 16, 1984 modifications, noticed May 23, 1984 (49 FR 21828), and the July 17, 1986 modifications to the amendment request are necessary due to changes in the periodic updating schedule contained in 10 CFR 50.55a since the submittal of the initial request.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (51 FR 7155). One of these examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications. Since the proposed change involves additional commitments to inservice inspection not currently in the Technical Specifications, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place. New York, New York 10003.

NRC Project Director: Steven A. Varga.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 4, 1986, as supplemented August 22, 1986.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for Units 1 and 2 to add the maximum allowable power range neutron flux high setpoint for 4 or 5 inoperable safety valves on any operating steam generator in TS 3/4.7, Table 3.7–1.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change would not affect power operation of any safety system. Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the existing accident analyses performed for full power operation would envelop this mode of operation which only allows the reactor to remain subcritical if four or five safety valves are inoperable. Finally, it would not (3) involve a significant reduction in a margin of safety because the power range setpoint must be set at 0% rated thermal power and the reactor will not be allowed to go critical. Thus, there will not be a significant decrease in a margin of safety. Accordingly, the Commission proposes to find that the change does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 29, 1985.

Description of amendment request: The proposed amendments would change the Technical Specifications by revising the overtemperature delta T, overpressure delta T, and loss of flow setpoints and by revising the overtemperature delta T and overpressure delta T response times. These changes are to account for plant modifications to the resistance temperature detector (RTD) system on the hot and cold legs of the reactor coolant system.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability of consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The modification and Technical Specification changes will provide equivalent temperature detection capability with RTDs installed in each loop, in place of the existing bypass system, for input to the Reactor Control and Protection System (RCPS). Three narrow-range RTDs in each Hot Leg will provide input for reactor coolant loop differential temperature and average coolant temperature. One narrow-range RTD will be installed in the cold leg (at the discharge of the Reactor Coolant Pump), as well as an additional narrow-range RTD installed as a spare.

The RPCS parameters which are affected by narrow-range RTD accuracy have been analyzed by the licensee to assure that sufficient allowance is available in the RPCS setpoints to accommodate RTD error. The licensee has further determined that Departure-from Nucleate-Boiling (DNB) transients which are analyzed in Chapter 15 of the Final Safety Analysis Report (FSAR) remain conservative and need not be reanalyzed. Transients for which DNB is not a concern (or not the only concern) were reanalyzed and found acceptable. The Instrumentation and Control portion of the modification has been evaluated and remains functionally unchanged and physically equivalent to the existing hardware, and meets applicable criteria.

The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The modification involves the removal of a section of reactor coolant loop bypass piping, and the replacement of certain associated instrumentation and circuitry. The reactor coolant system will be restored to the integrity as

originally built using comparable codes and criteria.

The proposed amendments will not involve a significant reduction in a margin of safety. Changes to instrument response times and uncertainties have been determined, through test and analysis, to be consistent with, or not significantly different from, current values. The increased response time of the RTDs is partially offset by the elimination of the delay associated with the bypass manifold piping, and partly by the reduction of the RTD electronic filter time constant. Licensee evaluations of uncertainties associated with the modification confirm that the setpoints defined in the McGuire Technical Specifications remain valid.

From our preliminary review of the licensee's evaluation, we agree with the above determination. Based on the above, the Commission proposes to determine that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: July 28, 1986.

Description of amendment request: The proposed amendment would update the pump testing surveillance requirements to comply with the requirements of 10 CFR 50.55a(g)(4)(i). The Inservice Testing program must be updated, in accordance with 10 CFR 50.55(g)(4)(i), every 120 months to the latest edition and addenda of the Code (ASME Section XI) referenced in paragraph (b) of that section twelve (12) months prior to the start of the interval. Paragraph (b) references the 1983 edition through the summer 1983 addenda. The 1983 ASME Section XI code edition allows quarterly pump testing, however, the current surveillance requirements require pump testing on a monthly basis. The revised surveillance requirements are proposed in accordance with 10 CFR 50.55a(g)(5)(ii) which states, "If a revised inservice inspection program for a facility conflicts with the technical specifications for a facility, the licensee shall apply to the Commission for amendment of the technical specifications to conform the technical specification to the revised program." The proposed changes incorporate applicable portions of the standard Technical Specification surveillance requirements and reference testing in accordance with specification 4.0.5.

Basis for proposed no significant hazards consideration determination: As stated above, the requested changes will be done in compliance with a regulation, and the end product, the revised technical specifications, will be in compliance with an edition and addenda of the ASME Code Section XI which is endorsed by a regulation. There is no change of hardware or operating procedures. Thus, requested changes do not create the possibility of an accident or malfunction of a different type from those previously evaluated, do not involve a significant increase in the probability or consequences of an accident previously evaluated, and do not decrease a margin of safety. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: December 19, 1985.

Description of amendment request: This proposed amendment would allow increasing the Uranium-235 loading limit in the Crystal River Unit 3 spent fuel pool B and the dry fuel storage rack from 3.5 weight percent to 4.0 weight percent. This minor increase in the loading limit would allow the licensee to utilize fuel which is slightly higher in U-235 in future fuel cycles with a slight improvement in fuel economy for operation of the facility.

Basis for proposed no significant hazards consideration determination: The purpose of limiting allowable fuel enrichment of assemblies stored in the wet and dry racks is to assure sufficient safety margin exists to prevent inadvertent criticality. This is done by assuring that a Keff equal to or less than 0.95 would be maintained conservatively assuming the racks fully loaded with fuel of the highest anticipated reactivity and flooded with unborated water at a temperature corresponding to the highest reactivity. The analysis submitted by the licensee indicates that storage of 4.0% (nominal) enriched fuel in Pool B will not cause Keff to exceed 0.95 under the conditions above. A second analysis for the dry storage racks was performed. The racks will be loaded in three 6 × 3 arrays such that every fourth row in the 6 × 11 rack is vacant. The analyses include margins for uncertainty in reactivity calculations and in mechanical tolerances.

Using the standards in 10 CFR 50.92, the licensee has concluded and the Commission's staff agrees that the proposed amendment involves no significant hazards considerations for the following reasons:

1. This proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of a previously evaluated accident is not affected by an increase in fuel enrichment. For example, positioning a fuel assembly outside the rack, or dropping one on top of the rack has negligible reactivity effects. Also, any effect is offset by the fact that no credit is taken for soluble boron in the water which would reduce reactivity significantly below the .95 criterion. To reduce the probability of an unplanned criticality event, the licensee has physically blocked 12 storage locations in the dry fuel storage rack. An increase in fuel enrichment will not by itself affect the mixture of fission product nuclides. A change in fuel cycle design which makes use of an increased enrichment may result in fuel burnup consisting of a somewhat different mixture of nuclides. The effect in this instance is insignificant for the following reasons.

(a) The isotopic mixture of the irradiated assembly is relatively insensitive to the assembly's initial enrichment.

(b) Because most accident doses are such a small fraction of 10 CFR 100 limits, a large margin exists before any change becomes significant.

(c) The change in plutonium content which would result from an increase in burnup would produce more of some fission product nuclides and less of other nuclides. Small increases in some doses are offset by reductions in other doses. The radiological consequences of accidents are not significantly changed.

2. This proposed amendment will not create the possibility of a new or different kind of accident from any

accident previously evaluated. The change in enrichment would only affect an unplanned criticality event. As indicated in the licensee's analyses, an unplanned criticality event will not occur as Keff will not exceed .95 even with Pool B fully loaded with the highest enrichment fuel and flooded with cold unborated water, or dry storage racks immersed in a water mist of 7.5% moderator density. Criticality is possible for a mist environment only if the higher enriched fuel occupies all of the locations in the dry storage racks including those which are required to be vacant. To prevent this occurrence, the licensee has taken measures to preclude improper fuel storage.

3. This proposed amendment will not involve a significant reduction in a margin of safety.

While the increased enrichment in Pool B and the dry storage racks may lessen the margin to criticality, this reduction is not significant because the overall safety margin is within NRC criteria of Keff less than or equal to .95 (NRC Standard Review Plan, Section 9.1.2).

Based on the above, the Commission's staff proposes to determine that the requested amendment does not involve significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: July 11, 1986.

Description of amendment request: The amendment would modify the Technical Specifications to add two new overcurrent protective devices to Table 3.8.2.6–1 to reflect the installation during the upcoming refueling outage of new drywell cooler units.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). An example (ii) of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed Technical Specification modification imposes additional limitations, restrictions and controls and therefore falls within this example.

Therefore, since the application for amendment involves a proposed change that is similar to an example (ii) for which no significant hazards considerations exists, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: July 18, 1986.

Description of amendment request: The amendment would modify the Technical Specifications to (1) revise allowable values (and trip setpoints, which are the same as the allowable values) for the reactor vessel water levels 1, 2, and 3; the shroud water level; the HPCI and RCIC steam line high flow; and the reactor steam dome low-pressure instruments to provide for the use of Rosemount as well as Barton transmitters as the analogue transmitter trip system instruments for these parameters; (2) provide clarifications and corrections; (3) revise the analytical limits and the corresponding allowable values for instruments which actuate on high drywell pressure, and (4) lower the core spray (CS) and residual heat removal low pressure coolant injection (RHR–LPCI) low reactor pressure injection permissive setpoints to allow for increased flexibility in the use of Rosemount transmitters for this trip function.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). One of these examples (i) of actions involving no significant hazards considerations relates to a purely administrative change to Technical Specifications.

Change item 2 would (a) correct parts numbers and the description of the reactor shroud water level trip in Table 3.3.3–1, (b) change the value used to indicate the suppression chamber high water level trip (actual level is unchanged), and (c) change a 42.5 °F area differential temperature allowable value to 42 °F for simplification. These changes are clarifications and corrections to the existing Technica1 Specifications and involve no changes in the actual requirements. These are administrative changes similar to example (i).

The Commission has also provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

We have evaluated proposed changes (1), (3) and (4) above against these criteria. None of these three proposed changes to the Technical Specifications involves or results in a change in the design function of equipment or in the mode of operating the plant. Instead the changes involve setpoint changes that the licensee states have been determined using the criteria of NRC Regulatory Guide 1.105 and methodology previously approved by the NRC in Amendment 39 to the Hatch Unit 2 Technical Specifications. Changes 1 and 3 preserve appropriate margins to the current analytical limits for the parameters involved. For change (4), it was necessary to relax the analytical limit for the RHR–LPCI and core spray injection value permissives. However the licensee has provided an analysis performed by General Electric Company that shows that the impact of the change in the analytical limits on the resultant accident analyses, and hence safety of the plant, is negligible.

On the basis of the above, we have determined that:

1. Since the changes do not create new modes of operation or change the design functions of equipment, they do not create the possibility of a new or different kind of accident from any previously evaluated.

2. Since no new modes of operation are created and since the analytical limits are maintained or, where changed, the impact on accident analysis results has been shown to be negligible, the

change does not involve (a) a significant increase in the probability or consequences of an accident previously evaluated or (b) a significant reduction in margin of safety.

On the basis of the above, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: July 18, 1986 superseding the submittal of April 23, 1984.

Description of amendment request: This submittal supercedes the submittal of April 23, 1984 which was noticed in the **Federal Register** on October 24, 1984 (49 FR 42822). The amendment proposed in this submittal would modify the Technical Specifications (TS) to: (1) add limiting conditions for both normal and end-of-cycle Recirculation Pump Trip Actuation Instrumentation; (2) clarify the surveillance requirements for these instruments by moving a vague reference to them from TS Table 3.3.1-1 to new Table 3.3.9-1; and (3) add trip setpoints and surveillance requirements for those instruments for both normal and end-of-cycle operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). An example (ii) of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. Proposed Technical Specification modifications 1 and 3 impose additional limitations, restrictions and controls and therefore fall within this example.

Another example (i) of actions involving no significant hazards considerations is an amendment involving a purely administrative change to the Technical Specifications, such as a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Proposed Technical Specification modification 2 is such an action as it is only an administrative change, neither increasing nor lessening previous requirements.

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: July 10, 1986, supplementing the submittal of January 27, 1986.

Description of amendment request: This submittal modifies the January 27, 1986 request to: (1) withdraw all of the January 27, 1986 requested Technical Specification changes except for the proposed changes to notes c and d of Table 4.15.2-1 (Unit 1) and Table 4.11.2-1 (Unit 2) and (2) revise the previously proposed changes to notes c and d to (a) require additional sampling and analysis following shutdown startup or power level changes greater than 15 percent of rated thermal power only if the primary coolant activity of I-131 and the noble gas activity increases by more than a factor of three and (b) to require grab sample analysis of principal gramma emitters only.

Basis for proposed no significant hazards consideration determination: The Commission has also provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes are consistent with NUREG-0473, "Standard Radiological Effluent Technical Specifications for BWRs", Revision 2, February 1, 1980 (model RETS).

During the course of reviewing and implementing the RETS for operating reactors it became evident that the mode of operation of some power reactors would require additional sampling of gaseous effluents, almost continually, if the wording of the earlier RETS guidance were used, namely, "following each start-up, shut-down, and thermal power change exceeding 15% in one hour." Since the purpose of such additional sampling is to detect possible rapid releases of radioiodine ("iodine spiking") during significant changes in power, the augmented sampling is not necessary unless other monitoring indicators show possible problems with failed fuel. Therefore, a revision was made to the RETS guidance adding the caveat that the additional sampling and analysis should be done only if the iodine-131 activity in the primary coolant and the noble gas activity monitor reading increase by more than a factor of 3 during the power change. The first change proposed by the licensee, namely the notation for the additional sampling of gaseous effluents, follows the present revised RETS guidance.

The second change requested involves clarification of the extent of analysis required for the special samples obtained under the circumstances described above. The current Technical Specifications require analyses of special gaseous effluent samples for tritium as well as for principal gamma emitters. Since as explained above, the primary purpose of these samples is to detect an "iodine spike," analysis of tritium is not necessary or pertinent. Hence, the modification of the tabular notation to specify analysis for only principal gamma emitters meets the intent of the guidance of the model RETS.

On the basis of the above discussion, the proposed changes are not expected to significantly change the margin of safety.

The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety are not increased above those analyzed in the FSAR due to these changes because they do not affect the mode of operation or function of any safety system.

The possibility of an accident or malfunction of a different type than analyzed in the FSAR does not result from these changes because this

proposal does not change the mode of operation of any safety system.

Accordingly, the Commission has determined that the requested amendments meet the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: July 25 1986.

Description of amendments request: These amendments would:

1. Revise the fire protection license conditions (License Condition 2.C(3) for Unit 1 and 2.C(3)(b) for Unit 2 to provide consistency with the standard fire protection license condition contained in NRC Generic Letter 86-10.

2. Delete the limiting conditions for operation and the surveillance requirements for fire protection equipment from Technical Specifications Sections 3 and 4.

3. Delete the minimum fire team staffing requirement from Technical Specification 6.2.2.

4. Revise Technical Specification 6.5.1.6 so that Plant Review Board (PRB) review is required for changes to the fire protection program and the implementing procedures.

5. Add to Technical Specification 6.9.2 a requirement that special reports for fire protection equipment operating and surveillance requirements be submitted to the Commission, as required by Appendix B of the Hatch Fire Hazards Analysis and Fire Protection Program, which is referred to as the FHA.

6. Delete Definition PP. Fire Suppression Watch System from Unit 1 Technical Specifications.

The updated FHA, which was submitted on July 22, 1986, and is incorporated by reference into the FSARs for Unit 1 and Unit 2, contains requirements replacing those that were previously included in the Unit 1 and Unit 2 Technical Specifications and addresses the fire protection items that are part of the license conditions for each unit.

NRC Generic Letter 86-10 advised licensees that (1) an NRC Approved Fire Protection Program and Fire Hazards Analysis should be incorporated into their FSARs; (2) upon completion of this effort, the licensees could apply for an amendment to the operating license to amend the existing license condition regarding fire protection; and (3) at the same time, the licensee could request an amendment to delete the fire protection Technical Specifications. This request by the licensee is responsive to Generic Letter 86-10.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists 10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, because no changes to safety systems or setpoints are proposed. The proposed changes simply relocate the fire protection requirements from the Technical Specifications to the FHA. New controls are also being incorporated for fire protection systems and equipment being added to the plant in order to meet the requirements of Appendix R. These changes will decrease the severity of the consequences of a fire.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated, because these changes do not affect the operation or function of any safety-related equipment. The fire protection program requirements will continue to be maintained. No new modes of operation are being introduced.

The proposed changes do not involve a significant reduction in a margin of safety, because the requirements previously contained in the Technical Specifications are simply being relocated to Appendix B of the FHA.

On the basis of the above, the Commission has determined that the requested amendments meet the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Kansas Gas and Electric Company, Kansas City Power and Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 13, 1986.

Description of amendment request: The proposed amendment would delete from the Design Features Section 5.3.1 of the Wolf Creek Technical Specifications (TS) the maximum fuel rod weight limit of 1,766 grams of uranium. The purpose of the change would be to permit the use of assemblies slightly over the weight limit. Fuel weights have increased slightly due to recent changes to the fuel design, including chamfered pellets with reduced dish and nominal density increase.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee submitted the following significant hazards determination:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of previously evaluated accidents?

Response: The change in fuel rod weight that could occur without a Technical Specification limit is small because other fuel design constraints such as rod diameter, gap size, UO_2 density, fuel active lengths, etc., limit the variation in rod weights. The current safety analyses are not based on fuel rod weights, but more on parameters such as power thermal conductivity, fuel dimensions, etc. These parameters are either: (1) not affected at all by fuel rod weight, or (2) are only slightly affected. However, a review of parameters which may be affected indicates that a change in fuel weight does not cause other parameters to exceed the values assumed in the safety analyses or to cause acceptance criteria to be exceeded. The slight effects are such that the monitored nuclear parameters (power power distribution. nuclear coefficients etc.) remain within their Technical Specification limits. Thus, it is

concluded that the change does not involve a significant increase in the probability or consequences of previously evaluated accidents.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The possibility of a new or different kind of accident from any previously evaluated has been considered and is not affected by this change. All of the fuel is contained in the fuel rod which is of the same dimensions and designed to function the same as previous fuel. The existing new and spent fuel criticality analyses bound the changes observed. Therefore, this change does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The margin of safety is maintained by adherence to other Technical Specification limits and the FSAR Design Bases. The deletion of fuel rod weight limits in Technical Specifications Design Features Section 5.3.1 does not directly affect any safety system or safety limits. Because safety margins are maintained by other limiting Technical Specifications, Design Features Section 5.3.1 will not affect the margin of safety.

Based on the above analysis, the licensee concluded that the proposed amendments do not involve significant hazards considerations. The staff has reviewed the licensee's significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room locotion: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia Kansas, 66801 and Washburn University School of Law Library, Topeka, Kansas.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of Amendment Request: May 23, 1986.

Description of Amendment Request: In accordance with Emergency Core Cooling Systems (ECCS) Technical Specification (TS) surveillance requirement 4.5.2.d.5, trisodium phosphate dodecahydrate (TSP) storage baskets are to be visually inspected at least once per eighteen (18) months for evidence of aggregation and any aggregate found must be mechanically dispersed. The proposed change would eliminate this TS surveillance requirement.

In February of 1986, to confirm Previous experimental work, a test was conducted at Waterford 3 in which a brick of aggregated TSP was partially submerged in potable water at 53° F. The aggregated mass crumbled into granules and formed a heap in twelve (12) minutes without agitation. Under actual conditions, the crumbling of an aggregated mass of TSP would be much faster due to borated water flow and higher temperatures.

Based on the results of this and previous tests conducted by Combustion Engineering, there is no need to ensure that TSP is in granulated form and therefore no need to break up the aggregated TSP to ensure dissolution. Since the 12-minute granulation time does not significantly affect the attainment of neutral pH within the three (3)-hour time frame stipulated in T.S. 4.5.2.d.4, TS surveillance requirement 4.5.2.d.5 is unnecessary and consequently can be deleted. Similarly, the word "granular" can be deleted from 4.5.2.d.3. By implementing these changes, worker radiation exposures incurred during TSP basket handling and aggregate dispersal would be reduced.

Basis for Proposed No Significant Hazards Consideration Determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not (a) involve a significant increase in the probability or consequences of an accident previously evaluated; or (b) create the possibility of a new or different kind of accident from any accident previously evaluated; or (c) involve a signficant reduction in a margin of safety. The basis for this proposed finding is given below.

(a) This change eliminates an unnecessary surveillance requirement based on the results of the test conducted in February 1986 at Waterford 3 as mentioned above. Tests conducted by Combustion Engineering provide similar justification, since experimental results indicated that TSP, when compressed at 20,000 psia, dissolved within 375 seconds (6.25 minutes). When considering a total dissolution time of less than 19 minutes (12 minutes needed to break up the aggregate plus 6.25 minutes needed to dissolve granulated TSP) versus the three hours required to attain the proper pH per T.S. 4.5.2.d.4, the aggregation does not significantly affect the attainment of neutral pH. Therefore, no increase in the probability or consequences of any accident previously evaluated will result from these changes.

(b) Since the TSP in aggregated form crumbles and readily dissolves, pH adjustment of the liquid in the containment sump is ensured. The proposed change to eliminate the surveillance requirement does not prevent dissolution of TSP, nor does the proposed change introduce new perturbations to plant operation. Consequently, elimination of the surveillance requirement does not create the possibility of a new or different kind of accident from any accidents previously evaluated.

(c) This proposed change will not affect the margin of safety because the requirement to attain a neutral pH within 3 hours (T.S. 4.5.2.d.4) is in no way impeded. Using the experimental results from the recent Waterford 3 test, coupled with previous experimental work conducted by Combustion Engineering on compressed TSP, sufficient justification exists to define "aggregate" as a solid block of TSP larger than the existing baskets in containment. Therefore, a reduction in a margin of safety would not result.

As the change requested by the licensee's May 23, 1986 submittal satisfies the criteria of 50.92, it is concluded that: (1) the proposed changes does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is reasonable assurance that the health and safety of the public wi11 not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Locol Public Document Room Locotion: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

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NRC Project Director: George W. Knighton.

VOL 51 ISS 175 SE 10 1986 UMI

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: May 23, 1986.

Description of Amendment Request: The proposed change will revise Technical Specification (TS) surveillance requirement 4.7.10.1.3.c.1 to remove the requirement for inspection of Diesel Fire Pump Battery cell plates. TS 4.7.10.1.3 delineates the surveillance requirements for each fire pump diesel starting (12-volt) battery bank and charger. In particular, item c.1 stipulates that the batteries, cell plates and battery racks are to be checked at least once per eighteen (18) months to ensure that there is no visual indication of physical damage or abnormal deterioration. The proposed TS change will delete the inspection requirement. Adequate indication of battery condition is ensured through related TS surveillance requirements.

Basis for Proposed No Significant Hazards Consideration Determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not (a) involve a significant increase in the probability or consequences for an accident previously evaluated; or (b) create the possibility of a new or different kind of accident from any accident previously evaluated; or (c) involve a significant reduction in a margin of safety. The basis for this proposed finding is given below.

(a) This proposed change only involves an elimination of the requirement for visually inspecting diesel fire pump battery cell plates. Since the diesel fire pump batteries at Waterford 3 are housed in black opaque cases, the only way to visually inspect the cell plates is through the small fill caps at the top of the batteries. This type of inspection does not represent a true indication of the cell plates' condition since bridging of the cell plates would most likely occur at the bottom. Also, batteries of the size and capacity of the diesel fire pump batteries are unavailable in clear cases. The remaining surveillance requirements on electrolyte level, voltage and condition of connections provide adequate indication of the batteries' condition. Therefore, the TS change would have no impact on the probability or consequences of any accident previously evaluated.

(b) The proposed change introduces no new perturbations to plant operations. Because related surveillance requirements provide adequate indication of the condition of the batteries, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(c) The proposed change to eliminate the surveillance requirement to visually inspect battery cell plates is based on the fact that the battery enclosures prevent such an inspection at the bottom of the cell plates, which is the only area that would reflect cell plate damage or deterioration. Additionally, deletion of the cell plate inspection requirement would not have an impact on the batteries integrity since other surveillance requirements on electrolyte level, votage and condition of connections exist to ensure their operability. Therefore, the proposed change would not result in a reduction in a margin of safety.

As the change requested by the licensee's June 24, 1986 submittal satisfies the criteria of 50.92, it is concluded that: (1) the proposed changes does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

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NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: May 23, 1986.

Description of Amendment Request: The proposed change will eliminate the requirement to shut the plant down when coolant activity levels are exceeded for 800 hours in a 12-month period and will reduce the reporting requirements for iodine spiking short-term report (Special Report) to an item which is to be submitted annually when the limits of Technical Specification 3.4.7 are exceeded. The proposed change will also revise Technical Specification Bases Section 3/4.4.7 and Administrative Controls Section 6.9.1.4 to achieve consistency throughout the Technical Specifications.

In an effort to eliminate unnecessary reporting requirements (Generic Letter 85-19), the Commission has determined that the existing requirements to shut down a plant if coolant activity limits are exceeded for 800 hours in a 12-month period can be eliminated based on such factors as the improvement of nuclear fuel quality, proper fuel management practices and existing reporting requirements. The Commission also has determined that the reporting requirements related to primary coolant specific activity levels, specifically primary coolant iodine spikes, can be reduced from a short-term report to an item which is to be included in the utility's Annual Report.

Although this change will result in a relaxation of the term reporting requirements on primary coolant specific activity levels, it does not alter the associated surveillance requirements for sampling and analysis which assures that excessive specific activity levels in the primary coolant will be detected in sufficient time to take corrective action.

Basis for Proposed No Significant Hazards Considerations Determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not (a) involve a significant increase in the probability or consequences of an accident previously evaluated; or (b) create the possibility of a new or different kind of accident from any accident previously evaluated; or (c) involve a significant reduction in a margin of safety. The basis for this proposed finding is given below.

(a) The removal of the short-term reporting requirements will not have an operational impact on Waterford 3, since the relevant information will be included in the annual report, when required. The removal of the constraint requiring the facility to shut down when iodine coolant activity limits are exceeded for 800 hours in a 12-month period will not have an adverse impact on safety since the change does not reduce the requirements for taking reactor coolant samples and monitoring the iodine levels.

The effect of an accident occurring during a period of operating with the iodine coolant specific activity limit exceeded would be increased thyroid doses in the event of a release.

However, the effect on thyroid doses is not related to the number of hours the facility has exceeded the 800-hour limit, but on the specific activity itself. Because the iodine coolant specific activity is directly related to the way the facility is being operated, appropriate action would be taken to reduce the coolant during the 12-month period. Therefore, no increase in the probability or consequences of any accident previously evaluated will result from these changes.

(b) The proposed change involves the reduction of the administrative reporting requirements related to iodine coolant activity limits being exceeded for periods longer than 500 hours in a 6-month period and removes the requirement for subsequently shutting down the facility after exceeding the limits for 800 hours during a 12-month period. Because this change does not result in a change in the way the facility will be operated nor does it alter the associated surveillance requirements for sampling and analysis, implementing the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(c) Since appropriate actions based on proper fuel management practices and existing reporting requirements would be initiated well before accumlating 500 or 800 hours above the iodine activity limit, the proposed change would not alter the existing margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (vii) relates to a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

In this case, the proposed change is similar to Example (vii) in that the change involves the reduction of the administrative reporting requirements related to iodine coolant activity limits in accordance with the regulatory interpretations documented in Generic Letter 85–19 and matches the model Technical Specifications contained in that generic letter.

As the change requested by the licensee's May 23, 1986 submittal fits the example provided, as well as satisfies the criteria of 50.92, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of Amendment Request: June 24, 1986.

Description of Amendment Request: The proposed change would revise the technical specifications on Administrative Control 6.2.4.1, Shift Technical Advisor, and Table 6.2–1, Minimum Shift Crew Composition.

On October 28, 1985 the Commission published a policy statement on Engineering Expertise on Shift (50 FR 43621). The policy statement provided two options to meet provisions of Item I.A.1.1 of "Clarification of TMI Action Plan Requirements," NUREG–0737, for an on-duty Shift Technical Advisor (STA). The first option allows a Senior Reactor Operator (SRO) to perform the dual SRO/STA function provided that the SRO meets the STA training criteria and possesses one of the educational requirements defined in the policy statement. The second option is the continued use of a dedicated STA on each shift who meets the training criteria of NUREG–0737.

The proposed change implements the combined SRO/STA position while maintaining the flexibility to use Option 2 should Option 1 requirements not be met. Specifically, Administrative Control 6.2.4.1 is rewritten to define the STA requirements consistent with the Commission policy statement. The proposed change for Table 6.2–1, which defines the minimum shift crew composition, includes a footnote to implement the dual SRO/STA position provided the SRO meets the criteria defined in Administrative Control 6.2.4.1.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (vii) concerns a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. In this case, it is clear that the Commission intends licensees to implement a dual SRO/STA position, and has determined that with the NUREG–0737 long-term improvements it is safety-beneficial to do so. While the Commission's policy statement is not, strictly speaking, a regulation, the proposed change is nonetheless similar to Example (vii).

As the change requested by the licensee's June 24, 1986 submittal fits the example as well as satisfies the criteria of 10 CFR 50.92, it is concluded that: (1) the proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this proposed action will not result in a condition which alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

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Attorney for Licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: August 20, 1986.

Description of Amendment Request: Technical Specification 3.11.1 addresses the release of liquid radioactive effluents to unrestricted areas. The proposed change will include the additional action requirement to "describe the events leading to this condition in the next Semiannual Radioactive Effluent Release report". This requirement already exists in the action statement for the technical specification concerning the release of gaseous effluents. Therefore, this change will establish consistency among the technical specifications.

Basis for Proposed No Significant Hazards Considerations Determination:

The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated: or (2) Create the Possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) This change does not alter the operation of the plant; it only adds the requirement of reporting the circumstances of any uncontrolled or abnormal liquid effluent release in the Semiannual Radioactive Effluent Release Report. Therefore, there is no increase in the probability or consequences or any accident previously analyzed.

(2) Since the proposed change does not result in a physical change to the plant, it does not create the possibility of a new or different kind of accident.

(3) As previously stated, this change does not impact plant operation and does not involve any plant modifications; therefore, the margin of safety will remain unaffected.

The Commission has also provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, for example, a more stringent surveillance requirement.

In this case, the proposed change is similar to Example (ii) since it establishes an additional reporting requirement.

As the change requested by the licensee's August 20, 1986 submittal fits the example provided, as well as satisfies the criteria of 50.92, it is concluded that: (1) the proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for Licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: *George W. Knighton.*

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: January 29, 1986 as amended July 29, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications to incorporate the specific requirements for iodine spiking into the annual report as recommended in Generic Letter 85–19 (Reporting Requirements on Primary Coolant System Iodine Spikes) and delete the primary coolant iodine activity report from Technical Specification 5.9.1.7, Special Reports, since this aspect of plant operation would be reported on an annual basis pursuant to the proposed Technical Specification 6.9.1.3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment it must provide to the Commission its analysis, using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed by the licensee:

This proposed change does not involve a significant hazards consideration because operation of Maine Yankee in the proposed manner would not:

a. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The elimination of the current Remedial Action Steps 1 and 2 of Technical Specification 3.2 requiring a plant shutdown if the coolant iodine activity limits are exceeded for 800 hours in a 12 month period and 500 hours in a 6 month period, respectively, does not significantly increase either the probability or the consequences of a previously evaluated accident.

The consequences of an accident analyzed with elevated coolant activity is bounded by analyses of applicable accidents assuming a pre-existing iodine spike of 60 uCi/gram dose equivalent I–131 activity.

The probability of previously evaluated accident is not significantly increased by the duration of the elevated coolant iodine activity. Proper fuel management ensures that appropriate actions would be taken in the event the Technical Specification iodine limit was exceeded to ensure that fuel cladding integrity would be maintained with design limits and preclude any Possibility of 800 cumulative hours of coolant iodine activity above the Technical Specification limit. The NRC staff has determined, [GL–85–19], that this Technical Specification requirement (shutdown if coolant iodine activity limits are exceeded for 800 cumulative hours in a 12 month period) is unnecessary and can be eliminated.

The remaining changes relax the special 30 day reporting requirements for iodine spikes to an annual report consistent with the guidance of Generic Letter 85–19. These are administrative changes and do not affect the probability or consequences of an accident previously evaluated.

b. Create the possibility of a new or different kind of accident from any previously analyzed.

The operating limits and sampling requirements for coolant iodine activity have not been altered by the proposed changes. Therefore, approval of these changes will not create the possibility of a new or different kind of accident from any previously analyzed.

c. Involve a significant reduction in a margin of safety.

As previously stated, the coolant iodine activity limits have remained unchanged at operating levels equal to or greater than 80% power. At operating levels less than 80% power, higher coolant iodine activity limits would be permitted than those previously allowed. While this could be considered as a relaxation to existing requirements, it is not considered a significant reduction in a margin of safety because these limits are only allowed at reduced thermal power conditions. The NRC has generically accepted these limits for Combustion Engineering plants in NUREG–0212, Revision 2.

Based on the above evaluation, this change does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, based on this review, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Ashok C. Thadani.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: January 29, 1986, as amended April 14, July 16, and August 26, 1986.

Description of amendment request: The amendment would make six changes in the Technical Specifications: (1) Change the names and valve numbers of certain plant service water system valves listed in Technical Specification Tables 3.6.4–1, 3.8.4.1–1, and 3.8.4.2–1 to reflect the incorporation of those valves into the drywell chilled water system: (2) clarify which quality assurance records specified in Technical Specification 6.10.2.i must be retained for the duration of the operating license; (3) change Technical Specification 3/4.6.5 "Drywell Post-LOCA Vacuum Breakers" to reflect the installation of position indicators for the vacuum breaker check valves; (4) delete reference to Specification 6.9.1.13.f in Technical Specification 3.12 "Radiological Environmental Monitoring"; (5) change Technical Specification 3/4.1.3 "Control Rods" to reflect installation in the control rod scram discharge volume system of diverse and redundant level instrumentation and redundant vent and drain valves and to allow an alternate system test in lieu of a scram test following valve installation and maintenance; and, (6) change notes in Technical Specification Tables 3.3.3–1 and 4.3.3.1–1 to make permanent the temporary condition allowing the HPCS activation signals of Drywell Pressure-High and Manual Initiation to be inoperable when the reactor water level is higher than Level 8 and reactor pressure is less than 600 psig.

This notice supersedes a previous notice published in the **Federal Register** on August 13, 1986 (51 FR 29002). The previous notice was based on the licensee's initial application dated January 29, 1986, as amended April 14 and July 16, 1986. During its safety review of the proposed changes to the Technical Specifications for the scram discharge volume, change (5), the staff noted that the proposed surveillance requirement for the scram discharge volume would have eliminated the presently required periodic scram test under operating conditions from 50% control rod density. In response to staff requests, the licensee proposed by letter dated August 26, 1986, to retain the periodic scram test from 50% rod density, but to add a footnote which would allow plant startup following installation of the valves and subsequent maintenance on the scram discharge volume system without a scram test. In its August 26, 1986 letter, the licensee further committed to perform a system test prior to plant restart to demonstrate design drainage flow following the installation of the redundant vent and drain valves and to perform similar system tests prior to plant restart following maintenance on the scram discharge volume system. This notice is based on the revised application from that initially noticed which results in greater assurance that the drain and vent lines and valves of the scram discharge volume system will perform their safety function following installation of the new valves and future maintenance. Appropriate changes to the initial notice have been incorporated in this notice with respect to change (5).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986, (51 FR 7744).

The licensee has provided an analysis of significant hazards considerations in its January 29, April 14, July 16 and August 26, 1986, submittals. The licensee has concluded, with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's amendment request. A summary of staff's review follows.

Changes (1), (2), and (4) of the proposed amendment are similar to example (i) in 48 FR 14870. Example (i) is a purely administrative change to Technical Specifications: e.g., A change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Change (1) would change only names and identification numbers for certain plant service water (PSW) system valves listed in Technical Specifications tables. The new names and numbers identify the valves as belonging to the drywell chilled water (DCW) system. The DCW system was installed to increase the drywell cooling capability of the PSW system. The DCW system used the existing PSW valves and piping but nomenclature of the valves was not changed at the time of installation. The proposed change will make the valves listed in Technical Specifications reflect the system with which they are now associated and will permit name plates, labels and tags to identify them as DCW valves instead of PSW valves. The Technical Specifications requirements are unaffected by this nomenclature change. Change (2) would achieve consistency between Technical Specification (TS) 6.10.1 which requires certain records to be retained for five years and T.S. 6.10.2 which requires certain records to be retained for the duration of the operating license. The individual records identified in T.S. 6.10.1.a, T.S. 6.10.1.b, and T.S. 6.10.1.d are part of the quality assurance records identified as a whole in T.S. 6.10.1.i "Records of Quality Assurance activities required by the operational Quality Assurance Manual." Change (2) would add the phrase "not listed in Specification 6.10.1" after "Manual" in T.S. 6.10.2.i to achieve consistency between the two specifications. Change (4) would correct an error in Technical Specification 3.12 "Radiological Environmental Monitoring" by deleting a reference to Technical Specification 6.9.1.13.f. Specification 6.9.1.13.f had been previously deleted by a license amendment in response to Generic Letter 83–43 regarding implementation of 10 CFR 50.73 "License Event Reporting System." It was intended to delete all references to this specification throughout the Technical Specifications, but the reference in T.S. 3.12 was inadvertently not deleted.

Another example provided by the Commission of actions likely to involve no significant hazards considerations (v) is a relief granted from an operating restriction that was imposed because construction was not completed. Change (3) is similar to this example. License Condition 2.C.(35) requires that position indicators for drywell vacuum breaker check valves be installed prior to startup following the first refueling outage. An action statement and two surveillance requirements were added by Note 1 to Technical Specification 3/

4.6.5 "Drywell Post LOCA Vacuum Breakers" until the position indicators are installed and operable. The licensee has previously submitted the proposed design changes by letter dated May 24, 1985, and the staff has previously reviewed and accepted the proposed design changes by letter dated July 23, 1985. Change (3) would delete Note 1 to T.S. 3/4.6.5 and specify the actions to be taken if a vacuum breaker or its associated isolation valve is found to be inoperable or if the position indicators for these valves are found to be inoperable by the surveillance tests.

Change (5) would provide Technical Specification changes needed for operation with new equipment to be installed in the control rod scram discharge volume (SDV) system. License Condition 2.C.(15) requires the installation prior to startup following the first refueling shutdown of diverse and redundant level instrumentation and redundant vent and drain valves. The redundant level instrumentation will provide redundant trip signals to the reactor protection system before the scram discharge volume is overfilled with water. The redundant signal to RPS will help to ensure that the reactor is shut down before the scram discharge volume is filled to the point that sufficient volume is not available to accept the discharge from the control rod drive system during control rod scram. The redundant scram discharge volume vent and drain valves in series with the present vent and drain valves will provide additional assurance that the scram discharge volume will isolate on a control rod scram signal. A footnote will be added to Surveillance Requirement 4.1.3.1.4 to allow the scram test of the system to be waived following startup after valve installation or maintenance on the system. Administrative procedures will require a system test prior to startup following valve installation or maintenance on the system to demonstrate design drainage flow from the system. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the design change increases the reliability of the reactor protection system and the scram discharge volume isolation function does not change the accident mitigation function. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the design change adds redundant reactor protection trip signals and redundant scram discharge volume isolation valves. The proposed change does not involve a significant reduction in the margin of safety because there is no change in the level instrumentation control rod scram setpoint nor in the isolation valve closing time.

Change (6) would modify the note in Technical Specification Table 3.3.3–1, "ECCS Actuation Instrumentation," and Table 4.3.3.1–1, "ECCS Actuation Instrumentation Surveillance Requirements," by deleting the phrase "Prior to STARTUP following the first refueling outage." The deletion of this phase from the note to the two tables makes the note applicable for the duration of the operating license. The note modifies the Technical Specifications on the high pressure core spray (HPCS) system actuation instrumentation such that the injection function of Drywell Pressure-High and Manual Initiation are not required to be OPERABLE when the indicated water level on the wide range instrument is greater than Level 8 coincident with the reactor pressure being less than 600 psig. The effect of this note on plant safe operation was previously analyzed by the licensee and accepted by the NRC staff in its safety evaluation attached to Amendment 10 to the GGNS low power license (September 23, 1983). The limitation in the note to allow such operation only prior to startup following the first refueling outage was included until the accuracy of the water level instrumentation could be determined. The accuracy of the installed water level instrumentation was analyzed by the licensee and accepted by the NRC staff in its letter dated March 18, 1985. Because Change (6) does not change equipment, procedures or conditions for operation from those previously analyzed and because the reason for the time limitation (uncertainty in water level instrumentation accuracy) has been satisfactorily addressed in a previous safety evaluated, the change would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 13, 1986 as amended August 26, 1986.

Description of amendment request: The amendment would change Technical Specification 3/4.5.1, "ECCS—Operating," with respect to the automatic depressurization System (ADS) air system by adding surveillance requirements and an associated action statement for the accumulator low pressure alarm system instrumentation channels and by adding a leakage test for the ADS air system.

Basis for proposed no significont hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its June 13, 1986 request for a license amendment as amended by letter dated August 26, 1986. The licensee has concluded, with appropriate bases. that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the Federal Register on March 6, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed change is similar to this example because it would add surveillance requirements for the ADS air system. These changes result from License Condition 2.C.(33)(g) which requires the licensee to install instrumentation to monitor ADS air system pressure and perform air system tests. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Dote of amendment request: July 25, 1986 as revised by letter dated August 11, 1986.

Description of amendment request: The amendment would change License Condition 2.C.(33)(b), "Training During Low Power Testing (TMI Action Plan Item I.G.1)" to make it consistent with present staff requirements in NRC Generic Letter 83–24, "TMI Task Action Plan Item I.G.1, Special Low Power Testing and Training, Recommendations for BWRs."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its July 25, 1986 request for a license amendment as revised by letter dated August 11, 1986. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration (vii) is a change to conform a license to changes in regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The requested change to License Condition 2.C.(33)(b) is similar to this example. Shortly after the TMI–2 accident, the NRC developed TMI-related requirements for new operating licenses (NUREG–0694, June 1980). One of these was TMI Task Action Plan Item I.G.1 which required applicants for operating licenses to define and commit to a special low power testing program to provide meaningful technical information beyond that obtained in the normal startup test program and to provide supplemental operator training. While special low power testing and training was developed for PWRs, a meaningful low power testing program has not been defined for BWRs. The BWR Owners Group recommended that BWR applicants meet the requirements of TMI Item I.G.1 by augmenting reactor operator participation in the initial test program and by some additional tests. (Letter from D.B. Waters to the NRC, dated February 4, 1981.) The staff took the position at that time that an acceptable means for meeting Item I.G.1 would be to meet the recommendations of the BWR Owners Group and, in addition, to perform a "simulated loss of all A–C power" (station blackout or SBO) test. The staff received commitments from each applicant for an operating license to conduct a station blackout test during the first fuel cycle, including the commitment for Grand Gulf Unit 1 by the licensee's letter dated August 18, 1981. This commitment provided the basis for License Condition 2.C.(33)(b) for Grand Gulf Unit 1.

Subsequently, the licensees for other BWRs indicated that a station blackout test would pose a hazard to plant equipment in that the drywell could undergo a severe temperature and humidity transient and potentially damage equipment in the drywell needed for normal operation although equipment needed to withstand a 4-hour station blackout could be expected to function. In consideration of these BWR licensees' findings, the staff concluded in Generic Letter 83–24 dated June 29, 1983 that if it can be demonstrated that temperature and/or other SBO conditions would adversely impact and pose a hazard to plant equipment, the BWR Owners' Group recommendations by themselves would constitute compliance with TMI Action Plan Item I.G.1.

By letter dated April 3, 1986, MP&L described procedures to be used for a station blackout and demonstrated that the SBO test would pose a hazard to plant equipment. Based on its review of the April 3, 1986 submittal, the staff agrees with the licensee that an SBO test could damage equipment in the drywell due to temperature levels above normal operation and concludes that sufficient justification was provided for not performing an SBO test at Grand Gulf Nuclear Station. The licensee's letter dated April 3, 1986 also committed to complete the testing recommended in the BWR Owners' Group letter dated February 4, 1981. By letters dated July 25 and August 11, 1986, the licensee requested that License Condition 2.C.(33)(b) be changed to require completion of the additional training and testing recommended by the BWR Owners Group as described in the licensee's April 3, 1986 letter.

Because the proposed license condition has been demonstrated to meet the staff's new requirements for TMI Action Plan Item 1.G.1 as given in Generic Letter 83–24, the change from the present license condition which contains superseded staff requirements, is similar to example (vii) of the Commission's examples of amendments considered not likely to involve a significant hazards consideration.

Accordingly, for the reasons cited above, the Commission proposes to determine that the proposed license condition change does not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 5, 1986.

Description of amendment request: The amendment would change the Technical Specifications by adding the Inadequate Core Cooling Instrumentation. Specifically added are the Heated Junction Thermocouples and Core Exit Thermocouples to Section 2.21. The Subcooled Margin Monitor is moved to Section 2.21 from Section 2.15. The surveillance requirements for these components are added to Table 3-3.

Basis for proposed no significant hazards consideration determination: Following the March 1979 accident at Three Mile Island, features have been added to nuclear power plants to enhance the ability of the operators to manage and monitor accidents and transients. The Inadequate Core Cooling Instrumentation system is one of these enhancements and serves to provide information to the plant operators relative to Reactor Coolant System inventory.

The staff has performed a preliminary review of the licensee's submittal and agrees that these changes will enhance the operator's ability to determine Reactor Coolant System inventory and provide additional information for the post-accident monitoring instrumentation that will assist in post-accident control. In effect, the addition of this new instrumentation in the technical specifications imposes more stringent controls and is representative of example (ii) in the list of examples of amendments that are considered not likely to involve significant hazards considerations cited in the **Federal Register** at 51 FR 7751.

The staff has also concluded that the proposed changes meet the criteria of 10 CFR 50.92. A discussion of the criteria follows:

(i) Involve any significant increases in the probability or consequences of an accident previously evaluated.

The Inadequate Core Cooling Instrumentation system is neither credited nor required in the mitigation of any previously evaluated accident and is not relied upon for reactor trip or initiation of any plant safety systems. Therefore, the proposed change does not affect the probability or consequences of any accident previously evaluated.

(ii) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Although the Inadequate Core Cooling Instrumentation is utilized in the Emergency Operating Procedures for corroboration of selected indications, no change to operating procedures are involved, therefore, no new path is created that may lead to a new or different kind of accident. The proposed changes are intended solely to enhance the ability of the operator to manage accidents and transients by providing the operators with additional corroborative information.

(iii) Involve any reduction in the margin of safety.

The specific purpose of these changes is to enhance accident and transient monitoring capability. This will make it possible to operate within the margin of safety previously analyzed with a greater degree of confidence, and will not affect the magnitude of the safety margin in a positive or negative manner.

Based on the above, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 19, 1986.

Description of amendment request: The amendment would change the Technical Specifications to implement the recommendations of NRC Generic Letter 84-13. Specifically, it would delete Tables 2.6(a) and 2.6(b) and the references to these Tables in the text. Sections 2, 3 and 5 of the Technical Specifications would be affected by this amendment.

Basis for proposed no significant hazards consideration determination: In May 1984, the Commission issued Generic Letter 84-13 regarding technical specifications for snubbers. This letter noted that numerous license amendments were required to add, delete or modify the snubber listing contained in the Technical Specifications. After reassessing the need to list snubbers in the Technical Specification; the Commission determined that this inclusion was unnecessary and licensees were given the option to change the Technical Specifications by deleting these Tables.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a change that is administrative in nature, intended to achieve consistency or correct an error. The proposed change is representative of Example (i) in that it eliminates Tables that may be inaccurate from time to time due to changes in the snubber listings. The change would also remove references to the Tables to maintain consistency throughout the specifications. In addition, clarity is increased by better delineating the snubbers that are within the scope of the specifications through description. The proposed change would exercise the option provided the licensee in Generic Letter 84-13 to delete the snubber listing Tables from the Technical Specifications.

The staff has also concluded that the proposed changes meet the criteria of 10 CFR 50.92. A discussion of the criteria follows:

(i) Involve any significant increase in the probability or consequences of an accident previously evaluated.

This change is administrative in nature and does not result in any changes to the design or functioning of the plant. Specifically, there are no modifications to the snubber design and functioning and there are no changes to the way in which the plant is controlled by the operators. Therefore, the proposed change does not affect the probability or consequences of any accident previously evaluated.

(ii) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the change does not result in any plant modifications or operating procedures, no new path is created that may lead to a new or different kind of accident.

(iii) Involve any reduction in the margin of safety.

The specific purpose of the change is to reduce the need to submit frequent applications for amendments to maintain the snubber listing current in the Technical Specifications. This will not affect the magnitude of the safety margin in a positive or negative manner.

Based on the above, the Commission proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 25, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications regarding the water level setpoint for closure of the Main Steam Isolation Valves (MSIVs). This setpoint would be changed from reactor low-low water level (Level 2, i.e. greater than or equal to 126.5 inches from top of active fuel) to reactor low-low-low water level (Level 1, i.e. greater than or equal to 18 inches from top of active fuel). Since the setpoint of water level instruments controlling the MSIVs also controls the main steam line drain valves and the reactor water sample line isolation valves, the setpoint for closure of these valves is also changed by the proposed amendment.

The proposed change would reduce the possibility of spurious MSIV closure due to variations in reactor water level. This, in turn, would increase plant availability, reduce challenges to the safety relief valves (with attendant suppression pool heatup), and simplify plant operation.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

All accidents or events previously evaluated in the Final Safety Analysis Report have been reevaluated using the proposed, revised water-level setpoint. These include abnormal operational transients, loss of coolant accidents and anticipated transients without scram (ATWS). In each case, reanalysis shows that the probability or consequence of the previously evaluated accident or event is not increased as a result of the proposed revision. Therefore, criterion (1) above is satisfied.

The reactor water-level setpoint is a safety feature which, through closure of the MSIVs, serves to mitigate the consequences of previously evaluated events. A change in this setpoint will not create the possibility of a new or different kind of accident from any previously evaluated since the change does not entail a hardware modification or any change in plant operating procedures, nor would the change in setpoint create a new accident sequence. Criterion (2) above is therefore satisfied.

The effects of the proposed setpoint change on operating parameters indicative of plant safety margin such as minimum critical power ratio and peak vessel pressure have been evaluated. Also evaluated were the effects on radiation release and shutdown capability during abnormal operational transients, fuel cladding integrity during a loss of coolant accident, and the reactor response during an ATWS event. These analyses have indicated that the proposed revision would not cause a reduction in safety margin. Furthermore, since the proposed revision would decrease the possibility of spurious MSIV closure due to variations in reactor water level, challenges to the safety relief valves and attendant suppression pool heatup would be reduced, resulting in an improved safety margin. Therefore, criterion (3) above is satisfied.

Because it has been established that plant operation in accordance with the proposed amendment would satisfy the three above stated criteria, the staff has, therefore, made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Daniel R. Muller.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: June 4, 1986.

Description of amendment request: The proposed amendments to Browns Ferry Nuclear Plant (BFN) Unit Nos. 1, 2 and 3 Technical Specifications (TS) would be a general revision to the sections covering limiting conditions for operation and surveillance requirements for the Rod Worth Minimizer (RWM) and the Rod Sequence Control System (RSCS).

The RWM and RSCS are monitoring systems which ensure that the reactor operator adheres to a predetermined sequence of control rod withdrawals or insertions when the reactor is operating at low power levels. The rod withdrawal and insert sequence (insertions are made in a reverse order to withdrawals) is designed to limit the worth of any single control rod so that a postulated rod drop accident will not result in peak fuel enthalpies greater than 280 calories/gram.

These changes are proposed to make BFN TS consistent with Standard Technical Specifications (STS) (NUREG 0123) in the area of control rod pattern constraints under low power conditions. They include administrative changes; renumbering sections, correcting grammar and clarifications; changes to achieve consistency between units; and changes to adopt STS guidance. Specific changes involve:

1. Surveillance testing requirements for RWM and RSCS are being changed to require more suitable tests to ensure system operability. The proposed revision to sections 4.3.B.3.a and 4.3.B.3.b affects the startup and shutdown surveillance requirements for RSCS and RWM. These proposed requirements will demonstrate that each function of RSCS and RWM is operable prior to when that function is required to enforce rod movement constraints, hence ensuring system operability.

2. A limiting condition for operation (LCO) which serves no safety function is being deleted.

The proposed revision to what is currently section 3.3.B.3.b will delete a limiting condition for operation (LCO) which relates to the RSCS. This LCO currently requires that no control rod movement be allowed after testing RSCS restraints and before reaching the RSCS enforcing region, and that alignment of rod groups be done prior to performing surveillance tests. Deletion of the LCO is consistent with NRC guidance as found in the STS.

3. Actions required when RWM is inoperable are being clarified. The proposed revision to section 3.3.B.3.b clarifies the LCO with the RWM inoperable. This clarification is consistent with the wording found in the STS.

The proposed revision to what is currently section 3.3.B.3.d will change the LCO which applies when either both

RWM and RSCS are inoperable, or when RWM is inoperable and a second licensed operator is not available to verify that the RWM sequence is adhered to. Under the proposed LCO, allowing no control rod movement becomes an acceptable alternative to immediately actuating the manual scram or placing the reactor mode switch in the shutdown position.

In the event that all automatic constraints on control rod movement are lost, simply prohibiting subsequent control rod movement will ensure that rod patterns which result in high control rod worths cannot be generated, hence fulfilling the intended function of the RWM and the RSCS. This proposed LCO is consistent with NRC guidance as found in the STS.

4. The action required when sufficient rod pattern controls are not operable is being changed to an action which is more appropriate for the conditions.

The proposed revision to section 3.3.B.3.a of the unit 2 TS will allow suspension of RSCS constraints for individual rods to allow special criticality testing and scram timing, provided that the RWM remains operable. This is consistent with the LCO for units 1 and 3, and ensures that an automatic constraint on control rod patterns remains in place at low power conditions when RSCS constraints are reduced. The scram timing provision is already allowed by Technical Specification 4.3.C.1 and the criticality test provision is supported by the safety evaluation report for Amendment No. 76 to the BFN unit 1 TS. The proposed amendment to BFN unit 2 TS would also add a provision for bypassing RSCS constraints for individual control rods for the purpose of certain tests.

Basis for proposed no significant hazards considerotion determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's determination for each of the four items above is as follows:

1. The proposed revisions to the surveillance requirements will adopt the Standard Technical Specification testing requirements. Because the actual system functions remain unchanged and the operability and testing requirements are consistent with NRC guidance, there is no increase in the consequences of the previously analyzed rod drop accident. These revisions do not create the possibility of an accident or malfunction of any different type, since the system will have the same function as before and the worst case accident under these conditions has been analyzed. There is no reduction in the margin of safety as defined in the basis of the TS since the RWM and RSCS will still restrict peak fuel pellet enthalpy to less than 280 calories/gram in the event of a rod drop accident.

2. The LCO being deleted required that no rod movement be permitted after testing RSCS restraints while shutting down and before reaching the RSCS enforcing region. This is not consistent with the proposed testing requirements, since they will test RSCS restraints after the enforcing region is reached. Because all restraints necessary for RSCS to perform its function are unchanged, the probability or consequences of any previously analyzed accident is not increased. Plant procedure in shutting down will not be changed in that RSCS restraints will control rod movement when required, so that no unanalyzed accident possibility is introduced. Finally, since RSCS system operation is unchanged, no margin to safety as defined in the bases for the TS is reduced.

3. The actions required when RWM is inoperable are being reworded to make clear when a second person verification may substitute for RWM control. This is unchanged in intent from the current LCO and so does not increase the probability or consequences of any previously analyzed accident. Since no change in plant configuration or procedure will occur, no unanalyzed accident condition is introduced. Because RWM functions are not being changed, no margin to safety as described in the bases of the TS is reduced.

4. The action required when sufficient rod pattern controls are not present is being changed to allow complete suspension of rod movement as an acceptable alternative to immediately shutting down the reactor. This change will not affect the probability or consequences of any previously analyzed accident. By not allowing rod movement after rod pattern controls are lost, no rod pattern may be generated which results in any new, unanalyzed accident. Finally, since no unanalyzed situation may develop, no margin to safety as described in the basis for the TS is reduced.

Based on these findings, the licensee proposed to determine that this license amendment request involves no significant hazards consideration.

The staff reviewed the licensee's determination and finds that it meets the Commission standards and it is acceptable. Therefore the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Project Director: Daniel R. Muller.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: March 14, 1986.

Description of amendment request: This proposed amendment, if approved, would revise the WNP–2 Technical Specifications by modifying the table notations of Table 4.3.7.5–1, Accident Monitoring Instrumentation Surveillance Requirements. License Condition 16, Attachment 2, item 3(a), as amended, of the WNP–2 operating License requires that the licensee shall implement (installation or upgrade) requirements of Regulatory Guide 1.97, Revision 2 with the exception of flux monitoring and wide range suppression pool monitoring prior to startup following the first refueling outage. As a result, during the Spring 1986 outage the licensee replaced, in total, the original hydrogen-oxygen (H2–O2) analyzer with a qualified replacement. The replacement system is designed so that precise sample gas concentrations as described in the present Technical Specifications are not necessary to ensure coverage of the required instrument range. Accordingly reference to precise sample gas concentrations should be removed from the Technical Specifications. The new H2–O2 monitoring system has a micro-processor that automatically compensates for containment pressure and temperature and is used to calibrate the H2–O2 monitoring system. An actual Technical Specification restraint is no longer required on the calibration gas concentrations since changes in H2 or O2 calibration gas concentrations are entered into the micro-processor and directly compared to the compensated output signals of the H2 and O2 sensors during calibrations.

The new system represents a marked improvement over the originally installed system. The sample points and return lines have been relocated so as to eliminate sample return problems and increase the accuracy and confidence of results. Remote calibration at any time is a new feature and an improvement over the original system. Additionally, the new system utilizes hydrogen/argon calibration gases instead of the more flammable hydrogen/nitrogen calibration gases used by the original system.

In summary the micro-processor used with the new system eliminates the need for precise gas concentrations, provides greater flexibility, and with the design features discussed above, provides a significant improvement in system operability and overall safety.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operating of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment per 10 CFR 50.92 does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of a precisely specified gas concentration does not diminish the capability of the H2–02 analyzers (Exosensor) to measure the concentrations over the required instrument range; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated because no function or feature of the original system will be lost by calibrating the new system without the precise gas concentrations specified in the Technical Specifications; or (3) involve a significant reduction in a margin of safety because the new system without precisely specified gas concentrations has the same capabilities as the originally installed system.

Based on our review of the proposed modification, the staff finds that there exists reasonable assurance that this proposed change will have little or no impact on the public health and safety. Accordingly, the Commission proposes to determine that the requested change to the WNP–2 Operating License involves no significant hazards considerations.

Local Public Document Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire; Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036.

NRC Project Director: E. Adensam.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: April 8, 1988.

Description of amendment request: This proposed amendment, if approved, would revise the WNP–2 Technical Specifications by modifying Section 3.3.7.8, 4.3.7.8, 4.7.2, index pages vi and xiii and Bases 3/4.3.7.8. Chlorine gas is no longer stored in the immediate plant site area. As a result, the threat to control room habitability due to chlorine gas leakage has been eliminated and this change requests the deletion from the Technical Specifications of the references to the chlorine detection system.

As discussed in the WNP–2 Final Safety Analysis Report, Section 6.4.4.2, chlorine gas was previously stored on site for use in chemical treatment of circulating water. Analysis of the quantity and location of the stored chlorine relative to the control room per Regulatory Guide 1.95, Revision 1 "Protection of Nuclear Power Plant Control Room Operators Against An Accidental Chlorine Release", indicated that the WNP–2 control room design should meet the guidance for a Class III type control room. Accordingly, redundant quick response chlorine detectors providing automatic control room isolation were incorporated to ensure control room habitability following a chlorine release on site. The licensee has recently changed the circulating water treatment system to a system using sodium hypochlorite. As a result, chlorine gas is no longer needed and its storage on the WNP–2 site has been eliminated; therefore, the WNP–2 chlorine detection system also is no longer needed to ensure control room habitability.

Furthermore, Regulatory Guide 1.78 "Assumptions for Evaluating the Habitability of a Nuclear Power Plant Control Room During A Postulated Hazardous Chemical Release" uses, as a threshold for evaluation due to transportation, a frequency of 10 to 30 shipments of chlorine gas cylinders per year for truck and rail, respectively, on transportation routes within five miles of the site. It is estimated that truck shipments on such routes are four per year. There has been no rail shipment since June 1983, and none is anticipated in the future. Thus transportation of chlorine gas in the immediate vicinity does not pose a significant threat to control room habitability.

Other areas within a five mile radius of the control room in which chlorine might be stored are the WNP–1 and Fast Flux Test Facility sites. Neither of these facilities uses nor stores significant quantities of chlorine gas; consequently chlorine at these sites does not represent a threat to the habitability of the WNP–2 control room.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment per 10 CFR 50.92 does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the possibility of the accident for which the monitors were required has been eliminated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated because no new systems or procedures are introduced and presently installed systems and procedures will not be affected by removal of the monitors; or (3) involve a significant reduction in a margin of safety because the removal of stored chlorine gas from the site will actually improve the safety margin by eliminating the possibility of chlorine gas release.

Based on our review of the proposed modification, the staff finds that there exists reasonable assurance that this proposed change will have little or no impact on the public health and safety. Accordingly, the Commission proposes to determine that the requested change to the WNP–2 Operating License involves no significant hazards considerations.

Local Public Document Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire; Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036.

NRC Project Director: E. Adensam.

VOL 51 ISS 175 SE 10 1986 UMI

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: July 10, 1986.

Description of amendment request: This proposed amendment, if approved, would revise the WNP–2 Technical Specifications by modifying Section 3.4.2 and its Basis, Section 3/4.4.2, both of which relate to the Safety/Relief Valves setpoint accuracy capabilities.

Specifically the Limiting Condition for Operation of the WNP–2 Technical Specifications and the BWR/5 Standard Technical Specifications currently require the reactor coolant system Safety/Relief Valve (SRV) tolerance to be within plus or minus 1% of the setpoint. The Supply System has prepared a technical position to support revising the tolerance to +1%/−3% based on the results of a General Electric Company reanalysis. By their inherent design, the WNP–2 SRV's, CROSBY model 6XRX10 HB–65–BP, have a setpoint opening scatter band range of 4%. This band range was measured during qualification testing of the valves, and it is the recommended setpoint tolerance provided by the vendor for on-line service set pressure verification testing. The proposed +1% and −3% tolerance is a more appropriate apportionment of this 4% scatter band. The +1% high tolerance limit is required by the ASME Code. The +1% limit of the revised tolerances adheres to this requirement; therefore the proposed tolerance maintains the same margin of safety for overpressure protection as before.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment per 10 CFR 50.92 does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the reactor pressure vessel overpressure limit as previously analyzed is maintained and the safety relief valves will be maintained within the allowable limits of the design: or (2) create the possibility of a new or different kind of accident from an accident previously evaluated because existing pressure relief capacity has not been reduced, no new accident is postulated and the SRV's associated piping and hardware are maintained within the allowable limits of the design; or (3) involve a significant reduction in a margin of safety because the ability of the SRV's to limit reactor pressure is maintained in accordance with design requirements as analyzed in the overpressure protection analysis.

Based on our review of the proposed modification, the staff finds that there exists reasonable assurance that this proposed change will have little or no impact on the public health and safety. Accordingly, the Commission proposes to determine that the requested change to the WNP–2 Operating License involves no significant hazards considerations.

Local Public Document Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire; Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036.

NRC Project Director: E. Adensam.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: August 1, 1986.

Description of amendment request: The amendment corrects typographical errors, deletes obsolete references and replaces them with current ones, and reinserts a requirement that was inadvertently deleted by a previous amendment.

Basis for proposed no significant hazards consideration determination: The proposed changes make minor corrections to existing Technical Specifications. They do not add or remove any requirements to the existing Technical Specifications. Therefore, the proposed changes maintain the intent of the existing Technical Specifications. Since the intent of the Technical Specifications remains unchanged, these changes are administrative. The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751) of actions likely to involve no significant hazards consideration. An example of an action involving no significant hazards consideration is a change that relates to "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." Since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Project Directorate: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: August 13, 1986.

Brief description of amendment: The proposed amendments would revise the Station's common Technical Specifications (TSs) to maintain consistency between Appendix J and the TSs. The licensee is also requesting an exemption from 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors", paragraph III.A.3. In 1973, Appendix J was issued to establish requirements for primary containment leakage testing

and incorporated, by reference, ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This Standard requires that containment leakage calculations be performed by using either the point-to-point method or the total time method. The total time method was used most by the nuclear industry until about 1976. As noted in N45.4, the point-to-point method is suited to uninsulated containments where atmospheric stability is affected by outside diurnal changes, while the total time method is appropriate for insulated containments that are relatively unaffected by diurnal changes. In 1976, an article (reference: "Containment Leak Rate Testing: Why the Mass-Plot Analysis Method is Preferred," Power Engineering, February 1976) was written which compared the results of test analyses that were performed using point-to-point, total time, and mass-plot techniques. Subsequently, the mass-plot method received the Commission's endorsement and became the Commission-recommended method to use. A revision to the Standard (reference: ANSI/ANS 56.8–1981, "Containment System Leakage Testing") specifies the use of mass-plot, to the exclusion of the two older methods. Licensees who wish to use mass-plot must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will conform to N45.4.

Date of publication of individual notice in **Federal Register:** August 27, 1986 (51 FR 30591).

Expiration date of individual notice: September 26, 1986.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated.

All of these items are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 1, 1982.

Brief description of amendments: These amendments change the drywell oxygen concentration upper limit from five percent by weight to four percent by volume.

Date of issuance: August 15, 1986.

Effective date: August 15, 1986.

Amendment Nos.: 96, 92.

Facility Operating License Nos. DPR–29 and DPR–30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1983 (48 FR 43132). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Moline Public Library, 504 17th Street, Moline, Illinois 61265.

Consumers Power Company Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 17, 1986.

Brief description of amendment: The amendment changes the Technical Specifications for heat-up and cool-down and hydrostatic test of the reactor vessel by raising the pressure-temperature limits. The amendment also extends the limits from 6.6 effective full power years to approximately 9.0 EFPY.

Date of issuance: August 21, 1986.

Effective date: August 21, 1986.

Amendment No.: 97.

Provisional Operating License No. DPR–20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1986 (51 FR 16919 at 16925). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 20, 1986, as supplemented May 23, June 4, July 10, and August 5, 1986.

Brief description of amendments: The amendments authorize use of Transnuclear, Inc., multielement spent fuel shipping casks TN–B or TN–8L for receipt of irradiated Oconee fuel at McGuire.

Date of Issuance: August 29, 1986.

Effective date: August 29, 1986.

Amendment Nos.: 61 and 42.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses.

Date of initial notice in **Federal Register:** May 29, 1986 (51 FR 19428). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 29, 1986 and in an Environmental Assessment dated August 22, 1986 (51 FR 30593).

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

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Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: September 17, 1985, as supplemented on March 25, 1986.

Brief description of amendments: These amendments revise the Station's common Technical Specifications (TSs) to include independent testing of the shunt and undervoltage trip attachments and silicon controlled rectifiers. These amendments are in response to Generic Letter 85-10, dated May 23, 1985, and the NRC letter to the Babcock and Wilcox Owner's Group, dated December 6, 1985.

Date of issuance: August 20, 1986.

Effective date: August 20, 1986.

Amendments Nos.: 148, 148, and 145.

Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 20, 1985 (50 FR 47861). Since the initial notice, the licensee supplemented the appliation by a March 25, 1986 letter. This letter submitted additional TS pages associated with the control rod drive mechanisms and editorially corrected Table 4.1-1 as submitted on September 17, 1985. The March 25, 1986 submittal does not affect the initial no significant hazards determination or the substance of the amendments. Therefore, renoticing of the proposed amendments was not warranted.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: February 13, 1984.

Brief description of amendments: These amendments revise the Station's common Technical Specifications (TSs) to incorporate fire hose stations (located in the three Oconee reactor buildings) into the limiting conditions for operation and surveillance requirements addressing the fire protection and detection systems. Other changes requested in the licensee's February 13, 1984 application have been handled separately.

Date of issuance: August 20, 1986.

Effective date: August 20, 1986.

Amendments Nos.: 149, 149 and 146.

Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 25, 1984 (49 5R 17858). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Duke Power Company, Dockets Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: September 24, 1985.

Brief description of amendments: These amendments revise the TSs to delete the reference to the enrichment requirement of 3.5 percent uranium-235 in TS 5.3.1.4. The amendments also correct two typographical errors. In Section 5.3.1.2, the active fuel assembly height is changed from 144 to 142 inches. On page 5.3-1, in Reference 2, Table 4.3.1 is changed to 4.3-1 (the period to a hyphen).

Date of issuance: August 27, 1986.

Effective date: August 27, 1986.

Amendment Nos.: 150, 150 and 147.

Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register. November 20, 1985 (50 FR 47861). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: January 30, 1986, as supplemented July 30, 1986.

Brief description of amendments: These amendments will revise the Technical Specifications to provide administrative control of the non-safety related Standby Feedwater System. These controls will provide assurance that the system will be available during plant operations.

Date of issuance: August 13, 1986.

Effective date: August 13, 1986.

Amendment Nos. 116 and 112.

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 9, 1986 (51 FR 12228).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 1986.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Iowa Electric Light and Power Company, Docket No. 50-311, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: February 7, 1986.

Brief Description of amendment: The amendment revises the Technical Specifications to incorporate restrictions related to a radiation monitor installed in the ventilation exhaust stack of the Low-Level Radwaste Processing and Storage Facility constructed at the Duane Arnold Energy Center.

Date of issuance: August 26, 1986.

Effective date: August 26, 1986.

Amendment No.: 135.

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 26, 1986 (51 FR 10462).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1986.

No significant hazards consideration comments received: No

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 6, 1985 as revised and supplemented by letters dated July 29, August 15, August 30, September 11, September 12, November 1, and December 18, 1985; and March 14, March 15, June 5, June 9, and July 25, 1986.

Brief description of amendment: This amendment revised Technical Specifications Section 5.6, "Fuel Storage," to allow increased upper

containment pool capacity and increased spent fuel storage pool capacity. This amendment also revised Specification 3/4.7.9, "Spent Fuel Storage Pool Temperature," to limit the pool temperature to 140 °F and require plant shutdown if pool temperature cannot be maintained below this limit.

Date of issuance: August 18, 1986.

Effective date: August 18, 1986.

Amendment No.: 17.

Facility Operating License No. NPF–29. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** (51 FR 26078) July 18, 1986.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 19, 1986 as supplemented by letters dated July 25 and July 29, 1986.

Brief description of amendment: This amendment adds an under voltage protection device for the Division 3 diesel generator, changes License Condition 2.C.(20) and the TSs to allow modifications to be made to the standby service water system, clarifies the TSs regarding breaker response time for the end-of-life recirculation pump trip system, and changes the test loads for the batteries. Changes to License Condition 2.C.(20) and Technical Specification Pages 1–3, 3/4 3–42, 3/4 7–2 and B 3/4 3–3 are effective upon issuance of this amendment. Changes to Technical Specification Pages 3/4 3–29, 3/4 3–32a, 3/4 3–35, 3/4 8–6 and 3/4 8–12 are effective when the equipment necessitating the changes on those pages is installed and operable. For those changes to the Technical Specifications that are not effective upon issuance, the licensee is requested to inform the NRR by letter of their effective dates within 30 days of the date the equipment is made operable.

Date of issuance: August 27, 1986.

Effective date: August 27, 1986.

Amendment No. 18.

Facility Operating License No. NPF–29. This amendment revised the Technical Specifications and the License.

Date of initiol notice in **Federal Register:** June 18, 1986 (51 FR 22239).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit No. 3, Eureka, California

Date of application for amendment: May 16, 1986.

Brief description of amendment: This amendment revised the Technical Specifications to: (1) upgrade requirements for the stack gas monitoring system, and (2) reduce the required number of condensate demineralizer beds to allow one of the beds to be used as a spent fuel pool demineralizer.

Date of Issuance: August 26, 1986.

Effective Date: August 26, 1986.

Amendment No.: 21.

Facility Operating License No. DPR–7. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1986 at 51 FR 22241.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Eureka-Humboldt County Library, 421 I Street (County Court House), Eureka, California 95501.

Pennsylvania Power and Light Company Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: April 4, 1986.

Brief description of amendment: This amendment changes the Susquehanna Unit 2 Technical Specifications in order to support plant modifications which will improve the containment isolation function and the testability of the Feedwater system. This change replaces the two Reactor Water Clean-up (RWCU) Return Manual isolation valves with two new valves. The valves being replaced (HV–244F042 and HV–244F104) are not being removed from the plant, but they will no longer serve as containment isolation valves. These valves are a significant contributor to leakage during local penetration testing due to their other function, throttling valve for the RWCU system operation. The new valves (HV–24182A&B) will assume the containment isolation function, and the existing RWCU valves will continue to serve as throttling valves for the RWCU system.

Date of issuance: August 27, 1986.

Effective date: Start-up following the Unit 2 first refueling outage.

Amendment No.: 28.

Facility Operating License No. NPF–22: Amendment revised the Technical Specifications.

Dates of initial notice in **Federal Register:** May 21, 1986 (51 FR 18692).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: July 1, 1985 and supplemented March 10, 1986.

Brief description of amendment: The amendment revises the Technical Specifications to incorporate changes related to the Low Temperature Overpressure Protection System (LTOPS). Section 3.1 of the Technical Specifications has been expanded to include the requirements necessary to allow startup of a Reactor Coolant Pump under various operating conditions. Section 3.3 has been expanded to address overpressure protection system considerations related to safety injection pumps. Other sections have been revised to reflect these changes.

Date of issuance: August 18, 1986.

Effective date: August 18, 1986.

Amendment No.: 67.

Facilities Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32801) and April 23, 1986 (51 FR 15401).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1984 and August 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: February 12, 1986.

Brief description of amendment: This amendment deletes a Technical Specification operability requirement for smoke detection instrumentation for a fire detection zone that is being removed due to a plant modification.

Date of issuance: August 18, 1986.

Effective date: August 18, 1986.

Amendment No.: 18.

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12238).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: February 12, 1986.

Brief description of amendments: The amendments revise the Technical Specifications to clarify the limiting conditions for operation regarding seismic restraints, supports and snubbers.

Date of issuance: August 19, 1986.

Effective date: August 19, 1986 to be implemented within 90 days.

Amendments Nos.: 129, 124, 100.

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1986 (51 FR 22244).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50-260 Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: August 23, 1984 (TVA BFNP TS-199), as supplemented September 4 and November 13, 1984, April 3, May 8, June 27, November 20 and December 30, 1985 and April 29, 1986.

Brief description of amendment: The amendment revises the Technical Specifications (TS) of the operating license to: (1) modify the core physics, thermal and hydraulic limits to be consistent with the reanalyses associated with replacing about one-third of the core during the Cycle 6 core reload outage and (2) reflect changes in various specifications as a result of plant modifications performed during the outage. In addition, TVA has updated the TS pages involved and made administrative corrections.

Date of issuance: August 19, 1986.

Effective date: August 19, 1986 to be implemented within 90 days.

Amendment No.: 125.

Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1986 (51 FR 22243).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: June 6, 1986, as supplemented July 30, 1986.

Brief description of amendment: The amendment modifies Surveillance Requirement 4.4.10.1.b to permit a one-time extension of the surveillance interval for the reactor vessel intervals vent valves from 18 months (plus an allowable extension of 25 percent) to until the reactor vessel head is removed or until the refueling following Cycle 5 operation. Although no specific date is included in the TSs by when the surveillance must be done, it is understood that testing of these valves will be done approximately no later than March 1986. Thus, the surveillance interval will have been extended to approximately 42 months maximum.

Date of issuance: August 20, 1986.

Effective date: August 20, 1986.

Amendment No.: 95.

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24265).

Since the initial notice, the licensee submitted a supplement dated July 30, 1986, which responded to the Commission's request for additional information. This information did not change the original application in any way, and therefore did not warrant renoticing. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: December 19, 1985.

Brief description of amendments: The amendments revise the NA-1 TS which address the Emergency Diesel Generators (EDG) and are consistent with the NRC recommendations of Generic Letter 84-15, "Proposed Staff Actions To Improve and Maintain Diesel Generator Reliability. Also, the recently issued NA-2 TS which address Generic Letter 84-15 have been revised to correct several typographical errors and an inconsistency in the use of a defined term. These changes for NA-2 are administrative in nature.

Date of issuance: August 22, 1986.

Effective date: August 22, 1986.

Amendment Nos.: 83 and 70.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1986 (51 FR 15412). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: January 6, 1986.

Brief description of amendment: The amendment modifies the Technical Specifications to extend by 30 days the schedule for submittal of supplemental information to the semiannual radioactive effluent release report

required to be submitted after January 1 of each year.

Date of issuance: August 20, 1986.

Effective date: August 20, 1986.

Amendment No.: 98.

Facility Operating License No. DPR-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 29, 1986 (51 FR 3722). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By October 10, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of applications for amendment: July 2, 1986, and supplemented July 15, July 24, July 30, and July 31, 1986.

Brief Description of amendment: This amendment revises the Fermi-2 Technical Specifications to change the values of the Division I degraded grid relay setpoints and the associated time delay. This change is reflected in Table 3.3.3–1. Basically, the affected relay setpoints have been increased from 89 to 95 percent of the nominal voltages. The time delay has been increased from 19.7 to 44.0 seconds.

Date of issuance: August 22, 1986.

Effective date: August 1, 1986.

Amendment No.: 4.

Facility Operating License No. NPF–43: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment and final No Significant Hazards Conditions Determination are contained in a Safety Evaluation dated August 22, 1986.

Attorney for licensee: John Flynn, Esquire, 2000 Second Avenue, Detroit, Michigan 48226.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendment: May 15, 1986, as supplemented May 23, June 6 and 30, and August 4 and 12, 1986.

Brief description of amendment: The amendments change the Technical Specifications to reflect the third of several refueling stages involved in the continuing transition to the use of optimized fuel assemblies in Unit 1. Changes for both units provide for a more positive moderator temperature coefficient and fuel assembly changes associated with protection from baffle jetting. (The supplemented information submitted on August 12, 1986 did not change the proposed amendment described in the **Federal Register** notice published August 7, 1986.)

Date of Issuance: August 22, 1986.

Effective Date: August 22, 1986.

Amendment Nos.: 60 and 41.

Facility Operating License Nos. NPF–9 and NPF–17: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. 51 FR 23484 dated June 27, 1986, and 51 FR 28463 dated August 7, 1986.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated August 22, 1986.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 4th day of September, 1986.

For the Nuclear Regulatory Commission,

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A.

[FR Doc. 86–20290 Filed 9–9–86; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Philadelphia Electric Co.; (Limerick Generating Station, Units 1 and 2)

[Docket Nos. 50–352–OL, 50–353–OL]

September 4, 1986.

Atomic Safety and Licensing Board Before Administrative Judges: Helen F. Hoyt, Chairperson, Dr. Richard F. Cole, Dr. Jerry Harbour.

Order

On September 3, 1986, a conference call was conducted by the Board with Counsel for Licensee, Counsel for Graterford prisoners, Counsel for Pennsylvania Department of Corrections, Counsel for PEMA and Counsel for NRC Staff to set the procedures for hearing the remanded issue in ALAB–845.

Parties were advised that September 22, 1986 at Philadelphia is the date established for hearing on the remanded issue; that no pre-filed testimony would be ordered but that witness lists would be exchanged no later than September 12, 1986; that the Board considered that discovery should begin immediately; and that the location of the hearing would be the Conference Room, Independence Terrace, Room 7B, Holiday Inn Midtown, 1305 Walnut Street, Philadelphia, Pennsylvania 19107.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, this 4th day of September 1986.

[FR Doc. 86–20373 Filed 9–9–86; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 35-24183]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 4, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 29, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

UtiliCorp United Inc. (31-818)

UtiliCorp United Inc. ("UtiliCorp"), 922 Walnut Street, Kansas City, Missouri 64199-3287, has filed an application pursuant to section 3(b) of the Act for an order declaring that West Kootenary Power and Light Company, Limited ("WKP"), Waneta Plaza, 8100 Rock Island Highway, Trail, British Columbia, Canada, will not be a subsidiary of UtiliCorp, for purposes of the Act, following UtiliCorp's acquisition of WKP.

UtiliCorp is a Missouri corporation primarily engaged in the sale and distribution of gas and electricity to retail and wholesale customers. UtiliCorp has signed a letter of intent to purchase 100% of the shares of WKP, a Canadian corporation engaged in the generation and transmission of electricity to Canadian wholesale and retail customers. Following the purchase, WKP will be a wholly owned subsidiary of UtiliCorp.

Neither WKP nor UtiliCorp (or any corporation which UtiliCorp owns or controls) presently is a "holding company" or a "subsidiary company" of a holding company under the Act. WKP operates exclusively in Canada and derives substantially all its income from Canadian sales of electricity. WKP is not qualified to do business in any state of the United States, and it owns no securities of any other public utility or holding company in the United States or Canada.

UtiliCorp asserts that because the operations of WKP are exclusively Canadian, the sales and revenues of the company, as regulated by applicable law, have little or no effect upon electric generation and sales within the United States. Under Canadian law, a majority of the Board of Directors of WKP must be Candian citizens. In addition, WKP is subject to dissolution by the Lieutenant Governor General of British Columbia upon the violation of any order of that authority. For these reasons, UtiliCorp asserts that United States regulation of WKP as the subsidiary of a holding company is not necessary for the public interest or for the protection of investors. In addition, UtiliCorp asserts that if WKP is granted an exemption pursuant to section 3(b) of the Act, then UtiliCorp, as the owner of all of the common shares of WKP, would be entitled to the exemption provided by Rule 10(a)(1) under the Act.

For the Commission, by the Division of Investment, Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20346 Filed 9-9-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

September 5, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

American President Companies, Ltd.
Common Stock, $.01 Par Value (File No. 7-9125)

Bernard Chaus, Inc.
Common Stock, Par Value $.01 (File No. 7-9126)

Consolidated Stores Corp.
Common Stock, $.01 Par Value (File No. 7-9127)

Norsk Hydro A.S.
American Depository Shares (File No. 7-9128)

Regional Financial Shares Investment Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-9129)

AFG Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7-9130)

NBD Bancorp, Inc.
Common Stock, $.250 Par Value (File No. 7-9131)

Radice Corp.
Common Stock, No Par Value (File No. 7-9132)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 26, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20384 Filed 9-9-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 5, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Kaufman & Broad Home Corp.
Common Stock, $1.00 Par Value (File No. 7-9133)

Leslie Pay Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7–9134)
DCNY Corp.
Common Stock, $0.50 Par Value (File No. 7–9135)
USF & G Corp.
$4.10 Series A Convertible Exchangeable Preferred Stock (File No. 7–9136)
Clabir Corporation
Class A Common Stock, $0.10 Par Value (File No. 7–9137)
NL Industries, Inc.
Series C Depository Receipts (File No. 7–9138)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 26, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20385 Filed 9–9–86; 8:45 am]

BILLING CODE 8010–01–M

VETERANS ADMINISTRATION

Advisory Committee on Women Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Women Veterans will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC on September 22 through September 23, 1986. The purpose of the Advisory Committee on Women Veterans is to advise the Administrator regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Veterans Administration; and the activities of the Veterans Administration designed to meet such needs. The Committee will make recommendations to the Administrator regarding such activities.

The sessions will convene at 8:50 a.m. on September 22, 1986, and 9:00 a.m. on September 23, 1986. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Program Assistant, Medical Service, Veterans Administration Central Office (phone 202/389–2450) prior to September 17, 1986.

Dated: September 2, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–20323 Filed 9–9–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 175
Wednesday, September 10, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Consumer Product Safety Commission	1
Inter-American Foundation	2
Nuclear Regulatory Commission	3
Pacific Northwest Electric Power and Conservation Planning Council	4

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 10, 1986.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. General Policy Statement

The Commission will consider a proposed Statement of General Policy concerning the structure and workings of the Commission staff and the flow of information within the Agency.

2. Commission Structure

The Commission will consider certain Agency structural realignments initiated by the Chairman.

3. Swimming Pool Covers: Options

The staff will brief the Commission on possible options for follow up activities on swimming pool covers.

4. LP Gas Check Program Statement: Options

The Commission will consider options on ways to support the National LP Gas Association's Gas Check Program.

*The Commission by majority vote decided that agency business required the waiving of the normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
September 5, 1986.

[FR Doc. 86–20460 Filed 9–8–86; 1:53 pm]
BILLING CODE 6355–01–M

2

INTER-AMERICAN FOUNDATION

TIME AND DATE:

September 22, 1986
6:00–9:00 p.m.
September 23, 1986
9:00 a.m.–12:00 noon

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open except for the portion to be held as Closed Session to discuss Personnel matters as defined in § 1004.4(b) of 22 CFR Chapter 10.

MATTERS TO BE CONSIDERED:

September 22, 1986

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the Meeting of December 9–10, 1985
4. Closed Session to Discuss Personnel Matters as Defined in Section 1004.4(b) of 22 CFR Chapter 10

September 23, 1986

5. Report of the Committees of the Board
6. Other Business

CONTACT PERSONS FOR MORE INFORMATION: Charles M. Berk, Secretary of the Board of Directors (703) 841–3812.

Dated: September 5, 1986.

Charles M. Berk,
Sunshine Act Officer.

[FR Doc. 86–20409 Filed 9–8–86; 10:25 am]
BILLING CODE 7025–01–M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 8, 15, 22, and 29, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 8

Wednesday, September 10

9:30 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Thursday, September 11

10:00 a.m.
Briefing on International Nuclear Safety Conventions (Closed—Ex. 1)
2:00 p.m.
Meeting with the Advisory Committee on Reactor Safeguards on Standardization Policy Statement (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Promulgation of Final Fee Rule Required by the Consolidated Omnibus Budget Reconciliation Act of 1986
b. Request for Hearing on Shearon Harris Exemption Request
c. Shoreham Intervenors' Motion to Reconsider CLI–86–11
d. Comanche Peak Construction Permit Extension (*postponed* from September 4)

Week of September 15—Tentative

Thursday, September 18

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 19

10:30 a.m.
Briefing by General Electric Company on Advanced Boiling Water Reactor (Public Meeting)

Week of September 22—Tentative

Thursday, September 25

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of September 29—Tentative

Thursday, October 2

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Title change—Discussion of Full Power Operating License for Perry-1, (Public Meeting) scheduled for September 5.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,
Office of the Secretary.
September 4, 1986.

[FR Doc. 86–20490 Filed 9–8–86; 3:52 pm]
BILLING CODE 7590–01–M

4

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. The Council also will hold an executive session to discuss pending litigation.

TIME AND DATE: September 17–18, 1986, 9:00 a.m.

PLACE: Council Offices, 850 S.W. Broadway, Portland, Oregon.

MATTERS TO BE CONSIDERED:

- Public comment of BPA/Council Issue Paper on the Resource acquisition Provisions of the Northwest Power Act (Section 6(c)) and Council Deliberation on a Draft Position on a Process and Criterion for Determining Consistency under Section 6(c).
- Discussion of Petition by Senator Al Williams, Chairman, Washington State Senate Energy and Utilities Committee, Regarding the Cost-Effectiveness of Washington Public Power Supply Systems Plants 1 and 3.
- Council Business.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins. (503) 222–5161, or toll-free 1–800–222–3355 (Montana, Idaho or Washington) or 1–800–452–2324 (Oregon).

Edward Sheets,

Executive Director.

[FR Doc. 86–20431 Filed 9–8–86; 10:26 am]

BILLING CODE 0000–00–M

VOL 51 ISS 175 SEP 10 1986 UMI

Federal Register

Wednesday
September 10, 1986

Part II

Department of Justice
Department of State

Immigration and Naturalization Service

Bureau of Consular Affairs

8 CFR Part 212

22 CFR Part 41

Documentary Requirements; Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole Visas; Documentation of Nonimmigrants Under the Immigration and Nationality Act; Final Rules

VOL 51 ISS 175 SE 10 1986 UMI

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

Documentary Requirements; Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule authorizes consular officers assigned to visa-issuing posts abroad to approve, on behalf of the Attorney General pursuant to section 212(d)(3)(A) of the Immigration and Nationality Act, a recommendation by another consular officer that an alien be admitted temporarily despite inadmissibility. The inadmissibility must be solely as a result of presumed or actual membership in, or affiliation with, organizations described in section 212(a)(28)(C) of the Act. This rule further provides that any recommendation may, and any recommendation that is not clearly approvable must, be presented to the appropriate officer of the Immigration and Naturalization Service for a determination.

This rule will reduce officer and clerical time that is currently devoted to what is largely a perfunctory process, enhance the efficiency of the visa application process, and result in economy of operation for both the Service and the Department of State. It will also reduce delays in visa issuance without affecting enforcement of the exclusion provisions of the Act.

EFFECTIVE DATE: September 10, 1986.

FOR FURTHER INFORMATION CONTACT:

For general information: Loretta J. Shogren, Director, Policy, Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone (202) 633–3048.

For specific information: Steven M. Hurst, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone (202) 633–4034.

SUPPLEMENTARY INFORMATION: Section 212(a) of the Immigration and Nationality Act defines general classes of aliens who are ineligible to receive visas and inadmissible to the United States, and who may be excluded from admission. In accordance with section 212(d)(3)(A) of the Act, the Attorney General in his discretion may approve a recommendation by a consular officer that an alien be admitted temporarily despite certain grounds of inadmissibility. Of those aliens for whom consular officers may make recommendations for temporary admission pursuant to section 212(d)(3)(A), are aliens who are, or at any time have been, members of, or affiliated with, organizations defined at section 212(a)(28)(C) of the Act. By regulation, district directors and certain officers in charge of the Immigration and Naturalization Service are authorized to act upon recommendations made by consular officers for the exercise of discretion under section 212(d)(3)(A) of the Act.

In recent years, the number of recommendations made by consular officers, and the number of approvals granted by Service officers abroad, particularly at Service offices in Hong Kong and Vienna, have increased significantly. In 1985, nearly 18,000 recommendations were processed at Hong Kong, and over 12,000 were adjudicated at the Vienna office. Between January, 1984, and June, 1986, the Service office in Hong Kong received an average of 55.5 recommendations each working day. The vast majority of these recommendations pertain to aliens inadmissible solely because of presumed or actual membership in, or affiliation with, organizations specified at section 212(a)(28)(C) of the Act.

The processing of these large volumes of section 212(d)(3)(A) recommendations and approvals has become a burdensome paper exercise at visa-issuing posts and Service offices. Although neither an application nor a fee is required of the alien for the recommendation, considerable officer and clerical time is expended in processing, recording, receiving, and transmitting recommendations and approvals. Administrative costs are increasing with the volume of recommendations. The procedure affects the efficiency of visa application processing and impairs economy of operation at Service offices. Additionally, visa applicants experience delays in receiving visas as a result of the need of the consular officer to present each recommendation to a Service officer and await approval.

In addition to its increasing administrative costs, the procedure whereby a consular officer recommends approval to a Service officer adds no practical dimension of control with respect to recommendations on behalf of aliens inadmissible solely as a result of presumed or actual membership in, or affiliation with, proscribed organizations pursuant to § 212(a)(28)(C). Approvals of such recommendations are routine, pro forma in nature, and based upon information available to consular officers. The beneficiaries of recommendations are accessible to consular officers who are in a position to completely and accurately assess the merits of visa applications. The requirements that a Service officer approve such recommendations constitutes an administrative redundancy which results in perfunctory approvals. Also, the intent of Congress with respect to recommendations concerning § 212(a)(28)(C) inadmissibility is indicated in the "McGovern Amendment [22 U.S.C. 2691]." That statute requires that the "Secretary of State should, within 30 days of receiving an application for a nonimmigrant visa by an alien who is excludable from the United States by reason of membership in or affiliation with a proscribed organization but who is otherwise admissible to the United States, recommend that the Attorney General grant the approval necessary for the issuance of a visa or such alien, unless the Secretary determines that the admission of such alien would be contrary to the security interests of the United States. . . . Nothing in this section may be construed as authorizing or requiring the admission to the United States or any alien who is excludable for reasons other than membership in or affiliation with a proscribed organization."

For the reasons herein discussed, the Commissioner, Immigration and Naturalization Service, and the Assistant Secretary of State for Consular Affairs, on March 22, 1986, entered into an agreement concerning the collateral responsibilities of the Service and the Department of State for the administration and enforcement of section 212(d)(3)(A) of the Act. This rule embodies the essence of that agreement.

This rule will reduce administrative work of a routine character of both the Service and the Department of State, enhance the efficiency of the visa application process, and result in economy of operation. It will also minimize delays in visa issurance without affecting the enforcement of the exclusion provisions of the Act. Additionally, the districts outside the United States are revised to reflect those currently listed in 100.4 of this Chapter.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the revision involves agency organization and management.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule

does not have significant impact on a substantial number of small entities.

This rule is not a rule within the definition of section 1(a) of E.O. 12291 as it relates to agency organization and management.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 continues to read as follows:

Authority: Secs. 103 and 212 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1182).

2. In § 212.4, paragraph (a) is revised to read as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d)(3).

(a) *Applications under section 212(d)(3)(A).*—(1) *General.* District directors and officers in charge outside the United States in the districts of Bangkok, Thailand; Mexico City, Mexico; and Rome, Italy are authorized to act upon recommendations made by consular officers for the exercise of discretion under section 212(d)(3)(A) of the Act. The District Director, Washington, DC, has jurisdiction in such cases recommended to the Service at the seat-of-government level by the Department of State. When a consular officer or other State Department official recommends that the benefits of section 212(d)(3)(A) of the Act be accorded an alien, neither an application nor fee shall be required. The recommendation shall specify:

(i) The reasons for inadmissibility and each section of law under which the alien is inadmissible;

(ii) Each intended date of arrival;

(iii) The length of each proposed stay in the United States;

(iv) The purpose of each stay;

(v) The number of entries which the alien intended to make; and

(vi) The justification for exercising the authority contained in section 212(d)(3) of the Act.

If the alien desires to make multiple entries and the consular officer or other State Department official believes that the circumstances justify the issuance of a visa valid for multiple entries rather than for a specified number of entries, and recommends that the alien be accorded an authorization valid for multiple entries, the information required by items (ii) and (iii) shall be furnished only with respect to the initial entry. Item (ii) does not apply to a bona fide crewman. The consular officer or other State Department official shall be notified of the decision on his recommendation. No appeal by the alien shall lie from an adverse decision made by a Service officer on the recommendation of a consular officer or other State Department official.

(2) *Authority of consular officers to approve section 212(d)(3)(A) recommendations pertaining to aliens inadmissible under section 212(a)(28)(C).* In certain categories of visa cases defined by the Secretary of State, United States consular officers assigned to visa-issuing posts abroad may, on behalf of the Attorney General pursuant to section 212(d)(3)(A) of the Act, approve a recommendation by another consular officer that an alien be admitted temporarily despite visa ineligibility solely because the alien is of the class of aliens defined at section 212(a)(28)(C) of the Act, as a result of presumed or actual membership in, or affiliation with, an organization described in that section. Authorizations for temporary admission granted by consular officers shall be subject to the terms specified in § 212.4(c) of this chapter. Any recommendation which is not clearly approvable shall, and any recommendation may, be presented to the appropriate official of the Immigration and Naturalization Service for a determination.

* * * * *

Dated: August 26, 1986.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

Concurred by:

Joan M. Clark,

Assistant Secretary of State for Consular Affairs, Department of State.

[FR Doc. 86-20344 Filed 9-9-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Department Reg. 108.853]

Visas; Documentation of Nonimmigrants Under the Immigration and Nationality Act

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends 22 CFR Part 41 to implement an agreement between this Department and the Immigration and Naturalization Service. Under the agreement, the Commissioner of Immigration and Naturalization has by regulation delegated to consular officers stationed abroad the authority in certain cases to approve recommendations that an alien who is ineligible to receive a nonimmigrant visa under section 212(a)(28)(C) be admitted temporarily to the United States pursuant to the provisions of section 212(d)(3)(A) of the Act. The rule adds a new paragraph to 22 CFR 41.95(b) to authorize a consular officer abroad to approve such a recommendation made by another consular officer. The authority to disapprove such a recommendation has not been delegated by the Commissioner.

The rule will affect certain nonimmigrant aliens who are ineligible to receive a nonimmigrant visa under the provisions of section 212(a)(28)(C) of the Act because of presumed or actual membership in or affiliation with certain proscribed organizations.

EFFECTIVE DATE: September 9, 1986.

ADDRESS: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC 20520 (202) 663-1204.

FOR FURTHER INFORMATION CONTACT: Guida Evans-Magher, Legislation and Regulations Division, (202) 663-1206.

SUPPLEMENTARY INFORMATION: Section 212(d)(3)(A) of the Act authorizes the Attorney General, upon the recommendation of the Secretary of State or a consular officer, to waive the ineligibility of an alien under any paragraphs of section 212(a) except paragraphs (27), (29), and (33), to permit the alien's temporary entry into the United States. The Attorney General has delegated that authority to the Commissioner of Immigration and Naturalization who has redelegated it to subordinate officers of the Immigration and Naturalization Service.

Section 103(a) of the Act authorizes the Attorney General (and, by delegation the Commissioner) to "confer or impose upon any employee of the United States, with the consent of the head of the Department, or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service."

As part of an effort to reduce the administrative burden imposed upon its overseas offices by the processing of large numbers of routine 212(d)(3)(A) waiver applications, the Immigration and Naturalization Service recently

VOL
51
ISS
175
SE
10
1986
UMI

proposed to delegate to consular officers stationed abroad the authority to approve recommendations for waivers of ineligibility in certain cases. The Service proposed to delegate this authority in those cases involving ineligibility under section 212(a)(28)(C) of the Act because of membership in or affiliation with a Communist or Communist-dominated organization. The proposed delegation would not include authority to disapprove such recommendations. After consideration, the Department has consented to the proposed delegation of authority.

The purpose of this rulemaking is to incorporate into the Department's visa regulations provisions to implement the agreed-upon delegation of authority. The rule will facilitate the administration of the immigration laws by reducing paperwork and communications between consular officers and overseas offices of the Immigration and Nuturalization Service. The rule will also benefit the aliens affected by eliminating time delays in the processing of their visa applications with result from the need to prepare the paperwork and transmit and receive the currently required communications.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary in this instance because this rule bestows a benefit upon the affected parties, provides for expeditious processing of visa applicants and reduces administrative paperwork and delays in visa issuance.

List of Subjects in 22 CFR Part 41

Visas, Aliens, Ineligible Classes of Immigrants

PART 41—[AMENDED]

1. The authority citation for Part 41 contines to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847.

Accordingly, § 41.95, paragraph (b) is revised to read:

§ 41.95 Procedure in recommending temporary admission of ineligible aliens.

* * * * *

(b) (1) A consular officer may, in certain categories defined by the Secretary of State, approve on behalf of the Attorney General a recommendation by a consular officer, other than the approving officer, that the temporary admission of an alien ineligible to receive a visa solely under section 212(a)(28)(C) of the Act be authorized under the provisions of section 212(d)(3)(A) of the Act;

(2) A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated immigration officers that the temporary admission of an alien, other than one described in paragraph (b)(1) of this section, ineligible to receive a visa be authorized under the provisions of section 212(d)(3)(A) of the Act;

* * * * *

Dated: July 24, 1986.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 86-20343 Filed 9-9-86; 8:45 am]

BILLING CODE 4710-06-M

Reader Aids

Federal Register

Vol. 51, No. 175

Wednesday, September 10, 1986

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308	2
31309-31604	3
31605-31756	4
31757-31924	5
31925-32046	8
32407-32188	9
32189-32296	10

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12532 (See Notice of September 4, 1986) 31925
Administrative Orders:
Notice:
September 4, 1986 31925
Proclamations:
5519 31309
5520 31311
5521 32047

5 CFR

831 31927
Proposed Rules
300 31954

7 CFR

1 32189
2 31757
226 31313
301 31605
729 32049
908 31758
1136 31759
1137 32056
1230 31898
1475 31316
Proposed Rules:
246 32093
301 31956
911 32098
915 32098
981 32103
989 32218
1065 31133
1068 31133
1079 31133
1137 31340
1139 32104

8 CFR

212 32294
Proposed Rules:
214 31637

9 CFR

319 32057
322 31937
Proposed Rules:
92 31637

10 CFR

477 31316
Proposed Rules:
2 31340
40 32217
50 31341

13 CFR

121 32197
123 32197

14 CFR

21 31317
39 ..... 31089, 31090, 31607, 31608, 32198-32200, 32202
71 31097
75 31097
91 31098
95 31319
97 31322
Proposed Rules:
21 31644
23 31644
39 ..... 31133-31137, 31342, 31343, 31647, 31779
71 ..... 31138, 31648

15 CFR

4 32204
4b 32206

17 CFR

Proposed Rules:
150 31648

18 CFR

Proposed Rules:
37 ..... 31651, 31781

19 CFR

111 ..... 31760, 32208
171 ..... 31760, 32208
178 ..... 31760, 32208

21 CFR

81 31323
175 31098
178 ..... 31099, 31760, 32211
193 31324
331 32212
332 32212
357 31763
369 31763
510 31100
558 31763

22 CFR

41 32295

24 CFR

201 32059
511 31764

26 CFR

1 ..... 31610, 31613, 32061
20 ..... 31938, 32071
25 31938
602 ..... 31610, 31613, 31938

28 CFR

0 ..... 31939, 31940

VOL 51 ISS 175 SE 10 1986 UMI

2.....32071

Proposed Rules:
16.....31781

29 CFR
1601.....32073
2200.....32002

30 CFR
901.....31940
938.....31942

Proposed Rules:
733.....31139
946.....32106

32 CFR
199.....31100
205.....31325
286g.....31103
706.....31103–31112

Proposed Rules:
40.....31651

33 CFR
117.....31112, 31113, 31946
165.....31113, 31114, 31946

Proposed Rules:
165.....31958

34 CFR

Proposed Rules:
614.....31754

36 CFR
13.....31619
800.....31115
1254.....31617

38 CFR

Proposed Rules:
21.....31782

39 CFR
10.....31325
233.....31328

Proposed Rules:
111.....31673

40 CFR
51.....32176
52.....31125, 31127, 31129, 31328, 32973, 32075, 32176
180.....32212
261.....31330
271.....31618
721.....32077
799.....32079

Proposed Rules:
51.....32180
52.....32180
86.....31783, 31959, 32032
260.....31783
261.....31140, 31783, 32217
262.....31783
264.....31783
265.....31783
268.....31783
270.....31783
271.....31783
799.....32107

41 CFR

Proposed Rules:
201–33.....31674

42 CFR
23.....31947
405.....31454
412.....31454

Proposed Rules:
57.....31920

43 CFR
36.....31619
2880.....31764

Proposed Rules:
2800.....31886
2880.....31886

44 CFR
64.....31330
65.....31635, 31950
67.....31951

Proposed Rules:
10.....31788
67.....31675, 31678

47 CFR
0.....31303, 32087
1.....31303, 32087
2.....31303
13.....31303
21.....31303
22.....31335
63.....31303
73.....32087, 32089, 32213
74.....32087
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303

Proposed Rules:
2.....32222
15.....31147, 32222
25.....32223
64.....32113
67.....31149
68.....31149
73...32113, 32114, 32224–32226
76.....31147
80.....31306

48 CFR
5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
47.....31424
50.....31424
52.....31424
223.....31765
228.....31765
242.....31765
252.....31765
914.....31335
933.....31335
952.....31335
970.....31335

Proposed Rules:
32.....31194
45.....31196
48.....31197
52.....31194, 31197
515.....31344
538.....31344
552.....31344
1317.....31687
1352.....31687
5316.....32114

49 CFR
571.....31765

Proposed Rules
391.....31150
393.....32115

50 CFR
17.....31412
20.....31430
23.....31130
36.....31619
611.....32089
655.....31774, 31775
661.....32091
674.....32214
663.....31776
683.....32215

Proposed Rules
611.....32226
630.....31151

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 5, 1986.

VOL
51

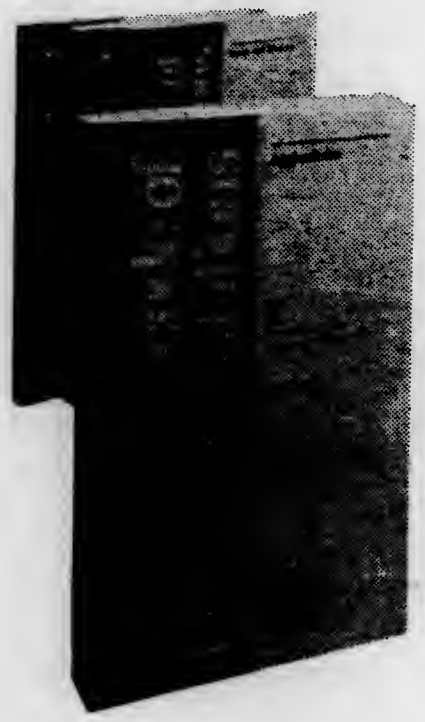
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Vol. 51 No. 176
Pages 32297-32416

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Thursday
September 11, 1986

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VOL
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Contents

Federal Register

Vol. 51, No. 176

Thursday, September 11, 1986

Agriculture Department
See Commodity Credit Corporation; Food Safety and Inspection Service; Forest Service; Soil Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 32350

Army Department
See Engineers Corps

Coast Guard
RULES
Anchorage regulations:
Connecticut, 32317
(2 documents)
Drawbridge operations:
Arkansas, 32318
Tennessee, 32318, 32319
(2 documents)
PROPOSED RULES
Drawbridge operations:
Louisiana, 32339

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service

Commodity Credit Corporation
RULES
Loan and purchase programs:
Rice and upland cotton, 32297
NOTICES
Loan and purchase programs:
Soybeans, 32343

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Australian dollar, 32348

Defense Department
See also Air Force Department; Engineers Corps; Navy Department
RULES
Federal claims collection; income tax refund offset, 32308
Organization, functions, and authority delegations:
Defense Logistics Agency, 32309
NOTICES
Meetings:
Ada Board, 32348
DIA Scientific Advisory Committee, 32349
Electron Devices Advisory Group, 32348, 32349
(3 documents)
Senior Executive Service:
Performance Review Board; membership, 32349

Delaware River Basin Commission
NOTICES
Hearings, 32350

Economic Regulatory Administration
NOTICES
Consent orders:
MGPC, Inc., et al., 32354

Education Department
NOTICES
Meetings:
Vocational Education National Council, 32352

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Western Area Power Administration
PROPOSED RULES
Acquisition regulations:
Management and operating contracts, 32340
NOTICES
Cooperative agreements:
Software development to evaluate wheeling rates, 32353
Senior Executive Service:
Performance Review Board; membership, 32353

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Sandstone Dam, Carbon County, WY, 32350

Environmental Protection Agency
NOTICES
Meetings:
Science Advisory Board, 32368

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
PROPOSED RULES
Airport radar service areas, 32410

Federal Communications Commission
RULES
Radio stations; table of assignments:
Florida, 32320
PROPOSED RULES
Radio stations; table of assignments:
Montana, 32340
NOTICES
Emergency broadcast system; closed circuit test, 32369

Federal Deposit Insurance Corporation
PROPOSED RULES
Powers inconsistent with Federal deposit insurance law:
Insurance and real estate underwriting, etc., 32336

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 32395

VOL 51 ISS 176 SE 11 1986 UMI

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
North Penn Gas Co. et al., 32355
Small power production and cogeneration facilities; qualifying status:
Nannini, Louis G., et al., 32355

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Baltimore County, MD, 32391

Federal Maritime Commission
NOTICES
Agreements filed, etc., 32369

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 32395

Fish and Wildlife Service
RULES
Alaska National Wildlife Refuges, management:
Kenai National Wildlife Refuge, AK; resource protection, 32329
Hunting:
Refuge specific hunting regulations, 32321

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Operating schedules for total quality control establishments; expansion, 32301

Forest Service
NOTICES
Boundary establishment, descriptions, etc.:
Mono Basin National Forest Scenic Area, CA, 32344
Environmental statements; availability, etc.:
Southern Region, 32345

General Services Administration
PROPOSED RULES
Acquisition regulations:
Contractor financial difficulty, bankruptcy, etc., 32340

Health and Human Services Department
See Human Development Services Office

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 32369

Human Development Services Office
NOTICES
Grants; availability, etc.:
Head start program; training and technical assistance resource centers, 32402

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Short supply determinations:
Historic telephone boxes, 32346

International Trade Commission
NOTICES
Import investigations:
Generalized System of Preferences; eligible articles list, etc.; correction, 32374

Interstate Commerce Commission
NOTICES
Agreements under sections 5a and b, applications for approval, etc.:
Movers' & Warehousemen's Association of America, Inc., 32375
National Association of Specialized Carriers, Inc., 32375
Railroad services abandonment:
Baltimore & Ohio Railroad Co., 32375

Justice Department
RULES
Privacy Act; implementation, 32305
NOTICES
Pollution control; consent judgments:
Providence, RI, 32376
Waste Management of Wisconsin, Inc., 32376
Privacy Act; systems of records, 32376

Labor Department
See Labor-Management Relations and Cooperative Programs Bureau

Labor-Management Relations and Cooperative Programs Bureau
RULES
Airline employee protection program; pilots and flight officers initial hiring age; justification under court order, 32306

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Kentucky; correction, 32370
Coal management program:
Carbon County, WY; coal core analyses and geophysical logs, 32370
Wind River Basin, WY; coal core analyses and geophysical logs, 32370
Meetings:
Miles City District Grazing Advisory Board, 32374
Moab District Grazing Advisory Board, 32374
Safford District Grazing Advisory Board, 32373
Vernal District Advisory Council, 32374
Oil and gas leases:
Montana, 32371
(2 documents)
Realty actions; sales, leases, etc.:
Idaho, 32371
Montana, 32371
(2 documents)
Nevada, 32372
Oregon, 32372
Wyoming, 32373
Recreation management restrictions, etc.:
Yuma District, AZ, 32373
Survey plat filings:
Wyoming, 32373

National Aeronautics and Space Administration
NOTICES
Meetings:
Space Systems and Technology Advisory Committee, 32378

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 32395

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 32334
Northern anchovy, 32334

National Technical Information Service
NOTICES
Patents, Government-owned; availability for licensing, 32347

National Transportation Safety Board
NOTICES
Accident reports, safety recommendations, and responses, etc.; availability, 32378, 32380
(2 documents)
Senior Executive Service:
Performance Review Board; membership, 32381

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Blue Ridge, 32313
USS Claude V. Ricketts and USS Waddell, 32312
USS MacDonough, 32314
USS Mauna Kea, 32315
USS Ponce, 32315
USS Tarawa et al., 32316

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 32386
(2 documents)
Petitions; Director's decisions:
General Electric Co., 32385
Regulatory guides:
Issuance, availability, and withdrawal, 32385
Applications, hearings, determinations, etc.:
Duke Power Co., 32383
Louisiana Power & Light Co., 32381
Wisconsin Electric Power Co., 32384

Office of United States Trade Representative
See Trade Representative, Office of United States

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Power plan amendments:
Columbia River Basin fish and wildlife program, 32387

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 32391, 32392
(2 documents)

Saint Lawrence Seaway Development Corporation
NOTICES
Meetings:
Strategic Planning for St. Lawrence Seaway Advisory Group, 32393

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 32395
(2 documents)
Self-regulatory organizations; proposed rule changes:
Cincinnati Stock Exchange, Inc., 32390

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Anaconda-Deer Lodge, MT, 32346

State Department
NOTICES
Agency information collection activities under OMB review, 32390

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
Kentucky, 32336
West Virginia, 32338

Trade Representative, Office of United States
NOTICES
Meetings:
Services Policy and Trade Negotiations Advisory Committees, 32386
Pre-shipment inspection and customs valuation procedures conducted by private companies on behalf of foreign governments, 32387

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Research and Special Programs Administration; Saint Lawrence Seaway Development Corporation
RULES
Organization, functions, and authority delegations:
Deputy General Counsel; cease and desist enforcement, 32320
NOTICES
Aviation proceedings:
Hearings, etc.—
National Express et al., 32391

Treasury Department
NOTICES
Agency information collection activities under OMB review, 32393

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 32396

Western Area Power Administration
NOTICES
Power marketing plans, etc.:
Salt Lake City Area Integrated Projects; proposed allocations, 32362

Separate Parts in This Issue

Part II
Department of Health and Human Services, Office of Human Development Services, 32402

Part III
Department of Transportation, Federal Aviation Administration, 32410

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

VOL 51 ISS 176 SE 11 1986 UMI

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1421.....32297
1427.....32297

9 CFR
307.....32301
318.....32301
381.....32301

12 CFR
Proposed Rules:
332.....32336

14 CFR
Proposed Rules:
71.....32410

28 CFR
16.....32305

29 CFR
220.....32306

30 CFR
Proposed Rules:
917.....32336
948.....32338

32 CFR
90.....32308
359.....32309
706 (6 documents).....32312-32316

33 CFR
110 (2 documents).....32317
117 (3 documents).....32318, 32319
Proposed Rules:
117.....32339

47 CFR
73.....32320
Proposed Rules:
73.....32340

48 CFR
Proposed Rules:
542.....32340
970.....32340

49 CFR
1.....32320

50 CFR
32.....32321
36.....32329
611.....32334
662.....32334
675.....32334

VOL
51
ISS
176
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Rules and Regulations

Federal Register
Vol. 51, No. 176
Thursday, September 11, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421 and 1427

Rice and Upland Cotton Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to amend the regulations found at 7 CFR Parts 1421 and 1427 in order to (1) implement the (i) 1986 rice marketing certificate program; (ii) the upland cotton inventory protection program; and (iii) the upland cotton first handler program; and (2) invite public comment on the interim rule. These actions are required by Section 603 of the Food Security Act of 1985 and section 103A(a)(5)(D) of the Agricultural Act of 1949, as amended.

DATES: Effective Date: August 1, 1986. Comments must be received on or before November 10, 1986.

ADDRESS: Send comments to Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013. The Final Regulatory Impact Analysis describing the options considered in developing this interim rule is available on request from the above-named individual.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, (202) 477–7954.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures estalished in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal Assistance Programs to which this interim rule applies are: Commodity Loans and Purchases—10.051; Rice Production Stabilization—10.065; and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to the provisions of this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this interim rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 29115 (June 24, 1983).

Since the 1949 Act provides that the rice marketing certificate program, the upland cotton first handler program, and the upland cotton inventory protection program be implemented beginning August 1, 1986, it has been determined that this rule should be effective on such date. However, comments are requested with respect to the provisions of this interim rule. In order to be assured of consideration, such comments must be received by November 10, 1986.

Rice Marketing Certificate Program—7 CFR Part 1421

Section 603 of the Food Security Act of 1985 provides that whenever, during the period beginning August 1, 1986, and ending July 31, 1991, the world price for a class of rice adjusted to United States quality and location, as determined by the Secretary of Agriculture, is below the current loan repayment rate for that class of rice, then in order to make United States rice competitive in world markets and to maintain and expand exports of rice produced in the United States, the Commodity Credit Corporation (CCC) shall make payments, through the issuance of negotiable marketing certificates, to persons who have entered into an agreement with CCC to participate in the rice marketing certificate program.

This interim rule implements the provisions of § 603 of the Food Security Act of 1985 by providing that payments, in the form of commodity certificates, shall be made available to producers of rice and to cooperative marketing associations, which have established eligibility under 7 CFR Part 1425 to participate in the price support program. Such payments shall be made available to persons who enter into a Rice Marketing Certificate Agreement with CCC and who have complied with the terms and conditions of such agreement and this interim rule.

Section 1421.322 of the interim rule provides that the payments shall be made available only with respect to domestically produced rice (Oryza Sativa L.) which consists of 50.0 percent or more paddy kernels, and which is of a class, variety, and grade at least equivalent to price support eligibility requirements. Such rice must be unmilled and unprocessed, and marketing certificates must not have been and must not be separately issued with respect to such rice.

Certificates shall be made available only on a quantity of eligible rice which, during a period when the adjusted world price for such rice is below the loan repayment rate for such rice, is either (1) redeemed from a price support loan with cash or (2) sold.

The payment rate shall be based upon the difference between the loan repayment rate and the adjusted world price for the eligible rice on the day of loan redemption or sale.

First Handlers of Upland Cotton—7 CFR Part 1427

Section 103A(a)(5)(D)(i) of the 1949 Act provides that during the period beginning August 1, 1986, and ending July 31, 1991, if a program carried out under Plan A or Plan B fails to make U.S. upland cotton fully competitive in world markets and the prevailing world market price of upland cotton (adjusted to U.S. quality and location), as determined by the Secretary, ("the adjusted world price") is below the current loan repayment rate for upland cotton, then, in order to make U.S. upland cotton competitive in world

markets and to maintain and expand domestic consumption and exports of upland cotton produced in the U.S., the Secretary shall provide for the issuance of negotiable marketing certificates.

Section 103A(a)(5)(D)(ii) of the 1949 Act further provides that CCC, under such regulations as the Secretary may prescribe, shall make payments, through the issuance of such negotiable marketing certificates to first handlers of cotton (persons regularly engaged in buying or selling upland cotton) who have entered into an agreement with CCC to participate in the program. Such payments shall be made in such monetary amounts and subject to such terms and conditions as the Secretary determines will make upland cotton produced in the U.S. available at competitive prices.

Under the interm rule, payments, in the form of commodity certificates shall be made available to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreement with CCC and who have complied with the terms and conditions of such Agreement and this interim rule. Such payments will be made available with respect to eligible 1986-crop upland cotton which is purchased by the first handler during a time period when the adjusted world price for upland cotton, as determined by the Secretary, is below the announced loan repayment rate. Section 1427.51 of the interim rule defines eligible upland cotton to include 1986-crop upland cotton which has not been pledged as loan collateral, or which has been redeemed from a price support loan with cash.

Section 1427.52 of the interim rule defines eligible first handlers as (1) persons regularly engaged in buying or selling upland cotton who are the first such persons to apply for a payment with respect to a bale of eligible upland cotton; (2) producers of upland cotton who sell such cotton directly to textile mills or for export or who tender upland cotton on a New York Futures Exchange number 2 contract; and (3) cooperative marketing associations which acquire the upland cotton production of their members.

The payment rate applicable to first handler payments shall be based on the difference between the adjusted world price for upland cotton and the loan repayment rate, as specified in the Upland Cotton First Handler Agreement.

Inventory Protection Payments—7 CFR Part 1427

Section 103A(a)(5)(D)(ii) of the 1949 Act provides that if, beginning August 1, 1986, the Secretary determines that the adjusted world price for upland cotton is below the current loan repayment rate for a crop of upland cotton and that the cotton loan program implemented under Plan A or Plan B has failed to make domestically produced upland cotton competitive in world markets, then the Secretary shall make such payments available, in the form of negotiable marketing certificates, as is determined to be necessary to make raw upland cotton in inventory as of August 1, 1986, available at competitive prices.

This interim rule sets out the terms and conditions under which CCC shall make payments, in the form of commodity certificates, to persons who have raw upland cotton in inventory as of 12:01 a.m. August 1, 1986, in order to make such cotton available at competitive prices, in accordance with section 103A(a)(5)(D)(ii) of the 1949 Act. Such payments shall be based upon the quantity of eligible raw upland cotton a person has in inventory on August 1, 1986, multiplied by the inventory protection payment rate. The basic payment rate shall be based upon the difference between (1) the national average price support loan rate for 1985-crop Strict Low Middling 1-1/16 inch upland cotton (micronaire 3.5 through 4.9) at average U.S. location, plus estimated carrying charges, and (2) the adjusted world price for upland cotton. The payment rate for eligible raw upland cotton other than baled upland cotton lint shall be based on a percentage of the basic payment rate.

Section 1427.78 of the interim rule defines eligible raw upland cotton to include all domestically produced 1985-crop and prior-crop raw upland cotton in free stocks as of 12:01 a.m. August 1, 1986, which is supported by documentation as prescribed by CCC.

Section 1427.79 of the interim rule sets forth the method of application for an inventory protection payment. All requests for inventory protection payments must be submitted to Kansas City Management Office (KCMO), Fiscal Division, P.O. Box 205, Kansas City, Missouri, 64141 no later than August 31, 1986, and must contain all information requested by CCC. Individual producers may submit their requests for payment to their local ASCS office which will forward such requests to KCMO. Section 1427.79 of the interim rule also provides for the submission of requests for early payment of the inventory protection payments. As previously announced by the Secretary of Agriculture, if a person submits a request for final payment by August 31, 1986, such person may submit a request for early payment no later than September 5, 1986, based on the applicant's estimate of the amount of eligible raw upland cotton such person had in inventory as of August 1, 1986.

The commodity certificates issued in accordance with the rice marketing certificate program, the upland cotton first handler program, and the upland cotton inventory protection program shall be governed by the provisions of 7 CFR Part 770.

List of Subjects

7 CFR Part 1421

Grains, Loan programs—agriculture, Price support program, Rice, Surety bonds, Warehouses.

7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouses.

Interim Rule

Accordingly, 7 CFR Parts 1421 and 1427 are amended as follows:

1. 7 CFR part 1421 is amended by adding the following new Subpart—Rice Marketing Certificate Program:

PART 1421—[AMENDED]

Subpart—Rice Marketing Certificate Program

Sec.

1421.320 General provisions.
1421.321 Eligible persons.
1421.322 Eligible rice.
1421.323 Rice marketing certificate agreements.
1421.324 Commodity certificates.
1421.325 Payment rate.

Subpart—Rice Marketing Certificate Program

Authority: Sec. 603 of the Food Security Act of 1985; 99 Stat. 1429 (7 U.S.C. 1441-1a).

§ 1421.320 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation (CCC) shall make payments, in the form of commodity certificates, to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC to participate in the rice marketing certificate program in accordance with § 603 of the Food Security Act of 1985.

(b) If, beginning August 1, 1986, and ending July 31, 1991, CCC determines that the adjusted world price for a class of rice (determined in accordance with 7 CFR Part 26) is below the current loan repayment rate for that class of rice, then CCC, in order to make domestically-produced rice competitive in world markets and to maintain and expand exports of domestically

produced rice, shall make payments available to eligible persons in accordance with the provisions of this subpart.

(c) Such payments shall be based upon the quantity of eligible rice which an eligible person has:

(1) Redeemed from a price support loan with cash or;

(2) With respect to eligible rice which has not been and will not be pledged as collateral for a price support loan, sold as evidenced by documentation acceptable to CCC.

§ 1421.321 Eligible persons.

For the purposes of this subpart, the following persons shall be considered to be eligible to enter into a Rice Marketing Certificate Agreement with CCC and to receive payment in accordance with this subpart:

(a) Producers of eligible rice, and

(b) Cooperative Marketing Associations which acquire the eligible rice production of their members and which have been approved (in accordance with 7 CFR Part 1425) to obtain price support from CCC on behalf of their members.

§ 1421.322 Eligible rice.

For the purposes of this subpart, eligible rice is 1986 and subsequent crop rice (Oryza Sativa L.), unmilled and unprocessed, which consists of 50 percent or more of paddy kernels of rice and which is of a class, variety, and grade eligible to be pledged as collateral for price support loan as provided in 7 CFR 1421.302, and with respect to which a payment in accordance with the provisions of this subpart has not been made available.

§ 1421.323 Rice marketing certificate agreement.

(a) Payments in accordance with this subpart shall be made available to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Rice Marketing Certificate Agreement.

(b) Rice Marketing Certificate Agreements may be obtained from local county Agricultural Stabilization and Conservation Service offices.

§ 1421.324 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificaters in accordance with 7 CFR Part 770.

§ 1421.325 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for the class of rice and the loan repayment rate as specified in the rice Marketing Certificate Agreement.

2. 7 CFR Part 1427 is amended by adding the following new Subpart, Payments to First Handlers of Upland Cotton:

PART 1427—[AMENDED]

Subpart—Payments to First Handlers of Upland Cotton

Sec.

1427.50 General provisions.
1427.51 Eligible upland cotton.
1427.52 Eligible first handlers.
1427.53 Upland cotton first handler agreements.
1427.54 Commodity certificates.
1427.55 Payment rate.

Subpart—Payments to First Handlers of Upland Cotton

Authority: Sec. 103A of the Agricultural Act of 1949, as amended; 99 Stat. 1407, as amended (7 U.S.C. 1444–1).

§ 1427.50 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates, to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreement with CCC to participate in the first handler program, in accordance with section 103A(5) (D) of the Agricultural Act of 1949, as amended.

(b) If, beginning August 1, 1986, CCC determines that the adjusted world price for upland cotton (determined in accordance with 7 CFR Part 26) is less than the current load repayment rate for a crop of upland cotton, and that the cotton loan program implemented under Plan A or Plan B (in accordance with 7 CFR 1427.8) has failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments in accordance with the provisions of this subpart to eligible first handlers of upland cotton.

(c) Such payment shall be based upon the quantity of eligible upland cotton which is purchased by eligible first handlers for either domestic consumption or export during a period in which the adjusted world price is below the announced loan repayment rate for a crop of upland cotton, multiplied by the payment rate determined in accordance with § 1427.55.

§ 1427.51 Eligible upland cotton.

(a) For the purpose of this subpart, eligible upland cotton is domestically produced upland cotton which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either—

(1) 1986-crop upland cotton baled lint which is not pledged as collateral for a price support loan,

(2) 1986-crop upland cotton baled lint which has been pledged as collateral for a price support loan but which has been redeemed with cash;

(3) Any prior crop upland cotton baled lint which was pledged as collateral for a price support loan and which was redeemed with cash (at the loan value plus accrued charges) on or after August 1, 1986;

(4) 1986-crop samples removed from bales of upland cotton for classification purposes which have been rebaled (hereinafter called "loose");

(5) 1986-crop upland cotton classified by USDA's Agricultural Marketing Service as Below Grade; or

(6) 1986-crop upland cotton reprocessed gin motes which have been cleaned with conventional seed cotton cleaning or saw lint cleaning devices that have removed a substantial volume of the non-lint content and which have been baled.

(c) Eligible upland cotton must not be:

(1) Upland cotton with respect to which an inventory protection payment has been or may be issued;

(2) Upland cotton with respect to which a payment in accordance with the provisions of this subpart has been made available;

(3) Upland cotton which was obtained with a commodity certificate in accordance with the provisions of Part 770 of this title; or

(4) Domestically produced upland cotton which has been exported.

§ 1427.52 Eligible first handlers.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible first handlers:

(1) A person regularly engaged in buying or selling eligible upland cotton who is the first such person to apply for a payment in accordance with this subpart with respect to a bale of eligible upland cotton;

(2) A producer of upland cotton who sells upland cotton directly to domestic textile mills or for export or who tenders upland cotton on a New York Futures Exchange number 2 contract; and

(3) A cooperative marketing association that acquires the upland cotton production of its members and

that has entered into a Cooperative Commodity Certificate Redemption Agreement with CCC.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

§ 1427.53 Upland cotton first handler agreements.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers who have entered into an Upland Cotton First Handler Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Upland Cotton First Handler Agreement.

(b) Upland Cotton First Handler Agreements may be obtained from Cotton Branch, BCD, Kansas City Commodity Office (KCCO), P.O. Box 205, Kansas City, Missouri 64141. In order to participate in the program authorized by this subpart, first handlers must execute the Upland Cotton First Handler Agreement and forward an original and two copies to KCCO.

§ 1427.54 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates in accordance with Part 770 of this title.

§ 1427.55 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for upland cotton and the loan repayment rate, as specified in the Upland Cotton First Handler Agreement. A coarse count adjustment shall be applied as provided in 7 CFR Part 26 and the Upland Cotton First Handler Agreement. Payment rates for eligible cotton other than baled upland lint cotton shall be based on a percentage of the basic rate, exclusive of coarse count adjustment, as specified in the Upland Cotton First Handler Agreement.

3. 7 CFR Part 1427 is further amended by adding the following new Subpart, Inventory Protection Payments:

Subpart—Inventory Protection Payments

Sec.

1427.75 General provisions.
1427.76 Eligible raw upland cotton.
1427.77 Payment rate.
1427.78 Commodity certificates.
1427.79 Application for payment.

Subpart—Inventory Protection Payments

Authority: Sec. 103A of the Agricultural Act of 1949, as amended; 99 Stat. 1407 (7 U.S.C. 1444–1).

§ 1427.75 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates, to persons who have raw upland cotton in inventory as of 12:01 a.m. August 1, 1986, in order to make such cotton available at competitive prices, in accordance with section 103A(5)(D) of the Agricultural Act of 1949, as amended.

(b) If, beginning August 1, 1986, CCC determines that the adjusted world price for upland cotton, determined in accordance with 7 CFR Part 26 (the "adjusted world price"), in less than the current loan repayment rate for a crop of upland cotton and that the cotton loan program implemented in accordance with 7 CFR 1427.8(e) has failed to make domestically produced upland cotton competitive in world markets, then CCC shall make payments in accordance with the provisions of this subpart to persons who have eligible raw upland cotton in inventory as of August 1, 1986.

(c) Such payments shall be based upon the quantity of eligible raw upland cotton a person has in inventory on August 1, 1986, multiplied by the payment rate determined in accordance with § 1427.77.

§ 1427.76 Eligible raw upland cotton.

For the purposes of this subpart, eligible raw upland cotton shall be all domestically produced 1985-crop and prior-crop raw upland cotton, including Below Grade, samples removed from bales of upland cotton for classification purposes which have been rebaled (hereinafter called "loose"), reprocessed motes which have been cleaned with conventional seed cotton cleaning or saw lint cleaning devices that have removed a substantial volume of the non-lint content and which have been baled, and reprocessed spinnable textile waste containing 85 percent or more upland cotton, in free stocks (not under price support loan or in CCC inventory) as of 12:01 a.m. August 1, 1986, which is supported by documentation, as prescribed by CCC.

§ 1427.77 Payment rate.

(a) For the purposes of this subpart, the payment rate for baled upland cotton lint (basic rate) shall be based upon the difference between:

(1) The national average price support loan rate for 1985-crop Strict Low Middling 1 1/16 inch (micronaire 3.5 through 4.9) upland cotton at average U.S. location, plus estimated average carrying charges (storage charges plus CCC price support loan interest charges), as determined by CCC; and

(2) The adjusted world price for upland cotton in effect on August 1, 1986, plus the additional adjustment for coarse count cotton for bales eligible for this adjustment, as provided in 7 CFR Part 26.

(b) For the purposes of paragraph (a) of this section, estimated average carrying charges shall be applied on a regional basis depending on the origin of growth of the cotton, as follows:

(1) Texas Plains, Western Oklahoma, Eastern New Mexico counties bordering the Texas Plains, and Kansas—4.25 cents per pound.

(2) Texas counties served by the Harlingen and Corpus Christi, Agricultural Marketing Service (AMS) Marketing Service Offices (MSO) and Texas and Eastern Oklahoma counties served by the Waco, Texas AMS–MSO—6.50 cents per pound.

(3) Southeast, Mid-South, West Texas (El Paso), remainder of New Mexico, Arizona, and California—5.80 cents per pound.

(c) If the origin of eligible raw upland cotton upon which a request for payment is made cannot be established to the satisfaction of CCC, the lowest regional estimated average carrying charge shall be used in the computation of the payment rate applicable to such cotton.

(d) The payment rates for eligible raw upland cotton, other than baled upland cotton lint, will be based on a percentage of the basic payment rate determined in accordance with paragraphs (a), (b) and (c) of this section, as follows:

(1) With respect to loose upland cotton, the payment rate will equal 85 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which the loose cotton was produced;

(2) With respect to Below Grade upland cotton, the payment rate will equal 70 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which such cotton was produced;

(3) With respect to reprocessed motes, the payment rate will equal 35 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which such cotton was produced;

(4) With respect to spinnable textile waste the payment rate will equal:

(i) With respect to comber noils, 60 percent of the basic rate (exclusive of

any coarse count adjustment) for the region in which the mill requesting a payment is located; and

(ii) With respect to spinnable textile waste that has been reprocessed through lint cleaning equipment, if reprocessing is necessary to make it spinnable, including Card Waste, Card Strips, and Soft, Reworkable Waste (for example, pneumafil, laps, roving, sliver):

(A) If such waste contains 100 percent upland cotton, 25 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which the mill is located; or

(B) If such waste contains at least 85 but less than 100 percent upland cotton, 20 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which the mill is located.

§ 1427.78 Commodity certificates.

Payments in accordance with provisions of this subpart shall be made available in the form of commodity certificates in accordance with Part 770 of this title.

§ 1427.79 Application for payment.

(a) All requests for an inventory protection payment must be submitted to Kansas City Management Office (KCMO), Fiscal Division, P.O. Box 205, Kansas City, Missouri 64141 no later than August 31, 1986, and must contain all information requested by CCC. Individual producers may submit their requests for payment to their local Agricultural Stabilization and Conservation Service office which will forward such requests to KCMO.

(b) *Request for early payment.* (1) As announced by CCC, if a person submits a request for final payment by August 31, 1986, such person may submit a request for early payment no later than September 5, 1986, based upon the person's estimate of the amount of eligible upland cotton such person had in inventory as of August 1, 1986. Such a request must be accompanied by a cash deposit, bond, letter of credit, or other security acceptable to CCC in an amount equal in value to the estimated quantity of eligible upland cotton multiplied by 40 cents per pound.

(2) If such request is supported by documentation acceptable to CCC, CCC shall make payments available, in accordance with the provisions of this subpart, to the person at a rate of 80 percent of the payment rate estimated by CCC to be in effect on August 1, 1986, as determined in accordance with § 1427.77.

(3) All persons who submit a request for early payment must submit a final request for payment not later than August 31, 1986. Such final request for payment shall set forth the actual quantity of eligible raw upland cotton such person had in inventory on August 1, 1986. CCC shall determine the total payment to be made available to such person based upon the final request for payment less any payment previously made available to such persons in accordance with the provisions of this subpart. Any excess payment made available by CCC to such person must be refunded to CCC. CCC shall assess liquidated damages equal to 25 percent of the excess estimated quantity of cotton claimed for payment multiplied by the early payment rate. CCC may look either to the person, or to the security furnished by such person, or both, for payment of such liquidated damages.

(c) Any excess payment made available by CCC under the provisions of this subpart must be refunded to CCC.

Signed at Washington, this 26th day of August 1986.

Earle J. Bedenbaugh,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-20489 Filed 9-10-86; 8:45 am]

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Food Safety and Inspection Service

9 CFR Parts 307, 318 and 381

[Docket No. 83-020F]

Meat and Poultry Inspection; Expansion of Operating Schedules for Total Quality Control Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat and poultry products inspection regulations to permit meat and poultry establishments under a USDA approved Total Quality Control (TQC) system to expand their approved operating schedule to up to 12 hours. TQC establishments are currently approved for an 8-hour operating schedule which prohibits the shipping of product that is produced after that 8-hour period. Establishments must either retain product produced after the 8-hour schedule in storage until the following shift when the inspector is on duty or request that overtime inspection services be provided and reimburse the Department for those additional services. This rule allows establishments that have satisfactorily operated under an approved TQC system for 1 year to expand their approved operating schedule, under certain terms and conditions and in accordance with apropriate monitoring by inspectors as deemed necessary.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule allows, under certain conditions, TQC establishments to expand their operating schedules to up to 12 hours. At this time, there are approximately 500 USDA approved TQC establishments. This rule is applicable to establishments that have satisfactorily operated under a TQC system for 1 year.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601).

At present, there are approximately 500 USDA approved TQC establishments. These establishments range from one-person operations to those operated by some of the Nation's largest processors.

TQC establishments are presently prohibited from shipping product produced after their approved 8-hour operating schedules. They must either retain such product in storage until the following day or request overtime services.

The rule allows TQC establishments, under certain conditions, to expand their operating schedules to up to 12 hours a day. This is particularly beneficial for small TQC establishments that may not have the space available to store the product produced after the 8-hour operating schedule and, therefore, have

VOL 51 ISS 176 SE 11 1986 UMI

no option but to pay for overtime services.

The rule does not have a significant impact on TQC establishments, whether large or small. It offers an alternative schedule for all TQC establishments on a voluntary basis. Although TQC establishments are required to submit a plan to the Department for implementing certain provisions required of TQC establishments operating under expanded schedules, this paperwork burden would be a one-time exercise. Otherwise, the rule provides a positive impact upon TQC establishments qualifying for the expanded operating schedule.

Background

On August 15, 1980, the Department published a final rule in the **Federal Register** (45 FR 54310) that, in part, permits an official establishment to be eligible for a program of inspection that places more responsibility on the establishment to control its own production through a quality control program. Under that rule, an establishment can submit a proposed Total Quality Control (TQC) System to the Administrator for approval. If the Administrator finds the proposed system adequate to assure the preparation of meat and poultry products in accordance with the Federal Meat Inspection Act (FMIA) and/or the Poultry Products Inspection Act (PPIA), the establishment can participate in TQC inspection. At this time, there are approximately 500 establishments approved to operate under a TQC system.

A TQC system identifies the critical control points in an establishment's production process where compliance with Food Safety and Inspection Service (FSIS) regulations could be affected. This system specifies how the critical control points will be checked by establishment management and what actions will be taken by the establishment to verify compliance. The establishment is required to keep records showing the results of checking the critical points. An approved TQC system is an agreement between the processor and the Department which identifies how that establishment will control its production process to insure that all products are produced in accordance with the applicable regulations.

The Department verifies that the TQC system is operating in accordance with the approved plan through the review and evaluation of the records kept by the establishment. In addition, verification samples are taken to insure products are in compliance. If an establishment fails to comply with the provisions outlined in the approved TQC plan or if its products are found to be adulterated or misbranded, the TQC plan will be terminated and the establishment will be inspected under traditional methods.

Establishments under an approved TQC system can produce and ship product any time during their approved 8-hour operating schedule. The Department provides inspection services, without charge, up to 8 consecutive hours per shift during their approved operating schedule. A TQC establishment may continue to produce product beyond its operating schedule but may not ship that product until the start of the establishment's next production shift, at which time the product is subject to inspection. Although an establishment can hold such product produced until the inspector resumes duty and has an opportunity to inspect the product, some establishments do not have adequate storage facilities to hold product. Overtime inspection is authorized when the TQC establishment requests to ship product after 8 hours of inspection service without holding it for the next regular scheduled shift of the inspector.

The Proposal

The Department determined a need exists to address the manner of inspection for a TQC establishment desiring to produce and ship product after its approved operating schedule. The basic philosophy underlying the TQC system at federally inspected establishments is that the Department is responsible for monitoring the TQC system and determining that the products prepared at the establishment are not adulterated and are otherwise in compliance with the FMIA and PPIA before they are passed and distributed from the establishment. This activity does not require the continued presence of the inspector at the establishments in all instances. Those establishments with an approved TQC system continue to operate under their TQC system and under Federal inspection regardless of the inspector's presence or absence. Thus, it appears to be unjustifiably burdensome to have separate requirements in all instances for shipping product after the establishment's 8-hour operating schedule. After evaluating this matter, the Department published a proposal on August 19, 1985 (50 FR 33348), to allow eligible TQC establishments to expand their approved operating schedule to up to 12 consecutive hours per shift, under certain conditions.

Under the proposal, the Department would inspect TQC establishments approved for a 12-hour operating schedule by a variety of methods. If an establishment were to request to change its operating schedule to up to 12 hours, the Department would verify that the establishment was operating according to its TQC plan after 8 hours of inspection service. Overtime inspection would be authorized for this purpose. The amount of overtime an establishment incurs would be determined by the circuit supervisor and by the nature of the operation and the volume of product being shipped during its expanded hours.

Another provision of the proposal was that establishments would be required to provide a plan for random sampling products that are shipped after 8 hours of operation and a plan for holding the samples until the inspector's next scheduled tour of duty. These verification samples would be required to further assure the establishment was operating according to its TQC plan and preparing products in compliance with the FMIA and PPIA.

Furthermore, immediate containers of products would be required to be coded to indicate when products were produced during the production shift. This would allow the Department to ascertain when any noncompliant product was produced.

In addition to these provisions, the Department would determine the level and intensity of inspection coverage for those establishments approved for expanding their operating schedules.

Establishments operating to up to 12 hours would be required to comply with all provisions of the rule. Those found not to be in compliance would be subject to, at the minimum, the termination provisions found in 9 CFR 318.4(g) and 381.145(g).

Comments Received on Proposal

The comment period on the proposal was scheduled to close on November 14, 1985. However, in response to several requests, FSIS extended the comment period an additional 60 days (50 FR 47060) until January 13, 1986.

The Department received 143 comments in response to the proposal—130 from consumers, 5 from official establishments, 4 from FSIS inspectors, 3 from trade associations, and 1 from an inspectors' union. Of the comments received, 137 opposed the proposal, 5 supported the proposal, and 1 did not voice an opinion.

Of the 130 comments from consumers, 129 were form letters from the same geographic area expressing general

opposition to the proposal because, in their judgment, TQC programs do not offer sufficient inspection of food products. They did not present any evidence or data to support their views or offer any alternative proposal. The other consumer expressed opposition on the grounds that meat and poultry products would not be inspected after the regular 8-hour period.

The comments from FSIS inspectors and the inspectors' union opposed the proposal. Their grounds for opposition were that the proposal: (1) Is unfair to allow TQC establishments to operate without inspection and not afford the same opportunity to non-TQC establishments; (2) encourages establishments to operate up to 12 hours rather than start a new shift; and (3) encourages quality control through reduced overtime charges instead of through the merits of TQC. One inspector suggested that establishments be required to identify the products being produced every 4 hours.

FSIS disagrees with the inspectors' comments. A TQC establishment which has expanded its hours of operation will be inspected. This is analogous to establishments under a patrol assignment where the inspector inspects each of the establishments some time during his/her tour of duty. These establishments continue to operate whether or not the inspector is present. FSIS published this proposal to establish consistent inspection policy for TQC establishments desiring to produce and ship product after their approved operating schedule. An approved TQC system is an agreement between the processor and the Agency which specifies how the production process will be controlled to insure all products are produced in accordance with the regulations. Non-TQC establishments do not enter into such agreement. Therefore, FSIS inspects them under traditional methods which require an inspector's presence when products are produced after 8 hours of inspection.

Several issues were raised by those in support of the proposal as well as those in opposition. The following is a summary of the issues and FSIS's response to each.

1. Overtime Charges

Comment: Three trade associations and one establishment opposed establishments' bearing the cost of overtime for monitoring operations after the inspector's tour of duty. Several proposed that the savings generated by this proposal be used to cover overtime costs. Another suggested that the inspector vary starting times to monitor all phases of the operation or supplement compliance activities for overtime inspection. It was also suggested that the costs and criteria for overtime charges should be made known.

Response: Since an establishment may be approved to operate up to 12 hours, FSIS believes it is necessary to verify how well an establishment is adhering to its QC program at any point during its hours of operation, including the expanded schedule of operations. Therefore, establishments approved to expand their operating schedule may be subject to some overtime charges.

The rule will establish a consistent policy of inspection for establishments under an approved QC program. This will not reduce the Agency's inspection costs. FSIS alternates the inspectors' starting times so that all phases of the operation can be monitored on a random basis. This will be used more frequently. However, FSIS believes the overtime requirement is a necessary regulatory tool that must be available to the Agency and reserves the right to visit an establishment outside normal duty hours.

FSIS initially considered specifying the amount of overtime charges that an establishment could incur. However, by doing so or by establishing overtime criteria, circuit supervisors would be limited in exercising inspection responsibilities since the circuit supervisor determines the need for overtime inspection. Therefore, the rule does not include these types of provisions.

2. Production of Products

Comment: Two trade associations opposed the provision that products produced after 8 hours of inspection must be a continuation of the processing during the last hour of inspection. They contended that such a requirement would be burdensome and would restrict flexibility of small firms.

Response: FSIS is required by law to assure that products produced are wholesome and not adulterated. During an inspector's tour of duty, FSIS has the opportunity to inspect raw ingredients and monitor the production process. If a new process were allowed to be initiated after the inspector's tour of duty, FSIS could not legally assure the safety and wholesomeness of the products produced and shipped. Therefore, the Agency would not meet its legal requirements. FSIS realizes this may restrict the operations of official establishments. However, the establishment could alleviate this through appropriate planning of its production schedules. For these reasons, the requirement remains as a condition for an establishment to expand its operating schedule.

3. Sampling Plan

Comment: Two trade associations and one establishment opposed a separate sampling plan for products shipped after 8 hours of inspection. They stated that since TQC progams require finished product sampling, additional sampling should not be needed, and that this should be the inspectors' responsibility rather than that of the establishment.

Response: FSIS agrees with the comments. Where appropriate, sampling plans are an integral part of a QC program. A sampling plan will include finished product sampling. Therefore, an establishment under TQC with an expanded operating schedule will sample products produced after the inspectors' tour of duty. FSIS does not believe it is necessary for an establishment to hold for subsequent examination samples of products produced after 8 hours of inspection. However, the inspector may take verification samples as he/she deems necessary.

FSIS has other methods in place to sample and inspect products produced after the hours of inspection. The Compliance Program, Meat and Poultry Inspection Operations, routinely takes retail market samples to insure product is in compliance. Also, the TQC program requires finished product sampling as well as verification sampling by the inspector. In addition, this rule makes provisions for the inspector to revisit an establishment on an overtime basis.

FSIS believes the sampling requirements would be burdensome to establishments and does not provide assurances that the TQC program is functioning properly. Thus, FSIS is deleting this requirement from the final rule.

4. One Year Requirement Prior to Expanding Schedule

Comment: Two trade associations voiced opposition to the requirement that only those establishments operating under an approved QC program for at least 1 year may be eligible for extended hours of operation. They contend that, since an establishment must comply with the QC program immediately, there should not be a waiting period. One commenter suggested that the timeframe be reduced to 3 months.

Response: FSIS believes that the establishment, as well as the Agency, needs time to ensure the QC program is operating satisfactorily. Since FSIS cannot prescreen applicants for TQC, except in cases where there are

convictions or perhaps pending indictments, the Agency must have an opportunity to evaluate the establishment's commitment to TQC and the actual operation of the system. Therefore, FSIS will require an establishment to successfully operate under an approved QC program for at least 1 year prior to becoming eligible to expand its operating schedule.

5. Coding of Products

Comment: Two trade associations and one establishment were opposed to the requirement that products produced during expanded hours of operation bear a special code. One commenter suggested that the coding of products should identify products produced every 4 hours rather than after 8 hours of inspection.

Response: The final rule will not require the sampling and holding of samples for examination by the inspector. Since this requirement is being deleted, FSIS needs a mechanism to verify the compliance of products produced and shipped after 8 hours of inspection.

The coding of products allows FSIS to sample, on occasion, products at the retail market and compare those products being produced during 8 hours of inspection with those produced during the expanded hours of operation. The Agency does not plan for this to be a routine monitoring method. Therefore, the coding requirement remains as proposed in the final rule.

Miscellaneous Amendments

FSIS has made several minor amendments in the final rule for clarity purposes.

Final Rule

After careful consideration of the comments received on the proposal, FSIS is adopting the proposed rule, except for the changes previously discussed herein.

List of Subjects

9 CFR Part 307

Meat inspection, Quality control, Facilities, Overtime.

9 CFR Part 318

Meat inspection, Quality control, Reporting requirements, Preparation of products.

9 CFR Part 381

Poultry products inspection, Quality control, Reporting requirements.

The Federal meat and poultry products inspection regulations are amended as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 215(a), 2.92.

2. Section 307.4(c) of the Federal meat inspection regulations (9 CFR 307.4(c)) is amended by adding a new sentence at the end thereof to read as follows:

§ 307.4 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 318.4(h) of this subchapter.

* * * * *

PART 318—[AMENDED]

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 et seq.), unless otherwise noted.

4. Section 318.4 of the Federal meat inspection regulations (9 CFR 318.4) is amended by adding a new paragraph (h) to read as follows:

§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishment; plant operated quality control.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control system may request approval for an operating schedule of up to 12 consecutive hours per shift. Permission will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least 1 year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(2) *Application.* Applications shall be submitted to the Regional Director and shall specify how the conditions in § 318.4(h)(1) have been or will be met.

(3) *Monitoring by Inspectors.* In order to verify that an establishment is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspection services at the discretion of the circuit supervisor and charged for such services.

(Reporting requirements set forth in this section were approved by the Office of Management and Budget under control number 0583–0015.)

PART 381—[AMENDED]

5. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

6. Section 381.37(c) of the poultry products inspection regulations (9 CFR 381.37(c)) is amended by adding a new sentence at the end thereof to read as follows:

§ 381.37 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 381.145(h) of this subchapter.

* * * * *

7. Section 381.145 of the Federal poultry products inspection regulations (9 CFR 381.145) is amended by redesignating the present paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

§ 381.145 Poultry products and other articles entering or at official establishment; examination and other requirements.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control system may request approval for an operating schedule of up to 12 consecutive hours per shift. Permissions will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least 1 year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being

conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(2) *Application.* Applications shall be submitted to the Regional Director and shall specify how the conditions in § 381.145(h)(1) have been or will be met.

(3) *Monitoring by Inspectors.* In order to verify that an establishment is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspectiom services at the discretion of the circuit supervisor and charged for such services.

(Reporting requirementa set forth in this section were approved by the Office of Management and Budget under control number 0583–0015).

Done at Washington, DC., on: August 26, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86–20493 Filed 9–10–86; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 18–86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Executive Office for Immigration Review, hereby exempts a new system of records entitled "Records and Management Information System, JUSTICE/EOIR–001," from the access and amendment provisions of the Privacy Act, 5 U.S.C. 552a(d). This exemption is needed to preclude access to any information in the system which has been properly classified under an Executive Order for national security reasons. It is also needed to preclude unauthorized access to certain confidential investigatory materials compiled for the purposes of enforcing immigration laws. In addition, the exemption is needed to preclude the amendment of the record of proceeding which constitutes the official record of quasi-judicial administrative proceedings. The records may include transcripts of the proceedings, charging documents, investigatory reports, decisional memoranda, and evidentiary materials such as exhibits and other case-related papers concerning aliens brought into the administrative adjudication process. These records are compiled during the course of proper hearings, established due process procedures, and any relevant investigations. If the individual who is the subject of the record could make ex parte "correction" of the material, administrative due process could not be achieved.

EFFECTIVE DATE: This rule will be effective September 11, 1986.

ADDRESS: J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, Room 9002, Department of Justice, 601 D Street NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202–272–6474).

SUPPLEMENTARY INFORMATION: This rule was first published as a proposed rule at 51 FR 16724, May 6, 1986. At that time, comments were invited until June 5, 1986. One comment was received and considered. A commentator objected to the rule on the grounds that the rule would unduly bar disclosures of most materials contained in the system of records and contended that the regulation to exempt the system was unnecessary because of current Privacy Act limitations on disclosure of confidential information. As stated in the May 6 proposed rule, the exemption applies only to the extent that information in the system is subject to exemption. That is, any information in the system which cannot be defined as (k)(1) or (k)(2) information will not be withheld pursuant thereto simply because "the system" has been exempted. For practical reasons, non-exempt information in the system cannot be segregated and maintained apart from that information which is exempt. Therefore, the exemption is promulgated to protect the (k)(1) and (k)(2) information within the system of records. The exemption is promulgated in accordance with 5 U.S.C. 553(b) (1), (2), and (3), (c), and (e), as required by the Privacy Act, 5 U.S.C. 552a (j) and (k). The exemption will not prevent proper access to the vast majority of information contained in the system.

A description of the "Records and Management Information System" has been published in the Notice section of the **Federal Register** of May 6, 1986 (51 FR 16753).

This order relates to individuals, rather than to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General No. 793–78, 28 CFR Part 16 is amended to add § 16.83 as set forth below.

Dated: August 6, 1986.

Robert N. Ford,

Acting Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. 28 CFR Part 16 is amended by adding § 16.83 to read as follows:

§ 16.83 Exemption of the Executive Office for Immigration Review System—Limited Access.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Executive Office for Immigration Review's Records and Management Information System (JUSTICE/EOIR–001). This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k) (1) and (2).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (d) because access to information which has been properly classified pursuant to an Executive Order could have an adverse effect on the national security. In addition, from subsection (d) because unauthorized access to certain investigatory material could compromise ongoing or potential investigations; reveal the identity of confidential informants; or constitute unwarranted invasions of the personal privacy of third parties.

(2) From subsection (d) (2), (3), and (4) because the record of proceeding constitutes an official record which includes transcripts of quasi-judicial administrative proceedings, investigatory materials, evidentiary materials such as exhibits, decisional memoranda, and other case-related

papers. Administrative due process could not be achieved by the ex parte "correction" of such materials by the individual who is the subject thereof.

[FR Doc. 86-20422 Filed 9-10-86; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Bureau of Labor-Management Relations and Cooperative Programs

29 CFR Part 220

Airline Employee Protection Program; Justification Under Court Order

AGENCY: Bureau of Labor-Management Relations and Cooperative Programs, Labor.

ACTION: Secretary of Labor's justification of final rule, pursuant to court order.

SUMMARY: On January 22, 1986, the United States District Court for the District of Columbia issued a favorable decision in the case of *Alaska Airlines Inc., et al.* v. *Brock, et al.*, 632 F.Supp. 178 (D.D.C. 1986), concerning the validity of the regulations promulgated pursuant to the employee protection provisions of the Airline Deregulation Act (ADA or the Act), 49 U.S.C. 1552. The decision upholds the Department's regulations, 29 CFR Part 220 *et seq.*, in all respects, with the single exception of 29 CFR Part 220.21(a)(1), dealing with initial hiring age. With respect to that part of the rule, the court has invalidated it as to pilots and flight officers alone, and has remanded the issue to the Secretary of Labor (the Secretary) for further explanation.

After reviewing the comments in light of the Act, the legislative history and legal precedents, the Secretary concludes that 29 CFR Part 220.21(a)(1) as published on December 27, 1985 (50 FR 53103) is consistent with Congressional intent and does not conflict with any other statutes or court decisions.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Jeffrey Salzman, Airline Employee Protection Program, Division of Employee Protections, Room N5416, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Phone: (202) 357-0473.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1985, the Department of Labor, through the Bureau of Labor-Management Relations and Cooperative Programs, published a final rule under section 43 of the Act (the employee protection provisions). 50 FR 53094. With the exception of § 220.21(a)(1), which the district court invalidated as to pilots and flight officers only, the remainder of the final rule became effective on January 27, 1986.

Section 220.21 permits a covered air carrier to apply any qualifications in its hiring process, except limitations based on initial hiring age or the existence of any seniority, recall rights or previous experience with another airline. The court stated that the initial hiring age of pilots and flight officers, that is, the age at which applicants are considered for employment by the covered air carrier, may affect the amount and adequacy of the training and experience they receive. The court then reasoned that this qualification may have an impact on airline safety. Finding safety to be a substantial concern, the court directed the Secretary to address the issue of whether initial hiring age could properly be excluded as a factor in hiring decisions, which issue was raised by comment during the rulemaking process. Accordingly, § 220.21(a)(1) was invalidated by the district court and did not go into effect, but only insofar as it applies to pilots and flight officers; § 220.21(a)(1) went into effect and continues to remain in effect as to all other occupational specialties. Furthermore, pursuant to the order of the district court, this section was remanded to the Secretary for further consideration, with respect to the safety aspects of initial hiring age disqualifications for pilots and flight officers. Since a number of comments were received on this issue when the regulations were first published, it was unnecessary to reopen the rulemaking record.

Comments on the issue of initial hiring age were received from three general sources: trade associations, labor organizations and individuals. The trade associations (industry groups) commented that § 220.21(a)(1) conflicts with their members' policies on initial hiring age for pilots. They state that failure to allow a bona fide occupational qualification (BFOQ) for initial hiring age of pilots will diminish the airlines' ability to deliver the safest possible airline service to their passengers. In support of their position, these commenters rely heavily on *Murnane* v. *American Airlines*, 482 F.Supp. 135 (D. D.C. 1979), *aff'd*, 667 F.2d 98 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 915 (1982). In *Murnane*, the U.S. Court of Appeals for the District of Columbia Circuit held, *inter alia*, that American Airlines' refusal to hire applicants over age 40 as flight officers was justified as a BFOQ under the Age Discrimination in Employment Act of 1967 (ADEA), in the interests of safety.

Comments arguing against permitting the airlines to implement an initial hiring age disqualification were submitted by several labor organizations and individuals. These comments recognized that age discrimination was prevalent in the airline industry and therefore, that the section of the regulations prohibiting use of an initial hiring age disqualification was necessary, in order to effectuate the purpose of the Act. Specifically, one of these commenters asserted that discrimination in hiring pilots over 35 years of age is well known in the commercial aviation industry and should be prohibited.

The Secretary has re-examined the comments, the Act, the legislative history and related case law and has concluded that § 220.21(a)(1) of the regulations accurately reflects the intent of Congress to assist airline industry employees who have made this industry their careers.

Beginning with the Act itself, section 43(d) of the Act states that any person who is a protected employee of an air carrier who is furloughed or otherwise terminated, other than for cause, *"shall have first right of hire, regardless of age,* in his occupation specialty. . . ." (emphasis added). This language is clear and unambiguous, susceptible to no other interpretation than its plain, literal meaning. A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning. Ascribing any other meaning of the phrase "regardless of age" would be to ignore the breadth of the statutory language and the underlying Congressional intent which must be identified and effectuated.

With statutory language so clear and unambiguous as this, it is not necessary to refer to the legislative history to discern Congressional intent. However, a review of the legislative history also supports this interpretation. The Senate was concerned with the possible decrease in the number of airline positions as a result of deregulation. In addition, the Senate wanted to protect employees who have demonstrated their dedication to the airline industry:

> Many airline employees have given most of their working lives to the air transportation industry and have too much invested to leave it now. In many cases, a job shift even within the industry would be costly because of lost seniority. *Older employees looking for a new*

job might encounter difficulties because of their age.

Senate Report 95–631. p. 114, 95th Congress 2d Sess., Feb. 5, 1978 (emphasis added).

When interpreting statutory provisions, the objective is to give effect to the legislative will by looking to the object and policy of the whole law. As the foregoing passage indicates, Congress' purpose was to identify those employees who were dependent upon the airline industry, has a measurable attachment to it, and to protect them. By definition, these would tend to be older employees who would become older still during the ten (10) year protected period.

Neither the statute nor the regulations will diminish safety in the air transportation industry. Both Section 43 of the ADA and the Secretary's regulations give a hiring preference only to experienced employees in good standing with air carriers certificated when the ADA went into effect. 49 U.S.C. 1522(d)(1); 29 CFR 220.20(a). Section 220.21(a) permits a covered air carrier to apply "any prerequisites or qualifications determined by it for any vacancy. . . ," with the exception, relevant here, of initial hiring age. The regulations do not in any manner require airlines to lessen their own hiring standards which protected employees must meet, nor limit the airlines' discretion in choosing among protected employees. For example, if a hiring carrier wished to specify that pilots and flight officers have experience in the cockpit on one type of aircraft, it would be free to do so. Hence, a carrier which operated Boeing 727's and specified that it only hired pilots and flight officers who were familiar with such aircraft would not be required to hire a protected employee who had no such experience, if, for example, his previous carrier only operated DC–9's. Section 220.21(a) would permit covered carriers to reapply the same hiring criteria to the protected employees that they use in considering non-protected and non-designated employees. None of the comments included reasons why experienced pilots and flight officers, who are otherwise qualified and who had safely operated a specific type of aircraft for one carrier, could not transfer that ability so as to perform the same duties for a second carrier in a safe manner. The airlines remain free to discharge employees who are unable to perform efficiently and safely and the regulations do not require them even to consider hiring employees terminated for cause by other carriers. 29 CFR 220.10(b)(5). Thus, covered air carriers are not required, either by the statute or the regulations, even to consider applicants unless, by definition, they are experienced and have met the safety requirements of at least one other carrier subject to the same safety obligations. The existing record contains no evidence that the employment of pilots and flight officers above a carrier's maximum age at-hire limitation poses a threat to airline safety. Indeed, if age at-hire in and of itself presented an unacceptable safety risk, then covered air carriers would be precluded from permitting their own pilots to fly beyond that age. If, on the other hand, observance of a maximum age at-hire limitation is a matter of a carrier's preference resting on a basis grounded in cost-effectiveness, then that preference must be balanced against the Congressional mandate that such employees be protected, *regardless of age.*

The trade association commenters assert that the airlines should be permitted to apply their initial hiring age disqualifications despite the "regardless of age" language in section 43(d) of the Act. In support of their position they refer to language from the district court decision in the case of *Murnane* v. *American Airlines, Inc.*, 482 F.Supp. 135 (D. D.C. 1979), *aff'd*, 667 F.2d 98 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 915 (1982), which upheld an initial hiring age disqualification as a BFOQ. However, that case is inapposite for several reasons: the suit was filed under the Age Discrimination In Employment Act of 1967 and not under any provision of the Airline Deregulation Act of 1978; the passage cited for support is dicta; plaintiff was a 43-year old retired Navy and Coast Guard aviator with no previous commercial airline experience who therefore would not even be defined as a "protected employee" under section 43(d) of the Act. Furthermore, both the district court and the court of appeals concluded that even if the age 30 guideline (considered by the courts only at age 40) was held not to be a BFOQ, the plaintiff's demonstrated deficiencies in judgment and flying skills were sufficient in themselves to preclude him from being hired.

The pilot in *Murane* is readily distinguishable from those who are protected employees and thus are guaranteed the first right of hire under the ADA. Section 43(h)(1) of the Act defines a protected employee as a person who had four (4) years of experience with a single covered carrier prior to the 1978 enactment of the ADA. 49 U.S.C. 1552(h)(1). Therefore, by definition, the types of applicants who will be able to invoke the first right of hire for positions of pilots and flight officers will be those who have had a *minimum* of four years of commercial aviation experience as of October 24, 1978. This is a far different situation from that of the applicant for a pilot position in *Murnane*, who did not possess even a single day of commercial aviation experience, let alone four years with a single covered commercial carrier prior to 1978. The fact that all protected employees will have been experienced in their occupational specialty is a significant distinction, since the ability to operate an aircraft safely was the *Murnane* court's overriding concern, not the chronological age of a pilot. As previously stated, if age above a particular carrier's at-hire maximum were to be considered synonymous with the ability to safely pilot an aircraft, then the airlines would not permit their own pilots to continue flying beyond that age. The airlines may objectively measure a protected employee's flying skills, through means such as flight simulators, test flights and medical examinations, rather than relying on a blanket exclusion for pilots and flight officers based on a maximum age at-hire limitation. By so doing, the industry can continue to ensure delivery of the safest carriage of airplane passengers possible, while at the same time effectuating the will of Congress so clearly expressed, namely, to protect designated employees "regardless of age."

Conclusion

The district court remanded 29 CFR 220.21(a)(1), to the Secretary, for consideration of whether airlines should be permitted to apply their initial hiring age disqualifications to those protected employees who are pilots or flight officers, due to concern for airline safety. Comments on the existing record were adequate to address this issue on remand, so that reopening the rulemaking record was not necessary. A re-examination of all comments on this part of the rule was conducted. In addition, the legislative history of the ADA was reviewed and legal precedents regarding maximum age at-hire and airline safety were researched. After thoroughly analyzing this information, it is concluded that Congress meant exactly what it said, when it sought to give the first right of hire to protected employees, "regardless of age." 49 U.S.C. 1552(d)(1). Part of its concern stems from recognition of the fact that older employees who have made the airline industry their career may have difficulty finding new jobs in the industry because of their age. Senate

Report 95–631, p. 114, 95th Congress 2d Sess., Feb. 5, 1978. Thus, based on this review, the Secretary finds that § 220.21(a)(1) should apply to all protected employees, pilots and flight officers included. Therefore, § 220.21(a)(1), as published on December 27, 1985 at 50 FR 53103, will become effective as to pilots and flight officers thirty days after the date of the publication of this document.

Signed at Washington, DC this 8th day of September 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–20457 Filed 9–10–86; 8:45 am]

BILLING CODE 4510–85–M

DEPARTMENT OF DEFENSE

32 CFR Part 90

[DoD Instruction 7045.18]

Collection of Indebtedness Due the United States

AGENCY: Office of the Secretary, DoD.

ACTION: Action rule.

SUMMARY: The Department of Defense (DoD) is revising its regulations on collection of indebtedness due the United States. This revision is necessary to incorporate a new paragraph N which provides DoD guidelines for reporting delinquent debts to the Internal Revenue Service for offset. Section 3720A of subchapter II of Chapter 37 of Title 31 U.S.C. authorizes Federal agencies who are owed past-due legally enforceable debts to notify the Secretary of the Treasury of the amount of such debts. It was approved July 23, 1986.

EFFECTIVE DATE: July 23, 1986.

FOR FURTHER INFORMATION CONTACT: Adam T. Shaw OASD(C) MD, Directorate for Accounting Policy, Room 3A882, The Pentagon, Washington, DC 20301, Telephone: (202) 697–0585.

SUPPLEMENTARY INFORMATION: This change is the third change to the basic instruction. The basic instruction was published in the April 22, 1985 **Federal Register** (50 FR 15734). Change 1 included three specific revisions ordered by the Office of Personnel Management as a condition of OPM approval, required by 5 CFR 550.1104. Also, there were minor administrative revisions. Change 1 was not published in the **Federal Register**. Change 2 (51 FR 28092) was made primarily to clarify Paragraph E.7 of Enclosure 1, "Hearings and Written Submissions." The primary revisions were made to subparagraphs E.7.a.(1)–(3). Paragraphs E.7.a.(1)–(3) were rewritten to more accurately describe the procedures under which a debtor may petition for and be granted a hearing by DoD Creditor Components. The new language explained the circumstances under which each type of hearing will be granted and the documentation required by the petitioner and the Creditor Component in preparing for the hearings. Paragraph M. was a new paragraph which provided guidelines for DoD Components to follow in developing procedures for writing-off and closing-out uncollectible accounts. The paragraph was added to comply with OMB Circular A–129 of May 9, 1985. Change 3 was approved July 23, 1986. The DoD has been working closely with the Office of Management and Budget and the Treasury Department and will participate in the income tax offset program beginning calendar year 1987. This change was added to comply with OMB Circular A–129.

List of Subjects in 32 CFR Part 90

Debt collection.

PART 90—[AMENDED]

Accordingly, 32 CFR Part 90 is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: 5 U.S.C. 5514.

2. In § 90.6, Enclosure 1 is amended by adding a new paragraph N to read as follows:

Enclosure 1—[Amended]

* * * * *

N. Reporting Delinquent Debts to the Internal Revenue Service for Offset

1. *General.* Section 3720A of subchapter II of Chapter 37 of Title 31, U.S.C. authorizes Federal agencies who are owed past-due legally enforceable debts to notify the Secretary of the Treasury of the amount of such debts. Upon receiving notice from any Federal agency that a named person owes to such agency a past-due legally enforceable debt, the Secretary of the Treasury shall determine whether any tax refunds of Federal Taxes paid, are payable to such person. If the Secretary determines that an amount is payable, he shall reduce such refunds by an amount equal to the amount of such debt, pay the amount of such reduction to such agency and notify such agency of the individual's home address.

2. *Treasury Regulotions.* The Secretary of the Treasury has issued regulations prescribing the time or times at which agencies must submit notices of past-due legally enforceable debt, the manner in which such notices must be submitted, and the necessary information that must be maintained in or accompany the notices.

3. *Memorandum of Understanding (MOU).* The Department of Defense will participate in the internal Revenue Service's Income Tax Refund Offset Program beginning in Calendar Year 1987. This participation is pursuant to a signed MOU between DoD and the Department of the Treasury, hereinafter referred to as IRS. The MOU prescribes the specific conditions DoD must meet before the IRS will accept requests for offset. It also prescribes other responsibilities of the DoD and the IRS including procedures for reimbursement to IRS for the cost of services rendered.

4. *Applicability of The Income Tax Refund Offset Program.* For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent more than 10 years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provision of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the DoD Creditor Component against amounts payable to the debtor by the Creditor Component;

(4) The DoD Component gave the taxpayer at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered the evidence presented by such taxpayer, and determined that a debt amount is past-due and legally enforceable;

(5) Has been disclosed by such DoD Component to a consumer reporting agency as authorized by 31 U.S.C. 3711(f);

(6) The Component has notified or has made a reasonable attempt to notify, the taxpayer that:

(a) The debt is past due, and

(b) Unless repaid within 60 days thereafter, will be referred to the IRS for offset against any overpayment of tax; and

(7) Is at least $25.

5. *Procedures.* a. The Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)) shall be the sole IRS point of contact for administrative matter, regarding the offset program. However, there shall be a single point of contact in each Military Service, the Army and Air Force Exchange Service (AAFES), and the participating Defense Agencies for ADP systems matters regarding the offset program. These points of contact shall be designated in writing and forwarded to ODASD(MS).

b. Only those DoD Creditor Components who are specifically designated to participate in the IRS offset program shall refer past due debts to the IRS. DoD Components which are not specifically designated shall refer past due debts to the IRS through a Component which has been so designated.

c. DoD Creditor Components who have been specifically designated to participate shall ensure that only those past-due legally enforceable debts described in paragraph N.4. above are forwarded to the IRS for offset. DoD Creditor Components shall also ensure that the procedures prescribed in the MOU between DoD and the IRS are followed

in developing past-due debt information and submitting the debts to the IRS.

d. Applicable DoD Creditor Components shall submit a notification of a taxpayer's liability for past-due legally enforceable debt to the IRS on magnetic tape by January 2, of each year or such other date as may be determined by the IRS. Such notification shall contain:

(1) The name and identifying number of the taxpayer who is responsible for the debt;

(2) The amount of such past-due and legally enforceable debt;

(3) The date of which the debt became past-due;

(4) The designation of the DoD Creditor Component or subcomponent submitting the notification of liability and identification of the DoD Creditor Component program under which the debt was incurred;

(5) A statement accompanying each magnetic tape by the DoD Creditor Component certifying that, with respect to each debt reported on the tape, all of the requirements of paragraph N.4. above have been satisfied.

e. A DoD Component shall promptly notify the IRS to correct DoD data submitted pursuant to paragraph d. above when the DoD Creditor Component:

(1) Determines that an error has been made;

(2) Receives or Credits a payment on such debt. However, a DoD Component shall not notify IRS about subsequent increases in such debts.

f. When advising debtors of an intent to refer a debt to the IRS for offset, DoD Creditor Components shall also advise the debtors of all remedial actions available to defer or prevent the offset process.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 5, 1986.

[FR Doc. 86-20439 Filed 9-10-86; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 359

[DoD Directive 5105.22]

Organization, Functions, and Authority Delegations; Defense Logistics Agency

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part has been updated to reflect current reporting relationships, consolidate the statement of functions, and conform to current editorial format. In addition, item (t) and (u) have been added to the delegations of authority. This part was last published on July 28, 1978 (43 FR 32759).

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, Office of the Assistant Secretary of Defense (Organization and Management Planning), Room 3A326, The Pentagon, Washington, DC, telephone (202) 697-0709.

List of Subjects in 32 CFR Part 359

Organization and functions (government agencies).

Accordingly, 32 CFR Part 359 is revised to read as follows:

PART 359—DEFENSE LOGISTICS AGENCY

Sec.

359.1 Reissuance and purpose.
359.2 Mission.
359.3 Organization and management.
359.4 Responsibilities and functions.
359.5 Authority.
359.6 Relationships.
359.7 Administration.
359.8 Assigned DoD programs/systems.
359.9 Delegations of authority.
359.10 Relationship between commanders of unified commands and overseas elements of the Defense Logistics Agency.

Authority: 10 U.S.C. Chapter 4.

§ 359.1 Reissuance and purpose.

Pursuant to authority vested in the Secretary of Defense under Title 10, U.S.C. this part reissues 32 CFR Part 359 to update the responsibilities, functions, relationships, and authorities of the Defense Logistics Agency (DLA).

§ 359.2 Mission.

The DLA shall function as an integral element of the military logistics system of the Department of Defense to provide effective and efficient worldwide logistics support to the Military Departments and the Unified and Specified Commands under conditions of peace and war, as well as to other DoD Components, Federal Agencies, foreign governments, or international organizations, as assigned. This support shall include:

(a) The provision of material commodities and items of supply that have been determined, through the application of approved criteria, to be appropriate for integrated management by a single agency on behalf of all DoD Components, of that has been otherwise specifically assigned by appropriate authority.

(b) The performance of logistics services directly associated with furnishing material commodities and items of supply (hereafter referred to as "Items").

(c) The administration of Department-wide supply and logistics management systems, programs, and activities, as assigned, including the provision of technical assistance, support services, and information.

§ 359.3 Organization and management.

DLA is established as a separate agency of the Department of Defense under the direction, authority, and control of the Assistant Secretary of Defense (Acquisition and Logistics) (ASD(A&L)). It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

§ 359.4 Responsibilities and functions.

The Director, DLA, shall:

(a) Organize, direct, and manage the DLA and all assigned resources; procure assigned items; and administer, supervise, and control all programs, services, and items assigned to DLA.

(b) Provide staff advice and assistance on supply and logistics matters to the Office of the Secretary of Defense (OSD), the Military Departments, other DoD Components, and other designated organizations, as appropriate.

(c) Maintain a wholesale distribution system for assigned items and accomplish all material management functions required to ensure responsive support to the associated supply and logistics requirements determination, supply control, procurement, quality and reliability assurance, industrial responsiveness and mobilization planning, receipt, storage, inventory accountability and distribution control, transportation, repair, maintenance and manufacture, shelf-life control, provisioning, technical logistic data and information, engineering support, value engineering, standardization, reutilization and marketing, and other related supply and logistics management functions, as appropriate.

(d) Provide contract administration services in support of the Military Departments and other DoD Components, the National Aeronautics and Space Administration, and other designated Federal and State Agencies, foreign governments, and international organizations.

(e) Operate centralized management information and technical report data banks in DLA; oversee the management of contractor-operated DoD Information Analysis Centers in selected fields of science and technology; and provide scientific and technical information to DoD Components, individuals, businesses, educational institutions, government laboratories, government contractors, and others consistent with policy guidance provided by the Under Secretary of Defense for Research and Engineering.

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(f) Perform systems analysis and design, procedural development, and maintenance for supply and service systems and other logistics matters assigned by the Secretary of Defense.

(g) Administer, manage, and operate the DoD-wide programs and systems listed in § 359.8 and recommend periodic revisions to this list, as appropriate.

(h) Develop, monitor, and maintain effective supply relationships with the General Services Administration (GSA) in order to ensure the timely availability of GSA items required by DoD Components.

§ 359.5 Authority.

The Director, DLA, is specifically delegated authority to:

(a) Meet the needs of the Military Departments and other authorized customers by conducting, directing, supervising or controlling all procurement activities with respect to property, supplies, and services assigned to DLA for procurement in accordance with applicable laws, DoD Regulations, the Federal Acquisition Regulation (FAR) and the DoD FAR Supplement (DFARS). To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the ASD(A&L).

(b) Have free and direct access to, and communicate with, all elements of the Department of Defense and other executive departments and agencies, as necessary.

(c) Prescribe procedures, standards, and practices for the Department of Defense, governing the executive of assigned responsibilities and functions.

(d) Obtain such reports, information, advice, and assistance from other DoD Components consistent with the policies and criteria of DoD Directive 5000.19 [1] as may be necessary for the performance of assigned functions and responsibilities.

(e) Establish new DLA facilities or recommend to the ASD(A&L) the reassignment to DLA or use of existing facilities of the Military Departments by DLA, as deemed necessary for improved effectiveness and economy.

(f) Provide membership on the Defense Acquisition Regulatory Council (DAR Council), participate with the Secretaries of the Military Departments and Federal Agencies in developing and publishing the FAR and participate with the Secretaries of the Military Departments in developing and publishing the DFARS.

(g) Exercise the administrative authorities contained in § 359.9.

§ 359.6 Relationship.

(a) In performing assigned functions, the Director, DLA, shall:

(1) Maintain appropriate liaison with other DoD Components, agencies of the Executive Branch, foreign governments and international organizations for the exchange of information on programs and activities in the field of assigned responsibilities.

(2) Maintain close working relationships with weapon systems managers of the Military Departments to ensure integration of effort and exchange of technical programs and reference data.

(3) Make use of established facilities and services in the Department of Defense or other governmental agencies wherever practicable to achieve maximum efficiency and economy.

(b) The Joint Chiefs of Staff, the Secretaries of the Military Departments, and the heads of other DoD Components shall provide support and logistical planning information, within their areas of responsibility, to the Director, DLA, in carrying out the responsibilities and functions assigned to DLA.

(c) The relationship between commanders of Unified Commands and overseas elements of DLA is defined in § 359.10.

§ 359.7 Administration.

(a) The Director shall be selected by the Secretary of Defense.

(b) When the Director and Deputy Director(s) are military officers, they shall normally be selected from different Military Departments.

(c) DLA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(d) The Military Departments shall assign military personnel to DLA in accordance with approved authorizations and procedures for assignments to joint duty.

(e) Programming, budgeting, funding, auditing, accounting, pricing, and reporting activities of DLA shall be in accordance with established DoD policy and procedures. DLA shall utilize appropriated funds to finance the operating costs of the Agency; a stock fund to finance all inventories procured for resale; and, when appropriate, an industrial fund for financing industrial-commercial type operations.

§ 359.8 Assigned DoD Programs/systems.

The following DoD programs/systems are assigned to DLA to administer, manage, and operate:

- DoD Coordinated Procurement.
- Federal Catalog System.
- DoD Industrial Plant Equipment.
- Operating Military Parts Control Advisory Groups for Standardization of Parts at the System Equipment Design Stage.
- DoD-wide Program for Redistribution/Reutilization of Excess Government-Owned or-Leased Automation Equipment.
- Defense Automatic Addressing System.
- Defense Precious Metals Recovery.
- Executive Agent for Material Redistribution via the Defense European and Pacific Redistribution Activity.
- Assigned Aspects of DoD Food Service Management.
- Military Standard Logistics Systems.
- Logistics Data Element Standardization Management.
- Defense Procurement Management Review.
- Defense Energy Information System.
- Centralized Referral System.
- Overseas Employment Referral.
- Automation Resources Management System.
- DoD Reenlistment Eligibility Reporting Information System.
- Commercial and Industrial-Type Activities Inventory Information Systems.
- Depot Maintenance and Maintenance Support Cost Accounting and Production Reporting Information System.
- Commercial or Industrial Type Products and Services Information Systems Data Base.
- DoD Shelflife Item Management.
- DoD Scientific and Technical Information.
- DoD Information Analysis Center.
- DoD Hazardous Materials Information System.
- Hazardous Material Technology Development.
- DoD-wide Interchangeability/Substitutability.
- DoD Personal Property Utilization and Disposal.
- DoD Industrial Resources Management.
- Integrated Material Manager for Bulk Petroleum.
- DoD Specification Standardization.
- DoD Investigative Management Information Management System.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

BEST COPY AVAILABLE

§ 359.9 Delegations of authority.

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DLA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of DLA to:

(a) Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 pertaining to the employment, direction and general administration of DLA civilian personnel.

(b) Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Combined Federal Wage System. In fixing such rates, the Director, DLA, shall follow the wage schedule established by the DoD Wage Fixing Authority.

(c) Establish advisory committees and employ part-time advisors as approved by the Secretary of Defense for the Performance of DLA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the agreement between the Department of Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, dated June 21, 1977.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government of any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of DLA to perform this function.

(e) Establish a DLA Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or effect DLA or its subordinate activities, in accordance with the provisions of 5 U.S.C. 4503 and OPM regulations.

(f) In accordance with the provisions of 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2 [2], "DoD Personnel Security program," December 20, 1979:

(1) Designate the security sensitivity of positions within DLA.

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in DLA for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(3) Authorize the suspension, but not terminate the services of a DLA employee in the interest of national security.

(4) Initiates investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned or detailed to, or employed by DLA. Any action to deny or revoke a security clearance prescribed in DoD 5200.2–R, "DOD Personnel Security Program," December 1979.

(g) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under the Internal Revenue Code of 1954, as amended (26 U.S.C. 3122) and the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) with respect to DLA employees.

(h) Authorize and approve overtime work for DLA civilian personnel in accordance with the provisions of 5 U.S.C. Chapter 55, Subchapter V, and applicable OPM regulations.

(i) Authorize and approve:

(1) Travel for DLA civilian personnel in accordance with Joint Travel regulations, Volume 2, "DoD Civilian Personnel."

(2) Temporary duty travel for military personnel assigned or detailed to DLA in accordance with Joint Travel regulations, Volume 1, "Members of Uniformed Services."

(3) Invitational travel to persons serving without compensation whose consultatives, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with DLA activities, pursuant to the provisions of 5 U.S.C. 5703.

(j) Approves the expenditure of funds available for travel by military personnel assigned or detailed to DLA for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

(k) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of 44 U.S.C. 3102 and DoD Directive 5015.2,[3] "Records Management Program," September 17, 1980.

(l) Establish and use imprest funds for making small purchases of material and services, other than personal, for DLA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Instruction 5100.71,[4] "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

(m) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DLA, consistent with 44 U.S.C. 3702.

(n) Establish and maintain appropriate property accounts for DLA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DLA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(o) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DLA, pursuant to DoD Directive 5200.8,[5] "Security of Military Installations and Resources," July 29, 1980, and serve as central coordinator of criminal investigative support to DLA.

(p) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulation, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DOD Directive 5025.1,[6] "Department of Defense Directives System," October 16, 1980.

(q) Enter into support and service agreement with the Military departments, other DoD Components, other Government agencies, and foreign governments, as required for the effective performance of DLA functions and responsibilities.

(r) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

(s) Exercise the authority and responsibility for the ASD(A&L) as delegated to the National Industrial

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[2] See § 359.5(d)

[3] See § 359.5(d)

[4] See § 359.5(d)

[5] See § 359.5(d)

[6] See § 359.5(d)

VOL 51 ISS 176 SE 11 1986 UMI

Equipment Reserve established by the National Industrial Equipment Reserve Act of 1948, as amended (50 U.S.C. 451 et seq.).

(t) Designate an officer or employee of DLA to serve as the advocate for competition of the Agency, pursuant to 10 U.S.C. 2318.

(u) Maintain an official seal and attest to the authenticity of official DLA records under that seal.

The Director, DLA, may redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

These delegations of authority are effective immediately.

§ 359.10 Relationship between commanders of unified commands and overseas elements of the Defense Logistics Agency.

When the Secretary of Defense assigns mission responsibilities to the Director, DLA, for the performance of integrated management functions outside the continental United States (CONUS) command relationships and interfaces pertinent to DLA elements assigned overseas shall be in consonance with the following:

(a) The *Director, DLA* shall:

(1) Ensure that missions assigned to DLA are carried out and coordinated in a manner fully responsive to, and in accordance with, the requirements of the appropriate Unified and Component Commanders.

(2) Coordinate matters of significant mutual command and management interest with the Unified Commander and/or the Joint Chiefs of Staff (JCS).

(3) Develop resource requirements for DLA overseas activities and in coordination with the applicable Unified Commanders, establish/disestablish DLA elements as dictated by mission requirements and objectives.

(4) Develop resource requirements for DLA overseas activities and in coordination with the applicable Unified Commanders, establish/disestablish DLA elements as dictated by mission requirements and objectives.

(5) Ensure compliance with physical security requirements promulgated by Unified or Component Commanders.

(6) Provide for the management and direction of DLA overseas activities, including budgeting, internal review, personnel support, and internal administration.

(b) The *Commander, Headquarters, DLA Europe (DEUR)* shall:

(1) Represent the Director, DLA, in the European Theater.

(2) Assist and advise the Director, DLA, in accomplishing assigned responsibilities in the European Theater.

(3) Coordinate plans and related matters to ensure continuity of DLA mission support during emergency conditions in the European Theater.

(4) Coordinate matters affecting customer supply assistance in the European Theater.

(5) Perform responsibilities with respect to DEUR and assist other DLA Overseas Elements in Europe as appropriate.

(c) The *Commander of Unified Command* is authorized to, and as appropriate, shall:

(1) Exercise directive authority in the field of logistics over DLA elements within the Commander's geographic area of responsibility to ensure effectiveness and economy in operations, and the prevention or elimination of unnecessary duplication of facilities and overlapping of functions. This authority is defined as that required to ensure the coordination, as necessary, of:

(i) Acquisition, storage, movement, distribution, maintenance, evacuation, and disposition of material.

(ii) Movement and evacuation of personnel.

(iii) Acquisition or construction, maintenance, operation, and disposition of facilities.

(iv) Acquisition or furnishing of services.

The Commander shall exercise such authority, after prior coodination locally with the pertinent DLA overseas activity, directly with the Director, DLA, or through the JCS, as appropriate.

(2) In the event of a major emergency which necessitates use of all available forces, assume temporary operational control of all DLA elements in the Commander's area of responsibility. The determination of the existence of such an emergency is the responsibility of the Commander concerned who, on assuming temporary operational control of DLA elements, shall immediately advise the following of the nature and estimated duration of employment:

(i) The JCS.

(ii) The appropriate operational Commander.

(iii) The Director, DLA.

(3) Exercise administrative direction over DLA elements in their area of responsibility in a manner consistent with, and comparable to, that exercised over assigned forces and elements of other DoD Components within the command. This will include, without being limited to, matters relating to Status of Forces Agreements and other agreements with host Nations, standards for dress and conduct, general theater regulations applicable to all U.S. Forces, and War and Emergency Plans.

(4) Provide, in accordance with existing DoD policy for interservice support, guidance on support between DLA overseas elements and components of the Military Services.

(5) Advise the Director, DLA, of any recommended changes to, or dissatisfactions with, the type, adequacy, and responsiveness of logistic support provided by DLA to and within the command. Unresolved issues between the Director, DLA, and a Commander of a Unified Command shall be referred to the JCS for resolution or forwarding to the ASD(A&L) for final determination when a negotiated resolution cannot be achieved.

(d) *Commanders of Component Commands* shall:

(1) Exercise such responsibilities and authorities pertinent to DLA elements as may be assigned or otherwise delegated to them by the Commander of their Unified Command.

(2) Provide for the physical security and administrative and logistic support of DLA elements as agreed to by DLA and Component Commands concerned under host/tenant agreements.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 5, 1986.

[FR Doc. 86-20442 Filed 9-10-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea; USS CLAUDE V. RICKETTS and USS WADDELL

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS CLAUDE V. RICKETTS (DDG 5) and USS WADDELL (DDG 24) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval destroyers. The intended effect of this rule is to warn

mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS CLAUDE V. RICKETTS (DDG 5) and USS WADDELL (DDG 24) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 2(a)(i), pertaining to the placement of the forward masthead light, without interfering with their special functions as naval destroyers. The Secretary of the Navy has also certified that the above-mentioned light is located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS CLAUDE V. RICKETTS (DDG 5) and USS WADDELL (DDG 24) are members of the DDG 2 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to these two vessels.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the vessels' abilities to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table 1 of § 706.2 is amended by adding the following vessels:

Vessel	Number	Distance [1]
USS CLAUDE V. RICKETTS	DDG 5	2.45
USS WADDELL	DDG 24	2.17

[1] Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I.

Dated: August 27, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-20462 Filed 9-10-86; 8:45 am]
BILLING CODE 3810-AE-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea; USS BLUE RIDGE

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS BLUE RIDGE (LCC 19) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as an amphibious command vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS BLUE RIDGE (LCC 19) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS BLUE RIDGE	LCC 19	N/A	N/A	N/A	N/A	N/A	N/A	x	70

Dated: August 27, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-20461 Filed 9-10-86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea; USS MACDONOUGH

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS MACDONOUGH (DDG 39) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 13, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400 Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS MACDONOUGH (DDG 39) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), regarding the arc of visibility of its forward masthead light, and Annex I, section 3(a), regarding the location of the forward masthead light in the forward quarter of the vessel and the horizontal distance between the forward and after masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner different from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§706.2 [Amended]

2. Table 4 of § 706.2 is amended by adding to the existing paragraph 22 the following vessel:

Table Four

* * * * *

Vessel	Number	Obscured angles relative to ship's heading
•	•	•
USS MACDONOUGH	DDG 39	18.7° and 341.3°.

3. Table 5 of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS MACDONOUGH	DDG 39	N/A	N/A	N/A	N/A	N/A	X	X	23

Dated: 13 August, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-20463 Filed 9-10-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea; USS MAUNA KEA

AGENCY: Department of the Navy, DOT.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS MAUNA KEA (AE 22) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ammunition ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400 Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS MAUNA KEA (AE 22) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner different from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,900 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS MAUNA KEA	AE 22	N/A	N/A	N/A	N/A	N/A	N/A	X	66

Dated: August 27, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-20464 Filed 9-10-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea; USS PONCE

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined the USS PONCE (LPD 15) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval amphibious transport dock ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400 Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS PONCE (LPD 15) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Sec 2 (a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS PONCE	LPD 15	N/A	N/A	N/A	N/A	N/A	N/A	X	55

Dated: August 27, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-20465 Filed 9-10-86; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea USS TARAWA et al.

AGENCY: Department of the Navy, DOD.
ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS TARAWA (LHA 1) Class ships are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval amphibious assault ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS TARAWA (LHA 1) Class ships are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship and the horizontal distance between the forward and after masthead lights, without interfering with their special functions as Navy ships. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Sec. 2 (a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masterhead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS TARAWA	LHA 1	N/A	N/A	N/A	N/A	N/A	X	X	13
USS SAIPAN	LHA 2	N/A	N/A	N/A	N/A	N/A	X	X	13
USS BELLEAU WOOD	LHA 3	N/A	N/A	N/A	N/A	N/A	X	X	13
USS NASSAU	LHA 4	N/A	N/A	N/A	N/A	N/A	X	X	13
USS PELELIU	LHA 5	N/A	N/A	N/A	N/A	N/A	X	X	13

Dated: August 27, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-20466 Filed 9-10-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD3 85-67]

Special Anchorage Area; Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing an additional special anchorage area in the Thames River, New London, CT, 125 yards north of the Gold Star Highway bridge, adjacent to the western shore. Because of the crowded conditions in the other special anchorages on the Thames River, an additional area is being created to ease the burden of securing a safe anchorage.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Ensign Jon Hammond, (203) 442-4471.

SUPPLEMENTARY INFORMATION: On March 3, 1986 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (51 FR 7288). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of these regulations are Ensign Jon Hammond, project officer, Captain of the Port, New London, CT, and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Comments

The Connecticut Department of Transportation felt that this special anchorage would cause no significant problems but recommended increased police patrols of the area. Local concerns were contacted before the NPRM was published and had no objection to this rule.

This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that full regulatory evaluation is unnecessary. The special anchorage will not interfere with commercial traffic or commercial fishing or shellfishing in the area. It is not anticipated to impact local merchants since this anchorage will accommodate vessels that previously used the other local special anchorages and will most likely continue to patronize the same merchants.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46; and 33 CFR 1.05-1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.52 paragraph (d) is added to read as follow:

§ 110.52 Thames River, New London, Conn.

* * * * *

(d) *Area No. 4.* An area in the western part of the Thames River, north of the highway bridge, bounded as follows: Beginning at a point 125 yards north of the highway bridge at latitude 41°21'56" N., longitude 72°05'32" W.; thence easterly to latitude 41°21'56" N., longitude 72°05'27" W.; thence northerly to latitude 41°22'12" N., longitude 72°05'27" W.; thence westerly to latitude 41°22'12" N., longitude 72°05'47" W.; thence southeasterly to latitude 41°22'02" N., longitude 72°05'40" W.; thence downriver along the charted foul grounds to the point of beginning.

* * * * *

Dated: September 3, 1986.

G.D. Passmore,

Rear Admiral (Lower Half), U.S. Coast Guard, District Commander, Third Coast Guard District.

[FR Doc. 86-20485 Filed 9-10-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD3 85-56]

Anchorage Grounds, New London Harbor, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two additional anchorage grounds at the mouth of the Thames River, New London, CT. The two anchorages are to the east of major shipping and ferry tracklines, approximately one mile southeast of New London Ledge Light. Anchorage E is for general use, while Anchorage F is exclusively for naval vessels. These anchorages are deemed necessary because of the need for a deeper anchorage for large vessels using the Thames River. A separate naval anchorage will safeguard both naval vessels and commercial vessels from unnecessary risk of collision.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Ensign Jon Hammond, (203) 442-4471.

SUPPLEMENTARY INFORMATION: On March 3, 1986 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (51 FR 7287). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of these regulations are Ensign Jon Hammond, project officer, Captain of the Port, New London, CT, and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Comments

The Connecticut Department of Transportation is in favor of the establishment of both anchorages, and feels that these deep-draft anchorages can better serve the larger vessels which transit the Thames River. Local concerns were contacted before the NPRM was published and had no objection to this rule.

This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been

found to be so minimal that a full regulatory evaluation is unnecessary. The anchorage grounds will be used on an infrequent basis and it is not anticipated that they will interfere with commercial traffic or commercial fishing or shellfishing. Since the anchorages are for vessels visiting either private or government facilities on the Thames River, local merchants would not be impacted.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

PART 110—[AMENDED]

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46; and 33 CFR 1.05–1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.147 paragraphs (a) (5) and (6) are added to read as follows and paragraph (b)(2) is redesignated as (b)(3) and new (b)(2) is added to read as follows:

§ 110.147 New London Harbor, Conn.

(a) * * *

(5) *Anchorage E.* The waters at the mouth of New London Harbor one mile southeast of New London Ledge Light beginning at latitude 41°17'26" N., longitude 72°04'21" W.; thence northeasterly to latitude 41°17'38" N., longitude 72°03'54" W.; thence southeasterly to latitude 41°16'50" N., longitude 72°03'16" W.; and thence southwesterly to latitude 41°16'38" N. longitude 72°03'43" W.; and thence northwesterly to the point of beginning.

(6) *Anchorage F.* The waters off the mouth of New London Harbor two miles southeast of New London Ledge Light beginning at latitude 41°16'00" N., longitude 72°03'13" W.; thence westerly to latitude 41°16'00" N., longitude 72°03'38" W.; thence northerly to latitude 41°16'35" N., longitude 72°03'38" W.; thence easterly to latitude 41°16'35" N., longitude 72°03'13" W.; and thence southerly to the point of beginning.

(b) * * *

(2) Anchorage F is reserved for the use of naval vessels and, except in cases of emergency, no other vessel may anchor in Anchorage F without permission from the Captain of the Port, New London, CT.

* * * * *

Dated: September 3, 1986.

G.D. Passmore,

Rear Admiral (Lower Half), U.S. Coast Guard District Commander, Third Coast Guard District.

[FR Doc. 86–20481 Filed 9–10–86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD02 86–33]

Drawbridge Operation Regulations; St. Francis River, AR

AGENCY: Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the Arkansas Highway bridge at Cody, mile 29.6, because the bridge has been removed. Notice and public procedure have been omitted from this action due to the removal of the bridge concerned.

EFFECTIVE DATE: This rule becomes effective on October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, (314) 425–4607.

Drafting Information

The drafters of this rule are Roger K. Wiebusch, project officer, and Lieutenant R.E. Kilroy, project attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.137 [Amended]

2. Section 117.137 is amended by removing paragraph (a) in its entirety and by removing the designator "(b)" from the second paragraph, but retaining the body of the second paragraph unchanged.

Dated: August 28, 1986.

J.D. Webb,

Captain, U.S. Coast Guard, Acting Commander, Second Coast Guard District.

[FR Doc. 86–20476 Filed 9–10–86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD02 86–01]

Drawbridge Operation Regulations; Cumberland River, TN

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Commander, U.S. Army Engineer District, Nashville, Tennessee, the Coast Guard is changing the regulations governing the Seaboard System Railroad Bridge, mile 126.5, at Clarksville, TN. This change deletes the requirement in the existing regulation that the bridge owner post notices of the regulation at the Kentucky and Pickwick Locks on the Tennessee River, and at the Barkley and Cheatham Locks on the Cumberland River. The majority of vessels transitting this bridge are commercial towboats. Recreational traffic is infrequent. Since both commercial and recreational navigation have publications available to them that provide information on the proper method for effecting drawbridge openings, this action will relieve the bridge owner of obtaining easements or property agreements to construct and maintain signs summarizing the regulation, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, telephone number 314–425–4607.

SUPPLEMENTARY INFORMATION: On March 28, 1986, the Coast Guard published proposed rules (51 FR 10638) concerning this amendment. The

Commander, Second Coast Guard District, also published the proposal as a Public Notice dated April 4, 1986. In each notice interested persons were given until May 12, 1986, to submit comments.

Drafting Information

The drafters of these regulations are Roger K. Wiebusch, project officer, and Lieutenant R. E. Kilroy, project attorney.

Discussion of Comments

No comments were received as a result of publication in the **Federal Register**, or in response to the Public Notice.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This change will not affect the operation of the bridge for rail or river traffic. The majority of vessels transitting this bridge are commercial towboats. Recreational traffic is infrequent. Both commercial and recreational navigation have readily available publications that provide information on the proper method for effecting drawbridge openings. Signs, which summarize the regulation and state the name, address and telephone number of the person to be notified when advance notice is required to open the draw, will be posted upstream and downstream of the bridge. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.943 is revised to read as follows:

§ 117.943 Cumberland River.

The draw of the Seaboard System Railroad bridge over the Cumberland River, mile 126.5, at Clarksville, shall open on signal when the vertical clearance under the navigational span is 47 feet or less. The draw shall open on signal if at least two hours notice is given when the vertical clearance is greater than 47 feet. The draw need not be opened for a vessel that arrives at the bridge more than 30 minutes after the time specified in the notice, unless a second two hours notice has been given.

Dated: August 26, 1986.

J.D. Webb,

Captain, U.S. Coast Guard Acting Commander, Second Coast Guard District.

[FR Doc. 86–20480 Filed 9–10–86; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD02 86–02]

Drawbridge Operation Regulations; Tennessee River, TN

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Commander, U.S. Army Engineer District, Nashville, Tennessee, the Coast Guard is changing the regulations governing the Chief John Ross Bridge, mile 464.1, at Chattanooga, TN, and the Southern Railway Bridge, mile 470.7, at Hixon, TN. This change deletes the requirement in the existing regulation that the bridge owner post notices of the regulation at the Nickajack and Watts Bar Locks on the Tennessee River. The majority of vessels transitting these bridges are commercial towboats. Recreational traffic is infrequent. Since both commercial and recreational navigation have publications available to them that provide information on the proper method for effecting drawbridge openings, this action will relieve the bridge owner of obtaining easements or property agreements to construct and maintain signs summarizing the regulation, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, telephone number 314–425–4607.

SUPPLEMENTARY INFORMATION: On March 28, 1986, the Coast Guard published proposed rules (51 FR 10639) concerning this amendment. The Commander, Second Coast Guard District, also published the proposal as a Public Notice dated April 4, 1986. In each notice interested persons were given until May 12, 1986, to submit comments.

Drafting Information

The drafters of these regulations are Roger K. Wiebusch, project officer, and Lieutenant R. E. Kilroy, project attorney.

Discussion of Comments

No comments were received as a result of publication in the **Federal Register**, or in respone to the Public Notice.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This change will not affect the operation of the bridges for vehicular, rail, or river traffic. The majority of vessels transiting these bridges are commercial towboats. Recreational traffic is infrequent. Both commercial and recreational navigation have readily available publications that provide information on the proper method for effecting drawbridge openings. Signs, which summarize the regulation and state the name, address and telephone number of the person to be notified when advance notice is required to open the draw, will be posted upstream and downstream of the bridge. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subject in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.949 is revised to read as follows:

§ 117.949 Cumberland River.

The draws of the Chief John Ross Bridge over the Tennessee River, mile 464.1, at Chattanooga, and the Southern Railway Bridge over the Tennessee River, mile 470.7, at Hixon, Tennessee, shall open on signal when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance beneath the draw is more than 50 feet, at least eight hours notice is required. When the operator of a vessel returning through the draw within four hours informs the drawtender of the probable time of return, the drawtender shall return one half hour before the time specified and promptly open the draw on signal for the vessel without further notice. If the vessel giving notice fails to arrive within one hour after the arrival time specified, whether upbound or downbound, a second eight hours notice is required. Clearance gages of a type acceptable to the Coast Guard shall be installed on both sides of each bridge.

Dated: August 26, 1986.

J.D. Webb,

Captain, U.S. Coast Guard Acting Commander, Second Coast Guard District.

[FR Doc. 86-20479 Filed 9-10-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-383; RM-5016]

Radio Broadcasting Services; Holmes Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 254A to Holmes Beach, Florida, as the community's first FM service at the request of Robert V. Barnes. The spacing requirements for Channel 254A are met based on a construction permit issued to Station WKTK (FM), Crystal River, Florida, and conditioned on Station WKTK receiving a license for the new site. The window period for filing applications on Channel 254A will be announced at a future date following the licensing of Station WKTK. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-383, adopted August 21, 1986, and released September 3, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. In § 73.202(b), the table of allotments is amended by adding Holmes Beach, Channel 254A, under Florida.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-20470 Filed 9-10-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-212]

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Deputy General Counsel the authority to issue cease and desist orders to persons found in violation of the Federal Aviation Act, as amended, and related Departmental regulations.

DATE: The effective date of this amendment is September 11, 1986.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, Office of the General Counsel, Department of Transportation, Washington, DC, (202) 366-9305.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

The Secretary has determined that the authority vested in her by the Federal Aviation Act of 1958, 49 U.S.C. 1301 *et seq.*, to issue appropriate orders, after notice and hearing, to compel persons to comply with Department regulations should be delegated to the Deputy General Counsel. This authority was included in the general delegation to the Assistant Secretary for Policy and International Affairs of the functions transferred to the Department from the Civil Aeronautics Board. The Deputy General Counsel currently has delegated authority to compromise civil penalties, but cannot issue concurrent cease and desist orders. This action will consolidate in the Deputy General Counsel the delegated authority to take action against violators of Departmental regulations.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

Accordingly, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority of Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.57a is revised to read as follows:

§ 1.57a Delegations to the Deputy General Counsel.

The Deputy General Counsel is delegated authority to appear on behalf of the Department on the record in hearing cases, and to initiate and carry out enforcement actions on behalf of the Department, under the authority transferred to the Department from the Civil Aeronautics Board as described in §§ 1.56(i) and 1.61(d) of this title. This includes the authority to compromise penalties under 49 U.S.C. 1471(a)(1); to issue appropriate orders, including cease and desist orders, under 49 U.S.C. 1482(c); to require the production of information and enter carrier property and inspect records under 49 U.S.C. 1377 (a) and (e), and to inquire into the management of the business of a carrier under 49 U.S.C. 1385, as appropriate to these responsibilities. In carrying out these functions, the Deputy General Counsel is not subject to the supervision of the General Counsel.

Issued in Washington, DC, on September 5, 1986.

Jim Burnley,

Acting Secretary.

[FR Doc. 86-20408 Filed 9-10-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is amending certain regulations in 50 CFR Part 32 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges (NWR). Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant such amendments. The modifications will ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

EFFECTIVE DATE: September 11, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy A. Marx, Division of Refuges, Fish and Wildlife Service, 18th and C Streets, NW., Room 2843, Washington, DC 20240; Telephone (202) 343–3922.

SUPPLEMENTARY INFORMATION: 50 CFR Part 32 contains the provisions that govern hunting on NWRs. Hunting is regulated on refuges to: (1) Ensure compatibility with refuge purposes, (2) properly manage the wildlife resources, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is an adequate way of meeting these objectives. On other refuges, it is necessary to supplement State regulations with refuge-specific hunting regulations which will ensure that the Service meets its management responsibilities as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations are issued only after the final publication of the opening of a refuge to migratory game bird, upland game, or big game hunting. These regulations may list the wildlife species that may be hunted, the seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22 and 32.32 respectively.

The Service reviews refuge hunting programs annually to determine if modifications in the regulations governing individual refuge hunts are necessary. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant that refuge-specific hunting regulations be modified, relaxed, or made more stringent. This ensures the continued compatibility of hunting with the purposes for which individual refuges were established and, to the extent practical, makes refuge hunting programs consistent with State regulations. This rule amends and supplements certain refuge-specific regulations in 50 CFR Part 32, §§ 32.12, 32.22, and 32.32, that pertain to migratory game bird, upland game, and big game hunting, respectively. In this rule, swans have been added to the take at Mattamuskeet and Swanquarter NWRs and desert bighorn sheep to Imperial NWR. A non-toxic shot regulation has also been added to several refuges. This final rule was published as a proposal on July 2, 1986, at 51 FR 24179.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, written comments received during the 30-day comment period for the proposed rule are addressed in the following section.

Responses to Comments Received

Written comments were received from one private organization and several Service regional offices in response to the proposed rulemaking. Corrections, deletions and additions have been made in response to comments from the Service's regional offices. Substantive issues raised by the one organization were the same as raised by them on the proposed rule opening seventeen refuges to hunting and/or fishing. In the interest of reducing the paperwork burden of the government, it is suggested that 51 FR 30655 (final rule opening seventeen refuges to hunting and/or fishing) be referenced for Service responses to those issues. Several new issues were presented on this proposed rule on refuge-specific regulations that are addressed below:

Issue: The use of dogs for hunting on Alligator River NWR will adversely impact the reintroduction of red wolves on the refuge.

Service Response: The habits of the red wolf, the topography of Alligator River NWR, an analysis of the hunters who have traditionally hunted the refuge, the use of dogs for hunting and many other factors have been thoroughly studied before reintroduction of the red wolf to the refuge was decided upon. Most of the refuge is inaccessible and what hunting is done usually takes place on the periphery of the refuge where there is expected to be minimal if any wolf activity. The appropriate documentation, evaluations and assessments have been completed and the finding is that hunting with dogs on the refuge "will have no impact" on the continued existence of the red wolf, nor would it adversely affect the success of the reintroduction effort.

Issue: Lack of data supporting the addition of swans to the huntable species at Mattamuskeet and Swanquarter NWRs.

Response: The appropriate documentation has been completed for amending the hunting programs on these refuges and the finding is that the addition of swans to the hunting programs would be compatible with the refuges purposes and objectives.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of NWRs. Specifically, section 4(d)(1)(A) of the Refuge Administration Act authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, and public recreation, accommodations, and access, when he determines that such uses are compatible with the major purposes for which the areas were established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Hunting plans are developed for each hunting program on a refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial compliance with the Refuge Administration and Refuge Recreation

Acts is ensured when the hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Economic Effect

Executive Order (E.O.) 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific hunting regulations would make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB Approval No.
Economic and Public Use Permits	1018-0014

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

It is also the intent of this rulemaking to update obsolete OMB approval numbers cited in § 32.41.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76-59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131). Compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act (16 U.S.C. 1531-1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved.

In view of the rapidly approaching hunting seasons, there is an immediate need to place these regulations into effect. The absence of refuge-specific hunting regulations during the early stages of the hunting seasons would be contrary to the public interest, hunter safety and wildlife conservation. Thus, the Department concludes that good cause exists within the meaning of 5 U.S.C 553(d)(3) of the Administrative Procedure Act to make these regulations effective upon publication in the **Federal Register.**

Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters. This information may also be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1

California, Hawaii, Idaho, Nevada, Oregon and Washington.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232; Telephone (503) 231-6214.

Region 2

Arizona, New Mexico, Oklahoma and Texas.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-1829.

Region 3

Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.

Region 4

Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North and South Carolina, Tennessee, Puerto Rico and the Virgin Islands.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303; Telephone (404) 221-3538.

Region 5

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965-9222.

Region 6

Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236-8145.

Region 7

Alaska (Hunting on Alaska refuges is in accordance with State hunting regulations. There are no refuge-specific hunting regulations for these refuges.).

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3538.

Nancy A. Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary

author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

PART 32—[AMENDED]

Accordingly, Part 32 of Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301, 16 U.S.C. 460k, 664, 668dd, 690d, 715i, 718d, 725, 44 U.S.C. 3501 et seq.

2. Section 32.12 is amended by revising paragraphs (b) introductory text, (b)(2) and (4); adding paragraph (b)(7); redesignating paragraph (c) as (c)(1); revising newly redesignated (c)(1); and adding paragraph (c)(2); redesignating paragraph (d)(1)(v) as (d)(1)(vi); and adding new paragraph (d)(1)(v); adding paragraphs (e)(1)(viii), (e)(3)(viii) and (e)(4)(vii), revising paragraphs (f)(1), (2) introductory text, (3) introductory text and (7) introductory text and (ii); (4)(v), (5)(iv), (6)(vi), (8)(iv), (9)(v), and (12)(iv); redesignating paragraphs (f)(13) through (14) as (f)(14) through (15); adding paragraphs (f)(13) and (15)(vii); revising paragraph (f)(14); revising paragraphs (i)(2)(ii); adding paragraphs (k)(3)(iv) and (v), and (5)(iv); revising paragraph (k)(6) introductory text; revising paragraphs (1)(2)(i), (ii) and (iv); redesignating paragraph (m) as (m)(1), (i), (ii), (iii) and (iv); and revising the paragraph heading of (m) and the introductory text of (m)(1); and adding paragraph (m)(2), adding paragraph (n)(5), redesignating paragraphs (p)(1) and (2) as (p)(2) and (3); and revising newly redesignated paragraphs (p)(2) and (3); and adding paragraph (p)(1); adding paragraph (q)(1)(iv); revising paragraphs (q)(2) (i), (ii), and (iii); revising paragraph (q)(3)(iv); adding paragraph (q)(3)(v); revising paragraphs (v)(2)(iii), (v)(3)(iii), (v)(4)(iii) and (v)(6)(iii); adding paragraphs (x)(1)(iii) and (11); revising paragraphs (x)(10)(y), and (z)(1)(i) and (2); redesignating paragraphs (dd)(1) through (4) as (dd) (2) through (5); and revising newly redesignated paragraphs (dd)(3) and (5); and adding paragraph (dd)(1); adding paragraph (gg)(3)(vii); revising paragraph (hh)(1)(iii); redesignating paragraphs (hh)(2) through (12) as (hh)(3) through (13); and revising newly redesignated paragraphs (hh)(6), (7) and (12); adding paragraphs (hh)(2), (5)(iii), (8)(iv) and (11)(vi); redesignating paragraphs (11)(1) through (3) as (11)(2) through (4); and revising newly redesignated paragraph (11)(2)(ii); adding paragraphs (11)(1), (qq)(1)(iii), (4)(iv), (7)(v) and (8)(v); and revising paragraphs (qq)(2) and (rr)(3) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(b) *Alabama and Georgia-Eufaula National Wildlife Refuge.* Hunting of geese, ducks, coots, mourning doves, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(2) Hunting of Canada geese, ducks and coots is permitted only on Mondays, Wednesdays and Saturdays until noon.

* * * * *

(4) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(7) Canada geese may be harvested only until the refuge harvest quota is reached.

* * * * *

(c) *Arizona*—(1) *Buenos Aires National Wildlife Refuge.* Hunting of geese, ducks, coots and mourning and white-winged doves is permitted on designated areas of the refuge.

(2) *San Bernardino National Wildlife Refuge.* Hunting of mourning and white-winged doves is permitted on designated areas of the refuge.

* * * * *

(d) *Arizona and California*—(1) *Cibola National Wildlife Refuge.* * * *

(v) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(e) *Arkansas*—(1) *Felsenthal National Wildlife Refuge.* * * *

(viii) Hunting of woodcock is permitted beginning with the State season through January 31.

* * * * *

(3) *Overflow National Wildlife Refuge.* * * *

(viii) Hunting of woodcock is permitted beginning with the State season through January 31.

(4) *White River National Wildlife Refuge.* * * *

(vii) Duck and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(f) *California*—(1) *Clear Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Air-thrust and inboard water-thrust boats are not permitted.

(ii) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(2) *Colusa National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(3) *Delevan National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules, and common snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(4) *Kern National Wildlife Refuge.*

* * *

(v) Only nonmotorized boats are permitted.

(5) *Kesterson National Wildlife Refuge.* * * *

(iv) Hunters may not possess more than 25 shells after leaving their assigned parking lot.

* * * * *

(6) *Lower Klamath National Wildlife Refuge.* * * *

(vi) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(7) *Merced National Wildlife Refuge.* Hunting of geese, ducks, coots and gallinules is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) Hunters may not use or possess more than 25 shells per day.

* * * * *

(8) *Modoc National Wildlife Refuge.*

* * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(9) *Sacramento National Wildlife Refuge.* * * *

(v) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(12) *San Luis National Wildlife Refuge.* * * *

(iv) Hunters may not possess more than 25 shells after leaving their assigned parking lot.

(13) *San Pablo Bay National Wildlife Refuge.* Hunting of ducks, geese and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) All personal property, except floating blinds must be removed from the refuge at the end of each hunting day. Floating blinds may be left overnight, but must be removed from the refuge at the end of the waterfowl hunting season.

(ii) The construction and use of permanent blinds is prohibited. Hunters may use portable blinds and temporary or floating blinds constructed primarily of biodegradable materials.

(iii) Blinds may be used by any hunter on a first-come basis each day.

(iv) Digging into levees is prohibited.

(14) *Sutter National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(15) *Tule Lake National Wildlife Refuge.* * * *

(vii) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(i) *Florida*—* * *

(2) *Lower Suwannee National Wildlife Refuge.* * * *

(ii) Hunting of ducks and coots is permitted on the Levy County portion of the refuge.

* * * * *

(k) *Idaho*—* * *

(3) *Deer Flat National Wildlife Refuge.* * * *

(iv) Nonmotorized boats are restricted to the area bounded by the water's edge and extending to a point 200 yards lakeward in hunting area 1 on the Lake Lowell sector.

(v) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(5) *Kootenai National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(6) *Minidoka National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(1) *Illinois*—* * *

(2) *Crab Orchard National Wildlife Refuge.* * * *

(i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greenbriar land areas, plus Orchard, Turkey, Sawmill and Grassy Islands, from sunrise to 12:00 noon each day during the goose season. Goose hunting on these areas, including lake shorelines, is permitted only from existing refuge blinds. Only selected hunters are allowed on the islands during the goose hunting season.

(ii) Goose hunters must use or possess only 15 shells per hunter.

* * * * *

(iv) Only portable or temporary blinds may be used. Blinds may not be located beyond the shoreline of refuge waters.

* * * * *

(m) *Iowa*—(1) *Desoto National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(2) *Union Slough National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(n) *Iowa, Illinois and Missouri—Mark Twain National Wildlife Refuge.* * * *

(5) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(p) *Kansas*—(1) *Flint Hills National Wildlife Refuge.* Hunting of geese, ducks, coots, mourning doves and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(2) *Kirwin National Wildlife Refuge.* Hunting of geese, ducks, coots, mourning doves and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(3) *Quivira National Wildlife Refuge.* Hunting of geese, ducks, coots, rails, mourning doves, common snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(q) *Louisiana*—(1) *Bogue Chitto National Wildlife Refuge.* * * *

(iv) Retrievers are permitted.

(2) *D'Arbonne National Wildlife Refuge.* * * *

(i) Hunting of ducks and coots is permitted until noon each day.

(ii) Boats, decoys and blinds must be removed from the refuge following each day's hunt.

(iii) Hunting is not permitted during the special teal season.

(3) *Delta National Wildlife Refuge.* * * *

(iv) When in season, snipe, rails and gallinules may be taken during the waterfowl hunt.

(v) Retrievers are permitted.

* * * * *

(v) *Mississippi*—* * *

(2) *Hillside National Wildlife Refuge.* * * *

(iii) Duck and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(3) *Mathews Brake National Wildlife Refuge.* * * *

(iii) Duck and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(4) *Morgan Brake National Wildlife Refuge.* * * *

(iii) Duck and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(6) *Panther Swamp National Wildlife Refuge.* * * *

(iii) Duck and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(x) *Montana*—(1) *Benton Lake National Wildlife Refuge.* * * *

(iii) Hunters shall possess and use, while in field, only non-toxic shot.

* * * * *

(10) *Red Rock Lakes National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(11) *Swan River National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot shall possess and use, while in the field, only non-toxic shot.

(y) *Nebraska—Valentine National Wildlife Refuge.* Hunting of mourning doves, geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(z) *Nevada*—(1) *Pahranagat National Wildlife Refuge.* * * *

(i) Permits are required for dove hunting from opening day through the following Monday.

* * * * *

(2) *Ruby Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(dd) *North Carolina*—(1) *Alligator River National Wildlife Refuge.* Hunting of mourning doves, geese, swans, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: The use of hunting dogs is permitted on designated areas of the refuge.

* * * * *

(3) *Mattamuskeet National Wildlife Refuge.* Hunting of swans, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(5) *Swanquarter National Wildlife Refuge.* Hunting of swans, ducks, geese and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(gg) *Oklahoma*—* * *

(3) Tishomingo National Wildlife Refuge. * * *

(vii) Waterfowl hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(hh) *Oregon*—(1) *Ankeny National Wildlife Refuge.* * * *

(iii) Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays.

* * * * *

(2) *Bandon Marsh National Wildlife Refuge.* Hunting of geese, ducks, coots, snipe, doves and pigeons is permitted on designated areas of the refuge.

* * * * *

(5) *Deer Flat National Wildlife Refuge.* * * *

(iii) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(6) *Klamath Forest National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) The use of air-thrust and inboard water-thrust boats is not permitted.

(ii) Waterfowl and coot hunters shall possess and use, while in field, only non-toxic shot.

(7) *Lewis and Clark National Wildlife Refuge.* Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(8) *Lower Klamath National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(11) *Umatilla National Wildlife Refuge.* * * *

(vi) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(12) *Upper Klamath National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) The use of air-thrust and inboard water-thrust boats is not permitted.

(ii) Waterfowl and coot hunter shall possess and use, while in the field, only non-toxic shot.

* * * * *

(11) *Tennessee*—(1) *Chickasaw National Wildlife Refuge.* Hunting of ducks, geese and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of waterfowl is permitted until noon each day.

(ii) Only portable blinds and blinds made of native vegetation are permitted.

(iii) Decoys and blinds must be removed after each day's hunt.

(2) *Cross Creeks National Wildlife Refuge.* * * *

(ii) Hunting is permitted on Saturdays and Sundays beginning with the State December duck season through the last day of the State goose season.

* * * * *

(qq) *Washington*—(1) *Columbia National Wildlife Refuge.* * * *

(iii) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(2) *Columbia White-Tailed Deer National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(4) *McNary National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

* * * * *

(7) *Umatilla National Wildlife Refuge.* * * *

(v) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(8) *Willapa National Wildlife Refuge.* * * *

(v) Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

(rr) *Wisconsin-* * * *

(3) *Trempealeau National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

3. Section 32.22 is amended by revising paragraphs (a)(2)(ii) and (4)(iii); adding paragraphs (a)(4)(v), (b)(3) and (c)(1)(iv) and (v); revising paragraph (c)(2)(i); adding paragraph (c)(2)(iv); revising paragraphs (c)(3), (d)(2)(iii), (d)(3) introductory text and (d)(4)(iii); adding paragraphs (d)(6)(v) and (vi); redesignating paragraphs (e)(8) and (9) as (e)(9) and (10); adding paragraph (e)(8); revising paragraphs (h)(3)(ii), (i)(2) introductory text, (l)(1) and (2), and (q)(1)(ii) and (2); adding paragraphs (q)(1)(iii), (3)(iii) and (6)(iii); revising paragraphs (t), (v)(1)(ii) and (z)(1); adding paragraph (v)(1)(iii); redesignating paragraphs (cc)(1) and (2) as (cc)(2) and (3); and revising newly redesignated (cc)(3)(i) and (iv); adding paragraph (cc)(1); revising paragraphs (hh)(4) introductory text; redesignating paragraphs (jj)(1) through (4) as (jj)(2) through (5); adding paragraph (jj)(1); and revising newly redesignated (jj)(2) and (5) as follows:

§ 32.22 Refuge-specific regulations; upland game.

(a) *Alabama*—* * *

(2) *Choctaw National Wildlife Refuge.* * * *

(ii) Hunting of squirrel and rabbit is permitted during the State season only through December 15.

* * * * *

(4) *Wheeler National Wildlife Refuge.* * * *

(iii) Hunting of raccoon and opossum is permitted during the month of February.

* * * * *

(v) Dogs are permitted for raccoon, opossum and rabbit hunts only.

(b) *Arizona*—* * *

(3) *San Bernardino National Wildlife Refuge.* Hunting of quail and cottontail rabbits is permitted on designated areas of the refuge subject to the following conditions:

(i) Only shotguns are permitted.

(ii) Cottontail rabbit season shall open on September 1 and close on the last day of the State quail season.

(c) *Arizona and California*—(1) *Cibolo National Wildlife Refuge.* * * *

(iv) Hunting is permitted from ½ hour before sunrise to sunset only.

(v) Only shotguns and bows and arrows are permitted.

(2) *Havasu National Wildlife Refuge.* * * *

(i) Hunting of quail is not permitted on Pintail Slough.

* * * * *

(iv) Hunting is permitted from ½ hour before sunrise to sunset only.

(3) *Imperial National Wildlife Refuge.* Hunting of quail, cottontail rabbit, coyote, fox and bobcat is permitted on designated areas of the refuge subject to the following conditions:

(i) Only shotguns and bows and arrows are permitted.

(ii) Hunting of cottontail rabbit is permitted from September 1 through the last day of the State quail season.

(iii) Hunting is permitted from ½ hour before sunrise to sunset only.

(d) *Arkansas*—* * *

(2) *Felsenthal National Wildlife Refuge.* * * *

(iii) Hunting of raccoon and opossum is permitted from December 1–5 and January 26–30, during the hours of darkness only. Daily bag limit for raccoon is two per hunter or four per party per night.

* * * * *

(3) *Holla Bend National Wildlife Refuge.* Hunting of raccoon, opossum, squirrel, rabbit, beaver and coyote is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(4) *Overflow National Wildlife Refuge.* * * *

(iii) Hunting of raccoon and opossum is permitted from December 1–5 and January 26–30 during the hours of darkness only. Daily bag limit for raccoon is 2 per hunter or 4 per party per night.

* * * * *

(6) *White River National Wildlife Refuge.* * * *

(v) Hunters may camp in designated areas.

(vi) Loaded firearms are not permitted within 100 yards of campground.

(e) *California*—* * *

(8) *San Pablo Bay National Wildlife Refuge.* Hunting of pheasants is permitted on designated areas of the refuge.

* * * * *

(h) *Florida*—* * *

(3) *St. Marks National Wildlife Refuge.* * * *

(ii) Hunting is permitted beginning the second Friday in December through the last Sunday in January.

* * * * *

(i) *Georgia*—* * *

(2) *Savannah National Wildlife Refuge.* Hunting of squirrel is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(1) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Hunting is permitted on the Big Timber Division and Turkey and Otter Islands.

(2) Hunting of squirrel is permitted on the Keithburg Division from the opening of the State season until the start of the Illinois waterfowl hunting season. Hunting of squirrel is permitted on the Gardner Division from the opening of the State season through September 30.

* * * * *

(q) *Louisiana*—(1) *Bogue Chitto National Wildlife Refuge.* * * *

(ii) Hunting of raccoon and opossum is permitted beginning the last day of the State deer season to the end of the State trapping season.

(ii) Daily bag limit for raccoon is two per hunter or four per party per night.

(2) *Catahoula National Wildlife Refuge.* Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted from the opening day of the State season through October 31.

(ii) Daily permits are required.

(3) *D'Arbonne National Wildlife Refuge.* * * *

(iii) Daily bag limit for raccoon is two per hunter or four per party per night.

* * * * *

(6) *Upper Quachita National Wildlife Refuge.* * * *

(iii) Daily bag limit for raccoon is two per hunter or four per party per night.

* * * * *

(t) *Michigan-Seney National Wildlife Refuge.* Hunting of grouse and snowshoe hare is permitted on designated areas of the refuge.

* * * * *

(v) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* * * *

(ii) Hunting of raccoon and opossum is permitted beginning on the day after the close of the State gun-deer season through the end of the State season.

(iii) Daily bag limit for raccoon is two per hunter or four per party per night.

* * * * *

(z) *Nevada*—(1) *Pahranagat National Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of jackrabbit is permitted only during the regular State season for cottontail rabbit.

* * * * *

(cc) *North Carolina*—(1) *Alligator River National Wildlife Refuge.* Hunting of squirrel, rabbit, quail, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: The use of hunting dogs is permitted on designated areas of the refuge.

* * * * *

(3) *Pee Dee National Wildlife Refuge.* * * *

(i) Hunting of squirrel is permitted for 14 consecutive days beginning Monday following the third Saturday in November.

* * * * *

(iv) Hunting of raccoon and opossum is permitted the first day of the State season through the third Saturday in November.

* * * * *

(hh) *South Carolina*—* * *

(4) *Savannah National Wildlife Refuge.* Hunting of squirrel is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(jj) *Tennessee*—(1) *Chickasaw National Wildlife Refuge.* Hunting of squirrel, rabbit, quail, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Seasons and bag limits are in accordance with State regulations for the Upper Anderson-Tully Wildlife Management Area.

(ii) Hunting of upland game, except raccoon, is not permitted during firearm deer hunts.

(2) *Cross Creeks National Wildlife Refuge.* Hunting of squirrel is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted during the first 14 days of October.

* * * * *

(5) *Tennessee National Wildlife Refuge.* Hunting of squirrel and raccoon is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of squirrel is permitted during the first four weeks of the State season.

(ii) Hunting of raccoon is permitted during the first 10 days of the State season.

* * * * *

4. Section 32.32 is amended by revising paragraphs (a)(1)(iii), (2)(i) and (ii); adding paragraphs (a)(2)(iv), (v) and (vi); removing paragraph (c)(1)(ii); revising paragraphs (a)(3)(ii) and (iii) and (c)(2); adding paragraphs (d)(1)(iv) and (v); revising paragraphs (d)(2)

introductory text, (d)(2)(ii), and (iv); adding paragraphs (d)(2)(vii) and (viii); revising paragraphs (d)(4) introductory text and (d)(4)(ii); removing paragraphs (d)(4)(iii) and (iv); redesignating paragraphs (d)(4)(v) and (vi) as (d)(4)(iii) and (iv); revising paragraphs (d)(5)(ii), (iii), (v) and (vi) and (h)(3)(ii); adding paragraph (h)(3)(v); revising paragraphs (h)(5)(ii), (iii) and (iv); removing paragraphs (h)(5)(v) and (vi); redesignating paragraphs (h)(5)(vii) through (x) as (h)(5)(v) through (viii); and revising newly redesignated paragraphs (h)(5)(vi) and (vii); revising paragraphs (h)(6)(ii) and (v); adding (h)(6)(ix); redesignating paragraphs (i)(2) through (5) as (i)(3) through (6), adding paragraph (i)(2); adding paragraphs (i)(5)(ix) and (x); revising paragraph (o)(1); revising paragraphs (r)(1) introductory text, (r)(1)(ii) and (iii); revising paragraphs (r)(2)(i), (ii) and (iii); adding paragraphs (r)(2)(iv), (v) and (vi); revising paragraph (r)(3); revising paragraph (r)(4)(i); adding paragraph (r)(5)(iii); revising paragraph (r)(7); adding paragraph (s)(5); revising paragraphs (v)(2) and (3); revising paragraphs (x)(1)(ii) and (iii); adding paragraph (x)(1)(iv); revising paragraphs (x)(2)(ii), (iii), (iv) and (v); revising paragraph (x)(6)(v); adding paragraphs (x)(6)(vi), (vii) and (viii); revising paragraphs (x)(7)(iv) and (v); redesignating paragraphs (ff)(1) through (4) as (ff)(2) through (5); and revising newly redesignated paragraphs (ff)(4)(ii), (iv), (v) and (vi); adding paragraph (ff)(1); redesignating paragraphs (ii)(1) through (5) as (ii)(2) through (6); adding paragraph (ii); revising paragraph (kk)(3)(ii); redesignating paragraphs (mm)(1) through (4) as (mm)(2) through (5); and revising newly redesignated paragraphs (mm)(2)(i) and (ii) and (3)(iii) and (iv); adding paragraphs (mm)(1), (2)(iii), and (3)(v) and (rr)(4)(iv) as follows:

§ 32.32 Refuge-specific regulations; big game.

(a) *Alabama*—(1) *Choctaw National Wildlife Refuge.* * * *

(iii) Hunting is permitted from the opening day of the State season through December 15.

(2) *Eufaula National Wildlife Refuge.* * * *

(i) Permits are required.

(ii) Archery hunting is permitted on the Alabama portion of the refuge during the entire State archery season except during scheduled youth hunts.

* * * * *

(iv) A two-day youth hunt is permitted during the Alabama and Georgia either-sex firearm reason.

(v) Only persons age 16 or younger are permitted to hunt with, carry, handle or discharge a firearm.

(vi) Youth hunters are required to check in and out of the refuge during the youth hunt.

(3) *Wheeler National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted beginning November 1 through the end of the State season.

(iii) Hunting with flintlock firearms is permitted beginning January 16 through the end of the State season.

* * * * *

(c) *Arizona and California*—* * *

(2) *Imperial National Wildlife Refuge.* Hunting of mule deer and desert bighorn sheep is permitted on designated areas of the refuge.

(d) *Arkansas*—(1) *Big Lake National Wildlife Refuge.* * * *

(iv) Hunters must check out of the refuge after each day's hunt.

(v) Only portable deer stands are permitted and must be removed after each day's hunt.

(2) *Felsenthal National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) Archery hunting is permitted only during the months of October and December except by special permit during quota deer gun hunts.

* * * * *

(iv) Modern gun hunting is permitted during the second Friday and Saturday of November and the Friday and Saturday following Thanksgiving.

* * * * *

(vii) Possession of a deer without a valid quota deer hunt permit during the modern gun hunt is prohibited.

(viii) All deer must be checked at designated check stations.

* * * * *

(4) *Overflow National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(ii) Archery hunting is permitted during the months of October and December.

* * * * *

(5) *White river National Wildlife Refuge.* * * *

(ii) Hunters may camp in designated areas only.

(iii) Possessing a loaded firearm within 100 yards of a campground is prohibited.

* * * * *

(v) Muzzleloader hunting is permitted the first two days of the first State muzzleloader deer season.

(vi) Hunting of deer with modern guns is permitted the first three days of the first State deer gun season.

* * * * *

(h) *Florida*—* * *

(3) *Lower Suwannee National Wildlife Refuge.* * * *

(ii) Archery and muzzleloading gun hunting of deer and feral hogs is permitted on the Levy County portion of the refuge in accordance with State seasons.

* * * * *

(v) Modern gun hunting of deer and feral hogs is permitted on the Levy County portion of the refuge beginning the opening day of the general State gun deer season for four consecutive weeks excluding Thanksgiving Day.

* * * * *

(5) *St. Marks National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted for deer (either sex), turkey and hogs for 10 consecutive days beginning the first Friday in October.

(iii) Deer (either sex), turkey and hog hunting using bows and/or muzzleloaders is permitted for three consecutive days beginning the second Friday in November.

(iv) Deer, turkey (bearded only) and hog hunting is permitted for two, three consecutive day hunts beginning the third and fourth Fridays in November.

* * * * *

(vi) A hog-only hunt is permitted for three consecutive days beginning the first Friday in December.

(vii) Hunting of turkey (bearded only) is permitted for 10 consecutive days beginning the fourth Friday in March.

* * * * *

(6) *St. Vincent National Wildlife Refuge.* * * *

(ii) Archery hunting is permitted for three consecutive days beginning on the second Thursday in January.

* * * * *

(iv) A primitive weapons hunt is permitted for three consecutive days beginning on the second Thursday in January.

* * * * *

(ix) Only still and stalk hunting are permitted.

(i) *Georgia*—* * *

(2) *Eufaula National Wildlife Refuge.* Regulations are the same as paragraph (a)(2) of this section.

* * * * *

(5) *Piedmont National Wildlife Refuge.* * * *

(ix) Buckshot is prohibited.
(x) Only persons 12 years of age or older are permitted to hunt.
* * * * *
(o) *Indiana—Muscatatuck National Wildlife Refuge.* * * *
(1) Permits are required during the second State muzzleloader season. Archery hunting is permitted following the second muzzleloader season.
* * * * *
(r) *Louisiana*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of white-tailed deer, turkey and feral hogs is permitted on designated areas of the refuge subject to the following conditions.
* * * * *
(ii) Feral hogs may be taken during all refuge hunts except during the turkey hunt.
(iii) Bucks-only deer gun hunting is permitted on six consecutive days beginning the fourth Saturday of November and seven consecutive days beginning the fourth Saturday in December.
* * * * *
(2) *Catahoula National Wildlife Refuge.* * * *
(i) Daily permits are required.
(ii) Muzzleloader hunting is permitted beginning January 2 through the end of the State muzzleloader season. Bucks only.
(iii) Checking of bagged game at an official check station is required.
(iv) Youth gun hunting is permitted the first and second Saturdays of November. Either sex may be taken.
(v) Only still and stalk hunting are permitted.
(vi) Feral hogs may be taken during all refuge hunts.
(3) *D'Arbonne National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:
(i) Bucks-only deer hunting is permitted during the first seven days of the State season.
(ii) Either-sex deer hunting is permitted the first day Friday and Saturday following Thanksgiving.
(iii) Feral hogs may be taken during any refuge deer hunt.
(4) *Delta National Wildlife Refuge.* * * *
(i) Only still and stalk hunting are permitted.
* * * * *
(5) *Lacassine National Wildlife Refuge.* * * *
(iii) Only portable tree stands may be used and must be removed from the refuge after each day's hunt.
* * * * *
(7) *Upper Ouachita National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:
(i) Bucks-only deer hunting is permitted during the first seven days of the State season.
(ii) Either-sex deer hunting is permitted the first Friday and Saturday following Thanksgiving.
(iii) Feral hogs may be taken during any refuge deer hunt.
(s) *Kentucky and Tennessee*— * * *
(5) Archery hunting is permitted for five consecutive days beginning the third Saturday in October.
* * * * *
(v) *Michigan*— * * *
(2) *Seney National Wildlife Refuge.* Hunting of deer and bear is permitted on designated areas of the refuge subject to the following condition: The use of dogs while bear hunting is not permitted.
(3) *Shiawassee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subjects to the following condition: Permits may be required.
* * * * *
(x) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* * * *
(ii) Bucks-only deer gun hunting is permitted for six consecutive days beginning the fourth Saturday in November and seven consecutive days beginning on the fourth Saturday in December.
(iii) Either-sex deer gun hunting is permitted for three consecutive days beginning the Friday following Thanksgiving.
(iv) A shotgun only turkey hunt is permitted during the State season.
(2) *Hillside National Wildlife Refuge.* * * *
(ii) Checking of bagged game at an official check station is required.
(iii) General gun deer (either sex) hunting is permitted for two consecutive days beginning the third Tuesday in December.
(iv) Only still and stalk hunting are permitted.
(v) Two muzzleloader hunts are permitted beginning the first and second Tuesday of the State season.
* * * * *
(6) *Panther Swamp National Wildlife Refuge.* * * *
(v) General gun deer hunting (either sex) is permitted the first Saturday of the State season and for three consecutive days beginning the third Thursday of the State season.
(iv) An eight consecutive day bucks-only hunt is permitted beginning the second day of the State season.
(vii) A shotgun only turkey hunt is permitted during the State season.
(viii) Checking of bagged game at an official check station is required.
(7) *Yazoo National Wildlife Refuge.* * * *
(iv) Muzzleloader deer hunting is permitted for five consecutive days beginning the second Tuesday in December.
(v) A general gun hunt is permitted the first day of the State's either-sex season.
* * * * *
(ff) *North Carolina*—(1) *Alligator River National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: The use of hunting dogs is permitted on designated areas of the refuge.
* * * * *
(4) *Pee Dee National Wildlife Refuge.* * * *
(ii) Muzzleloader hunting is permitted the Wednesday following the first Saturday in November.
* * * * *
(iv) Archery hunting is permitted during the month of October.
(v) Youth gun hunting is permitted the first Saturday in November. Only persons age 15 or younger are permitted to carry, handle or discharge a firearm.
(vi) Two consecutive day gun hunts are permitted starting the first and second Fridays in November.
* * * * *
(ii) *Oregon*—(1) *Bear Valley National Wildlife Refuge.* Hunting of deer only is permitted on designated areas of the refuge subject to the following conditions:
(i) Hunting opens concurrent with the State season and closes October 31.
(ii) No hunting or public entry of any kind is permitted from November 1 to March 31.
* * * * *
(kk) *South Carolina*— * * *
(3) *Pinckney Island National Wildlife Refuge.* * * *
(ii) Hunting is permitted the third Saturday in November.
* * * * *
(mm) *Tennessee*—(1) *Chickasaw National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:
(i) State permits for the Upper Anderson-Tully Wildlife Management Area are required for the turkey hunt.
(ii) Muzzleloader, gun and archery deer hunting is permitted in accordance with State regulations for the Upper

Anderson-Tully Wildlife Management Area.

(2) *Cross Creeks National Wildlife Refuge.* * * *

(i) Archery hunting is permitted during the last 14 days of the State archery season.

(ii) Tagging and checking of deer at a State check station is required.

(iii) Permits are required.

(3) *Hatchie National Wildlife Refuge.* * * *

(iii) Firearm deer hunting is permitted during two one-day hunts the third and fourth Saturdays in October. One deer, either sex, may be taken.

(iv) Archery hunting is permitted for the first 16 days of the State season. Two deer, either sex, may be taken.

(v) Turkey hunting is permitted during two of the three-day hunts, beginning the second and fourth Fridays of the State season. One bearded turkey may be taken.

* * * * *

(rr) *Washington*— * * *

(4) *Willapa National Wildlife Refuge.* * * *

(iv) Baiting for bear is prohibited.

§ 32.41 [Amended]

5. Section 32.41 is amended by revising the information collection and OMB approval number table to read as follows:

* * * * *

Type of information collection	OMB approval No.
Economic and Public Use Permits	1018–0014

* * * * *

Dated: August 25, 1986.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–20168 Filed 9–10–86; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 36

Kenai National Wildlife Refuge; Resource Protection Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is issuing final regulations for public use and access on the Kenai National Wildlife Refuge (NWR). These rules further define the existing general regulations for the Alaska NWRs and describe the conditions under which public use and recreation, including but not limited to hunting, fishing, trapping, and camping, will be permitted on the refuge. To protect refuge resources, to promote the safety of refuge users, and to more equitably allocate opportunities to enjoy refuge facilites, these refuge-specific regulations are promulgated pursuant to 50 CFR 36.42 (e) and (g).

EFFECTIVE DATE: September 11, 1986.

FOR FURTHER INFORMATION CONTACT: William Knauer at (907) 786–3399; or the Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, Alaska 99669; Telephone (907) 262–7021.

SUPPLEMENTARY INFORMATION: Regulations in this rule supplement and amend the Management Regulations for Alaska National Wildlife Refuges (50 CFR Part 36), published at 46 FR 31827 on June 17, 1981. The rule has been developed in accordance with the public participation and closure procedures for Alaska NWRs described in 50 CFR 36.42. The regulations contained herein supersede the special regulations for Kenai NWR contained in 50 CFR 26.34. Those special regulations were promulgated to protect Alaska refuge resources and to ensure public safety while still allowing traditional activities and recreational use.

Kenai NWR was used by nearly one-half million visitors in 1985, and the number of visitors is increasing. These regulations for access and public use are designed to protect the refuge's fish, wildlife, and habitat resources from the effects of intensive unregulated public use. They will also assist in protecting the health and safety of the many people who use the refuge.

These regulations are consistent with the preferred management alternative in the Kenai NWR Compreshensive Conservation Plan (CCP), for which a Record of Decision was signed on June 27, 1985. A detailed examination of their need is available for review at the refuge headquarters and the regional office (address above). The need for regulations and the appropriateness of these regulations for Kenai NWR will be reviewed on a regular basis and changes will be proposed as necessary both to protect the resources and to reduce any regulatory burden.

Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On March 5, 1986, the proposed rule setting out resource protection regulations for Kenai NWR was published in the **Federal Register** (51 FR 7593), with a 60-day comment period. During that period and after notice in statewide and local newspapers and on local radio, public hearings were held in Soldotna, Homer, and Anchorage, Alaska. The State of Alaska and one other commenter responded that they felt there was inadequate notification of the meetings, so the Service held an additional hearing in Anchorage.

Responses to Comments

During the comment period, 33 letters were received. Substantive comments are outlined and responded to below:

Issue 1: A concern was expressed that there was not adequate notification of the public.

Response: The Service complied with all regulatory requirements for notification of the public; but because of the above concern, an additional public meeting was held in Anchorage. In the future, direct mailings to interested parties will be utilized to ensure widespread notice.

Issue 2: One commenter wished to know why subsistence was not a priority on Kenai NWR.

Response: The Alaska National Interest Lands Conservation Act (ANILCA) of 1980 specifically did not include subsistence as a purpose of Kenai NWR; however, the impact of these regulations on subsistence opportunities was examined in the Environmental Assessment and found to have minimal or no effect on subsistence.

Issue 3: One commenter suggested that pre-ANILCA lands should be treated differently than lands added by ANILCA when regulating access.

Response: ANILCA placed all lands under a single management authority by including them in the Kenai NWR. The regulations on pre-ANILCA lands were promulgated for purposes of resource protection. Since wildlife populations know no boundaries and the habitat conditions on lands added by ANILCA are similar to pre-ANILCA lands, managing the lands separately would not be an effective means of resource protection.

Issue 4: Various commenters felt that the proposed rules were overly restrictive on wheeled-aircraft access or conversely, too liberal. Two commenters thought that wheeled-aircraft access should be allowed on Sheep Creek below Glacier Lake near Dinglestadt Glacier, along Fox River to Chernof Glacier, an area between Tustamena Lake and Glacier, and an area between Skilak Lake and Glacier.

Response: Wheeled-aircraft access on the refuge was prohibited by regulation in 1965; however, there is documented use of wheeled-aircraft along Dinglestadt and Wusnesenski Glacier terminus lakes when these areas were

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under other jurisdictions. Changes opening those two areas have been made in this final rule to continue wheeled-aircraft access. The Service feels, after examination of the potential biological impacts to the resource, that the other restrictions are appropriate.

Issue 5: Various commenters thought additional lakes should be opened for aircraft access.

Response: Those additional lakes were evaluated on an individual basis and Kolomin Lakes will be opened to aircraft access and Swanson, Gene, and Pepper Lakes have been added in this final rule to the list of lakes open to aircraft access for ice fishing. Other areas were not opened due to safety reasons (e.g., too small for aircraft operation).

Issue 6: One commenter argued that the dates for aircraft closure (§ 36.39(i)(1)(ii)) and the dates for motorboat closure § 36.39(i)(2)(ii)) to protect swans should match the dates contained in the Kenai NWR CCP. Another emphasized that the ending date should be September 10 to allow access during moose season.

Response: Research data obtained since the draft CCP was published indicates that the swans are not leaving the lakes until the end of September; nesting lakes are the key to swan survival. Regarding the earlier opening, we examined the impacted lakes and found that all but two are either too small for safe aircraft operation, have an open lake nearby, or are accessible by other means. All lakes, except Windy and Lonesome Lakes, will remain closed until September 30 each year. Windy and Lonesome Lakes will be opened on September 11, because there is no other access nearby.

Issue 7: One commenter pointed out that aircraft access to the Kenai River should be restricted when the river is closed to boat motor use.

Response: Aircraft operations are disruptive to staging swans on the Kenai River as well as a hazard during periods of high boating use. The Service acknowledges this oversight in the proposed rule. Accordingly, the suggested change has been made in this final rule.

Issue 8: One commenter stated that the dates (§ 36.39(i)(2)(ii)) for motorboat closure on the Kenai River should coincide with State closure dates.

Response: The Service agrees with the State's assessment of resource needs justifying the dates for this closure. Therefore, the change has been made in this final rule.

Issue 9: One commenter suggested that since there has been some historic use of the tidal portion of the Chickaloon River that it should remain open to unrestricted motorboat use (section (i)(2)(iv)).

Response: This final rule has been modified to reflect that the Chickaloon River downstream of rivermile 7.5 will remain open.

Issue 10: One commenter felt that the term "nesting" should be removed from those regulations referring to swans.

Response: Service biologists indicate that, on lakes where swans are nesting (which is extremely obvious even to the casual observer), disturbance is detrimental to cygnet survival. Therefore, this suggestion has not been adopted.

Issue 11: One commenter felt that off-road vehicles (ORV) should be permitted on lands added to the refuge by ANILCA. Another felt that the term "non-traditional" was inappropriate when referring to airboats.

Response: ORVs have not been traditionally used by the public for recreational activities on Kenai NWR (even on the new additions) and their use for subsistence purposes was not identified on the ANILCA additions. Access to inholdings is governed by separate regulations in 50 CFR 36.23. With respect to airboats, section 1110(a) of ANILCA and its legislative history indicate that motorboats were the only methods of motorized water transport that were to be given special access to conservation system units. The Service recognizes that the modifier "traditional" in section 1110(a) does not refer to transportation methods but to the activities for which access is given. The Service therefore has revised section (3)(i) of the regulations by rewording the phrase "non-traditional motorized watercraft" to read "motorized watercraft except motorboats."

Issue 12: One commenter suggested deleting section (i)(3)(vii) on snowmobile use for big game hunting/transporting since there were no hunting seasons occurring when snowmobiles could be used.

Response: The Service concurs and this section has been deleted.

Issue 13: One commenter objected to the Caribou Hills area remaining open to snowmobile use (section (i)(4)(ii)).

Response: Currently, there is no caribou use of the area; if at a later date, there is a need to protect reestablished caribou, a restriction will be considered. No changes are being made at this time.

Issue 14: One commenter requested prohibiting hunting and trapping in the Skilak Loop Wildlife Management Area as presented in the Kenai NWR CCP.

Response: These restrictions, if necessary, will be proposed by the State through their regulatory process.

Issue 15: One commenter questioned the ¼ mile restriction (section (i)(5)(i)). Another commenter desired that the word "public" be inserted when referring to facilities and deleting the words "trailheads," "waysides," and "Sterling Highway."

Response: Current regulations do not adequately protect the public from a shooter who is inadvertently or intentionally shooting within close proximity of heavily used public facilities, including the Sterling Highway. The ¼ mile designation is a widely accepted safety standard throughout the country. The ¼ mile designation has been retained from the east refuge boundary to the junction of the Skilak Loop Road (east end). The word "public" has been added. These other areas, most heavily utilized by families, visitors, and the non-hunting public, are extremely unsafe if indiscriminate shooting is allowed. The terms "waysides," "trailheads," and "Sterling Highway" have been left in the regulations.

Issue 16: One commenter argued that the permit requirement found in section (i)(5)(ii) relating to the baiting of black bears should be deleted.

Response: The State currently does not have a system regulating the baiting of black bears. The requirement for a permit is necessary to insure visitor safety on the refuge by preventing baiting in high public use areas and by preventing the proliferation of garbage and litter.

Issue 17: One commenter felt that the restriction on being airborne prior to taking fur animals (section (i)(5)(v)) should be deleted. Another felt it should be expanded to prohibit any use of airplanes in the running of a trapline.

Response: This regulation has been deleted since the State now has a similar regulation in effect.

Issue 19: One commenter questioned the chainsaw restrictions (section (i)(7)(vii)) in wilderness. Another suggested deleting the restriction for ANILCA-added wilderness areas.

Response: ANILCA placed all lands under a single management authority by including them in the Kenai NWR. The wilderness areas on Kenai NWR do not have a history of use of chainsaws for subsistence purposes. The use of chainsaws is permitted on all of the non-wilderness areas on the refuge.

Conformance With Statutory and Regulatory Authorities

Executive Order 8979 of December 16, 1941, originally established the Kenai National Moose Range. ANILCA (16 U.S.C. 3101) redesignated the Moose Range as the Kenal NWR. The purposes of the refuge, outlined as follows, are specified in sections 302 and 303 of ANILCA: (a) Conservation of fish and wildlife populations and habitats; (b) fulfillment of international treaty obligations; (c) protection of water quality and quantity, consistent with (a) above; (d) provision for opportunities for scientific research, interpretation, environmental education and land management training, consistent with (a) and (b) above; and (e) provision for opportunities for fish and wildlife-oriented recreation in a manner compatible with refuge purposes. ANILCA also designated 1.35 million acres or about 69% of the refuge as wilderness, which is managed in accordance with the provisions of the Wilderness Act, the National Wildlife Refuge System Administration Act, and ANILCA.

Section 304 of ANILCA requires the Secretary of the Interior to prescribe such regulations as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska are compatible with the purposes of the refuge.

Section 1110(a) of ANILCA requires the Secretary of the Interior to permit, on Alaska refuges, including designated wilderness areas, the use of airplanes, motorboats, snowmachines and nonmotorized surface transportation for traditional activities and for travel to and from villages. Such use is subject to reasonable regulation to protect the natural and other values of the resources on refuge units.

Restrictions on these modes of access can be imposed only if refuge resources are being detrimentally impacted and if a public hearing is first held in the area in which the restriction would be imposed. The Service believes that unlimited, unrestricted public use would harm the resource values of the refuge as described in the document entitled "Resource Needs for Regulations on Kenai National Wildlife Refuge," which is available from the refuge or regional office (address above). This document also describes in detail the resource impact basis for the access restrictions contained in these regulations, and thus demonstrates the consistency of the regulations with the requirements of section 1110(a).

These regulations have been evaluated as to their impact on subsistence uses as required by section 810 of ANILCA. Public use and access is expected to differ little from that previously allowed. The regulations are consistent with the purposes and intent of section 810 and will result in no significant restrictions on subsistence activities.

Properly regulated public use and access are consistent with and will not interfere with the refuge purposes delineated above, and are thus compatible with the purposes for which the Kenai NWR was established.

Environmental Considerations

The final Environmental Impact Statement for operation of the National Wildlife Refuge System (FES 76-59) was filed with the Council on Environmental Quality on November 12, 1976. A notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131).

An Environmental Assessment and Finding of No Significant Impact for proposed interim regulations for Alaska National Wildlife Refuges was approved on May 13, 1981. The final regulations have essentially left unchanged the level of use previously permitted. An Environmental Impact Statement on the management of Kenai NWR was completed in April 1985 and a Record of Decision was signed on June 27, 1985. The final regulations conform with that Record of Decision.

In view of the rapidly approaching hunting seasons, there is an immediate need to place these regulations into effect. These regulations were promulgated to give needed protection to refuge resource values and to permit equal opportunity for the public to enjoy the same. To delay the effective date of these regulations would cause greater adverse impacts to the resources and would not be in the best interest of the Service or the public. Thus the Department concludes that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to make these regulations effective upon publication in the **Federal Register.**

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires each information collection requirement to display an Office of Management and Budget (OMB) clearance number and contain a statement to inform the person receiving the request why the information is being collected, how it will be used, and whether a response is voluntary, mandatory, or required to obtain a benefit. The Service has received approval from OMB for the information collection requirements of these regulations under the approval number 1018-0014. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities requiring that public uses be compatible with the primary purposes for which the areas were established. The information collection is necessary for the refuge manager to issue permits and a response is required to obtain permitted benefits.

Economic Effects

Executive Order 12291, "Federal Regulations," of February 19, 1981, requires the preparation of a regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organization or governmental jurisdictions.

The Department of the Interior had determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This rule is expected to cost the National Wildlife Refuge System less than $15,000 annually for permit processing and is expected to cost the users of refuge resources who need permits less than $8,000 annually ($15 estimated individual cost for time and information to develop a permit application).

Unregulated public use would ultimately result in the termination of many recreational activities on the refuge because of damage to refuge resources. Regulating public use as detailed in this document will allow recreational activities to continue, having a minor positive secondary effect on sporting goods stores, restaurants, hotels, motels, and inns. The regulations will impose no costs on small entities. The exact number of business and the amount of trade that will result from implementing these regulations is unknown. The aggregate effect is a

positive economic effect on a number of small entities. The number of small entities affected is unknown; however, the positive effects will be seasonal in nature and will, in most cases, merely continue existing uses of refuge areas. The impacts will not be significant.

William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, National Wildlife Refuge System, Public land—mineral resources, Public lands—rights-of-way, Recreation, Traffic regulations, Wildlife refuges.

For the reasons set out in the preamble, Part 36, Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

PART 36—[AMENDED]

1. The authority citation for Part 36 is revised to read as follows:

Authority: 16 U.S.C. 460k et seq., 668dd et seq., 742(a) et seq., 3101 et seq.; 44 U.S.C. 3501 eq seq.

2. Subpart E—Permits and Public Participation, consisting of §§ 36.41 and 36.42, is redesignated as Subpart F and the heading is revised to read as follows:

Subpart F—Permits and Public Participation and Closure Procedures

3. A new Subpart E consisting of § 36.39 is added to read as follows:

Subpart E—Refuge Specific Regulations

§ 36.39 Public use.

(a) *General.* Public use of Alaska National Wildlife Refuges (NWR) is permitted subject to all other parts of 50 CFR Part 36, those sections of 50 CFR Subchapter C not supplemented by Part 36, and the following refuge-specific requirements:

(b)-(h) (Reserved).

(i) *Kenai National Wildlife Refuge*—(1) *Aircraft.* (i) The operation of aircraft on the Kenai NWR, except in an emergency, is permitted only as authorized in designated areas as described below. These areas are also depicted on a map available from the Refuge Manager.

(A) Within the Canoe Lakes, Andy Simons, and Mystery Creek units of the Kenai Wilderness, only the following lakes are designated for airplane operations:

Canoe Lakes Unit

Bedlam Lake
Bird Lake
Cook Lake
Grouse Lake
King Lake
Mull Lake
Nekutak Lake
Norak Lake
Sandpiper Lake
Scenic Lake
Shoepac Lake
Snowshoe Lake
Taiga Lake
Tangerra Lake
Vogel Lake
Wilderness Lake

Pepper, Gene, and Swanson Lakes are only open for sport ice fishing.

Andy Simons Unit

Emerald Lake
Green Lake
Harvey Lake
High Lake
Iceberg Lake
Kolomin Lakes
Lower Russian Lake
Martin Lake
Pothole Lake
Twin Lakes
Upper Russian Lake
Windy Lake
Dinglestadt Glacier terminus lake
Wusnesenski Glacier terminus lake

Tustumena Lake and all wilderness lakes within one mile of the shoreline of Tustumena Lake.

All unnamed lakes in sections 1 & 2, T. 1 S., R. 10 W., and sections 4, 5, 8, & 9, T. 1 S., R. 9 W., S.M., AK.

Mystery Creek Unit

An unnamed lake in section 11, T. 6 N., R. 5 W., S.M., AK.

(B) Airplanes may operate on all lakes outside the Kenai Wilderness, except those lakes with recreational developments, including, but not limited to, campgrounds, campsites, and public hiking trails connected to road waysides. The non-wilderness lakes closed to aircraft operations are as follows:

North of Starling Highway

Afonasi Lake
Anertz Lake
Breeze Lake
Cashka Lake
Dabbler Lake
Dolly Varden Lake
Forest Lake
Imeri Lake
Lili Lake
Mosquito Lake
Rainbow Lake
Silver Lake
Upper Jean Lake
Watson Lake
Weed Lake
West Lake

All lakes in the Skilak Loop Area (South of Sterling Highway and North of Skilak Lake) are closed to aircraft except that airplanes may land on Bottenintnin Lake, which is open year-around and Hidden Lake, which is only open for sport ice fishing.

South of Sterling Highway

Headquarters Lake is restricted to administrative use only.

(ii) Notwithstanding any other provision of these regulations, the operation of aircraft is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present, except Windy and Lonesome Lakes where the closure is between May 1 and September 10 inclusive.

(iii) The operation of wheeled aircraft, at the pilot's own risk, is only authorized on the unmaintained Big Indian Creek Airstrip, on gravel areas within ½ mile of Wusnesenski Glacier terminus lake, and within the SE¼, section 16 and SW¼, section 15, T. 4 S., R. 8 W., Seward Meridian.

(iv) Unlicensed aircraft are permitted to operate on the refuge only as authorized by a special use permit from the Refuge Manager.

(v) Airplanes may operate only within designated areas on the Chickaloon Flats, as depicted on a map available from the Refuge Manager.

(vi) Airplane operation is permitted on the Kasilof River, the Chickaloon River outlet, and the Kenai River below Skilak Lake from June 15 through March 14. All other rivers on the refuge are closed to aircraft.

(2) *Motorboats.* Motorboats are authorized on all waters of the refuge except under the following conditions and within the following areas:

(i) Motorboats are not authorized on lakes within the Canoe Lakes Unit of the Kenai Wilderness, except those lakes designated for airplane operations as described on a map available from the Refuge Manager. Boat motor use is not authorized on those portions of the Moose and Swanson Rivers within the Canoe Lakes Unit of the Kenai Wilderness.

(ii) That section of the Kenai River from the outlet of Skilak Lake downstream for three miles is closed to motorboat use between March 15 and June 14, inclusive. However, any boat having a motor attached may drift or row through this section provided the motor is not operating.

(iii) That section of the Kenai River from the powerline crossing located approximately one mile below the

confluence of the Russian and Kenai Rivers downstream to Skilak Lake is closed to motorboats. However, any boat having a motor attached may drift or row through this section provided the motor is not operating.

(iv) Motors in excess of 10 horsepower are not authorized on the Moose, Swanson, Funny, Chickaloon (upstream of river mile 7.5), Killey, and Fox Rivers.

(v) A "no-wake" restriction applies to Engineer, Upper and Lower Ohmer, Bottenintnin, Upper and Lower Jean, Kelly, Petersen, Watson, Imeri, Afonasi, Dolly Varden, and Rainbow Lakes.

(vi) Notwithstanding any other provision of these regulations, operation of a motorboat is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present, except Windy and Lonesome Lakes where the closure is between May 1 and September 10, inclusive.

(3) *Off-Road Vehicles.* (i) The use of air cushion, airboat, or other motorized watercraft, except motorboats, is not allowed on the Kenai NWR, except as authorized by a special use permit from the Refuge Manager.

(ii) Off-road vehicle use, including operation on lake and river ice, is not permitted. Licensed highway vehicles are permitted on Hidden, Engineer, Kelly, Petersen, and Watson Lakes for ice fishing purposes only, and must enter and exit lakes via existing boat ramps.

(4) *Snowmobiles.* Operation of snowmobiles is authorized on the Kenai NWR subject to the following conditions and exceptions:

(i) Snowmobiles are permitted between December 1 and April 30 only when the Refuge Manager determines that there is adequate snowcover to protect underlying vegetation and soils. During this time, the Refuge Manager will authorize, through public notice, the use of snowmobiles less than 46 inches in width and less than 1,000 pounds (450 kg) in weight. Designated snowmobile areas are described on a map available from the Refuge Manager.

(ii) All areas above timberline, except Caribou Hills, are closed to snowmobile use.

(iii) The area within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., S.M., AK., east of the Sterling Highway right-of-way, including the refuge headquarters complex, the environmental education/cross-country ski trails, Headquarters and Nordic lakes, and the area north of the east fork of Slikok Creek and northwest of a prominent seismic trail to Funny River Road, is closed to snowmobile use.

(iv) An area, including the Swanson River Canoe Route and portages, beginning at the Paddle Lake parking area, then west and north along the Canoe Lakes wilderness boundary to the Swanson River, continuing northeast along the river to Wild Lake Creek, then east to the west shore of Shoepac Lake, south to the east shore of Angler Lake, and west to the beginning point near Paddle Lake, is closed to snowmobile use.

(v) An area, including the Swan Lake Canoe Route, and several road-connected public recreational lakes, bounded on the west by the Swanson River Road, on the north by the Swan Lake Road, on the east from a point at the east end of Swan Lake Road south to the west bank of the Moose River, and on the south by the refuge boundary, is closed to snowmobile use.

(vi) Within the Skilak Loop Special Management Area, snowmobiles are prohibited, except on Hidden, Kelly, Petersen and Engineer lakes for ice fishing access only. Upper and Lower Skilak Lake campground boat launches may be used as access points for snowmobile use on Skilak Lake.

(vii) Snowmobiles may not be used on maintained roads within the refuge. Snowmobiles may cross a maintained road after stopping and when traffic on the roadway allows safe snowmobile crossing.

(viii) Snowmobiles may not be used for racing or for the harassment of wildlife.

(5) *Hunting and Trapping.* (i) Firearms may not be discharged within ¼ mile of designated public campgrounds, trailheads, waysides, buildings or the Sterling Highway from the east refuge boundary to the east junction of the Skilak Loop Road.

(ii) A special use permit, available from the Refuge Manager, is required prior to baiting black bears.

(iii) Hunting with the aid or use of a dog for taking big game is permitted only for black bear, and then only under the terms of a special use permit from the Refuge Manager.

(iv) Hunting and trapping within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., S.M., AK., encompassing the Kenai NWR headquarters/visitor center and associated environmental education trails, are prohibited. The boundary of these administrative and environmental education areas is depicted on a map available from the Refuge Manager.

(6) *Fishing.* Fishing is prohibited June 1 to August 15, on the south bank of the Kenai River from the Kenai-Russian River Ferry dock to a point 100 feet downstream.

(7) *Other Public Uses.* (i) Camping is permitted on the Kenai NWR subject to the following restrictions:

(A) Camping may not exceed 14 days in any 30 day period anywhere on the refuge.

(B) Campers may not spend more than two consecutive days at the Kenai-Russian River access area, more than seven consecutive days at Hidden Lake Campground, or more than seven consecutive days in refuge shelters.

(C) Within developed campgrounds, camping is permitted only in designated areas and open fires are permitted only in Service-provided fire grates or portable, self-contained, metal fire grills.

(D) No camping is permitted within ¼ mile of the Sterling Highway, Ski Hill or Skilak Loop roads, except in designated campgrounds.

(E) Campers may cut only dead and down timber for campfire use.

(F) Pets in developed campgrounds are permited only on a leash no longer than nine feet.

(ii) Removal of timber, including the cutting of firewood for home use, is permitted only as authorized by a special use permit from the Refuge Manager.

(iii) Leaving personal property unattended longer than 72 hours is authorized only in designated areas or as authorized by a special use permit from the Refuge Manager.

(iv) Rock outcrop islands in Skilak Lake used by nesting cormorants and gulls and the adjacent waters within 100 yards are closed to public entry and use from March 15 to September 30. Maps showing these areas are available from the Refuge Manager.

(v) All radio transmitters, neck and leg bands, ear tags, or other research marking devices recovered from wildlife shall be turned in to the Refuge Manager or the Alaska Department of Fish and Game within five days after recovery.

(vi) Use of non-motorized wheeled vehicles is permitted only on refuge roads designated for public vehicular access.

(vii) The use of motorized equipment, including but not limited to, chainsaws, generators, and auxiliary power units, is not permitted within the Kenai Wilderness, except snowmobiles, airplanes, and motorboats in designated areas.

(viii) All canoeists on the Swanson River and Swan Lake Canoe Routes must register at entrance points. Maximum group size is 15 persons.

Dated: August 28, 1986.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-20448 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 60598-6098]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: The Secretary of Commerce extends an emergency rule amending regulations implementing the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) in effect through September 2, 1986. This extension is necessary to provide continued interim protection for crab species identified in the emergency rule. The emergency rule (1) prohibits domestic and foreign trawl fishing in a specified area of the Bering Sea, (2) establishes prohibited species catch (PSC) limits for two species of crab, and (3) provides for closing certain fisheries when the PSC limits are reached. This action is intended as a conservation measure based on the best available biological and socioeconomic information on the status of the groundfish fishery.

EFFECTIVE DATE: September 3, 1986, through December 2, 1986.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Resource Management Specialist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: Under section 305(e) of the Magnuson Fishery Conservation and Management Act, the Secretary issued an emergency rule effective on June 3, 1986 (51 FR 20652, June 6, 1986), to protect certain depleted crab stocks. The reasons for these actions, which are discussed in the preamble to the emergency rule, still continue and are not repeated here. When the North Pacific Fishery Management Council originally recommended the emergency rule to the Secretary, it also recommended extension beyond the initial ninety-day period so that the maximum conservation benefits of the emergency rule would accrue during the 1986 fishing season.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Office of Management and Budget, with an explanation of why it is not possible to follow procedures of that Order.

(16 U.S.C. 1801 *et seq.*)

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

Dated: September 5, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20434 Filed 9-8-86; 11:25 am]

BILLING CODE 3510-22-M

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50 CFR Part 662

[Docket No. 60731-6162]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final harvest quotas.

SUMMARY: NOAA issues this notice announcing the final determination of estimated spawning biomass and harvest quotas for the northern anchovy fishery in the fishery conservation zone (FCZ) for the 1986-1987 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. This action is intended to notify users of the final harvest quotas and to promote orderly management of the fishery.

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Craig, Fishery Biologist, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, 213-514-6662.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the Southwest Fisheries Center, NMFS, the Director, Southwest Region, NMFS (Regional Director) made preliminary determinations of the spawning biomass of the central subpopulation of northern anchovy *(Engraulis mordax)* and harvest quotas and special allocations for the 1986-87 anchovy fishing season. These preliminary determinations were announced in the **Federal Register** on July 23, 1986 (51 FR 26440). Regulations at § 662.20 require the publication of final determinations of harvest quotas by notice in the **Federal Register** on or about August 1 of each year. Regulations at 50 CFR 611.20(c) require that the estimated total allowable level of foreign fishing (TALFF) for this fishery also be published at the beginning of the fishing year.

The preliminary determinations were discussed and agreed to at public meetings of the Pacific Fishery Management Council (Council) on July 9, 1986, in Portland, Oregon. Public comment was invited in the announcement and at the Council meeting; no public comments were received. A more recent estimate of anchovy landings in Mexico has been published since the preliminary determinations were announced. These Mexican landings for 1985 increase the estimate of that country's excess catch of 56,900 metric tons (mt). This results in reducing TALFF from the 100,300 mt announced in the notice of preliminary determinations to 82,300 mt.

The Regional Director has made the following final determinations of harvest quotas for the 1986-87 fishing season, based on an estimated spawning biomass of 770,000 mt and applying the formulas in the FMP and in § 662.20 to calculate the harvest quotas, special allocations, and expected processing levels.

1. The total U.S. harvest quota of optimum yield (OY) is 144,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 140,000 mt.

a. Of the total reduction harvest quota, 9,072 mt is reserved for the reduction fishery in subarea A (north of Pt. Buchon). The maximum reduction fishery in subarea A is the total reduction quota minus the amount taken in subarea B.

b. The reduction quota for subarea B (south of Pt. Buchon) is 130,928 mt. The reduction fishery in subarea B may be limited to less than this amount if more than 9,072 mt is taken in subarea A.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and direct human consumption) is 4,900 mt. However, non-reduction fishing is not limited until the total catch in the reduction and non-reduction fisheries reaches the total harvest quota of 144,900 mt.

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing (DAP) capacity for the reduction and non-reduction industry is 5,700 mt.

6. The domestic annual harvest (DAH) capacity for the reduction fishery is 5,700 mt.

7. The amount allocated to joint venture processing is zero because there is no history of, nor are there applications for, joint ventures.

8. The total allowable level of foreign fishing is 82,300 mt. The FMP states that TALFF in the FCZ will be based upon the U.S. portion of the OY minus the DAH and minus that amount of expected harvest in the Mexican fishery zone which is in excess of that allocated by the FMP. The current value of DAH combined with the estimated excess harvest in the Mexican fishery (56,900 mt) is less than the U.S. OY, resulting in this TALFF.

Other Matters

This action is taken under the authority of 50 CFR Parts 662 and 611.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR 662

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: September 5, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20435 Filed 9-10-86; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 176
Thursday, September 11, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

Powers Inconsistent With Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Extension of deadline for consideration, adoption, and publication of final rule.

SUMMARY: This notice serves to extend the period of time which the FDIC may use under its internal policy statement for the consideration, adoption, and publication of the FDIC's final rule on participation by insured banks in real estate development and insurance underwriting activities.

DATE: The deadline for final agency action on the proposed rule is extended to March 15, 1987.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Senior Attorney, Legal Division, (202) 898–3743, or Robert E. Feldman, Senior Attorney, Legal Division, (202) 898–3743, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC's Statement of Policy on Development and Review of Rules and Regulations (44 FR 31007 (1979)) states that it is the intention of the FDIC formally to withdraw any proposed regulations on which final action by the Board of Directors has not been taken within nine months from the date the regulation was last published for comment. The FDIC published on June 7, 1985, a proposed amendment to Part 332 of FDIC's regulations governing "Powers Inconsistent with the Purposes of Federal Deposit Insurance." (50 FR 23964 (June 7, 1985)). The proposed amendment would, among other things, prohibit insured banks, subject to certain exceptions, from directly engaging in real estate development and insurance underwriting activities and establish certain restrictions on the indirect conduct of such activities.

Pursuant to the FDIC's policy, final action on this proposed regulation should have been taken by March 7, 1986, in order to avoid withdrawal of the proposed rule. Inasmuch as FDIC staff was actively reviewing the June 7, 1985, proposal in the spring of this year and due to the then-recent appointments of two members of the FDIC's three member Board of Directors, the Board of Directors determined that additional time was necessary for the staff to complete its review and for the Board of Directors to familiarize itself with the subject matter dealt with by the proposal. As withdrawing the proposal and initiating the rulemaking process anew would have caused unnecessary delay, the Board of Directors determined to extend the deadline for final agency action on the proposed regulation to September 8, 1986. (51 FR 7077 (Feb. 28, 1986)).

At present, staff still requires additional time to evaluate the voluminous public record established throughout the course of this rulemaking. Further, additional time is warranted to allow the FDIC and the Board of Governors of the Federal Reserve System to attempt to coordinate the final action taken in this rulemaking with any final action taken by the Board of Governors in conjunction with its solicitation of public comment on real estate activities of bank holding companies and their subsidiaries. (*See* 50 FR 4519 (1985)). Therefore, the Board of Directors has determined to extend the deadline for final action on the proposed regulation until March 15, 1987, by publication of this notice.

By order of the Board of Directors.

Dated at Washington, DC, this 8th day of September, 1986.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–20475 File 9–10–86; 8:45 am]
BILLING CODE 6714–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Public Comment and Opportunity for Public Hearing of a Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments pertain to remining and reclamation of previously affected areas and are intended to implement the provision of Kentucky Senate Bill No. 374 which was approved by OSMRE on July 18, 1986 (51 FR 26002). The proposed rules are also intended to address the requirement at 30 CFR 917.16(c)(2) that prior to implementation of Senate Bill 374, Kentucky must submit to the Director and obtain his approval of, regulatory amendments to implement the bill.

This notice sets forth the times and location that the Kentucky program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before October 14, 1986 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on October 6, 1986, beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

ADDRESSES: Written comments should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE Offices and the Office of State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 L Street, NW., Washington, DC 20240.

Bureau of Surface Mining Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington, Kentucky Field Office, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue of the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background of the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiences. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice. Subsequent action concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16 and 917.17.

III. Submission of Program Amendments

On July 29, 1986, Kentucky submitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program. The revisions are intended to implement Kentucky Senate Bill No. 374 which was approved by the Director, OSMRE, on July 18, 1986 (51 FR 26002). The proposed rules are also intended to address the requirement at 30 CFR 917.16(c)(2) which states that Kentucky is required, prior to implementation of Senate Bill 374, to submit to the Director proposed regulations to implement the bill and to receive the Director's approval of the regulations.

The revisions modify sections of the Kentucky Administrative Regulations (KAR) at 405 KAR 16:070, 405 KAR 18:070, 405 KAR 8:060 and 405 KAR 20:090 as summarized briefly below.

1. Kentucky proposes to amend 405 KAR 16:070 and 18:070, water quality standards and effluent limitations for surface mines and underground mines, respectively. Kentucy proposes to add paragraph (f)2 to section 1(1) of these rules to exempt sediment pond effluents from U.S. Environmental Protection Agency (EPA) effluent limitations in 40 CFR 434, under certain circumstances. Kentucky proposes to add paragraph (g)2 to section 1(1) concerning discharges of water from areas disturbed by mining activities which contain preexisting pollutional water discharges.

2. Kentucky proposes to add a new regulation 405 KAR 8:060, to set forth permit application requirements for secondary coal recovery operations. The rule would include sections for applicability (all applications for permits to conduct secondary coal recovery operations); definitions; general provisions; legal, financial and compliance information; environmental resources information; maps, drawings and cross-sections; mining and reclamation plan; and performance bond. A secondary coal recovery operation would be defined as an activity "in which coal is extracted from abandoned coal refuse piles, coal slurry ponds, or other abandoned materials containing coal which is not in its original geologic locations; and the washing, crushing; screening, or other chemical or physical processing of such coal."

3. Kentucky proposes to add a new regulation, 405 KAR 20:090, to establish performance standards to apply to all secondary coal recovery operations. The applicability section of the rule proposes that requirements of 405 KAR Chapters 16, 18 and 20 (the approved program performance standards for surface mines, underground mines and special categories) would not apply to such secondary coal recovery operations except as specifically stated in the rule. The rule would establish separate hydrologic protection requirements, requirements for backfilling and grading and revegetation standards for secondary coal recovery operations.

Therefore, the Director, OSMRE, is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issues of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and Regulatory review by OMB.

The Department of the Interior has determined that this rule would not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 4, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-20482 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 948

Extension of Deadlines for the West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and hearing on a request from the State of West Virginia to extend the deadlines for submission of a number of required amendments to its permanent regulatory program (hereinafter referred to as the West Virginia program). This notice sets forth the times and locations that the West Virginia program and request for extension are available for public inspection, the comment period during which interested persons may submit written comments on the proposed extensions, and the procedures that will be followed regarding the public hearing, if requested.

DATES: Written comments relating to the proposed extensions must be received on or before 4:00 p.m. on October 14, 1986, to be considered. A public hearing on the proposal will be held upon request on October 1, 1986. Any person interested in making an oral or written presentation at the hearing should contact Mr. James C. Blankenship, Jr. at the OSMRE Charleston Field Office by the close of business on or before September 26, 1986. If no one has contacted Mr. Blankenship to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Blankenship, a public meeting, rather than a hearing, may be held and the results of the meeting included in the West Virginia administrative record.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the extension request (Administrative Record No. WV 709), the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed program amendments by contacting the OSMRE Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Office of Surface Mining Reclamation and Enforcement, 1000 L Street, NW., Room 5315, Washington, DC 20240, Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-4004

West Virginia Department of Energy, 1615 Washington Street, East, Charleston, West Virginia 25305, Telephone: (304) 348-3287.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On March 3, 1980, West Virginia submitted its proposed permanent regulatory program, which the Secretary of the Interior disapproved on October 22, 1980, following a review in accordance with 30 CFR Part 732 (45 FR 69249-69271). On December 19, 1980, West Virginia resubmitted its proposed program, which the Secretary approved on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program, can be found in the January 21, 1981 **Federal Register** (46 FR 5915-5956). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 948.11, 948.12, 948.13, 948.15 and 948.16.

II. Submission of Extension Request

The July 11, 1985 **Federal Register** contained two notices announcing the approval, with certain exceptions, of two sets of program amendments submitted by West Virginia (50 FR 28316-28342). In his decision concerning the West Virginia Energy Act, the Director required that, no later than March 15, 1986, West Virginia submit copies of statutory revisions to correct or otherwise eliminate nine grammatical, codification and reference citation errors, as listed at 30 CFR 948.16(c).

In his decision concerning the second amendment package, which contained revised regulations and associated materials, the Secretary removed nine conditions of program approval and revised the six remaining conditions as codified at 30 CFR 948.11(a)(1), (8), (19),

(38), (39) and (41). As revised, the conditions require that, by January 11, 1986, West Virginia submit additional proposed amendments to correct deficiencies concerning stability analyses for coal mine waste piles, inspection requirements for coal mine waste piles, inspection requirements for coal mine waste disposal areas, compliance information requirements for permit applications, critical habitats of threatened and endangered species with respect to coal exploration permit applications, revegetation success standards and evaluation techniques, and the issuance of show cause orders for patterns of violations.

By letter of November 5, 1985, West Virginia submitted draft proposed changes designed to address these conditions and required amendments as well as certain provisions of the amendments originally found inconsistent with Federal requirements (Administrative Record No. WV 705). By letter of December 10, 1985, OSMRE notified the State that, while the proposed changes themselves appeared to be acceptable, additional materials were needed to fully satisfy all outstanding concerns (Administrative Record No. WV 706). On February 10, 1986, West Virginia notified OSMRE that because of legislative scheduling problems, it would be unable to meet the January 11, 1986 deadline for addressing the conditions and that it would probably be unable to meet the March 15, 1986 deadline for the required statutory amendments (Administrative Record No. WV 707). The letter further stated that, if the legislature failed to act on the proposed regulatory changes, emergency regulations would be filed to address the conditions.

On March 15, 1986, the 1986 session of the legislature adjourned without acting upon the proposed amendments. On May 27, 1986, OSMRE requested that the State proceed with promulgation of emergency regulations and supply a new schedule for final resolution of all requirements. On June 30, 1986, West Virginia responded that the legislature had revised the procedures and restricted the cricumstances under which emergency regulations could be filed, and that it did not believe the current situation justified an emergency filing (Administrative Record No. WV 709). Furthermore, the letter stated a desire to address those issues as part of the regulatory reform review process, rather than submitting them to the legislature as an amendment package separate from the changes which will be needed as a result of that process. To provide adequate time for preparation and consideration by the 1987 session of the legislature, West Virginia requested that the submission deadlines for both the conditions and the required amendments be extended until April 15, 1987.

In consideration of the legislative schedule and the State requirement for legislative approval of all permanent regulations, and in the interest of consolidation of the rulemaking process, the Secretary is proposing to grant the State's request. In accordance with the provisions of 30 CFR 732.17, he is now seeking comment on this proposed extension.

III. Additional Determinations

1. Compliance with the National Environmental Policy Act:

The Secretary has determined that pursuant to section 702(d) SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this section is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 4, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-20483 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD02 85-27]

Drawbridge Operation Regulations; Black River and Ouachita River, LA

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of rulemaking.

SUMMARY: The Coast Guard is withdrawing a proposed rule to change the regulations governing the operation of the following 3 bridges:

(1) The swing span bridge over the Black River, Mile 40.9, on U.S. 84 at Jonesville, Concordia Parish;

(2) The swing span bridge over Ouachita River, Mile 57.5, on Louisiana 8 at Harrisonburg, Catahoula Parish;

(3) The lift span bridge over the Ouachita River, Mile 110.1, on U.S. 165 at Columbia, Caldwell Parish.

At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard was considering a change that would have required the draws of the 3 bridges to open after receipt of at least 4 hours advance notice. These bridges are presently required to open at all times after receipt of at least one hour's advance notice. The change was requested because of a decrease in bridge openings during the period 1980 through 1984. The proposal is being withdrawn because public comments indicated that the change would not serve the needs of existing and prospective navigation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 425-4607.

SUPPLEMENTARY INFORMATION: On August 5, 1985, the Coast Guard published a Notice of Proposed Rulemaking (50 FR 31627) to revise these regulations. The Commander, Second Coast Guard District also published the proposal in a Public Notice dated August 7, 1985. In each notice interested parties were given until 19 September 1985 to submit comments.

Drafting Information

The drafters of this withdrawal notice are Roger K. Wiebusch, project officer, and Lieutenant R.E. Kilroy, project attorney.

Discussion of Comments

There were no responses to the **Federal Register** publication. Thirteen (13) firms or community organizations

responded to the Public Notice. One company offered no objection; the remaining firms and organizations opposed the change due to lack of adequate communications capabilities, difficulty in estimating arrival times, and the potential for restricting economic development of communities dependent on river transportation for shipping regional commodities. After reviewing these comments, LDOTD has decided not to pursue its proposal to change the operation regulations for the 3 bridges at Jonesville, Harrisonburg, and Columbia, Louisiana.

List of Subjects in 33 CFR Part 117

Bridges.

Accordingly, the proposed rule published in the **Federal Register** (50 FR 31627) on August 5, 1985, is hereby withdrawn.

Dated: August 26, 1986.

J.D. Webb,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 86-20477 Filed 9-10-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-353, RM-5486]

Radio Broadcasting Services; Hardin, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by California Broadcast Group, proposing the substitution of FM Class C Channel 238 for Channel 237A at Hardin, Montana, and modification of the license for Station KATM(FM) at Hardin to specify the higher class of channel. This proposal could provide a first wide coverage area station to Hardin.

DATES: Comments must be filed on or before October 27, 1986, and reply comments on or before November 12, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant as follows: Michael J. Wilhelm, Verner, Liipfert, Bernhard, McPherson and Hand, Chartered; 1660 L Street NW., Suite 1000, Washington, DC 20036 (Counsel to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-353, adopted August 14, 1986, and released September 3, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86-20471 Filed 9-10-86; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 542

General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) which would revise Part 542 to add Subpart 542.70 to provide guidance to contracting officers on dealing with situations where a contractor is experiencing financial difficulty, has filed for bankruptcy, or is dissolving its business. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due in writing on or before October 14, 1986.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to: Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW, Room 4026, Washington, DC. 20405, (202) 523-3822.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Spagnola, jr., Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW, Room 4031, Washington, DC 20405, (202) 523-4768.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The proposed rule simply elaborates on existing regulations to provide additional guidance to GSA contracting officers on handling situations where a contractor is experiencing financial difficulty, has filed for bankruptcy, or is dissolving its business. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Part 542

Government procurement.

Dated: September 4, 1986.

Ida M. Ustad,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 86-20501 Filed 9-10-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation Concerning Management and Operating Contracts

AGENCY: Office of the Secretary, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy Acquisition Regulation (DEAR) in order to describe the contractor employee travel expense

limitations that will apply to DOE's management and operating (M&O) contracts as established for Federal executive agency contractors under the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (Pub. L. 99–234).

DATE: Written comments should be submitted no later than October 14, 1986.

ADDRESS: Comments should be addressed to: U.S. Department of Energy, Rudolph J. Schuhbauer, Business and Financial Policy Branch (MA–421.2), 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Rudolph J. Schuhbauer, Business and Financial Policy, Branch (MA–421.2), Procurement and Assistance Management Directorate, Washington, DC 20585, (202)252–8173.

Paul Sherry, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, Washington, DC 20585, (202)252–1526.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background.
II. Procedural requirements.
A. Review under Executive Order 12291.
B. Review under the Regulatory Flexibility Act.
C. Paperwork Reduction Act.
D. National Environmental Policy Act.
E. Public Hearing.
III. Public Comments.

I. Background

Under Section 644 of the Department of Energy) Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

Title II, Section 201 of the Federal Civilian Employee and Contractor Travel Expense Act of 1985, hereafter referred to as the "Act," specified ". . . costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by Subchapter I of Chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter." To implement these requirements the Federal Acquisition Regulation (FAR) Council amended the FAR cost principles applicable to commercial organizations; i.e., FAR 31.205–46, Travel costs (51 FR 27488, 7–31–86).

The revisions being proposed today by DOE would, when issued as a final rule, apply the provisions of the Act to DOE's M&O contractors. DOE's proposed cost principle amendment to DEAR 970.3102–17, Travel costs, states that payments for lodging, meals, and incidental expenses incurred by M&O contractor personnel while performing contract requirements shall be considered to be reasonable and allowable contract cost to the extent that they do not exceed the maximum per diem rate limitations set forth in the (1) Federal Travel Regulations, (2) Joint Travel Regulations, or (3) Standardized Regulations (Government Civilians, Foreign Areas). DOE's proposed revision also provides for special or unusual situations where actual costs in excess of the maximum per diem limits, as authorized for Federal civilian employees, may be allowed under M&O contracts. Advance agreements regarding the M&O contractor's implementation of the required travel cost limitations are also provided for in this proposed rule.

The proposed amendments to the clauses cited at DEAR 970.5204.13, Allowable cost and fixed-fee (CPFF management and operating contracts), and DEAR 970.5204–14, Allowable cost and fixed fee (support contracts), provide that payments to M&O contractor employees for lodging, meals and incidental expenses shall be reasonable and allowable contract cost to the extent they do not exceed the rates and amounts established for Federal employees.

The proposed amendments will become effective upon publication of the final rule in the **Federal Register.**

II. Procedural Requirements

A. Review Under Executive Order 12291

The Executive order, entitled "Federal Regulations," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring prior review under the bulletin and is accordingly exempt from such review.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

This proposed rule may impose some additional recordkeeping requirements. Since the information collected moves directly from the contractor to the General Services Administration (GSA), responsibility for recordkeeping and paperwork burden remains with GSA. DOE has requested an OMB control number from GSA.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432, *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on September 4, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 970—MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

2. Subsection 970.3102-17(c) is proposed to be added as follows:

970.3102-17 Travel costs.

* * * * *

(c) *Lodging, meals and incidental expenses.* (1) Costs for lodging, meals, and incidental expenses incurred by management and operating (M&O) contractor personnel traveling on official business in the performance of contract work are allowable costs but subject to the limitations set forth in this subsection. Payments for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable cost to DOE.

(2) Except as provided in paragraph (c)(3) of this subsection, M&O contractor payments for lodging, meals, and incidental expenses (as defined in the regulations cited in paragraphs (c)(2) (i) through (iii) of this subsection shall be considered to be reasonable and allowable cost only to the extent that they do not exceed, on a daily basis, the maximum per diem rates in effect at the time of travel as set forth in the:

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States;

(ii) Joint Travel Regulations, Volume 2, DOD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in paragraphs (c)(2) (i) and (ii) of this subsection.

(3) In special or unusual situations, M&O contractor personnel may be paid for actual expenses in excess of the above-referenced maximum per diem rates provided such payments do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in paragraph (c)(2) (i), (ii) or (iii) of this subsection and all of the following conditions are met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in paragraph (c)(2) (i), (ii) or (iii) of this subsection exist.

(ii) A written justification for payment of the higher amounts is approved by an officer or appropriate official of the M&O contractor's organization.

(iii) Documentation exists to support the payment of actual expenses incurred and each employee expenditure in excess of $25.00 is supported by a receipt. The approved justification required by paragraph (c)(3)(ii) of this subsection and, if applicable, DOE advance approvals required under paragraph (c)(5) of this subsection must also be retained.

(4) Paragraphs (c)(2) and (c)(3) of this section do not incorporate the regulations cited in paragraphs (c)(2) (i), (ii) and (iii) of this subsection in their entirety. Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates and the definitions of lodging, meals and incidental expenses are to be applied to M&O contractors.

(5) An advance agreement with respect to compliance with paragraphs (c)(2) and (c)(3) of this subsection will be established in the personnel appendix of the M&O contract. The M&O contractor shall also be required to obtain advance approval from DOE, if it becomes necessary for the contractor to exercise the authority to make payments based on the higher actual expense method repetitively or on a continuing basis in a particular area. It is not intended that individual contractor authorizations to pay actual expenses in excess of applicable maximum per diem rates be approved in advance by DOE. Such before the fact case-by-case approvals should only be invoked when the M&O contractor does not have acceptable travel cost policies, procedures or practices in effect.

3. In subsection 970.5204-13 the clause is proposed to be amended by adding new subparagraph (e)(35) to read as follows:

970.5204-13 Allowable costs and fixed-fee (CPFF management and operating contracts).

* * * * *

(e) * * *

(35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

4. In subsection 970.5204-14 the clause is proposed to be amended by adding new subparagraph (e)(33) to read as follows:

970.5204-14 Allowable costs and fixed-fee (support contracts).

* * * * *

(e) * * *

(33) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however; such payments must be properly authorized by an officer or appropriate official of the contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

[FR Doc. 86-20433 Filed 9-10-86; 8:45 am]

BILLING CODE 6450-01-M

Notices

Federal Register
Vol. 51, No. 176
Thursday, September 11, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1986 Crop Soybeans

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Preliminary Determinations with respect to 1986 Crop Soybeans.

SUMMARY: The purpose of this notice is to announce that the preliminary level of price support for the 1986 soybean crop is $4.77 per bushel and that marketing loans will not be made with respect to such crop. These determinations are made pursuant to section 201(i) of the Agricultural Act of 1949, as amended (the "1949 Act").

EFFECTIVE DATE: August 29, 1986.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Analysis Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202)447–4417.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated "not major." It was designated "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

Section 1017 of the Food Security Act of 1985 provides that the Secretary of Agriculture shall determine the loan and purchase levels for any of the 1986 through 1990 crops without regard to the requirements for notice and public participation. Accordingly, public comments are not requested.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice or proposed rulemaking with respect to the subject matter of this notice. A preliminary impact analysis has been prepared and is available from the above named individual.

Section 201(i)(1)(A) of the 1949 Act provides that the price of soybeans for each of the 1986 through 1990 marketing years shall be supported through loans and purchases. Section 201(i)(1)(D) provides that the support price for the 1986 and 1987 crops of soybeans shall be $5.02 per bushel. However, if the Secretary of Agriculture determines in accordance with section 201(i)(2) that the level of loans or purchases determined for a marketing year would discourage the exportation of soybeans and cause excessive stocks of soybeans in the United States, the Secretary may reduce the loan and purchase level for soybeans by the amount the Secretary determines necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 5 percent in any year nor below $4.50 per bushel. Any reduction made in accordance with section 201(i)(2) in the loan and purchase level for soybeans shall not be considered in determining the loan and purchase level for soybeans for subsequent years.

Section 201(i)(5) of the 1949 Act provides that the Secretary shall make a preliminary announcement of the level of price support for a crop of soybeans not earlier than 30 days prior to September 1, the beginning of the soybean marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available on prices for the five years preceding the beginning of the marketing year for which the level of support is determined. The final level of the price support must be announced no later than October 1 of the marketing year to which the announcement is applicable. The final level of support cannot be less than that of the preliminary announcement.

Ending stocks of soybeans for the 1985–86 marketing year are expected to be approximately 515 million bushels, an amount considered to be excessive. Maintaining the price level for the 1986 crop of soybeans at $5.02 per bushel would likely result in ending stocks of approximately 535 million bushels for the 1986–1987 marketing year since such a level would discourage the exportation of soybeans and, to a lesser degree, result in lower domestic use of soybeans. Based upon 1986 estimated production of soybeans, it is estimated that a $4.77 per bushel price support level would result in ending stocks of approximately 515 million bushels for the 1986–1987 marketing year. As compared to a $5.02 per bushel price support level, a $4.77 per bushel price support level would increase the export of soybeans about 2 percent and also increase slightly the domestic use of soybeans. The price support level for the 1986 crop of corn has been established at $1.92 per bushel. Establishing a 1986 soybean price support level of $5.02 per bushel, based upon a $1.92 per bushel price support level for corn, would result in an adverse distortion of the historical corn/soybean price relationship and result in an adverse impact on the use of soybeans. However, a 1986 soybean price support level of $4.77 per bushel would better maintain this normal corn/soybean price relationship. Accordingly, the preliminary 1986-crop soybean price support level is reduced to $4.77 per bushel, which is 5 percent less than the price support level of $5.02 per bushel which was established for the 1985 crop of soybeans.

Section 201(i)(3) of the 1949 Act provides that, if the Secretary determines that such action will assist in maintaining the competitive relationship of soybeans in domestic and export markets after taking into consideration the cost of producing soybeans, supply and demand conditions, and world prices for soybeans, the Secretary may permit a producer to repay a loan for a crop at a level that is the lesser of (1) the

announced loan level for such crop or (2) the prevailing world market price for soybeans, as determined by the Secretary. If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation (1) a formula to define the prevailing world market price for soybeans and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for soybeans.

Assuming a marketing loan repayment rate of $4.00 per bushel, implementation of a marketing loan for the 1986 crop of soybeans would possibly increase exports of soybeans approximately 5–7 percent and increase domestic use approximately 2–3 percent. The cost of implementing a marketing loan with a $5.02 per bushel price support level and loan repayment level of $4.00 is estimated to be about $1.0–$1.1 billion greater than if a marketing loan is not implemented. With a $4.77 per bushel price support level and a loan repayment level of $4.00, a marketing loan would increase program costs about $800–$900 million. By establishing a price support rate at $4.77 per bushel for the 1986 crop of soybeans, ending stocks of soybeans are not expected to increase since domestic and export use are expected to increase. Accordingly, it has been determined that a marketing loan for the 1986 crop of soybeans is not necessary to maintain the competitive relationship of soybeans in domestic and export markets.

Section 1009(a) of the Food Security Act of 1985 provides that whenever the Secretary determines that an action authorized by section 1009 (c), (d) or (e) will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small and medium sized producers participating in such programs, the Secretary shall take such action with respect to that commodity program. These actions include: (1) The commercial purchases of commodities by the Secretary; (2) the settlement of nonrecourse loans at an amount less than the total of the principal loan amount and accumulated interest, but not less than the principal amount, if such action will result in: (A) Receipt of a portion rather than none of the accumulated interest, (B) avoidance of default of the loan, and (C) elimination of storage, handling and carrying charges on the forfeited loan collateral; and (3) the reopening of a production control or loan program established for a crop at any time prior to harvest of such crop for the purpose of accepting bids from producers for the coversion of acreage planted to a program crop to diverted acreage in return for in-kind payments if the Secretary has determined that: (1) Changes in domestic or world supply or demand conditions have substantially changed after announcement of the program for that crop and (2) without action to further adjust production, the Federal Government and producers will be faced with a burdensome and costly surplus. Such payments are not subject to the maximum payment limitation provision of section 1001 of the Food Security Act of 1985 but are limited to $20,000 per year per producer for any one commodity.

Determination

A. Loan and Purchase Level

The preliminary price support level for the 1986 crop of soybeans is $4.77 per bushel.

B. Marketing Loan

A marketing loan will not be implemented with respect to the 1986 crop of soybeans.

C. Cost of Reduction Options

The decision to implement any cost reduction option will be made at a later date.

Sec. 201 of the Agricultural Act of 1949, as amended, 63 Stat. 1052, as amended (7 U.S.C. 1446(i))

Signed at Washington, DC, on September 4, 1986.

Richard E. Lyng,

Secretary.

[FR Doc. 86–20438 Filed 9–10–86; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Mono Basin National Forest Scenic Area; Proposed Minor Boundary Revisions

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed boundary revisions.

SUMMARY: The Forest Service proposea six minor revisions in the boundary of the Mono National Forest Scenic Area. To comply with direction contained in Section 301 of the California Wilderness Act of 1984 which established the Scenic Area, notice of the proposed changes is being published in the **Federal Register**. In some proposed revisions, additional land will be included within the Scenic Areas. In others, land will be excluded. The net effect of the proposals will be to add approximately 909 acres to the Scenic Area.

DATE: Comments must be received by October 14, 1986.

ADDRESS: Send written comments to John W. Ruopp (2370), Recreation Staff Officer, Inyo National Forest, 873 N. Main Street, Bishop, CA 93514. The public may inspect comments received on this proposed action in the office of the Recreation Planner, Recreation Staff, Forest Supervisors Office, 873 North Main, Bishop, California, between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nancy Upham, Scenic Area Manager, Lee Vining, CA (619) 647–6525, or Dick Warren, Recreation Planner, Bishop, CA. (619) 873–5841.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the California Wilderness Act of 1984 (98 Stat. 1632) establishing the Mono Basin National Forest Scenic Area, the Forest Service proposes minor revisions in the boundary of the Scenic Area as it was originally shown on a map dated June, 1983. The revisions, as proposed, will clarify boundary descriptions. All the proposals have been reviewed and recommended by the Scenic Area Advisory Board. Involved property owners have been notified of the proposals. Maps showing the proposed revisions are available at the office of the Forest Supervisor, 873 N. Main, Bishop, California, and at the office of the District Ranger, Mono Lake Ranger District, Lee Vining, California.

All Descriptions Are For The Mount Diablo Base Meridian.

Revision 1

New Description

T. 2 N., R. 25 E.

Sec. 13—NE¼Ne¼; that portion of the NW¼NE¼ lying south of the northernmost edge of the right-of-way for the Lundy Lake Road (right-of-way S 038388, 200 feet from centerline on public lands); SE¼NE¼, SW¼NE¼ except that portion of Lot 12 as shown on the Final Parcel Map numbered 34–3 and as recorded beginning on page 57 of Parcel Map Book No. 2, County of Mono, and as shown on Exhibit C dated August 20, 1986, on file at the Forest Supervisor Office, 873 N. Main, Bishop, CA, and at the District Ranger Office, Lee Vining, CA; that portion of the NE¼NW¼ lying south of the northern most edge of the right-of-way for the Lundy Lake Road and lying east of the easterly line of Lot 12 (said line having a bearing of N 26 degrees, 13 minutes, 9 seconds W as recorded above; SE¼NW¼, except Lots 9, 10, 11, 12 of Parcel 34–3 as recorded above and as shown on Exhibit C; SE¼; SW¼, except Lots 5,8,7,8 of Parcel 34–3 as recorded above and shown on Exhibit C.

Delete previous references to T2N R25E Sec 14 as it is now outside the Scenic Area.

Reason for Revision

This revision deletes private land which is not necessary to maintain the integrity of the Scenic Area. The exclusion is approximately 53 acres.

Revision 2

New Description

T. 2 N., R. 26 E.

Sec. 18—NE¼NE¼, S½NW¼NE¼, S½NE¼; S½N½ of Lot 1 and S½ of Lot 1 in the NW¼, S½N½ of Lot 2 and S½ of Lot 2 in the NW¼; Lots 1 and 2 of the SW¼; SE¼.

Reason for Revision

This revision includes provate lands at the request of the owner. This parcel should logically be within the Scenic Area. The revision adds approximately 160 acres to the Scenic Area.

Revision 3

New Description

T. 3 N., R. 26 E.

Sec. 19—W½E½; W½ partly unsurveyed.
Sec. 30—all.
Sec. 31—all.
Sec. 32—W½NW¼; SW¼.

T. 3 N., R. 27 E.

Sec. 13—that portion lying south of the northernmost edge of right-of-way S 038388 (California State Highway 167, 200' from centerline).
Sec. 23—that portion lying south of the northernmost edge of right-of-way S 038388 (California State Highway 167, 200' from centerline).
Sec. 23—that portion lying south of the northernmost edge of right-of-way S 038388 (California State Highway 167, 200' from centerline).

Reason for Revision

The revision is to clarify the description of portions of the eastern boundary of the Scenic Area as originally shown. The original boundary follows a dirt road that is inaccurately shown on maps. This road also has a tendency to change location depending on weather factors. The new boundary will be a fixed location, easily marked and shown on maps. The included lands are public lands administered by the Bureau of Land Management. This inclusion adds approximately 981 acres to the Scenic Area.

Revision 4

New Description

T. 3 N., R. 26 E.

Sec. 36—That portion lying south of the northern most edge of right-of-way S 038388 (California State Highway 167), except that portion of the SE¼SE¼NE¼ actually occupied by a structure and a 10 foot wide driveway, and that portion of the SW¼SE¼NE¼ and the NW¼SE¼NE¼ actually occupied by a 10 foot wide driveway, all as shown by Exhibit A dated April 24, 1986, on file at the Forest Supervisor Office, 873 N. Main, Bishop, CA and at the District Ranger Office, Lee Vining, CA.

Reason for Revision

The revision is at the request of the property owner and will exclude the improvements located there. The exclusion will delete approximately 0.40 acres from the Scenic Area.

Revision 5

New Description

T. 1 N., R. 25 E.

Sec. 1—that portion of the NE¼ lying northeast of a line drawn from the SE corner of the SW¼NE¼ to an unnamed peak approximately 9760 feet in evaluation located on or near the N/S quarter line of Sec. 1; that portion of the NW¼ lying northeast of a line drawn from the unnamed peak approximately 9760 feet in elevation to an unnamed peak marked "9804" located in T2N R25E Sec. 36; S½SW¼; NE¼SE¼, SW¼SE¼.

T. 25 E.

Sec. 36—N½; that portion of the SW¼ lying northeast of a line drawn from the unnamed peak approximately 9760 feet in evaluation in T1N R25E Sec. 1 to the unnamed peak marked "9804" in T2N R25E Sec. 36, and that portion of the SW¼ lying north of the line drawn westerly from the unnamed peak marked "9804" to the point of intersection with section line between Sec. 35 and Sec. 36 in T2N R25E; SE¼.

Reason for Revision

This revision is at the request of the Boy Scouts of America. The new boundary will make allow a feasible development of the patented claims originally excluded from the Scenic Area. This revision will delete approximately 238 acres from the Scenic Area. It has been determined that the revision will not be detrimental to the integrity of the Scenic Area.

Revision 6

New Description

T. 1 N., R. 26 E.

Section 8—That portion of the NE¼ lying east of the western most edge of right-of-way S030385 U.S. Highway 395) and lying north of the extended northerly property line of the Lee Vining High School site as described below and as shown on Exhibit B.

Section 9—NE¼NW¼, NW¼NW¼ except that portion occupied by the Lee Vining High School as shown on the Record of Survey filed in Mono County Book 6 of maps, page 51; that portion of SW¼NW¼ lying north of the Lee Vining High School site as described above, all as shown on Exhibit B, dated April 24, 1986, on file at the Forest Supervisor Office, 873 N. Main, Bishop, CA and at the District Ranger Office, Lee Vining, CA.

Reason for Revision

The revision is necessary to include the location of the proposed Mono Basin National Forest Scenic Area visitor center, authorized by the Act. The land is owned by the City of Los Angeles, Department of Water and Power. The inclusion adds approximately 104 acres to the Scenic Area.

Dated: September 3, 1986.

Dennis W. Martin,

Forest Supervisor.

[FR Doc. 86-20502 Filed 9-10-86; 8:45 am]

BILLING CODE 3410-11-M

Vegetation Management Program in the Southern Region; Intent To Prepare Three Environmental Impact Statements

The Department of Agriculture, Forest Service, will prepare three Environmental Impact Statements (EISs) for proposed vegetation management programs in three areas of the Southern Region: Appalachian Mountains, Ozark and Ouachita Mountains, and Coastal Plains/Piedmont. These documents will cover National Forest System lands within the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and a portion of West Virginia.

The analyses for the EISs will consider a range of alternative Vegetative Management Programs. The alternatives will identify the methods to be used in treating the vegetation and the activities that involve vegetation management. Methods under consideration include herbicide application, mechanical and manual techniques, and prescribed burning. Activities that involve treatment of vegetation include site preparation for natural and artificial reforestation, conifer and hardwood release, pre-harvest treatment for oak regeneration, wildlife habitat improvement, right-of-way maintenance (roads, trails, utilities and railroads), and recreation site maintenance. These activities are performed by USDA Forest Service personnel, cooperators, and contractors.

Federal, State and local agencies, any affected Indian tribes, and other individuals or organizations who may be interested in or affected by the decision will be invited by letter to participate in the process. Other interested publics may send comments as indicated below. No formal hearings or public meetings

are planned at this time. The process for each of the three areas will include:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the Regional and local issues to be considered and analyzed.
3. Determining the disciplines needed on the interdisciplinary team.
4. Focusing on social, physical, and biological issues for each EIS.
5. Identifying cooperating agencies.
6. Identifying groups or individuals interested or affected by the decisions.

John E. Alcock, Regional Forester, Southern Region, Atlanta, Georgia is the responsible official.

The analyses for, and preparation of all three EISs are expected to take about 24 months. The Draft EIS on the Appalachian Forests should be available for public review by July 1987 with the Final EIS scheduled to be completed by January 1988.

The Draft EIS for the Ozark/Ouachita should be available for public review by October 1987, with the Final EIS scheduled to be completed by April 1988. The Draft EIS for the Coastal Plains/Piedmont should be available for public review by February 1988 with the Final EIS scheduled to be completed by September 1988.

Written comments and suggestions concerning the analyses, the EISs, or EIS process should be sent to Regional Forester, Southern Region, 1720 Peachtree Rd. NW., Atlanta, Georgia 30367.

Questions about the proposed actions and EISs should be directed to Stephen McCorquodale, Vegetation Management EIS Team Leader, Southern Region, phone (404) 347–7930.

Dated: August 29, 1986.

John E. Alcock,

Regional Forester, Region 8.

[FR Doc. 86–20410 Filed 9–10–86; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Anaconda Erosion Control and Stabilization RC&D Measure Plan, MT

AGENCY: Soil Consevation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Anaconda Erosion Control and Stabilization RC&D Measure Plan, Anaconda-Deer Lodge, Montana.

FOR FURTHER INFORMATION CONTACT: Glen H. Loomis, State Conservationist, Soil Conservation Service, 10 East Babcock, Bozeman, Montana 59715, telephone (406) 587–6813.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of thsee findings, Glen H. Loomis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for critical area treatment. The planned works of improvement include seeding grasses and shrubs on 135 acres of critical eroding area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Wallace A. Jolly.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: September 2, 1986.

Glen H. Loomis,

State Conservationist.

[FR Doc. 86–20505 Filed 9–10–86; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Short Supply Review on Certain Historic Telephone Boxes; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain historic telephone boxes.

EFFECTIVE DATE: Comments must be submitted no later than 10 days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a short supply request for certain telephone boxes with significant cultural, historical, and aesthetic value for use as ornaments in private homes and commercial establishments. The boxes are of the classic style used in the United Kingdom.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of

Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 9, 1986.

[FR Doc. 86-20632 Filed 9-10-86; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-848,175
Flange Interlock Building System
SN 6-861,770
Accoustical Detection of Hidden Insects
SN 6-878,047
Method and Apparatus for Placement of Fertilizer Below Seed with Minimum Soil Disturbance
SN 6-878,106
Process for Crossdyeing Cellulosic Fabrics

Department of Commerce

SN 6-838,748
Micromanipulator System
SN 6-851,607
Fibrous Monolithic Ceramic and Method for Production
SN 6-868,483
Acoustic Evaluation of Thermal Insulation
SN 6-868,485
Split Rail Parallel Gripper

Department of Health and Human Services

SN 6-496,275 (4,588,993)
Broadband Isotropic Probe System for Simultaneous Measurement of Complex E- and H-Fields
SN 6-850,120
Method of Sensing Fluid Properties Independent of Bubble Concentrations
SN 6-857,831
Differential Conductivity Detector for Ion Chromatography
SN 6-874,633
Biologically Pure, Prohormone Converting Enzyme and Synthesis of Peptide Hormones
SN 6-874,637
Novel Method of Preparing Toxoid

Department of the Interior

SN 6-636,765 (4,588,565)
Separation of Lithium Chloride from Impurities
SN 6-669,151 (4,592,515)
Soil Pulverizing Mill
SN 6-693,510 (4,598,588)
Detached Rock Evaluation Device
SN 6-756,535 (4,596,151)
Biaxial Pressure Sensor

Department of the Air Force

SN 6-477,998 (4,591,977)
Plurality of Processors Where Access to the Common Memory Requires Only a Single Clock Interval
SN 6-505,165 (4,591,976)
Multiple Task Oriented Processor
SN 6-607,089
Piezoelectric Material Testing Method and Apparatus
SN 6-693,399
Vacuum Pump Oil Recovery Process
SN 6-696,298 (4,587,805)
Electro-Optical Control of Solid Fuel Rocket Burn Rate
SN 6-734,299 (4,590,304)
Protected Ethynylated Phenols
SN 6-742,826
Digital Phase Meter Apparatus
SN 6-747,743
Prism Holder
SN 6-753,504
Stepless Pulse Count Switching
SN 6-758,926
Method for Refining Microstructures of Prealloyed Titanium Powder Compacted Articles
SN 6-758,929
Method for Refining Microstructures of Titanium Alloy Castings
SN 6-765,764
A Unique Signal, Safe and Arm Device
SN 6-801,341
Shock Absorbing Device with Integral Pressure Relief Valve
SN 6-801,348
Rapid Sythesis of Indium Phosphide
SN 6-824,994
Multi-Element Adaptive Antenna Array
SN 6-831,886
Improved Anti-G Suit
SN 6-831,901
Rapid Acting Electro-Pneumatic Anti-G Suit Control Valve
SN 6-835,923
Unique Mechanization to Fault Isolate Failures of an Electron Tube Radio Frequency (RF) Amplifier and its High Voltage Power Supply
SN 6-844,636
Super Gripper Variable Vane Arm
SN 6-844,637
Ni-Co Alloy Plaque for Cathode of Ni-Cd Battery
SN 6-846,691
Thermal Vacuum Heater Array Apparatus
SN 6-849,991
Interrupt Control Switch Interface System
SN 6-852,587
Method of Fabricating High Efficiency Binary Planar Optical Elements
SN 6-852,597
Process for Carbon-Carbon Composite Fabrication
SN 6-852,683
Metal Thickness Measurements Using Radiography
SN 6-852,698
Aryloxy-2,6-Naphthalicdiacid Compositions and Products Produced Thereby
SN 6-853,827
Multichannel Phase Noise Measurement System
SN 6-854,234
Mutli Use Gripper for Industrial Robot
SN 6-855,047
Cryogenic Wound Rotor for Lightweight, High Voltage Generators
SN 6-855,243
Sliding Duct Seal
SN 6-856,248
Light Socket Removal Tool
SN 6-856,544
Automated Tape Laying Machine for Composite Structures
SN 6-856,907
Real Time Data Reduction System Standard Interface Unit
SN 6-860,357
Co-Pyrolysis Process for Forming Carbonized Composite Bodies
SN 6-861,905
Improved Vane Platform Sealing and Retention Means
SN 6-861,908
Self-Locking Outer Air Seal with Full Backside Cooling
SN 6-861,909
Turbine Air Seal with Full Backside Cooling
SN 6-864,221
TDD Antenna—Foil Formed, Substrate Loaded Laser Welded Assembly
SN 6-864,222
In-Line Determination of Presence of

Liquid Phase Moisture in Sealed IC Packages
SN 6-867,652
Spacecraft Subsystem Support Structure
SN 6-867,727
Low Temperature Formation of Mullite
SN 6-870,045
High Frequency, High Voltage Mosfet Isolation Amplifier
SN 6-870,047
Optical Gaussian Convolvers
SN 6-870,048
Nonlinear Optical Apparatus Using Optical Fibers
SN 6-870,552
Method and Apparatus for Increasing Service Life of Augmentor and Combustion Chamber Liners
SN 6-870,562
Reflector Antenna Having Sidelobe Nulling Assembly

Department of the Army

SN 6-477,479 (4,590,166)
Method for Separating and Measuring the Amount of Polar Compounds and Their Metabolites in Aqueous Solutions
SN 6-571,766 (4,595,287)
Doppler Effect Laser Velocity Measuring System
SN 6-699,140 (4,080,942)
Metering Fuel by Compressibility
SN 6-856,263
Beam Steering Mirror Construction
SN 6-859,283
Temperature and Frequency Compensated Array Beam Steering Unit
SN 6-861,462
Confinement of kOe MagneticFields to Very Small Areas in Miniature Devices
SN 6-861,463
Sampling and Recording Dose Rate Meter
SN 6-861,464
Confinement of Longitudinal, Axially Symmetric, Magnetic Fields to Annular Regions with Permanent Magnets
SN 6-863,759
Apparatus for the Detection of Angles-of-Arrival of Radio Frequency Signals
SN 6-864,638
Cylindrical Laser Welder
SN 6-868,862
Parametric Linear Variation of a Leakage Free Permanent Magnet Field Source
SN 6-868,863
A Leakage-Free, Linearily Varying Axial Permanent Magnet Field Source

Tennessee Valley Authority

SN 6-769,095 (4,587,358)
Production of High-Strength, Storage-Stable Particulate Urea

[FR Doc. 86-20498 Filed 9-10-86; 8:45 am]
BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Australian Dollar

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in the Australian dollar. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by the Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 10, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Reference should be made to the CME Australian dollar futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed CME futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support to their application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by November 10, 1986.

Issued in Washington, DC, on September 8, 1986.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86-20468 Filed 9-10-86; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board Environment Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Environment Panel will be held Friday, 26 September 1986 from 9:00 A.M. to 5:00 P.M. at the Radisson Metrodome Hotel, Minneapolis, MN.

FOR FURTHER INFORMATION CONTACT: Dr. Erhard Ploedereder, Tartan Laboratories, 477 Melwood Avenue, Pittsburgh PA 15213, (412) 621-2210.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 5, 1986.

[FR Doc. 86-20443 Filed 9-10-86; 8:45 am]
BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Meeting

SUMMARY: The DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will held at 0900, Tuesday, 7 October 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to

provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Dispslays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer. Department of Defense.

September 5, 1986.

[FR Doc. 86–20445 Filed 9–10–86; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Meeting

SUMMARY: Working group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, October 2, 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc, 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 11 section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer. Department of Defense.

September 5, 1986.

[FR Doc. 86–20446 Filed 9–10–86; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 8 October 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct on economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. II Section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer. Department of Defense.

September 5, 1986.

[FR Doc. 86–20447 Filed 9–10–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 23 September 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on U.S. Strategic Defense Initiative.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 8, 1986.

[FR Doc. 86–20484 Filed 9–10–86; 8:45 am]

BILLING CODE 3810-01-M

Performance Review Board; Membership Appointments

AGENCY: Defense Mobilization Systems Planning Activity, DOD.

ACTION: Announce Membership of Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Mobilization Systems Planning Activity. The publication of PRB membership is required by 5 U.S.C. 4314 (c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance

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appraisals and makes recommendations regarding performance and performance awards to the Director.

DATE: September 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Oppenheimer, Resource Management and Support Services, Defense Mobilization Systems Planning Activity, c/o OASD (FM&P), Correspondence & Control Division, The Pentagon, 3E 759, Washington, DC 20301, (202) 756–2249.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314 (c)(4), the following register constitutes members of the Defense Mobilization Systems Planning Activity PRB who will serve one-year renewable terms effective September 1, 1986.

Mr. Maurice Lipton
Brigadier General Paul A. Maye
Dr. Michael L. Ioffredo
Dr. William T. Marquitz
Mr. Kevin C. Moody.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 5, 1986.

[FR Doc. 86–20440 Filed 9–10–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 2, 1986.

The USAF Scientific Advisory Board Aerospace Vehicles Panel will meet at Aeronautical Systems Division Headquarters, Building 14, Wright Patterson Air Force Base, Ohio, October 2 and 3, 1986.

The purpose of this meeting is to discuss the panel's findings on Air Force Project Forecast II topics and to prepare a final report on those findings.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–20412 Filed 9–10–86; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Sandstone Project

AGENCY: U.S. Army Corps of Engineers, Omaha District, DOD. Sponsor: Wyoming Water Development Commission, Cheyenne, Wyoming.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action is to construct the Sandstone Dam on Savery Creek in Carbon County, Wyoming. The dam site is accessed via a county road which extends north from State Route 70 at Savery, Wyoming, approximately 8.5 miles. The dam would be located on Savery Creek just downstream of the confluence of Savery and Little Sandstone Creeks. Savery Creek is a tributary of the Little Snake River.

2. Alternatives being evaluated by the applicant include:

a. Construction of a new reservoir (several alternate sites).

b. Use of groundwater resources.

c. No action.

Alternatives available to the Corps of Engineers include:

a. Approve the permit application.

b. Denial of the permit.

c. Approve the permit with some modification.

3. To date, public involvement has included meetings of the North Platte Water Development Board in July 1985 and July 1986 in Baggs, Wyoming. The project will also comply with the requirements of the Historic Preservation Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, section 404 of the 1977 Clean Water Act, Executive Order 11988 on flood plains, and Executive Order 11990 on wetlands.

4. Scoping meetings for the DEIS will be held on Tuesday, September 23, 1986, at 9:00 a.m. in the Basement Conference Room of the Hathaway Building, 2300 Capitol Avenue, Cheyenne, Wyoming; and at 9:00 a.m. on Wednesday 24, 1986, at the Baggs Elementary School Music Room, Baggs, Wyoming. The participation of the public and all interested Government agencies is invited.

5. The Omaha District estimates that the DEIS will be released for public review in July 1987.

ADDRESS: Questions about the proposed action, DEIS, or scoping meetings should be directed to Richard Gorton; Chief, Environmental Analysis Branch; Omaha District, CE; 1612 U.S. Post Office and Courthouse; Omaha, Nebraska 68102–4978; phone (402) 221–4598.

Arvid L. Thomsen,

Chief, Planning Division Omaha, District, CE.

[FR Doc. 86–20413 Filed 9–10–86; 8:45 am]

BILLING CODE 3710–62–M

DELAWARE RIVER BASIN COMMISSION

Commission Meetings and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 17, 1986 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. Borough of Hatfield D–80–94 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply 6.48 million gallons (mg)/30 days to the Borough of Hatfield water supply system from Well No. 10. Commission approval in 1981 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from the well remain limited to 6.48 mg/30 days. The project is located in the Borough of Hatfield, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

2. Elizabethtown Water Company D–81–17 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 25.92 mg/30 days of water to the applicant's distribution system from each of Well Nos. 1 and 2. Commission approval on October 6, 1981 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 51.84 mg/30 days. The project is located in West Windsor Township, Mercer County, New Jersey.

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3. Louis Romano, Jr. D–81–42 RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 22 mg/30 days of water to the applicant's irrigation system from Well Nos. 1 and 2. Commission approval in 1981 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells be increased from 10 mg/30 days to 22 mg/30 days. The project is located in Lawrence Township, Cumberland County, New Jersey.

4. United States Power Corporation D–85–56

An application to moor a floating paddle wheel electric generating vessel ("piggy back water power generator") in the mid-channel of the Delaware River several miles downstream of Easton, Pennsylvania, between Whipporwill Island (William Township, Northampton County, Pennsylvania) and River Rock Island (Pohatcong Township, Warren County, New Jersey). The pontoon vessel will be 23 feet wide and 19 feet long. Each paddle in the two parallel paddle assemblies will be less than six feet long and extend less than three feet into the water. The vessel will be connected to an existing Jersey Central Power and Light Company utility pole by a marine cable that will be placed on the river bottom and buried on the New Jersey river bank. The total maximum operating electric generating capacity will be 60 kilowatts.

5. Coca-Cola Foods D–85–85

An application for the construction of a new industrial waste treatment facility using activated sludge pretreatment in aerated earthen lagoons followed by spray irrigation to treat a food-oriented wastewater generated at a new Coca-Cola Foods processing plant to be located in Keystone Industrial Park, Bristol Township, Bucks County, Pennsylvania. Process wastewater and cooling tower/boiler blowdown of 100,000 gpd will receive final land application on a 29 acre site one-half mile south of Newportville along Newportville Road. During extended periods when land application cannot be implemented, wastewater will discharge to the public sewers.

6. Kings Plaza Water Company D–86–13 CP

An application for approval of a ground water withdrawal project to supply 137,000 gpd (4.11 mg/30 days) for a municipal water supply facility which is to include an existing privately owned system, supplied by wells. The new wells (Nos. 2, 6, and 7) and the operating well, Kings Plaza No. 1, are located in Doylestown Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. Whitehall Township Authority D–86–14 CP

An application for approval of a ground water withdrawal project to supply up to 16.4 mg/30 days of water to the applicant's distribution system from new Walnut Gardens Well No. 3 and to increase the existing withdrawal limit from all wells to 36.7 mg/30 days. The project is located in Whitehall Township, Lehigh County, Pennsylvania.

8. Borough of North Wales D–86–20 CP

A sewage treatment plant expansion project to serve 3,400 people in North Wales Borough and a portion of Upper Gwynedd Township, both in Montgomery County, Pennsylvania. The application consists of a proposal to renovate and construct several facilities at the existing site. The secondary treatment plant will be modified and the design capacity increased from 0.5 to 0.95 mgd capacity. The teated effluent will continue to be discharged to an unnamed tributary of the Wissahickon Creek.

9. Camelback Ski Corporation D–86–21

An application for the expansion of the applicant's sewage treatment plant serving the Camelback Mountain Ski Resort located in Pocono Township, Monroe County, Pennsylvania. The existing 0.14 mgd plant serves up to 1,400 people, but the proposed 0.4 mgd facility could serve 4,000 persons. The treated effluent discharge location will be moved downstream to a point where the unnamed tributary to Pocono Creek becomes a perennial stream.

10. Upper Moreland-Hatboro Joint Sewer Authority D–86–27 CP

A sewage treatment plant expansion project to serve a design population of over 54,000 people in both Hatboro and Upper Moreland Township, Montgomery County, Pennsylvania. Flow from industrial sources results in an additional equivalent population of an estimated 8,400 persons served. The existing secondary treatment plant has a design average flow of 6.6 mgd. The proposed expansion will increase the capacity to 7.0 mgd. The tertiary treatment facility is designed to serve the projected flow through the year 2005. The treated effluent will continue to be discharged to Pennypack Creek.

11. City of Reading D–86–28 CP

A sewage treatment plant expansion project to serve the City of Reading and 11 surrounding municipalities all within Berks County, Pennsylvania. The existing plant has a design average flow capacity of 23.25 mgd. The proposed expansion will increase the plant's capacity to 28.50 mgd. The design includes a projected ground water infiltration reduction of 1.41 mgd. The treated effluent will continue to be discharged to the Schuylkill River at River Mile 92.47–72.8. The proposed expansion is designed to serve the City of Reading through the year 2000.

12. Reading Municipal Airport Authority D–86–38 CP

A wastewater treatment project to serve Reading Municipal Airport, an industrial park, and several commercial users adjacent to the industrial park. The existing secondary treatment plant will have a design average flow capacity of 0.175 mgd, but several facilities will be renovated and some new units will be constructed in order to upgrade the plant. All of the new facilities will be built at the existing plant site which is located in Bern Township, Berks County, Pennsylvania. The project is designed to serve the applicant through the year 2000. The secondary treatment plant effluent will continue to be discharged to the Schuylkill River.

13. Bordentown Sewerage Authority D–86–47 CP

An application for a sewage regionalization project to serve the City of Bordentown and Bordentown Township, in Burlington County, New Jersey. This application requests: revision of the Comprehensive Plan by eliminating the Laurel Run Sewage Treatment Plant and the reconstruction and expansion of the Bordentown City Sewage Treatment Plant (BCSTP) into a regional facility with a design capacity of 3 mgd. The proposed plant is designed to provide high quality secondary treatment for a projected population of 16,400 persons through the design year 2000. The treatment plant effluent will continue to be discharged to Blacks Creek at River Mile 128.22–2.0 in Water Quality Zone 2.

14. Northeastern Power Company D–86–53

An application to withdrawn 0.84 mgd of water from abandoned mines for use in a proposed steam/electric cogeneration process which involves the discharge of 0.196 mgd of treated effluent to surface waters. The proposed site in Kline Township, Schuylkill

County, Pennsylvania is rural and is located adjacent to large piles of coal breaker refuse which will serve as the principal fuel for the facility. The acid ground water will be pretreated before use in the proposed 45 MW facility. The proposed process wastewater will be treated to meet NPDES permit limits prior to discharge into the headwaters of the Little Schuylkill River.

15. Catasauqua Borough Authority D–86–32 CP

An application to expand the existing 1.77 mgd sewage treatment plant to an average flow capacity of 2.25 mgd. The proposed facility is designed to provide secondary treatment for industrial and residential wastewaters. Catasauqua and a portion of Hanover Township are the Lehigh County, Pennsylvania communities served by this facility, while North Catasauqua and a portion of Hanover Township in Northampton County, Pennsylvania, are also served. The expanded plant is designed to serve an equivalent population of almost 20,000 persons through the year 2005. Treated wastewater will continue to be discharged to the Lehigh River through the existing outfall located in River Mile 183.66–20.2.

Proposed Water Supply Contract for the Philadelphia Electric Company Limerick Generating Station. Pursuant to the provisions of the Delaware River Basin Compact, DRBC Resolution Nos. 71–4 and Section 5–3.2 of Resolution No. 74–6, a contract is proposed between the Delaware River Basin Commission (DRBC) and the Philadelphia Electric Company (PECO) to provide an annual minimum payment to the DRBC for the use of water withdrawn from the Schuylkill River and the East Branch of Perkiomen Creek for the consumptive and non-consumptive water use at the Limerick Generating Station in Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

* * * * * *

The Commission will hold a special 25th Anniversary meeting on Thursday, September 18, 1986 beginning at 2:00 p.m. in the Oak Room of the Union League of Philadelphia, 140 South Broad Street, Philadelphia, Pennsylvania. The meeting, which is open to the public, will be one of several events commemorating the Commission's 25th year under the interstate-federal Delaware River Basin Compact.

Susan M. Weisman,

Secretary.

September 2, 1986.

[FR Doc. 86–20411 Filed 9–10–86; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

National Council on Vocational Education; Meeting

AGENCY: Education Department.

ACTION: Notice of Public Meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend. It should also be noted on September 30-October 1, 1986 the meeting will be in the form of workshops and the General Business Meeting of the Council will take place on October 2, 1986.

DATES: September 30, 1986–October 2, 1986.

ADDRESS: The National Center for Research in Vocational Education, The Ohio State University, 1960 Kenny Road, Columbus, Ohio 43210 (614) 486–3655.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90–576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational educational programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

FOR FURTHER INFORMATION CONTACT. Dr. Joyce Winterton, Executive Director, 2000 L Street NW., Suite 580, Washington, DC 20036, (202) 634–6110.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 A.M. to 4:30 P.M.

Signed at Washington, DC., September 3, 1986.

Joyce Winterton,

Executive Director.

National Council on Vocational Education

Three Day Seminar/Fourth Quarter Meeting at National Center for Research on Vocational Education (NCRVE) September 30–October 2, 1986.

Agenda

8:00 am Meet Van In Hotel Lobby for Transportation to NCRVE.

Tuesday, September 30

8:30 am Continental Breakfast—Room IA.

9:00 am Opening Remarks—Chairman Niebla.
Comments—Joyce Winterton.
Overview of Tuesday's Program—Pat Silversmith.

9:15 am Introduction to National Center—Chet Hansen.

9:45 am Overview of Major Topics—Chairman Niebla, Ray Shamie, and Ralph Bregman.

10:30 am Break.

10:45 am Video Message—Charles Buzzell.

11:00 am *"Project Catalyst" Progress Report*—W.J. Woodhull, John Wanat, Ginny Straus, and Ralph Bregman.

12:00 noon Luncheon—Room 1A.

1:00 pm *Perspectives from Council Members.*
Video Message—Marv Feldman.
A discussion led by: Bob Worthington, and Joyce Winterton.

3:00 pm *Setting National Priorities.*
A discussion led by: Mary Pyle.
State Council Representatives: Wally Vog, Mike Rask, and Jim Kadamus.
State Directors Representative: Bob Sorensen.

5:00 pm Closing Remarks—Chairman Niebla.

6:15 pm Meet Van in Holiday Inn Lobby for Transportation to Hilton Inn.

6:30 pm Reception—*Hilton Inn.*

7:00 pm Dinner—Rumrunner Room.
Master of Ceremonies—Art Vadnais.
Speaker—Dr. C. Dygert.

Subject: "Communicating Your Message Effectively"

* * * *

Wednesday, October 1

7:30 am Meet Van in NCRVE Lobby for Transportation to Hotel.
6:00 am Continental Breakfast.
Opening Remarks and Introductions—Vice Chairman Farley, Master of Ceremony.
8:15 a.m Perspectives on the Future of the Economy Implications for Education.
Moderator: Gordon Ropp, National Association of State Councils (NASCOVE).
Overview: Morgan Lewis, National Center for Research in Vocational Education.
Panelists: Jim Kadamus, State Director of Vocational Education, N.Y., John Serumgard, Industrial Relations, Rubber Manufacturers' Association, and Neil Rosenthal, Bureau of Labor Statistics, DOL.
Summaries: Pier Gherini and Bill Hayes.
9:45 am Benefits/Shortcomings of Vocational Education
Moderator: N.L. McCaslin, National Center for Research in Vocational Education.
Panelists: Tom Bogetich, California State Council, Dan Dunham, Oregon Curriculum Center, and Lonny Brown, U.S. Department of Education.
10:30 am Break—Nat Semple, Committee for Economic Development, and Susan Berryman, Institute on Education and The Economy, Columbia University.
Reactions: Trudy McDonald and Joyce Newman.
11:45 am Luncheon—Room 1A.
1:00 pm New Horizons for Vocational Education.
Moderator: Michael Rask, Nevada State Council.
Panelists: Peter Elliman, Lucas Manufacturing, South Carolina, Joe Lutjeharmes, Council of Chief State School Officers, and David Ponitz, Ohio Community College.
Unanswered Concerns: Marilyn Liddicoat and Mary B. Liu.
2:45 pm Reskilling the Work Force.
Moderator: William Ashley, National Center for Research in Vocational Education.
Panelists: Anthony Carnevale, American Society for Training and Development, Reece Hammond, International Union of Operating Engineers, and Madeleine Hemmings, Business Roundtable.
Challenges for the Council: Christine Valmy and Patricia Silversmith.
4:30 pm Closing Remarks: Michael Farley and Fernando Niebla.
5:45 pm Meet Van in Holiday Inn Lobby for Trip to University Parke Hotel.
6:00 pm Reception—*University Parke.*
6:30 pm Dinner—*Evergreen Room.*
Master of Ceremonies: Art Vadnais.
Speaker: Dr. Robert Taylor, Executive Director Emeritus, National Center.
Subject: "Education Delivery Systems from Abroad"

* * * * *

Thursday, October 2—Hotel Check-out.
8:30 am Meet Van in Hotel Lobby for Trip to NCRVE with Luggage.
9:00 am Roundtable Disussion led by: Chairman Niebla and Vice Chairman Farley.
10:00 am How-To Session for public presentations, press interviews and TV appearances led by: W.J. Woodhull.
12:00 pm Luncheon—Room 1A.
Members' Observations on Three Day Seminar and Suggestions for Future Meetings—John Mackey and George Ames.
1:00 pm Continue How-To Sessions.
2:30 pm National Council Business Meeting with Chairman Niebla and Executive Director Joyce Winterton.
4:30 pm Adjournment.

[FR Doc. 86-20414 Filed 9-10-86; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Development of Software To Evaluate Wheeling Rates

AGENCY: Department of Energy (DOE).

ACTION: Notice of Solicitation for a Cooperative Agreement Application.

SUMMARY: DOE announces that it is conducting negotiations with the New York State Energy Research and Development Authority for development of software to evaluate wheeling rates. These negotiations are expected to result in the award of a cooperative agreement No. DE-FC0186PE79009, in which DOE will provide $125,000 of the total estimated cost of $200,000, for the performance period of twelve months estimated to begin September 30, 1986.

Scope of Study: The cooperative agreement will develop software to demonstrate the benefits of implementing an innovative system of wheeling rates. The software will show how the highly complex and abstract economic-engineering model would translate into specific wheeling rates for utilities in specific circumstances. The software will also compare these wheeling rates with other types of wheeling rates to show how the innovative rates could be used to reduce utility operating costs.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Barbara Sneden, MA-453.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-1076.

Edward T. Lovett,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 86-20515 Filed 9-10-86; 8:45 am]
BILLING CODE 6450-01-M

Senior Executive Service: Performance Review Board Members

ACTION: Notice of SES Performance Review Board Appointments.

SUMMARY: This notice lists those persons who have been appointed to serve on the Performance Review Board standing register for the Department of Energy. This supplements the listings published in 50 FR 33818, on August 21, 1985, and 50 FR 40991, on October 8, 1985.

EFFECTIVE DATE: These appointments are effective on August 18, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara J. Hall, MA-204.1, U.S. Department of Energy, Office of Personnel, (202) 252-8477.

SUPPLEMENTARY INFORMATION: Section 4314(c) of title 5, United States Code (as amended by the Civil Service Reform Act of 1978), requires that the Department of Energy establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s) to review and evaluate the initial rating and make a final written recommendation on performance appraisals assigned to the Departmental members of the Senior Executive Service.

The Performance Review Board established for the Department of Energy also makes written recommendations to the Executive Personnel Board regarding SES performance bonuses, awards, and performance related actions.

The names of the appointed members of the SES Performance Review Board are as follows:

Richard Redenius
Marion Bowden
Jerry Ballinger
Edward Goldberg
Charles Kay
Dr. N. Anne Davies
John Brodman

Jerry Pruzan
John Meinhardt
Sherry Peske
Dorner Schueller
Bob Davies
Vic Berniklau
Dr. James Batchelor
Dr. Herbert Volchok

Issued in Washington, DC, on August 11, 1986.

Harry Peebles,

Director of Administration.

[FR Doc. 86-20517 Filed 9-10-86; 8:45 am]

BILLING CODE 6450-1-M

Economic Regulatory Administration

Final Consent Order With MGPC, Inc. and MCO Holdings, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed consent order between the Department of Energy (DOE) and MGPC, Inc. and its parent MCO Holdings, Inc. ("MGPC/MCOH") shall be made final as proposed. The consent order resolves matters relating to MGPC/MCOH's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981 (the period covered by the consent order). The proposed order requires MGPC/MCOH to pay to the DOE $700,000, plus interest from the date the proposed consent order was executed by DOE. Persons claiming to have been harmed by MGPC/MCOH's overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the MGPC/MCOH consent order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room 3H-017; Mail Code RG-43, Washington, DC 20585. (202) 252-4235.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On July 11, 1986, ERA issued a notice announcing a proposed consent order between DOE and MGPC/MCOH which would resolve matters relating to MGPC/MCOH's compliance with federal petroleum price and allocation regulations, including the audit period August 19, 1973 through February 28, 1975 (the audit period). The proposed order, which requires MGPC/MCOH to pay $700,000,[1] is for the settlement of MGPC/MCOH's potential liability of $124,310.81, plus interest for sales of condensate, and $390,093, plus interest for sales of NGLs and NGLPs. The July 11 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The notice solicited written comments from the public relating tothe adequacy of the terms and conditions of the settlement, and whether the settlement should be made final.

II. Comments Received

ERA received written comments in the form of a joint submission by the states of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah and West Virginia (states): The comments were considered in making the decision as to whether or not the proposed consent order should be made final.

The written comments concern the Office of Hearings and Appeals' ultimate disposition of the settlement funds, and the use of OHA Subpart V procedures to distribute the settlement monies.

The comments submitted by these parties did not question the basis of the settlement or adequacy of the settlement amount, but only offered suggestions on the distribution of the settlement funds that were different from the consent order provisions requiring disbursement through OHA administrative claims proceedings.

III. Analysis of Comments

The July 11 notice solicited written comments in order to enable the ERA to receive information from the public relevant to the decision whether the proposed consent order should be finalized as proposed, modified or rejected. To ensure greater public understanding of the basis for the proposed settlement, the July 11 notice provided detailed information regarding MGPC/MCOH's overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This expanded settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

The comments from the states of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah and West Virginia relating to OHA's ultimate distribution of the funds if the MGPC/MCOH consent order is finalized were not germane to the basis or adequacy of the settlement. The comments requested that those funds for which no injured party could be identified be refunded to the states, and restated objections made in other proceedings to any ultimate dispensation of overcharge monies to the U.S. Treasury.

The consent order requires the ERA to petition the OHA to implement a Subpart V proceeding with regard to all the funds received from MGPC/MCOH. The distribution of funds to the states, requested in their comments, is a matter to be considered during the OHA proceeding. Accordingly, it appears that the states' concerns are effectively addressed by the consent order.

Therefore, comments on the actual disbursement of the monies by OHA will not be addressed here, but will be referred to OHA for consideration in the MGPC/MCOH consent order claims proceeding.

In the July 11 **Federal Register** notice, ERA sought to provide the maximum amount of the information possible, and to address MGPC/MCOH's actual financial liability resolved by the proposed consent order. A review of the scope of disclosure in the July 11 notice and the fact that no commenter in any way addressed the adequacy of the settlement amount has resulted in ERA's belief that the July 11 notice provided the public with sufficient information to assess its adequacy. Therefore, the ERA will not repeat its explanation concerning the basis for the settlement, but will refer any member of the public who is interested in that matter to the July 11 **Federal Register** notice, which contains a thorough discussion.

The review and analysis of the written comments did not provide any information that would support the modification or rejection of the proposed consent order with MGPC/MCOH. Accordingly, ERA concludes that the consent order is in the public interest and should be made final.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed consent order between MGPC/MCOH and DOE executed on May 23, 1986 is made a final order of the Department of Energy,

[1] The $700,000, plus interest accrued from the date the proposed consent order was executed by DOE, will be disbursed to DOE within 30 days of publication of this Notice.

effective the date of publication of this notice in the Federal Register.

Issued in Washington, DC, on the 28th day of August, 1986.

Carl A. Carrallo,

Solicitor, Economic Regulatory Administration.

[FR Doc. 86-20516 Filed 9-10-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF86-1001-000, etc.]

Louis G. Nannini et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Louis G. Nannini

[Docket No. QF86-1001-000]

September 4, 1986.

On August 22, 1986, L. G. Nannini (Applicant), of U.S. Borax, 3075 Wilshire Boulevard, Los Angeles, California 90010 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the site of U.S Borax's mine and refining processing facility in Boron, California. The facility will consist of a combustion turbine-generator, a two pressure level heat recovery steam generator (HRSG) and a condensing/extraction steam turbine-generator. The extracted steam together with low pressure steam from HRSG will be used for process at the U.S. Borax mine and refining facility. The net electrical power production capacity of the facility will be approximately 45 MW. The primary energy source will be natural gas. The installation of the facility will commence in March 1988.

2. First American Energy Company/ Culmtech, Ltd.

[Docket No. QF86-964-001]

September 5, 1986.

On August 13, 1986, First American Energy Company/Culmtech, Ltd. (Applicant), P.O. Box 616, Pittston, Pennsylvania 18640, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Inkerman, Pennsylvania. The facility will consist of two circulating fluidized-bed boilers and an extraction/condensing turbine generating unit. Extraction steam produced by the facility will be sold to Green Mall, Ltd. for use in heating ten one-acre greenhouses. The net electric power production capacity of the facility will be 80 MW. The primary energy source will be anthracite culm. The installation of the facility will begin on or about January 31, 1987.

3. Peat Products of America, Inc.

[Docket No. QF86-438-002]

September 5, 1986.

On August 28, 1986, Peat Products of America, Inc. (Applicant), of 23 Franklin Street, Bangor, Maine 04401, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Applicant filed for recertification to reflect a change in ownership and an increase in the electric power production capacity of the facility. The proposed net electric power production capacity of the facility will be 22.8 MW (The original net electric power production capacity was 21 MW). The ownership will be transferred from Down East Peat, Ltd. to Down East Peat, L.P., a limited partnership organized in Delaware.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 86-20487 Filed 9-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-698-000 et al.]

Natural Gas Certificate Filings; North Penn Gas Co. et al.

Take notice that the followings filings have been made with the Commission:

1. North Penn Gas Co.

[Docket No. CP86-698-000]

September 3, 1986.

Take notice that on August 25, 1986, North Penn Gas Company (North Penn), 76-80 Mill Street, Port Allegany, Pennsylvania 16743, filed in Docket No. CP86-698-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment and a temporary certificate authorizing North Penn to provide storage service to Transco Gas Services Company, Inc. (Transco), for a one-year period, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

North Penn states that the storage service would provide Transco with the right to store 5,000 Mcf of natural gas on a peak day and 500,000 Mcf of natural gas on a seasonal basis in the Wharton field in Potter and Cameron Counties, Pennsylvania. The Wharton field is owned and operated jointly by Transcontinental Gas Pipeline Corporation and United Natural Gas Company (United). North Penn has a contract with United that entitles North Penn to store 10,000 Mcf of natural gas on a daily basis and 1,000,000 Mcf of gas on an annual basis in the Wharton field. The proposed storage service for Transco would be provided to Long Island Lighting Company (LILCO) by Transco as proposed in Docket No. CP86-673-000.

North Penn states that the proposed storage service would be governed by the rates, terms and conditions that are contained in a currently pending settlement agreement in North Penn's most recent rate case, Docket No. RP85-193-000. It is stated that the proposed storage service is conditioned on acceptance without modificaiton of this settlement agreement.

North Penn requests that the Commission dispose of the application in accordance with the shortened

procedure as provided in § 385–802 of the Commission's Rules of Practice and Procedure.

Comment date: September 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP84–462–004]

September 4, 1986.

Take notice that on August 13, 1986, ANR Pipeline Company (Petitioner), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84–462–004 a petition to amend the order issued on April 3, 1985, in Docked No. CP84–462–000, issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act, which authorized transportation of up to 20,000 Mcf of natural gas per day (Mcfd) on a firm basis for Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Petitioner states that on March 7, 1986, Petitioner and Bridgeline executed the fourth amendment to the transportation agreement dated July 19, 1983, to reduce the amounts of gas subject to transportation. Petitioner proposes to modify the Commission order to reduce the level of contract demand service on November 1, 1986, to 18,000 Mcf of gas per day and, if Bridgeline so elects, to further reduce contract demand to 14,000 Mcf of gas per day, effective on November 1, 1989.

Comment date: September 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP86–690–000]

September 4, 1986.

Take notice that on August 25, 1986, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP86–690–000, a request pursuant to § 157.205 of the Commission's Regualtions under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate taps and related jurisdictional facilities necessary to enable AER to deliver natural gas from jurisdictional pipelines to consumers served by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under the certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that AER proposes to construct and operate: (1) A sales tap on its Line AM–22 in Garland County, Arkansas, to deliver gas to ALG's rural extension No. 174 for distibution to approximately 149 retail customers who would use an aggregate amount of gas estimated at about 13,261 Mcf of gas per year, and 459 Mcf of gas on a peak day; (2) a sales tap on its Line T in Monroe County, Arkansas to deliver gas to ALG's rural extension No. 1193 for distribution to approximately 35 retail customers who would use an aggregate amount of gas per year, and 36 Mcf of gas on a peak day; (3) a sales tap on its Line AM–165 in Howard County, Arkansas, to deliver gas to ALG's rural extension No. 1194 for distribution to approximately 40 retail customers who would use an aggregate amount of gas estimated at about 10,000 Mcf of gas per year and 68 Mcf of gas on a peak day.

AER states that the gas would be delivered from its general system supply, which it is stated is adequate to provide the service.

Comment date: October 20, 1986, in accordance with Standard Paragraph G at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP86–695–000]

September 4, 1986.

Take notice that on August 25, 1986, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86–695–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), for authority to construct and operate new delivery points to Northern Gas Division of K N Energy, Inc. (Northern Gas) in Albany County, Wyoming, and Eastern Colorado Utility Company (Eastern Colorado) in Adams County, Colorado, and for authority to revise certain Maximum Daily Volume Obligation (MDVO) and delivery pressures for Public Service Company of Colorado (PSCo), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that the volumes of gas to be delivered by CIG to Northern Gas and Eastern Colorado at the new delivery points would be within the volumes that CIG is currently authorized to sell and deliver to those customers. CIG further states that the revised MDVO and delivery pressures for PSCO would result in no change to the volumes which CIG is authorized to sell and deliver to PSCO. CIG alleges that no change in any total daily or annual entitlement is proposed by this request. CIG indicates it would experience no impact on its peak day or annual sales resulting from the proposed new delivery points or revised MDVO and delivery pressures, and the changes can be accommodated by CUG's existing transmission system without detriment or disadvantage to CIG's other customers.

Comment date: October 20, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Iowa-Illinois Gas and Electric Company

[Docket No. CP86–688–000]

September 4, 1986.

Take notice that on August 21, 1986, Iowa-Illinois Gas and Electric Company (Applicant), P.O. Box 4350, Davenport, Iowa 52808, filed in Docket No. CP86–688–000 an application requesting that the Commission issue a certificate pursuant to section 7(f) of the Natural Gas Act describing the service area in which Applicant may enlarge or extend its facilities without further authorization from the Commission, a blanket certificate pursuant to Order No. 63 authorizing Applicant to engage in self-implemented transportation of customer-owned volumes of natural gas to end-users in the area to be certificated, and a declaration that the Applicant is a local distribution company in the area to be certificated for the purpose of Section 311 of the Natural Gas Policy Act and the Commission's regulations promulgated thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant's request pertains to the area described in the application consisting of all of Scott County, Iowa, a portion of Muscatine County, Iowa, and a portion of Rock Island County, Illinois. Applicant states it is engaged in the distribution of natural gas for residential, commercial and industrial use in the states of Iowa and Illinois and is the only distribution utility providing natural gas service in the area which is the subject of the application. Applicant further states it makes no sales for resale and has no gas rates on file with this Commission. Applicant states its rates, services, and facilities in the State of Illinois are regulated by the Illinois Commerce Commission and that its rates, services, and facilities in the State of Iowa are regulated by the Utilities Board of the Iowa Department of Commerce.

Applicant states that a complete copy of this filing has been mailed to the Utilities Board of the Iowa Department

of Commerce and the Illinois Commerce Commission.

Comment date: September 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Pacific Interstate Transmission Company

[Docket No. CP86-689-000]

September 4, 1986.

Take notice that on August 22, 1986, Pacific Interstate Transmission Company (Applicant), 720 West Eight Street, Los Angeles, California 90017, filed in Docket No. CP86-689-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its sale for resale certificate to Southern California Gas Company under its Rate Schedule SG-1, and to cancel its purchased gas adjustment clause (PGA), both to be effective on or before March 1, 1988.

It is stated that the abandonment should coincide with termination of Applicant's purchase gas agreements the first of which occurs in October, 1986, with the final termination occuring in February, 1988. The Applicant states that the reason the contracts are being terminated is the inability of the Applicant to renegotiate the agreements with the producer to a price its customer is willing to pay, and, further, the small amounts of gas involved.

The Applicant states that its Purchase Gas Adjustment should be cancelled when the final abandonment occurs as all of the gas supply covered by the PGA will be eliminated when final abandonment takes place.

The Applicant further states that a waiver of any regulations necessary to accomplish the requested abandonment and cancellation of tariff sheets is requested.

Comment date: September 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP86-686-000]

September 4, 1986.

Take notice that on August 20, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-686-000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Alabama Gas Corporation (Alagasco), acting as agent for certain of its industrial and commercial end-use customers (End-Users), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, up to 90 billion Btu equivalent of natural gas per day on behalf of Alagasco, acting as agent for the End-Users, for a term of one year from the date of the Commission's order. It is stated that Alagasco, as agent for the End-Users, would purchase such gas from SNG Trading, Inc. It is explained that Applicant would receive the gas at existing points of interconnection on Southern's system as specified in Exhibit A to the transportation agreement and deliver it to Alagasco for further transportation to the respective plants of the End-Users (See Appendix for list of End-Users and volumes to be transported).

Applicant states that Alagasco has agreed to pay the following transportation charge:

(a) Where the aggregate of the volumes transported and redelivered by Applicant on any day to Alagasco under any and all transportation agreements with Applicant, excluding that certain long-term transportation agreement among Applicant, Alagasco, and Alabama Intrastate Supply, dated October 1, 1984, when added to the volumes of gas delivered under Applicant's OCD Rate Schedule on such day to Alagasco do not exceed the daily contract demand of Alagasco, the transportation rate would be 39.9 cents per million Btu equivalent; and

(b) Where the aggregate of the volumes transported and redelivered by Applicant on any day to Alagasco under any and all transportation agreements with Applicant, excluding that certain long-term transportation agreement among Applicant, Alagasco, and Alabama Intrastate Supply, dated October 1, 1984, when added to the volumes of gas delivered under Applicant's OCD Rate Schedule on such day to Alagasco exceed the daily contract demand of Alagasco, the transportation rate for the excess volumes would be 64.9 cents per million Btu equivalent.

Applicant proposes to charge Alagasco the currently effective GRI surcharge. Applicant also proposes to retain 3.25 percent of the volume transported for fuel use.

Applicant also requests flexible authority to provide transportation from additional delivery points in the event Alagasco obtains alternative sources of supply of natural gas. The additional transportation service would be to the same redelivery point, the same recipient, and within the same maximum daily transportation volume of gas as stated in the application.

Applicant states that the transportation service would enable the End-users to diversify their natural gas supply sources and to obtain gas at competitute prices. In addition, Applicant states that it would obtain take-or-pay relief on the gas that Alagasco may obtain from Applicant's suppliers. Applicant indicates that it would release for resale by others gas in the Natural Gas Policy Act categories 102(c), 103 and 107. Applicant further indicates that it would also release gas that is subject to the Commission's jurisdiction under the Natural Gas Act upon receipt by Applicant's producer-supplier of appropriate abandonment authorization.

APPENDIX

End users	Agency agreement date	Estimated transportation quantity
Anniston Area:		
APAC-Alabama, Inc., Anniston, Alabama.	Jul. 10, 1986	100
Blue Mountain Industries, Anniston, Alabama.	do	150
FMC Corporation, Anniston, Alabama.	do	500
National Aluminum, Anniston, Alabama.	do	300
National Gypsum, Anniston, Alabama.	do	2,000
Northeast Regional Medical Center, Anniston, Alabama.	do	120
Post Engineer, Anniston, Alabama.	do	1,800
Southern Tool, Inc., Anniston, Alabama.	do	200
U.S. Pipe & Foundry Co., Anniston, Alabama.	do	400
Birmingham Area:		
Allied Products Company, Birmingham, Alabama.	Jul. 10, 1986	10,000
APAC-Alabama, Inc., Birmingham, Alabama.	do	130
Bama Company, Birmingham, Alabama.	do	150
Barber Milk Company, Birmingham, Alabama.	do	150
Baptist Medical Center Central Laundry, Birmingham, Alabama.	do	100
Baptist Medical Center Montclair, Birmingham, Alabama.	do	360
Baptist Medical Center Princeton, Birmingham, Alabama.	do	190
Birmingham Steel Corp., Birmingham, Alabama.	do	850
Brookwood Medical Center, Birmingham, Alabama.	do	200
C.B.I., Inc., Birmingham, Alabama.	do	110
Carraway Methodist Medical Center, Birmingham, Alabama.	do	350

APPENDIX—Continued

End users	Agency agreement date	Estimated transportation [1] quantity
Celotex Corporation, Birmingham, Alabama.	Jul. 10, 1986	130
Central Laundry Services, Birmingham, Alabama.	do	230
Cosby Hodges Company, Birmingham, Alabama.	do	280
Dunn Construction Co., Inc., Birmingham, Alabama.	do	150
General Foods Mfg. Corp., Birmingham, Alabama.	do	230
Gold Kist, Inc., Birmingham, Alabama.	do	450
Hanna Steel Corp., Birmingham, Alabama.	do	140
Hayes International Corp., Birmingham, Alabama.	do	370
Jefferson Co. Commission Cooper Green Hospital, Birmingham, Alabama.	do	100
Jim Walter Resources, Inc., Birmingham, Alabama.	do	1,000
McWane Cast Iron Pipe Co., Birmingham, Alabama.	do	870
Metalplate Galvanizing, Inc., Birmingham, Alabama.	do	180
Metro Metals, Inc., Birmingham, Alabama.	do	210
National Linen, Birmingham, Alabama.	do	110
PEROX, Inc., Birmingham, Alabama	do	320
Polymer Coil Coaters, Birmingham, Alabama.	do	290
Rex International, Birmingham, Alabama.	do	200
Rock Wool Mfg. Co., Leeds, Alabama.	do	160
Samford University, Birmingham, Alabama.	do	210
St. Vincent's Hospital, Birmingham, Alabama.	do	320
SONAT, Birmingham, Alabama	do	1,900
Thomas Foundries, Inc., Birmingham, Alabama.	do	220
University of Alabama in Birminghan, Birmingham, Alabama.	do	1,660
Unitog Company, Birmingham, Alabama.	do	130
W.J. Bullock, Inc., Birmingham, Alabama	do	190
Gadsden Area:		
AAA Plumbing Pottery Corp., Gadsden, Alabama	do	340
Amcast Industrial Corp., Gadsden, Alabama.	do	200
Baptist Hospital, Gadsden, Alabama.	do	190
Calhoun Asphalt Co., Inc., Gadsden, Alabama.	Jul. 10, 1986	400
EMCO, Gadsden, Alabama.	do	150
Flowers Baking Co., Gadsden, Alabama.	do	180
Gulf States Steel, Inc., Gadsden, Alabama.	do	17,000
Holy Name of Jesus Hospital, Gadsden, Alabama.	do	140
Spring Valley Foods, Inc., Gadsden, Alabama.	do	270
Montevallo Area:		
Metrock Steel & Wire Company, Inc., Montevallo, Alabama.	do	110
Montgomery Area:		
Colonial Bread Company, Montgomery, Alabama.	do	100
Dana Corp. (Highway 80), Montgomery, Alabama.	do	500
Dixie Darling Bakers, Inc., Montgomery, Alabama.	do	230
General Electric Company, Montgomery, Alabama.	do	1,560
Gunter Field, Montgomery, Alabama.	do	380
Maxwell AFB, Montgomery, Alabama.	do	1,730
St. Margaret's Hospital, Montgomery, Alabama.	do	200
Opelika District:		
Auburn University, Auburn, Alabama.	do	1,630
Dexter Lock, Auburn, Alabama.	do	100
Diversified Products, Opelika, Alabama.	do	350
East Ala. Medical Center, Opelika, Alabama.	do	120
East Ala. Paving Co., Inc., Opelika, Alabama.	do	180
Opelika Industries, Opelika, Alabama.	do	250
Tuskeegee Institute, Tuskeegee, Alabama.	do	940
VA Hospital, Tuskeegee, Alabama.	do	520
Selma Area:		
All Lock Co., Inc., Selma, Alabama.	do	130
American Candy Manufacturing, Inc., Selma, Alabama	do	100
Hammermill Paper Company, Selma, Alabama.	do	6,000
R.L. Ziegler Co., Inc., Selma, Alabama.	do	120
Talladega Area:		
Crown Textile, Talladega, Alabama.	do	500
Image Yarns, Inc., Talladega, Alabama.	do	100
Wehadkee Yarn Mills, Inc., Talladega, Alabama.	do	210
Tuscaloosa Area:		
Bryce Hospital, Tuscaloosa, Alabama.	do	500
DCH Medical Center, Tuscaloosa, Alabama.	do	300
Elk Corporation, Tuscaloosa, Alabama.	do	120
Hunt Oil Company, Tuscaloosa, Alabama.	Jul. 10, 1986	2,080
Koppers Co., Inc., Tuscaloosa, Alabama.	do	150
Ray Loper Lumber Co., Tuscaloosa, Alabama.	do	210
Partlow School, Tuscaloosa, Alabama.	do	190
Sullivan Lumber Co., Inc., Tuscaloosa, Alabama.	do	250
Tuscaloosa Steel Corp., Tuscaloosa, Alabama.	do	4,000
VA Hospital, Tuscaloosa, Alabama.	do	190
Total		70,940

[1] The Transportation Quantity is an estimated average daily volume in MMBtu for each end-user, and therefore the total of these Quantities does not exactly equal the Transportation Quantity in the Agreement.

Comment data: September 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-647-000]

September 4, 1986.

Take notice that on July 31, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. 2511, Houston, Texas 77001, filed in Docket No. CP86-647-000 an application pursuant to section 7(c) of the National Gas Act for a certificate of public convenience and necessity authorizing an interruptible transportation service for Mobil Oil Exploration & Producing Southeast Inc. (MOEPSI), Mobil Oil Exploration and Producing North America, Inc. (MEPNA), and Mobil Producing Texas and New Mexico, Inc. (MPTM), herein referred to collectively as Mobil, pursuant to the terms of a gas transportation agreement between Tennessee and Mobil dated July 28, 1986 (Agreement), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to the provisions of the Agreement, Tennessee requests authority to receive on an interruptible basis, up to 162,000 dt equivalent of natural gas per day for the account of Mobil from the following receipt points and to deliver thermally equivalent quantities (less any quantities retained for Tennessee's fuel and uses, gas lost and unaccounted for, and plant thermal reduction due to processing) for the account of Mobil at the following delivery points:

Point(s) of receipt	Point(s) of delivery
(1) Tennessee's Meter Nos. 1-1294 and/or 2-0562 South Pass 77-A, offshore Louisiana (SP 77-A).	To Columbia Gas Transmission Company at Tennessee's Meter No. 1-1034 near Egan in Acadia Parish, LA (Egan-B).
(2) Tennessee's Meter Nos. 1-1380 at Mississippi Canyon 148-A, offshore Louisiana (MC-148-1A).	Egan-B.
(3) Tennessee's Meter Nos. 1-9007 at South Timbalier 50-A, offshore Louisiana (ST 50-A).	Egan-B.
(4) Tennessee's Meter Nos. 1-9012 at South Timbalier 34-A, offshore Louisiana (ST 34-A).	
ST 34-A	To Texas Gas Transmission Company at Tennessee's Meter No. 2-6002 near Egan in Acadia Parish, Louisiana (Egan-D).
ST 34-A	To Texas Eastern Transmission Company at Tennessee's Meter No. 2-0526 near Old Lady Lake in Terrebonne Parish, Louisiana (Old Lady Lake).
(5) Tennessee's Meter Nos. 1-1135 and/or 1-1750 at South March Island 243 C&A, offshore Louisiana (SMI 243 C/A).	Egan-B.
SMI 243 C/A	Egan-D.
SMI 243 C/A	Old Lady Lake.
(6) Tennessee's Meter No. 1-1308 at South Marsh Island 244A, offshore Louisiana (SMI 244-A).	Egan-B.
SMI 244-A	Egan-D.
SMI 244-A	Old Lady Lake.
(7) Tennessee's Meter No. 1-9002 at South Timbalier 36-B, offshore Louisiana (ST 36-B).	Egan-B.
ST 36-B	Egan-D.
ST 36-B	Old Lady Lake.
(8) Tennessee's Meter No. 1-1589 at Sabine Pass 10-JA, offshore Louisiana (SA 10-JA).	Egan-B.
SA 10-JA	Egan-B.
SA 10-JA	Old Lady Lake.
(9) Tennessee's Meter No. 1-1723 at South Pass 49-A, offshore Louisiana (SP 49-A).	Egan-B.
SP 49-A	Egan-D.
SP 49-A	Old Lady Lake.
(10) Tennessee's Meter No. 1-1182 at Ship Shoal 182-C, offshore Louisiana (SS 182-C).	Egan-B.
SS 182-C	Egan-D.
SS 182-C	Old Lady Lake.
(11) Tennessee's facilities at High Island 39-A, offshore Texas (HI 39-A).	Egan-B.
HI 39-A	Egan-D.
HI 39-A	Old Lady Lake.
(12) Tennessee's Meter No. 1-1662 near Mud Lake in Cameron Parish, Louisiana (Mud Lake).	Egan-B.
Mud Lake	Egan-D.
Mud Lake	Old Lady Lake.
(13) Tennessee's facilities in Bovina Field, Warren County, Mississippi (Bovina).	To United Gas Pipe Line Company at Tennessee's Meter No. 5-0110 (UGPL/Bovina).
(14) Tennessee's facilities in the Oakridge Field, Warren County, Mississippi (Oakridge).	UGPI/Bovina.
(15) Tennessee's facilities in the Lac Blanc Field, Vermilion Parish, Louisiana (Lac Blanc).	To Superior Offshore Pipeline Company in Vermilion Parish, Louisiana (SOPCO).

Tennessee requests authority to charge Mobil for the proposed transportation service a quantity charge equal to the applicable cost-based rate multiplied by the total quantity in dekatherms of gas delivered by Tennessee for the account of Mobil at each delivery point as shown in Exhibit P-2 of the application.

Tennessee requests authority to collect the effective GRI surcharge for all deliveries to SOPCO. For all other deliveries, the interstate pipeline to whom Tennessee delivers the gas for the account of Mobil would collect the applicable GRI surcharge.

Tennessee also requests authority to transport the liquid and liquefiable hydrocarbons associated with the natural gas tendered for transportation.

Pursuant to Article VI of the Agreement, Tennessee proposes to install hot taps at an estimated cost of $77,900 which Tennessee alleges are necessary for Tennessee to receive gas at the Bovina, Lac Blanc and High Island 39-A point(s) of receipt. Mobil shall reimburse Tennessee for all costs, both direct and indirect, incurred by Tennessee for such facilities and installation. Tennessee alleges that no certification authority is required for these receipt taps under § 2.55(d) of the Commission's Regulations.

Tennessee states that the interstate pipelines to whom Tennessee proposes to deliver the gas for the account of Mobil would provide the necessary transportation services for Mobil under section 311 of the Natural Gas Policy Act of 1978, either pursuant to waivers of § 284.10(a)(1) of the Commission's Regulations granted on June 27, 1986, or pursuant to Order No. 436 blanket transportation certificates. Tennessee further states that the subject supplies would be delivered to several end-users, as indicated in an August 26, 1986, letter filed with the Commission in this docket.

Comment date: September 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-662-000]

September 4, 1986.

Take notice that on August 8, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas, 77001, filed in Docket No. CP86-662-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible transportation service for Tenneco Oil Company (TOC), pursuant to the terms of a gas transportation agreement between Tennessee and TOC dated August 8, 1986 (Agreement), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to the provisions of the Agreement, Tennessee requests authority to receive on an interruptible basis up to 500,990 dt equivalent of natural gas per day for the account of TOC from the following receipt points:

1. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1180 located at TOC's Ship Shoal Block 198-H platform, offshore Louisiana.

2. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1802 located at TOC's Ship Shoal Block 198-J platform, offshore Louisiana.

3. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1936 located at TOC's Ship Shoal Block 198-F platform, offshore Louisiana.

4. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-0957 located at TOC's Ship Shoal Block 199-E platform, offshore Louisiana.

5. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1119 located at TOC's South Marsh Island Block 61-C platform, offshore Louisiana.

6. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1412 located at TOC's South Marsh Island Block 61-D platform, offshore Louisiana.

7. The existing interconnection between the facilities of Tennessee and TOC at Tennessee's Meter No. 1-1091 located at TOC's South Marsh Island Block 61-B platform, offshore Louisiana.

Tennessee requests authority to transport and deliver equivalent quantities (less fuel and uses and gas lost and unaccounted for) to Columbia Gulf Transmission Company for TOC at the following delivery points:

1. The existing interconnection between Tennessee's 523M-4000 line and the Ship Shoal Block 198 central gathering platform (Ship Shoal 198-H) (Blue Water Header).

2. The existing interconnection between Tennessee's 523M-1200 line and the east leg of the Blue Water System located in Ship Shoal Block 198 (Ship Shoal 198-F) (Blue Water East Leg).

3. The existing interconnection between Tennessee's 523M-7200 line and the east leg of the Blue Water System located in Ship Shoal Block 198 (Ship Shoal 198-J) (Blue Water East Leg).

4. The existing interconnection between Tennessee's 523M–800 line and the the Blue Water Header located in Ship Shoal Block 199 (Ship Shoal 199–E) (Blue Water Header).

5. The existing interconnection between Tennessee's 523M–4300 line and the the Blue Water Header located in South March Island Block 76 (South Marsh Island 61–C) (Blue Water Header).

6. The existing interconnection between Tennessee's 523M–4300 line and the the Blue Water Header located in South March Island Block 76 (South Marsh Island 61–D) (Blue Water Header).

7. The existing interconnection between Tennessee's 523M–1300 line and the the Blue Water Header located in South March Island Block 76 (South Marsh Island 61–B) (Blue Water Header).

Tennessee proposes to charge for this transportation service a quantity charge equal to the applicable cost-based rate multiplied by the total quantity in dekatherms of natural gas delivered by Tennessee for the account of TOC at each delivery point. Tennessee states that the interstate pipeline to whom it delivers the gas for the account of TOC would collect the applicable GRI surcharge.

Tennessee requests authority to transport the liquid hydrocarbons associated with the natural gas tendered for the transportation.

Tennessee provided in a letter filed with the Commission in this docket on August 28, 1986, its best estimate of potential end-users with maximum daily takes of the TOC gas supplies. Tennessee states in this letter that in order to sustain markets for its gas and avoid shutting-in production, TOC indicates that it would need flexibility to (1) add or delete customers and (2) increase or decrease maximum daily quantities to each customer.

Comment date: September 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Texas Eastern Transmission Corporation

[Docket No. CP86–691–000]

September 4, 1986.

Take Notice that on August 25, 1986, Texas Eastern Transmission Corporation (Applicant) P.O. Box 2521, Houston, Texas 77252, filed an application in Docket No. CP86–691–000 pursuant to section 7(c) of the Natural Gas Act for authority to render a transportation service for Texaco Inc. (Texaco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Texaco has requested Bridgeline Gas Distribution Company (Bridgeline), an intrastate pipeline, to transport natural gas from the Lake Barre and Caillou Island Fields located in Terrebonne Parish, Louisiana to Texaco's Paradis Gas Processing Plant (Paradis Plant) in St. Charles Parish, Louisiana. Applicant asserts that since Bridgeline does not have facilities in these areas, Applicant and Texaco entered into a Gas Transportation Agreement ("Agreement") dated May 2, 1986 in which Applicant agreed to transport Texaco's gas from Lake Barre and Caillou Island, and deliver it to Bridgeline, for the account of Texaco, at a point near Larose in Lafourche Parish, Louisiana for subsequent redelivery by Bridgeline to Texaco at their Paradis Plant.

Pursuant to the terms and conditions of the Agreement, Applicant requests authorization to transport for Texaco, on an interruptible basis, up to a Maximum Daily Quantity of 300,000 dekatherms (dth) of natural gas, less Applicable Shrinkage, and such additional daily quantities of natural gas in excess of the Maximum Daily Quantity as Applicant, in its sole judgement, determines it is able to receive, transport, and deliver on any given day.

Applicant further requests that the authorization granted under the application be limited to a term commencing upon acceptance of the certificate and terminating on and including October 31, 1990, and that such authorization be subject to the right of pregranted abandonment at the end of such term.

Applicant states that Texaco will deliver Lake Barre gas to Applicant at a proposed point of interconnection of the pipelines of Applicant and Texaco on Applicant's Line #40–E in Terrebonne Parish, Louisiana. Texaco will deliver the Caillou Island gas to Applicant at proposed interconnections at the terminus of Applicant's Line #40–E. Applicant will transport Texaco's gas and deliver it to Bridgeline, for Texaco's account, at a proposed point of interconnection of Applicant's Line #40 near Larose in Lafourche Parish, Louisiana.

Applicant further states that only facilities it will be required to install are tap facilities at the receipt and delivery points at an estimated cost of $338,000. Texaco will reimburse Applicant for the cost of these facilities.

Bridgeline and Texaco will construct, own and operate measuring and regulating facilities at the receipt and delivery points.

For the transportation service, Applicant will charge Texaco its effective TS–3 rate for 0–200 miles of haul in Zone A, plus an applicable GRI surcharge. Based on rates currently in effect, Texaco will pay Applicant a transportation charge of $0.0903 per dekatherm, consisting of a TS–3 rate of $0.0772 and a GRI surcharge of $0.0131.

Comment date: September 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Texas Gas Transmission Corporation, Texas Gas Exploration Corporation

[Docket No. CP84–31–002]

September 4, 1986.

Take notice that on August 21, 1986, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301 and Texas Gas Exploration Corporation (Exploration), Houston Center, Suite 2000, 909 Fannin Street, Houston, Texas 77201, (hereinafter collectively referred to as petitioners) filed in Docket No. CP84–31–002 a petition to amend the order issued in Docket No. CP84–31–000 *et al.*, on April 23, 1984 pursuant to section 7(c) of the Natural Gas Act so as to authorize the exchange of natural gas between the petitioners from time to time, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by Commission order issued April 23, 1984 in Docket No. CP84–31–000 *et al.*, Texas Gas was authorized to transport for direct sale up to 20,000 Mcf of natural gas per day to Exploration on an interruptible basis.

Petitioners now request the Commission to amend the certificate of public convenience and necessity issued which authorizes the transportation and direct sale of natural gas by Texas Gas to Exploration. It is said that the price Exploration is presently obligated to pay for the gas is a price per MMBtu equal to Texas Gas' system average cost per MMBtu to all gas purchased during the preceding month plus Texas Gas' currently effective transportation charge for the gas purchased. It is further said that Texas Gas and Exploration now seek to institute the exchange option described in the original application so that Texas Gas and Exploration may elect to have the gas sold under their gas sales agreement exchanged with a volume of gas containing an equivalent quantity of Btus at the Eunice gas processing plant or a mutually agreeable point on Texas Gas' transmission system. Petitioners indicate that such an

exchange would be on a therm-for-therm basis.

Petitioners state that the sources of the gas to be exchanged by Exploration include, but are not limited to, those sources listed in the application. Petitioners state further that the gas to be exchanged by Exploration would be limited to: (1) Gas which has been price deregulated pursuant to Section 121 of the Natural Gas Policy Act of 1978; or (2) gas for which the applicable maximum lawful price exceeds the Natural Gas Policy Act, Section 109 maximum lawful price, provided, however, that the maximum lawful price of such gas would always exceed Texas Gas' system average cost per MMBtu of all gas purchased during the preceding month. Exploration, it is said, would continue to pay Texas Gas' currently effective transportation charge in addition to any charges assessed by third party transporters for the transportation of the exchanged gas.

Comment date: September 25, 1986, in accordance with the first subparagraph Standard Paragraph F at the end of this notice.

12. Texas Gas Transmission Corporation

[Docket No. CP86-684-000]

September 4, 1986.

Take notice that on August 21, 1986, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP86-684-000, a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) to add a new delivery point to the City of Covington, Tennessee (Covington), in Tipton County, Tennessee, under the authorization issued to it in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection.

Texas Gas states that it currently makes natural gas sales to Covington pursuant to a service agreement dated April 7, 1986. It is stated that the proposed new delivery point would be constructed, owned, maintained and operated by Texas Gas and would be located on its Shelby County-Ripley 10-inch pipeline near the Rialto Industrial Park approximately three (3) miles northeast of the city limits of Covington in Tipton County, Tennessee. Texas Gas advises that such natural gas would be consumed by a new industrial plant which would be constructed in the Rialto Industrial Park in the near future.

The proposed maximum annual quantity of natural gas to be delivered to Covington at the new delivery point is expected to be 5,000 billion Btu equivalent, with a maximum daily quantity of 20 million Btu equivalent. Texas Gas states that the amounts are so small that the addition of such would have a *de minimus* effect on its peak day and annual deliveries. Texas Gas further states that the addition of this new delivery point would not result in an increase in Covington's existing Contract Demand or Quantity Entitlements. Finally, Texas Gas advises that service to Covington through this new delivery point could be accomplished without detriment to its other customers.

Comment date: October 20, 1986, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP86-692-000]

September 4, 1986.

Take notice that on August 25, 1986, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP86-692-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to add a new delivery point to Peoples Gas and Power Co., Inc. (Peoples), in Greene County, Indiana under the authorization issued to it in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas asserts that it currently makes natural gas sales to Peoples pursuant to a Service Agreement dated February 25, 1986. Texas Gas stated that the proposed new delivery point will be constructed, owned, maintained and operated by Texas Gas and will be located near the terminus of Texas Gas' Bee-Hunter 2-inch pipeline approximately one and six-tenths miles (1.6) northeast of the Town of Lyons, in Greene County, Indiana.

Texas Gas asserts that the proposed maximum annual quantity of natural gas to be delivered to Peoples at the new delivery point is approximately 15.0 billion Btu equivalent, with a daily minimum quantity of 200 million Btu. It is stated that such natural gas will be consumed by People's existing natural gas customers in and around the rural community of Lyons where Peoples has experienced peak day delivery problems in recent years.

Texas Gas asserts that the addition of this new delivery point will not result in an increase in Peoples' existing contract demand or quantity entitlements. Furthermore, Texas Gas indicates that service to Peoples through this new delivery point can be accomplished without detriment to Texas Gas' other customers. Texas Gas states that the amount of natural gas proposed to be delivered at the new delivery point is so small that the addition of such will have a *de minimus* effect on Texas Gas' peak day and annual deliveries.

Comment date: October 20, 1986, in accordance with Standard Paragraph G at the end of this notice.

14. Washington Gas Light Company

[Docket No. CP86-693-000]

September 4, 1986.

Take notice that on August 25, 1986, the Washington Gas Light Company (Applicant), 1100 H Street, NW., Washington, DC 20080, filed in Docket No. CP86-693-000 an application pursuant to section 1(b) of the Natural Gas Act for a disclaimer of jurisdiction of customer-owned gas in Applicant's service area, or, in the alternative, for a blanket certificate pursuant to the Natural Gas Policy Act of 1978 and § 284.224 of the Commission's Regulations, requesting that the Commission defer to the several state regulatory commissions in establishing rates, terms and conditions for such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it would accept customer-owned gas at its interconnections with its pipeline suppliers, Columbia Gas Transmission Corporation and Transcontinental Gas Pipe Line Corporation, and distribute such gas via its three operating divisions to its retail customers on an interruptible basis. Applicant states that District of Columbia Gas Natural Gas (DCNG), a Division of Washington Gas Light Company, has filed with the Public Service Commission of the District of Columbia (P.S.C.) an application for authority to provide such service to customers located within the P.S.C.'s jurisdiction under rates, terms and conditions set forth in the proposed rate schedule included in such application. A copy of such application is filed as Exhibit Z-1 of the Applicant's application to the Commission.

Applicant bases its request for a section 1(b) disclaimer of jurisdiction upon an order issued October 31, 1962 in Docket No. CP62-205 (28 FPC 753), as amended, wherein the Commission found that (1) Applicant is primarily a local distribution company that has no

long distance transmission facilities and makes no sales for resale, and (2) the rates of Applicant are not subject to the jurisdiction of the Commission. Applicant also cites the Commission's more recent order issued July 24, 1984 in Tenneco Oil Company, *et al.*, Docket No. CI83-269-000 (28 FERC ¶61,122), wherein the commission stated: "The Section 7(f) determination permits it (Applicant) to operate as a state regulated local distribution company, notwithstanding its multistate presence."

Applicant further states that if the Commission believes some authorization is required, Applicant requests that the Commission treat it as a local distribution company under § 284.224 of the Commission's Regulations for purposes of the Commission's blanket certification program. In support of the request, Applicant cites the Commission's order granting Arkansas Oklahoma Gas Corporation a blanket certificate under comparable circumstances. 33 FERC ¶61,197 (1985).

Comment date: September 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20486 Filed 9-10-86; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Proposed Post-1989 Power Allocations From Salt Lake City Area Integrated Projects

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of Proposed Post-1989 Power Allocations; Salt Lake City Area Integrated Projects.

SUMMARY: The proposed post-1989 allocations of energy and capacity from the Salt Lake City Area Integrated Projects (SLCA/IP), consisting of the Colorado River Storage Project, the Collbran Project, and the Rio Grande Project, to eligible allottees by the Western Area Power Administration (Western) are published herein together with a description of the process by which the proposed allocations were derived. Also included are discussions of issues related to these allocations.

DATES: Comments must be received in writing no later than the close of business on November 10, 1986. A public comment forum regarding the allocations will be held October 8, 1986, at 8:30 a.m., at the Marriott Hotel, in Salt Lake City, Utah. Applicants and interested parties are invited to comment on the proposed allocations. At this forum, interested persons may submit written comments or orally present their views. Following the forum, an informal meeting will be held to discuss the preparation of prototype contracts for the sale of energy and capacity.

ADDRESSES: For further information on the proposed post-1989 power allocations, contact Mr. Lloyd Greiner, Area Manager, or Ms. Marlene Moody, Assistant Area Manager for Power Marketing, at Salt Lake City Area Office, Western Area Power Administration, 438 East Second South, P.O. Box 11606, Salt Lake City, UT 84147, telephone (801) 524-5493.

SUPPLEMENTARY INFORMATION: Contents of this section include:

I. Statutory Basis of the Allocations.
II. Notice of Environmental Assessment and Finding Of No Significant Impact (FONSI).
III. Applications.
IV. Proposed Allocations.
A. General.
1. Marketable Resources.
2. Other General Issues.
B. Allocations in the Southern Division (Resource Pools 1 and 2).
C. Allocations in the Northern Division (Resource Pools 3 and 4, 5 and 6).
1. Existing Customers (Resource Pools 3 and 4).
a. Proposed Allocations.
b. Adjustments for Energy Conservation.
c. Benefits of Project Integration.
d. Possible Adjustment to Allocations.
2. Participating Customers (Resource Pools 5 and 6).
a. Effect of Special Allocations on Seasonal Energy Factors.
b. Estimated 1990-92 Loads.
V. Opportunity for Written Comments on Proposed Allocations.
VI. Publication of Final Allocations.
VII. Appendices.

I. Statutory Basis of the Allocations

The proposed allocations published herein by the Western Area Power Administration's Salt Lake City Area Office (SLCAO) were determined after the close of the period for submitting applications for power by applying the final Post-1989 General Power Marketing and Allocation Criteria (Criteria), published February 7, 1986, at 51 FR 4844. The Criteria were developed based on provisions of the Acts of Congress approved June 17, 1902 (ch. 1093, 32 Stat. 388), August 4, 1939 (43 U.S.C. 485h(c)), and August 4, 1977 (42 U.S.C. 7152, 7191), and acts amending or supplementing all of the foregoing legislation.

II. Notice of Environmental Assessment and Finding Of No Significant Impact (FONSI)

The February 7, 1986, **Federal Register** notice (51 FR 4844) summarized the environmental assessment and FONSI for the Criteria, and therefore will not be repeated here. Copies of the environmental assessment and FONSI are available by writing to the address above.

III. Applications

The Criteria required that those wishing to be considered for allocations apply to Western's SLCAO by the close of business on April 8, 1986. Applications were received from a total of 113 entities prior to the April 8, 1986, application deadline. A summary of those applications is contained in the following Table 1:

TABLE 1.—SUMMARY OF POST-1989 APPLICATIONS

Priority	Customer group	Division	No. of applicants
1. Preference entities within the SLCA integrated projects market area.	Existing	Southern	24
		Northern [1]	47
	Prospective	Northern	34
Subtotal			105
2. Preference entities outside the SLCA integrated projects market area.	Existing	Northern	0
	Prospective	Southern	2
		Northern	4
Subtotal			6
3. Nonpreference entities acting as agents for public entities without distribution systems.	Prospective	Southern	0
		Northern	1
Subtotal			1
4. Nonpreference entities acting on their own behalf.	Prospective	Southern	1
		Northern	0
Subtotal			1
Total			113

[1] Number of applicants includes 4 single purchasing agents with a total of 43 member systems. Therefore, 144 Priority 1 preference customers are interested in an allocation.

The cities of Santaquin and Elk Ridge, Utah, were given until May 7, 1986, to demonstrate to Western that each had taken "significant and tangible steps" to obtain utility status by September 30, 1988. Neither Santaquin nor Elk Ridge provided this information. Therefore, neither has been granted an allocation as a Priority 1 entity.

Application was received from the city of Richfield, Utah, 2 days after the application deadline of April 8, 1986. Therefore, Richfield has been excluded from consideration for an allocation as a Priority 1 entity.

The Utah Power and Light Company (UP&L) applied for power on its own behalf and on behalf of 143 municipalities, towns, and counties in Utah and Wyoming, which UP&L referred to as "applying municipalities." UP&L stated that its applications were "expressly conditioned upon the availability to UP&L and the applying municipalities of Federal hydroelectric power on the same basis as to preference entities as currently defined by WAPA (Western)." Under existing laws, UP&L, an investor-owned utility, is not entitled to preference in the sale of power. Western assumes that UP&L intended to apply for an allocation of power even though it is a nonpreference entity.

The "applying municipalities" mentioned in UP&L's application are all served by UP&L. Most of the 143 "applying municipalities," which signed resolutions authorizing UP&L to act on their behalf, declared that they had granted UP&L the service franchise in their areas and specified that the application was for power to be distributed through UP&L's distribution system to their residents. Therefore, they are included under UP&L's application as a Priority 3 entity. Two of the 143, Cedar City and Santaquin, Utah, indicated in their resolutions that they would also seek to acquire the power for their own use if they acquired a means to distribute the power without using UP&L's distribution system. However, only Cedar City independently satisfied applicant qualification criteria by taking in a timely manner significant and tangible steps to acquire the means to distribute power by September 30, 1988. Therefore, Cedar City, which submitted a separate application which was received prior to the application deadline has been considered as a Priority 1 applicant.

Since UP&L applied for power on behalf of the remaining "applying municipalities" without distribution systems prior to the April 8, 1986, application deadline, UP&L qualifies as a Priority 3 applicant. In addition, UP&L applied for power on its own behalf, and therefore qualifies as a Priority 4 applicant. However, to avoid double accounting in Table 1, UP&L has been included only in the tabulation of Priority 3 applicants.

IV. Proposed Allocations

A. General

Marketable Resources. The total amounts of long-term energy and capacity identified previously in the Criteria and available for allocation to the Northern and Southern Divisions of the SLCA/IP market area are tabulated in the following table.

TABLE 2.—MARKETABLE RESOURCES

Marketable firm totals	Winter		Summer	
	Energy (gwh) 3177.407	Capacity (mw) 1449.140	Energy (gwh) 2979.330	Capacity (mw) 1351.380
Southern Division:				
Existing customers	264.842	119.000	463.854	210.000
Northern Division:				
Existing customers	2628.705	1200.504	2227.720	1010.813
Participating customers	218.967	100.000	220.389	100.000
Subtotal	2847.672	1300.504	2448.109	1110.813
C&RE Incentive Program	64.893	29.636	67.366	30.567

2. Other General Issues. Due to the limited available resource from the SLCA/IP and the large number of requests received from Priority 1 applicants, only Priority 1 applicants have received proposed allocations. As a group, Priority 1 applicants received 18 percent of their 1980–82 average load requirements.

In the Criteria, Western requested qualified applicants to specify their requests for the desired number of kilowatthours per kilowatt (kWh/kW) to be associated with their individual energy allocations in each season. The resultant individual capacity figures were to be adjusted, if necessary, to match available capacity in each resource pool.

The resource pools and related kWh/kW figures were defined in Appendix B of the Criteria. In determining individual capacity allocations, Western gave first priority to those potential allottees requesting allocations at the resource pool kWh/kW level. Next, priority was given to those requesting a kWh/kW ratio higher than the resource pool level; that is, requesting less capacity. Any capacity not used by this second category of applicants was distributed proportionately, based on initial allocation requests, among those in a third category requesting a kWh/kW ratio lower than that of the resource pool; that is, more capacity. Since, in most cases, insufficient amounts of capacity remained to meet requested allocations of those applicants in category three, requests within this category were adjusted downward to match remaining available capacity.

The available energy pool was distributed through a two-step process. First, the initial energy allocations, referred to as unadjusted SLCA/IP allocations, were calculated using the allocation methodologies detailed in the Criteria. Second, each applicant's post-1989 Federal energy allocations from other Federal projects were added to the unadjusted SLCA/IP allocation and compared to the 3-year average energy usage reported for 1980 through 1982 in applicant profile data (APD). In those cases where an applicant's total Federal entitlement exceeded the 3-year average usage, the difference was subtracted from the applicant's unadjusted SLCA/IP energy allocations, resulting in a proposed (adjusted) SLCA/IP energy amount. The total amount of energy withdrawn was then proportionately distributed to the remaining applicants within the pool, thereby increasing their initial SLCA/IP energy allocations. This energy limitation test was repeated until all applicants had a SLCA/IP energy allocation such that none received greater than 100 percent of their 3-year average load, and all energy available in the pool had been allocated.

Those applicants impacted by the energy limitation are listed in the discussion of allocation results for each customer group.

B. Allocations in the Southern Division (Resource Pools 1 and 2)

The allocations to eligible entities in the Southern Division for both the winter (October–March) and summer (April–September) seasons are listed in Appendix A. According to the Criteria, only existing customers in the Southern Division are eligible.

The Navajo Tribal Utility Authority is no longer a Southern Division customer, but is a Northern Division existing customer. This was done to simplify contract negotiation and administration and accounting and billing requirements.

Littlefield Electric Cooperative has been included in applicant profile data with information reported for Dixie-Escalante Rural Electric Association (Dixie-Escalante) and is a Northern Division existing customer.

Reservation of long-term, contingent capacity, and associated firm energy for renewal to current Boulder Canyon Project contractors was published in the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects, 49 FR 50582, published on December 28, 1984. These reservations included commitments to many existing CRSP Southern Division customers.

The post-1987 allocations from the Parker-Davis Project (made by the Boulder City Area Office) were not completed at the time of this publication. Therefore, since Federal energy commitments for the post-1989 period to specific entities in the Southern Division from this project were unknown, the allocations listed in Appendix A assume that existing Parker-Davis nonwithdrawable commitments will continue in the post-1989 period. The SLCA/IP proposed allocations will be subject to adjustment based upon the final Parker-Davis Project post-1987 allocations, which are expected to be published later this year. Western will publish final Southern Division allocations for the SLCA/IP concurrent with the publication of the final Parker-Davis Project allocations.

Those existing customers who received an adjustment in their initial SLCA/IP allocations as a result of application of the energy limitation were as follows:

Winter: Ak-Chin Indian Community, Chandler Heights Citrus Irrigation & Drainage District, Electrical District 5, Maricopa, Electrical District 7, Ocotillo Water Conservancy District.

Summer: Electrical District 5, Maricopa.

In the determination of associated capacity for Southern Division customers in the winter season, insufficient capacity was requested such that approximately 24 kW remained unallocated. Since only one entity (Yuma Proving Grounds) requested more capacity than the resource pool level of 2,225 kWh/kW, it will be given first right of refusal to this unallocated capacity.

C. Allocations in the Northern Division (Resource Pools 3 and 4, 5 and 6)

1. Existing Customers (Resource Pools 3 and 4).

a. Proposed Allocations. Allocations to existing customers in the Northern Division for both winter and summer seasons are listed in Appendix B. Proposed allocations for the Pick-Sloan Missouri Basin Program (Western Division) (P–SMBP–WD) and the Fryingpan-Arkansas Project (Fry-Ark) were published in the **Federal Register** on May 27, 1986, 51 FR 19080. These proposed allocations were considered as other Federal resources available to Northern Division existing customers. Western will use the P–SMBP–WD and Fry-Ark final allocations in determining the final SLCA/IP allocations.

Those existing customers who received an adjustment in their initial SLCA/IP allocations as a result of application of the energy limitation were as follows:

Winter: Pueblo Army Depot, CO; Truth or Consequences, NM; Defense Depot—Ogden, UT.

Summer: Holyoke, CO; Pueblo Army Depot, CO; Willwood Light & Power, WY; Defense Depot—Ogden, UT.

b. Adjustments for Energy Conservation. The Criteria provided that Western adjust the historic load reported by an entity in APD if an applicant demonstrates that 1980–82 energy usage declined from earlier years and was a direct result of conservation efforts.

Dixie-Escalante submitted detailed information documenting conservation and energy management efforts in effect during this time period which had a significant impact on both demand and energy usage. These conservation efforts involved the following actions:

(1) Implementation of a conservation-oriented rate with an associated capacity charge resulting in a significant reduction in capacity and energy consumption;

(2) Educational programs and energy audits for residential users calling attention to inefficient electrical equipment and emphasizing cost-effective home improvements to reduce overall energy usage;

(3) Instigation of an irrigation rate which made several farmers reevaluate marginal winter production;

(4) Conversion of an irrigation storage reservoir into a gravity-flow, pressure-piped irrigation system, eliminating a large load and energy user; and

(5) Other construction and maintenance efforts to reduce losses in transmission facilities.

These conservation efforts resulted in a reduction in energy consumption in the winter season during 1980 through 1982 of an estimated 40,400,000 kWh or approximately 13,500,000 kWh annually. Therefore, Western concludes that an adjustment to historic load reported by Dixie-Escalante for the winter season is warranted. The 3-year average winter energy usage for Dixie-Escalante has been increased from 37,366,845 kWh to 52,836,022 kWh. Such an adjustment had no influence on the determination of Dixie-Escalante's SLCA/IP (unadjusted) energy allocation; however, this adjustment prevented a reduction to Dixie-Escalante's initial allocation in application of the energy limitation test. This adjustment was considered appropriate since the intent of the energy limitation was not to penalize an applicant for having taken actions which resulted in demonstrated reductions in energy usage.

c. Benefits of Project Integration. In accordance with the Criteria, the benefits of project integration were shared by the smaller projects' customers and the other customers in the Northern Division. Western quantified the monetary benefit due to project integration in proportion to the net benefit contributed by each of the smaller projects' customers and translated these benefits into equivalent amounts of energy. Of that energy, 50 percent was retained by existing small project contractors, and the remaining 50 percent was included in the resource pool available to all other Northern Division customers.

The Criteria summarized the assumptions and procedures used to determine the appropriate distribution of integration benefits. A more detailed analysis, which includes specific allocation numbers and other financial information, is available by writing to the address listed above.

d. Possible Adjustment to Allocations. The allocations to the existing Collbran Project and the Rio Grande Project customers are contingent upon the continuation of the contracts now in effect for the sale of these smaller projects' resources through September 1989. If power purchases from the smaller projects are discontinued or if Western is not assured that anticipated revenues will be received during this period, adjustments of these proposed post-1989 allocations may be necessary.

2. Participating Customers (Resource Pools 5 and 6).

a. Effect of Special Allocations on Seasonal Energy Factors. The special allocations anticipated by the Criteria from Resource Pools 5 and 6 to the cities of Enterprise and Hurricane in Utah and the Department of Energy, Albuquerque Operations Office, in New Mexico reduced those pools to 82,413 kW and 213,068,381 kWh for Pool 5 and 83,646 kW and 217,297,141 kWh for Pool 6.

The factors published in the Criteria for these resource pools were consequently adjusted when allocations were computed. The load factors for these pools, after deducting the special allocations, are approximately 59 percent in both seasons. Refer to Appendix C for these special allocations.

b. Estimated 1980–82 Loads. There are 11 other applicants for whom 1980–82 loads were estimated. These estimated loads formed the basis of their allocations. Nine are municipal applicants in the process of acquiring a utility system. When available, information from the current supplier of the municipal load was used for the purpose of estimating historic load. However, two applicants are water conservancy districts who received this treatment as a result of their close association with Federal projects. Estimated loads were based in one case on hydrological data for the 1980–82 period which has a direct relationship to electric loads (Northern Colorado Water Conservancy District) and in the other (Central Utah Water Conservancy District) on the most current estimate of the load that would have existed in 1980–1982.

V. Opportunity for Written Comments on Proposed Allocations

Western will accept written comments on these proposed allocations from all interested parties until the close of business on November 10, 1986. These comments should be limited to issues related to the implementation of the Criteria. A public comment forum is scheduled for October 8, 1986, at 8:30 a.m., at the Marriott Hotel, in Salt Lake City, Utah.

VI. Publication of Final Allocations

Western will evaluate all comments and determine the final allocations for the 1989–1999 commitment period for the Northern Division. These allocations will be promptly published in the **Federal Register.**

The final allocations for the Southern Division will be published concurrent with the publication of the Parker-Davis Project allocations which are expected to be completed during the fall of 1986.

VII. Appendices

Appendix A: Proposed Allocations, Southern Division, Existing Customers
Appendix B: Proposed Allocations, Northern Division, Existing Customers
Appendix C: Proposed Allocations, Northern Division, Participating Customers.

The Proposed Post-1989 Power Allocations for the SLCA/IP are published herewith.

Issued at Golden, Colorado, September 4, 1986.

William H. Clagett,
Administrator.

APPENDIX A.—PROPOSED POST-1989 ALLOCATIONS, SLCA/IP, SOUTHERN DIVISION EXISTING CUSTOMERS

Customer group	Customer	Resource pool 1—Winter season		Resource pool 2—Summer season	
		Capacity (MW)	Energy (MWH)	Capacity (MW)	Energy (MWH)
(1)	(2)	(3)	(4)	(5)	(6)
Southern Division Existing Customers.	AK-Chin Indian Community	1.920	4,273.433	4.244	9,374.538
	APPA	13.819	30,309.525	27.274	60,245.663
	Chandler Heights Citrus I.D.D.	0.284	630.299	0.400	881.761
	Colorado River Commission	29.505	65,664.940	22.419	49,516.834
	Colorado River Irr./Power	0.883	1,937.237	0.442	1,010.293
	Electrical District #3	2.884	6,419.527	8.630	19,062.541
	Electrical District #4	3.682	8,193.412	4.897	10,815.372
	Electrical District #5–M	0.226	502.866	1.281	2,829.668
	Electrical District #5–P	2.634	5,863.054	2.948	6,511.426
	Electrical District #6	0.000	0.000	6.245	13,793.632

APPENDIX A.—PROPOSED POST-1989 ALLOCATIONS, SLCA/IP, SOUTHERN DIVISION EXISTING CUSTOMERS—Continued

Customer group	Customer	Resource pool 1—Winter season		Resource pool 2—Summer season	
		Capacity (MW)	Energy (MWH)	Capacity (MW)	Energy (MWH)
(1)	(2)	(3)	(4)	(5)	(6)
	Electrical District #7	0.518	1,153.065	4.808	10,619.670
	Maricopa County MWCD No. 1	2.374	5,282.773	5.749	12,696.071
	Ocotillo WCD	0.224	499.364	1.161	2,564.695
	Queen Creek Irr. Dist	0.000	0.000	1.887	4,167.426
	Roosevelt Irr. Dist	1.761	3,919.906	5.243	11,580.055
	Roosevelt Water Cons. Dist	1.617	3,599.233	2.364	5,222.406
	Safford, AZ	0.561	1,248.596	1.227	2,710.406
	Salt River Project	52.299	116,395.635	103.221	227,998.470
	San Carlos Irr. Project	1.844	4,104.092	1.366	3,017.035
	San Tan Irr. District	0.000	0.000	0.882	1,948.977
	Thatcher, AZ	0.363	807.178	0.556	1,228.647
	Wellton-Mohawk Irr. Dist	0.450	1,002.265	0.146	320.633
	Williams AFB	0.913	1,995.287	2.265	5,002.088
	Yuma Proving Grounds	0.415	1,041.337	0.347	732.781
Total, Southern Division Existing		118.976	264,842.000	210.000	463,854.000

APPENDIX B.—PROPOSED POST-1989 ALLOCATIONS, SLCA/IP, NORTHERN DIVISION EXISTING CUSTOMERS, LOVELAND AREA

Customer Group	Customer	Resource Pool 3—Winter season		Resource pool 4—summer season	
		Capacity (MW)	Energy (MWH)	Capacity (MW)	Energy (MWH)
(1)	(2)	(3)	(4)	(5)	(6)
Northern Division Existing Customers Loveland Area.	Center, CO	1.803	3,959.644	1.084	2,336.173
	Colorado Springs, CO	64.957	141,475.553	16.351	35,693.913
	Fleming, CO	0.088	141.607	0.088	188.772
	Fort Morgan, CO	9.092	19,042.807	8.589	18,556.557
	Frederick, CO	0.045	115.556	0.038	95.852
	Haxtun, CO	0.546	1,104.860	0.576	1,221.546
	Holyoke, CO	2.024	4,219.065	1.542	3,326.000
	Lamar, CO	2.666	5,563.149	2.197	4,731.819
	Platte River Power Auth	146.181	382,941.240	114.277	274,265.935
	Pueblo Army Depot	2.866	6,253.067	2.641	5,620.433
	Torrington, WY	1.303	2,677.302	1.925	4,141.463
	Tri-State (CO–WY)	226.278	473,501.834	273.433	589,770.236
	Willwood LT & PWR	0.039	66.369	0.052	113.933
	WMPA	6.741	14,748.862	5.043	10,811.692
	Wray, CO	1.060	2,321.969	0.503	1,108.323
	Yuma, CO	1.413	2,954.767	1.226	2,643.238
Subtotal, Loveland Area.		467.050	1,061,107.691	429.574	954,827.887
Northern Division Existing Customers Salt Lake City Area.	Aztec NM	2.782	6,090.702	2.048	4,509.526
	Brigham City, UT	12.812	27,816.374	8.961	19,715.138
	Defense Depot, Ogden, UT	3.532	7,734.000	3.169	6,984.667
	Delta, CO	1.212	2,654.847	1.064	2,345.488
	Delta-Montrose E.A	0.916	2,006.730	1.270	2,799.108
	Deseret G&T	110.469	231,190.971	101.799	219,560.699
	Dixie-Escalante E.A	23.908	49,759.427	18.826	40,496.460
	Doe-Albuq. Oper. Off	21.157	46,326.947	16.384	36,108.130
	Empire E.A	0.420	920.411	0.578	1,274.169
	Farmington, NM	17.602	42,737.006	16.414	35,310.067
	Grand Valley Rural Power	0.285	624.280	0.394	867.933
	Gunnison, Co	7.236	15,843.569	4.828	10,640.248
	Gunnison County E.A	0.339	742.566	0.391	861.719
	Holy Cross E.A	1.661	3,637.678	1.932	4,258.457
	Irea	27.208	59,577.176	20.713	45,650.259
	La Plata E.A	0.807	1,766.156	0.991	2,183.279
	Navajo Tribal UT ATH	19.615	51,313.479	16.199	42,377.082
	Oak Creek, CO	0.485	1,015.934	0.322	704.532
	Page, AZ	8.051	17,629.611	8.709	14,785.799
	Plains G&T	177.921	372,746.899	142.712	312,967.039
	Sangre De Cristo E.A	0.177	387.227	0.240	528.057
	San Isabel E.A	0.410	897.057	0.538	1,187.602
	San Luis Vly R.E.A	0.253	554.515	1.800	3,966.370
	San Miguel P.A	0.436	955.201	0.604	1,331.665
	Southeast Co. P.A	0.346	757.211	0.938	2,068.211
	Truth or Consequences, NM	6.506	14,234.333	6.038	13,313.548
	UAMPS	191.834	399,263.928	123.589	265,847.053
	UMPA	93.696	205,166.445	79.386	174,958.945
	Weber Basin Cons. Dst	0.00	0.000	0.417	918.918
	White River E.A	0.232	509.050	0.388	745.532
	Yampa Vly E.A	1.342	2,937.782	1.646	3,627.411
Subtotal, Salt Lake City Area.		733.454	1,567,597.306	561.239	1,272,892.107

APPENDIX B.—PROPOSED POST-1989 ALLOCATIONS, SLCA/IP, NORTHERN DIVISION EXISTING CUSTOMERS, LOVELAND AREA—Continued

Customer Group	Customer	Resource Pool 3—Winter season		Resource pool 4—summer season	
		Capacity (MW)	Energy (MWH)	Capacity (MN)	Energy (MWH)
(1)	(2)	(3)	(4)	(5)	(6)
Total, Northern Division Existing.		1,200.504	2,628,705.000	1,010.813	2,227,720.000

APPENDIX C.—PROPOSED POST-1989 ALLOCATIONS, SLCA/IP, NORTHERN DIVISION PARTICIPATING CUSTOMERS, SPECIAL ALLOCATIONS

Energy			Resource pool No. 5 (winter)	Resource pool No. 6 (summer)
Marketable Firm Energy for Participating Customers (kWh)			218,967,000	220,389,000
Special Allocations:	Winter	Summer		
DOE/Los Alamos (kWh)	0	0		
Enterprise, UT	1,472,945	1,132,616		
Hurricane, UT	4,425,874	1,959,243		
Total (kWh)	5,898,619	3,091,859	(5,898,619)	(3,091,859)
Resultant Resource Amounts For Distribution by Formula (kWh)			213,068,381	217,297,141
Capacity:				
Marketable Firm Power for Participating Customers (kW)			100,000	100,000
Special Allocations:	Winter	Summer		
DOE/Los Alamos (kW)	15,000	15,000		
Enterprise, UT	646	496		
Hurricane, UT	1,941	858		
Total (kW)	17,587	16,354	(17,587)	(16,354)
Resultant Resource Amounts For Distribution by Formula (kW)			82,413	83,646
Seasonal Energy Factor				
Winter: 213,068,381/82,413=2585.373 kWh/kW				
Summer: 217,297,141/83,646=2597.818 kWh/kW				
Load Factor				
Winter: 2585.373/4368=59.19%				
Summer: 2597.818/4392=59.15%				

Customer group	Customer	Resource pool 5—Winter season		Resource pool 6—Summer season	
		Capacity (MW)	Energy (MWH)	Capacity (MW)	Energy (MWH)
(1)	(2)	(3)	(4)	(5)	(6)
Prospective Customers	Aspen, CO	1.651	4,169.300	1.062	2,696.781
	Blanding, UT	0.753	1,896.502	0.500	1,270.263
	Cannon AFB	1.397	3,518.397	1.387	3,522.606
	Cedar City, UT	3.421	8,521.385	2.759	6,842.412
	Central Vly Elec Coop	3.592	9,048.806	3.579	9,092.367
	County of Los Alamos, NM	1.545	3,890.403	1.057	2,684.102
	Central Utah WCD	0.095	285.651	0.239	607.009
	Farmers Elec Coop	1.577	6,780.637	1.845	7,931.689
	Gallup, NM	3.593	9,048.806	3.440	8,737.982
	Glenwood Springs, CO	1.663	4,177.881	1.247	3,161.779
	Helper, UT	0.464	1,162.787	0.304	788.600
	Hill AFB	3.593	9,048.806	3.579	9,092.367
	Holloman AFB	2.033	5,303.339	1.921	4,901.151
	Ivins, UT	0.129	323.092	0.118	298.119
	Kanab, UT	0.602	1,515.914	0.478	1,208.583
	La Verkin, UT	0.243	607.996	0.211	534.559
	Lea County Elec Coop	3.592	9,048.806	3.579	9,092.367
	No. Col. WCD	0.000	0.000	3.608	9,078.000
	Panguitch, UT	0.686	1,722.833	0.646	1,638.083
	Price, UT	1.676	4,220.789	1.119	2,843.099
	Raton, NM	1.612	4,014.834	1.081	2,719.740
	Roosevelt Co Elec Coop	3.036	7,649.080	3.437	8,731.128
	Sandia/Kirtland AFB	3.593	9,048.806	3.579	9,092.367
	Santa Clara, UT	0.326	815.238	0.301	759.690
	Springdale, UT	0.028	71.655	0.024	60.652
	Tooele Army Depot	1.287	3,240.787	0.920	2,336.982
	University of Utah	3.408	8,805.860	3.084	7,969.382
	USDI-Dexter N.F.H	0.014	37.329	0.008	19.532
	Utah St. University	1.134	2,970.471	1.123	2,862.289
	Washington, UT	0.680	1,702.132	0.558	1,408.357
	West Bountiful, UT	0.462	1,149.915	0.445	1,119.490
Subtotal, Prospective Customers		47.882	123,798.237	47.237	123,181.527

Customer group	Adjusted customer	Resource pool 5—Winter season		Resource pool 6—Summer season	
		Adjusted capacity (MW)	Adjusted energy (MWH)	Adjusted capacity (MW)	Energy (MWH)
(1)	(2)	(3)	(4)	(5)	(6)
Participating customers—existing	Delta, CO	0.509	1,260.870	0.449	1,141,.262
	Delta-Montrose E.A	3.500	9,048.806	3.500	9,092.367
	Doe-Albuq. Oper. Off	0.000	0.000	3.579	9,092.367
	Empire E.A	3.500	9,048.806	2.638	6,853.319
	Farmington, NM	1.265	3,193.994	3.599	9,092.367
	Grand Valley Rural Power	2.766	7,151.356	1.803	4,683.216
	Gunnison County E.A	3.319	8,581.455	1.803	4,683.216
	Holy Cross E.A	3.500	9,048.806	3.500	9,902.367
	La Plata E.A	3.500	9,048.806	3.500	9,902.367
	Navajo Tribal UT Ath	3.459	9,048.806	3.476	9,902.367
	San Miguel Pwr Assn	3.500	9,048.806	2.770	7,195.985
	Weber Basin WCD	0.000	0.000	0.753	1,914.165
	White River E.A	2.213	5,720.826	1.539	3,997.864
	Yampa Valley E.A	3.500	9,048.806	3.500	9,902.367
Subtotal, Existing Customers		34.531	89,276.144	36.409	94,115.616
Subtotal, Exist.+Prosp. (Excl. Spec. Alloc.)		82.413	213,066.361	83.646	217,297.141
Participating Customers—Special Allocations	Doe-Albuq. Oper. Off	15.000	0.000	15.000	0.000
	Enterprise, UT	0.646	1,472.945	0.496	1,132.616
	Hurricane, UT	1.941	4,425.674	0.858	1,959.243
Subtotal, Special Allocations		17.587	5,898.619	16.354	3,091.859
Total, Participating Customers		100.000	218,967.000	100.000	220,389.000

[FR Doc. 86-20328 Filed 9-5-86; 11:05 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-3078-1]

Science Advisory Board, Radiation Advisory Committee, Radon Mitigation Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Radon Mitigation Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held on September 30, 1986 at the U.S. Environmental Protection Agency, South Conference Area Room #4. The Conference Area is located on the Ground Floor, near the EPA Washington Information Center, Waterside Mall, 401 M Street, SW., Washington, DC. The meeting will begin at 8:30 a.m. and adjourn no later than 5:00 p.m.

The Subcommittee will review the Office of Environmental Engineering and Technology document, *The EPA Radon Mitigation Test Matrix*. Copies of the document being reviewed may be obtained by calling or writing Mr. Paul Shapiro (202) 382-2583 at the Office of Environmental Engineering and Technology, RD-681, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The meeting is open to the public; however, seating is limited. Any member wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on September 26,

1986. The telephone number is (202) 382-2552.

Dated: September 4, 1986.

Kathleen Conway,

Deputy Director, Science Advisory Board.

[FR Doc. 86-20458 Filed 9-10-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

A Closed Circuit Test of the Emergency Broadcast System During the Week of September 22, 1986

September 5, 1986.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of September 22, 1986. Only ABC, AP Radio, CBS, CNN, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-20472 Filed 9-10-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003368-004.

Title: Palm Beach Terminal Agreement.

Parties:

Port of Palm Beach District (Port)

Eastern Cement Corporation (Eastern)

Synopsis: The proposed amendment would make certain changes in that portion of the agreement covering the use of that part of the Port's facilities leased by Eastern referred to as "Additional Demised Premises." The parties have requested a determination as to whether or not the amendment is subject to the provisions of the Shipping Act of 1984.

Agreement No.: 224-010989.

Title: North Atlantic Talking Agreement.

Parties:

Port of Portland, Maine
New Hampshire Port Authority
Massachusetts Port Authority
Fall River Port Authority
City of New York Department of Ports & Terminals
Port Authority of New York and New Jersey
Philadelphia Port Corporation
South Jersey Port Corporation
Port of Wilmington, Delaware
Delaware River Port Authority
Maryland Port Administration
Virginia Port Authority
Virginia International Terminals, Inc.

Synopsis: The proposed agreement would authorize the parties to confer, discuss and exchange information relating to rates, charges, practices, legislation, port administration and procedures and other matters of common interest. The agreement would remain in effect for a five-year period.

Agreement No.: 224-010990.

Title: Charleston Terminal Agreement.

Parties:

South Carolina State Ports Authority (the Authority)

Farrell Lines Incorporated (Farrell)

Synopsis: The proposed agreement would permit the Authority to provide contained services to Farrell at a reduced rate in exchange for Farrell's designation of Charleston, South Carolina, as its sole port of call in the Wilmington, North Carolina/Miami, Florida inclusive port range. The agreement would remain in effect for a period of three years.

Agreement No.: 224-010991.

Title: Global Terminal & Container Services/Costa Armatori Terminal Agreement.

Parties:

Global Terminal & Container Services, Inc. (Global)

Costa Armatori S.p.A. (Costa)

Synopsis: The proposed agreement would permit Global to perform contained stevedoring, terminal and LCL cargo handling services at its marine terminal facility in the Port of New York for containers and RO/RO cargo to be loaded onto or discharged from full container vessels and combination RO/RO-container vessels owned, operated, chartered or controlled and used by Costa in its service between the Mediterranean and New York.

Agreement No.: 224-010992.

Title: Global Terminal & Container Services/Costa Armatori Agency Collection Agreement.

Parties: Global Terminal & Container Services, Inc. (Global)

Costa Container Lines S.p.A. (Costa)

Synopsis: The proposed agreement would designate Global as Costa's agent for the assessment, billing, collection and administration of free time and demurrage on cargo and containers discharged from Costa's vessels at Global's terminal facilities at the Port of New York.

By Order of the Federal Maritime Commission.

Dated: September 8, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-20473 Filed 9-10-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-86-1637]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to. Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Confirmation of Accounts Receivable—Low Rent Public Housing Program Revolving Fund
Office: Office of Inspector General
Form Number: None
Frequency of Submission: Single-Time
Affected Public: State or Local Governments
Estimated Burden Hours: 21
Status: New
Contact: Robert McClintock, HUD, (202) 755–6351, Robert Fishman, OMB, (202) 395–6880

Proposal: Inspection Form: Section 8 Existing Housing Program
Office: Housing
Form Number: HUD–52580 and 52580A
Frequency of Submission: Annually
Affected Public: State or local Governments
Estimated Burden Hours: 500,000
Status: Extension
Contact: Myra Newbill, HUD, (202) 755–7007, Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44, U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 19, 1986.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary.

[FR Doc. 86–20512 Filed 9–10–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 970–06–4121–14–2410; ES 35269 and ES 34711]

Competitive Coal Lease Offering by Sealed Bid, Bell County, KY; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

Correction

In FR Doc. 86–18655, beginning on page 29614, in the issue of Tuesday, August 19, 1986, make the following corrections:

1. On page 29614, first column, eleventh line in the "Summary" the parenthetical text should be corrected to read (30 U.S.C. 351–359).

2. On the same page, second column, second line in the "Dates and Addresses" "Wednesday, September 25, 1986," should be corrected to read "Thursday, September 25, 1986."

3. On the same page, second column, twenty first line in the "Dates and Addresses," the word "tow" is corrected to read "two."

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 86–20345 Filed 9–10–86; 8:45 am]

BILLING CODE 4310–GJ–M

[WY–030–4121–13]

Availability of Coal Core Analyses and Geophysical Logs, Rawlins BLM District, WY

ACTION: Public Notice of Availability of eight coal analyses and forty-three geophysical logs from Carbon County, Wyoming.

SUMMARY: Notice is hereby given that eight coal analyses and forty-three geophysical logs from forty-three coal test holes located in Carbon County, Wyoming are now available to the public.

Twenty-three test holes and four coal analyses, located in Townships 21, 22 and 23 North, Range 89 West, were designed to investigate coal beds in the Paleocene Fort Union Formation in the eastern part of the Great Divide Basin.

Thirteen test holes and two coal analyses, located in Township 16 North, Ranges 90 and 91 West, were designed to investigate coal beds in the Upper Cretaceous Mesaverde Formation in the eastern part of the Washakie Basin.

Seven test holes and two coal analyses, located in Townships 22 and 23 North, Range 86 West, were designed to investigate coal beds in the Upper Cretaceous Mesaverde Formation in the western part of the Hanna Basin.

ADDRESS: Reproductions of the geophysical logs and core analyses are available at cost. Contact: William Newby, Assistant District Manager, Division of Minerals, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301. Telephone (307) 324–7171.

Richard W. Bastin,

District Manager.

[FR Doc. 86–20507 Filed 9–10–86; 8:45 am]

BILLING CODE 4310–22–M

[WY–030–4121–13]

Availability of Coal Core Analyses and Geophysical Logs, Rawlins BLM District, WY

ACTION: Public Notice of Availability of three coal analyses and ten geophysical logs from the Wind River Basin, Fremont County, Wyoming.

SUMMARY: Notice is hereby given that three coal analyses and ten geophysical logs from ten coal test holes located in the Wind River Basin, Fremont County, Wyoming are now available to the public.

The test holes, located in Township 34 North, Range 94 West, were designed to investigate coal beds in the Upper Cretaceous Mesaverde Formation in the southern part of the Wind River Basin.

ADDRESS: Reproductions of the geophysical logs and core analyses are available at cost. Contact: William Newby, Assistant District Manager, Division of Minerals, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301. Telephone (307) 324–7171.

Richard W. Bastin,

District Manager.

[FR Doc. 86–20506 Filed 9–10–86; 8:45 am]

BILLING CODE 4310–22–M

[MT-922-06-3111-13; MT-62415]

Proposed Reinstatement of Terminated Oil and Gas Lease; Montana

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 62415(ND), Golden Valley County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination June 1, 1986.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), The Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: August 29, 1986.

Karen L. Skauge,

Chief, Leasing Unit.

[FR Doc. 86-20417 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-86-M

[MT-922-06-3111-13; MT-59173]

Proposed Reinstatement of Terminated Oil and Gas Lease; Montana

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 59173, Pondera County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination June 1, 1986.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termiantion, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: August 29, 1986.

Karen L. Skauge,

Chief, Leasing Unit.

[FR Doc. 86-20416 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-86-M

[ID-943-06-4212-12; ID-21395]

Issuance of Land Exchange Conveyance Document for Exchange of Public and State Lands; Blaine, Power, Boundary, Bonner & Kootenai Counties

The United States has issued an exchange conveyance document to the State of Idaho for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 53 N., R. 5 W.,
Sec. 28, NE¼SE¼.
T. 56 N., R. 2 W.,
Sec. 8, S½SE¼.
T. 57 N., R. 3 W.,
Sec. 17, S½NW¼NE¼NW¼.
Comprising 125.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 5 S., R. 27 E.,
Sec. 36, all.
T. 6 S., R. 27 E.,
Sec. 16, all;
Sec. 36, all.
T. 7 S., R. 27 E.,
Sec. 16, N½, N½SW¼, E½SE¼SW¼, SE¼SW¼, SE¼;
Sec. 36, all.
T. 8 S., R. 27 E.,
Sec. 16, all.
T. 6 S., R. 28 E.,
Sec. 16, all;
Sec. 25, SE¼SW¼, W½NW¼SW¼SE¼, SW¼SW¼SE¼;
Sec. 36, W½NE¼NW¼NE¼, W½NW¼NE¼, W¼SW¼NE¼, NW¼, N½NE¼SW¼, N½S½NE¼SW¼, S½SW½NE¼SW¼, SW¼SE¼NE¼SW¼,
T. 7 S., R. 28 E.,
Sec. 16, all.
T. 6 S., R. 28 E.,
Sec. 16, all.
Comprising 6,140.00 acres of State land.

The purpose of the exchange was to acquire State land which would complement management of the Bureau's Wapi Lava Flow portion of the proposed Great Rift Wilderness Area. The public interest was well served through completion of this exchange.

Dated: September 3, 1986.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 86-20503 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-DQ-M

[MT-030-06-4212-14]

Notice of Realty Action—Cancellation of Public Sale; Montana

AGENCY: Bureau of Land Management, Dickerson District Office, USDI.

ACTION: Notice of Realty Action M-63930 (ND), Cancellation of Sale of Public Lands in Grant County.

SUMMARY: This notice cancels the proposed competitive sale of public land in case M-63930 (ND) as published in the **Federal Register**, Vol. 50, No. 153, pages 32118 and 32119, issued Thursday, August 8, 1985, (FR Doc. 85-18846) because of lack of public interest. The public land is in the S½SW¼, Sec. 4, T. 134 N., R. 86 W., Fifth Principal Meridian.

Dated: September 3, 1986.

William F. Krech,

District Manager.

[FR Doc. 86-20418 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-DN-M

[MT-030-06-4212-13]

Notice of Realty Action—Exchange Amendment; Montana

AGENCY: Bureau of Land Management, Dickinson District Office, USDI.

ACTION: Notice of Realty Action M-62060 (ND), Amendment to an exchange of public and private lands in Bowman County.

SUMMARY: This notice amends the legal description of the public land for an exchange of public and private land published in the **Federal Register**, Vol. 50, No. 251, pages 53404 and 53405, issued Tuesday, December 31, 1985, (FR Doc. 85-30905) to include additional lands. The following lands, located in Bowman and Grant Counties have been added to the list of lands identified as suitable for exchange.

Fifth Principal Meridian, North Dakota

T. 134 N., R. 86 W.,
Sec. 4, S½SW¼.
T. 129 N., R. 106 W.,
Sec. 16, NE¼SW¼.
T. 129 N., R. 107 W.
Sec. 12, SW¼SW¼;
Sec. 13, NW¼NE¼, N½NW¼.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may

submit comments to the District Manager, Bureau of Land Management, Dickinson District Office, P.O. Box 1229, Dickinson, ND 58602–1229.

Objections will be reviewed by the BLM Montana State Director, who may sustain, vacate or modify this realty action. In absence of any objections this realty action will become the final determination of the Department of the Interior.

Dated: September 3, 1986.

William F. Krech,

District Manager.

[FR Doc. 86–20419 Filed 9–10–86; 8:45 am]

BILLING CODE 4310–DN–M

[NV–930–06–4212–11; N–42531]

Realty Action; Lease or Sale of Public Lands for Recreation and Public Purposes in Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action; Lease or Sale of Public Lands for Recreation and Public Purposes in Nye County, NV.

SUMMARY: The following described public lands have been determined to be suitable and will be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.):

Mount Diablo Meridian, Nevada

T. 12 S., R. 46 E.,
Section 23, S½NW¼, SW¼;
Section 26, N½NW¼.

The area described contains 320 acres.

The lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. The lands described in this notice will not be offered for lease or sale until the classification becomes effective.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands together with the right to prospect for, mine, and remove such deposits under applicable laws.

And will be subject to:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights of record at the time of patent issuance.

3. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the **Federal Register** the above described public lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except as to applications under the mineral leasing laws and application under the Recreation and Public Purposes Act.

Comments: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: August 26, 1986.

Terry Plummer,

District Manager, Battle Mountain, Nevada.

[OR–050–4212–11: GP6–363; OR–40071]

Prineville District Office Realty Action, Recreation and Public Purposes Classification and Lease/Sale of Public Lands in Deschutes County, OR

The following described lands have been examined and found to be suitable for lease/sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.).

T. 22 S., R. 10 E., W.M. Deschutes County, Oregon

Section 11: SE¼ that portion lying east of Highway 97.
Section 12: W½SW¼ that portion lying west of the Burlington Northern Rail Road right-of-way.

The described lands, comprising 188.2 acres, are being offered by lease to the LaPine Special Sewer District, to allow development of a sewage collection, treatment and disposal system.

This Decision/Notice is based on the following:

(1) The lands have been found to be valuable for public purposes.

(2) The land is not of National Significance and not essential to any Bureau of Land Management Program.

(3) The proposed use is in conformance with BLM, STATE and Local Land Use Planning.

(4) The proposed action will not have significant or controversial environmental effects.

(5) The proposed use of these lands will serve important public objectives, ie. the protection of the regional shallow groundwater aquifer and related protection of public health.

(6) The classification, lease and/or patenting of the land to the LaPine Special Sewer District is in conformance with policy established by the Secretary of Interior to provide needed lands for community development.

The classification and granting of the lease with the option to purchase/patent the land will not be adverse to any known public or private interests. The lease will be subject to the following terms and conditions:

1. All timber on the site shall be sold at fair market value prior to any harvesting activity. A buffer zone of at least 220 feet will be maintained around the perimeter of the site. This buffer shall be thinned by overstory removal.

2. During development of the project, the holder shall be responsible for preventive and corrective road maintenance along Reed Road, and the road along the west side of the railroad right-of-way. This may include, but not be limited to blading the roadway, cleaning ditches and drainage facilities, dust abatement, and other requirements as directed by the authorized officer.

Classification of the lands for lease to the LaPine Special Sewer District, under the provisions of the above cited authority segregates them from all appropriations, including locations under the mining laws, except as to applications under the Mineral Leasing Laws.

Detailed information concerning this application, including the field reports and environmental assessments, are available for review at the Prineville District Office, Box 550, Prineville, OR 97754.

Petition for classification OR—40071 is approved as to the land described above.

On or before November 5, 1986, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 550, Prineville, OR 97754. Objections will be reviewed by the State Director who may sustain, vacate or modify the realty action. In the absence of any objections, this realty action will become the Final Determination of this Department.

Dated: September 5, 1986.

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 86–20509 Filed 9–10–86; 8:45 am]

BILLING CODE 4310–33–M

[W-88732]

Wyoming; Postponement of Realty Actions for Public Lands in Goshen County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Postponement of Sale Date for Realty Action in Goshen County, Wyoming.

SUMMARY: The sale date of September 24, 1986 for a Realty Action (a modified competitive sale) for land parcel W-88732, T. 22 N., R. 63 W., 6th PM; section 7, SE¼SE¼; section 18, NE¼NE¼, published in the **Federal Register** on Tuesday, July 29, 1986 (51 FR 27090-27091) is hereby postponed until future notice pending further analysis.

Any sale bids will be returned immediately to the party of issuance.

When further analysis is completed, a decision will be made as to whether to reoffer the parcel for sale. If the parcel should be made available for sale, the sale date will be rescheduled and all affected parties contacted.

FOR FURTHER INFORMATION CONTACT: For any further information, contact the Platte River Resource Area Office, 111 South Wolcott, Room 111, Casper, Wyoming 82601, phone (307) 261-5191.

Dated: September 5, 1986.

James W. Monroe,

District Manager.

[FR Doc. 86-20510 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-22-M

[AZ-050-06-4333-12]

Rules of Conduct and Supplementary Rules of Yuma District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rules for areas within the Topock north section of the lower Colorado River special recreation management area, Havasu Portion.

SUMMARY: The affected areas comprise BLM-managed lands within the Yuma District situated in San Bernardino County, California, between Havasu National Wildlife Refuge and the City of Needles, and land in Mohave County, Arizona, 8 miles south of Bullhead City (Section 10, T. 19 N., R. 22 W., G&SRM, hereinafter section 10). In addition to the regulations contained in 43 CFR 8365.1, the following supplementary rules will apply to the area herein already described.

a. Overnight camping is prohibited within section 10 and the Beal Slough habitat development area.

b. Except where otherwise posted, all motorized vehicle travel is confined to graded and maintained roads as signed and inventoried.

c. Open fires are prohibited within section 10 and the Beal Slough habitat development area.

d. Cutting or damaging trees or plants is prohibited. No wood collecting is permitted.

e. The possession and use of fireworks are prohibited.

f. Beal Slough is a no-wake zone. Boats must be operated in a safe manner. Water skiing is prohibited.

EFFECTIVE DATE: September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, 3189 Sweetwater, Lake Havasu City, Arizona 86403 (602) 855-8017.

SUPPLEMENTARY INFORMATION: The authority for establishing supplementary rules is contained in 43 CFR 8365.1-6. These rules and accompanying maps will be available in the Havasu Resources Area office, which has jurisdiction over the lands, sites, or facilities affected. These rules will also be posted near and/or within the lands, sites, or facilities affected.

J. Darwin Snell,

District Manager.

[FR Doc. 86-20511 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-32-M

[WY-940-06-4520-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., September 2, 1986.

Sixth Principal Meridian

T. 32 N., R. 79 W.

The plat showing the lotting and area of segregated mineral claim, unpatented Maud Lode, in Sec. 7, T. 32 N., R. 79 W., Sixth Principal Meridian, Wyoming, was accepted August 28, 1986.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

T. 53 N., R. 68 W.

The plat representing the dependent resurvey of the Thirteenth Standard Parallel North, through R. 68 W., the east and north boundaries and the subdivisional lines, T. 53 N., R. 68 W., Sixth Principal Meridian, Wyoming, Group No. 464, was accepted August 28, 1986.

T. 52 N., R. 69 W.

The plat representing the dependent resurvery of the Eighth Auxiliary Meridian West, through T. 52 N., between Rs. 68 and 69 We., the south and west boundaries and the subdivisional lines, T. 52 N., R. 69 W., Sixth Principal Meridian, Wyoming, Group Nos. 473 and 474, was accepted August 28, 1986.

These surveys were executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P. O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 3, 1986.

Richard L. Oakes,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 86-20421 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-22-M

Arizona; Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, October 17, 1986; 9:00 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The agenda for the meeting will include:

1. Election of officers.
2. Proposed Range Improvement projects for Fiscal Year 87.
3. Progress report on Fiscal Year 86 Range Improvements.
4. Allotment management plans proposed for implementation in FY 87.
5. BLM management update.
6. Business from the floor.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10:00 p.m. and 11:00 p.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford.

Arizona 85546, by 4:15 p.m., Thursday, October 16, 1986.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: September 3, 1986.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 86-20415 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-32-M

[MT-020-06-4410-02]

Montana; Miles City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Miles City District Office.

ACTION: Grazing Advisory Board Meeting Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that the Miles City District Grazing Advisory Board will meet October 22, 1986. The meeting will begin at 10 a.m. in the conference room at the Miles City Resource Area Office, Bureau of Land Management, Miles City Plaza, Miles City Montana 59301.

The agenda for the Grazing Advisory Board meeting includes an organizational session with election of officers; a discussion of fiscal 1987 range managment projects, allotment management plans, and the allocation of 1987 range funds. The board will also hear an update on the noxious weed control program.

The meeting is open to the public. The public may make oral statements before the board or file written statements for their consideration. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Dated: September 5, 1986.

David D. Swogger,

Acting District Manager.

[FR Doc. 86-20508 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-DN-M

[UT-060-4322-02]

Moab District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Moab District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Moab District Grazing Advisory Board will be held on October 15, 1986. The meeting will begin at 10:00 a.m. in the Conference room of the Bureau of Land Management District Office at 82 East Dogwood, Moab, Utah 84532.

The agenda for the meeting will include:

1. Election of officers.
2. Grazing Fee update.
3. Discussion of non-use requirements and procedures.
4. Discussion of I.G. Report on BLM Grazing Program.
5. Discussion of subleasing regulations.
6. Status Reports on San Juan and San Rafael RMP's.
7. Livestock leases on Colorado River Riparian zones.
8. Discussion of noxious weeds and shrub die-off problems.
9. Indian Creek cooperative management plan.
10. Prioritization of 1987 Allotment Project packages.

The meeting is open to the public. Interested persons may make oral statements to the board between 2:00 p.m. and 3:00 p.m. on October 15, 1986 or file written statements for the Boards consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532, by October 10, 1986.

Summary minutes of the Board meeting will be maintained in the District Office and will be available within thirty (30) days following the meeting.

Gene Nodine,

District Manager.

September 3, 1986.

[FR Doc. 86-20499 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-080-06-4830-12]

Vernal District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Vernal District Advisory Council Meeting.

SUMMARY: A meeting of the Vernal District Advisory Council will be held on Thursday, October 16, 1986, commencing at 7:30 pm. The meeting will be held at the Vernal District Office Conference Room located at 170 South 500 East, Vernal, Utah.

The agenda items will include: (1) Nomination of Chairman and Vice-Chairman. (2) Setting Priorities for Implementation of the Book Cliffs Resource Management Plan and Possible Amendment on the Wild Horse Section, (3) Discussion of the Brown's Park Habitat Management Plan, (4) Update on the Transfer of the White River Oil Shale Facilities to BLM Jurisdiction and Possible Future Uses of the Facilities, (5) Comments from the General Public.

The meeting is open to the public. Persons desiring to present a statement to the Council should contact the District Manager at the below mentioned address or phone him at (801) 789-1362 not later than October 10, 1986.

FOR FURTHER INFORMATION CONTACT: David E. Little, District Manager, 170 South 500 East, Vernal, Utah 84078, Phone (801) 789-1362.

David E. Little,

District Manager.

[FR Doc. 86-20500 Filed 9-10-86; 8:45 am]

BILLING CODE 4310-DQ-M

INTERNATIONAL TRADE COMMISSION

[TA-503(a)-13 and 332-238]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

Correction

In FR Doc. 86-19952 beginning on page 31733 in the issue of Thursday, September 4, 1986, make the following corrections on page 31734:

1. In the third column, in the second line, "315,35" should read "315.35". In the fifth line, "715,62" and "715,641" should read "715.62" and "715.64" respectively.

2. In the same column, in the list under paragraph C, the petition number for "Singapore, Taiwan" should read "653.00". Also, in the last line of the list, the petition number for "Taiwan" should read "772.09".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

[Amdt. No. 5]

Movers' & Warehousemen's Association of America, Inc.—Agreement; Section 5a Application No. 4 [1]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Movers' & Warehousemen's Association of America, Inc. (MWA) has filed, pursuant to section 14(e) of the Motor Carriers Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of MWA's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, 20423, and from MWA's representatives:

Herbert Burstein, Esq., and Zoe Ann Pace, Esq., Zelby & Burstein, Suite 2373, One World Trade Center, New York, NY 10048.

Mary B. Vann Hardman, Executive Director, Movers' & Warehousemen's Association of America, Inc., 1001 North Highland St., Arlington, VA 22201.

Additional information is in the Committee decision. Copies may be purchased from T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC, 20423, or call toll-free (800) 424–5403, or (202) 289–4357 in the Washington, DC metropolitan area.

DATES: Comments from interested persons are due by October 13, 1986. Replies are due by October 28, 1986.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 4 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Harold Johnson (202) 275–7971

or

Louis E. Gitomer (202) 275–7691.

[1] Section 5 was recodified as section 10706.

SUPPLEMENTARY INFORMATION: We have provisionally approved MWA's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Implementation of Pub. L. 96–296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following subject areas: Identification and description of member carriers; right of independent action; employee docketing; open meetings; final disposition of cases; general standards for member voting and disposition of collectively established rates; single-line rates; and released rates. We have also offered comments and imposed requirements concerning the agreement generally. MWA has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and the *Rate Bureau* case, *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria, and their application to MWA's agreement.

A copy of any comments filed with the Commission must also be served on MWA, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that MWA must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: August 18, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Andre concurred in the provisional approval of this ageement. Chairman Gradison dissented with a separate expression.

Kathleen King,

Acting Secretary.

[FR Doc. 86–20450 Filed 9–10–86; 8:45 am]

BILLING CODE 7035–01–M

Section 5a Application No. 87; National Association of Specialized Carriers, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Cancellation of rate agreement and revocation of antitrust immunity.

SUMMARY: National Association of Specialized Carriers, Inc. (NASC), on June 24, 1986, filed a request to surrender its approved agreement and to withdraw pending amendments to its agreement owing to dissolution of the corporation. NASC must file a certificate of dissolution from the appropriate official in the state where it is incorporated. All outstanding antitrust immunity is revoked.

EFFECTIVE DATE: This decision is effective September 10, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rothstein (202) 275–7912

or

Louis E. Gitomer (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. A copy may be purchased from T. S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call toll-free (800) 424–5403, or (202) 289–4357 in the Washington, DC, metropolitan area.

Energy and Environmental Statement

This action does not appear to significantly affect the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10706 and 10321.

Decided: September 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Kathleen King,

Acting Secretary.

[FR Doc. 86–20449 Filed 9–10–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–19 (Sub-No. 121X)]

The Baltimore and Ohio Railroad Company for Exemption of Abandonment in Richland County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Interim Trail use or abandonment.

SUMMARY: The Interstate Commerce Commission issues a Notice of Interim Trail Use or Abandonment in response to a letter from The Baltimore and Ohio Railroad Company advising the Commission that it intends to enter into discussion with the Richland County Park District concerning possible trail use of the right-of-way. By decision served July 30, 1986, the Commission

exempted the abandonment of the involved line.

DATE: This notice will be effective September 11, 1986.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr. (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: September 2, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary

[FR Doc. 86–20451 Filed 9–10–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Second Amended Consent Decree Pursuant to Clean Air Act; Providence, RI

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 2, 1986, a proposed Second Amended Consent Decree in *U.S.* v. *City of Providence*, Civil Action No. 77–0375 was lodged with the United States District Court for the District of Rhode Island. The proposed Second Amended Consent Decree permits the Narragansett Bay Water Quality Management District Commission, successor-in-interest to the City of Providence to the ownership of the Field's Point facility to resume operation of its Field's Point sewage sludge incinerator No. 2 for the purpose of demonstrating compliance with the applicable New Source Performance Standards promulgated under the Clean Air Act, 42 U.S.C. 7401 *et seq.* After the tests are conducted the Commission, by the terms of the Decree, shall terminate operation of the incinerator until the Environmental Protection Agency ("EPA") gives the Commission notice that the incinerator has demonstrated compliance with the applicable New Source Performance Standards, or the Commission submits and EPA approves another proposal permitting the operation of incinerator for the purpose of demonstrating compliance with the applicable New Source Performance Standards.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *U.S.* v. *City of Providence*, D.J. Ref. 90–5–1–1–758.

The proposed Second Amended Consent Decree may be examined at the office of the United States Attorney, District of Rhode Island, 223 Federal Building and Courthouse, Kennedy Plaza, Providence, Rhode Island, and at the Region I Office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Room 2207, Boston Massachusetts. Copies of the Second Amended Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Second Amended Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–20423 Filed 9–10–86; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Order Pursuant to Clean Air Act; Waste Management of Wisconsin, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Waste Management of Wisconsin, Inc.*, Civil Action No. 86–C–0956, was lodged with the United States District Court for the Eastern District of Wisconsin. The proposed Consent Decree concerns the control of fugitive dust emissions from the Omega Hills Landfill in Germantown, Wisconsin, in compliance with the Wisconsin State Implementation Plan limitations on emissions of particulate matter.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Waste Management of Wisconsin, Inc.*, D.J. reference #90–5–2–1–912.

The proposed Consent Decree may be examined at the office of the United States Attorney, 330 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–20424 Filed 9–10–86; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 17–86]

Privacy Act of 1974; Amended System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the U.S. Marshals Service (USMS), Department of Justice, is amending a system of records entitled "United States Marshals Service Training Files (JUSTICE/USM–006)."

The USMS is amending the system to add a new category of records to support its newly established Fitness in Total (FIT) Program; to identify the purpose of the system, the new system manager, and locations of the primary system and decentralized segments; to clarify the authority for maintenance of the system; to amend a routine use related to the release of information to the courts; and to make other minor clarifying changes.

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review some of the proposed changes. Therefore, please submit any comments by October 14, 1986. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Assistant Director, General Service Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street NW. Washington, D.C. 20530.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to the Director, OMB, the

President of the Senate, and the Speaker of the House of Representatives.

The system description is reprinted below.

Dated: August 6, 1986.

Robert N. Ford,

Acting Assistant Attorney General for Administration.

Justice/USM–006

SYSTEM NAME:

United States Marshals Service Training Files (Justice/USM–006).

SYSTEM LOCATION:

a. Primary system: Associate Director for Administration, U.S. Marshals Service (USMS), One Tysons Corner Center, McLean, Virginia 22102.

b. Decentralized segments: Individual training files and the Fitness in Total (FIT) Program training assessment files, identified as items (1) and (3) under "Category of Records in the System," are located also at the USMS Training Academy, Department of Justice, Building 70, Glynco, Georgia 31524. Each district office of the USMS maintains FIT files only on their respective participants in the FIT Program (See Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USMS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Individual training files contain information on the individual's educational background and employee training history, and an individual career development plan; (2) Skills files identify languages and other special skills possessed by the individual USMS employee; and (3) Individual FIT Program training assessment files contain records on physical and medical examinations, blood tests, health histories, physical assessments, and administrative records on participation, goal setting and progress while in the program. The Certificate of Medical Examination (SF–78) is maintained in the primary system at USMS Headquarters only unless obtained and placed in the district file by the individual FIT participant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(h).

PURPOSE OF THE SYSTEM

Individual training files are used to make employment, promotion, or retention determinations for all Deputy U.S. Marshals; to develop training histories; and to determine training and/or promotion eligibility. In addition, FIT Program training assessment files are used to make hiring/retention determinations for Deputy U.S. Marshal personnel entering on duty as of July 1, 1984 and later; to determine employees' eligibility to participate in the program; to tailor an individual fitness program for each employee; to chart employee progress in the program; to determine the need for and to chart progress toward weight reduction; to develop physical fitness standards for performance appraisal purposes; and to examine statistically the physical fitness level of the USMS workforce against law enforcement populations and the general population of the United States. Skills files are used to identify special skills and language abilities possessed by personnel to aid in staffing special assignments which require such skills.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed as a routine used in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constitutents.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA) AND THE GENERAL SERVICES ADMINISTRATION (GSA):

A record from a system of records may be disclosed as a routine use to NARA and to GSA in records management inspections conducted under the authority of Title 44 of the United States Code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals of paper records contained in this system are kept in standard file cabinets. Skills files, summaries of FIT Program training assessment records, and duplicates of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Records are maintained in metal filing cabinets which are locked during non-duty hours. Entry to headquarters is restricted by 24-hour guard service to employees with official and electronic identification. Entry to the Training Academy and district offices is restricted generally to trainees/employees with official identification. Access to computerized records in this system is restricted to the responsible headquarters employees by assigned code.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves the USMS at which time paper records are shredded and magnetic discs are erased.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Associate Director for Administration, U.S. Marshals Service, One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURES:

Direct inquires to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information Act/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)).

Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, training personnel, the Combined Federal Law Enforcement Training Academy, examining physicians, fitness coordinators, and personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-20425 Filed 9-10-86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-65]

NASA Advisory Council, Space Systems and Technology Advisory Committee, (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Task Team on Reliability, Diagnostics and Quality Assurance.

DATE AND TIME: September 30, 1986, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue, SW., Room 647, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John Smith, Code RX, National Aeronautics and Space Administration, Office of Aeronautics and Space Technology, Washington, DC 20546 (202/453-2834).

SUPPLEMENTARY INFORMATION: The Space Systems and Technology Advisory Committee (SSTAC) Ad Hoc Task Team on Reliability, Diagnostics and Quality Assurance, chaired by Mr. Adrian O'Neal, is comprised of six members and was formed to assess the technology base requirements for support of future space flight missions. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open.

Agenda: September 30, 1986.

8:30 a.m.—Briefings on the OAST Technology Program related to Reliability, Diagnostics and Quality Assurance.

12:30 p.m.—Discussion of study plan and assignment of study tasks.

4:30 p.m.—Adjourn.

September 4, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86-20474 Filed 9-10-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Accident Reports: Availability of and Responses to Safety Recommendations

Report No.	NTIS No.	Date	Subject
NTSB/RAR-86/01	PB86-916301	Mar. 2, 1986	Railroad Accident Report: Derailment of New York City Transit Authority Subway Train, Dekalb Avenue Station Brooklyn, New York, May 15, 1985.
NTSB/RAR-86/02	PB86-916303	June 20, 1986	Railroad Accident Report: Head-on Collision of Burlington Northern Railroad Company Freight Trains Extra 6311 West and Extra 6575 East, Near Westminster, Colorado, August 2, 1985.

Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports, call 703-487-4650 and to order subscriptions to report, call 703-487-4630.

Recommendation No.	Respondent	Date	Subject
I-86-3	SS	July 4, 1986	Assist the DOE in the creation of a national clearinghouse for alcohol and drug safety education programs.
I-78-15	Assoc. of American Railroads	Aug. 1, 1986	Disseminate safety procedures to railroad, wreckage-clearing contractor, special emergency response team personnel, and public safety officials in the communities through which the railroads operate.
I-78-16	...do	...do	Establish a procedure for regular reviews of railroad wreckage-clearing operations so that safety procedures can be upgraded.
I-86-01	Dept. of Education	Aug. 11, 1986	Create a national clearinghouse for alcohol and drug safety education programs.
I-86-02	...do	...do	Interdepartmental evaluation of Federal, State, and local alcohol and drug education programs.
A-84-49	FAA	...do	Seek legislative authority to use the NDR to identify airmen whose driving licenses have been suspended or revoked for alcohol-related offenses.
A-85-112	FAA	Aug. 13, 1986	Revise the localizer backcourse runway 19 instrument approach procedure at the New Orleans International Airport.
A-85-113	FAA	...do	Review instrument approach procedures at airports designated as the primary airport within a TCA or ARSA.
A-85-114	FAA	...do	Institute measures to improve coordination between personnel involved in the design of TCA and ATSA airspace and those involved in the design of instrument approach procedures.
A-86-13	FAA	Aug. 19, 1986	Issue an AD to require that the placard concerning the installation of the nose gear centering spring bolt on Piper PA-34-200 airplanes be installed in Piper Model Seneca I and applicable Seneca II airplanes.
A-85-35-37	FAA	Aug. 21, 1986	Amend 14 CFR 121, 125, and 135 to require that all passenger air carrier aircraft operating under these Parts be equipped with life preservers.
A-85-42	FAA	...do	Amend TSO-C13d to require that the timed donning tests include the time to extract the life preserver from an unopened package.

Recommendation No.	Respondent	Date	Subject
A-85-43	FAA	do	Amend TSO-C13d to establish donning test performance requirements and compliance criteria.
A-85-44	FAA	do	Amend TSO-C13d to require that the timed donning tests be performed without the use of a briefing card.
A-85-45	FAA	do	Amend TSO-C13d so that it does not preclude the use of single inflation chamber life preserver designs.
A-85-46	FAA	do	Amend TSO-C13d to require an automatically activated survivor locator light.
A-85-48	FAA	do	Amend TSO-C13d to provide minimum performance standards for flotation devices designed to meet the needs of infants.
A-85-38	FAA	do	Amend 14 CFR 25 and SFAR No. 23 to require that the stowage compartment for life preservers be located where the preserver will not be susceptible to water impact crash damage or cabin flooding.
A-85-41	FAA	do	Amend TSO-C69a to require quick-release grips and handholds on emergency evacuation slides.
A-85-125	FAA	do	Issue a series of ADs to require modification of seats installed in general aviation airplanes which have identified deficiencies.
A-85-134	FAA	Aug. 28, 1986	Require the manufacturer to modify the design of the Boeing 747 hydraulic systems so that the integrity of all four hydraulic systems will not be impaired.
A-83-83	FAA	do	Urge Direction Generale de L'Aviation Civil to review the engine manufacturer's program to identify the causes of the axial compressor blade failures in the Turbomeca Artouste III series engines.
A-86-14	FAA	do	Issue an AD to Electra operators to modify the air start access door to prevent an inflight opening from affecting airfoil aerodynamics.
A-86-15	FAA	do	Issue an Air Carrier Operations Bulletin to have POIs inform operators of Electra aircraft of the potential of an open air start access door to cause vibrations during takeoff and inflight.
A-86-16	FAA	do	Establish procedures to ensure that adquate surveillance of operators is maintained when a carrier's operations are located away from the office.
A-86-17	FAA	do	Instruct POIs to verify that supplemental operators are fulfilling their responsibility to ensure that competent personnel maintain and service operator's aircraft at transient locations.
A-86-18	FAA	do	Evaluate the information needed by crash/fire-rescue agencies to deal with inflight emergencies.
A-86-19	FAA	do	Provide guidance on topics and training in cockpit resource management so that operators can provide training to flightmembers.
A-86-30	FAA	do	Revise the current tower training curriculum at the ATC Academy to include practical "hands-on" training.
A-86-31	FAA	do	Establish a program for improved supervision of tower controller performance in which scanning, coordination, and use of proper phraseology is emphasized.
A-86-32	FAA	do	Establish a task force to develop memory aids to reduce ATCs forgetting traffic.
A-86-33	FAA	do	Require controllers to obtain a readback for hold, takeoff, or crossing clearances and for active runways.
A-86-34	FAA	do	Emphasize the importance of reading back taxi, hold-short, runway crossing, and takeoff clearances in proper phraseology.
A-86-35	FAA	do	Emphasize that a good operating practice is to monitor only assigned ATC communications frequencies after a clearance onto an active runway for department.
A-86-36	FAA	do	Revise controller phraseology for use when issuing takeoff and landing clearance to include the runway number.
A-86-37	FAA	do	Issue a GENOT directing the terminal ATC facilities to brief all controllers on the dangers of expedited traffic departing or crossing runways to accommodate arrival and departure traffic.
A-86-38	FAA	do	Issue an Advisory Circular delineating the pilot and controller roles in the prevention of runway incursion incidents.
A-86-39	FAA	do	Revise the near-midair collision reporting and investigating program to clarify the intent that near-collision on or near the airport surface constitute an occurrence which must be investigated.
A-84-40	FAA	do	Revise the requirements to report and investigate operational errors, pilot deviations, and near-midair collisions that involve aircraft on the ground as well as in the air.
A-86-41	FAA	do	Issue an air carrier operations bulletin to require air carrier inspectors to review air carrier training and operations manuals and pilot training programs to ensure they have standardized information about runway incursions.
A-86-42	FAA	do	Disseminate copies of the Report on Runway Incursions to terminal control facilities and to the ATC Academy for training programs.
A-86-43	FAA	do	Determine the most effective signs, markings, and procedures, from an operational and human performance perspective to prevent pilot-induced runway incursions.
A-86-47	FAA	do	Issue an AD superseding AD 46-38-03 and applicable to Ercoupe Model 415 airplanes requiring compliance with Ercoupe Service Bulletins Nos. 12 and 24 and the installation of fuel gascolator braces.
M-86-33	USCG	Aug. 11, 1986	Publicize the availability and benefits of the use of rescue equipment.
M-86-34	USCG	do	Require life rafts to be installed so that unnecessary lifting will not be required when they are manually launched.
M-86-15	USCG	do	Require that masters and officers on passenger vessels carrying 50 or more passengers report to the vessel's operating company when they are taking any medication.
M-86-16	USCG	do	Develop and implement a memo of understanding with Puerto Rico concerning responsibilities, when various agencies participate in search and rescue situations.
H-86-23	Owner-Operators Ind. Drivers Assn. of America	Aug. 6, 1986	Work with the NSC to develop a guidance program designed to reach people who are considering a career in commercial truck driving.
H-79-31	Montana Governor	Aug. 4, 1986	Enact legislation to require that the driver of a motor vehicle with a seating capacity of more than 16 passengers, possess a drivers's license and a certificate from a bus driver training course.
H-85-12	Iowa Governor	Aug. 1, 1986	Develop a program to be used by school districts targeted at drivers of privately-owned and -operated pupil transportation vehicles that includes a review of all laws, regulations, and policies.
H-84-72	do	do	Enact legislation to require operators of noncommercial buses to demonstrate their driving skills by taking an examination and road test.
H-79-31	do	do	Enact legislation to require that the driver of a motor vehicle with a seating capacity of more than 16 passengers, possess a driver's license and a certificate from a bus drivers training course.
H-86-12	Ins. Serv. Office, Inc	do	Undertake a program encouraging member companies to offer financial incentives to motor carrier policy holders whose drivers have received formal training.
H-86-14	Prof. Truck Driver Inst. of America, Inc	Aug. 7, 1986	Compile and submit to BMCS the views of members of the trucking and truck driving training industries concerning revisions in the BMCS standards.
H-86-15	do	do	Develop a program for evaluating truck driver training schools.
H-86-16	do	do	Work with the NSC to develop a guidance program to reach people who are interested in considering a career in commercial truck driving.
H-86-10	Amer. Assoc. of Motor Vehicle Administrators	Aug. 12, 1986	Develop recommendations on how a National Driver License for truck drivers could be administered.
H-86-11	do	do	Urge all States to implement the NDR to obtain prompter access to records.
H-86-07	Amer. Assoc. of State Highway & Transp. Officials	Aug. 8, 1986	Work with the FHA to develop a bridge inspection procedure for elements.
H-86-49	Soc. of Pelvic Surgeons	Aug. 11, 1986	Disseminate informed guidance to those who treat motor vehicle crash victims concerning the nature, severity, and handling of injuries sustained by those using belt restraint systems.

VOL 51 ISS 176 SE 11 1986 UMI

Recommendation No.	Respondent	Date	Subject
H-86-12	American Insurance Assoc	Aug. 18, 1986	Encourage members to offer financial incentives to motor carrier policy holders whose drivers have received formal training.
H-86-12	Alliance of American Insurers	do	Same as above.
H-86-38	GM	Aug. 21, 1986	Provide aftermarket retrofit assemblies for passenger vehicles to convert lap-only belts systems at outboard positions to lap/shoulder belt systems.
H-86-39	GM	do	Provide in newly manufactured passenger vehicles, lap/shoulder belts in non-front outboard seating positions.
H-86-40	GM	do	Cooperate with NHTSA in determining the feasibility of providing lap/shoulder belts at non-outboard seating positions of passenger vehicles.
H-85-22	Dept. of Public Safety (AK)	Aug. 21, 1986	Child Passenger Safety Symposium: Ways to Increase Use and Decrease Misuse of Child Restraints.
R-79-64	CSX Transportation	Jul. 24, 1986	Establish train makeup and operation guidelines for trains carrying hazardous materials.
R-83-47	CSX Transportation	do	Revise the practices to include emergency response guidance information on the hazardous materials classified as "empty."
R-83-50	do	do	Revise the engineers' training program to require annual attendance at train dynamics analyzer classes.
R-83-51	do	do	Require engineers who fail to demonstrate proficiency in train handling during train dynamics analyzer classes to attend the training school.
R-79-29	Transit Rail Operations	Jul. 29, 1986	Change the emergency release mechanism so the doors can be opened by passengers in emergency conditions.
R-79-30	do	do	Provide a means for emergency personnel to open car doors from the outside.
R-79-31	do	do	Alter the interiors of the commuter cars to correct the injury-producing features of the car design.
R-76-14	do	do	Develop a program to improve all grade crossings used by commuter trains.
R-82-80	Distnct of Columbia Fire Dept	Aug. 5, 1986	Require that the Fire Dept. expand its computer storage capability to include all the information needed by the fire dispatcher.
R-85-118	Chemical Manufacturers Association	do	Inform its members of the facts of the accident in Elkhart, Indiana, review the methods available to shippers to determine the quantity of material remaining in rails after unloading.
R-84-20	American Railway Engin. Association	Aug. 4, 1986	Assist in the identification of certain highway-railroad grade crossing locations, hazardous materials truck carriers that are involved in near collisions at grade crossings.
R-79-85	FRA	Aug. 5, 1986	Study the feasibility of requiring locomotives to be equipped with brake pipe flow indicators to enable engineers to measure trainline airflow.
R-76-13	FRA	do	Require flashing lights and gates as protection at all grade crossings used by commuter trains.
R-76-54	FRA	do	Develop a method that does not depend on crew observations that will indicate when a wheel has failed or is derailed.
R-76-55	FRA	do	Revise the CFR to ensure that wheels exposed or suspected of being exposed to critical temperatures are removed from service.
R-83-42	Maryland Governor	Aug. 8, 1986	Require that State contracts with the Baltimore and Ohio Railroad Company specify that adequate supervisory checks be performed by the railroad at those points where commute trancrews report to duty.
R-84-15	FRA	Aug. 11, 1986	Initiate inspections of tank cars equipped with excess flow valves to determine if the tank cars heve improperly positioned excess flow valve sets, determine the cause, and require corrections.
R-81-96	Assoc. of American Railroads	do	Encourage railroads to develop programs for train crewmembers to report truck carriers identified as transporters of hazardous materials; crossings with passive warning devices; and hazardous materials trucks involved in near collisions.
R-85-120	Assoc. of American Railroads	Aug. 13, 1986	Issue guidelines for mechanical inspection of tank cars.
R-83-60	The ATSF Railway Company	Aug. 14, 1986	Establish supervisory procedures at crew-change terminals to insure that employees coming on duty are fit and capable of complying with the rules.
R-83-61	do	do	Enhance the training of all employes in their responsibilities and duties.
R-85-82	Amtrak	Aug. 20, 1986	Apply for an exclusive radio channel for National Railroad Corporation's operational use in New York.
R-85-83	do	do	Develop an operating rules verification procedure that will require employees to demonstrate that they understand the meaning of the rules and apply them.
R-82-113	Alabama Governor	Aug. 21, 1986	Install STOP and STOP AHEAD signs on County Road 42 where it intersects the track of the Southern Railway Company.
R-85-130	NOAA	do	Solicit the voluntary submission of real-time severe weather observations from citizens and observers to provide an overview of weather parameters at remote locations.

Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Monica Revelle,

Alternate Federal Register Officer.

September 2, 1986.

[FR Doc. 86-20427 Filed 9-10-86; 8:45 am]

BILLING CODE 7533-01-M

Safety Recommendations Issued; Availability of

Recommendation No.	Respondent	Date	Subject
P-86-15	DOT	August 13, 1986	Amend Final Order CPF No. 3541-H to Williams Pipe Line Company.
H-86-38	U.S. Manufacturers of Passenger Vehicles	August 8, 1986	Provide aftermarket retrofit assemblies for passenger vehicles to convert lap-only belts systems to lap/shoulder belt systems.
H-86-39	do	do	Provide in newly manufactured passenger vehicles, lap/shoulder belts in all non-front seating positions.
H-86-40	do	do	Determine the feasibility of providing lap/shoulder belts at non-outboard seating positions of passenger vehicles.
H-86-41	Foreign Manufacturers Passenger Vehicles	do	For passenger vehicles with lap-only belts at outboard positions, provide aftermarket retrofit assemblies to convert these belts to lap/shoulder belt systems.
H-86-42	do	do	Provide in newly manufactured passenger vehicles lap/shoulder belts in all non-front outboard seating positions.
H-86-43	do	do	Determine the technical feasibility of providing lap/shoulder belts at non-outboard seating positions of passenger vehicles.
H-86-44	NHTSA	do	Encourage manufacturers of passenger vehicles to provide aftermarket retrofit assemblies to convert lap-only belt systems to lap/shoulder belt systems.

Recommendation No.	Respondent	Date	Subject
H-86-45	NHTSA	do	Require that lap/shoulder belts be installed at all outboard seating positions in newly manufactured passenger vehicles manufactured for sale in the U.S.
H-86-46	NHTSA	do	Encourage manufacturers to provide lap/shoulder belts in all non-front outboard seating positions.
H-86-47	NHTSA	do	Determine the feasibility of requiring that 3-point lap/shoulder belts be provided at every seating position in newly manufactured passenger vehicles manufactured for sale in the U.S.
H-86-48	Intern'l Assoc. of Chiefs of Police	do	Disseminate information on the possibility for serious head, spine, and internal injuries to crash victims who were using a lap belt.
H-86-49	Assoc. and Groups Concerned with Emergency Medicine.	do	Disseminate guidance to those who treat crash victims with the nature, severity, and handling of injuries that can be sustained by those using belt restraint systems.
H-86-58	Agencies, Assocs. & Inst. interested in trans. farm equipment.	do	Work jointly to develop and widely disseminate an audio-visual program to promote the safe transportation of farm equipment on highways.
A-86-61	FAA	August 1, 1986	Identify all JT9D-7R4 series engines that have high pressure turbine rotating airseals made from material identified with head code RLTM and require removal of the airseals.
A-86-62	FAA	August 8, 1986	Conduct an investigation of the turbine rotating airseals in Pratt & Whitney JT9D-7R4 series engines to determine the requirements for an inspection program.
A-86-63	FAA	do	Establish a program to determine and correct the cause of fatigue failures in turbine rotating airseals in Pratt & Whitney JT9D-7R4 series engines.
A-86-64	FAA	do	Notify foreign civil aviation authorities and operators of airplanes equipped with Pratt & Whitney JT9D-7R4 series engines about the failures associated with the turbine rotating airseal in these engines and the actions taken to eliminate the failures.

Single copies of these recommendation letters are available on written request to Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include addressee's name, date of the letter, and the recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Monica Revelle,

Alternote Federal Register Officer.

September 2, 1986.

[FR Doc. 86-20426 Filed 9-10-86; 8:45 am]

BILLING CODE 7533-01-M

Performance Review Board, Senior Executive Service; Appointment of Members

Appointments of Performance Review Board members are required to be published in the **Federal Register** by 5 U.S.C. 4314(c)(4).

The following persons have been appointed to, and will serve on Performance Review Boards for senior executives in the National Transportation Safety Board:

Patricia A. Goldman
John Hammerschmidt
Lloyd Miller
B. Michael Levins
Terrence Armentrout
Leslie Kampschror
John Stuhldreher
Hebert Banks
Robert Pyle
Barry Sweedler

Robert W. Pyle,

Director of Personnel.

[FR Doc. 86-20428 Filed 9-10-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-382]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Louisiana Power & Light Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-38 issued to Louisiana Power and Light Company (the licensee), for operation of Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana. The request for amendment was submitted by letter dated June 24, 1986, as supplemented by letters dated August 4 and September 2, 1986.

According to Technical Specification 5.3.1, the Waterford 3 fuel is presently limited to a maximum enrichment of 3.70 weight percent U-235. Because Cycle 2 is being designed as an approximately 18-month cycle, increased fuel enrichments are needed. For Cycle 2 the maximum nominal enrichment will be 3.90 weight percent U-235; however, it is estimated that later cycles will require a maximum fuel enrichment of approximately 4.0 weight percent U-235. Therefore, the change will increase the level of enrichment for fuel to be loaded into the reactor core from a maximum of 3.70 weight percent U-235 to a maximum of 4.0 weight percent U-235. Analyses have been performed demonstrating the acceptability of storing fuel with a maximum enrichment of 4.0 weight percent in the fuel storage areas (spent fuel pool, new fuel storage vault, and containment temporary storage racks).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment follows:

Criterion 1

The proposed change will increase the fuel enrichment limit in order to allow receipt of reload fuel for use in extended cycle operation. Middle South Services, Inc. has performed a criticality analysis for each of the fuel storage areas (new fuel vault, spent fuel pool, and containment temporary storage racks) using KENO, a 3-D monte carlo criticality analysis code. Based upon these analyses, the resultant K-eff for each of these areas is less than the required limit of 0.95 for enrichments up to 4.0 weight percent U-235. Because the calculated K-eff values (including uncertainties) indicate that the fuel storage configurations are substantially sub-critical (i.e.< 0.95) the probability of a criticality event in these areas is not increased. No physical change is being made to the storage areas. Therefore, there are no increased adverse consequences for such a postulated event.

Criterion 2

Because there are no changes being made to trip setpoints of alaram functions, and there will be no change in how the facility is operated, the proposed change will not introduce a new or different kind of accident from those previously evaluated.

Criterion 3

Because the calculated values for K-eff (including uncertainties) are below the regulatory limits and because they reflect a substantial sub-critical configuration for each of the fuel storage areas under adverse conditions, the margin of safety is not reduced by implementing the proposed change.

Therefore, since the application for an amendment appears to satisfy the criteria specified in 10 CFR 50.92, the NRC staff proposed to determine that the requested change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By October 10, 1986 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for an amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commissio expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for an amendment which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Bethesda, Maryland, this 5th day of September, 1986.

For the Nuclear Regulatory Commission.
George W. Knighton,
Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.
[FR Doc. 86-20407 Filed 9-10-86; 8:45 am]
BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina.

In accordance with the licensee's application dated June 30, 1986, as superseded in its entirety September 2, 1986, the proposed amendments would revise the Station's common Technical Specifications (TSs) to support the operation of Oconee Unit 2 at full rated power during the upcoming Cycle 9.

The proposed amendment request changes the following areas:

1. Core Protection Safety Limits (TS 2.1);
2. Protection System Maximum Allowable Setpoints (TS 2.3);
3. Rod Position Limits (TS 3.5.2); and
4. Power Imbalance Limits (TS 3.5.2).

To support the license amendment request for operation of Oconee Unit 2, Cycle 9, the licensee submitted, as an attachment to the application, a Duke Power Company (DPC) Report, DPC-RD-2007, "Oconee Unit 2, Cycle 9 Reload Report," dated June 1986. A summary of the Cycle 9 operating parameters is included in the report, along with safety analyses.

During the refueling outage, 117 fuel assemblies will be reinserted similar to those previously used, and 60 fuel assemblies will be discharged and replaced with new, but substantially similar, assemblies of the Mark BZ type. As in the previous cycle, Cycle 9 will utilize gray (less-absorbing) axial power shaping rods (APSRs) instead of the previously used black (highly-absorbing) APSRs. The use of the Mark BZ fuel assemblies and the gray APSRs was approved by the Commission's staff for use at Oconee Unit 1 during Cycle 9, in amendments dated November 23, 1984.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). Example (iii) of the types of amendments not likely to involve significant hazards considerations is an amendment to reflect a core reload where:

(1) No fuel assemblies significantly different from those found previously acceptable to the Commission for a previous core at the facility in question are involved;
(2) No significant changes are made to the acceptance criteria for the Technical Specifications;
(3) The analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and
(4) The NRC has previously found such methods acceptable.

This particular reload involves the reinsertion of 117 fuel assemblies of a type previously approved and used and the insertion of 60 fuel assemblies of the Mark BZ type. The Mark BZ fuel assemblies are the same as previously approved and used assemblies in terms of fuel rods, end grid, end fittings, and guide tubes and differ only slightly from previously approved assemblies in the use of Zircaloy spacer grids rather than Inconel Intermediate Spacer grids. Thus, this core reload involves the use of fuel assemblies that are not significantly different from those found previously acceptable to the Commission for a previous core at this facility. The request for amendment changes the TSs to reflect new operating limits based on the fuel and control rods to be inserted into the core. These parameters are based on the new physics of the core and fall within the acceptance criteria.

In the analyses supporting this reload, there have been no significant changes in the acceptance criteria for the Technical Specifications, the analytical methods used to demonstrate conformance with the Technical Specifications and the regulations were not significantly changed, and those analytical methods have been previously found acceptable. Thus, this reload and the proposed license amendments reflecting it appear to be encompassed by example (iii) of amendments not likely to involve a significant hazards consideration. On this basis, the Commission proposes to determine that these amendments do not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

By October 14, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's 'Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intevene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the sepcificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issueance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated June 30, 1986, as superseded in its entirety September 2, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Dated at Bethesda, Maryland, this 8th day of September 1986.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Acting Director, PWR Project Directorate No. 6, Division of PWR Licensing-B.

[FR Doc. 86-20494 Filed 9-10-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Denial of Request for Amendment to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for amendments to Facility Operating License Nos. DPR-24 and DPR-27, issued to the Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2 (the facilities), located in the Town of Two Creeks, Manitowoc County, Wisconsin.

The amendments as proposed by the licensee would modify the Point Beach Technical Specifications (TS), to allow reduced duration testing during type "A" containment integrated leak rate tests (CILRT) using either Bechtel BN-TOP-1 criteria (absolute method, total-time technique) or the EPRI NP-3400 criteria (absolute method, mass-point technique). The amendments would also allow containment purge supply and exhaust valves to be treated as Type "B" containment penetration for purposes of testing and repair. The amendments would also make some minor editorial changes. The licensee's application for the amendments was dated October 25, 1983 as revised February 7 and April 18, 1984. Notice of consideration of issuance of the amendments was published in the **Federal Register** on January 26, 1984 (49 FR 3344 at 3358) and on June 20, 1984 (49 FR 25350 at 25382).

Notice of issuance of Amendment Nos. 104 and 107 will be published in the Commission's next regular biweekly **Federal Register** notice.

The portion of the application which proposed a change regarding reduced duration CILRT using the EPRI criteria was denied. The proposed TS for reduced duration testing (using the EPRI criteria) contain several discrepancies with the requirements of 10 CFR Part 50, Appendix J, with the EPRI NP-3400

report and with a previous CILRT performed on Point Beach Unit 1. These discrepancies include lack of criteria on minimum test duration, data acquisition frequency and number of data points, failure to require containment test condition stabilization prior to test start, the existence of potential nonconservatisms observed when using the proposed criteria during a CILRT on Unit 1 and lack of adequate validation for the proposed criteria. Based on the discrepancies in and uncertainties associated with the licensee's proposed short duration testing using the EPRI criteria, the staff denied the licensee' proposed Technical Specification.

The licensee was notified of the Commission denial of this request by letter dated August 27, 1986.

By September 29th, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated October 25, 1983 as revised February 7 and April 18, 1984 and (2) the Commission's letter to Wisconsin Electric Power Company dated August 27, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Joseph P. Mann Public Library, Two Rivers, Wisconsin. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of PWR Licensing-A.

Dated at Bethesda, Maryland, this 27th day of August 1986.

For the Nuclear Regulatory Commission.

Richard F. Dudley,

Acting Director, PWR Project Directorate No. 1 Division of Licensing-A.

[FR Doc. 86-20495 Filed 9-10-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-1113]

Issuance of Partial Director's Decision; General Electric Co., (Wilmington, North Carolina Facility)

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a Partial Director's Decision pursuant to 10 CFR 2.206 concerning a Petition dated December 13, 1984, and supplements dated February 28, March 12, April 11, and June 20, 1985, filed by Mozart G. Ratner on behalf of Vera M. English. The Petitioner had requested, in part, that the Commission take escalated enforcement actions against General Electric Company for alleged violations of NRC regulations in the conduct of activities at the General Electric fuel fabrication facility at Wilmington, North Carolina. Certain issues raised by the Petitioner are being deferred pending further investigation by the NRC or further determinations by the Secretary of Labor. The remaining issues do not raise substantive health and safety concerns warranting any action at this time. Consequently, the Director, Office of Inspection and Enforcement, has denied the Petitioner's requests concerning those issues.

The reasons for this decision are explained in the "Partial Director's Decision" under 10 CFR 2.206 (DD-86-11), which is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission twenty-five (25) days after issuance, unless the Commission on its own motion institutes review of the decision within that time.

For the Nuclear Regulatory Commission.
Dated at Bethesda, Maryland, this 29th day of August, 1986.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-20405 Filed 9-10-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FC 601-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Guide for the Preparation of Applications for Radiation Safety Evaluation and Registration of Devices Containing Byproduct Material" and is intended for Division 10, "General." It is being developed to provide guidance on preparing and submitting requests for radiation safety evaluations and registration of devices containing byproduct material.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by November 7, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single

copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regualtory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 3rd day of September 1986.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 86-20406 Filed 9-10-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Containment Requirements; Meeting

The ACRS Subcommittee on Containment Requirements will hold a meeting on September 23, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 23, 1986—9:00 a.m. Until the Conclusion of Business

The Subcommittee will review a draft position paper on containment performance design objectives as an addition to the Safety Goal Policy, and a draft of a proposed generic letter on Mark I containment requirements for severe accidents.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 5, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-20496 Filed 9-10-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittees on Severe (Class 9) Accidents and Nuclear Plant Chemistry; Meeting

The ACRS Subcommittees on Severe (Class 9) Accidents and Nuclear Plant Chemistry will hold a combined meeting on September 24, 1986, Room 1046 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 24, 1986—8:30 A.M. until the conclusion of business

The Subcommittees will review the NRR Implementation Plan for Severe Accidents, including proposed regulatory changes related to PWR spray additives and BWR suppression pool scrubbing, and the IDCOR Methodology for Individual Plant Evaluation.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with respresentatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 8:15 A.M and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 8, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-20497 Filed 9-10-86 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Services Policy Advisory Committee and Advisory Committee for Trade Negotiations; Meetings and Determination of Closing of Meetings

The meetings of the Services Policy Advisory Committee to be held Wednesday, October 1, 1986, from 2:00 p.m. to 5:00 p.m.; the Advisory Committee for Trade Negotiations to be held Friday, October 17, 1986, from 12:00 noon to 4:00 p.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosures of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Barbara North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Alan Woods,

Acting United States Trade Representative.

[FR Doc. 86-20467 Filed 9-10-86; 8:45 am]

BILLING CODE 3190-01-M

Pre-Shipment Inspection and Customs Valuation Procedures Conducted by Private Companies on Behalf of Foreign Governments; Request for Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for Public Comment.

SUMMARY: This notice solicits public comment in connection with the pre-shipment inspection and customs valuation procedures conducted by private companies on behalf of foreign governments. All submissions should be sent in conformance with 15 CFR 2003 with 20 copies to: Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 521, 600 17th Street NW., Washington, DC 20506.

DATE: Public comments are due by the close of business Wednesday, October 8, 1986.

FOR FURTHER INFORMATION CONTACT: Betsy Stillman, Director for Andean and Caribbean Affairs (202-395-5190) or Florizelle Liser, Director of Customs Valuation and Import Licensing Policy (202-395-3063), Office of the United States Trade Representative, Washington, DC 20506.

SUPPLEMENTARY INFORMATION: The U.S. Government has become increasingly aware of a growing trend among developing countries which, in their efforts to conserve scarce foreign exchange or ensure public coffer receipt of expected revenue, have employed private companies to perform Customs inspection and valuation functions, normally the responsibility of governments themselves. This has raised a new issue in international trade arising from the fact that while such private inspection companies assume the role of governments, they do not have the same direct responsibilities as do governments to conform to international obligations.

U.S. Government agencies have received numerous complaints from U.S. exporters about the pre-shipment inspection and pricing procedures employed by private inspection companies on behalf of foreign governments as a prerequisite to foreign market entry. We have received complaints concerning administrative delays, inspection company requests for business confidential information, and foreign government intervention, through its U.S. inspection company agent, in the setting of prices. The U.S. Government seeks the public's help in documenting business community experiences in complying with foreign government pre-shipment inspection and pricing requirements. Submissions should address the following areas:

—Pricing procedures and clarity of the procedures employed;
—The time required for pre-shipment inspections to be completed and the clarity of the procedures employed;
—The extent of requests for and submission of business confidential information; and
—The administrative cost to the exporter for complying with pre-shipment inspections.

The business community's submission of the most specific information will contribute greatly to the U.S. Government's efforts to address appropriately this new issue in international trade. Submissions should indicate clearly the information for which business confidential treatment is rquested and why such information should be accorded confidential treatment. A non-confidential summary should be included. In addition, submissions should indicate at the cover page that business confidential information is included and each page subject to a request for confidential treatment must be marked at the top: "BUSINESS CONFIDENTIAL".

The U.S. Government acknowledges the desire of debt-burdened developing countries to conserve foreign exchange and our objectives in pursuing this issue are, therefore, not aimed at stopping private inspection companies from providing appropriate services in that regard. However, the U.S. Government is concerned that inspection company agents of foreign governments perform such services in a manner that accords with internationally accepted standards and does not impede the flow of international trade.

Donald M. Phillips,

Assistant United States Trade Representative for Trade Policy Coordination.

[FR Doc. 86-20436 Filed 9-10-86; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Proposed Amendments, Hearings, and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of proposed amendments, hearings, and opportunity to comment.

SUMMARY: On November 15, 1982, the Pacific Northwest Electric Power and Conservation Planning Council (the Council) adopted a Columbia River Basin Fish and Wildlife Program (Fish and Wildlife Program). The Fish and Wildlife Program was amended on October 10, 1984 (programwide amendments), February 21, 1985 (salmon and steelhead framework, sections 201 and 1504, Action Item 36), and February 13, 1986 (mainstem passage sections). The Council is proposing again to revise and amend the Fish and Wildlife Program. The proposed amendments of the Program are being released for public review and comment, and public hearings will be held. This notice describes the proposed amendments, provides information on how to obtain additional information, including copies of the draft amendment document, and outlines the process for submitting written comments and participating in the hearings.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments closes at 5 p.m., December 15, 1986. Public hearings on the proposed amendments will be held in:

- Spokane, Washington, October 2, 1986 at Cavanaugh's at the Park, Ballroom B from 1:00 p.m. to 9:00 p.m.;
- Portland, Oregon, October 8, 1986 at the Portland Building, 1120 S.W. 5th, Second Floor Auditorium; 1:00 p.m. to 9:00 p.m.; and
- Boise, Idaho, October 21, 1986 at the Red Lion Riverside; 1:30 p.m. to 9:00 p.m.;
- Kalispell, Montana, October 22, 1986 at the Outlaw Inn, 7:00 p.m. to 11:00 p.m.; and
- Missoula, Montana, October 23, 1986 at the Village Red Lion, 7:00 p.m. to 11:00 p.m.

Instructions For Oral Comment At Hearings

1. Requests for time slots must be made at least five days prior to the hearings to Ruth Curtis, Information Coordinator, at the Council's central

office, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 or (503) 222-5161 (toll free 1-800-222-3355 in Idaho, Montana and Washington or 1-800-452-2324 in Oregon).

2. Those who do not sign up for time slots will be permitted to testify as time permits.

3. Hearings should be used to summarize written comments. Comments should not be read. Comments should be limited to the draft amendment document.

4. If possible, ten copies of hearing testimony should be submitted to the Council recorder at the hearings. This person will be sitting at a table near the Council members. (See instructions for written comment.)

5. Those persons officially representing an organization will have 15 minutes to summarize their written testimony. (Organizations may have only one official representative.) All other individuals will be limited to five minutes. These time limits will be observed strictly in order to allow parties to testify.

6. The Council may ask questions for clarification. If so, this will be over and above the time limits imposed above.

7. A written record of each hearing will be made. Appearance at more than one hearing is unnecessary. Scheduling preference will be given to individuals and groups which have not testified at other hearings.

Instructions For Written Comment

1. Comments should be limited to the draft amendment document and must be received in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 by 5 p.m. on December 15, 1986. Comments received after that time will not be considered.

2. Written comments should be marked "Draft Amendment Comments."

3. Comments should be specific and concise. They should refer to amendments by their code numbers. Alternative language should be submitted if a change is being proposed.

4. A marked up copy of the draft amendment document (or the appropriate section) indicating suggestions or revisions may be submitted. Suggested deletions should be lined out and placed in parentheses. Suggested new language should be underlined.

5. All comments should be typed, if possible, and double spaced. It would also be helpful if a separate page were prepared for comments on each proposed amendment or rejection. Provide ten copies of all comments, if possible.

One copy each of the Fish and Wildlife Program draft amendment document may be obtained free of charge by contacting Ruth Curtis at the Council's address and telephone above. The Council expects that copies will be available by September 1, 1986.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 (toll-free 1-800-222-3355 in Idaho, Montana, and Washington; toll-free 1-800-452-2324 in Oregon; or 503-222-5161).

SUPPLEMENTARY INFORMATION: On November 15, 1982, as required by the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), the Council adopted a Columbia River Basin Fish and Wildlife Program. The Act allows the Council to amend its Program from time to time, and requires the Council to review the Program (as part of the Power Plan) and request recommendations for amendments at least once every five years. At its meeting in Whitefish, Montana on August 6, 1986, the Council voted to release draft Fish and Wildlife Program amendments. These proposed amendments are the result of a process that began in July 1985, when the Council (as required by the Act) called for recommendations. More than 85 amendment applications were submitted by 25 individuals and organizations by the February 18, 1986 deadline. A summary of the amendment proposals and their complete text were made available to all interested parties. In addition, on June 10, 1986 the Council voted to accept another application, (code number 704(b)/Umatilla), submitted after the deadline. Some other amendments were proposed by the Council on its own motion or on the recommendations of its staff.

During the summer of 1986, both the Council and its staff considered the amendment applications, consulted with interested parties, and arrived at proposed dispositions of the amendment applications. These proposed dispositions are contained in the draft amendment document. The draft amendment document only contains proposed amendments to the Fish and Wildlife Program and applications proposed for rejection. The Council welcomes comments on both the proposed amendments and the proposed rejections.

Nothing in the draft amendment document is final. Council approval of release of this document does not constitute final Council endorsement of the dispositions proposed in the document. It simply represents a Council decision to seek public review of and comment on the proposals. The Council is willing to consider changing all or part of this document when it takes final action in February 1987. The Council will consider all oral and written testimony before making a final decision on the amendments. All comments, written and oral, will become part of the Council's administrative record and will be available for public review in the Public Reading Room of the Council's central office, Suite 1100, 850 Southwest, Broadway, Portland, Oregon 97205, weekdays between 8:30 a.m. and 5 p.m.

Major features of the draft amendment document include:

- A statement of hydropower responsibility for salmon and steelhead losses, proposed by the Council last spring.
- A description of the Council's approach to system planning for salmon and steelhead, based on a June 1986 Council staff issue paper on the same subject.
- Guiding principles and areas of emphasis for salmon and steelhead research.
- Changes in funding of habitat and tributary passage projects.
- Support for Bonneville funding of a spring chinook hatchery in northeastern Oregon.
- Widlife plans to mitigate the effects of Hungry Horse (proposed by the Council last spring) and Libby Dams in Montana.
- A policy on resident fish substitutions (proposed by the Council last spring) and the proposed addition of a variety of resident fish "substitution" projects to mitigate the effects of hydropower development in the blocked areas above Chief Joseph and Hells Canyon Dams.
- Changes in Water Budget accounting and transportation policy and reject of spill increases, all as proposed by the Council at its July meeting in Spokane.
- Provison of Bonneville power for a Umatilla pumping project to aid flows for fish.
- Provision for Bonneville funding of data collection on hatchery and natural production.
- Recognition of a Montana Power Company agreement to fund the purchase of water from Painted Rocks Reservoir to maintain flows for fish.
- No define schedule for future amendment proceedings.

VOL 51 ISS 176 SE 11 1986 UMI

Issues For Comment

The Council is particularly interested in comments on the following issues raised by this document.

1. *Standards*

The Northwest Power Act specifies the standards for program measures. See U.S.C. 839b(h)(5), (6). To be adopted by the Council, a proposal for amendment must:

a. Protect, mitigate, and enhance fish and wildlife affected by development, operation, and management of Columbia Basin hydropower facilities while assuring the region an adequate, efficient, economical, and reliable power supply.

b. Complement existing and future activities of fish and wildlife agencies and Indian tribes.

c. Be based on, and supported by, the best available scientific knowledge.

d. Where equally effective alternative means of achieving the same sound biological objective exist, use the alternative with the minimum economic cost.

e. Be consistent with legal rights of the Indian tribes.

f. With respect to anadromous fish, provide for improved survival at Columbia Basin hydropower facilities and provide flows for sufficient quality and quantity between facilities to improve production, migration, and survival as necessary to meet sound biological objectives.

The Council seeks comment on whether the amendments proposed for adoption in Part 1 of the draft document meet these standards. The Council or Council staff has concluded, tentatively, that the applications discussed in Part 2 of the document do not meet these standards. The Council welcomes comment on the proposed rejections as well.

2. *Five-Year Action Plan (Section 1504).*

The Council asks that commentors focus special attention on the proposed five-year action plan and provide their views on these questions: a) Does the proposed action plan reflect reasonable expectations of effort by the Bonneville Power Administration, Bureau of Reclamation, Corps of Engineers, and Federal Energy Regulatory Commission, the federal agencies given responsibilities by Congress in sections 4(h)(10) and 4(h)(11) of the Northwest Power Act, to help make the Council's program work? b) If not, what alternative action packages would be more reasonable for each agency?

3. *Bonneville Budget (Action Item 39.1).*

The Council would appreciate comment on how it can work more closely with Bonneville and others to use the Bonneville budgeting process as a means for publicly setting a fiscal pace for program implementation. Suggestions on ways to improve the annual work planning process also are welcome.

4. *Funding of Resident Fish Substitutions in Idaho (Sections 804(g)(1) & (2)).*

In section 207 of the draft, the Council recognizes that some areas in the basin where salmon and steelhead once were produced have been blocked by hydropower projects that make salmon and steelhead production infeasible ("blocked areas"), and has established selection criteria for projects to substitute resident fish for lost salmon and steelhead ("resident fish substitutions").

Six amendments applications propose resident projects above Hells Canyon Dam. The Council staff has reviewed those applications, found that they generally meet the Council's resident fish substitutions criteria, and included them in draft section 804(g)(2). However, the appropriate funding source for those projects is not clear because the blockages at and above Hells Canyon Dam came from a variety of sources over an extended period of time. The funding sources could include the Bonneville Power Administration, Bureau of Reclamation and/or Federal Energy Regulatory Commission on licenses. The Council staff solicits comments on these issues:

a. Are any entities willing to fund any of the projects listed in draft Section 804(g)(2)? If the identify of the appropriate funding sources for the draft Section 804(g)(2) projects cannot be readily ascertained or agreed to, what process should be used to identify funding sources?

b. Which project or projects permanently blocked the area to salmon and steelhead production? To what extent are those projects operated for hydropower purposes?

c. To what extent have salmon and steelhead losses due to hydropower development and operations in this area already been mitigated? By whom? In what way? Are there any unmitigated damages attributable to hydropower development or operations?

5. *Numerical Targets for Resident Fish Substitutions (Section 207).*

The Council's proposed resident fish substitutions policy, in draft section 207, states that proposed projects must "incorporate adaptive management principles," "achieve significant biological results," and "reflect a management plan with sound biological objectives." To that end, the Council requests comment on whether project proponents should be asked to state numerical production targets, as a way to measure results against quantified objectives.

6. *Fish Passage Center (Sections 304 and 404).*

In draft sections 304 and 404, the Council has proposed the Fish Passage Center as the point of contact between the fish and wildlife agencies and Indian tribes and the hydropower system on Water Budget and spill issues. Should the Center also serve as the point of contact on bypass and transportation issues?

The program now provides for two fish passage managers, one to represent the Indian tribes and one to represent the fish and wildlife agencies. Would it be more appropriate to fund one fish passage manager to represent both the Indian tribes and the fish and wildlife agencies?

7. *Protected Areas.*

Section 1204(c) of the current progrm calls for the Council to designate stream reaches and wildlife habitat areas in the Columbia River Basin to be protected from further hydroelectric development. The Council and Bonneville are nearing completion of a study of the hydroelectric potential of streams in the Columbia River Basin and the value of their fish and wildlife resources, and it soon will be important to identify the appropriate criteria to apply to the study information to decide which areas in the basin to designate for protection from hydropower development. The Oregon legislature recently enacted a statue designating all natural and wild production areas in Oregon for protection from new hydropower development. The Council welcomes comments on whether such an approach should be taken basinwide and suggestions for any alternative ways to choose protected areas for wildlife and resident fish, as well as salmon and steelhead.

8. *System Alternatives for Salmon and Steelhead*

In sections 203 and 204 of the draft document, the Council staff describes a planning process designed to lead to discussion of and choices among broad havest, production and passage alternatives, as well as the institutional framework needed to further those choices. The Council staff will circulate an issue paper on system alternatives in mid-October. That paper could address a number of broad, long-term issues related to salmon and steelhead in the basin and the future of the Council's

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program. It could result in program amendments in addition to those proposed in this document. All recipients of this draft amendment document will receive that paper as well. The Council will schedule a second round of hearings on the paper, solicit written comment, and otherwise urge full and special attention to the questions raised by the issue paper.

Additional Information

For additional information on the proposed amendments and rejections, readers may wish to refer to the amendment applications, summary of applications, issue papers, minutes of Council meetings, and written comments submitted to the Council on applications and issue papers. All of those materials are available in the Council's administrative record of those amendment proceedings. The record is maintained in the Council's public reading room in its Portland office and is available for review and copying during regular business hours. Certain parts of the record can be ordered by mail. As noted above, an issue paper on salmon and steelhead policies to be distributed in October 1986, also may affect the proposed amendments. That issue paper also may be requested.

After considering all public comments received, the Council plans to adopt final Fish and Wildlife Program amendments in February, 1987.

Edward Sheets,

Executive Director.

[FR Doc. 86-20432 Filed 9-10-86; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23578; SR-CSE-86-5]

Self-Regulatory Organizations; by Cincinnati Stock Exchange, Inc., Order Approving Proposed Rule Change

The Cincinnati Stock Exchange, Inc. ("CSE") submitted on July 10, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Article IV, section 3.2 of its Code of Regulations concerning the delisting of a security by an issuer. Under the proposed rule, an issuer may be delisted from the Exchange at its own request provided that it furnishes the Exchange with a certified copy of a resolution adopted by the issuer's Board of Directors authorizing the withdrawal from listing and registration on the Exchange and providing a statement setting forth reasons and justifications for the proposed delisting. The proposal would permit the Exchange to require the issuer to submit the proposed withdrawal to the holders of the security for their vote where the security is not also listed on another exchange having rules requiring submission of any delisting proposal to the security holders for approval.

Currently, CSE rules require an issuer requesting delisting of a security from the Exchange to first obtain approval for such an action from its shareholders at a special or annual meeting. The CSE believes this requirement imposes an unnecessary burden on issures who list their securities on more than one exchange. According to the CSE, the proposed rule change would remove this burden without compromising the right of shareholders to have their security listed on at least one exchange for trading purposes.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 23468, July 24, 1986) and by publication in the **Federal Register** (51 FR 27617, August 1, 1986). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 29, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20444 Filed 9-10-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 961]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted proposed collections of information to the Office of Management and Budget for review.

SUMMARY: The following summarizes the following collection proposals submitted to OMB:

1. Title of information collection—Overseas Schools Questionnaire.

Form number—FS-573, A & B.

Originating office—Office of Overseas Schools.

Type of request—Extension.

Frequency—Annual.

Respondents—Overseas schools seeking assistance.

Estimated number of responses—175.

Estimated number of hours needed to respond—175.

2. Title of Information Collection—Request for Assistance.

Form number—FS-574.

Originating office—Office of Overseas Schools.

Type of request—Extension.

Frequency—Annual.

Respondents—Overseas schools seeking assistance.

Estimated number of responses—175.

Estimated number of hours needed to respond—88.

3. Title of Information Collection—Approval of Funding to Support Educational Projects.

Form number—JF-45.

Originating office—Office of Overseas Schools.

Type of request—Extension.

Frequency—Annual.

Respondents—Overseas schools seeking assistance.

Estimated number of responses—175.

Estimated number of hours needed to respond—44.

4. Title of Information Collection—Overseas Schools, Grant Status Report.

Form number—JF-61.

Originating office—Office of Overseas Schools.

Type of request—Extension.

Frequency—Quarterly.

Respondents—Overseas schools seeking assistance.

Estimated number of responses—283.

Estimated number of hours needed to respond—212.

Section 3504(h) of Pub. L. 96-511 does not apply.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647-4086. Comments and questions should be directed to (OMB) Francine Picoult, (202) 395-7231.

BEST COPY AVAILABLE

BEST COPY AVAILABLE

Dated: August 19, 1986.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 86-20429 Filed 9-10-86; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-9-12; Docket 44328]

Revocation of the Section 401 or 418 Certificates of National Express, Sundance International, Inc., and Wien Air Alaska, Inc.; Order to Show Cause

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Order to Show Cause, (Order 86-9-12) Docket 44328.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the section 401 or 418 certificates issued to National Express Inc. Sundance International, Inc., and Wien Air Alaska, Inc.

DATES: Persons wishing to file objections should do so no later than September 26, 1986.

ADDRESSES: Responses should be filed in Docket 44328 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, P-47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: September 5, 1986.

Vance Port,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-20455 Filed 9-10-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Baltimore County, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement is being prepared for the proposed widening and extension of Beaver Dam Road from Beaver Court to Padonia Road.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211, telephone 301/962-4010, and/or Mr. John Trenner, Chief, Highway Design and Approval Section, Baltimore County Department of Public Works, 111 W. Chesapeake Avenue, Towson, Maryland 21204, telephone 301/494-3739.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration and Baltimore County Department of Public Works is preparing an environmental impact statement to develop an acceptable alternate to widen approximately a one-mile portion of existing Beaver Dam Road to four lanes and to extend the facility approximately 0.6 mile on new location to Padonia Road.

In addition to the No-Build, five build alternates are under consideration. All five alternates involve the construction of a four-lane undivided highway with at-grade intersections at the cross streets. All Build alternates would have an adverse effect on the National Register Eligible Texas Historic District.

An Environmental Assessment has previously been completed and a public hearing held. The draft EIS is being prepared to further address the significant impacts to the Texas Historic District which were discussed in the Environmental Assessment and at the Public Hearing. Another public hearing is not anticipated since there have been no substantial changes in the project, the affected environment, or the identified impacts, since the last hearing. The draft EIS will be available for public and agency review and comment for a 45-day period following the publication of the availability notice in the **Federal Register**. To ensure that the full range of issues relating to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program)

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 86-20430 Filed 9-10-86; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Hazardous Materials; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo Vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes October 14, 1986.

ADDRESS: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9652-N	Dresser Industries, Inc., Houston, TX	49 CFR 173.103(a), (d), 175.3	To ship detonators, Class C explosives, in DOT-12B fiberboard boxes containing no more than 50 detonators each. (Modes 1, 4, 5).

VOL 51 ISS 176 SE 11 1986 UMI

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9653-N	Stauffer Chemical Co., Westport, CT	49 CFR 173.31	To ship chlorine in a partially filled tank car, overdue for retest, from an unloading plant site to another plant site. (Mode 2).
9654-N	Interox America, Houston, TX	49 CFR 173.266(a)(2), 178.109-6.	To ship hydrogen peroxide solution in water, exceeding 52% concentration, in aluminum drums complying with DOT Specification 42D except for rolling hoops. (Modes 1, 2, 3).
9655-N	Chevron U.S.A. Inc., El Segundo, CA	49 CFR 173.245b(a)(8)	To ship a corrosive solid in a non-DOT specification steel portable bin of 20 cubic yard capacity, secured to motor vehicle chassis during transportation. (Mode 1).
9657-N	Noranda Sales Corp., Toronto, ON	49 CFR 173.272, 179.201-1	To authorize shipment of sulfuric acid or oleum, classed as corrosive material in DOT Specification 111A100W2 tank car tanks equipped with bottom outlets. (Mode 2).
9658-N	Fiberoware, Inc., Chaska, MN	49 CFR 173.119, 173.245, 173.247, 173.248, 173.249, 173.249a, 173.256, 173.262, 173.263, 173.264, 173.265, 173.266, 173.267, 173.268, 173.269, 173.272, 173.276, 173.277, 173.288, 173.290, 173.292, 173.299.	To manufacture, mark and sell non-DOT specification composite polyethylene and Teflon portable tanks, enclosed within a wire mesh frame, having capacity of 220 gallons or 330 gallons, for shipment of certain flammable liquids, and corrosive liquids. (Modes 1, 2).
9659-N	Compositek Engineering Corp., Buena Park, CA	49 CFR 173.302, 173.304, 175.3	To manufacture, mark and sell S-2 glass fully overwrapped aluminum lined composite cylinders in accordance with DOT-FRP-1 Standard for shipment of compressed air, oxygen, helium, nitrogen, carbon dioxide, hydrogen, methane, and natural gas, classed as flammable gas or non-flammable gas, as appropriate. (Modes 1, 2, 3, 4, 5).
9660-N	Russell-Stanley West, Inc., City of Industries, CA	49 CFR 173.347	To manufacture, mark and sell DOT Specification 34 drum, of 55 gallon capacity, made from specific polyethylene resin and to a certain design, for shipment of aniline oil, classed as poison B. (Modes 1, 2, 3).
9662-N	National Agricultural Chemicals Association, Washington, DC	49 CFR 173.5(a)(2)	To authorize shipment of liquid formulated agricultural chemicals in two and one-half gallon capacity containers under special conditions. (Mode 1).
9663-N	Siepe GmbH, Federal Republic Germany	49 CFR 178.134	To manufacture, mark and sell 15 gallon steel overpacks similar to DOT Specification 37M except wall thickness is 25 gage instead of 24 gage and inner polyethylene drum meets DOT Specification 2SL except for marking, for shipment of those hazardous materials authorized in DOT Specification 37M/2SL. (Modes 1, 2, 3).
9664-N	Hughes Aircraft Co., El Segundo, CA	49 CFR 175.85	To authorize a laser device containing limited quantities of methane, classed as flammable gas, shipped as a consumer commodity, ORM-D to be carried in the cabin of a passenger carrying aircraft. (Mode 5).

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 4, 1986.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86-20453 Filed 9-10-86; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials; Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing a public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes September 29, 1986.

ADDRESS: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2709-X	Atlantic Research Corp., Camden, AR.	2709
3095-X	Dowell Schlumberger, Inc., Tulsa, OK.	3095
3121-X	U.S. Department of Defense, Falls Church, VA.	3121
3330-X	Western Zirconium, Inc., Ogden, UT.	3330
3330-X	Babcock and Wilcox Co., Lynchburg, VA.	3330
4803-X	Dowell Schlumberger, Inc., Tulsa, OK.	4803
6293-X	Hercules, Inc., Wilmington, DE.	6293
6293-X	Olin Corp., East Alton, IL	6293
6296-X	UNIROYAL Chemical Co., Inc., Bethany, CT.	6296
6349-X	Airco Industrial Gases, Murray Hill, NJ.	6349
6543-X	Rohm and Haas Co., Philadelphia, PA.	6543
6874-X	Harrisons & Crosfield (Pacific), Inc., Emeryville, CA.	6874
6963-X	I.S.C. Chemicals Limited, Bristol, England.	6963
7046-X	J.T. Baker Chemical Co., Phillipsburg, NJ.	7046
7266-X	Union Carbide Corp., Danbury, CT.	7268
7285-X	Parlefer S.A.R.L., Paris, France.	7285
7778-X	Schenley Industries, Inc., New York, NY.	7778
7840-X	General Dynamic Corp., Fort Worth, TX.	7840
7840-X	Douglas Aircraft Co., Long Beach, CA.	7840
7840-X	Weber Aircraft, Burbank, CA	7840
7876-X	J.T. Baker Chemical Co., Phillipsburg, NJ.	7876
8003-X	Pennwalt Corp., Buffalo, NY	8003
8023-X	Acurex Corp., Mountain View, CA.	8023
8060-X	Diamond Shamrock Corp., Deer Park, TX.	8060

Application No.	Applicant	Renewal of exemption
8099-X	Union Carbide Corp., Danbury, CT (See Footnote [1]).	8099
8451-X	Atlas Powder Co., Dallas, TX	8451
8451-X	Boeing Aerospace Co., Seattle, WA.	8451
8451-X	Stresau Laboratory, Inc., Spooner, WI.	8451
8478-X	West-Mark, Ceres, CA	8478
8522-X	Tuscarora Plastics, Inc., Sterling, VA.	8522
8522-X	General Chemical Corp., Morristown, NJ.	8522
8723-X	IRECO Inc., Salt Lake City, UT.	8723
8723-X	Atlas Powder Co., Dallas, TX	8723
8735-X	Letica Corp., Rochester, MI (See Footnote [2]).	8735
8787-X	Motorola Semiconductor Sector, Phoenix, AZ.	8787
8817-X	Allied Corp., Morristown, NJ	8817
8839-X	Poly Processing Co., Inc., Monroe, LA (See Footnote [3]).	8839
8861-X	Hoover Group, Inc., Beatrice, NE.	8861
8865-X	Moog Inc., East Aurora, NY	8865
8878-X	Preussag AG Metall, Boslar, West Germany.	8878
8878-X	Corning Glass Works, Corning, NY.	8878
8904-X	Keith Huber, Inc., Gulfport, MS.	8904
8923-X	Union Carbide Corp., Danbury, CT.	8923
8931-X	C-I-L Inc., North York, Ontario, Canada.	8931
8942-X	Poly Processing Co., Inc., Monroe, LA (See Footnote [4]).	8942
8944-X	Union Carbide Corp., Danbury, CT (See Footnote [5]).	8944
8958-X	Goex, Inc., Moosic, PA	8958
9197-X	Grief Bros. Corp., Springfield, NJ.	9197
9235-X	Bennett Industries, Peotone, IL.	9235
9277-X	FMC Corp., Philadelphia, PA	9277
9280-X	Union Carbide Corp., Danbury, CT.	9280
9280-X	Dow Corning Corp., Midland, MI.	9280
9286-X	The Continental Group, Inc., Lombard, IL.	9286
9290-X	Mauser Packaging Ltd., New York, NY.	9290
9298-X	Eli Lilly Co., Indianapolis, IN	9298
9374-X	Poly Processing Co., Inc., Monroe, LA (See Footnote [6]).	9374
9374-X	Poly Cal Plastics, Inc., French Camp, CA (See Footnote [7]).	9374
9400-X	Poly Cal Plastics, Inc., French Camp, CA (See Footnote [8]).	9400
9400-X	Poly Processing Company, Inc., Monroe, LA (See Footnote [9]).	9400
9486-X	Byer Inc., Chester, WV	9486
9599-X	Gibson Cryogenics, Inc., El Cajon, CA (See Footnote [10]).	9599
9603-X	Tennessee Eastman Co., Kingsport, TN.	9603

[1] To authorize additional packaging configuration identical to that presently authorized except for a larger capacity for shipment of certain poison B solids, n.o.s.

[2] To increase specific gravity of commodities from 1.2 to 1.3.

[3] To authorize shipment of 10% nitric acid solution, classed as oxidizer, in non-DOT specification polyethylene portable tanks.

[4] To authorize shipment of 10% nitric acid solution, classed as oxidizer, in non-DOT specification polyethylene portable tanks.

[5] To renew and to modify certain procedures for acoustic emission testing of DOT Specification 3AX, 3AAX and 3T cylinders.

[6] To authorize shipment of 10% nitric acid solution, classed as oxidizer, in non-DOT specification polyethylene portable tanks.

[7] To authorize an additional classification of blasting agent.

[8] To authorize an additional classification of blasting agent.

[9] To authorize shipment of 10% nitric acid solution, classed as oxidizer, in non-DOT specification polyethylene portable tanks.

[10] To provide for shipment of liquid oxygen and liquid nitrogen in non-DOT specification portable tanks.

Application No.	Applicant	Parties to exemption
8418-P	Trical, Inc., Hollister, CA	8418
7024-P	Greenwood Motor Lines, Inc., Greenwood, SC.	7024
7052-P	Clifton Precision Systems Division, Springfield, PA.	7052
7694-P	Quantic Industries, Inc., San Carlos, CA.	7694
8445-P	MazMat Environmental Group, Inc., Buffalo, NY.	8445
8538-P	Atlas Powder Co., Tamaqua, PA.	8538
8723-P	Roundup Power Co., Inc., Miles City, MT.	8723
8958-P	Add Fire Inc., Miami Shores, FL.	8958
9338-P	Anaquest, Cleveland, OH	9338
9348-P	Motorola Inc., Fort Lauderdale, FL.	9348
9571-P	National Institutes of Health, Bethesda, MD.	9571
9617-P	Explosives, Inc., Clarksburg, WV.	9617

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 4, 1986.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86-20454 Filed 9-10-86; 8:45 am]

BILLING CODE 4910-60-M

Saint Lawrence Seaway Development Corporation

Advisory Group on Strategic Planning for the St. Lawrence Seaway; Change in Meeting Site

On September 3, 1986, a notice of a public meeting of the Advisory Group on Strategic Planning for the St. Lawrence Seaway was published in Volume 51, No. 170 on page 31386 of the **Federal Register**. This notice indicated that the meeting would be held in Room 2253 Rayburn House Office Building. In order to better accommodate the public who wish to attend, the meeting room has been changed to Room 538 Dirksen Senate Office Building. All other details of the meeting are as published in the September 3rd notice.

Joan C. Hall,

Advisory Board Liaison.

[FR Doc. 86-20504 Filed 9-10-86; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 5, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0052
Form Number: ATF F 5230.9
Type of Review: Extension
Title: Brewer's Monthly Report of Operations

OMB Number: 1512-0205
Form Number: ATF REC 5110/1—ATF F 5110.40)
Type of Review: Extension
Title: Distilled Spirits Plants (DSP) Production Records and Report

Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Comptroller of the Currency

OMB Number: 1557-0156
Form Number: FFIEC 035
Type of Review: Extension
Title: Monthly Consolidated Foreign Currency Report of Banks in the United States

Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: 1545-0045
Form Number: IRS Form 976
Type of Review: Extension

Title: Claim for Deficiency Dividends Deduction by a Personal Holding Company, Regulated Investment Company or Real Estate Investment Trust

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reparts Management Office.

[FR Doc. 86–20488 Filed 9–10–86; 8:45 am]

BILLING CODE 4810–25–M

VOL 51 ISS 176 SE 11 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 176
Thursday, September 11, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Election Commission	1
Federal Reserve System	2
National Labor Relations Board	3
Securities and Exchange Commission	4, 5
United States Institute of Peace	6

1

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, September 16, 1986 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participating in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee
* * * * *

DATE AND TIME: Thursday, September 18, 1986, at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings
Correction and Approval of Minutes
Any matters not concluded at the meeting of September 11, 1986
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-20536 Filed 9-9-86; 10:26 am]

BILLING CODE 6715-01-M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 17, 1986.

PLACE: Marriner S. Eccles Federal Reserve board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 9, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-20624 Filed 9-9-86; 3:56 pm]

BILLING CODE 6210-01-M

3

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 3:00 p.m., Friday September 5, 1986.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Discussion of Budget of National Labor Relations Board.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, September 8, 1986.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 86-20595 Filed 9-9-86; 3:35 pm]

BILLING CODE 7545-01-M

4

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [51 FR 30936/ August 29, 1986].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, August 25, 1986.

CHANGE IN THE MEETING: Additional items.

The following items were considered at a closed meeting held on Wednesday, September 3, 1986, at 2:30 p.m.

Formal orders of investigation.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272-2149.

Shirley E. Hollis,

Assistant Secretary.

September 4, 1986.

[FR Doc. 86-20559 Filed 9-9-86; 12:42 pm]

BILLING CODE 8010-01-M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, September 3, 1986.

CHANGE IN THE MEETING: Additional meeting.

The following item will be considered at an open meeting to be held on Wednesday, September 10, 1986, at 3:00 p.m., in Room 1C30.

Formal orders of investigation.

Commissioner Peters, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

The Commission will consider Expiration Friday trading procedures. For further information, please contact Eneida Rosa at (202) 272-2893.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted

VOL
51
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or postponed, please contact: Patrick Daugherty at (202) 272–3077.

Shirley E. Hollis,

Assistant Secretary.

September 8, 1986.

[FR Doc. 86–20560 Filed 9–9–86; 12:42 pm]

BILLING CODE 8010–01–M

6

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES: 10:00 a.m.–5:00 p.m., Thursday, September 18, 1986; 9:00 a.m.–5:00 p.m., Friday, September 19, 1986.

PLACE: National Courts Building, Room 309 (Courtroom 10), 717 Madison Place, NW., Washington, DC 20005.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

AGENDA (TENTATIVE): Meeting of Board of Directors convened. Consideration of minutes of fifth meeting. Preliminary Report on *Peace and Research: An Intellectual Map.* Grants Procedures Update. Meeting of Directors of the Endowment. Plenary Meeting. Consideration of grant applications.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789–5700.

Dated: September 8, 1986.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 86–20519 Filed 9–9–86; 8:55 am]

BILLING CODE 6820–PA–M

federal register

Thursday
September 11, 1986

Part II

Department of Health and Human Services

Office of Human Development Services

Administration for Children, Youth and Families; Head Start Program; Notice

VOL 51 ISS 176 SE 11 1986 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Program Announcement No. 13600-861]

Office of Human Development Services Administration for Children, Youth and Families Head Start Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of availability of Federal financial assistance and request for applications to establish a national network of ten Head Start Training and Technical Assistance (T/TA) Resource Centers.

SUMMARY: The Head Start Bureau (HSB) of the Administration for Children, Youth and Families, OHDS, announces that competing applications will be accepted for financial assistance through cooperative agreements to operate ten new Regional and multi-Regional Resource Centers for Fiscal Year 1987. These cooperative agreements will involve substantial participation of the HSB/ACYF and regional offices in activities which the recipient organizations will carry out with the funds provided through the awards. The purpose of these cooperative agreements will be to provide training and technical assistance (T/TA) for support of local grantees in their management and provision of Head Start services. These cooperative agreements will be awarded and administered by the Head Start Bureau, ACYF/OHDS.

Applications are being solicited now so that the competitive process for selecting Resource Centers can be completed and T/TA services provided to Head Start grantees as early as possible in Fiscal Year 1987. The availability of funds for FY 1987 is dependent on passage of appropriations by the Congress.

DATE: The closing date for receipt of applications is November 10, 1986.

Application receipt point: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Edmund Clark, (202) 755-8208.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Program Purpose

The Head Start program is designed to provide comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To aid enrolled children to obtain their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. The Head Start Act was originally enacted as part of the Economic Opportunity Act of 1964, Pub. L. 88-452, and has been reauthorized several times, most recently by the Human Services Reauthorization Act of 1984, Pub. L. 98-558. The Act is codified at 42 U.S.C. 9831 et. seq. The Head Start regulations are published at 45 CFR Parts 1301-1305.

Section 648 of the Head Start Act authorizes the Secretary of Health and Human Services to provide directly or through grants or other arrangements: (1) Technical assistance to communities in developing, conducting, and administering Head Start programs, and (2) training for specialized or other personnel needed in connection with Head Start programs.

Technical assistance is a problem solving event generally utilizing the services of an expert. Such services may be provided on-site, by telephone or through other communications. These services address a specific problem or set of problems and are intended to assist the consumer with immediate resolution or an approach to resolving a given problem or set of problems.

Training is an educational activity or event which is designed to impart knowledge and understanding or to increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, or programs of self-instructional activities. Some training is designed for newly hired employees with a focus on base level knowledge and capability. Other training activities are more advanced and geared to the on-going instructional and information needs of more experienced staff.

Section 640 (a)(2)(C) of the Head Start Act, as amended by Pub. L. 98-558, the Human Services Reauthorization Act of 1984, 4 U.S. 9835, instructs the Secretary to fund training and technical assistance services at $25 million. Of the total amount ($25,000,000) expected to be available for Head Start T/TA in fiscal year 1987, ACYF plans to award approximately $16,200,000 directly to Head Start grantees. Those funds will be awarded through the ten HHS/HDS Regional Offices and the American Indian and Migrant Programs Branches as part of the regular application process for Head Start grants.

In addition, under this program announcement, approximately $3,300,000 is expected to be available for ten Resource Center cooperative agreement awards. It is intended that local Head Start programs, including Parent Child Centers, in all regions and the American Indian and Migrant Head Start grantees will be served through these cooperative agreements.

B. Programs Goals and Objectives

It is expected that T/TA services arranged or provided by the Resource Centers will ultimately result in improved performance and service delivery of local Head Start programs through:

1. Increased knowledge and skills necessary for competent performance of staff of local Head Start programs in disciplines of the component areas to which they are assigned;
2. Increased direct participation of parents in the planning, conduct and administration of their Head Start programs;
3. Improved capacity of local programs to design and conduct their own training activities;
4. Increased utilization of a cadre of knowledgable personnel employed in Head Start programs who have appropriate skills to provide training and technical assistance services to their own or other Head Start programs;
5. Identification, availability and increased utilization of resource materials which enhance the quality of services provided to Head Start children and their families.

C. Eligible Applicants

Public or private non-profit and "for profit" organizations, including organizations formed especially for this purpose (such as a consortium of Head Start associations or post secondary institutions), may apply for financial assistance under this announcement.

With regard to "for-profit" applicants, the Department's grants administration regulations at 45 CFR 74.705 stipulate that ". . . no grant funds may be paid as profit to any recipient of a grant or subgrant, even if the recipient is a for-profit organization." The regulations further state that "Profit is any amount in excess of allowable direct and indirect costs of the recipient."

Applications for Resource Center cooperative agreements must be from organizations which are located within the geographical areas to be served by the cooperative agreement.

D. Available Funds

The Administration for Children, Youth and Families expects to award approximately $3,300,000 in FY 1987 for Head Start Resource Center cooperative agreements to support one year of operation. Generally, the project period for these cooperative agreements will be for three years. Those Resource Centers that are continued beyond the first year will be refunded as non-competing continuations. Refunding decisions for each of the subsequent two years will be made on a case-by-case basis, in consideration of the needs of local Head Start grantees, availability of funds, satisfactory performance of the project for which the award was made and the best interests of the Government.

Appendix I is a table which identifies the amount of funds available in FY 1987 for the ten Resource Centers. The different amounts reflect the variances in the number of local Head Start grantees and employees among the regions and American Indian and Migrant Programs Branches.

E. Recipient Share of the Project

Recipients are not required to provide a non-Federal share or in-kind contributions. However, in-kind contributions are encouraged.

F. General Instructions

Training and technical assistance are considered key factors in implementing and maintaining Head Start program quality and performance.

Training and/or technical assistance may be given to personnel of any Head Start program for the purpose of obtaining conformity with Head Start regulations and policies or for other program improvement purposes depending on needs at the local level and national priorities. The determination that particular areas of the program require improvement is made by comparing actual program operation with Federal regulations and policies that govern the Head Start program. The results of the compliance reviews are often helpful in making this determination.

Resource Center applicants should assess needs and reflect in their applications the needs of local Head Start programs within the designated geographic areas as a basis for planned training and/or technical assistance activities.

The T/TA efforts may include content related to all the Head Start program components listed below including administration. Regional Offices have in the past used, and still may use, some or all of the following means to identify T/TA needs: The Program and Administrative Self-Assessment/Validation Instrument (SAVI) or other reports on the results of self-assessments conducted by grantees; monitoring reports; audits; Program Information Reports (PIR); and Performance Indicators. In addition, T/TA may be provided for major national and regional/American Indian/Migrant ACYF program emphases and pertinent regional, multi-State and State Head Start Association emphases. Major subject areas for Resource Center Head Start training and technical assistance services are:

- Education;
- Parent Involvement;
- Social Services; and
- Management and Administration

(Management and Administration include systems for the management of needs assessments, program planning, program improvement, personnel administration, fiscal management, program funding, organizational structure and compliance with regulations and Head Start policies.)

The Resource Centers should employ qualified and experienced individuals who are able to coordinate T/TA services related to: (a) The education component and CDA program; (b) the social services and parent involvement components, and (c) Head Start program management and administration. Based on past experience with other T/TA providers, ACYF would prefer that staff functions be grouped in these three areas and that each area be under the direction of a full-time (or nearly full-time) resource center employee, as opposed to other groupings of functions or the use of part-time staff and consultants.

The Resource Centers should take full advantage of the resources and expertise available from other ACYR T/TA grants and contracts, and should coordinate as necessary with those contractors or grantees.

Specifically, the Resource Center grantees should coordinate with the Resource Access Projects for handicapped services; the National Child Development Associate (CDA) assessment and credentialing grantee; and the Public Health Service and Indian Health Service for medical, dental, mental health and nutritional T/TA services.

Part II. Specific Responsibilities

A. Responsibilities of Head Start Bureau

The Head Start Bureau/ACYF continues to place major emphasis on improvement of services to Head Start children and their families. Several national and regional targets are being set which are intended to improve the quality of Head Start programs and to make Head Start services available to the largest number of children possible utilizing current resources. The Head Start Bureau (HSB) expects to identify and undertake appropriate initiatives that support attainment of the targets and enhance local grantees' capabiltiies for compliance with the Performance Standards.

We expect that such initiatives will include:

1. Policy development and revisions;
2. Development and program guides;
3. Identification of existing materials, technologies and information that will strengthen the skills and knowledge of local Head Start employees;
4. Development of strategies for involvement of other public, private and governmental agencies in the direct delivery of Head Start services to children and their families as well as in the provision of training and technical assistance to local grantees' staffs; and
5. Special projects designed to strengthen or expand component services.

Accomplishment of these initiatives requires a collaborative relationship between the HSB and Resource Centers. Federal involvement by HSB/ACYF central and regional offices will include substantial roles for the Government Project Officer and responsible Regional Office Head Start officials in the following areas:

1. Setting of priorities for T/TA services to be provided by the Resource Centers.
2. Briefing Resource Center staff on the details, priorities, targets and T/TA implications of Head Start initiatives and major program objectives.
3. As necessary, reviewing and approval of major activities to be performed by the Resource Centers, including the development of materials and publications.
4. Identifying grantees that require special T/TA services from the Resource Centers.
5. Making arrangements for semi-annual joint meetings of HSB and Resource Center staff, including determining meeting dates, location and preparation of meeting agenda.
6. Preparing and providing the Resource Centers with a list of proposed State-wide and/or region-wide Head Start training workshops. In collaboration with the Resource Centers, determining what workshops will be conducted.

7. Reviewing and approving Resource Centers' plans and materials for State-wide and region-wide workshops.

B. Responsibilities of the Resource Centers

Most local Head Start grantees are directly funded to acquire much of their own T/TA services. However, the Resource Centers are expected to assume a key role in assuring that information relative to HSB goals and initiatives are expeditiously, accurately and uniformly transmitted to all local grantees through assembled training events and/or other means.

In accordance with the program goals and initiatives set forth in this announcement, the Resource Center must perform the following tasks and services:

1. Organizing and Maintaining a Resource Pool

a. Identify and maintain a pool of individuals who reside in the geographic area served by the Resource Center and who are available to provide T/TA services to local grantees.

(1) Individuals selected should have a firm knowledge of Head Start policies and procedures with special expertise in one or more of the Head Start component areas (including administration), home-based services, bilingual multicultural services and other program options or special emphasis areas.

(2) Every effort should be made to assure that the pool of individuals includes Head Start employees and parents who may provide T/TA relative to their experiences and who may serve as members of peer review teams.

b. Develop a network of home-based supervisors, home visitors and other Head Start personnel with the capability to provide T/TA related to the home-based option.

2. Providing Technical Assistance for Local Level T/TA

Planning and Management of T/TA Activities.

Assist local grantees in planning for T/TA events, including technical assistance in:

a. Assessing, analyzing and prioritizing T/TA needs,

b. Organizing workshops and seminars,

c. Designing training agendas,

d. Identifying and obtaining curriculum materials and other information needed, and

e. Matching identified T/TA needs with resource persons who have the expertise to respond to the apecified needs.

3. Assisting Local Grantees that have Special T/TA Needs

As determined by the ACYF regional offices, provide direct on-site T/TA services to local grantees that have special T/TA needs.

4. Assisting in the Planning and Implementation of Major T/TA Events

Assist in the planning and conduct of State-wide and region-wide training events. Determination for the need and planning of such events will be done in collaboration with the national and regional ACYF offices. Program content of the events should address common and on-going T/TA needs of local grantees as well as regional and national goals and initiatives.

5. Assisting in the Utilization of Automated Data Processing (ADP) Systems at the Local Grantee Level

In collaboration with ACYF regional and national offices, design and provide T/TA services to assist local grantees in the installation and/or utilization of ADP systems best suited for their respective management needs.

Many grantees already have computer hardware and access to a variety of software. Other grantees are planning to purchase hardware and software systems for the first time. It is expected that assistance needed by grantees will include guidance in selecting hardware and software systems, training of staff in the use of the systems and organizing and maintaining user groups.

6. Providing T/TA Support for the Child Development Associate (CDA) Effort

a. Assist local grantees in negotiations with colleges and universities to arrange for the delivery of training that is relevant to CDA competency requirements, provides field supervision and offers valid college credits.

b. Design and arrange training which will provide CDA and Parent Community Representatives with the information and skills needed to perform their "Information Collection" responsibilities as members of CDA Local Assessment Teams.

c. Identify and address specific needs of individual CDA candidates in order to assure their timely completion of the assessment process and receipt of the national credential.

7. Utilizing Public and Private Agency Resources

Identify and assist local grantees in establishing linkages with public and private agencies that offer Head Start related resources at the local, State and regional levels.

8. Establishing and Maintaining Close Communications with all Head Start T/TA Network Entities

a. Develop and maintain close working relationships with the other Resource Centers and other Head Start funded T/TA grantees and contractors.

b. Participate in periodic teleconferences that include each of the other Resource Centers.

c. Participate in semi-annual joint meetings of Resource Centers and HSB staff. It is expected that these joint meetings will be held in the Washington, DC area and the first meeting will be convened within 60 days after the award of the Resource Center cooperative agreement.

d. Regularly prepare and provide information for publication in the Head Start Resource Bulletins.

Part III. Criteria for Review and Evaluation of Financial Assistance Application

Competing applications for financial assistance will be reviewed and evaluated against the following criteria:

A. Objectives and Need for This Assistance

The extent to which the proposed project objectives demonstrate an understanding of the program objectives and priorities described by the program announcement; reflect an understanding of the need for this assistance; and are capable of achieving the program objectives and priorities—10 points.

B. Approach (Project Implementation Plan)

(1) With regard to tasks and services 1,2,3,4,5,7, and 8 described in Section B of the program announcement, the extent to which the applicant demonstrates an ability to apply the appropriate training methodology to different audiences for different purposes; knowledge of the use of various training and technical assistance techniques and their application to Head Start program staff and parents; and an ability to accomplish and provide the prescribed tasks and services—25 points.

(2) With regard to task 6 described in Section B of the program announcement, the extent to which the applicant shows capacity for assisting local programs in negotiating CDA training packages with local colleges and universities, and delivering other prescribed services—10 points.

C. Staffing and Management

(1) Adequacy of Resources: The extent to which the applicant has or will have

adequate facilities and resources and demonstrates organizational experience in the areas to be served with regard to the tasks of the proposed project—15 points.

(2) Competence of Staff: The extent to which the applicant's staff are shown to be qualified, experienced in, and familiar with the work to be performed and the programs to be served; and the extent to which professional personnel are available to the applicant at the anticipated time of award and during the period of the cooperative agreement—30 Points

D. Budget Appropriateness and Reasonableness

Extent to which the applicant demonstrates that the project's costs are reasonable in view of the anticipated results—10 points.

Part IV. The Application Process

A. Availability of Forms

Applications for a financial assistance award under the Head Start Training and Technical Assistance Program must be submitted on the standard 424 forms (Office of Management and Budget Control Number 0980–0016) provided for this purpose.

Application kits which include the forms and other information may be obtained by writing or calling: ACYF/Head Start Bureau/Program Operations Division, P.O. Box 1182, Washington, DC 20013, Attention: Robert Foster, Telephone (202) 755–8208.

B. Application Submission

At a minimum, one signed original and two copies of the applications are required. Applications, including all attachments, must be mailed or hand delivered to the Department of Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 341F, Hubert H. Humphrey Bldg., Washington, DC 20201, Attn: William J. McCarron.

C. Closing Date for Receipt of Application

The closing date for receipt of all applications under this Program Announcement is November 10, 1986.

1. *Mailed applications.* Applications mailed through the U.S. Postal Service shall be considered to meet the deadline if they are either:

a. Received on or before the deadline date at the above address; or

b. Sent by first class mail, postmarked on or before the deadline date, and received in time to be considered during the competitive review and evaluation process.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications submitted by any means except through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the HDS Grants and Contracts Management Office during the normal working hours of 8:30 a.m. to 5:00 P.M., Monday through Friday.

3. *Late applications.* Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

4. *Extension of deadline.* The Head Start Bureau may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

D. Application Consideration

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review and evaluation against the specific criteria outlined in Part III by qualified individuals. The results of the competitive review will assist the Associate Commissioner of the Head Start Bureau in determining which applicants will be recommended for funding. The Commissioner of ACYF will approve the final selection.

After the Commissioner has reached a decision either to fund or not to fund competing applications, unsuccessful applicants will be notified in writing of this decision. Successful applicants will be notified through the issuance of a Notice of Financial Assistance Awarded, which sets forth the amount of funds awarded, the budget period for which support is given, and the total period for which project support is contemplated.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirement inherent in a program announcement. This program announcement does not contain information collection requirements beyond those approved for HDS discretionary grant applications approved under OMB Control Number 0980–0016.

F. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alaska, Idaho, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

Therefore, the comment period for State processes will end on January 9, 1987, to allow time for HDS to review, consider and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Ave., SW., Room 341F, Hubert H. Humphrey Building, Washington, DC 20201, Attn: William J. McCarron.

A list of single points of contact for each State and territory is included at the end of this announcement.

(Catalog of Federal Domestic Assistance Number: 13.600 Head Start Program)

Dated: August 8, 1986.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: August 18, 1986.

Jean K. Elder,

Acting Assistant Secretary for Human Development Services.

APPENDIX I.—HEAD START RESOURCE CENTERS

Resource centers	Region	States	Approximate maximum amount of fiscal year 1987 grant (dollars)
Area No. 1	I. Boston	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	$251,000
Area No. 2	II. New York	New Jersey, New York Puerto Rico, Virgin Islands	325,000
Area No. 3	III. Philadelphia	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia	315,000
Area No. 4	IV. Atlanta	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee	487,000
Area No. 5	V. Chicago	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	440,000
Area No. 6	VI. Dallas	Arkansas, Lousiana, New Mexico, Oklahoma, Texas	352,000
Area No. 7	VII. Kansas City	Iowa, Kansas, Missouri, Nebraska	300,000
	VIII. Denver	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	
Area No. 8	IX. San Francisco	Arizona, California, Hawaii, Nevada, Outer Pacific	348,000
	X. Seattle	Alaska, Idaho, Oregon, Washington	
Area No. 9	American Indian Programs.	Washington D.C: Alaska, Arizona, California, Colorado, Florida, Idaho, Kansas, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming.	262,000
Area No. 10	Migrant Programs	Washington DC: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Maryland, Michigan, Minnesota, New Jersey, New Mexico New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina Tennessee, Texas, Utah, Virginia, Washington, Wisconsin.	220,000

Appendix II

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905

Alaska

None

Arizona

Department of Commerce, State of Arizona

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804, For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3016 or 548–3085

Idaho

None

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Mr. Alexander J. Ingram, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capitol Annex, 523 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281–3864

Kansas

Ms. Judy Krueger, Intergovernmental Liaison, 122 A South, State Office Building, Topeka, Kansas 66612, Tel. (913) 296–3919

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Mr. Ferguson Brew, Assistant Secretary and SPOC, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3725

Maine

State Planning Office, Attn: Intergovernmental Review Process/Hal Kimbal, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning,

301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

Massachusetts

Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253

Michigan

Michelyn, Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–3530

Minnesota

Maurice D. Chandler, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101, Tel. (612) 296–2571

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202 For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 760 Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana

Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

None

Nevada

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence & questions concerning the State's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215. For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (814) 466–0699

Oklahoma

Don Strain, Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Barbara J. Gontz, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Note.—Questions & correspondence concerning this State's review process should be directed to:

Mr. Michael T. Marfeo, Review Coordinator

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Connie Tveidt, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Bob McPherson, State Planning Director, Office of the Governor, P.O. Box 12561, Capitol Station, Austin, Texas 78711

Note.—Questions concerning this State's review process should be directed to:

Intergovernmental Relations Division, Tel. (512) 463–1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Shawn McNamara, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786–4474

Washington

Washington Department of Community Development, Attn: Washington Intergovernmental Review process, Ninth and Columbia Building, Olympia, Washington 98504–4151, Tel. (206) 586–1240

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster—GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741

Note.—Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–8349

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Toya Andrew, Federal Program Coordinator, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–6517

District of Columbia

Lovetta Davis, D.C. State Single Point of Contact for E.O. 12372, Executive Office of

the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patricia G. Custodio, P.E., Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

American Samoa

None

Guam

Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910

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Thursday
September 11, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Area; Proposed Rulemaking

VOL 51 ISS 176 SE 11 1986 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-36]

Proposed Establishment of Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at William P. Hobby Airport, Houston, TX. This location is a public airport with an operating control tower served by a Level V Radar Approach Control. Establishment of this ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before December 15, 1986. An informal airspace meeting is scheduled for November 14, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 86-AWA-36, 800 Independence Avenue, SW., Washington, DC 20591.

The informal airspace meeting place is as follows:

Time: 7:00 p.m.

Location: William P. Hobby Airport, Flight Standards District Office Conference Room, 8800 Paul Koonce Drive, Houston, TX 77061

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-36." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold an informal airspace meeting for the proposed ARSA location in order to receive additional input with respect to the proposal. The schedule of the time and place of the meeting is listed above. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The date, time, and place for this meeting are listed above. There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at this meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted at the discretion of the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR were the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that Terminal Radar Service Areas (TRSA) should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these

airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (Amendment No. 71–10, 50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that this criteria consider—among other things—traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. Accordingly, criteria were developed and have been adopted in FAA Order 7400.2C, Notice 7400.20.

Adoption of the alternate criteria will allow an airport without a TRSA to become a candidate for establishment of an ARSA, providing one or more of the numerical criteria categories are met. The traffic count and passenger enplanements at William P. Hobby Airport not only meet all of the quantitative criteria for an ARSA but in fact qualify the airport for candidacy for a Terminal Control Area (TCA). In keeping with FAA policy of regulating with the least impact on the public, the FAA, at this time, does not intend to propose a TCA for William P. Hobby Airport. However, the FAA may propose other regulatory airspace actions for this airport if future conditions justify such action. The FAA now proposes to establish an ARSA at William P. Hobby Airport under the guidelines of established criteria.

Related Rulemaking

This notice proposes ARSA designation at a location not identified as a candidate for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). This candidate airport meets the criteria for ARSA candidacy as adopted in FAA directives. Other candidate locations, whether identified as a candidate location in the preamble to Amendment No. 71–10 or proposed as a candidate by virtue of meeting the adopted criteria, will be proposed in future notices published in the **Federal Register**.

The Current Situation at the Proposed ARSA Location

William P. Hobby Airport is a public airport with an operating control tower served by a Level V and a Level III Radar Approach Control. The airport operations at this airport are quite varied as to the mix of aircraft. Speeds range from the extremely slow to the maximum speed allowed under regulations with maneuverability varying from the extremely maneuverable to the slower maneuvering aircraft. Although most aircraft landing at William P. Hobby Airport are sequenced with the aid of radar, airspace and operating rules are not established by regulation. Participation by pilots operating under visual flight rules (VFR) is voluntary, although pilots are urged to participate. This level of service is known as Stage II and is provided at some locations not identified at TRSA's. The NAR Task Group recommended and the FAA adopted the establishment of numerical criteria to allow airports such as William P. Hobby with safety, traffic and other needs to become candidates for ARSA's regardless of the presence of a TRSA.

William P. Hobby Airport is rapidly becoming more heavily used by numerous air carriers and air taxis. The number of passengers boarded annually far surpasses that adopted as being necessary for ARSA candidacy.

The NAR Task Group stated that, because there are different levels of service offered in terminal areas such as William P. Hobby Airport, users are not always sure of what restrictions or privileges exist, or how to cope with them. Stage II services offered at William P. Hobby Airport include traffic advisories and sequencing to the runway but do not include conflict resolution in the terminal airspace. Participation in this program is strictly voluntary. The only service available outside the airport traffic area is separation for instrument flight rule (IFR) traffic and VFR traffic advisories as an additional service. Some believe that the voluntary nature of Stage II at airports with moderate activity levels does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service in the same way, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR section 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of section 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish an ARSA at William P. Hobby Airport, Houston, TX. This location is a public airport with an operating control tower served by a Level V Radar Approach Control facility and a Level III terminal radar approach control in a tower cab (TRACAB). The legal description of this proposed ARSA is depicted on a chart in Appendix 1 to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the

deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR Task Group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA conducted a Regulatory Evaluation of the proposed establishment of an ARSA at William P. Hobby Airport. The major findings of that evaluation are summarized below, and the full evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the ARSA program can be implemented without requiring additional controller personnel above current authorized staffing levels because participation in Stage II at William P. Hobby Airport is already quite high, and the separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic very efficiently. Further, because controller training will be conducted during normal working hours, and William P. Hobby Airport already operates the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

Much of the need to notify the public and educate pilots about ARSA operations will be met as a part of this rulemaking proceeding. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. Because the expenses associated with these public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, they are more appropriately considered sunken costs attributable to the rulemaking process rather than costs of the ARSA program. Once the decision has been made to establish an ARSA through a final rule issued in this proceeding, however, any public information costs which follow are strictly attributable to the ARSA program. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA has also issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs for the airport at which an ARSA is being proposed by this notice is estimated to be about $450. This cost will be incurred only once upon the initial establishment of this ARSA.

Information on ARSA's following implementation of the program will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and therefore will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA to allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and pasenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor

procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at the three locations where ARSA's have been in effect for the longest period of time, and is the trend at most of the locations that have been more recently designated.

The FAA does not expect that any operators will find it necessary to install radio transceivers as a result of establishing the ARSA proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and therefore will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs. Most non-radio equipped (NORDO) aircraft in the vicinity of William P. Hobby Airport are located outside of the 5-nautical-mile ring and therefore will not be affected by the mandatory participation requirements. For those NORDO aircarft based at Genoa Airport, which is within the 5-nautical-mile ring, the FAA plans to establish local procedures that will accommodate them.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impacts will occur at the candidate ARSA site proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable, and is attributable to simplification and standardization of ARSA configurations and procedures. Further, once experience is gained in ARSA operations, the flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic as efficiently as at present but with increased safety.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collison involving a large air carrier aircraft and numerous fatalities. Establishment of an ARSA at the site proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at new ARSA locations will only be temporary, and that once established, the ARSA program will result in efficient terminal area operations at those airports where ARSA's are established. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition, establishment of this proposed ARSA will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at one airport within the United States. As such, it will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The small entities that could be potentially affected by implementation of the ARSA program are the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in Stage II and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude almost every satellite airport located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements

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extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if promulgated, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–49, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

William P. Hobby Airport, Houston, TX [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of William P. Hobby Airport (lat. 29°38'43"N., long. 95°16'43"W.); and that airspace extending upward from 1,500 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport from the 042°T(036°M) bearing from the airport clockwise to the 313°T(307°M) bearing from the airport, and that airspace extending upward from 1,800 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport from the 313°T(307°M) bearing from the airport clockwise to the 042°T(036°M) bearing from the airport, excluding that airspace north of an east-west line drawn from the 10-mile point on the 313°T(307°M) bearing from the airport direct to the 10-mile point on the 042°T(036°M) bearing from the airport.

Issued in Washington, DC, on September 5, 1986.

Daniel J. Peterson,

Monager, Airspace-Rules and Aeronautical Information Division.

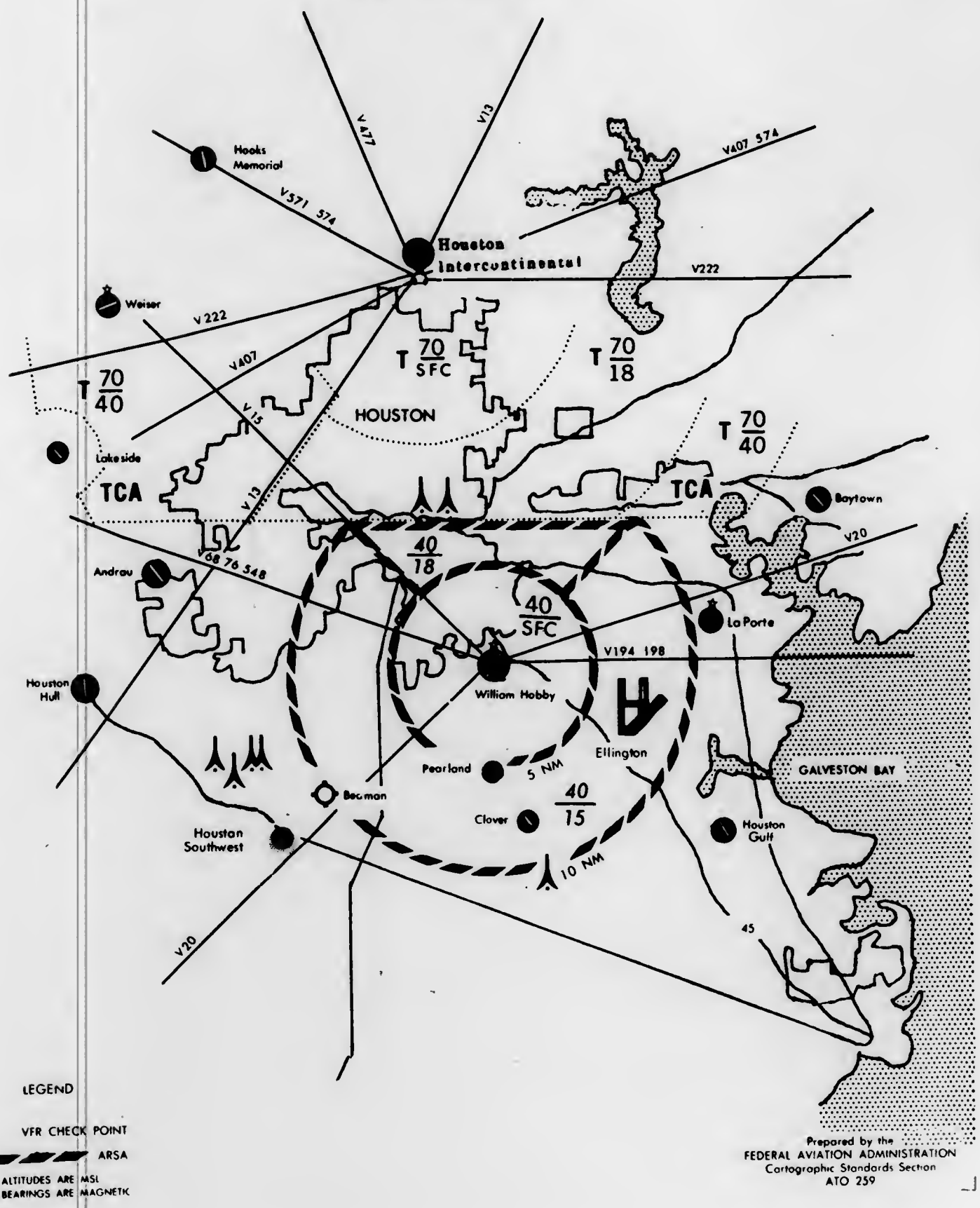
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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

HOUSTON, TEXAS
HOBBY AIRPORT
FIELD ELEV. 47' MSL



LEGEND

VFR CHECK POINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO 259

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Vol. 51, No. 176

Thursday, September 11, 1986

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PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308	2
31309-31604	3
31605-31756	4
31757-31924	5
31925-32046	8
32047-32188	9
32189-32296	10
32297-32416	11

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12532 (See Notice of September 4, 1986)....31925

Administrative Orders:
Notice:
September 4, 1986....31925

Proclamations:
5519....31309
5520....31311
5521....32047

5 CFR

831....31927

Proposed Rules:
300....31954

7 CFR

1....32189
2....31757
226....31313
301....31605
729....32049
908....31758
1136....31759
1137....32056
1230....31898
1421....32297
1427....32297
1475....31316

Proposed Rules:
246....32093
301....31956
911....32098
915....32098
981....32103
989....32216
1065....31133
1068....31133
1079....31133
1137....31340
1139....32104

8 CFR

212....32294

Proposed Rules:
214....31637

9 CFR

307....32301
318....32301
319....32057
322....31937
381....32301

Proposed Rules:
92....31637

10 CFR

477....31316

Proposed Rules:
2....31340
40....32217
50....31341

12 CFR

Proposed Rules:
332....32336

13 CFR

121....32197
123....32197

14 CFR

21....31317
39....31089, 31090, 31607, 31608, 32198-32200, 32202
71....31097
75....31097
91....31098
95....31319
97....31322

Proposed Rules:
21....31644
23....31644
39....31133-31137, 31342, 31343, 31647, 31779
71....31138, 31648, 32410

15 CFR

4....32204
4b....32206

17 CFR

Proposed Rules:
150....31648

18 CFR

Proposed Rules:
37....31651, 31781

19 CFR

111....31760, 32208
171....31760, 32208
178....31760, 32208

21 CFR

81....31323
175....31098
178....31099, 31760, 32211
193....31324
331....32212
332....32212
357....31763
369....31763
510....31100
558....31763

22 CFR

41....32295

24 CFR

201....32059
511....31764

VOL 51 ISS 176 SE 11 1986 UMI

26 CFR

1.....31610, 31613, 32061
20.....31938, 32071
25.....31938
602.....31610, 31613, 31938

28 CFR

0.....31939, 31940
2.....32071
16.....32305
Proposed Rules:
16.....31781

29 CFR

220.....32306
1601.....32073
2200.....32002

30 CFR

901.....31940
938.....31942
Proposed Rules:
733.....31139
917.....32336
946.....32106
948.....32338

32 CFR

90.....32308
199.....31100
205.....31325
286g.....31103
359.....32309
706...31103-31112, 32312-32316
Proposed Rules:
40.....31651

33 CFR

110.....32317
117.....31112, 31113, 31946, 32318, 32319
165.....31113, 31114, 31946
Proposed Rules:
117.....32339
165.....31958

34 CFR

Proposed Rules:
614.....31754

36 CFR

13.....31619
800.....31115
1254.....31617

38 CFR

Proposed Rules:
21.....31782

39 CFR

10.....31325
233.....31328
Proposed Rules:
111.....31673

40 CFR

51.....32176
52.....31125, 31127, 31129, 31328, 32973, 32075, 32176
180.....32212
261.....31330
271.....31618
721.....32077
799.....32079
Proposed Rules:
51.....32180
52.....32180
86.....31783, 31959, 32032
260.....31783
261.....31140, 31783, 32217
262.....31783
264.....31783
265.....31783
268.....31783
270.....31783
271.....31783
799.....32107

41 CFR

Proposed Rules:
201-33.....31674

42 CFR

23.....31947
405.....31454
412.....31454
Proposed Rules:
57.....31920

43 CFR

36.....31619
2880.....31764
Proposed Rules:
2800.....31886
2880.....31886

44 CFR

64.....31330
65.....31635, 31950
67.....31951
Proposed Rules:
10.....31788
67.....31675, 31678

47 CFR

0.....31303, 32087
1.....31303, 32087
2.....31303
13.....31303
21.....31303
22.....31335
63.....31303
73.....32087, 32089, 32213, 32320
74.....32087
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303
Proposed Rules:
2.....32222
15.....31147, 32222
25.....32223
64.....32113
67.....31149
68.....31149
73.....32113, 32114, 32224-32226, 32340
76.....31147
80.....31306

48 CFR

5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
47.....31424
50.....31424
52.....31424
223.....31765
228.....31765
242.....31765
252.....31765
914.....31335
933.....31335
952.....31335
970.....31335
Proposed Rules:
32.....31194
45.....31196
48.....31197
52.....31194, 31197
515.....31344
538.....31344
542.....32340
552.....31344
970.....32340
1317.....31687
1352.....31687
5316.....32114

49 CFR

1.....32320
571.....31765
Proposed Rules
391.....31150
393.....32115

50 CFR

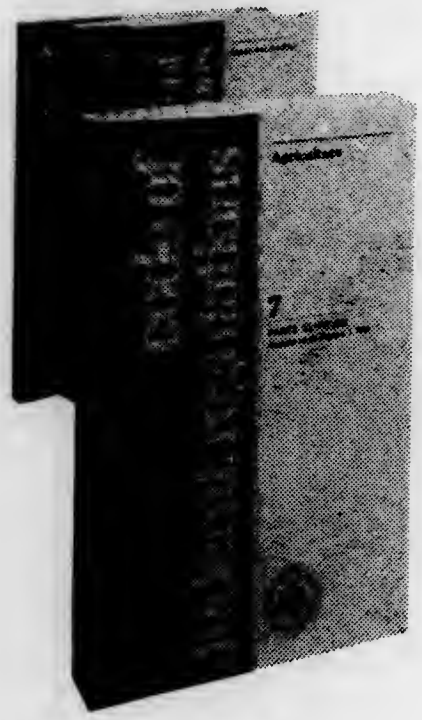
17.....31412
20.....31430
23.....31130
32.....32321
36.....31619, 32329
611.....32089, 32334
655.....31774, 31775
661.....32091
662.....32334
663.....31776
674.....32214
675.....32334
683.....32215
Proposed Rules
611.....32226
630.....31151

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 5, 1986.

VOL
51
ISS
176
SE
11
1986
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Friday
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VOL
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9-12-86
Vol. 51
Pages

9-12-86
Vol. 51 No. 177
Pages 32417-32622

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Friday
September 12, 1986

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VOL
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177
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RULES
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NOTICES
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32

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Puge

Comm
See Fo
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Contents

Federal Register

Vol. 51, No. 177

Friday, September 12, 1986

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 32423

Agricultural Research Service
NOTICES
Meetings:
National Arboretum Advisory Council, 32502

Agricultural Stabilization and Conservation Service
RULES
Marketing quotas and acreage allotments:
Peanuts, 32620

Agriculture Department
See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Agricultural Research Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Forest Service; Rural Electrification Administration
NOTICES
Committees; establishment, renewals, terminations, etc.:
Foreign Animal and Poultry Diseases Advisory Committee, 32502
Cooperative agreements:
Rutgers University, 32502
Privacy Act; systems of records, 32502

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Brucellosis
Cattle, bison, and swine, 32574

Army Department
NOTICES
Meetings:
Historical Advisory Committee, 32516

Blind and Other Severely Handicapped, Committee for Purchase from
See Committee for Purchase from the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Meetings:
Immunization Practices Advisory Committee, 32538
Nursing personnel; reducing back stress; NIOSH meeting, 32538

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Puget Sound, WA; vessel traffic service, 32489

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for Purchase from the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1986:
Additions and deletions, 32515
(2 documents)
Additions and deletions; correction, 32516

Committee for the Implementation of Textile Agreements
NOTICES
Textile consultation; review of trade:
Japan, 32513

Commodity Credit Corporation
RULES
Loan and purchase programs:
Tobacco, 32424

Customs Service
RULES
Air commerce:
Security areas; employee identification strip or seal; use and display, etc., 32448

Defense Department
See also Army Department
NOTICES
Meetings:
Strategic Defense Initiative Advisory Committee, 32516

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Salkind, Morris, D.O., 32545

Education Department
NOTICES
Agency information collection activities under OMB review, 32516
Meetings:
Bilingual Educational National Advisory and Coordinating Council, 32518

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 32547

Energy Department
See Energy Information Administration; Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 32518
Forms; availability, etc.:
Coal survey forms, 32520

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Quality assurance and control revisions, 32454
Hazardous waste:
Identification and listing—
Exclusion, 32458
National Environmental Policy Act; implementation (municipal wastewater treatment construction grants program); final, 32606
PROPOSED RULES
Toxic substances:
Significant new uses—
1-Propanol, 3-mercapto-, 32495
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 32533
Weekly receipts, 32533
Toxic and hazardous substances control:
Premanufacture exemption approvals, 32534, 32535 (2 documents)
Premanufacture exemption approvals; correction, 32535
Premanufacture notices receipts; correction, 32535, 32536 (2 documents)

Executive Office of the President
See Presidential Documents

Farm Credit Administration
RULES
Farm credit system:
Stockholder/borrower rights; mergers, consolidations, and territory transfers; conservorships and receiverships, 32431
NOTICES
Farm credit system:
Amarillo Production Credit Association; voluntary liquidation, denial, 32536

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Dornier, 32480
Transition areas, 32481–32484 (4 documents)
VOR Federal airways, 32480

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 32570

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 32570, 32571 (3 documents)

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Chocorua Forestlands Ltd. Partnership et al., 32523
Natural gas certificate filings:
Columbia Gas Transmission Co. et al., 32523
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 32526
Preliminary permits surrender:
Streamline Hydro, Inc., 32527
Applications, hearings, determinations, etc.:
Arkla Energy Resources, 32527
Cambridge Electric Light Co., 32528
Caprock Pipeline Co., 32528
El Paso Natural Gas Co., 32528, 32529 (3 documents)
Kansas Gas & Electric Co., 32530
Marin Municipal Water District, 32530
Mid Louisiana Gas Co., 32530
Natural Gas Pipeline Co. of America, 32530
Northern States Power Co., 32531
Panhandle Eastern Pipe Line Co., 32531
Raton Gas Transmission Co., 32531
Ringwood Gathering Co., 32532
Sea Robin Pipeline Co., 32532
Southern Natural Gas Co., 32532
Texas Gas Transmission Corp., 32533

Federal Highway Administration
RULES
Accounting; CFR Part removed, 32453

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Houston Belt & Terminal Railway Co. et al., 32568

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic policy directives, 32537
Applications, hearings, determinations, etc.:
BTB Corp., 32536
Mellon Bank Corp., 32536
Mountaineer Bankshares of West Virginia, Inc., et al., 32537

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
Detroit Auto Dealers Association, Inc., et al., 32485

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal Bonds:
Allianz Insurance Co., 32569

Fish and Wildlife Service
RULES
Endangered Species Convention:
Cacti, 32477
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 32460

Food and Drug Administration
RULES
Color additives:
[Phthalocyaninato(2-)] copper; change in organic chlorine content specification, etc., 32453
Organization and authority delegations:
Director, St. Louis Branch, 32451

NOTICES
Committees; establishment, renewals, terminations, etc.:
Cardiovascular and Renal Drugs Advisory Committee, 32538
Endocrinologic and Metabolic Drugs Advisory Committee, 32539
Human drugs:
New drug applications; opportunity for hearing, etc.—Becton Dickinson & Co. et al., 32539
Meetings:
Consumer information exchange, 32539

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Illinois; Diamond Star Auto Manufacturing Plant, 32504

Forest Service
NOTICES
Environmental statements; availability, etc.:
Southern Region; Southern pine beetle suppression program, 32504

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Public Health Service

Health Care Financing Administration
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—Iowa, 32540

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements:
General internal medicine and general pediatrics, residency training, 32541

Indian Affairs Bureau
NOTICES
Environmental statements; availability, etc.:
Cabazon Indian Reservation, CA, 32543

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Mirrors in stock sheet and lehr end sizes from—
Belgium, 32505
Italy, 32506
Japan, 32507
Portugal, 32508
United Kingdom, 32510
West Germany, 32511
Meetings:
Military Critical Technologies List Implementation Technical Advisory Committee and President's Export Council, 32504

Interstate Commerce Commission
PROPOSED RULES
Motor carriers:
Passenger motor carriers (buses); operations over superhighways and alternate routes, 32500
NOTICES
Agreements under sections 5a and b, applications for approval, etc.:
Alaska Carriers Association Inc., 32545
Motor carriers:
Compensated intercorporate hauling operations, 32543
Railroad operation, acquisition, construction, etc.:
Atchison, Topeka & Santa Fe Railway Co. et al., 32544
Montana Western Railway Co., Inc., 32544
Newburgh & South Shore Railroad Co., 32545

Justice Department
See Drug Enforcement Administration; Prisons Bureau

Labor Department
See also Employment Standards Administration; Occupational Safety and Health Administration; Pension and Welfare Benefits Administration
NOTICES
Privacy Act; systems of records, 32546

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Oregon, 32542

National Archives and Records Administration
NOTICES
RECORDFACTS; new publication availability, 32557

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
High seas salmon off Alaska, 32478
Tuna, Atlantic fisheries, 32478

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Baltimore Gas & Electric Co., 32558
Export and import license applications for nuclear facilities or materials, 32557
Applications, hearings, determinations, etc.:
Maine Yankee Atomic Power Co., 32559

Occupational Safety and Health Administration
RULES
State plans; development, enforcement, etc.:
Connecticut; correction, 32453
NOTICES
Variance applications, etc.:
Lenox China, Inc., 32548

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Additional Securities Benefit Fund et al., 32548
PECA-IBEW Annuity Fund et al., 32555

Presidential Documents
PROCLAMATIONS
Special observances:
Employ the Handicapped Week, National (Proc. 5524), 32421
Hispanic Heritage Week, National (Proc. 5522), 32417
Lupus Awareness Month (Proc. 5523), 32419

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Recreation programs, showing of movies, 32602

Public Health Service
See also Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration
PROPOSED RULES
Grants:
Nursing student loan program, 32616
NOTICES
Meetings; advisory committees:
September/October, 32542

Rural Electrification Administration
RULES
Telephone borrowers:
Lien accommodations and subordination policy, 32428

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 32559
Meetings; Sunshine Act, 32571
(2 documents)
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 32559
New York Stock Exchange, Inc., 32560
Applications, hearings, determinations, etc.:
Alger Fund, 32564
PB-SB 1983 Investment Partnership I et al., 32565
PVNGS Funding Corp., Inc., 32560
Scandinavia Fund, Inc., 32563

Small Business Administration
NOTICES
Loan guarantees; pilot programs:
Illinois, 32568

Organization, functions, and authority delegations:
Inspector General, 32567

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 32568

Treasury Department
See Customs Service; Fiscal Service

Separate Parts in This Issue

Part II
Department of Agriculture, Animal and Plant Health Inspection Service, 32574

Part III
Department of Justice, Bureau of Prisons, 32602

Part IV
Environmental Protection Agency, 32606

Part V
Department of Health and Human Services, Public Health Service, 32616

Part VI
Department of Agriculture, Agricultural Stabilization and Conservation Service, 32620

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5522.....32417
5523.....32419
5524.....32421

7 CFR
729.....32620
910.....32423
1464.....32424
1747.....32428

9 CFR
51.....32574
71.....32574
78.....32574
80.....32574
92.....32574

12 CFR
611.....32431

14 CFR
Proposed Rules:
39.....32480
71 (5 documents).....32480–32485

16 CFR
Proposed Rules:
13.....32485

19 CFR
6.....32448

21 CFR
5.....32451
74.....32453

23 CFR
11.....32453

28 CFR
544.....32602

29 CFR
1956.....32453

33 CFR
Proposed Rules:
161.....32489

40 CFR
6.....32606
60.....32454
261.....32458
Proposed Rules:
721.....32495

42 CFR
Proposed Rules:
57.....32616

49 CFR
Proposed Rules:
1042.....32500

50 CFR
20.....32460
23.....32477
285.....32478
674.....32478

VOL
51
ISS
177
SE
12
1986
UMI

Federal
Vol. 51
Friday,

Title

The

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Federal Register
Vol. 51, No. 177
Friday, September 12, 1986

Presidential Documents

Title 3—

The President

Proclamation 5522 of September 10, 1986

National Hispanic Heritage Week, 1986

By the President of the United States of America

A Proclamation

National Hispanic Heritage Week provides an opportunity for all Americans to recognize and celebrate the great and varied contributions Hispanic Americans have made and continue to make to this country.

As a Nation of immigrants founded on universal ideals, America's vision of freedom based on God-given rights embraces all the people of the world. Throughout our history, we have been fortunate in attracting to our shores immigrants from every part of the world. Their values, energies, and spirit have enriched America's culture and added to her dynamism and prosperity.

No part of our national mosaic better exemplifies this tradition than America's numerous citizens of Hispanic heritage. Their love of freedom is reflected daily in their abundant economic, cultural, and political vitality. Their profound religious faith nourishes the spirit of a Nation whose first principle is the God-given dignity of the human person. Through hard work Hispanics have done much to contribute to the betterment of their families and their communities. Many have played important roles as leaders in American society. Their ties to the nations of Latin America form an important part of the bond between America and its neighbors to the South, many of whom are enjoying a renaissance of freedom and democratic government. The roots of their culture bind us also to democratic Spain and its great cultural legacy. For all these reasons, we rejoice in the strength and inspiration America derives from its citizens of Hispanic heritage.

In recognition of the many achievements of the Hispanic American Community, the Congress, by Joint Resolution approved September 17, 1968 (Public Law 90–498), authorized and requested the President to issue annually a proclamation designating the week that includes September 15 and 16 as National Hispanic Heritage Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 14, 1986, as National Hispanic Heritage Week, in recognition of the Hispanic individuals, families, and communities that enrich our national life. I call upon the people of the United States, especially the educational community, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-20906
Filed 9-10-86; 4:34 pm]
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Presidential Documents

Proclamation 5523 of September 10, 1986

Lupus Awareness Month, 1986

By the President of the United States of America

A Proclamation

Systemic lupus erythematosus (also known as lupus or SLE) is an inflammatory disease of connective tissue, which can produce changes in the structure and function of the skin, joints, and internal organs. The exact cause of lupus is unknown, but evidence suggests that the disease may result from a disorder in the body's production of antibodies (proteins that fight invading organisms). In lupus, abnormal antibodies are produced that react against the patient's own tissue. More than 500,000 Americans have the disease. Ninety percent of these victims are women in their child-bearing years.

Although research has yet to find a cure for lupus, the outlook has vastly improved. Patients are living longer, more normal lives as a result of increased awareness of the disease, improved diagnostic methods, and more effective therapy. As a result of advances from biomedical research, positive findings have emerged from such diverse projects as studies on defects in the immune system; research on genetic and environmental factors influencing the disease and its complications; studies aimed at developing improved treatment, including new drugs and techniques; and research in epidemiology and data systems.

In order for us to take advantage of the knowledge already gained, public awareness of the symptoms and treatment of lupus—and of the need for continuing scientific research—remains essential. The Federal government and private voluntary organizations have developed a strong and enduring partnership committed to research on lupus. Working together, our objective must be to uncover the cause and find a cure for this devastating disease.

The Congress, by Public Law 99–365, has designated the month of October 1986 as "Lupus Awareness Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1986 as Lupus Awareness Month. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86–20809
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Presidential Documents

Proclamation 5524 of September 10, 1986

National Employ the Handicapped Week, 1986

By the President of the United States of America

A Proclamation

During the past decade, our Nation has seen increased awareness of the capabilities of workers with disabilities. We have demonstrated a greater commitment to the principle of equal employment opportunity for all Americans.

This awareness has led to actions by people with disabilities, by business, by organized labor, and by government at all levels to encourage the full integration of workers with disabilities into the American work force.

This cooperative and unified action has enabled people with disabilities to forge ahead—as leaders, as employers and employees, as team members, as vital members of American society. Medical and technological developments, coupled with new awareness of the capabilities of people with disabilities, can lead to greater and more fruitful participation of all Americans in our work force.

The first full week in October of each year is National Employ the Handicapped Week. During these seven days, we emphasize our recognition of the changing roles of people with disabilities in America today. Their aspirations and demonstrated ability to meet challenges and make the most of opportunities have resulted in changing the way the Nation thinks about handicaps and disabilities. Let us recognize through our actions, as well as our words, that people with disabilities are first of all our fellow citizens, who happen to be disabled.

The Congress, by Joint Resolution approved August 11, 1945, as amended (36 U.S.C. 155), has called for the designation of the first full week in October of each year as "National Employ the Handicapped Week." This special week is a time for all Americans to join together to renew their dedication to meeting the goal of full opportunities for disabled citizens.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 5, 1986, as National Employ the Handicapped Week. I urge all governors, mayors, other public officials, leaders in business and labor, and private citizens to help meet the challenge of insuring equal employment opportunities and full citizenship rights and privileges for people with disabilities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-20610
Filed 9-10-86; 4:36 pm]
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Rules and Regulations

Federal Register
Vol. 51, No. 177
Friday, September 12, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 526]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: Regulation 526 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 200,000 cartons during the period September 14 through September 20, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 526 (§ 910.826) is effective for the period September 14–20, 1986. Comments due October 2, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning the possible impact of volume regulations on small entities. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

At the beginning of each marketing year, the Lemon Administrative Committee submits a marketing policy to the Department which discusses, among other things, the potential use of volume and/or size regulations for the ensuing season. The Committee's 1986–87 season marketing policy contemplated the use of volume regulation this season. The Department reviewed that policy with respect to legal and administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The regulatory action in this instance is proposed volume control (prorate) for shipments of fresh domestic lemons grown in California and Arizona, authorized under marketing order 910. At the present time, the Agricultural Marketing Servcie is not able to conclusively determine all the costs and benefits of the proposed regulation on small business entities. However, if a "significant economic impact on a substantial number of small entities" would be present, it is the Department's view that under the proposed regulation this impact would not be adverse. Although the information currently available to AMS is limited, the known costs to growers of implementing the regulations appear to be significantly offset when compared to potential benefits of regulation.

The California-Arizona lemon industry is characterized by a large number of growers that cover a large geographical area. The exact number of growers is not presently known, but estimates are that this number is in the range of 2,000 to 2,500. An actual number is difficult to obtain, due to the various types of legal entities involved in growing lemons. For example, one grower may be involved in several different legal entities; either as an individual or with others. It is therefore difficult to ascertain if such an individual constitutes one or several growers. There is also a lack of complete information regarding all the legal entities themselves.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three fiscal years of less than $100,000. It is believed that the California-Arizona lemon industry is dominated by small growers. It is difficult to substantiate the exact makeup of the industry in view of the absence of data regarding numbers and names of producers, and value of production of each. In addition, the number of small growers may vary significantly from year to year depending on price levels, production levels, and yields.

Regardless of the lack of determination of the number of small growers in the industry, the proposed regulations apply to the entire industry, therefore all small growers are affected. Furthermore, the regulations are applied uniformly and in proportion to each grower's shipments throughout the industry.

The reporting and recordkeeping requirements under M.O. 910 are incurred by handlers of lemons. However, the handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by the handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

If the alternative of not using volume regulations for the 1986–87 season was adopted, it is likely that most of these reporting and recordkeeping functions would still be carried out. The method of calculating the quantities of lemons for fresh shipments by handlers for any given week is based on information gathered over several previous week's time. Therefore, there is an incentive to keep and maintain records in anticipation of future implementation of regulation.

As long as M.O. 910 provides the authority for weekly volume regulation, most of the recordkeeping will likely continue, as it did during the 1985–86 season when no volume regulation was used.

Based on consideration of the conditions that exist in the lemon industry at this time, and the evaluation of alternatives to the implementation of prorate regulations, USDA has certified that the issuance of weekly volume regulations will not have a significant economic impact on a substantial number of small entities.

The Fruit and Vegetable Division of the Agricultural Marketing Service, however, encourages the submission of comments on economic impacts on small entities from all interested parties. USDA's position on this certification of the regulatory action will be further evaluated in view of the applicable comments received.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87. The committee met publicly on September 9, 1986, at Yuma, Arizona, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is poor and that the market is oversupplied, which has resulted in decreases in price. The use of prorate was recommended in order to strengthen the rapidly declining market for lemons.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subject in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.826 is added to read as follows:

§ 910.826 Lemon Regulation 526.

The quantity of lemons grown in California and Arizona which may be handled during the period September 14 through September 20, 1986, is established at 200,000 cartons.

Dated: September 11, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–20814 Filed 9–11–86; 9:37 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1464

Tobacco; Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR Part 1464 to implement provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Food Security Act of 1985 with respect to the tobacco price support program. Major changes include: (1) New formulas for determining the level of price support for kinds of tobacco for which marketing quotas are in effect or have not been disapproved by producers; (2) a requirement that purchasers of tobacco pay assessments to applicable No Net Cost Tobacco Funds or Accounts; (3) a reduction in the quantity of tobacco produced on a farm which may be eligible to receive price support from 110 percent to 103 percent of the effective burley and flue-cured tobacco farm marketing quota; and (4) a penalty for the failure of a person to collect and timely remit No Net Cost Fund or Account contributions or assessments. Other editorial changes also are made in 7 CFR Part 1464 for clarity.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Tobacco Marketing Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2515, Washington, DC 20013, (202) 447–3518.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of Law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

Section 1102 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (the "1985 Act") amended section 106(f) of the Agricultural Act of 1949, as amended (the "1949 Act"), to establish the level of price support for the 1985 and 1986 crops of burley tobacco at $1.488 per pound and for the 1986 crop of flue-cured tobacco at $1.4338 per pound. For the 1987 and subsequent crops of those kinds of tobacco for which marketing quotas are in effect or are not disapproved by producers, the level of price support is established at the same level established for the previous crop plus or minus, respectively, an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply and demand with respect to such tobacco, of: (1) 66.7 percent of the amount by which (a) the average price received by producers for such tobacco, respectively, on U.S. auction markets during the 5 marketing years immediately preceding the marketing

year for which the determination is made, excluding the highest and lowest years, is greater or less than (b) such average prices calculated in the same manner for the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is made; and (2) 33.3 percent of the change in an index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made. The index of prices paid shall include items representing general, variable costs of producing tobacco, as determined by the Secretary, and excluding the cost of land, risk, overhead, management, purchase or leasing of quotas, marketing contributions or assessments, and other costs not directly related to the production of tobacco.

Section 1102 of the 1985 Act also amended section 106(f) of the 1949 Act with respect to the 1986 and subsequent crops of other kinds of tobacco for which marketing quotas are in effect or are not otherwise disapproved by producers. Generally, this amendment provides that the levels of price support for such crops are the levels established for the previous crops of such kinds of tobacco plus or minus, respectively, the amount by which: (1) The level of price support for the crop for which the determination is made, as determined in accordance with section 106(b), is greater or less than (2) the level of price support, determined in accordance with section 106(b), for the immediately preceding crop. This difference may be adjusted downward by the Secretary if the level of price support for which the determination is being made is greater than the immediately preceding crop's level of price support. Such downward adjustment of the difference may be made only to the extent that the increase in the level of price support after adjustment is not less than 65 percent of the increase in the level of price support which would otherwise have been established for such kind of tobacco if such downward adjustment had not been made. Notwithstanding these provisions, if requested by the board of directors of an association through which price support is made available for a kind of tobacco other than burley or flue-cured, the Secretary may reduce level of price support for the respective kind of tobacco to the extent requested in order to more accurately reflect the market value and improve marketability of such tobacco.

Since the levels of price support for eligible tobacco are statutorily established, 7 CFR 1464.3 is amended to provide that such levels shall be established in accordance with section 106 of the 1949 Act. The previous provisions of 7 CFR 1464.3 which provided that reduced levels of price support shall be applicable to certain designated varieties of flue-cured tobacco are retained.

Section 1105 of the 1985 Act amended section 106(c) of the 1949 Act to provide that if acreage poundage or poundage farm marketing quotas are in effect under section 317 or 319 of the Agricultural Adjustment Act of 1938, as amended, price support shall not be available on tobacco marketed in excess of 103 percent of the marketing quota for the farm on which such tobacco was produced.

Previously such quantity of tobacco eligible to receive price support could not exceed 110 percent of such marketing quota. Accordingly, 7 CFR 1464.2 is amended to reflect the reduction in the quantity of tobacco produced on a farm which may be eligible to receive price support.

The No Net Cost Tobacco Program Act of 1982 (the "1982 Act") amended the 1949 Act to provide that the price support program for tobacco is to be conducted in such a manner as to result in no net cost to the government. The 1982 Act added sections 106A and 106B to the 1949 to provide that this would be accomplished through: (1) Producer contributions to No Net Cost Tobacco Funds maintained by the cooperative marketing associations through which price support is made available to producers or (2) producer marketing assessments maintained in No Net Cost Tobacco Accounts established by the Commodity Credit Corporation for such an association. Such contributions and assessments are made annually for each crop of each kind of tobacco which receives price support.

Section 1108 of the 1985 Act amended sections 106A and 106B of the 1949 Act to provide that, in addition to producer assessments or contributions, purchasers of flue-cured and burley tobacco shall pay to the cooperative marketing association through which price support is made available to producers an assessment for deposit in such association's No Net Cost Tobacco Fund or No Net Cost Tobacco Account in an amount announced by the Secretary with respect to all purchases of such kind of tobacco marketed by a producer from a farm and purchases from the association's stocks of the 1986 and subsequent crops. The amount of producer contributions or assessments and purchaser assessments to applicable No Net Cost Tobacco Funds or Accounts are to be determined in such a manner that purchasers and producers share equally, to the maximum extent practicable, in maintaining such Fund or Account.

Section 1106 of the 1985 Act also provided that any contribution or assessment shall be collected: (1) From the person who acquired the tobacco from the producer, except that if the tobacco is marketed by sale an amount equal to the applicable producer contribution or assessment may be deducted by the purchaser from the price paid to the producer; (2) if the tobacco is marketed by a producer through a warehouseman or agent, from such warehouseman or agent; or (3) if the tobacco is marketed by a producer directly to any person outside the United States, from the producer who may add an amount equal to the purchaser assessment to the price paid by the purchaser. If the sale of the tobacco is made through a warehouseman or agent, such warehouseman or agent may deduct an amount equal to the applicable producer contribution or assessment from the price paid to the producer and add an amount equal to the purchaser assessment to the price paid by the purchaser.

Each person who fails to collect and remit any contribution or assessment in the manner prescribed by the Secretary shall be liable, in addition to any amount due, for a marketing penalty equal to 75 percent of the average market price for the kind of tobacco involved for the immediately preceding year on the quantity of tobacco as to which such failure to remit has occurred. Any such penalty shall be assessed after notice of the violation and an opportunity for a hearing. The penalty may be reduced by the Secretary in an amount determined equitable in any case which the Secretary determines that the failure was unintentional or without knowledge on the part of the person involved.

7 CFR 1464.10 is amended to incorporate the provisions of section 1108 of the 1985 Act with respect to assessment and collection of purchaser assessments. Section 1464.10 also is amended for clarity with respect to the assessment and collection of producer contributions and assessments.

7 CFR 1464(i) sets forth the manner in which contributions and assessments are to be collected and remitted. The provisions are substantially similar to requirements previously applicable only to producer assessments and contributions. 7 CFR 1464.10(i)(2)

provides that a dealer or warehouseman may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

7 CFR Part 1464(j) provides that if any person fails to collect and remit a contribution or assessment a marketing penalty shall be assessed. It has been determined that a marketing penalty will not be assessed if contributions or assessments are remitted to the appropriate association not later than 15 days after the day on which the contribution or assessment was required to be made. If a warehouseman fails to collect a contribution or assessment within 15 days of the date specified in the loan contract between the warehouseman and the association, the association shall provide the State ASC committee a statement of the reason for the warehouseman's delay in making a timely payment.

In accordance with 7 CFR 1464.10(j)(3), the State ASC committee is responsible for initially assessing any marketing penalty which is assessed. In accordance with 7 CFR 1464.10(j)(4), the Deputy Administrator may reduce the amount of any marketing penalty if it is determined that the failure to collect and remit a contribution or assessment was unintentional or without knowledge of the person involved.

Sections 1201 through 1223 of the Food Security Act of 1985 provide that certain benefits, including tobacco price support loans, shall not be available to persons who have cultivated certain highly erodible land or newly converted wetland. The regulations implementing these provisions are set forth at 7 CFR Part 12 (51 FR 23496, June 27, 1986). Accordingly, 7 CFR 1464.7 is amended to provide that an eligible producer for purposes of receiving a tobacco price support loan must be in compliance with the provisions of 7 CFR Part 12.

This final rule also makes other minor changes in 7 CFR Part 1464 for purposes of clarity and organization.

Section 1108(c) of the 1985 Act provides that the Secretary shall implement the provisions of sections 1102 through 1109 of that Act without regard to the provisions requiring notice and comment and other procedures for public participation in rulemaking contained in 5 U.S.C. 553 or in any directive of the Secretary. Accordingly, this final rule shall become effective on September 12, 1986.

List of Subjects in 7 CFR Part 1464

Price support programs, Tobacco.

Final Rule

PART 1464—[AMENDED]

Accordingly, 7 CFR Part 1464 is amended as follows:

1. The authority citation for Part 1464 is revised to read:

Authority: Secs. 4 and 5 of the Commodity Credit Charter Act, as amended, 62 Stat. 1070 as amended, 1072, 15 U.S.C. 714b, 714c, secs. 101, 106, 106A, 106B, 401, 403 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 96 Stat. 197, as amended, 63 Stat. 1054, as amended, 7 U.S.C. 1441, 1445, 1445–1, 1421, 1423.

§ 1464.2 [Amended]

2. Section 1464.2 is amended in paragraphs (b)(1)(i) and (b)(2)(vii) by removing the number "110" each place it appears and inserting in its place the number "103".

3. Section 1464.3 is revised to read:

§ 1464.3 Level of price support.

(a) The level of price support for eligible tobacco shall be determined in accordance with section 106 of the Agricultural Act of 1949, as amended.

(b) Flue-Cured tobacco of varieties Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, and Dixie Bright 244, or a mixture or strain of such seed varieties or any breeding line of Flue-Cured tobacco seed varieties, including, but not limited to, 187 Golden Wilt (also designated by such names as No-Name, XYZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244 will be supported at one-half the support rate, plus 50 cents per hundred pounds, for comparable grades of acceptable varieties.

§ 1464.5 [Amended]

4. Section 1464.5 is amended: (1) By removing from the first sentence the words "for each crop" and (2) by removing from the last sentence the words "any crop" and inserting in their place the words "the 1981 or any prior crop".

5. Section 1464.7 is revised to read:

§ 1464.7 Eligible producer.

To qualify as an eligible producer for purposes of receiving price support during the current marketing year a person must have eligible tobacco, as provided in § 1464.8, for marketing and such person:

(a) Must have agreed to make contributions to a No Net Cost Fund or pay assessments to a No Net Cost Account, as applicable, in accordance with § 1464.10.

(b) Must not have been found, after notice and opportunity for an administrative hearing in accordance with Part 780 of this title, to have:

(1) Knowingly delivered nested tobacco for the purpose of receiving price support.

(2) Filed a false report with respect to the use of pesticides on tobacco produced for marketing during the current marketing year.

(c) Must be in compliance with the provisions of Part 12 of this title.

6. Section 1464.8 is revised to read:

§ 1464.8 Eligible tobacco.

Eligible tobacco for the purpose of pledging such tobacco as collateral for a price support loan is any tobacco of a kind for which price support is available, as provided in § 1464.2, that is in sound and merchantable condition and:

(a) Is not a kind of tobacco for which marketing quotas are not in effect for the marketing year because marketing quotas have been disapproved in a referendum of producers;

(b) Is offered for marketing by the person who was the producer of the tobacco, or in the case of a deceased producer, by the duly authorized successor(s) in interest;

(c) Is offered for marketing in accordance with § 1464.2(b);

(d) If marketing quotas are in effect for the kind of tobacco:

(1) Except for burley tobacco, the farm operator has filed a report of the acreage planted to tobacco on the farm in the applicable year in accordance with Part 718 of this title.

(2) The tobacco was produced on a farm on which neither the reported nor determined acreage of the kind of tobacco exceeds any acreage allotment established for the farm in accordance with the applicable Parts 724 through 726 of this title for the kind of tobacco for the applicable year.

(3) Is identified when delivered to the association either directly or through an auction warehouse with a single marketing card for each lot of tobacco.

(e) If marketing quotas are in effect for the kind of tobacco or if marketing quotas are not in effect but would have been in effect for the kind of tobacco had such marketing quotas not been terminated by the Secretary, the operator of the farm on which the tobacco was produced:

(1) Has certified that all tobacco delivered from such farm for price support will not have not been nested as defined in Part 29 of this title.

(2) Has certified to the county ASC committee on a form approved by the

Deputy Administrator that all pesticides (including plant regulators, defoliants, and desiccants), as defined in 40 CFR 162.3, which were used in connection with the production of the tobacco have been approved by the Environmental Protection Agency for use on tobacco and any such pesticides that were used were applied in accordance with label directions.

(3) Has not refused to permit the sampling of such tobacco, either on the farm or where stored, for chemical analysis for the purpose of verifying the accuracy of any pesticide certification.

(f) With respect to burley and flue-cured tobacco only, is a quantity of tobacco which when added to the pounds of the respective kind of tobacco previously marketed from the farm during the marketing year does not exceed 103 percent of the effective farm marketing quota established for the respective kind of tobacco for that year.

(g) With respect to flue-cured tobacco only, is a quantity of tobacco which was delivered to the association through an auction warehouse and is a quantity which when added to the pounds of flue-cured tobacco previously marketed from the farm at that warehouse does not exceed the quantity of flue-cured tobacco designated by the farm operator for marketing at that warehouse.

(h) With respect to Puerto Rican tobacco only, is tobacco which the producer has certified to the association as meeting the following requirements:

(1) All pesticides (including plant regulators, defoliants, and desiccants), as defined in 40 CFR 162.3, which were used in connection with the production of the tobacco, have been approved by the Environmental Protection Agency for use on tobacco and any such pesticides that were used were applied in accordance with label directions.

(2) All tobacco delivered for price support has not been nested as defined in Part 29 of this title.

7. Section 1464.9 is revised to read:

§ 1464.9 Refund of price support advance.

In any case in which a producer has received price support on a lot of tobacco such producer shall refund to CCC any price support advance received with respect to such lot of tobacco if it is determined, after notice and opportunity for an administrative hearing in accordance with Part 780 of this title, that such producer:

(a) Knew that such lot of tobacco was nested, as defined in Part 29 of this title, at the time such tobacco was delivered for the purpose of receiving price support.

(b) Filed a false report with respect to the use of pesticides on tobacco produced on the farm from which such lot of tobacco was identified, at the time of marketing, as having been produced.

8. In § 1464.10 paragraph (a)(2) is amended by removing the words "(except Flue-cured)"; paragraphs (a)(9) and (g) through (j) are added; and paragraphs (b) through (f) are revised to read:

§ 1464.10 No Net Cost Tobacco Fund or Account.

(a) * * *

(9) "Purchaser" means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, burley or flue-cured tobacco from the producer, or, with respect to the 1986 and subsequent crops of such tobacco, from an association.

(b) *Establishing a No Net Cost Tobacco Fund.* Except as provided in paragraph (c) of this section, each association shall establish and maintain a Fund in accordance with the requirements of section 106A of the Agricultural Act of 1949, as amended.

(c) *Establishing a No Net Cost Tobacco Account.* Upon request of any association, an Account shall be establish and maintained for such association in lieu of a Fund. Also, after consultation with an association, the Secretary may established and maintain an Account for such association in lieu of a Fund if the Secretary determines that the accumulation of the Fund for such association is, and is likely to remain, inadequate to reimburse CCC for net losses which CCC may sustain under its loan agreement with such association. The requirements of section 106B of the Agricultural Act of 1949, as amended, shall be applicable with respect to an Account.

(d) *Producer contributions or assessments.* As a condition of eligibility for price support during the applicable marketing year a producer of quota tobacco shall agree to make contributions to the Fund established for the association serving the area for the kind of tobacco to be marketed by such producer during such marketing year, or, if a Fund has not been established for such association, pay assessments to the Account established for such association. The amount of any contribution or assessment shall be determined in accordance with sections 106A and 106B of the Agricultural Act of 1949, as amended.

(e) *Filing of agreement.* Any agreement to make contributions to a Fund or pay assessments to an Account shall be on a form approved by the Deputy Administrator and shall be filed with the local county ASC committee prior to the issuance of a marketing card for use in identifying tobacco to be marketed from the farm of the kind of tobacco for which such agreement is applicable.

(f) *Responsibility of farm operator.* The farm operator shall determine whether all producers on the farm agree to make contributions to the Fund or pay assessments to the Account, as applicable, that has been established for the association serving the area and may sign on their behalf an agreement which acknowledges that such persons will make such contibutions or pay such assessments.

(g) *Special provisions applicable to burley tobacco.* (1) Notwithstanding the provisions of paragraphs (d) and (e) of this section, if a Fund has been established for an association that serves burley tobacco producers, a producer of burley tobacco shall agree, as a condition of eligibility to receive price support, to make contributions to the association's Fund during each of the 3 marketing years of any three-year period for which marketing quotas have been approved for burley tobacco.

(2) Any agreement to make contributions to a Fund shall be on a form approved by the Deputy Administrator and shall be filed with the local county ASC committee by September 30 preceding the beginning of the first marketing year of the applicable three-year period.

(3) If during the applicable three-year period there is a change in the operator of the farm or a new farm burley tobacco quota has been approved for a farm, the successor operator or the farm operator of the new farm shall agree, as a condition of eligibility to receive price support, to contribute to the Fund in any remaining marketing year of the applicable three year period and shall file such agreement with the local county ASC committee by September 30 preceding the beginning of the next marketing year.

(4) The amount of any contribution shall be determined for each respective marketing year in accordance with section 106A of the Agricultural Act of 1949, as amended.

(h) *Purchaser assessments.* Each purchaser of burley and flue-cured quota tobacco shall pay an assessment with respect to purchases of all such kind of tobacco marketed by a producer from a farm, including purchases from the association of such tobacco from the 1986 and subsequent crops. Such assessment shall be determined in

accordance with section 106A or 106B, as applicable, of the Agricultural Act of 1949, as amended, and shall be paid into the applicable association's Fund or Account.

(i) *Collection and remission of contributions or assessments.*

(1) Any producer contribution or assessment due under this section shall be collected at the time of marketing:

(i) From any dealer or warehouseman who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer; or

(iii) If the tobacco involved is delivered directly to an association, by such association.

(2) A dealer or warehouseman may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) Any purchaser assessment due under this section shall be collected at the time of marketing:

(i) From the dealer or warehouseman who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer who may add an amount equal to the purchaser assessment to the price paid by the purchaser for such tobacco.

(4) If tobacco involved is marketed at a warehouse auction, the warehouseman may add an amount equal to the purchaser assessment to the price paid by the purchaser of such tobacco.

(5) All persons who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association within 15 days of the date on which the tobacco was marketed except as provided in subparagraphs (i) and (ii).

(i) Warehousemen who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable in accordance with the provisions of the loan contact between the association and the warehouseman.

(ii) Dealers who are responsible for collecting any contribution or assessment as required by this section shall remit such collections to the State ASCS office in accordance with Parts 724 through 726 of this title.

(6) Any person who fails to collect and timely remit any collections required by this section shall be subject to a late payment charge. Such late payment shall be calculated and assessed in accordance with Part 1403 of this title.

(j) *Penalty for failure to collect and remit contributions or assessments.* (1) If any person fails to collect and remit any contributions or assessments according to the provisions of this section such person shall be liable, in addition to any amount of contributions or assessments and any late payment charges, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco for the immediately preceding year on the quantity of tobacco as to which failure occurs. Such a penalty only shall be assessed after the person has been notified of the pending assessment of the penalty and the person has been afforded an opportunity for a hearing with respect to the assessment of the penalty. However, such marketing penalty shall not be assessed if such contributions or assessment are collected and remitted not later than 15 days after the date required by this part.

(2) If a warehouseman fails to collect and remit any contribution or assessment to an association within 15 days after the date provided in the loan contract between the warehouseman and such association, the association shall provide to the State ASC committee for the state in which the warehouseman's business is located a statement of the reason for the failure of the person to timely remit such collection, including the name and address of the warehouse involved, the pounds of tobacco purchased, the date of purchase, and the date the collection was required to be remitted. The association shall submit such facts within 25 days after the applicable due date regardless of whether such assessment or contribution has been remitted to the association.

(3) The State ASC committee shall be responsible for assessing any marketing penalty determined in accordance with paragraph (j)(1) of this section.

(4) The Deputy Administrator may reduce the amount of any marketing penalty for which a person otherwise would be liable in accordance with the provisions of this section.

(5) The marketing penalty provided in this section is in addition to, and not exclusive of, any other remedies that may be available with respect to collection and remission of any contributions or assessments made in accordance with this section.

Signed at Washington, DC, on September 5, 1986.

Earle J. Bedenbaugh,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-20492 Filed 9-11-86; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1747

Lien Accommodation and Subordination Policy (Telephone Program)

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) is adding a new part, Part 1747, Lien Accommodations, to 7 CFR Chapter XVII, containing the mortgage lien accommodation and subordination application procedure and criteria of the REA telephone program and the Rural Telephone Bank (RTB). The rule will enable REA and RTB telephone borrowers to attract the outside capital necessary to finance other telecommunication services. Certain criteria are set forth. The rule will have an impact on all present and future REA telephone borrowers.

EFFECTIVE DATE: August 7, 1986.

FOR FURTHER INFORMATION CONTACT: John H. Arnesen, Assistant Administrator—Telephone, Rural Electrification Administration, Room 4048, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9554. The Final Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major".

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees, and 10.852—Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. 1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or recordkeeping requirements which require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.).

Background

On May 8, 1986, REA published a Notice of Proposed Rulemaking to add a new part to 7 CFR Chapter XVII. Currently REA encourages borrowers to submit requests for mortgage lien accommodations or subordinations for purposes provided in the Rural Electrification Act (RE Act) as amended (7 U.S.C. 901 et seq.). This final rule sets forth the REA and RTB policy with respect to the use of financing from private lenders for projects to provide telephone service as defined by section 203(a) of the RE Act.

In addition to facilitating financing from private lenders for RE Act purposes, this new part establishes criteria which REA will consider in accommodating or subordinating the Government's lien for telecommunication services not eligible to be financed under the RE Act.

The final rule defines "telecommunication services" and sets forth application procedures for REA and RTB to consider mortgage lien accommodation or subordination requests which will facilitate financing of such telecommunication services.

Comments

In the Notice of Proposed Rulemaking (NPR), REA invited interested parties to file comments on or before June 9, 1986. Although some comments were received after that date, all responses received have been considered in preparing the final rule.

Fourteen different organizations or groups commented on the proposed rule. They are: (1) National Rural Telecom Association, National Telephone Cooperative Association, United States Telephone Association (NRTA, et al.), (2) National Rural Utilities Cooperative Finance Corporation (CFC). (3) Central Bank for Cooperatives (BC), (4) Hargray Telephone Company, Inc. (Hargray), (5) Missouri Telephone Company (Missouri), (6) Telocator Network of America (Telocator), (7) National Association of Business and Educational Radio, Inc. (NABER). (8) Associated Telephone Answering Exchanges, Inc. (ATAE), (9) Allied Radiotelephone Utilities of California (Allied), (10) Radio Paging Service (RPS), (11□ The Phone Works (TPW), (12) Able Communications Inc. (Able), (13) LRPS/ Stenocall (LRPS) and (14) United States Department of the Treasury.

Comments opposing the proposed rule were submitted by organizations or groups allied with or currently providing telecommunication services or facilities that are not eligible to be financed under the RE Act. Comments supporting the rule were submitted by organizations representing or allied with telephone systems financed by REA or RTB loans or loan guarantees.

Principal objection to the proposed rule was that mortgage lien accommodation or subordination for non-RE Act purposes would provide an unfair competitive advantage to REA borrowers. Those opposed contended that the rule would provide REA-financed systems with an advantage in the cost of financing that would not be available to non-borrowers and, in effect, be a government subsidy of these telecommunication services. One party commented that the proposed rule would have the unfortunate result of placing many rural Americans in the position of having to subsidize their local telephone company's efforts to diversify into new markets, creating an unfair situation for non-REA borrowers to compete against those that can borrow money from the Federal Government and have their loans from outside sources guaranteed by the Federal Government.

Parties supporting the rule commented that deregulation and competition in the industry is eroding and jeopardizing their historical revenue sources. They contended that they must have the flexibility to diversify to successfully accomplish their objective of serving rural America with quality, affordable telecommunication services in this new environment.

Under present policy, REA has approved very few requests for mortgage lien accommodation or subordination for services not eligible for financing under the RE Act. REA borrowers are generally limited to using internally generated funds or unsecured debt for financing other telecommunication services.

In cases where loan security is not affected, this rule will provide an opportunity for REA borrowers to provide telecommunication services on an equal basis with non-REA borrowers. A lien accommodation from REA does not provide any special incentive to a lender to loan funds at an advantageous interest rate to an REA borrower. Rather, it merely allows the lender to obtain a security interest in facilities it is financing for an REA borrower in the same approximate degree it could obtain Security from a non-REA borrower.

The policy will not permit the use of REA, RTB or FFB loan funds for non-RE Act purposes or the subsidization of unregulated activities by the REA-financed systems.

REA finds that the accommodation or subordination of its lien in appropriate cases as provided for in the rule is advantageous to the Government because providing an opportunity for REA borrowers to compete in the deregulated telephone and expanding telecommunication markets will provide REA and RTB borrowers with additional revenues which should improve their financial stability.

Improved financial stability of REA and RTB borrowers will advance and facilitate their ability to obtain financing from private lenders for services now eligible for financing from REA, RTB or the FFB.

Several of those opposed to the rule contended that the rule would have an effect on the economy of $100 million or more and was not, therefore, in conformance with Executive Order 12291, Federal Regulation.

REA's opinion on this issue is based on three points. REA has reviewed the equity capital that REA and RTB borrowers have available to allocate to investments in telecommunications projects that would be eligible for financing by this rule by mortgage lien accommodation or subordination. That review shows that if all REA and RTB borrowers were to request mortgage lien accommodation or subordination that their level of equity required by private lending would support a maximum level of investment by the borrowers of from $35 million to $70 million.

Secondly, REA believes that this rule will result in far fewer requests for mortgage lien accommodation or subordination than the equity levels

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would, at maximum, support because (1) the nature of the projects not eligible for REA or RTB financing, (2) the time involved to develop engineering and economic studies and (3) the special requirements and conditions of the rural areas.

Thirdly, at present less than 10 percent of all telephone borrowers apply annually for financing for Act purposes. Current annual loan levels are approximately 300 million dollars. REA estimates that fewer borrowers would request lien accommodations and that their funding requests for other telecommunication services would be substantially less than their funding requests for their primary (telephone) business purpose.

One respondent commented that the proposed rule would provide REA telephone borrowers with advantages sought in 1983 by legislation which was rejected by the Congress.

REA emphasizes that the 1983 legislation was a major revision of the entire REA telephone and electric programs. It was rejected by Congress for a number of reasons. The mortgage lien accommodation and subordination feature of that legislation for non-RE Act purposes was a minor part of that comprehensive legislation. The rule provides a method for considering the financing of non-Act telecommunication projects by REA telephone borrowers, rather than mandating mortgage lien accommodation or subordination as was proposed in the 1983 legislation. REA also emphasizes that each request for a mortgage lien accommodation or subordination will be considered under the proposed rule on a case-by-case basis utilizing specific criteria and following application procedures set forth in the rule.

The Department of the Treasury commented in opposition to the section of the rule that would allow subordination of REA's lien on after acquired property.

REA will not take a subordinate position on any property which it has financed, or on any property on which it currently enjoys a security position. The only circumstance under which REA will consider a subordination will be on property which the borrower is considering obtaining in the future with financing from private lenders. This "after-acquired" property would be obtained without government financing or government guarantee. It is REA's contention that the government, therefore, has no need in these circumstances to have an equal or superior standing with the private lender on the after-acquired property until such time as the private loan is repaid. At that point the government's lien would attach to the "after-acquired" property.

Both those who supported the proposed rule and those who opposed it commented on the definition of "telecommunication project" in Part 1747.2(e). Those opposed to the proposed rule commented that the definition was too broad. They generally wanted the definition to apply only to facilities presently eligible to be financed under the RE Act. Supporters of the rule wanted expansion of the definition; several commenters wanted it to specifically include acquisitions, refinancing, and rural development. REA acknowledges that there could be some confusion concerning the term "telecommunication project". Consequently, all references to "telecommunication project" are changed to "telecommunication services" to coincide with RE Act language. The definition in the rule closely parallels the definition of telephone service in the RE Act, but has been made more expansive in order to reflect technological and market changes.

REA does not believe the definition is too broad because one of the primary purposes of the rule is to encourage and enable REA borrowers to compete in a wide range of telecommunication endeavors. Neither should the definition be so broad that it includes any project that promotes "rural development" because REA believes that its telephone borrowers should focus on those enterprises which are clearly related to telecommunications. The definition, as written, allows mortgage lien accommodations or subordinations for acquisitions, but not for refinancing. This is because acquisitions directly relate to the provision of new, and expansion of existing, telecommunication facilities, while refinancing does not necessarily lead to these ends.

Several parties commented that references to financing other than from REA, RTB, or FFB as "private lenders," "other lending organizations" or "financing elsewhere," could be confusing and may not include some lenders, such as the Banks for Cooperatives of the Farm Credit System. The final rule is changed to define "private lenders" as lenders other than "REA, RTB or FFB."

Several parties commented that not all requests for mortgage lien accommodation or subordination will require consideration by the Administrator or RTB Governor of all of the items listed in 1747.20(b) "to determine that security for outstanding government loans and guarantees is reasonably adequat. . ." The final rule has been changed so that it reads, the Administrator or the RTB Governor will consider, among other matters, when applicable, the following . . ."

Several respondents suggested also that engineering studies prepared for financing from private lenders may be sufficient for REA as part of an application for mortgage lien accommodation or subordination. They suggested that the requirement for engineering studies implied that separate studies should be prepared for REA. The final rule is changed by adding "when applicable" to 1747.30(b)(3).

List of Subjects in 7 CFR Part 1747

Loans programs-communications telephone.

In view of the above, REA hereby adds a new part, Part 1747—Lien Accommodation and Subordination (Telephone Program), to 7 CFR Chapter XVII to read as follows:

Part 1747—Lien Accommodations and Subordination Policy

Sec.

1747.1 General.
1747.2 Definitions.
1747.3–1747.9 (Reserved).
1747.10 Act Purposes.
1747.11–1747.19 (Reserved).
1747.20 Non-Act Purposes.
1747.21–1747.29 (Reserved).
1747.30 Application Procedures.

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 et seq.

§ 1747.1 General.

Recent changes in the telephone industry, including deregulation and technological developments, have caused REA borrowers and other organizations providing telephone services to consider undertaking projects to provide new telecommunication services. Although certain telecommunication services may not be eligible for financing under the RE Act, these services may nevertheless advance Act objectives where the borrower obtains financing from private lenders. The borrower's financial strength and the assurance of repayment of outstanding Government debt may be improved as a result of providing new telecommunication services. To facilitate the financing of new telecommunication services, REA is willing to consider accommodating the Government s lien on telephone borrowers' systems or subordinating the Government's lien on after-acquired property of telephone borrowers. This part sets forth REA policy with respect

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to such lien accommodations and subordinations. The policies of this part will also be utilized by the Governor of the Rural Telephone Bank in carrying out the Rural Telephone Bank's loan program.

§ 1747.2 Definitions.

(a) "Act" means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et *seq.*)

(b) "Accommodation" means sharing the Government's lien on a pari passu or pro rata basis with a private lender.

(c) "Subordination" means granting a lien which a private lender has on specific property priority over the Government's lien on such property.

(d) "After-acquired property" means property which is to be acquired by the borrower and which would be subject to the lien of the Government's mortgage when acquired.

(e) "Telecommunication services" means any service for the transmission, emission, or reception of signals, sounds, images, or intelligence of any nature by optical waveguide, wire, radio, or other electromagnetic systems and shall include all facilities used in providing such service as well as the development, manufacture, sale, and distribution of such facilities.

(f) "Private lender" means any lender other than the Rural Electrification Adminfstration, the Rural Telephone Bank or the Federal Financing Bank.

§§ 1747.3–1747.9 [Reserved]

§ 1747.10 Act purposes.

(a) Borrowers are encouraged to submit requests for accommodation of the Government's lien on the borrower's system in order to facilitate obtaining financing from private lenders for purposes provided in the RE Act.

(b) The Administrator will consider requests for the subordination of the Government's lien on after-acquired property which will enable borrowers to obtain financing from private lenders for purposes provided in the Act: Provided, however, that property integral to the operation of projects financed with loans made or guaranteed by REA shall be financed with funds obtained through lien accommodations instead of lien subordinations, unless the Administrator determines that it is in the Government's interest to do otherwise.

§§ 1747.11–1747.19 [Reserved]

§ 1747.20 Non-act purposes.

(a) The Administrator will consider requests for the accommodation of the Government's lien on the borrower's system or the subordination of the Government's lien on after-acquired property which will enable the borrowers to obtain financing from private lenders for the purpose of providing new telecommunication services which may not be eligible for financing under the Act if the Administrator is satisfied that:

(1) The borrower will have the ability to repay its existing and proposed indebtedness;

(2) The security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination; and

(3) Approval of the request is in the interests of the Government.

(b) In determining that the security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination the Administrator will consider, among other matters, when applicable, the following:

(1) Market forecasts for the project;

(2) Projected revenues, expenses and net income of the borrower's existing system and the project;

(3) Maximum debt service on indebtedness of both the borrower's system and the project;

(4) Projected rate of return on the borrower's investment in the project;

(5) Fair market value of property acquired by the borrower as part of the project;

(6) Impact of the project on the ratio of the borrower's secured debt to assets;

(7) Projected growth in borrower's system and project equity; and

(8) Amount of funds available for plant additions, replacements and other similar costs of the system and the project.

(c) In determining whether the accommodation or subordination is in the interests of the Government, the Administrator may consider, among other matters, whether the project will improve the borrower's financial strength and the assurance of repayment of Government debt.

§§ 1747.21–1747.29 [Reserved]

§ 1747.30 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator—Telephone Rural Electrification Administration, Washington, DC 20250–1500.

(b) An application for a lien accommodation or subordination shall include the following supporting information:

(1) A board Resolution from the applicant requesting the lien accommodation or subordination and stating the general purpose for which the funds from the private lender will be used, the proposed amount of the loan, and the proposed terms and conditions of the loan;

(2) An opinion from counsel representing the applicant that the applicant has the authority under its articles of incorporation, bylaws, and under applicable state law to undertake the project;

(3) Engineering and pertinent studies related to the projects or purposes to be financed, when applicable;

(4) Feasibility studies with pro forma financial statements showing the ability to repay the loan and provide an appropriate margin or net income;

(5) Such information regarding the environmental impacts of the project as may be required pursuant to 7 CFR Part 1794; and

(6) Any other information or documentation deemed pertinent by the borrower or the Administrator in support of the application.

(c) When the Administrator makes a determination that an application for an accommodation or subordination will not be approved the Administrator shall set forth the reasons therefor in writing and furnish such determination and reasons to the borrower within 30 days of the determination.

Dated: August 7, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86–20558 Filed 9–11–86; 8:45 am]

BILLING CODE 3410–15–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Farm Credit System; Merger, Consolidation, Etc.

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by action of the Farm Credit Administration Board (Board), publishes final regulations implementing recently enacted amendments to the Farm Credit Act of 1971 (Act) relating to mergers, consolidations, and territory transfers, and conservatorships and receiverships of the financial institutions of the Farm Credit System (System).

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after this publication during

VOL
51
ISS
177
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which either or both Houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton. Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090 (703) 883-4020

SUPPLEMENTARY INFORMATION: On May 8, 1986, the FCA published a Notice of Proposed Rulemaking (51 FR 17035) for the promulgation of regulations implementing a number of sections of the Act which were amended by the Farm Credit Amendments Act of 1985 (1985 Amendments). These regulations governing the operations of System institutions relate to the topics of mergers, consolidations, territory transfers, conservatorships and receiverships, and stockholder/borrower rights. The FCA received 21 comments on the proposed regulations. Comments were received from six System borrowers, five System associations, a System bank, the Farm Credit Corporation of America (FCCA) on behalf of the 37 banks of the System, a Congressman, an attorney, a public accounting firm, two farmers' organizations, a legal services group, the governor of a Midwestern State and certain persons representing various interests in that State, and a group of attorneys general from five Midwestern States. Because of the number and complexity of the issues raised by commentators, the Board has determined that in order to properly respond to the comments, the regulations will be divided into two groups and considered separately. The first group of regulations is contained in this publication and relates to mergers, consolidations, territorial transfers, and conservatorships and receiverships of System institutions. The second group of regulations, relating to the rights of borrowers and stockholders of System institutions, will be considered by the Board in the near future.

The Board analyzed and considered each comment and responds to the comments on the basis of a thorough consideration of the merits of the points of view expressed therein.

Section-by-Section Analysis and Response to Comments

§ 611.1090 Request for district changes—general.

The regulation establishes the requirements applicable to the merger of districts, the transfer of territories between districts, and the means by which a district may change its name. District mergers and territory transfers require the approval of the stockholders of the banks involved and the FCA.

The FCCA commented that stockholder approval should not be required for all transfers of territories since many of such transfers involve only small parcels of land and relatively few borrowers. The FCCA believes that in cases involving minor transfers, the interests of stockholders are adequately protected by other regulations governing the transfer of territory between associations and the requirement that district boards approve all transfers between districts. The FCCA also requested clarification of whether the regulation requires approval by the stockholders of the district banks, which are production credit associations (PCAs), Federal land bank associations (FLBAs), and cooperative borrowers, or by the stockholders of the PCAs and FLBAs involved. The FCCA believes that the regulation should only require approval by the stockholders of the banks involved.

The FCCA correctly notes that in accordance with § 5.17(a)(2) of the Act, mergers of district banks must be approved by the stockholders of the banks, not the stockholders of the associations in the district. Thus, the merger must be approved by the cooperatives that are stockholders of the banks for cooperatives (BCs) involved, the FLBAs that are stockholders of the Federal land banks (FLBs) involved, and the PCAs that are stockholders of the Federal intermediate credit banks (FICBs) involved. While this requirement is clear in the law and implicit in the regulation, the Board revised the final regulation to clarify the point.

In response to the comment that the regulation should be amended to eliminate the requirement for stockholder approval for some transfers of territories between districts, the Board notes that § 5.17(a)(2) of the Act provides that all transfers of territories between banks require the approval of the stockholders of the banks involved and § 5.0 requires that changes in the boundaries of districts require the approval of the district boards. In accordance with these statutory requirements, the regulation must include a requirement for stockholder approval for all territory transfers. In the event a transfer of territory between districts involves all of the banks in a district, the approval of the district board and the approval of the stockholders of each of the banks is required. In the event a transfer of territory between districts involves only one or two of the banks in a district, approval is only required of the stockholders of the banks involved.

The Board noted that the proposed regulation contained only minor technical amendments to a regulation that has been in effect for a considerable period of time. However, the nature of the comments received indicates that there is some uncertainty regarding its provisions. Accordingly, the Board decided to substantially rewrite the regulation to correct any ambiguities and reduce the possibility of misinterpretation.

Section 611.1121 Charter amendment procedures.

The proposed regulation only contains procedural changes to the current regulation that provide for direct communications between the FCA and associations. The new procedures provide that the district bank shall review and analyze the proposed amendment to an association's charter and forward its recommendation on such proposal to the FCA and to the association. The association transmits the proposed amendment to the FCA and upon receipt of such material, the FCA reviews the materials and either approves or disapproves the request. Finally, the FCA notifies the association of its action and provides a copy of the communication to the bank.

The FCCA expressed its objection to this regulation and other regulations which provide for direct communications between the FCA and associations. The FCCA stated that this change is not required by the 1985 Amendments and believes that this constitutes an attempt by the FCA to erode the supervisory functions of the banks over associations. The FCCA maintains that communications between associations and the FCA should only be made through the district bank since this provides the only means by which banks have an opportunity to raise relevant issues in a timely manner with the FCA or the associations.

The Board does not concur in the recommendations of the FCCA. The Act establishes the FCA as the Federal agency responsible for chartering, examining, and regulating all banks and associations of the System. While, in the past, the FCA has delegated many functions to district banks and has relied on the banks to transmit communications to associations, those delegations did not eliminate the FCA's authorities or responsibilities in connection with the activities of associations. The 1985 Amendments eliminated the authority of the FCA to delegate its functions to the

banks and required the FCA to conduct yearly examinations of all banks and associations. In addition, the amendments give the FCA specific enforcement authorities which can be exercised with respect to both banks and associations. In order for the FCA to be in a position to effectively carry out its statutory responsibilities, it must establish direct communications with System associations and must, by regulation, ensure that it is in a position to take actions with respect to associations, regardless of the position of the bank involved. These regulatory changes in no way affect the debtor/creditor relationship between the banks and associations and the statutory supervisory responsibility of banks over associations. Contrary to the assertion of the FCCA, the regulations do contain provisions which ensure that banks receive timely notification of decisions by the FCA and associations.

Section 611.1122 Requirements for mergers or consolidations.

The proposed regulation amends the current regulation by eliminating the requirement for association boards of directors to approve a districtwide reorganization plan that has been adopted by a district board. Rather, each association board would provide stockholders with a statement either endorsing or opposing the association's participation in the plan. The regulation also provides that bank approvals of association mergers or consolidations (hereafter referred to as "mergers") are only required at the preliminary approval stage. After approval by the bank, preliminary approval by the FCA, and an affirmative stockholder vote, the FCA will grant final approval in connection with the issuance of new or amended charter documents. In addition, the regulation provides for direct communication between the FCA and the associations requesting approval of a merger proposal.

The FCCA supported the portion of the regulation that permits the stockholders of all associations to vote on mergers that are part of a district reorganization plan even though the board of directors of one or more associations oppose the proposal. However, the FCCA expressed concern that § 611.1122(a)(3)(ii) could be interpreted to mean that where the board of directors of more than one association disapproves participation in a districtwide plan, the merger process would be terminated.

Taking the opposite position, a California PCA objected to the provision on the basis that it prevents a board of directors from carrying out its duties and circumvents the board's responsibilities as the stockholders' elected governing body.

The FCCA opposed the elimination of the requirement for district banks to give final approval to mergers of associations. The FCCA stated that since the district bank's authority is equal to that of the FCA, providing the FCA, but not the district bank, with final approval authority is inconsistent with the Act. The FCCA believes that such approval authority is essential in order for the banks to discharge their supervisory responsibilities. Reiterating an earlier comment, the FCCA objected to the provision in the regulation that relates to direct communications between the FCA and the associations involved in a merger.

Other comments addressed more general issues. A Minnesota legal services organization requested that the FCA clarify the statement in the supplemental information accompanying the proposed regulation that the authority of the agency to amend charters and transfer territories on its own initiative was unchanged. Several individual borrowers stated that the merger regulations should attempt to preserve control of associations at the local level. They believe that the centralization that has occurred at the district level has led to a breakdown in communications between borrowers and association personnel.

The Board has made a technical amendment to the regulation which clarifies that, in the case of districtwide mergers, the stockholders of the associations involved will have an opportunity to vote on the merger, even if more than one association board of directors is opposed to the proposal. In response to the comment that this provision is in derogation of the authorities and responsibilities of association boards, it is noted that §§ 4.12 and 5.17(a)(2) of the Act do not require association boards of directors to approve association mergers. To the contrary, this is one of the few corporate acts for which the Act specifically requires stockholder approval. While under general corporate legal principles board approval would be required, the Board believes that the amended regulation carries out the express provisions of the Act and is also consistent with the intent of several provisions contained in the 1985 Amendments which were designed to maximize stockholder involvement in mergers of System associations.

The elimination of the two stages of bank approval in connection with association mergers is more in the nature of a technical change. Following approval by the bank, preliminary approval by the FCA, and approval by the stockholders of the associations involved, the only remaining step in the process is the granting of final approval by the FCA in connection with the issuance of new or amended charter documents to the associations involved. There is no need for a second stage of bank approval and it is unclear upon what basis the bank could disapprove a merger after it has been approved by the stockholders of the associations involved. If the bank has a basis for opposing a merger proposal it should deny approval of that proposal before it is submitted to the stockholders for a vote.

In response to the comment seeking clarification of the authority of the FCA to require a merger, the proposed regulations did not amend the existing authority of the FCA derived from § 5.17(a)(2) to issue or amend charters of any System institution when deemed appropriate to carry out the policies and objectives of the Act. This general agency power is, of course, limited by other provisions in the Act, such as § 4.12, which provides that the FCA may only require the merger of an association with the concurrence of the district board, when an association has failed to meet its outstanding obligations or failed to conduct its operations in accordance with the Act.

Section 611.1123 Merger or consolidation agreements.

The proposed regulation provides that association directors may, with FCA approval, terminate a merger that has been approved by stockholders only where (1) the information disclosed to stockholders contained material errors, (2) misrepresentations were made to stockholders regarding the impact of a merger, (3) fraudulent activities were used to obtain stockholder approval, or (4) any other intervening event of a significant nature occurred subsequent to a stockholder vote that could have had an impact on such vote. The FCCA commented that while it, in general, agrees with the purpose for the regulation, it objects to the approach taken by the FCA. The FCCA argued that Congress did not intend for the FCA, rather than the stockholder-elected directors, to have the authority to overrule a stockholder vote on a merger or consolidation. The FCCA stated that if the FCA believes it should have the power to terminate a merger for reasons 1 through 3, the agency should adopt a regulation to that effect. The FCCA does not believe those reasons are

appropriate grounds for an association board to stop a merger. In the FCCA's view, there is no basis in the 1985 Amendments for requiring a merging association to make what the FCCA characterizes as a legal determination. The FCCA suggests that the regulation should provide that a merger agreement may be terminated by one or more of the merging associations with the concurrence of the district banks only upon a determination that an intervening event occurred between the time of the vote and the effective date of the merger that would have a significant adverse impact on the future viability of the continuing institution or that additional material information became available following the stockholder vote and that it would be in the best interest of the stockholders to reconsider the proposed merger. The FCCA also noted, as a technical matter, that the explanation of the proposed regulation appears to be inconsistent with the language of the regulation in that the former focuses on matters that could have an impact on the vote, while the latter applies to events that could have a significant impact on the future viability of the institution.

In response to the FCCA comment that this regulation gives the FCA the authority to override a stockholder vote in favor of a merger, the FCCA has apparently misread the regulation. The regulation does not empower the FCA to override stockholder votes, but rather requires that in order for a board to override the stockholder vote, FCA concurrence must be obtained.

The Board believes that the FCCA recommendation that the district bank be substituted for the FCA as the authority responsible for concurring in the association board decision to disapprove a merger is without merit. The FCA's statutory responsibility for the examination and regulation of all System institutions, including associations, and its specific authority to issue and amend charters of institutions, require that the FCA have the final determinative authority regarding these actions. In light of the fact that the statute explicitly provides that associations may merge upon the affirmative vote of the stockholders of the associations involved, any association board action that would override a stockholder vote must be carefully circumscribed and closely monitored by the FCA. The inclusion of the district bank in the process would only add an additional step since FCA approval of this board action is imperative. While the Board agrees that it is unlikely that this type of situation will often arise, instances have occurred in the past where association boards, which have been reluctant to go along with mergers at the outset, have sought to override affirmative votes by their stockholders based on their determination of what they believe to be in the stockholders' best interests. The Board believes that the association boards should be able to voice those concerns and propose that the merger not proceed, but that FCA approval of such action is required in order to preserve the preeminence of stockholder rights in connection with mergers.

In addition, the Board believes that the circumstances under which a stockholder vote can be overridden must be carefully delineated and strictly interpreted. The proposed regulation sets forth four conditions under which a board of directors can override a vote of stockholders. The first three relate to actions occurring before or at the time of the vote that could have had an effect on the vote. The last criterion relates to an event which occurred after the vote that could have a significant adverse impact on the future viability of the association. In response to the FCCA comment regarding the first three criteria, the Board notes that the criteria do not necessarily require association boards to make an admission of improper disclosure regarding matters over which they had control. It would be anticipated that any board invoking one of those three criteria would do so on the basis that another association that was a party to the merger had provided inaccurate or incomplete information or had used impermissible tactics in trying to influence the outcome of the vote. The last criterion is specifically limited to intervening events which could have an adverse impact on the viability of the continuing institution. This provision is partially consistent with one of the proposals set forth by the FCCA. However, it does not allow the override to be based on intangible considerations which would not have an effect on the viability of an association but which would, in the opinion of a board, have influenced the outcome of the vote. The Board believes that adoption of the change proposed by the FCCA would create an open-ended invitation for a board to continue to seek revotes until the stockholders finally acquiesced in the position of the board.

Section 611.1124 Territorial adjustments.

The proposed regulation sets forth the disclosure requirements for the transfer of territory between associations. The disclosure requirements parallel those relating to mergers but do not include the same requirements for detailed financial information. While generally concurring with the substance of the proposed regulation, the FCCA offers several comments relating to specific aspects of the regulation. The FCCA suggests that the FCA add a provision similar to that contained in the merger section of the proposed regulations that would permit a stockholder vote on a districtwide territorial transfer plan adopted by a district board notwithstanding disapproval by a particular association board. In addition, the FCCA also recommends that the term "financial statements and related information" as used in § 611.1124(f)(8) be defined to mean the association's annual financial statements for the previous 3 years as well as other financial information prepared by the association concerning the proposed transfer of territory. Consistent with its previous comments, the FCCA objects to the provision that provides for direct communication between the associations and the FCA. In addition, the FCCA suggests that this section should include a cross-reference to § 611.1090 which would clarify that these procedures would apply to the transfer of a portion of an association's territory to an association operating in a different district.

The Board agrees with the recommendation of the FCCA regarding the need for a provision in the territorial transfer regulations comparable to the merger regulations which provides that in the event of a districtwide territorial transfer plan, the stockholders of the affected associations should have an opportunity to vote on the proposal even if one or more of the association boards involved objects to the proposal. The Board agrees with the recommendation of the FCCA that § 611.1124(f)(8) be amended to clarify that "financial statements and related information" of the association that are available upon request by an association stockholder means the association's financial statements for the previous 3 years plus any other financial information prepared by the association concerning the proposed transfer of territory. The Board also agrees with the need for a cross-reference to § 611.1090. The final regulation has been amended to reflect these changes.

Section 611.1125 Treatment of associations not approving districtwide mergers or consolidations.

The proposed regulation prohibits district banks from discriminating against associations that refuse to join a districtwide merger or consolidation by

denying or limiting financial services or assistance, financially related services, or professional or technical assistance.

Two comments were received on the proposed regulation. A North Dakota farmers' group made a general comment that the regulation should be more emphatic in its prohibition of district bank discrimination against associations not approving a districtwide merger. The FCCA concurred with the requirements contained in the proposed regulation, but recommended the adoption of several technical amendments. The FCCA stated that the regulation should be amended to clarify that (1) district banks are not required to treat FLBAs in the same manner as PCAs, and (2) a decision not to provide financial assistance to an association is only discriminatory if it is based on the association's refusal to join a merger.

In response to the first comment, the sole purpose for the regulation is to achieve the result sought by the farmers' organization. The regulation clearly prohibits the types of discriminatory conduct which could occur between a bank and a dissenting association. The Board amended the final regulation to include the clarifying amendments sought by the FCCA and believes that with these amendments the concern of the farmers' organization will have been addressed.

The proposed regulation, in accordance with the requirements of the Act, prohibits bank actions directed at dissenting associations that are not based on valid financial considerations. In the normal course of business banks must make decisions affecting associations based on the needs of the associations and their financial and operating strengths and weaknesses. The Board agrees with the FCCA comment that this intent should be clarified and the final regulation is amended accordingly.

The Board believes there is no basis for the FCCA's comment that the regulation could require that FLBAs and PCAs be treated uniformly. The regulation prohibits discrimination by banks against associations. FICBs have financial dealings with PCAs, not FLBAs, and the reverse applies to FLBs. FICBs do not lend money or provide financial assistance to FLBAs; as such, there is no basis upon which they can treat FLBAs differently.

Section 611.1156 Grounds for appointment of conservators and receivers.

The proposed regulation establishes the grounds for the appointment of a conservator or receiver of a System institution. The Act and the regulation provide that an institution is insolvent when its assets are less than its obligations to creditors and others, including its members. While member stock is part of the capital of an institution, for purposes of this regulation it is considered an obligation of the institution. Thus, an institution is deemed insolvent when its stock has a book value less than par. "Obligation" is defined to include liabilities, stock and participation certificates, but not other "equities," such as retained earnings. The regulation also restates the other statutory bases for the appointment of conservators and receivers.

Comments on this provision were received from a North Dakota farmers' organization, the FCCA, and the System's accounting firm. The farmers' organization suggested that the regulation should define the terms "unsafe or unsound practice" and "unsafe or unsound condition." It believes that in the absence of a definition, such terminology tends to be subjective and judgmental, and might be utilized by the FCA in an arbitrary and capricious manner. The FCA is authorized to define this term by regulation, rule or order. The Board is not required to and does not believe it would be appropriate to adopt a general regulatory definition that would be applicable solely to these receivership regulations.

The FCCA and the accounting firm expressed concern regarding the inclusion of capital stock and participation certificates in the definition of "obligation" for purposes of determining insolvency. The FCCA asserted that the inclusion of capital in the definition of obligation is contrary to well-established principles of corporate law and is without any basis in the Act. The accounting firm argued that this treatment is a significant departure from the generally accepted meaning of capital and stated that it knows of no other comparable definition.

The FCCA made a number of arguments to support its position. It stated that the Bankruptcy Act and the Uniform Commercial Code do not treat stockholder capital as a debt of the institution for purposes of determining insolvency. The FCCA also stated that it has found no court decision holding that the capital stock of a corporation is an obligation for purposes of determining insolvency and noted that, in the cases it has examined, the courts have excluded capital stock from such determination. The FCCA stated that the definition of insolvency in § 4.12(b), which was adopted as part of the 1985 Amendments, was drawn from the language in the statute granting the Federal Home Loan Bank Board (FHLBB) the authority to appoint conservators and receivers for savings and loan associations. The FCCA argues that analogizing the relationship of members of a mutual savings and loan association to System stockholders is inappropriate because such members are depositors who are creditors of the institution. Furthermore, the FCCA stated that the FHLBB has never treated a member's capital investment in an association as an obligation of a savings institution.

In further support of its position, the FCCA argued that the disclosure documents provided to borrowers describe the benefits and risks of stock investments in PCAs and FLBAs. Those documents clearly state that capital stock is an "at risk" investment in the institutions. The FCCA stated that if capital stock is treated as an obligation of the institution, it should be reflected in the financial statements as a liability rather than equity. In this same vein, the accountant added that this definition may force the FCCA to give consideration to reclassifying capital stock and participation certificates as liabilities in the financial statements of System institutions.

The FCCA also suggested a technical change in § 611.1156(b)(5) to add the word "FCA" before "examiner." The Board believes this technical amendment is unwarranted and could be confusing since bank credit reviewers are not empowered to "examine" System institutions.

The Board approved the final regulation without change. Prior to enactment of the 1985 Amendments, the Act provided that a System institution was deemed insolvent when it had defaulted on an obligation. The principal obligations of each System institution are its debt obligations. In the case of PCAs, the principal debt obligation is embodied in a general financing agreement that provides a direct line of credit with the FICB. In the case of System banks, the principal obligations are the notes and bonds on which they are primarily or secondarily liable. Upon a determination of insolvency, the FCA may, but is not required to, place the institution in liquidation.

The old definition of insolvency in the Act was, in substance, cash insolvency rather than book insolvency. Because of the nature of the repayment terms contained in the general financing agreements, and the credit limits contained in those agreements, a PCA would usually default on its general financing agreement before its stock

VOL 51 ISS 177 SE 12 1986 UMI

was impaired. At that point, the PCA could be placed in liquidation. The Act provided for liquidation prior to impairment in order to prevent stockholders from initiating "runs" on their associations, and to provide a financial buffer that would protect the FICB from the additional losses that are often incurred in connection with the collection of the assets of a PCA in liquidation. This definition of insolvency also protects investors in System securities by ensuring that there is a reserve of equity capital that can be impaired. The 1985 Amendments changed the terminology used in defining insolvency, but did not change the underlying purpose of the prior law, which was to define insolvency in a manner that would provide adequate protection to banks and investors in System securities and protect stockholders from "runs" on their institutions.

The Board recognizes that the definition of insolvency in the Act is different in its effect than the definitions of insolvency that are applicable to most other entities under banking and the bankruptcy law. However, there are legitimate reasons for those differences. If a PCA operates with impaired stock, its stockholders will have to be provided with a disclosure of that impairment. Upon the disclosure of an impairment, it can be reasonably projected that all borrowers who are able to do so will seek credit elsewhere to repay their loans, and if possible seek retirement of their stock at its impaired value. Any PCA that attempts to conduct normal operations with impaired stock will see its asset base rapidly disappear and could see a serious erosion of its capital. Eventually, its stock will have little or no value. When the PCA is placed in liquidation at that point, its principal creditor, the FICB, will in all probability suffer a significant loss on its loan to the PCA. If this occurs on a large enough scale, it could cause the insolvency of the FICB and consequent losses to investors in its securities.

The definition of insolvency is applicable to banks for the same reasons. While, in theory, a bank can continue to operate with impaired stock, the impairment of the bank's stock will have to be reflected on each association's books by a reduction in the value of its assets. That action will have the effect of moving all associations closer to impairment with the same results discussed above.

The Board believes that the FCCA and the System accountant are primarily concerned that this definition of insolvency would cause other parties to consider System stock as debt rather than equity. That is not the purpose or effect of this regulation. In fact, this regulation has the exact opposite result. This definition appears in a subpart which specifically provides in §§ 611.1166 and 611.1174 that all debt obligations of associations must be paid before the stockholders receive a liquidating dividend upon final liquidation of the bank or association. The regulations make clear that System stock is treated as an equity investment, not a debt obligation, for purposes of determining the priority of claimants in the event of liquidation. This is consistent with the treatment of equity stock in a commercial bank. Even equity stock in a commercial bank is, in effect, an obligation that is subordinated to the claims of general creditors. Equity stockholders are entitled to a distribution on their equity from any residual funds on final liquidation.

This definition in no way changes the status of stock and other forms of equity, and does not alter the priority of debt over equity. To the contrary, if the definition were amended in accordance with these comments, it would have the exact negative effect that these commentators are concerned about. It would result in each System institution being permitted to continue operations and incur financial losses that would completely dissipate all its equity capital prior to the liquidation of the institution. In that event, there would be no resources to protect holders of System securities from potential losses on their investments. Realization of this fact could cause a serious disruption in the current funding activities of the System.

Section 611.1157 Conservators and receivers.

The proposed regulation describes the purposes, responsibilities, and authorities of conservators and receivers. A conservator operates an institution on a continuing basis until the FCA makes a determination regarding the institution's future status. The conservator exercises all powers of the association necessary to continue its operations and otherwise protect the interests of all concerned parties. A receiver is appointed to wind up the business affairs of the institution, collect its debts, liquidate its assets, and distribute the proceeds to creditors and stockholders.

The FCCA objected to the phrase in § 611.1157(a) which provides that a conservatorship may be terminated and the institution "turned over to such management as FCA may direct." The FCCA stated that upon discharge of a conservator, the management of the institution should be returned to its elected board of directors on such terms as are acceptable to FCA and the board. The FCCA believes this is the only way of ensuring the future accountability of a board of directors to its stockholders. The FCCA argued that if the FCA is not satisfied with the conduct of certain directors it should seek their removal pursuant to the appropriate enforcement powers, and not attempt to circumvent the procedures for removing officers and directors through the use of conservatorship powers. Accordingly, the FCCA suggested that the FCA adopt a provision similar to the FHLBB regulation at 12 CFR 547.8 (1986).

The Board adopted a technical amendment to the second sentence of this section in accordance with the recommendation made by the FCCA.

In response to the substantive comment of the FCCA regarding this provision, the Board notes that the FCCA did not discuss FHLBB regulations upon which this regulation was patterned. The FHLBB regulations specifically provided, at 12 CFR 547.7, that "[t]he Board may at any time: (a) Direct the conservator or receiver to turn over the association to its previous management or new management;". The FHLBB regulation referred to by the FCCA relates only to circumstances in which the conservator is directed to return control of the association to its prior management.

The purpose of this regulation is to provide maximum flexibility to the FCA in making a determination regarding the eventual resolution of the problems of an institution in conservatorship. While a conservator is in possession of an institution, he/she succeeds to all of the powers and duties of the directors, officers, and employees of the institution. During the period an institution is under a conservator, situations may exist which would make it imprudent, impractical, or otherwise not in the best interests of the institution to return its operations to the prior management. In those situations, the FCA must have the flexibility to appoint a new board and management to serve until such time as new elections can be held for the institution.

Section 611.1158 Action for removal of conservator or receiver.

The proposed regulation provides that an institution may, through its board of directors, and within 30 days of the appointment of the conservator or receiver, bring an action in United States District Court for an order requiring the FCA to remove such conservator or receiver. The regulation

specifically provides that only the board is empowered to authorize the filing of a removal action.

A North Dakota farmers' organization suggested that the 30-day appeal period should be extended to 60 days. It also suggested that a procedure should be provided whereby a suspended board of directors could obtain review of any action of a conservator or receiver. As a technical matter, the farmers' organization believes that the language in §§ 611.1160(d), 611.1170(c), and 611.1180(c) should be rewritten to emphasize that an institution's board of directors is empowered to meet to determine whether to file a removal petition.

The FCCA commented that stockholders of an institution should be entitled to initiate a derivative action to seek removal of an FCA conservator or receiver. It stated there is no basis in the Act or the regulations of other Federal banking agencies for limiting the right to initiate a removal action to the institution's board of directors. As a general matter, the FCCA believes that the FCA's authority under § 4.12 must be interpreted in light of the provisions of the 1985 Amendments which empower the Farm Credit System Capital Corporation (Capital Corporation) to provide financial assistance to System institutions. In this regard, the FCCA believes it would be an abuse of discretion for the FCA to appoint a conservator or receiver to an institution on the grounds of insolvency pending a decision by the Capital Corporation on a request for financial assistance.

The regulatory provision providing for an action to be filed in District Court for the removal of a conservator or receiver is specifically provided for in § 4.12 of the Act. This is a jurisdictional requirement specifically provided for in the statute and is consistent with a similar provision provided for with respect to FHLBB receivers and conservators. This provision has been upheld in court and the staff knows of no reasons why the FCA, by regulation, should attempt to enlarge it.

The provision providing that removal actions shall be filed by the board of the institution is consistent with the statutory requirement that such actions only be brought by the institution involved. The regulation merely seeks to clarify that the board is empowered to meet for the sole purpose of deciding whether such action should be commenced.

In response to the comment from the farmers' organization, the Board does not believe the regulation can be more explicit in providing specifically for the board of directors to meet to determine whether or not to file a removal petition. Section 611.1158 specifically provides that notwithstanding any other provisions in the regulations, the board of an institution may meet to determine whether to initiate an action on behalf of the institution to remove a receiver.

In response to the FCCA comment, the Board does not believe that the regulation should authorize a derivative action by stockholders to challenge the appointment of a receiver. The Board believes that the statutory requirement is clear, that such actions may only be brought by the institution. The Board believes that derivative actions should not be provided for in the regulation and should not be permitted in a reviewing court. The regulatory provision authorizing the board to meet is specifically designed to protect the interests of the institution's stockholders by ensuring that the board has the opportunity and means to deliberate and decide the matter in a timely fashion.

Section 611.1160 Appointment of receiver.

The regulation describes the procedure by which a receiver is appointed by the FCA to take control of an association. Notice of the appointment shall be provided to the institution and the district bank and shall be published in the **Federal Register**. All rights, privileges and powers of the board of directors, officers, and employees of the association are vested exclusively in the receiver and those persons are suspended except as provided for in the case of a voluntary liquidation of a solvent association. In the latter case, the board of directors of the association may, at the discretion of the Chairman of the FCA, remain in office to provide advice to the receiver during the liquidation.

A group of attorneys general from six Midwestern States (attorneys general) expressed concern that the regulations do not adequately minimize the adverse impact of a liquidation on borrowers. They specifically objected to the absence of a requirement for personal notice to the borrowers of an institution placed in liquidation. The attorneys general noted that the proposed regulations regarding appointment of a conservator in § 611.1180(b) do provide for personal notice for borrowers and stated there is no reason why the appointment of receivers should be handled differently. They believe it is even more important for borrowers to be aware of a pending liquidation in order to arrange their affairs and minimize the impact of a liquidation. They suggested that personal notice should be given to borrowers prior to a receiver's accepting appointment and more probably as soon as a decision to appoint a receiver is made.

The FCCA expressed concern that § 611.1160(d) can be interpreted as prohibiting a receiver from re-employing officers and employees of an association during the liquidation. The FCCA believes such action is clearly authorized in § 611.1161 and should be acknowledged in this section. The FCCA also reiterated its comment made in § 611.1157(a) regarding the reinstatement of an institution's board of directors following the termination of a receivership.

The comment by the attorneys general regarding the need for a notification to stockholder-borrowers upon the appointment of a receiver apparently arises out of a misunderstanding of the nature of the proposed amendments to the liquidation regulations. The proposed regulations only amend §§ 611.1160, 1161, 1165, and 1167 of existing FCA regulations found in Subpart L. The proposed regulations do not amend § 611.1163, which specifically provides for notice to all stockholders of an institution placed in liquidation. The FCA Board believes that this section in the existing regulation contains exactly the type of notice provision sought by the attorneys general.

The Board agrees with the comment of the FCCA regarding the authority of the receiver to employ a person who had served as an officer or director of an institution and amends § 611.1160(d) to clarify that point.

The Board disagrees with the FCCA comment regarding the reinstatement of boards of directors for the same reasons set forth in response to the comments on § 611.1157.

Section 611.1161 Powers and duties of the receiver.

The proposed regulation describes the authorities and responsibilities of the receiver of an association and provides that the receiver conducts the operations of an association for the benefit of its creditors and stockholders. Among the authorities of the receiver are the power to take any action the receiver considers appropriate or expedient to carry on the business of the association during liquidation and the power to institute, maintain, intervene, and participate in the name of the association in any legal proceeding by or against the association in which the association, its creditors, or its members have any interest, and to represent same.

The attorneys general group objected to the provision authorizing the receiver to take action that he or she considers appropriate or expedient to carrying on the business of the association during liquidation. The group argued that this provision gives unreasonably broad discretion to a receiver and is inconsistent with the requirement that the adverse impact of a liquidation on borrowers be minimized. The attorneys general suggested that language should be amended to ensure that the receiver does not violate the borrowers' rights provided for in the Act and related regulations.

The FCCA objected to language in § 611.1161(h) which provides that the receiver shall "represent in every way the association, its members, and creditors." It argued that a receiver cannot possibly represent all the interests of the varied parties. The FCCA recommended that the regulation be amended to provide that the receiver shall represent the interests of the association alone.

The two comments received on this regulation do not relate to matters that were amended by the proposed regulation. Rather, the two comments relate to language that was in the FCA receivership regulations as approved in 1985 and as published in the current version of the CFR. Similar provisions are contained in the receivership regulations of other banking agencies. See 12 CFR 548.2 (a), (f).

The attorneys general are apparently concerned that this section gives the receiver the authority to take actions which are not authorized by the Act or other applicable laws, or contracts entered into by the institution. Such is clearly not the case. The section merely gives the receiver the same authorities that all receivers of any type of institution have and clarifies that, subject to existing legal requirements and the supervision of the FCA, the receiver exercises all rights, privileges, and immunities relating to the operation of the institution.

Similarly, the comment by the FCCA appears to be premised on its belief that the regulation authorizes a receiver to take any action the receiver desires involving any conceivable right or interest of a member of the association. Clearly, such is not the case. The regulation simply provides that in the conduct of litigation, the receiver is empowered to represent all of the interests of the institution. Many of the institution's interests are also jointly the interests of its stockholders and creditors. In fact, every collection action brought by an operating association or an association in liquidation is done for the ultimate benefit and in preservation of the interests of its stockholders and creditors.

Section 611.1162 Preservation of equity.

This regulation is a current FCA regulation for which no amendments have been proposed by the FCA; however, one comment was received from the FCCA. The regulation provides that capital stock and participation certificates may not be retired during the pendency of a liquidation until all creditors are paid and the receiver makes a final distribution to stockholders. The FCCA believes that in the context of an FLBA liquidation, this provision could cause great hardship to an FLB borrower who has repaid his loan to an FLB that is not itself in receivership. Since each FLBA is not a direct lender but rather operates as an agent of the FLB, it is purely a "pass-through entity" issuing stock to the borrower and making an equivalent investment in the bank. Therefore, unless the FLB is itself in receivership there is no reasonable basis for freezing the borrower's stock in an FLBA. The FCCA suggested that a "conservatorship" would be more appropriate for an FLBA and that members should be able to have their stock retired except when the FLB is in receivership.

The FCCA provided a comment on this regulation even though it was not a regulation included in the group of liquidation regulations subject to amendment. The Board agrees that as a practical matter there would probably be few instances in which an FLBA would be liquidated in the absence of a concurrent liquidation of the FLB. However, in the event of any liquidation of an FLBA, the stock of the association must be preserved to pay the debts of the association prior to a distribution to stockholders. The Board does not believe an amendment to this regulation is necessary.

Section 611.1165 Sale and transfer of loans.

The regulation authorizes a receiver to sell loans at fair market value, including any amount borrowed to purchase stock in an association, to the Capital Corporation or any commercial lending institution. Additionally, a receiver may sell a loan to an association authorized to make loans in the territory previously served by the association in liquidation. When an association purchases a loan offered for sale by a receiver the borrower must agree to buy stock in and become a member of the "new" association.

All the comments received on this regulation relate to matters in the proposed regulations which are unchanged from current FCA receivership regulations.

A North Dakota farmers' organization questioned whether there was a conflict between §§ 611.1165(b)(1) and 611.1165(c). The organization commented that paragraph (b)(1) appears to require the purchase of capital stock in a purchasing association while paragraph (c) provides that an association may purchase a loan only when the borrower agrees to buy stock in and become a member of the association.

The attorneys general group stated that the regulation does not fulfill the intent of Congress because it does not contain provisions that minimize the adverse impact of liquidations on borrowers. The group recommended that the FCA should direct institutions to liberalize the financing of loans that are sold, for example, by providing an extended time period during which borrowers can purchase stock in the new association.

The FCCA suggested that the regulation be amended to avoid a potential double payment by a borrower of the amount borrowed to purchase stock where a borrower's stock has previously been retired and applied against an outstanding loan before the association was placed in receivership.

In response to the comment by the farmers' organization, the Board does not believe there is any conflict between the two paragraphs. Paragraph (b) sets forth the procedures associated with the sale of a loan to a neighboring association. The regulation requires, among other things, that in order for a loan to be sold to a neighboring association the borrower must become a stockholder of such association in accordance with the normal requirements of the Act. Failure to include this requirement would, of course, completely nullify the entire purpose of stock purchases and would eliminate the value of stock as an available source of capital for the payment of the debts of the association to its creditors. Paragraph (c) provides that the purchasing association has 90 days to make a determination whether or not to accept loans. If an association would otherwise accept a loan, but the borrower refuses to become a member of the new association, the association must return that loan to the liquidating association. This latter provision was specifically placed in the final regulation adopted by the FCA in 1985 following a comment by an interested party that the

regulations needed to clarify that each borrower has the option of refusing to have his loan transferred to a neighboring association.

In response to the attorneys general comment, the proposed regulations continue, unchanged, the provisions in the current FCA receivership regulations that authorize banks to provide interest-free loans to stockholders for the purchase of stock in a neighboring association. In liquidations where banks have had the financial capacity to offer these interest-free loans, it has enabled loans to be transferred from an association in receivership to a neighboring association with no immediate out-of-pocket expense to the borrower. Under the programs which have been used, the borrower continued to pay interest on any outstanding loan for the purchase of stock in the association in liquidation, but would not incur an interest expense on a loan to purchase stock in the new association. Following the final distribution of assets from the liquidating association or 5 years, whichever is sooner, the borrower is then required to pay interest on any funds borrowed to purchase stock in the purchasing association. These provisions cannot be made mandatory because in many instances the bank may not have the financial capacity to make such interest-free loans.

The Board believes these provisions fully carry out the intent of Congress by establishing a reasonable and financially practical method by which the impact of a liquidation on individual borrowers can be minimized while at the same time not endangering the financial integrity of the bank and other associations in a district. While this provision has been unchanged from current FCA regulations, the Board has amended the regulation to specifically include a reference to the authority for the bank to provide such loans at no interest or at a reduced rate of interest.

In response to a recommendation by the FCCA the Board made a technical amendment to § 611.1165(a).

Section 611.1167 Inventory, examination, audit, and reports to stockholders.

The regulation provides for the following: An inventory of the assets and liabilities of the institution by the receiver; examination of the institution by the FCA; audit of the institution by the FCA or, at its discretion, an independent CPA; and periodic financial reporting to the FCA and stockholders.

The System accountant suggested that the institution in receivership should be required to meet all financial reporting rules set forth in FCA regulations. In addition, the accounting firm suggested that such institutions should also be required to report at least quarterly to the FCCA so that the System and the banks can prepare combined financial statements on a timely basis. The FCCA suggested that the regulation be amended to require that copies of such reports are provided to the district bank. The FCCA stated that such reports are necessary in order to prepare accurate Systemwide, district bank, and individual bank financial statements. The FCCA also recommended that the regulation provide for annual stockholder meetings for associations in receivership during which the receiver could present the annual report and stockholders would have an opportunity to ask questions.

The Board agrees with the comments received by the System accountant that institutions in liquidation are required to meet financial reporting rules set out in FCA regulations. However, since the reporting and disclosure requirements contained in 12 CFR Parts 620 and 621 include numerous provisions which are applicable to "going concerns," rather than institutions in liquidation, all of the provisions in those regulations cannot be made applicable to institutions in receivership.

The proposed regulation did not contain specific reporting and disclosure requirements because the FCA had not completed the process of promulgating disclosure and reporting requirements for System institutions. Those disclosure and reporting regulations have now been finalized and, accordingly, the Board has amended this section to include references to specific quarterly and yearend financial reporting requirements and disclosure requirements to stockholders that apply to institutions in receivership. The requirements relating to the distribution of financial reports of institutions in receivership are the same as the requirements applicable to other System institutions.

The Board does not agree with the recommendation that the proposed regulations be amended to include a requirement for annual stockholder meetings. The primary purpose of stockholder meetings is to elect directors for the institution. An association in receivership is under the control of a receiver who is exercising authority in accordance with the FCA regulations and as agent of the FCA. Stockholders who have questions about the operations of the association can direct their inquiries at any time they deem appropriate to the receiver or the FCA.

Section 611.1170 Appointment of receiver.

The regulation provides that upon appointment of a receiver for a bank, all rights, powers, and privileges of the board, officers, and employees are vested exclusively in the receiver and such individuals are suspended except as provided in the case of a voluntary liquidation under paragraph (g). The FCCA restated the comment it made regarding § 611.1160, that the regulation should clarify that a receiver is authorized to re-employ officers and employees of the bank for purposes of assisting in its liquidation. In addition, the FCCA stated, for the same reasons cited in its comment to § 611.1157(a), if the FCA elects to terminate a receivership, the authority of the board of directors should be reinstated.

For the same reasons discussed with respect to § 611.1160, the Board has amended this section to clarify that the receiver has the authority to employ persons who previously served as officers or employees of the bank before it was placed in liquidation.

For the same reason discussed in connection with § 611.1160, the Board does not believe the regulations should be amended to provide that in the case a receivership is terminated, the prior board of directors is reinstated.

Section 611.1175 Inventory, examination, audit, and reports to stockholders.

This section directs receivers to prepare and file periodic reports with the FCA covering various matters relating to the receivership. The FCCA recommended that the regulation be amended to require receivers to make regular reports to bank stockholders. They argued that the stockholders of a bank in receivership have just as much interest in the status of the receivership as the borrowers/stockholders of liquidating associations and that bank stockholders require current and accurate financial information concerning the receivership in order to prepare their own financial statements. In addition, the FCCA restated its comments to § 611.1167 relating to regular stockholder meetings during the pendency of a receivership and a requirement that the receiver provide timely, quarterly financial information to the FCCA. The System accountant concurred with the FCCA with respect to requiring the receiver to file financial reports with the FCCA so that the banks can provide combined financial statements on a timely basis.

VOL 51 ISS 177 SE 12 1986 UMI

The Board agrees with the FCCA comment regarding the need for reports to the associations or cooperatives that are stockholders of a bank in receivership and has amended the regulation to include a provision comparable to the stockholder reporting provision contained in § 611.1167(d).

For the same reasons discussed with respect to § 611.1167, the Board does not believe the regulation should be amended to include a requirement for annual stockholder meetings.

The Board concurs with the recommendation that the regulation be amended to specifically require the receiver to file copies of financial reports with the FCCA and has amended the regulation accordingly. This requirement is appropriate in light of the new responsibility of the FCCA to assemble Systemwide financial information.

Section 611.1180 Appointment of a conservator.

The proposed regulation provides the grounds for and procedures applicable to the appointment of a conservator for a System bank, association, or service organization; the authority of the Chairman of the FCA to terminate a conservatorship and remove the conservator and turn over management of the institution to such individuals as the Chairman may direct; the vesting of the institution's powers exclusively in the conservator; and subjecting the conservator to the direction and supervision of the FCA.

The FCCA restated the comment made to § 611.1157 regarding the authority of the Chairman to direct the conservator to turn over management of the institution to such persons as the Chairman may direct. The FCCA also suggested that § 611.1180(c) should be clarified to avoid unnecessary disruption to an institution by providing that existing officers and employees should be deemed approved to continue their activities subject to the direction of the conservator unless and until the FCA provides notification to the conservator to the contrary. In addition, the FCCA requested clarification of whether a conservator has the same immunity from personal liability as a receiver.

The FCCA correctly noted that under the conservator regulations the officers and employees of the institution are not immediately suspended from their employment upon the appointment of the conservator. Rather, while the conservator is vested with the authorities of the board of directors, officers, and employees, existing officers and employees would remain in their positions unless and until advised by the conservator that their services were no longer required. The Board concurs with the recommendation for a clarification of this point and has amended § 611.1180(c) accordingly.

In response to the comment by the FCCA regarding the status of FCA conservators, the Board notes that it was the intent of the conservatorship regulations to provide the conservator with the same agent status and the immunities as an agent of the FCA as are specifically provided for with respect to FCA receivers. Accordingly, the Board has amended § 611.1181 by adding a new paragraph (a) which contains language substantially the same as is contained in §§ 611.1161 and 611.1171.

Section 611.1181 Powers and duties of conservators.

The proposed regulation grants conservators various powers to operate an institution, but provides that certain of those authorities are subject to the prior approval of the FCA. In addition, the regulation provides that in the case of litigation, the conservator shall represent the interest of the institution, its stockholders and creditors. The FCCA stated that if prior FCA approval is required in each instance provided for in the regulation, the conservator will have difficulty exercising his responsibilities. The FCCA also restated its comment regarding § 611.1181 that a conservator cannot represent all interests of shareholders, creditors, and the institution.

As discussed above with respect to § 611.1180, the Board added a new paragraph (a) relating to the status of the conservator of this section, which parallels comparable provisions contained in the receivership regulations. The Board does not believe any changes should be made to the prior approval requirements in this regulation. These prior approval requirements, which are similar to the requirements contained in the FHLBB regulations, serve a very useful purpose. A conservatorship, unlike a receivership, is generally intended to operate for a relatively short period of time, during which the operations of the institution can be stabilized and a more permanent solution for its condition can be determined. In the interim, the FCA must maintain close control over the operations of the institution. While many activities require the prior approval of the FCA, the FCA will establish guidelines for the operations of conservatorships which will provide approvals for classes and categories of activities. Those categories will establish threshold limits under which a preapproval is granted subject to monitoring and reporting requirements.

Section 611.1182 Inventory, examination, audit, and reports to stockholders.

The regulation requires the examination and audit of the institution and the filing of periodic reports with the FCA. The FCCA interpreted these regulations to require that the disclosure, reporting, and stockholder meeting requirements applicable to ongoing institutions would be applicable to institutions in conservatorship. The FCCA stated that in the event its interpretation was not correct, it recommended the same changes that were suggested with respect to §§ 611.1167 and 611.1175, relating to the financial reporting requirements and stockholder meetings. The System accountant also restated its comments from §§ 611.1167 and 611.1175, relating to financial reporting requirements.

The FCCA is incorrect in its assumption that the financial reporting and stockholder meeting requirements applicable to other System institutions would apply to institutions in conservatorships in accordance with these regulations. The proposed regulations provide that the specific reporting procedures regarding an institution in conservatorship shall be established by the FCA. For the same reasons discussed with respect to § 611.1167, the Board has amended the regulation to include reporting requirements similar to those contained in §§ 611.1167 and 611.1175, with appropriate modifications to reflect the differences between receiverships and conservatorships. These reports are necessary in order to assure that each district, and the System as a whole, can compile accurate and complete financial statements.

The regulations do not require annual stockholder meetings since the primary reason for a stockholder meeting, the election of directors, does not exist during the pendency of the conservatorship. The conservator does have the authority at his discretion or at the direction of the FCA to hold informational stockholder meetings in order to apprise the members of the bank or association of the current status or upcoming developments relating to the institution. However, in most instances such information can be imparted to stockholders in written form and therefore, there is no necessity for the regulations to require stockholder meetings.

List of Subjects in 12 CFR Part 611

Accounting, Agriculture, Archives and records, Banks, Banking, Credit, Government securities, Investments, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Part 611 of Chapter VI, Title 12, of the Code of Federal Regulations, be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.13, 2.10, 4.11, 4.12, 4.28A–4.28L, 5.9, 5.10, 5.15, and 5.17, Pub. L. 99–205, 99 Stat. 1678.

Subpart F—General Rules for Districts

2. Section 611.1090 is revised to read as follows:

§ 611.1090 Request for district changes—general.

(a) A district board in its capacity as the board of an individual bank or as the board of all banks in a district, as appropriate, may recommend the following actions:

(1) The merger of one or more banks in the district with one or more like banks in another district;

(2) The transfer of territory between one or more banks in the district and one or more like banks in another district; and

(3) A change in the name of a district.

(b) Upon approval of an appropriate resolution by the district board, the resolution, together with supporting documentation, shall be submitted to the Farm Credit Administration for preliminary approval. Following the receipt of written notification of preliminary approval by the Farm Credit Administration, the proposal shall be submitted for approval by a majority vote of the Federal land bank associations, production credit associations, and cooperatives that are stockholders of the banks involved. Upon approval by the stockholders, the proposal shall be submitted to the Farm Credit Administration for final approval and issuance of amendments to the charters of the institutions involved. A proposed change in the name of a district does not require stockholder approval.

§ 611.1115 [Removed]

3. Section 611.1115 is removed.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

4. Section 611.1121 is amended by revising paragraphs (b), (c), and (d) and the introductory text to the section to read as follows:

§ 611.1121 Charter amendment procedures.

This section shall apply to any request by an association to amend its charter.

* * * * *

(b) Upon receipt of a proposed amendment from an association, the district bank shall review the materials submitted and provide the association with its analysis of the proposal within a reasonable period of time. Concurrently, the bank shall communicate its recommendation on the proposal to the Farm Credit Administration, including the reasons for the recommendation, and any analysis the bank believes appropriate. Following review by the bank, the association shall transmit the proposed amendment with attachments to the Farm Credit Administration.

(c) Upon receipt of an association's request for a charter amendment, the Farm Credit Administration shall review the materials submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate.

(d) The Farm Credit Administration shall notify the association of its approval or disapproval of the amendment request, and provide a copy of such communication to the bank. A notification of approval shall be accompanied by a copy of the charter, as amended.

5. Section 611.1122 is amended by revising paragraphs (a) introductory text, (a)(3), (b), (c), (e) introductory text, (e)(4), (9), and (i) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(a) Where two or more associations plan to merge or consolidate, or where the district board has adopted a reorganization plan for the associations in the district, the associations involved shall jointly submit a request to the district bank containing the following:

* * * * *

(3)(i) A certified copy of the resolution of the board of directors of each association recommending approval of the merger or consolidation; or

(ii) In the case of a district reorganization plan, a certified copy of the resolution of the board of directors of each association recommending either approval or disapproval of the proposal.

* * * * *

(b) Upon receipt of a request for approval of an association merger or consolidation, the district bank shall review the materials submitted to determine whether they comply with the requirements of these regulations and shall communicate with the associations concerning any deficiency. When the bank approves the request to merge or consolidate it shall notify the associations and the Farm Credit Administration of its approval together with the reasons for its approval and any supporting analysis the bank deems appropriate. The associations shall jointly submit the proposal together with required documentation to the Farm Credit Administration for preliminary approval.

(c) Upon receipt of an association merger or consolidation request, the Farm Credit Administration shall review the request and either deny or give its preliminary approval to the request. When a request is denied, written notice stating the reasons for the denial shall be transmitted to the associations and a copy provided to the bank. When a request is preliminarily approved, written notice of the preliminary approval shall be given to the associations and a copy provided to the bank. Preliminary approval by the Farm Credit Administration shall not constitute approval of the merger or consolidation. Approval of a merger or consolidation shall be only pursuant to paragraph (9) of this section.

* * * * *

(e) Notice of the meeting to consider and act upon a proposed merger or consolidation of associations shall be accompanied by the following information covering each constituent association.

* * * * *

(4) A brief statement by the boards of directors of the constituent associations setting forth the basis for the boards' recommendation on the merger or consolidation.

* * * * *

(g) Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, a certified copy of the stockholders' resolution shall be forwarded to the Farm Credit Administration. The merger or consolidation shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the associations and a copy provided to the bank.

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VOL
51
ISS
177
SE
12
1986
UMI

(i) The notice and accompanying information required under paragraph (e) of this section shall not be sent to stockholders until preliminary approval of the merger or consolidation has been given by the Farm Credit Administration.

* * * * *

6. Section 611.1123 is amended by revising paragraphs (a) introductory text and (a)(7) to read as follows:

§ 611.1123 Merger or consolidation agreements.

(a) Associations operating under the same title of the Act may merge or consolidate voluntarily only pursuant to a written agreement. The agreement shall set forth all of the terms of the transaction, including, but not limited to, the following:

* * * * *

(7) A statement that the board of directors of each constituent association can terminate the agreement before the effective date upon a determination by an association, with the concurrence of the Farm Credit Administration, that:

(i) The information disclosed to stockholders contained material errors or omissions;

(ii) Material misrepresentations were made to stockholders regarding the impact of the merger or consolidation;

(iii) Fraudulent activities were used to obtain stockholders' approval; or

(iv) An event occurred between the time of the vote and the merger that would have a significant adverse impact on the future viability of the continuing institution.

* * * * *

7. Section 611.1124 is revised to read as follows:

§ 611.1124 Territorial adjustments.

This section shall apply to any request submitted to the Farm Credit Administration to modify association charters for the purpose of transferring territory from one association to another.

(a) Territorial adjustments, except as specified in paragraph (m) of this section, require approval of a majority of the voting stockholders of each association present and voting or voting by written proxy at a duly authorized meeting at which a quorum is present.

(b) When two or more associations agree to transfer territory, each association shall submit a proposal to the district bank containing the following:

(1) A statement of the reasons for the proposed transfer and the impact the transfer will have on its stockholders and holders of participation certificates;

(2) A certified copy of the resolution of the board of directors of each association approving the proposed territory transfer;

(3) A copy of the agreement to transfer territory that contains the following information:

(i) A description of the territory to be transferred.

(ii) Transferor association's plan to transfer loans and the types of loans to be transferred.

(iii) Transferor association's plan to retire and transferee association's plan to issue equities held by holders of stock, participation certificates, and allocated equities, if any, and a statement by each association that the book value of its equities is at least equal to par.

(iv) An inventory of the assets to be sold by the transferor association and purchased by the transferee association.

(v) An inventory of the liabilities to be assumed from the transferor association by the transferee association.

(vi) A statement that the holders of stock and participation certificates whose loans are subject to transfer have 60 days from the effective date of the territory transfer to inform the transferor association of their decision to remain with the transferor association for normal servicing until the current loan is paid.

(vii) A statement that the transfer is conditioned upon the approval of the stockholders of each constituent association.

(viii) The effective date of the proposed territory transfer.

(4) A copy of the stockholder disclosure statement provided for in paragraph (f) of this section; and

(5) Any additional relevant information or documents that the association wishes to submit in support of its request or that may be required by the Farm Credit Administration.

(c) Upon receipt of documents supporting a proposed territory transfer, the district bank shall review the materials submitted and provide the associations with its analysis of the proposal within a reasonable period of time. The bank shall concurrently advise the Farm Credit Administration of its recommendation regarding the proposed territory transfer. Following review by the bank, the associations shall transmit the proposal to the Farm Credit Administration together with all required documents.

(d) Upon receipt of an association's request to transfer territory, the Farm Credit Administration shall review the request and either deny or give preliminary approval to the request. When a request is denied, written notice stating the reasons for the denial shall be transmitted to the associations, and a copy provided to the bank. When a request is preliminarily approved, written notice of the preliminary approval shall be transmitted to the associations, and a copy provided to the bank. Preliminary approval by the Farm Credit Administration shall not constitute approval of the territory transfer. Final approval shall be granted only in accordance with paragraph (h) of this section.

(e) Upon receipt of preliminary approval by the Farm Credit Administration, each constituent association shall, by written notice, and in accordance with its bylaws, call a meeting of its voting stockholders. The affirmative vote of a majority of the voting stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present shall be required for stockholder approval of a territory transfer.

(f) Notice of the meeting to consider and act upon a proposed territory transfer shall be accompanied by the following information covering each constituent association:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A copy of the Agreement to Transfer Territory and a summary of the major provisions of the Agreement.

(3) The reason the territory transfer is proposed.

(4) A map of the association's territory as it would look after the transfer.

(5) A summary of the differences, if any, between the transferor and transferee associations' interest rates, interest rate policies, collection policies, service fees, bylaws, and any other items of interest that would impact a borrower's lending relationship with the institution.

(6) A statement that all loans of the transferor association that finance operations located in the transferred territory shall be transferred to the transferee association except as otherwise provided for in this section or in accordance with agreements between

the associations as provided for in § 614.4070 of this chapter.

(7) Where proxies are to be solicited a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholders.

(8) A statement that the associations' bylaws, financial statements for the previous 3 years, and any financial information prepared by the associations concerning the proposed transfer of territory are available on request to the stockholders of any association involved in the transaction.

(g) No bank or association, or director, officer, or employee thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any association in connection with a territory transfer.

(h) Upon approval of a proposed territory transfer by the stockholders of the constituent associations, a certified copy of the stockholders' resolution for each constituent association and one executed Agreement to Transfer Territory shall be forwarded to the Farm Credit Administration. The territory transfer shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the associations and a copy provided to the bank.

(i) No director, officer, or employee of a bank or an association shall make an oral or written representation to any person that a Preliminary or final approval by the Farm Credit Administration of a territory transfer constitutes, directly or indirectly, a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(j) The notice and accompanying information required under paragraph (f) of this section shall not be sent to stockholders until preliminary approval of the territory transfer has been granted by the Farm Credit Administration.

(k) Where a territory transfer is proposed simultaneously with a merger or consolidation, both transactions may be voted on by stockholders at the same meeting. Only stockholders of a transferee or transferor association shall vote on a territory transfer.

(l) Each borrower whose real estate or operations is located in a territory that will be transferred shall be provided with a written Notice of Territory Transfer immediately after the Farm Credit Administration has given final approval of the territory transfer. The Notice shall inform the borrower of the transfer of the borrower's loan to the transferee association and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities shall be offered that will not adversely affect the interest of the owner. The Notice shall give the borrower 60 days from the effective date of the territory transfer to notify the transferor association in writing if the borrower decides to stay with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit shall be made to the transferee association, except as otherwise provided for by an agreement between associations in accordance with § 614.4070 of this chapter.

(m) This section shall not apply to territory transfers initiated by order of the Chairman of the Farm Credit Administration or to territory transfers due to the liquidation of the transferor association.

(n) Where a proposed action involves the transfer of a portion of an association's territory to an association operating in a different district, such proposal must comply with the provisions of this section and § 611.1090 of this part.

8. Section 611.1125 is revised to read as follows:

§ 611.1125 Treatment of associations not approving districtwide mergers.

(a) **Issuance of charters.** When issuing charters or certificates of territory for districtwide mergers or consolidations of associations, the Farm Credit Administration will not issue any charters or certificates of territory that include the territory of one or more associations whose stockholders voted to disapprove the merger or consolidation.

(b) A district bank shall not take any of the following actions with respect to an association that has determined to not participate in a districtwide merger or consolidation:

(1) Discriminate in the provision of any financial service and assistance, including, but not limited to, access to loan funds and rates of interest on loans and discounts offered by the district bank to associations and their member/borrowers;

(2) Discriminate in the provision of any financially related services that are offered by the district bank to associations and their member/borrowers;

(3) Discriminate in the provision of any professional assistance that may be normally provided by the district bank to associations; or

(4) Discriminate in the provision of any technical assistance that may be normally provided by the district bank to associations.

(c) This regulation does not prohibit a district bank from taking any action with respect to an association, including, but not limited to, charging different rates of interest or different prices for services, or declining to provide financial assistance; provided that any such action is fully documented and based on an objective analysis of applicable criteria that are uniformly and consistently applied by the district bank to all associations in the district.

9. Part 611 is amended by adding Subpart K, Appointment of Conservators and Receivers, to read as follows:

Subpart K—Appointment of Conservators and Receivers

Sec.
611.1155 General.
611.1156 Grounds for appointment of conservators and receivers.
611.1157 Conservators and receivers.
611.1158 Actions for removal of conservator or receiver.

Subpart K—Appointment of Conservators and Receivers

§ 611.1155 General.

The Farm Credit Administration has exclusive authority to appoint conservators or receivers for System institutions and to establish the procedures under which conservatorships and receiverships are operated. This subpart sets forth the basis for the appointment of conservators and receivers and establishes general guidance for the operations of conservatorships and receiverships. Subparts L and M of this part set forth the specific powers and procedures for receivers of associations and banks, respectively. Subpart N of this part sets forth the powers and procedures applicable to conservatorships of banks and associations.

§ 611.1156 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm

Credit Administration may, at its discretion, appoint a conservator or receiver for such institution.

(b) The grounds for the appointment of a conservator or receiver for a System institution are:

(1) The institution is insolvent. For purposes of this paragraph, "insolvent" means that the assets of the institution are less than its obligations to its creditors and others, including its members. A determination of insolvency is made when an examination conducted or adopted by the Farm Credit Administration reveals that the capital stock or participation certificates of an institution are worth less than their par or stated value;

(2) There has been a substantial dissipation of the assets or earnings of the institution due to the violation of any law, rule, or regulation, or the conduct of an unsafe or unsound practice;

(3) The institution is in an unsafe or unsound condition to transact business;

(4) The institution has committed a willful violation of a final cease-and-desist order issued by the Farm Credit Administration; or

(5) The institution is concealing its books, papers, records, or assets, or is refusing to submit its books, papers, records, assets, or other material relating to the affairs of the institution for inspection to any examiner or to any lawful agent of the Farm Credit Administration.

§ 611.1157 Conservators and receivers.

(a) A Farm Credit Administration conservator is appointed by the Chairman of the Farm Credit Administration pursuant to section 4.12(b) of the Act and § 611.1156 of this part to take possession of an institution in accordance with the terms of the appointment. Upon appointment, a conservator shall direct the institution's further operation until the Farm Credit Administration decides whether to liquidate the institution. Upon correction or resolution of the problem or condition that provided the basis for the appointment and upon a determination by the Farm Credit Administration that the institution can be returned to normal operations, the Farm Credit Administration may turn the institution over to such management as the Farm Credit Administration may direct. A conservator shall exercise all powers necessary to continue the ongoing operations of the institution, to conserve and preserve the institution's assets and property, and otherwise protect the interests of the institution, its stockholders, and creditors as provided in Subpart N of this part.

(b) A Farm Credit Administration receiver is appointed by the Chairman of the Farm Credit Administration pursuant to section 4.12(b) of the Act and § 611.1156 of this part to take possession of a System institution in order to wind up the business operations of such institution, collect the debts owed to the institution, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to its stockholders. A receiver shall exercise all powers necessary to the efficient termination of an institution's operation, as provided for in Subparts L and M of this part.

§ 611.1158 Action for removal of conservator or receiver.

Upon the appointment of a conservator or receiver to a System institution by the Farm Credit Administration, the institution may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of the institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration to remove such conservator or receiver. Notwithstanding any other provisions of Subparts L, M, or N of this part, the institution's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may only be authorized by such institution's board of directors.

Subpart L—Liquidation of Associations

10. Section 611.1160 is revised to read as follows:

§ 611.1160 Appointment of receiver.

(a) The board of directors of an association, by the adoption of an appropriate resolution, may vote to liquidate the association, and upon approval of the resolution by the Farm Credit Administration after consultation with the supervisory bank, the Chairman by order may place the association in receivership and appoint a receiver.

(b) The Farm Credit Administration may, at its discretion, appoint a receiver for any System association in accordance with the grounds for appointment set forth in § 611.1156 of this part.

(c) Upon the appointment of a receiver and acceptance by the receiver of the appointment, the Chairman shall immediately notify the institution and its district bank and notice of the appointment shall be published in the **Federal Register.**

(d) Upon the issuance of the order placing an association in liquidation, all rights, privileges, and powers of the board of directors, officers, and employees of the association are vested exclusively in the receiver, and said individuals are suspended except as provided for in paragraph (9) of this section. Persons who were serving as officers or employees may be employed by the receiver in accordance with § 611.1161 of this part.

(e) The voluntary or involuntary liquidation of an association shall be conducted by the receiver as agent of the Farm Credit Administration. The receiver shall be responsible for collecting the assets, paying the creditors, and paying any liquidating dividend to stockholders of the association. Upon completion of the liquidation and discharge of the receiver by the Farm Credit Administration, the Chairman will cancel the charter of the association.

(f) The Chairman may at any time remove or replace the receiver or may terminate the receivership and direct the receiver to turn over the association to its previous management or such other management as the Chairman may order, in which event the provisions of this subpart shall no longer apply.

(g) In the case of the voluntary liquidation of an association where grounds for the appointment of a receiver pursuant to § 611.1156 of this part do not exist, the Chairman may appoint a receiver, taking into consideration the recommendations of the board of directors of the liquidating association. The board of directors of the association may, at the discretion of the Chairman, remain in office to provide advice and recommendations to the receiver during the pendency of the liquidation.

11. Section 611.1161 is revised to read as follows:

§ 611.1161 Powers and duties of the receiver.

The receiver of an association serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the association. In this capacity, as trustee of the estate, the receiver is an agent of and is subject to the specific procedures and approval requirements established by the Farm Credit Administration and enjoys the same immunities against personal liability that exist for all employees and agents of the Farm Credit Administration. As the agent of the Farm Credit

Administration and acting on behalf of the association in receivership, the receiver is authorized and empowered to:

(a) Exercise all powers as are conferred upon the officers and directors of the association under law and the charter, articles, and bylaws of the association.

(b) Take any action the receiver considers appropriate or expedient to carry on the business of the association during the process of liquidating its assets and winding up its affairs.

(c) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership.

(d) Borrow such sums as necessary to effectuate the purposes of the receivership.

(e) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the association's assets or property, or rehabilitate or improve such property and assets.

(f) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the association has a lien or in which the association has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(g) Investigate any matter related to the conduct of the business of the association, including, but not limited to, any claim of the association against any individual or entity, and institute appropriate legal or other proceedings in the name of the association to prosecute such claims.

(h) Institute, prosecute, maintain, defend, intervene, and otherwise participate in the name of the association in any legal proceeding by or against the association or in which the association or its creditors or members have any interest, and represent in every way the association, its members, and creditors.

(i) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(j) Hire any employees necessary for proper administration of the receivership, which employees shall be covered by a bond satisfactory to the receiver and the Farm Credit Administration;

(k) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effectual as if it had been executed by the association's officers by authority of its board of directors.

(l) Sell for cash or otherwise, any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock, or debt owed to the association, or any property (real or personal, tangible or intangible).

(m) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(n) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(o) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the association or the receiver.

(p) Pay out of the assets of the association, all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(q) Pay out of the assets of the association, all approved claims of indebtedness in accordance with priorities established in this subpart:

(r) Take all actions in the name of the association in receivership, and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(s) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration authorizes, directs, confers, or imposes by order or by amendment of any order or by regulation.

12. Section 611.1165 is revised to read as follows:

§ 611.1165 Sale and transfer of loans.

(a) The receiver is authorized to sell loans, including any amount outstanding that was used to purchase stock or participation certificates of the association, to the Farm Credit System Capital Corporation (Capital Corporation) or to any commercial lending institution at fair market value (including any amount borrowed to purchase stock in the association). All loans not purchased by other System institutions are eligible for purchase by the Capital Corporation.

(b) The receiver is authorized to sell loans to an association (hereafter referred to as "purchasing association") that has been authorized, by charter amendment, agreement, or otherwise, to make loans in the territory heretofore served by the association in liquidation only on the following basis:

(1) A loan, including any amount outstanding that was used to purchase stock or participation certificates of the association, may be sold at not less than its fair market value (including the amount borrowed to purchase stock or participation certificates in the liquidating association) and the borrower will immediately make the required capital investment in the purchasing association by providing cash sufficient therefor or by increasing the loan by an amount necessary to make such capital investment.

(2) A loan, including any amount outstanding that was used to purchase stock or participation certificates of the association, may be sold at not less than its fair market value in conjunction with an agreement between the borrower, the receiver, the bank, and the purchasing association, which provides for a loan, at no interest or a reduced rate of interest, from the bank to the borrower or the purchasing association in the amount of the required capital investment in the purchasing association, to be repaid on or before the completion of the liquidation of the association, on terms set forth in the agreement.

(c) An association to which the receiver proposes to sell a loan shall have not less than 90 days to purchase the loan. The association may purchase any such loan at its discretion provided that the borrower agrees to buy stock and become a member of the association.

13. Section 611.1167 is revised to read as follows:

§ 611.1167 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of an association, the receiver shall make an inventory of the assets and liabilities as of the date possession was taken. Such inventory shall include the book value and the fair market value of the association's assets. The method of listing assets must provide such information to the satisfaction of the Farm Credit Administration. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The association in receivership shall be examined on an annual basis by the Farm Credit Administration. The association shall be audited by the Farm Credit Administration or, at the discretion of the Farm Credit

Administration, by an independent certified public accountant at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the association in receivership.

(c) Each association in receivership shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of Part 621 of this chapter with the exception of those provisions that, in accordance with generally accepted accounting principals, are not applicable to an entity that is not considered a "going concern." The receiver of the association shall provide the certification required by § 621.12 of this chapter.

(d) Each association in receivership shall prepare and distribute financial reports in accordance with the provisions of Part 620, Subpart A, of this chapter. The provisions of § 620.3 of this chapter relating to the content of reports shall not be applicable to associations in receivership except as specifically provided for in this paragraph (d). The receiver of the association shall provide the certification required by § 620.2(e) of this chapter and shall provide the signature required by § 620.2(f) of this chapter. Each report shall include:

(1) A discussion of the material events or developments occurring as of the date the association was placed in receivership with a thorough explanation of events or circumstances that have resulted or that may result in material deviations from the plan of liquidation.

(2) A brief description of any material pending legal proceedings, in accordance with § 620.3(c) of this chapter.

(3) A description of the reasons for any changes in independent public accountants used by the receivership, in accordance with § 620.3(1) of this chapter.

(4) A statement of net assets (or liabilities) and a statement of changes in net assets (or liabilities) for each of the last 2 years, and related footnotes. Financial statements and related footnotes shall be prepared in accordance with generally accepted accounting principles for entities not considered "going concerns," and instructions and other requirements of the FCA. The statements shall be audited in accordance with generally accepted auditing standards and shall include an opinion of a qualified public accountant, as defined in § 621.2(a)(21) of this chapter.

(e) Each association in receivership shall prepare and distribute quarterly financial reports in accordance with Subpart B of Part 620 of this chapter, except for § 620.11 of this chapter relating to the content of reports. The receiver of the association shall provide the certification required by § 620.10(d) of this chapter. Quarterly reports shall include:

(1) Information that is presented in accordance w th generally accepted accounting principles for interim financial reporting.

(2) Information as provided for in paragraphs (d) (i) and (ii) of this section.

(3) Financial statements as provided for in paragraph (d) of this section, with captions of major components of the financial statements representing not less than 15 percent of the institution's total liabilities.

(f) Upon the final liquidation of the association, the receiver shall cause to be sent to each stockholder of record, a report summarizing the activities of the receiver and describing the disposition of the assets of the receivership and claims against the receivership.

Subpart M—Liquidation of Banks

14. Section 611.1170 is revised to read as follows:

§ 611.1170 Appointment of receiver.

(a) The board of directors of a bank, by the adoption of appropriate resolution, may vote to liquidate the bank, and upon approval of the resolution by the Farm Credit Administration, the Chairman may, by order, place the bank in receivership and appoint a receiver.

(b) The Farm Credit Administration may, at its discretion, appoint a receiver for any System bank in accordance with the grounds for appointment set forth in § 611.1156 of this part.

(c) Upon the issuance of an order placing a bank in liquidation, all rights, privileges, and powers of the board of directors, officers, and employees of the bank are vested exclusively in the receiver, and such individuals are suspended, except as provided for in paragraph (g) of this section. Persons who were serving as officers or employees may be employed by the receiver in accordance with § 611.1171 of this part.

(d) Upon the appointment of a receiver, and acceptance by the receiver of the appointment, the Chairman shall immediately notify the institution, and notice of the appointment shall be published in the Federal Register.

(e) A voluntary or involuntary liquidation of a bank shall be conducted by the receiver, as agent of the Farm Credit Administration. The receiver shall be responsible for collecting the assets, paying the creditors, paying any liquidating dividend to stockholders, and winding up the affairs of the bank. Upon completion of the liquidation, the Chairman will revoke the charter of the bank.

(f) The Chairman may at any time remove and replace the receiver or may direct the receiver to return the bank to the previous management or such other management as the Chairman may order, in which event the provisions of this subpart shall no longer apply.

(g) In the case of the voluntary liquidation of a bank, where the grounds for the appointment of a receiver pursuant to § 611.1156 of this part do not exist, the Chairman may appoint a receiver, taking into consideration the recommendations of the board of directors of the liquidating bank. The board of directors may, at the discretion of the Chairman, remain in office to provide advice and recommendations to the receiver during the pendency of the liquidation.

(h) For purposes of this subpart, the term "bank" includes each bank, the Farm Credit System Capital Corporation, and any service organization chartered pursuant to Part D of Title IV of the Act.

15. Section 611.1175 is revised to read as follows:

§ 611.1175 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a bank, the receiver shall make an inventory of the assets and liabilities of the bank as of the date possession was taken. Such inventory shall include the book value and fair market value of the bank's assets and the book value of the bank's liabilities and any security therefor. The method of listing assets and liabilities must provide such information to the satisfaction of the Farm Credit Administration. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The bank in receivership shall be examined on an annual basis by the Farm Credit Administration. The bank shall be audited by the Farm Credit Administration or, at the discretion of the Farm Credit Administration, by an independent certified public accountant at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the bank in receivership.

(c) Each bank in receivership shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of Part 621 of this chapter with the exception of those provisions that, in accordance with generally accepted accounting principles, are not applicable to an entity that is not considered a "going concern." The receiver of the bank shall provide the certification required by § 621.12 of this chapter.

(d) Each bank in receivership shall prepare and distribute financial reports in accordance with the provisions of Part 620, Subpart A, of this chapter. The provisions of § 620.3 of this chapter relating to the content of reports shall not be applicable to banks in receivership except as specifically provided for in this paragraph (d). The receiver of the bank shall provide the certification required by § 620.2(e) of this chapter and shall provide the signature required by § 620.2(f) of this chapter. Each report shall include:

(1) A discussion of the material events or developments occurring as of the date the bank was placed in receivership with a thorough explanation of events or circumstances that have resulted or that may result in material deviations from the plan of liquidation.

(2) A brief description of any material pending legal proceedings, in accordance with § 620.3(c) of this chapter.

(3) A description of the reasons for any changes in independent public accountants used by the receivership, in accordance with § 620.3(1) of this chapter.

(4) A statement of net assets (or liabilities) and a statement of changes in net assets (or liabilities) for each of the last 2 years, and related footnotes. Financial statements and related footnotes shall be prepared in accordance with generally accepted accounting principles for entities not considered "going concerns," and instructions and other requirements of the Farm Credit Administration. The statements shall be audited in accordance with generally accepted auditing standards and shall include an opinion of a qualified public accountant, as defined in § 621.2(a)(21) of this chapter.

(e) Each bank in receivership shall prepare and distribute quarterly financial reports in accordance with Subpart B of Part 620 of this chapter, except for § 620.11 of this chapter relating to the content of reports. The receiver of the bank shall provide the certification required by § 620.10(d) of this chapter. Quarterly reports shall include:

(1) Information that is presented in accordance with generally accepted accounting principles for interim financial reporting.

(2) Information as provided for in paragraphs (d)(i) and (ii) of this section.

(3) Financial statements as provided for in paragraph (d)(iv) of this section, with captions of major components of the financial statements representing not less than 15 percent of the institution's total liabilities.

(f) Upon the final liquidation of the bank, the receiver shall cause to be sent to each stockholder of record a report summarizing the activities of the receiver and describing the disposition of the assets of the receivership and claims against the receivership.

16. Part 611 is amended by adding a new Subpart N, Conservators and Conservatorships of Banks and Associations, to read as follows:

Subpart N—Conservators and Conservatorships of Banks and Associations

Sec.

611.1180 Appointment of a conservator.
611.1181 Powers and duties of conservators.
611.1182 Inventory, examination, audit, and reports to stockholders.
611.1183 Final discharge and release of conservators.

Subpart N—Conservators and Conservatorships of Banks and Associations

§ 611.1180 Appointment of a conservator.

(a) The Farm Credit Administration may appoint ex parte and without notice a conservator for any System institution provided the grounds for appointment as set forth in § 611.1156 exist.

(b) Upon the appointment of a conservator and acceptance by the conservator of the appointment, the Chairman of the Farm Credit Administration shall immediately notify the institution and, in the case of an association, the district bank, and notice of the appointment shall be published in the **Federal Register**. As soon as practicable after the conservator takes possession of the institution, the conservator shall notify, by first class mail, each holder of stock and participation certificates in the institution of the establishment of the conservatorship and shall describe the effect of the conservatorship on the institution's operations and on the borrower's loan and equity holdings.

(c) Upon the issuance of the order placing a System institution in conservatorship, all rights, privileges, and powers of the members, board of directors, officers, and employees of the institution are vested exclusively in the conservator.

(d) The conservatorship of a System institution shall be conducted by the conservator as agent of the Farm Credit Administration. The conservator, under the direction and supervision of the Farm Credit Administration, shall be responsible for conserving and preserving the assets of the institution and continuing the ongoing operations of the institution until the conservatorship is terminated by order of the Chairman.

(e) The Chairman may, at any time, remove or replace the conservator or may terminate the conservatorship and direct the conservator to turn over the institution's operations to such management as the Chairman may designate, in which event the provisions of this subpart shall no longer apply.

(f) For purposes of this subpart, "System institutions" includes each bank, association, the Farm Credit System Capital Corporation, and the service organizations chartered under Part D of Title IV of the Act.

§ 611.1181 Powers and duties of conservators.

(a) The conservator of an institution serves as the trustee of the institution and conducts its operations for the benefit of the creditors and stockholders of the institution. In this capacity, as trustee, the conservator is an agent of and is subject to the specific procedures and approval requirements established by the Farm Credit Administration and enjoys the same immunities against personal liability that exist for all employees and agents of the Farm Credit Administration.

(b) The conservator may, with respect to System institutions, exercise the powers that a receiver of an association may exercise under § 611.1161(d), (k), (p), (r), and (s) of this part. The conservator may, with the prior approval of the Farm Credit Administration, exercise the powers that a receiver of a System bank or association may exercise under § § 611.1161 (i), (j), (l), (n), (o), and (q) and 611.1171 of this part. In interpreting those paragraphs for purposes of this section, the term "conservator" and "conservatorship" shall be read for "receiver" and "receivership," and "institution" shall be read for "association."

(c) The conservator may also, subject to the restrictions contained in this section:

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(1) Exercise all powers as are conferred upon the officers and directors of the institution under law and the charter, articles, and bylaws of the institution, except that the conservator may not declare, credit, pay, or otherwise distribute dividends on stock or other equities of a System institution without the prior approval of the Farm Credit Administration;

(2) Pay any sum the conservator deems necessary or advisable to preserve, conserve, or protect the institution's assets or property, or with prior approval of the Farm Credit Administration, rehabilitate or improve such property and assets;

(3) Extend credit to new and existing borrowers as is necessary to the continuing operation of the institution and to effectuate the purposes of the conservatorship;

(4) Investigate any matter related to the conduct of the business of the institution including, but not limited to, any claim of the institution against any individual or entity and, under the supervision of the General Counsel of the Farm Credit Administration, institute, prosecute, maintain, defend, intervene, and otherwise participate in legal or other proceedings in the name of the institution in which the institution, its creditors, or stockholders have any interest, and otherwise represent in every way the institution, its creditors, or stockholders;

(5) Purchase or lease, for 1 year or less, property and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the conservatorship, or with the prior approval of the Farm Credit Administration, lease property for greater than 1 year; or

(6) Take any action the conservator considers appropriate or expedient to the continuing operation of the institution subject to the restrictions contained in this section.

§ 611.1182 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a Farm Credit System institution the conservator shall, as may be directed by the Farm Credit Administration, make an inventory of the assets and liabilities of the institution as of the date possession was taken. Such inventory shall include the scheduling of the book value and fair market value of the institution's assets and the book value of the institution's liabilities and any security therefrom. The inventory must be in a form acceptable to the Farm Credit Administration and contain such other information as the Farm Credit Administration may require. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The institution in conservatorship shall be examined by the Farm Credit Administration on an annual basis. The institution shall also be audited by the Farm Credit Administration or at the discretion of the Farm Credit Administration by an independent certified public accountant at such times as the Farm Credit Administration may determine. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the institution in conservatorship unless otherwise ordered by the Farm Credit Administration.

(c) Each institution in conservatorship shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of Part 621 of this chapter. The conservator of the institution shall provide the certification required in § 621.12 of this chapter.

(d) Each institution in conservatorship shall prepare and issue published financial reports in accordance with provisions of Part 620 of this chapter, provided that the certifications and signatures of the board of directors or management provided for in §§ 620.2(e), 620.3(m)(3), 620.10(d), and 620.20(e) and (f) shall be provided by the conservator of the institution.

§ 611.1183 Final discharge and release of conservators.

(a) *Final report.* At such time as the conservator shall be relieved of the conservatorship duties, the conservator shall file with the Farm Credit Administration a detailed report in a form satisfactory to the Farm Credit Administration.

(b) *Discharge.* At such time as the conservator shall be relieved of the conservatorship duties, the Chairman may direct an examination of the institution and/or an audit of the books and records of the institution in connection with the final report of the conservator. The accounts of the conservator shall be approved or disapproved by the Farm Credit Administration and, if approved, the conservator shall thereupon be completely and finally released.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration.

[FR Doc. 20544 Filed 9-11-86; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T. D. 86-174]

Customs Regulations Amendment Concerning Access To Customs Security Areas at Airports

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to require the use and display of a Customs approved identification card, strip, or seal on existing identification cards worn by employees at airports accommodating international air commerce. The changes are necessitated by recent terrorist incidents at foreign airports, and in an effort to prevent similar incidents from occurring at U.S. airports accommodating international arrivals and departures. All Federal, and uniformed State and local law enforcement personnel are excepted from the requirement. The additional identification is required for all non-exempt persons located at, operating out of, or employed by, affected airports, who require access to Customs security areas in order to perform functions associated with their employment. The amendment also requires that an authorized official of the employer attest, in writing, that a background check of employment history and references has been conducted on their affected employees.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Charles P. Bartoldus (202-566-2140). Legal Aspects: Ellen McClain (202-566-2482).

SUPPLEMENTARY INFORMATION:

Background

Various provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), which are made applicable to aircraft by 19 U.S.C. 1644 (49 U.S.C. App. 1509), and § 6.10, Customs Regulations (19 CFR 6.10), provide the statutory authority for Customs officers to control the entry and clearance of aircraft arriving in the U.S. from foreign countries and the inspection of the crew, passengers, baggage, stores, and cargo carried aboard those aircraft. Section 1109 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1509), authorizes the Secretary of the Treasury to designate airports as ports of entry for civil air navigation. Section 582, Tariff Act of 1930, as amended (19

U.S.C. 1582), authorizes the Secretary of the Treasury to prescribe regulations for the detention and search of persons and baggage. These regulations are set forth in Parts 6 and 162, Customs Regulations (19 CFR Parts 6 and 162). Implicit in the search and inspection authority and the right to designate airports is the right to maintain a controlled and secure Customs area which facilitates and insures the integrity of the authorized search and inspection.

Customs found it necessary to improve integrity and security in authorized inspection areas, due in large measure to the recent sharp increases in threats to airport security posed by terrorist organizations. Existing Part 6, Customs Regulations, was inadequate for controlling access to the Customs security areas to the extent necessary. The arrival of an aircraft from abroad necessitates the services of numerous persons representing various specialties, such as ground crews, refueling personnel, baggage handlers, and food service personnel, among others. While all of these persons may have legitimate business associated with the arrival of an international flight, Customs needed a method by which access to the aircraft and inspection areas could be restricted, as well as some assurance that the servcie personnel themselves had been found trustworthy by their employers. While the Federal Aviation Administration (FAA) has general responsibility for security at airports, Customs determined that it was necessary to provide Customs with the needed authority and procedures to achieve these goals at the areas under the Customs jurisdiction.

Accordingly, Customs amended Part 6, Customs Regulations, on an interim basis by publication of T.D. 86–12 in the **Federal Register** on February 3, 1986 (51 FR 4161). The purpose of the amendment was to establish an identification system for all employees whose duties require access to Customs security areas at airports handling international air commerce, with the exception of Federal, and uniformed State, and local law enforcement personnel. Because of terrorist incidents at foreign airports, threats of violence at U.S. airports, and in an effort to improve the security of these areas by restricting access to authorized employees, Customs required that affected employees apply for a Customs approved identification card, or a strip or seal to be affixed to existing identification cards once an authorized official of the employer attested that background checks of employment history of the affected employees had been conducted. Since March 5, 1986, when the interim regulations became effective, Customs has issued the identification card, strip or seal once satisfied that the presence of the employee would neither endanger the revenue nor threaten the security of the entire security area (which may include the arriving airplane, ramp area, cargo area, and Customs baggage and passenger inspection facilities).

The requirement for a background investigation of employees was only for employees hired after November 1, 1984. For all employees hired before that date, the authorized official of the employer needed only attest to the fact that the employee was employed before November 1, 1984, and was considered trustworthy.

Further, the interim amendment provided identification of a "Customs security area" within which the previously described procedures would be enforced. This area could include the deplaning and ramp areas, as defined by the district director of Customs, as well as the baggage and passenger inspection areas. These areas are posted, to the extent possible, once designated. In airports with areas dedicated only to international arrivals, the posted areas are restricted at all times. In airports in which international and domestic flights share arrival facilities, the restriction times are posted to the extent they are identifiable.

The February 3, 1986, **Federal Register** notice solicited public comments on the new requirements. The comments received have been taken into consideration in formulating the final rule and are discussed in this document.

Analysis of Comments

Fourteen comments were received in response to publication of the interim regulations. Several commenters, including associations representing the airline industry and airport operators, took exception to the November 1, 1984, cut-off date for conducting background investigation on persons requiring access to the Customs security area. Concern was expressed that the date should be consistent with the November 1, 1985, date which the FAA utilizes in administering related requirements. We believe that this comment has merit and have changed the date after which background checks must be conducted by employers to November 1, 1985.

Other commenters stated that the new requirements are merely duplicative of FAA security regulations. The FAA has the responsibility for overall security at U.S. airports. Customs has the responsibility to safely and efficiently process international passengers, baggage, and cargo. The new requirements merely enhance the security of high risk areas and, in that sense, act to enhance the FAA efforts. They are not duplicative of the FAA requirements and have been endorsed by that agency.

A point raised by several commenters was that the need for proceeding on an emergency interim basis was never adequately justified. At the time the regulations were prepared, we were unable to make specific references to threats received. Events surrounding the threats remain classified. However, it can be stated that specific threats were received that passengers arriving at U.S. airports, on foreign flights, would be the targets of terrorist actions. The terrorist events were to take place while passengers were being processed in or exiting from Customs areas. In coordinating security measures at several airports, it became apparent that immediate tighter controls on access to Customs areas were necessary. The interim amendment to the regulations was designed to meet these needs without undue and possibly dangerous delay.

One commenter asked for exception from the formal application process for law enforcement personnel. We have revised the regulations to reflect that law enforcement personnel need not make application nor submit to background checks for security area access.

Several commenters were concerned that the processing of part-time employees would be cumbersome. Customs representatives have discussed this with industry representatives and have determined that the concern was premature. Customs officers implementing the program are cognizant of the industry concern on this subject and are working locally to avoid over-burdening the industry. Therefore, no change in the regulation is warranted on this subject.

One commenter stated that he had been informed that the new requirements apply only to large airports. This is not the case. The new requirements apply to all airports at which international flights arrive or depart.

One commenter urged severe penalties for violations of the new security requirements. At this time, Customs believes that existing penalty provisions are sufficient to administer these regulations.

After consideration of all the comments received, and following further review of the matter, it has been determined to adopt the interim

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regulations with the minor modifications discussed and several editorial changes.

E.O. 12291 and Regulatory Flexibility Act

Because the amendment does not meet the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, Customs has not prepared a regulatory impact analysis.

It is certified under section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations are subject to the Paperwork Reduction Act of 1930 (44 U.S.C. 3501). Accordingly, they were submitted to the Office of Management and Budget, approved, and assigned control number 1515–0152.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Customs Headquarters. However, personnel from other offices participated in its developments.

List of Subjects in 19 CFR Part 6

Air carriers, Air transportation, Aircraft, Airports.

Amendment to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended as set forth below:

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen Hdnote 11), 1624, 1644, 49 U.S.C. App. 1474, 1509.

2. Part 6 is amended by revising § 6.12a, to read as follows:

§ 6.12a Access to Customs security areas.

(a) For the purposes of this section, the term "Customs security area" means the federal inspection services area (as provided for by § 6.12(e) of this part), designated for processing passengers, crew, their baggage and effects arriving from foreign countries, as well as the aircraft deplaning and ramp areas and other restricted areas designated by the district director of Customs. These areas will be posted as restricted to the extent possible, and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

(b) With the exception of all Federal, and uniformed State and local law enforcement personnel, all persons located at, operating out of, or employed by any airport accommodating international air commerce, or its tenants or contractors, including air carriers, who have unescorted access to the Customs security areas must openly display or produce upon demand, a Customs approved identification card, or strip or seal to be issued and affixed by Customs to existing airport identification cards. The approved identification card, strip or seal, shall be in the possession of the person in whose name it is issued at all times when the person is in the Customs security areas.

(c) An application for an approved identification card, strip or seal as required by this section, shall be filed by the applicant with the district director on Customs Form 3078. This requirement applies to all employees, regardless of the length of their employment. For employees hired on or after November 1, 1985, an authorized official of the employer shall attest in writing that a background check has been conducted on the applicant, to the extent allowable by law. The background check shall include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceeding 5 years. For any employee hired before November 1, 1985, the authorized official of the employer need only attest to the fact that the employee was hired before that date. The authorized official of the employer shall attest that to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. The fingerprints of the applicant may be required on Standard Form 87 at the time of the filing of the approved application. Proof of citizenship or authorized residency, and a photograph may also be required. In addition, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained and made available upon request by the district director for a period of 1 year following cessation of employment by affected employees.

(d) Law enforcement officers and other Federal, State, or local officials requiring access to the Customs security area need only request from the district director the issuance of an approved identification card with strip or seal affixed thereto. They need not make application nor submit to background checks for security area access.

(e)(1) An approved identification card, strip, or seal shall not be issued to any person whose employment, if necessitating access to the Customs security areas will, in the judgment of the district director, endanger the revenue or the security of the areas. Grounds for denial of access shall include, but are not limited to:

(i) Any cause which would justify suspension or revocation of the identification card under the provisions of paragraph (j) of this section; or

(ii) Evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct.

(2)(i) The district director shall give written notification to any person whose application for access to the Customs security areas has been denied, fully stating the reasons for denial and setting forth specific appeal procedures. The employer shall be notified in writing that the applicant has been denied access to the area and that detailed reasons for denial have been furnished to the applicant. Specific reasons for denial shall not be furnished directly to the employer.

(ii) The denial will be final unless the applicant files with the district director a written notice of appeal. The applicant's written notice must be filed within 10 calendar days following receipt of the notice of denial. The notice of appeal shall be filed in duplicate, and shall set forth the response of the applicant to the statement of the district director. The district director shall render his decision on the appeal to the applicant within 30 calendar days.

(iii) If the district director denies the application on appeal, the applicant may file a further written notice of appeal to the Commissioner of Customs within 10 calendar days of receipt of the district director's decision on the appeal. The further notice of appeal shall be filed in duplicate, and shall set forth the response of the applicant to the district director's decision. The Commissioner or his designee shall review the appeal, and render his decision, in writing. This final decision shall be transmitted to the district director and served by him on the applicant.

(f) An employee may obtain a new identification card, strip, or seal from the district director in the following circumstances, without completing a new application:

(1) A change in employee name or address;

(2) A change in the name or ownership of his employing company;

(3) A change in employer or airport authority identification card format; or

(4) Loss or theft of the identification card, strip, or seal.

(g) The identification strip or seal shall be removed from employee identification cards by the district director when, for security reasons, it is necessary to change the nature of the identification.

(h) The loss or theft of an identification card, with strip or seal affixed, shall be promptly reported, in writing, by the employee to the district director, and may be replaced as provided in paragraph (f) of this section.

(i) If an approved identification card is presented by a person other than the one to whom it was issued, the identification strip or seal shall be removed from the identification card by the district director and destroyed.

(j)(1) An approved identification card, strip or seal may be removed from an employee by any Customs officer designated by the district director. In addition, the district director may revoke or suspend access to the Customs security area for any of the following reasons:

(i) The approved identification card, strip, or seal was obtained through fraud or the misstatement of a material fact;

(ii) The employee is convicted of a felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(iii) The employee permits the approved identification card to be used by any other person, or refuses to openly display or produce it upon the proper demand of a Customs officer;

(iv) The continuation of privileges would, in the judgment of the district director, endanger the revenue or security of the area;

(v) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation; or

(vi) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance. In this instance the employer shall notify the district director in writing, return the strip or seal, and give information regarding the disposition of the approved identification card which was issued to the employee who no longer requires access. If the employee returns to duties in the Customs security area at the airport within 1 year, a Customs Form 3078, as required by paragraph (d) of this section, need not be submitted.

(2) The district director shall suspend or revoke access to the Customs security area by giving notice of the proposed action in writing to the employee with a copy of the notice to the employer. The notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the employee unless he files with the district director a written notice of appeal as provided in paragraph (j)(3) of this section.

(3) The employee may file a written notice of appeal from the revocation or suspension within 10 calendar days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate, and shall set forth the response of the employee to the statement of the district director. The employee, in his notice of appeal, may request a hearing.

(4) If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner or his designee within 30 calendar days following the request. The employee shall be notified of the time and place of the hearing at least 5 calendar days before the hearing.

(5) The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of cross-examination. A stenographic record of the proceedings shall be made and a copy furnished to the employee. At the conclusion of the proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall promptly transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs or his designee, together with his recommendation for final action.

(6) Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the employee may submit to the Commissioner of Customs or his designee, in writing, additional views and arguments on the basis of the record.

(7) If neither the employee nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and promptly transmit all papers with his recommendation to the Commissioner or his designee.

(8) The Commissioner or his designee shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the district director. The decision shall be transmitted to the district director and served by him on the employee.

(k) When an approved identification card, strip, or seal is required under paragraph (b) of this section, and the district director determines that the application for the identification card, strip, or seal cannot be administratively processed in a reasonable period of time, an employer may, upon written request, be issued a temporary identification for his employee. The employer must satisfy the district director that a hardship to his business would result pending issuance of an approved identification card, strip, or seal.

(1) The temporary identification shall be valid for a period of 60 days. The district director may renew the temporary identification for additional 30-day periods if he determines that the circumstances under which the temporary identification was originally issued continue to exist. The temporary identification shall be destroyed by the district director when the permanent approved identification card, strip, or seal is issued, or the privileges granted thereby are withdrawn.

(2) The provisions of this paragraph shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the identification shall be valid for a period of 30 days. In the case of official visitors, the temporary identification shall be valid for the day of issuance only. Temporary employee and official visitor identification are renewable for periods equal to their original period of validity.

(3) The temporary identification may be revoked and access to the Customs security area denied at any time if, in the judgment of the district director, continuation of the privileges granted thereby would endanger the revenue or if the holder of the temporary identification refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation.

William von Raab,

Commissioner of Customs.

Approved: August 27, 1986.

Francis A. Keating II,

Assistant Secretary of the Treosury.

[FR Doc. 86-20580 Filed 9-11-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Name Change

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority

to reflect a title change. The title of the Chief, St. Louis Station Office is being changed to the Director, St. Louis Branch.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Marjorie J. Shandruk, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: This document changes references to the Chief, St. Louis Station Office to the Director, St. Louis Branch (April 16, 1986). FDA is revising the following sections under Part 5 in accordance with the name change. Under the following sections, the Chief, St. Louis Station Office is changed to the Director, St. Louis Branch: § 5.22 *Certification of true copies and use of the Department seal* (21 CFR 5.22), § 5.30 *Hearings* (21 CFR 5.30), § 5.36 *Certification following inspections* (21 CFR 5.36), § 5.37 *Issuance of reports of minor violations* (21 CFR 5.37), § 5.45 *Imports and exports* (21 CFR 5.45), § 5.47 *Detention of adulterated or misbranded medical devices* (21 CFR 5.47), § 5.63 *Detention of meat, poultry, eggs, and related products* (21 CFR 5.63), and § 5.89 *Notification of defects in, and repair or replacement of electronic products* (21 CFR 5.89).

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 et seq.; 21 U.S.C. 41 et seq., 61-63, 141 et seq., 301-392, 467f(b), 679(b), 801 et seq., 823(f), 1031 et seq.; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 2421, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u et seq., 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1046); Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1241); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921.

2. In § 5.22 by revising paragraph (a)(12)(iii) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(12) * * *

(iii) The Director, St. Louis Branch.

* * * * *

3. In § 5.30 by revising paragraphs (a)(7) and (c)(8) to read as follows:

§ 5.30 Hearings.

(a) * * *

(7) The Director, St. Louis Branch.

* * * * *

(c) * * *

(8) The Director, St. Louis Branch.

* * * * *

4. By revising § 5.36 to read as follows:

§ 5.36 Certification following inspections.

Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized to issue certificates of sanitation under § 1240.20 of this chapter.

5. In § 5.37 by revising paragraph (a)(5)(iv) and the introductory text of paragraph (b)(4) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(5) * * *

(iv) The Director, St. Louis Branch.

(b) * * *

(4) Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, when such functions relate to:

* * * * *

6. In § 5.45 by revising the introductory texts of paragraphs (a) and (b) and by revising paragraphs (c)(5), (d), and (e)(4) to read as follows:

§ 5.45 Imports and exports.

(a) The Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized, under section 801 of the Federal Food, Drug, and Cosmetic Act (FFDCA), to perform the following functions or to designate officials to:

* * * * *

(b) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH); the Director and Deputy Director, Office of Compliance, CDRH; Regional Food and Drug Directors; District Directors; and the Director, St. Louis Branch, are authorized, under section 360 of the Public Health Service Act (PHSA), to perform the following functions or to designate officials to:

* * * * *

(c) * * *

(5) The Director, St. Louis Branch.

(d) The Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized to exercise all of the functions of the Commissioner of Food and Drugs under section 362 of the PHSA that refers to the prohibition of the introduction of foods, drugs, devices, cosmetics, and electronic products and other items or products regulated by the Food and Drug Administration into the United States when it is determined that it is required in the interest of public health, and such functions relate to the law enforcement functions of the Food and Drug Administration.

(e) * * *

(4) The Director, St. Louis Branch.

7. In § 5.47 by revising paragraph (d) to read as follows:

§ 5.47 Detention of adulterated or misbranded medical devices.

* * * * *

(d) The Director, St. Louis Branch.

8. By revising the introductory text of § 5.63 to read as follows:

§ 5.63 Detention of meat, poultry, eggs, and related products.

The Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized to perform and to designate other officials to perform all of the functions of the Commissioner of Food and Drugs under:

* * * * *

9. In § 5.89 by revising the introductory text of paragraph (a) to read as follows:

§ 5.89 Notification of defects in, and repair or replacement of, electronic products.

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH), are authorized to perform all functions of the Commissioner of Food and Drugs relating to notification of defects in, noncompliance of, and repair or replacement of or refund for, electronic products under section 359 of the Public Health Service Act (the act) and under §§ 1003.11, 1003.22, 1003.31, 1004.2, 1004.3, 1004.4, and 1004.6 of this chapter; and Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized to perform all such functions relating to:

* * * * *

Dated: September 5, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-20535 Filed 9-11-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 74

[Docket No. 85C-0327]

Confirmation of Effective Date for [Phthalocyaninato(2-)] Copper; Change in Organic Chloride Content Specification for the Color Additive for Coloring Sutures and Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of July 25, 1986, for the final rule that amended the color additive regulations by increasing the organic chloride content specification for the color additive [phthalocyaninato(2-)] copper used to color sutures and contact lenses. This action responded to a petition filed by Ethicon, Inc.

EFFECTIVE DATE: Effective date confirmed: July 25, 1986.

FOR FURTHER INFORMATION CONTACT: Lester Borodinsky, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 1986 (51 FR 22928), FDA amended the color additive regulations by increasing the organic chloride content specification for the color additive [phthalocyaninato(2-)] copper used to color sutures and contact lenses.

FDA gave interested persons until July 24, 1986, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of June 24, 1986, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the June 24, 1986, final rule. Accordingly, the amendments promulgated thereby became effective July 25, 1986.

Dated: September 5, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-20534 Filed 9-11-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 11

Accounting; Rescission of Regulation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of regulation.

SUMMARY: This document rescinds FHWA's regulation regarding the collection of accrued unbilled cost information. This action is being taken because FHWA is now able to develop accrued unbilled cost information internally and no longer needs to collect the information from the States. This action eliminates a quarterly reporting requirement and a related semi-annual review requirement.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Max I. Inman, Office of Fiscal Services, (202) 366-0562, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Title 31, United States Code, requires Federal agencies to maintain accounting records on an accrual basis. To satisfy this requirement, the FHWA issued a regulation (23 CFR Part 11) on July 19, 1974 (39 FR 26406) that required States to report accrued unbilled costs for all FHWA Federal-aid programs. The reports have been used to collect these costs for FHWA's accounting records.

The FHWA is now able to develop accrued cost information internally, and as a result, the reporting process is no longer necessary. For this reason, Part 11 is no longer operative and is, therefore, rescinded.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since this document merely rescinds an obsolete FHWA regulation, public comment is unnecessary. For this reason, the FHWA finds good cause to make the rescission final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reason, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information. Again, for the reasons stated above, the preparation of an economic evaluation is unnecessary, since the economic impact is minimal. Also, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, by removing Part 11.

PART 11—ACCOUNTING [REMOVED]

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 11

Accounting, Grant programs—transportation, Highways and roads.

Authority: (23 U.S.C. 315; 49 CFR 1.48(b).

Issued on: September 8, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86-20627 Filed 9-11-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

Certification of Completion of Developmental Steps for Connecticut Public Employee Only State Plan; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; correction.

SUMMARY: In **Federal Register**, 51 FR 29917, published August 21, 1986, OSHA amended Subpart E of 29 CFR Part 1956 to reflect the Assistant Secretary's

certification of completion of developmental steps for Connecticut's Public Employee Only State Plan. Paragraph (g) was inadvertently omitted from the codification section. This notice will correct that error by adding paragraph (g). For the purpose of clarity, the codification section of the August 21, 1986, Federal Register notice is contained in this notice.

EFFECTIVE DATE: August 19, 1986.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8148.

List of Subjects in 29 CFR Part 1956

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC, this 8th day of September 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1956—[AMENDED]

In accordance with this certification, 29 CFR Part 1956 is hereby amended as follows:

1. The authority citation for Part 1956 continues to read as follows:

Authority: Secs. 8, 18, Occupational Safety and Health Act of 1970 (20 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71, (36 FR 8754), 8-76 (41 FR 25059) or 9-83 (48 FR 35736), as applicable.

2. 29 CFR 1956.44 is amended to reflect successful completion of the developmental steps by adding new paragraph (g) as follows. The heading and paragraph (h) are republished.

§ 1956.44 Completion of developmental steps and certification.

* * * * *

(g) In accordance with 29 CFR 1956.10(g), a State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. The Connecticut Public Employee Only State plan provides for three (3) safety compliance officers and one (1) health compliance officer as set forth in the Connecticut Fiscal Year 1986 grant. This staffing level meets the "fully effective" benchmarks established for Connecticut for both safety and health.

(h) In accordance with § 1956.23 of this chapter, the Connecticut occupational safety and health public employee only plan was certified effective August 19, 1986 as having completed all developmental steps specified in the plan as approved October 2, 1978, on or before October 2, 1979. This certification attests to the structured completeness of the plan, but does not render judgment on adequacy of performance.

[FR Doc. 86-20514 Filed 9-11-86; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL 3059-8]

Standards of Performance for New Stationary Sources; Additions of Quality Assurance and Quality Control Procedures to Methods 5A, 5D, 6A, 6B, and 20

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Revisions and additions to Methods 5A, 5D, 6A, 6B, and 20 to add quality control (QC) and quality assurance (QA) procedures were proposed in the Federal Register on October 2, 1985 (50 FR 40280). This action promulgates these revisions and additions. The QC and QA procedural revisions and additions include field calibration checks of sample volume meters for Methods 5A and 5D, relocation of a temperature monitor for Method 5A, analytical audits for Methods 6A and 6B, and addition of the option to measure carbon dioxide (CO_2) and other procedural clarifications in Method 20.

The QC and QA revisions and additions incorporate changes made to other methods in 40 CFR Part 60 in earlier Federal Register notices (49 FR 26522 and 48 FR 55670). The intended effect is to provide procedures for verifying and improving the reliability of data produced by these test methods.

The additions to Method 20 to allow CO_2 measurements, in lieu of oxygen (O_2) measurements, include specifications for instrumental measurements and calculations for correcting pollutant measurements to specific O_2 conditions using CO_2 data. The intended effect of this procedural change is to increase the flexibility of the method.

EFFECTIVE DATE: September 12, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A-84-50, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Westlin or Mr. Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

The amendments to Methods 5A and 5D incorporate QC procedures that allow the tester to check the calibration of the dry gas volume meter on the test site. An additional change to Method 5A specifies that the filter temperature sensor be located in the sample gas stream immediately downstream of the filter.

Amendments to Methods 6A and 6B specify the completion of QC analytical audits when the methods are used for compliance determinations. The audits are applied for each use of Method 6A and periodically for successive uses of Method 6B.

Amendments to Method 20 describe a procedure for substituting measurement of CO_2 for measurement of O_2. Some clarifications and minor corrections to Method 20 are also included.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, this rulemaking provides usable alternative procedures and valid QA and QC measures for several methods.

II. Public Participation

A public hearing was scheduled for October 23, 1985, at 10:00 a.m., but was not held because no one requested to speak. The public comment period was from October 2 to December 13, 1985. The comments have been carefully considered and, where determined to be

appropriate by the Administrator, changes have been made to the proposed rulemaking.

III. Significant Comments and Changes to the Proposed Rulemaking

Two comment letters were received. One was from the environmental department of a large industrial company and the second from a State regulatory agency. The major comments and the Agency's responses are summarized below.

The industrial commenter supported the revisions and agreed that the revisions were appropriate.

The State agency commenter directed comments toward the revisions proposed for Method 5A—Determination of Particulate Emissions from the Asphalt Processing and Asphalt Roofing Industry. The first comment concerned the availability of a sample probe cooling system capable of maintaining the filter exit sample stream temperature to the close tolerances specified in Method 5A when the sample gas stream is above 1200 °F.

The tolerance limits on the filter exit temperature are not within the scope of the proposed amendments. This issue was considered in the promulgation of Method 5A, and the availability and applicability of water-cooled probes were established at that time.

The second comment was that the temperature indicator required for the monitoring of filter exit temperature may be too expensive for a single source category. The commenter recommends use of the existing temperature monitoring system.

Temperature monitoring in Method 5 and, hence, Method 5A is a requirement that has long been part of the methods. The proposed revision does not add a requirement to monitor temperature but specifies a new location for this monitoring. The Agency estimates the cost for modifying a filter holder to accommodate a temperature monitor downstream of the filter to be less than $20.

The last comment was a recommendation to consider a condensation filtration technique in Method 5A as an alternative to the proposed filter temperature monitoring procedure. It is not within the scope of these revisions to consider alternatives to Method 5A. Additionally, the method is essentially a condensation-filtration procedure as written. Monitoring the filtration temperature within close tolerances is important in such procedures and the amendments address this concern directly.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The revisions to these methods do not add any requirements to the testing of new sources, but, instead, provide QC procedures and alternative procedures that will add flexibility in the application of the methods. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291. This regulation has been submitted to the Office of Management and Budget for E.O. 12291 review.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis (RFA) in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, an RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will have no economic impact on small entities because no additional testing costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 2, 1986.

A. James Barnes,

Acting Administrator.

PART 60—[AMENDED]

In Appendix A of 40 CFR Part 60, Methods 5A, 5D, 6A, 6B, and 20 are amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In Method 5A, by revising Section 2.1.4 as follows:

2.1.4 Filter Heating System. Any heating (or cooling) system capable of maintaining a sample gas temperature at the exit end of the filter holder during sampling at 42±10 °C (108±18 °F). Install a temperature gauge capable of measuring temperature within 3 °C (5.4 °F) at the exit side of the filter holder so that the sensing tip of the temperature gauge is in direct contact with the sample gas, and the sample gas temperature can be regulated and monitored during sampling. The temperature gauge shall comply with the calibration specifications defined in Section 5. The tester may use systems other than the one shown in APTD–0581.

3. In Method 5A, by adding a new Section 4.4 to Section 4 as follows:

4.4 Quality Control Procedures. A quality control (QC) check of the volume metering system at the field site is suggested before collecting the sample. Use the procedure defined in Method 5, Section 4.4.

4. In Method 5D, by adding Section 4.7 to Section 4 as follows:

4.7 Quality Control Procedures. A (QC) check of the volume metering system at the field site is suggested before collecting the sample. Use the procedure defined in Section 4.4 of Method 5.

5. In Method 6A, by adding Section 4.4 as follows:

4.4 Quality Assurance (QA) Audit Samples. Only when this method is used for compliance determinations, obtain an audit sample set as directed in Section 3.3.6 of Method 6. Analyze the audit samples, and report the results as directed in Section 4.4 of Method 6. Acceptance criteria for the audit results are the same as in Method 6.

6. In Method 6A, by revising Section 7.5 to Section 7 as follows:

7.5 Sample Analysis. Analysis of the peroxide solution is the same as described in Section 4.3. Only when making compliance determinations, conduct an audit of the SO_2 analysis procedure as described in Section 4.4.

7. In Method 6B, by adding Section 4.4 as follows:

4.4 Quality Assurance (QA) Audit Samples. Only when this method is used for compliance determinations, obtain an audit

sample set as directed in Section 3.3.6 of Method 6. Analyze the audit samples at least once for every 30 days of sample collection, and report the results as directed in Section 4.4 of Method 6. The analyst performing the sample analyses shall perform the audit analyses. If more than one analyst performed the sample analyses during the 30-day sampling period, each analyst shall perform the audit analyses and all audit results shall be reported. Acceptance criteria for the audit results are the same as in Method 6.

8. In Method 6B, by revising Section 7 as follows:

7. *Emission Rate Procedure.*

The emission rate procedure is the same as described in Method 6A, Section 7, except that the timer is needed and is operated as described in this method. Only when this method is used for compliance determinations, perform the QA audit analyses as described in Section 4.4.

9. In Method 20, by revising the title as follows:

Method 20—Determination of Nitrogen Oxides, Sulfur Dioxide, and Diluent Emissions from Stationary Gas Turbines

10. In Method 20, by revising Section 1.1 as follows:

1.1 Applicability. This method is applicable for the determination of nitrogen oxides (NO_x), sulfur dioxide (SO_2), and a diluent gas, either oxygen (O_2) or carbon dioxide (CO_2), emissions from stationary gas turbines. For the NO_x and diluent concentration determinations, this method includes: (1) measurement system design criteria; (2) analyzer performance specifications and performance test procedures; and (3) procedures for emission testing.

11. In Method 20, Section 1.2, by replacing "O_2" wherever it appears with "diluent."

12. In Method 20, by adding new Sections 2.1.4 and 2.1.5 as follows:

2.1.4 CO_2 Analyzer. That portion of the system that senses CO_2 and generates an output proportional to the gas concentration.

2.1.5 Data Recorder. That portion of the measurement system that provides a permanent record of the analyzer(s) output. The data recorder may include automatic data reduction capabilities.

13. In Method 20, Section 2.7, by replacing "continuous monitoring system" with "measurement system."

14. In Method 20, Sections 4.1 and 4.1.5, by replacing "O_2" wherever it appears with "diluent."

15. In Method 20, Section 3.3, by replacing "3" with "30."

16. In Method 20, Section 4.1.11, by replacing "Data Output" with "Data Recorder."

17. In Method 20, by revising Section 4.1.9 as follows:

4.1.9 Diluent Gas Analyzer. An analyzer to determine the percent O_2 or CO_2 concentration of the sample gas.

18. In Method 20, by revising Section 4.4 and adding new Sections 4.4.1 and 4.4.2 as follows:

4.4 Diluent Calibration Gases.

4.4.1 For O_2 calibration gases, use purified air at 20.9 percent O_2 as the high-level O_2 gas. Use a gas concentration between 11 and 15 percent O_2 in nitrogen for the mid-level gas, and use purified nitrogen for the zero gas.

4.4.2 For CO_2 calibration gases, use a gas concentration between 8 and 12 percent CO_2 in air for the high-level calibration gas. Use a gas concentration between 2 and 5 percent CO_2 in air for the mid-level calibration gas, and use purified air (<100 ppm CO_2) as the zero level calibration gas.

19. In Method 20, Section 5.1, by replacing "O_2" wherever it appears with "O_2 or CO_2."

20. In Method 20, Sections 5.2, 5.3, 5.3.2, and 5.4, by replacing "O_2" wherever it appears with "diluent."

21. In Method 20, Section 5.3.2, by removing the "±" symbol. The phrase shall be ". . . gases within 2 percent . . ."

22. In Method 20, by revising Section 6.1.2 as follows:

6.1.2 A preliminary O_2 or CO_2 traverse is made for the purpose of selecting sampling points of low O_2 or high CO_2 concentrations, as appropriate for the measurement system. Conduct this test at the turbine operating condition that is the lowest percentage of peak load operation included in the test program. Follow the procedure below, or use an alternative procedure subject to the approval of the Administrator.

23. In Method 20, Sections 6.1.2.2 and 6.1.2.3, by replacing "O_2" wherever it appears with "diluent."

24. In Method 20, by revising Section 6.1.2.4 as follows:

6.1.2.4 Selection of Emission Test Sampling Points. Select the eight sampling points at which the lowest O_2 concentrations or highest CO_2 concentrations were obtained. Sample at each of these selected points during each run at the different turbine load conditions. More than eight points may be used, if desired, providing that the points selected as described above are included.

25. In Method 20, Sections 6.2, 6.2.2, and 6.3, by replacing "O_2" wherever it appears with "diluent."

26. In Method 20, Figures 20-6 and 20-8, by replacing "Oxygen" and "O_2" wherever they appear with "Diluent."

27. In Method 20, by revising Section 7 as follows:

7. *Emission Calculations.*

7.1 Moisture Correction. Measurement data used in most of these calculations must be on a dry basis. If measurements must be corrected to dry conditions, use the following equation:

$$C_d = \frac{C_w}{1 - B_{ws}}$$

Eq. 20-1

where:

C_d = Pollutant or diluent concentration adjusted to dry conditions, ppm or percent.

C_w = Pollutant or diluent concentration measured under moist sample conditions, ppm or percent.

B_{ws} = Moisture content of sample gas as measured with Method 4, reference method, or other approved method, percent/100.

7.2 CO_2 Correction Factor. If pollutant concentrations are to be corrected to 15 percent O_2 and CO_2 concentration is measured in lieu of O_2 concentration measurement, a CO_2 correction factor is needed. Calculate the CO_2 correction factor as follows:

7.2.1. Calculate the fuel-specific F_o value for the fuel burned during the test using values obtained from Method 19, Section 5.2, and the following equation.

$$F_o = \frac{0.209\ F_d}{F_c}$$

Eq. 20-2

where:

F_o = Fuel factor based on the ratio of oxygen volume to the ultimate CO_2 volume produced by the fuel at zero percent excess air, dimensionless.

0.209 = Fraction of air that is oxygen, percent/100.

F_d = Ratio of the volume of dry effluent gas to the gross calorific value of the fuel from Method 19, dsm^3/J ($dscf/10^6$ Btu).

F_c = Ratio of the volume of carbon dioxide produced to the gross calorific value of the fuel from Method 19, dsm^3/J ($dscf/10^6$ Btu).

7.2.2. Calculate the CO_2 correction factor for correcting measurement data to 15 percent oxygen, as follows:

$$X_{CO_2} = \frac{5.9}{F_o}$$

Eq. 20-3

where:

X_{CO_2} = CO_2 Correction factor, percent.

5.9 = 20.9 percent O_2 − 15 percent O_2, the defined O_2 correction value, percent.

7.3 Correction of Pollutant Concentrations to 15 percent O_2. Calculate the NO_x and SO_2 gas concentrations adjusted to 15 percent O_2 using Equation 20-4 or 20-5, as appropriate. The correction to 15 percent O_2 is very sensitive to the accuracy of the O_2 or CO_2 concentration measurement. At the level of the analyzer drift specified in Section 3, the O_2 or CO_2 correction can exceed 5 percent at the concentration levels expected in gas turbine exhaust gases. Therefore, O_2 or CO_2 analyzer stability and careful calibration are necessary.

7.3.1 Correction of Pollutant Concentration Using O_2 Concentration. Calculate the O_2 corrected pollutant concentration, as follows:

$$C_{adj} = C_d \frac{5.9}{20.9 - \%O_2} \quad \text{Eq. 20-4}$$

where:

C_{adj} = Pollutant concentration corrected to 15 percent O_2 ppm.

C_d = Pollutant concentration measured, dry basis, ppm.

$\%O_2$ = Measured O_2 concentration dry basis, percent.

7.3.2 Correction of Pollutant Concentration Using CO_2 Concentration. Calculate the CO_2 corrected pollutant concentration, as follows:

$$C_{adj} = C_d \frac{X_{CO_2}}{\%CO_2} \quad \text{Eq. 20-5}$$

where:

$\%CO_2$ = Measured CO_2 concentration measured, dry basis, percent.

7.4 Average Adjusted NO_x Concentration. Calculate the average adjusted NO_x concentration by summing the adjusted values for each sample point and dividing by the number of points for each run.

7.5 NO_x and SO_2 Emission Rate Calculations. The emission rates for NO_x and SO_2 in units of pollutant mass per quantity of heat input can be calculated using the pollutant and diluent concentrations and fuel-specific F-factors based on the fuel combustion characteristics. The measured concentrations of pollutant in units of parts per million by volume (ppm) must be converted to mass per unit volume concentration units for these calculations. Use the following table for such conversions:

CONVERSION FACTORS FOR CONCENTRATION

From	To	Multiply by
g/sm³	ng/sm³	10^6
mg/sm³	ng/sm³	10^3
lb/scf	ng/sm³	1.602×10^{11}
ppm (SO_2)	ng/sm³	2.660×10^6
ppm (NO_x)	ng/sm³	1.912×10^6
ppm (SO_2)	lb/scf	1.660×10^{-7}
ppm (NO_x)	lb/scf	1.194×10^{-7}

7.5.1 Calculation of Emission Rate Using Oxygen Correction. Both the O_2 concentration and the pollutant concentration must be on a dry basis. Calculate the pollutant emission rate, as follows:

$$E = C_d F_d \frac{20.9}{20.9 - \%O_2} \quad \text{Eq. 20-6}$$

where:

E = Mass emission rate of pollutant, ng/J (lb/10^6 Btu).

7.5.2 Calculation of Emission Rate Using Carbon Dioxide Correction. The CO_2 concentration and the pollutant concentration may be on either a dry basis or a wet basis, but both concentrations must be on the same basis for the calculations. Calculate the pollutant emission rate using Equation 20-7 or 20-8:

$$E = C_d F_c \frac{100}{\%CO_2} \quad \text{Eq. 20-7}$$

$$E = C_w F_c \frac{100}{\%CO_{2w}} \quad \text{Eq. 20-8}$$

where:

C_w = Pollutant concentration measured on a moist sample basis, ng/sm³ (lb/scf).

$\%CO_{2w}$ = Measured CO_2 concentration measured on a moist sample basis, percent.

28. In Method 20, in Section 8, by changing designations 8.1 and 8.2 to 1. and 2., respectively, and by adding Citation 3 to Section 8 as follows:

3. Shigehara, R.T., R.M. Neulicht, and W.S. Smith. Validating Orsat Analysis Data from Fossil Fuel-Fired Units. Emission Measurement Branch, Emission Standards and Engineering Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. June 1975.

29. In Method 20, by replacing Figure 20-1 with new Figure 20-1 in Method 20.

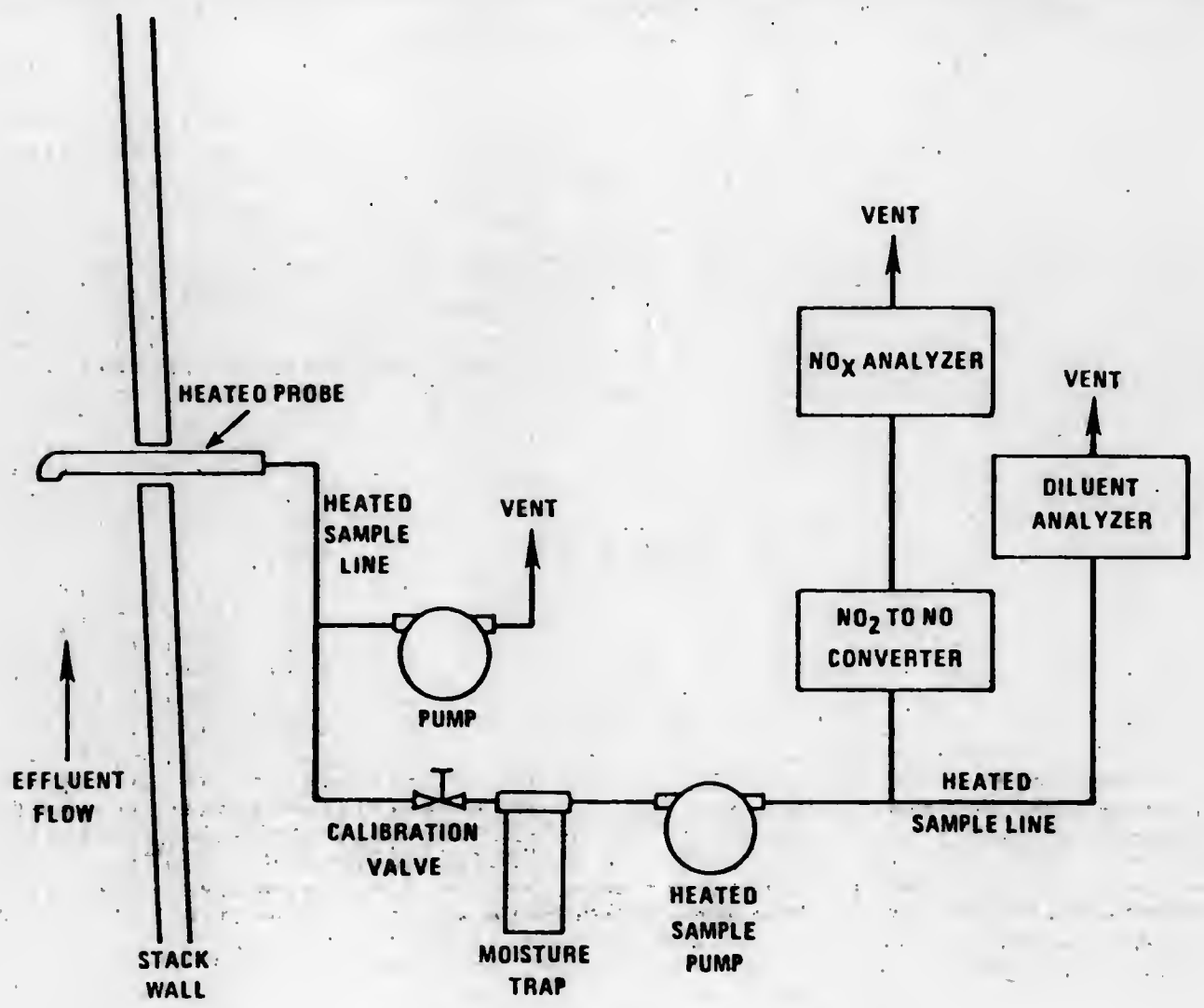


Figure 20-1. Measurement system design.

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BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3078-4]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at two particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: September 12, 1986.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The reference number for this docket is "F-86-CPEF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On July 30, 1986, EPA proposed to exclude specific wastes generated by three facilities, including: (1) Capitol Products Corporation, located in Harrisburg, Pennsylvania (see 51 FR 27217); and (2) Continental Can Company, located in Olympia, Washington (see 51 FR 27218).[1] These actions were taken in

[1] In the same **Federal Register** notice, the Agency also proposed to exclude the waste generated by the Whirlpool Corporation, located in Findlay, Ohio (see 51 FR 27220). This facility generates wastewater treatment sludges from electroplating operations (EPA Hazardous Waste No. F006). The Agency is currently re-evaluating its listing criteria for this particular wastestream, and therefore, will address the proposed decision on Whirlpool's petition in a future **Federal Register** notice.

response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final two of the three proposals and to make our decisions effective immediately. More specifically, today's rule allows two of these facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[2] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's Federal Register have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. The petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[3] To date only one State (Georgia) has received approval for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs, petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners: Capitol Products Corporation, Harrisburg, Pennsylvania; Continental Can Company, Olympia, Washington.

I. Capitol Products Corporation

A. Proposed Exclusion

Capitol Products Corporation (Capitol) has petitioned the Agency to exclude its wastewater treatment sludge (clarifier sludge) from EPA Hazardous Waste No. F019, based on the low concentration and immobilization of the listed consituents in the waste. Data submitted by Capitol substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Capitol indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 27217–27218, July 30, 1986, for a more detailed explanation of why EPA proposed to grant Capitol's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Capitol for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the clarifier sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Capitol Products Corporation for its dewatered wastewater treatment sludge (clarifier sludge) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. FO19, generated at its Harrisburg, Pennsylvania facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[4] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Continental Can Company

A. Proposed Exclusion

Continental Can Company (Continental) has petitioned the Agency to exclude its dewatered wastewater treatment sludge (vacuum filtration sludge) from EPA Hazardous Waste No. FO19, based on the low concentration and immobilization of the listed constituents of concern in this waste. Data submitted by Continental substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Continental indicate that no other hazardous constituents are present in this waste, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 27218–27220, July 30, 1986, for a more detailed explanation of why EPA proposed to grant Continental's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Continental for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vacuum filtration sludge is non-hazardous and as such should be excluded from hazardous

[2] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[3] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[4] The current exclusion applies only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new petition is granted.

waste control. The Agency, therefore, is granting a final exclusion to Continental Can Company for its dewatered wastewater treatment sludge (vacuum filtration sludge) resulting from the chemical conversion coating of aluminium, listed as EPA Hazardous Waste No. FO19, generated at its Olympia, Washington facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[5] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

III. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increase, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e., small businesses, small organizations, and small governmental jurisdictions). The Adminsitrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.*

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: September 4, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 as indicated:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	• • •
Capitol Products Corp.	Harrisburg, PA.	Dewatered wastewater treatment slugdges (EPA Hazardous Waste No. FO19) generated from the chemical conversion coating of aluminum after September 12, 1986.
Continental Can Co.	Olympia, WA.	Dewatered wastewater treatment sludges (DPA Hazardous Waste No. FO19) generated from the chemical conversion coating of aluminum after September 12, 1986.
•	•	• • •

[FR Doc. 86–20584 Filed 9–11–86; 8:45 am]

BILLING CODE 6560–50–M

[5] See footnote 4.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Final Frameworks for Late Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits and other options for the 1986–87 migratory bird hunting season. The earliest of these seasons generally commences on or about October 1, 1986, and include most of those for waterfowl.

The Service annually prescribes hunting regulations frameworks to the States. The effects of this final rule are to facilitate the selection of hunting seasons by the States and to further the establishment of the late-season migratory bird hunting regulations for 1986–87. State selections will be published in the **Federal Register** as amendments to §§ 20.104 through 20.107 and § 20.109 of Title 50 CFR Part 20.

EFFECTIVE DATE: This rule takes effect on September 12, 1986.

ADDRESSES: Send State season selections to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received on the proposed late-season frameworks are available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC. 20240. Telephone (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703–711), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 21, 1986, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (51 FR 9854) proposals to amend 50 CFR Part 20, with comment periods ending June 19, July 14 and August 25, 1986, respectively, for the 1986–87 Alaska, Hawaii, Puerto Rico and Virgin Islands hunting seasons; other early hunting seasons; and the late hunting seasons frameworks. That document dealt with the establishment of hunting seasons, shooting hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. A supplemental proposed rulemaking for both the early- and late-season frameworks appeared in the **Federal Register** dated June 6, 1986 (51 FR 20677).

On July 3, 1986, the Service published for public comment in the **Federal Register** (51 FR 24415) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On July 25, 1986, the Service published in the **Federal Register** (51 FR 26712) a fourth document containing final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 13, 1986, the Service published in the **Federal Register** (51 FR 28946), a fifth document containing final frameworks for other early seasons for migratory bird hunting from which State wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for the 1986–87 season. On August 15, 1986 (51 FR 29274) a sixth document containing proposed frameworks for late season migratory bird hunting regulations was published. On August 28, 1986, the Service published in the **Federal Register** (51 FR 30646) a seventh document consisting of a final rule amending subpart K of Title 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, and common moorhen and purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; Canada geese in September in portions of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and extended falconry seasons. This document is the eighth in the series and establishes final frameworks for late-season migratory bird hunting regulations for the 1986–87 season.

Migratory Bird Hunting on Indian Reservations

In the March 21, 1986, **Federal Register** (at 51 FR 9858 and 9860), the Service proposed to amend § 20.1 (Scope of regulations) of 50 CFR Part 20 by adding a paragraph to clarify the conditions under which a memorandum of understanding may be employed to reach agreement on migratory bird hunting regulations for members of Indian tribes that have reserved hunting rights on their reservations or on off-reservation trust lands. Following review of comments received, the Service has concluded that the guidelines published on September 3, 1985, (at 50 FR 35762) should provide appropriate guidance in reaching such agreement. Therefore, at this time, the Sevice defers amending 50 CFR Part 20 for this purpose. The Service intends, however, to continue consulting with interested tribes to reach mutual agreement on migratory bird hunting regulations for tribal members, and agreements recently were reached with the Mille Lacs and White Earth Bands of the Minnesota Chippewa Indian Tribe for sustenance regulations for the 1986 hunting season. The agreements permit a mid-September opening of the waterfowl season, and they allow some flexibility in bag limits, under the conditions spelled out in the guidelines. The Service believes that the harvest of waterfowl and other migratory game birds by tribal members will be the same as in past years and is pleased that it was possible to reach mutual agreement on sustenance hunting regulations with these two Chippewa Indian Bands.

Review of Public Comments and the Service's Response

Written Comments Received

In the **Federal Register** dated June 6, 1986, (at 51 FR 20677), the Service responded to comments received up to that time on proposed late season frameworks. Fifteen statements made at the public hearing on proposed late hunting season frameworks and 20 additional written comments were summarized and responded to in the **Federal Register** dated August 15, 1986 (at 51 FR 29274). Since then 81 written comments have been received. In several cases, more than one comment was received from the same respondent, and in some others views were offered on more than one regulatory subject. The new comments are summarized and responded to according to the numbered regulatory topics identified in the **Federal Register** dated March 21, 1986 (51 FR 9854).

1. Shooting Hours

Defenders of Wildlife expressed the hope that their concerns about "predawn" hunting hours will be more adequately addressed in the forthcoming supplemental environmental impact statement (SEIS) on the issuance of regulations for sport hunting migratory birds.

Response. The Service will review the shooting hours issue in the SEIS on sport hunting scheduled for development in 1987.

2. Frameworks for ducks in Conterminous United States—Outside Dates, Season Length and Bag Limits

(a) Defenders of Wildlife, by letter of August 25, 1986, expressed its suport of the Service's proposed 1986–87 duck hunting regulations frameworks which in essence continue the conservative duck harvest management strategy of 1985–86.

(b) A California hunter questioned the necessity of the additional restriction on mallard bag limits in California because mallard production there was reportedly excellent in 1986 and because California hunters shoot mainly California-produced mallards. He also noted that in the Klamath Basin where he must he would be unduly restricted by the 4-mallard limit because only mallards are available there and he therefore would be denied the opportunity of harvesting a fifth duck.

Response. The Service's information on breeding duck populations in California is provided by the California Department of Fish and Game (CDFG). CDFG reported that the 1986 breeding populations of total ducks and mallards, respectively, were 27% and 26% below those of 1985. California-produced mallards are important to the California harvest, with some regions of the State benefiting to a greater extent than others. However, information on distribution and derivation of harvests indicate that about half of California's mallard harvest is derived from birds coming from outside the State. While California-produced mallards may or may not benefit from these restrictive limits, that segment of the population coming from Prairie Canada which Californians shoot does warrant this additional protection. In those areas where one species of duck comprises a majority of the bag, species-specific regulations are apt to be the most effective in achieving their intended

results—reducing the mallard harvest in this particular situation.

(c) The California Waterfowl Association (CWA), the Waterfowl Habitat Owners Alliance, the Oregon Duck Hunters Association and 25 individuals from California, several of which were commenting on behalf of waterfowl hunting clubs, recommended that frameworks governing duck hunting regulations in the Pacific Flyway be the same as last year. CWA reasoned that the additional restrictions in numbers of mallards and pintails over last year is unwarranted because populations of the two species showed increases over last year and because the Pacific Flyway more than achieved the sought-for harvest reduction in 1985 when comparing it with 1983 instead of 1984. Many of those commenting also expressed concern that restrictive regulations may reduce the incentive of some private landowners to provide wintering habitat for waterfowl.

Response. The Service is cognizant of the restrictive measures voluntarily taken by some Pacific Flyway States during the 1984–85 season, with some of those restrictions being more substantive than others. The Service notes that there were reductions in harvests from 1983 to 1984 among most of the non-targeted species as well as in those States that did not take restrictive measures, suggesting that much of the reductions in harvests were attributable to the then second lowest fall flight into the Pacific Flyway. While there have been improvements in both breeding populations and the fall flight over 1985, those for 1986 are still the second lowest on record and those from southern Alberta, an area of considerable importance to the Pacific Flyway, are at the lowest level in our records. The Service recognizes the potential loss, due to restrictive regulations, of public support for waterfowl conservation, but the immediate needs of the resource must be considered first. Every effort has been made to provide opportunities for recreational use of the waterfowl resource to the extent compatible with sound management.

(d) In the Atlantic Flyway, the States of Maine, New Hampshire, Vermont, Massachusetts and Connecticut submitted comments that opposed the proposed restrictions on mallards for the New England States in 1986–87. These objections were based largely on the belief that the harvest of mallards in the New England States has little impact on western mallard populations; that mallards in the northeast are increasing and do not need protecting; and that restrictions on mallards could be detrimental to black ducks by either increasing harvest directly or by increasing rates of hybridization. They argued there is no biological justification for reducing mallard harvest in New England and asked that the Service exempt the six New England States from mallard daily bag restrictions.

Response. The Service acknowledged the concerns expressed by the Northestern States regarding mallard regulations during the 1985–86 season in the September 5, 1985, **Federal Register** (50 FR 36200). In view of the arguments, the Service established a Northeast Management Unit on an experimental basis but specifically requested that more information be provided in the coming year to better define the management objectives and boundaries of the Unit. This request was reiterated in the June 6, 1986, **Federal Register** (51 FR 20679) which further asked that a detailed proposal containing justification, management objectives and an evaluation plan be submitted to the Service prior to the late-season regulations meeting. In the absence of such a proposal or additional information on this subject, the Northeast Management Unit was not continued for 1986–87. Although the Unit was not specifically requested for the 1986–87 season, similar documentation would be necessary for the Service to exempt the six New England States from the mallard restrictions being applied to the Atlantic Flyway. The Service recognzies different mallard stocks in the Atlantic Flyway, but without better population and banding data, the impacts from a variety of species-specific regulations throughout the Flyway cannot be adequately evaluated. While an increase in the harvest of mallards in the New England States may have merit to reduce detrimental effects on black ducks and to reduce the number of nuisance "Park" mallards, a management plan with goals and objectives is needed. The Atlantic Flyway Council has acknowledged the need for a stronger data base and a management plan for mallards, especially in the Northeast. The issue is not solely protection of a few prairie-nesting mallards, but rather appropriate management of a complex resource. Any consideration of differntial species regulations within a flyway should proceed through a coordinated flyway plan, an experimentation phase, and evaluation prior to being considered for operational status.

(e) A letter from a Massachusetts biologist presented mallard distribution and derivation data from surveyed and unsurveyed areas, band recovery information and harvest results in support of special mallard regulations for the New England States. He indicated that different bag limits on wood ducks and Canada geese by region in the Flyway has set a precedent for independent bag limits for mallards in New England. He stated that since the New England States harvest few prairie mallards and are outside the principal migration corridor of mallards produced in eastern Ontario and western Quebec, mallard bag restrictions for the Northeast place unnecessary restrictions on hunters and can not be biologically justified. Further, he suggested that affording additional protection to mallards in New England is counter productive to efforts to increase black duck populations and can only exacerbate the problem of hybridization.

Response. The Service appreciates the information presented to justify separate mallard regulations in New England, but again emphasizes the need for a management plan or a proposal which specifically sets goals and objectives, and procedures to evaluate a particular mallard harvest strategy (see preceding comments above). Although considerable biological information has been analyzed by State and Federal biologists regarding the status of mallards in the Northeast, no formal proposal or plan has emerged. Further, the Service points out the fact that extensive documentation was a prerequisite before the establishment of special seasons on wood ducks and other waterfowl or before the institution of separate managment units in other Flyways. To establish different mallard regulations in the Northeast, separate from the remainder of the Flyway without a well designed plan would be inconsistent with normal requirements for special seasons and would preclude evaluation of the impacts. The impact of mallard restrictions, including only one hen in the bag, on black duck populations cannot be fully assessed. However, since the harvest on mallards in the Northeast is small and few complete mallard bags are reported, impacts to black ducks should be small.

(f) A letter from a Connecticut biologist objected to the proposed Flyway-wide mallard bag limit restriction. He argued that such restrictions were not warranted for the New England States, particularly since the total mallard harvest that occurs in New England from populations of concern is small. He stated that data showing mallard harvest by order in the daily bag suggests the difference in bag size from 5 to 3 results in the savings of only few mallards derived from the mid-

continent area. Also, he indicated that mallard populations are increasing in the Northeast, primarily due to local production and that mallard restrictions may encourage hunters to shift pressure to black ducks.

Response. The Service notes that the comments presented by the Connecticut biologist are similar to those received from Massachusetts and refers to the response given to the Massachusetts' biologist's comments.

(g) A letter from a wildlife biologist from Rhode Island objected to the proposed 1986–87 regulations frameworks for mallard bag limits in the New England States. He indicated that mallard populations in New England and eastern Canada are increasing, and the increasing numbers are causing additional pressure on the region's black duck populations through habitat competition and hybridization. He recommended the New England States be exempt from any restrictions on mallard harvest.

Response. The Service notes these comments are similar to those previously addressed and the Massachusetts response applies.

(h) A letter received from the Finger Lakes and Western New York Waterfowl Association expressed dissatisfaction and disagreement concerning mallard restrictions imposed on the Atlantic Flyway during the 1985–86 season and those proposed for 1986–87. They note that the percentage of mallard band recoveries from western reference areas during 1950–69 and 1975–84 in the Atlantic was 3.3% and 2.8%, respectively, whereas during the same years in the Mississippi Flyway the percentage of recoveries from western reference areas was 82.4% and 72.1%, respectively. Yet, regulations frameworks between the two Flyways are similar. Therefore, they maintain that the Atlantic Flyway's harvest has a minimal impact on prairie mallards and does not justify the imposition of mallard restrictions to the same extent as in other Flyways. Also, based on unweighted recovery data from western reference areas, they suggested that the high male to female recovery ratio in the Atlantic Flyway demonstrates that mallard hen restrictions are not justified. Further, they point out that mallard restrictions will serve to transfer pressure to black ducks as hunters are not permitted a four mallard bag. They concluded, based on their analysis and interpretation of the data available, that the Atlantic Flyway is being made to accept a disproportionate burden of the mallard harvest restrictions.

Response. The Service has long recognized that duck populations from the surveyed areas are not distributed equally among Flyways and States within Flyways. Also, the Service has long been aware that the Atlantic Flyway receives fewer mallards from the surveyed areas than other Flyways. Nevertheless, during the development of the 1985–86 duck hunting frameworks the Service asked all Flyways to achieve a 25% reduction in their harvest of ducks in general and in particular, mallards and pintails entering each Flyway. These restrictions were imposed on all Flyways since breeding stocks had declined to record low levels and these population segments, no matter how small, required protection and rebuilding. In the Atlantic Flyway, mallards, pintails, gadwalls, wigeons, etc. reached record low levels during the 1985 winter inventory. Thus, these restrictions were designed to protect population segments having migration and wintering affinities to each particular Flyway rather than to specifically restrict in the Flyway having the largest component of birds derived from the surveyed area. For example, imposing restrictions in the Mississippi Flyway while exempting the Atlantic Flyway from restrictions would have no influence on rebuilding populations important to Atlantic Flyway States.

Management has made great strides but we remain incapable of sorting out all distinctive waterfowl populations and monitoring the annual recruitment and mortality rates of these populations. In the absence of such capabilities, extensive documentation must be required before differential regulations can be designed for regions within a particular Flyway. In the case of the Atlantic Flyway, a considerable proportion of the mallard harvest is derived from unsurveyed areas. Therefore, given the low population status of many species in the Flyway, and without information to document breeding populations and annual productivity and better data to assess mortality factors from outside the surveyed areas, the Service believes a conservative harvest strategy is justified in the Atlantic Flyway.

The Service notes the information presented on sex ratios of recoveries from western reference areas, but without weighting these data and determining differential vulnerability, little meaningful information can be derived. However, hen restrictions are justified since it is the female component that is needed to rebuild population segments migrating to the Atlantic Flyway. The impacts of mallard restrictions on black ducks are reviewed in the response to the Massachusetts biologist.

(i) By letter dated May 29, 1986, Florida notified the Service of their intent to seek a reduction in the point value of ring-necked ducks from 35 to 20 points in the Atlantic Flyway. A proposal and supporting justification accompanied the letter. Subsequent correspondence from Florida dated July 7, July 24 and August 22, 1986, provided additional information or support for the change. The State maintains there is evidence that ring-necked ducks exhibit a long term population growth in both of the major reference areas contributing to the Atlantic Flyway, that harvest surveys suggest a stable or increasing population of ring-necked ducks and that apparent declines in ring-necked ducks based on winter counts are the result of changes in survey effort and are not evidence of real change in the population. Florida does not view the proposed point value change for ring-necked ducks as a liberalization but as a correction of an unwarranted point value change effected in 1985. Florida also indicated that all States operating under conventional bag limits may now take 4 ring-necked ducks per day instead of the 3 permitted under the point system option. Finally, Florida noted the absence of a Service response in the proposed late-season frameworks published August 15, 1986 (at 51 FR 29274).

Response. The Service inadvertently omitted the Florida ring-necked duck material from the proposed late season frameworks distributed for comment. The Service did, however, respond to Florida's initial letter and did seek Mississippi Flyway Council review of same. The matter was also discussed by the Service Regulations Committee and Flyway Consultants at the July 31, 1986 meeting. The Service initially indicated the proposed point value change would likely increase the harvest of ring-necked ducks should the point value change be effected in both the Mississippi and Atlantic Flyways. Florida's recommendation that the change apply only to the Atlantic Flyway is not feasible because the ring-necked ducks in question are common to the two eastern Flyways in terms of breeding areas and harvest. A second concern of the Service is the high band recovery rates typical of ringnecks. The full meaning of this is not clear but caution seems warranted. The Service notes the Atlantic Flyway Council supported Florida's request for a point value change but recommended ring-necked ducks be in a 25 point category. In contrast, the Mississippi Flyway Council recommended no change in the point value of the ring-necked duck

during the 1986–87 season. In a letter dated July 23, 1986, a representative of the Canadian Wildlife Service (CWS) noted that the source of many Florida ring-necked ducks was Ontario, that recent studies indicated the productivity of ringnecks in Ontario was decreasing, and suggested this was not a good time to consider measures that might increase harvest.

Further, the fact that four ringnecks may be taken under conventional regulations does not translate directly to a 4-bird point system bag. The effect of a potential 5-duck bag under the point system in contrast to 4 ducks per day under conventional bag limits is one complication. Another is the fact that most Mississippi Flyway States select the point system in contrast to the Atlantic Flyway situation.

The Service recognizes Florida's efforts in assembling information in support of the point value change for ring-necked ducks. Still, the Service does not support a reduced point value in the Atlantic Flyway only, and does not support a uniform reduced point value for ring-necked ducks because of the potential for an increased harvest. The Service believes more information is needed on the status and productivity of the ring-necked duck on the breeding grounds, the status of the species on the wintering grounds, and a better understanding of high band recovery rates before any liberalization should be considered. Because of these concerns, the frameworks in this final rule show no change in the point value of ring-necked ducks in 1986.

(j) An outdoor writer from Illinois supported the continuation this season of the restrictive frameworks established in 1985. He recommended that the Service seek further protection for the hen mallard in order to rebuild populations of the species.

Response. The frameworks for the 1986–87 duck seasons and bag limits are as restrictive as those of last season. The support expressed above for such regulations is appreciated. In all flyways, not more than one hen mallard may be included in the daily bag. Only a closure on hen mallards would be more restrictive and the Service believes the one-hen daily limit is the most practical approach to providing adequate protection for hen mallards.

(k) Letters have been received from 25 Congressional Representatives of various States in the Atlantic Flyway requesting that the Service provide an extra hunting day for each day lost to those States in the Flyway that have a ban on Sunday hunting.

Response. It is noted that the rest-days that result because of no Sunday hunting do not represent a reduced harvest of waterfowl. In fact, rest-days are a well recognized harvest management technique and many gunning clubs, private properties, and State-managed areas regularly institute rest-days and half-day shooting to hold birds and prolong and increase their harvest opportunities. Under these circumstances it does not appear that States that ban Sunday hunting are at a disadvantage in terms of waterfowl harvest. The Service has addressed this issue previously and continues to believe that the loss of hunting opportunity because of a State restriction is a matter for local resolution.

(l) By letter dated August 6, 1986, a Congressional Representative from Georgia requested the Service consider the resolution of the Georgia Board of Natural Resources calling for an extension of the 1986–87 waterfowl season framework closing date to January 31, 1987.

Response. The Service noted the Board's resolution and responded to it in the August 15, 1986, Federal Register (51 FR 29274).

(m) An outdoor writer from Florida has requested a later framework closing date for duck hunting in Florida than the 1985–86 framework closing date of January 13, 1986.

Response. The frameworks of this final rule provide for a closing date for duck hunting in Florida no later than January 18, 1987.

(n) The Chairman of the Massachusetts Fisheries and Wildlife Board, by letter dated August 18, 1986, noted it appeared that the Service predetermined what the waterfowl frameworks would be prior to Council deliberations. He cited past examples of Massachusetts wildlife resource responsibility. He noted waterfowl frameworks were more restrictive than a year ago and suggested that the Service needs to be more responsive to Council and State recommendations.

Response. The Service presented a report on the current status of waterfowl in 1986 at the July 25, 1986, meeting in Denver. The Service did note an improvement in fall flights compared to 1985 but cautioned that the flight expected in 1986 would be lower than any year other than 1985. The Service advocated a harvest strategy for the 1986–87 season that would maintain the reduced harvest rate effected on mallards and all ducks in 1985. The frameworks established resulted from a general acceptance of this harvest strategy by the four flyway Councils and were not the result of any predetermined frameworks developed by the Service. The waterfowl frameworks in the Atlantic Flyway as a whole are similar to last year but are more restrictive on mallards in the former Northeast Unit. This is unfortunate but, as discussed earlier in the response to item 2.(d), is due to the absence of an agreed upon management plan for mallards in the Atlantic Flyway. The Service again urges the Atlantic Flyway to develop such a plan. Finally, the Service acknowledges Massachusetts has developed a record of responsible wildlife management. It is the Service's intent to be as responsive as possible to Council and State recommendatidons but notes that resource responsibilities and concerns with many national and flyway problems does place limits on our actions.

3. American Black Ducks

(a) Massachusetts has requested the option of continuing with a 2 black duck daily bag limit in the Coastal Zone. They argue that by restricting the frameworks to 1 black duck daily the Service will abrogate their previous harvest reduction agreement and the State must terminate their 10-day closure to maintain reasonable harvest opportunity in their Coastal Zone. They assert that opportunities to hunt black ducks will increase by 29% by adding extra days. They fear that the additional hunting opportunities will offset the harvest reduction expected by reducing the bag and cause the overall harvest of black ducks to increase.

Response. The 1985–86 frameworks eliminated the black duck option for all areas of the Atlantic Flyway, except for the Northeast Management Unit. The 1986–87 regulatory frameworks are designed to achieve greater uniformity among States in the Atlantic and Mississippi Flyways by permitting the taking of only 1 black duck daily. Most States have generally met or exceeded the goal of reducing harvest by 25% from the 1977–81 average level over the past three years. States are asked to continue necessary season length and other restrictions to insure this goal is met in the coming hunting season. Since the 1986–87 frameworks no longer allows for different regulatory options in the New England States, the Service does not support a 2-bird daily bag on black ducks. However, in spite of these regulatory changes, the Service expects States to meet their harvest reduction responsibilities for black ducks. The effectiveness of the 1986–87 regulations will be assessed following the hunting season and any necessary changes incorporated in future regulations.

(b) By letter dated August 18, 1986, the Chairman of the Massachusetts Fisheries and Wildlife Board stated his belief that the one-black duck limit was overly restrictive in Massachusetts and limited the State's management flexibility.

Response. See preceding response.

(c) The Humane Society of the United States (HSUS) commented that the population status of black ducks continues to deteriorate in spite of efforts to reduce the harvest. HSUS claims that the 25% harvest reduction program has failed to make measurable progress in either halting the population decline or significantly reducing the kill rate. They urge the Service to impose additional restrictions this year by closing the season on black ducks.

Response. With respect to the black duck harvest reduction program, the Service disagrees with the assertion that the program has failed to make measurable progress towards halting the population decline of black ducks. Results to date show winter populations have stabilized in the last three years and that the harvest rates have been reduced. Progress towards our goals has been achieved and can be measured. Three years of a five-year program have been completed. The Service proposes to continue with the current harvest reduction program and to evaluate the results annually. Additional restrictions will be developed as necessary in subsequent years.

(d) The Defenders of Wildlife expressed concern that black duck populations have not responded to the harvest reduction program and asked the Service to take a more responsive and aggressive stand to protect the species.

Response. See the Service's response to similar comments submitted by The Humane Society of the United States.

(e) An outdoor writer from Illinois encouraged the Service to seek further regulatory protection for black ducks.

Response. As stated above, the Service believes progress has been made towards halting the population decline of black ducks, and proposes to continue with the current harvest reduction program and evaluate its results before imposing additional restrictions.

12. Canvasback and Redhead Ducks

(a) North Carolina, by letter dated August 6, 1986, requested that if a canvasback season is offered in the Atlantic Flyway, the season frameworks for North Carolina be changed to include the entire State, and the season length be reduced from 11 days to 6 days.

Response. The Service gave notice in the August 15, 1986, **Federal Register** (51 FR 29274) that it proposed to not open the hunting season on canvasbacks in the Atlantic, Mississippi and Central Flyways in 1986 because the Eastern Population is below the minimum 3 year average breeding population level identified in the 1983 environmental assessment on canvasback hunting. This is the second consecutive year the population has been below the minimum. The canvasback hunting closure is included in the frameworks of this final rule.

(b) In commenting on the proposed 1986–87 waterfowl hunting regulations frameworks (August 15, 1986, **Federal Register**, 51 FR 29274), the National Wildlife Federation and Defenders of Wildlife expressed their support of the canvasback hunting closure in the Atlantic, Mississippi and Central Flyways.

13. Duck Zones

(a) By letter dated July 31, 1986, Massachusetts submitted an evaluation of its duck zoning experiment and requested the zones be designated operational.

Response. In the March 2 and June 6, 1986, **Federal Register** documents (51 FR 9854 and 20677, respectively) the Service announced its belief that there should be no new duck hunting zones, or modification of existing zones, until the cumulative effects of such zones can be evaluated. Therefore, the Massachusetts zones will continue to be considered experimental and will be evaluated based on the State's previously collected data.

(b) Michigan, by letter dated August 6, 1986, submitted additional information in support of its request for a duck zone boundary change in the Lower Peninsula. The State indicated the change will satisfy their long-range duck harvest management strategy, and the boundary would not be changed in future years.

Response. In the August 15, 1986, **Federal Register** (51 FR 29274) the Service indicated it was proposing to retain the 1985 duck zone structure in Michigan because the boundary change requested by the State and endorsed by the Upper Region Regulations Committee of the Mississippi Flyway Council was viewed as a major change. The Service has reviewed the supporting harvest information provided by the State and has considered the similarity of the requested boundary to that which was in place before the current zone structure. On the basis of this information, the frameworks of this final rule reflect the Service's endorsement of Michigan's request.

14. Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length and Bag Limits

(a) By letters received August 4 and August 25, 1986, Massachusetts modified its earlier request for changes in the Canada goose hunting season frameworks (see June 6, 1986, **Federal Register**, 51 FR 20677) by limiting its request for a 90-day season to only a portion of the Coastal Zone and by withdrawing its request for bag limit liberalizations. The August letter included additional supporting information for the State's request. By letter dated August 18, 1986, the Chairman of the Massachusetts Fisheries and Wildlife Board indicated the denial of a 90-day Canada goose season in a portion of southeast Massachusetts would exacerbate the nuisance goose problem there.

Response. In the August 15, 1986, **Federal Register** (51 FR 29274) the Service noted the Atlantic Flyway Council's endorsement of Massachusetts' modified request, but indicated that the State's supporting justifications for the frameworks changes are not adequate to alleviate concerns regarding the potential impact of such changes on migrant Canada geese. The Service stated that prior to submission of another proposal, Massachusetts needs to collect data on the population numbers and racial composition of Canada geese for the specific area and time-span during which the requested season would occur. The additional information provided in the State's August 25 letter has been reviewed and the Service continues to believe more detailed information on the total number of geese present, the number with collars, time periods and locations are needed to justify the framework change.

(b) By letter received August 4, 1986, Connecticut requested changes in the State's Canada goose hunting season frameworks for its South Zone.

Response. The Service concurred with the Atlantic Flyway Council's endorsement of Connecticut's request in the August 15, 1986, **Federal Register** (51 FR 29274). The frameworks contained in this final rule reflect the changes requested.

(c) By letter dated August 5, 1986, Illinois submitted additional information in support of its request for special Canada goose hunting seasons in northeastern Illinois in late September

and late December to control local giant Canada geese.

Response. In light of the new information, the Service believes an experimental 6-consecutive-day Canada goose season in the nine northeastern-most counties of Illinois in late September is justified and regulatory provisions for such a season are included in this final rule. The limited information provided by the State does not support a season in late December. Illinois must collect additional information this fall and winter before a judgment can be made regarding the December season.

(d) By letter received August 5, 1986, Arkansas provided information on the reasons and biological justification for its request that the framework closing date for snow and white-fronted goose hunting in the State be extended from January 20 to January 31.

Response. The Service addressed this matter in the proposed late-season frameworks published in the August 15, 1986, **Federal Register** (51 FR 29274). The frameworks of this final rule reflect an extension of the snow goose hunting season in Arkansas to January 31, but the framework closing date for hunting white-fronted geese in the State continues to be January 20.

(e) In commenting on the proposed 1986–87 waterfowl hunting regulations frameworks (August 15, 1986, **Federal Register**, 51 FR 29274) the National Wildlife Federation expressed its pleasure with the regulations regarding goose harvest in the Pacific Flyway, particularly as they relate to enhancing the recovery of cackling Canada geese, Pacific white-fronted geese, emperor geese and black brant.

15. Tundra Swan

In commenting on the proposed waterfowl hunting regulations frameworks (August 15, 1986, **Federal Register**, 51 FR 29274), Defenders of Wildlife expressed its support of the Service's proposal to not expand experimental tundra swan hunting in the Atlantic Flyway nor designate the North Carolina experimental hunt operational prior to completion and evaluation of the experiment.

Nontoxic Shot Regulations

In the January 6, 1986, **Federal Register** (51 FR 409), the Service published a proposed rule describing areas in which lead shot would be prohibited for waterfowl and coot hunting in the 1986–87 hunting seasons. Appendix O of the recently published Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States contains a preliminary final rule addressing the 1986–87 nontoxic shot zones. Notice of the Record of Decision on the Final Supplemental Environmental Impact Statement was published in the August 20, 1986, **Federal Register** (51 FR 29673). The final rule describing areas where nontoxic shot is required for waterfowl and coot hunting in the 1986–87 hunting seasons was published in the **Federal Register** on September 3, 1986, 51 FR 31429.

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council of Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). An environmental assessment addressing this rulemaking and a finding of no significant impact was signed on September 5, 1986. In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of [critical] habitat . . ." The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 23, 1986, the Chief, Office of Endangered Species (OES), gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, DC.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 21, 1986 (at 51 FR 9859), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. These final regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated July 25, 1986 (at 51 FR 26712).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by it nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed late hunting season rulemakings were published on March 21, June 6, and August 15, 1986, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the close of

each period time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates, shooting hours and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** final rulemaking amending 50 CFR Part 20 (§§ 20.104 through 20.107 and § 20.109) to reflect seasons, limits and shooting hours for the contiguous United States for the 1986–87 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1986–87 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Final Regulations Frameworks for 1986–87 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved final frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

General

Split Season: States in all Flyways may split their season for ducks, geese or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours: From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Extra Teal: States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. States in the Atlantic Flyway (except Florida) not selecting the point system may select an extra teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

Special Scaup-only Season: States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 4, 1986, and January 31, 1987, all dates are inclusive.

2. The season must fall outside the open season for any other ducks except sea ducks.

3. The season must be limited to areas mutually agreed upon by the State and the Service prior to August 31, 1986.

4. These areas must be described and delineated in State hunting regulations.

or

Extra Scaup: As an alternative, States in the Atlantic, Mississippi and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Point System: Selection of the point system for any State entirely within a flyway must be on a statewide basis, *except* if New York selects the point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Massachusetts, Pennsylvania and Vermont may not select the point system pending completion of zoning studies.

Deferred Season Selections: States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Exception: Since 1978, the Service has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the Service has been contained in the Interior Department's Appropriations Act each year since 1978 (Pub. L. 98–473, Sec. 305). As a consequence of this restriction the Service can only propose additions and deletions to the designated nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current Service guidelines and criteria indicate such zones are necessary to protect migratory birds, the Secretary of the Interior, acting through the Service, will not open those areas to waterfowl and coot hunting (January 6, 1986, **Federal Register**, 51 FR 409; June 27, 1986, **Federal Register**, 51 FR 23444). This action is pursuant to the Secretary's/Service's responsibilities under the Migratory Bird Treaty Act and, in the case of zones proposed for bald eagle protection, the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884).

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Ducks, Coots and Mergansers

Hunting Seasons and Duck Limits:

Outside Dates: Between October 4, 1986, and January 18, 1987.

Hunting Season: Not more than 40 days.

Duck Limits: The daily bag limit of ducks is 4 and may include no more than 3 mallards (only 1 may be a hen), 2 pintails, 2 wood ducks, 1 black duck and 1 fulvous tree duck. The possession limit is 8, including no more than 6 mallards, (no more than 2 of which may be a female), 2 black ducks, 4 pintails, 4 wood ducks, and 2 fulvous tree ducks (except as noted below). The limit of redheads is 2 daily and 4 in possession.

The season is closed to the taking of canvasbacks.

Point System Options: As an alternative to conventional bag limits for ducks, a 40-day season with a point-system bag limit may be selected by Atlantic Flyway States during the framework dates prescribed. Point values for species and sexes taken are as follows: in Florida only, the fulvous tree duck counts 100 points each; the female mallard, black duck, and mottled duck (except South Carolina) count 100 points each. Wood duck (except in Virginia, North Carolina, South Carolina and Georgia during the early wood duck season option), redhead and hooded merganser count 70 points each; scaup, blue-winged teal, green-winged teal, sea ducks, wigeon, shoveler, gadwall, and mergansers (except hooded) count 20 points each; the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina and Georgia counts 25 points each; the male mallard, pintail, ring-necked duck, goldeneye, bufflehead and all other ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in two days.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: Throughout the Flyway the daily bag limit of mergansers is 5, only 1 of which maybe a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: Throughout the Flyway daily bag and possession limits of coots are 15 and 30, respectively.

Early Wood Duck Season Option: Virginia, North Carolina, South Carolina and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 4 and October 15. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. For those States using conventional regulations, the extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits of wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Restrictions on Wood Ducks: Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively.

Restriction on Mottled Ducks: The season is closed to the taking of mottled ducks in South Carolina.

Special Scaup and Goldeneye Season: In lieu of a special scaup season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneye or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

Zoning

New York: New York may, for *Long Island Zone*, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected. A 2-segment split season may be selected in each zone. Teal and scaup bonus options shall be applicable, but the 16-day special scaup season will not be allowed.

The *West Zone* is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The *North* and *South Zones* are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. *North Zone*—That portion of the State north of Interstate 95.

b. *South Zone*—That portion of the State south of Interstate 95.

Maine may be divided into two zones as follows:

a. *North Zone*—Game Management Zones 1 through 5.

b. *South Zone*—Game Management Zones 6 through 8.

New Hampshire

Coastal Zone—That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone—That portion of the State north and west of the above boundary.

West Virginia may be divided into two zones as follows:

a. *Allegheny Mountain Upland Zone*—The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I–64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State—That portion outside the above boundaries.

Zoning Experiments

Vermont will continue a Lake Champlain Zone in 1986. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont. *Massachusetts, New Jersey,* and *Pennsylvania,* may continue zoning experiments now in progress as shown in the sections that follow. *Massachusetts* and *New Jersey* may be divided into three zones, *Pennsylvania* into four zones and *Vermont* into two zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected in Massachusetts, Pennsylvania and Vermont. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special season scaup shall be allowed.

Zone Definitions

Massachusetts

Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone—That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–195, west to the Rhode Island line. *EXCEPT* the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of the State east and south of the Central Zone.

New Jersey

Coastal Zone—That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone—That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone—That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania

Lake Erie Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone—That portion of the State north of I–80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I–80, then west on I–80 to its junction with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone—That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I–80, and on the west by the Ohio line.

South Zone—The remaining portion of the State.

Vermont

Lake Champlain Zone—Includes the United States portion of Lake Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keeseville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22; along New York Route 22 to U.S. Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border. From the New York border at U.S. Highway 4, along U.S. Highway 4 to Vermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone—The remaining portion of the State.

Sea Ducks: The daily bag and possession limit for sea ducks in special sea duck areas is in addition to the limits applying to other ducks during the regular duck season. In all areas outside of special sea duck areas, sea ducks are included in the regular duck season conventional or point system daily bag and possession limits.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1986, and January 20, 1987, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. HIghway 17) may select 70-day seasons for Canada geese; the daily bag and possession limits are 3 and 6 geese, respectively. In New York (including Long Island), Rhode Island, Connecticut (North Zone only), New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I–80 to the New Jersey line, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1987. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with the possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut (North Zone) will be 3 and 6, respectively. In the South Zone of Connecticut (that portion south of Interstate 95) the Canada goose season length may be 90 days with the closing framework date extended to February 5, 1987. The daily bag limit and possession limit will be 3 and 6, respectively, before January 15 and 5 and 10, respectively from January 15 to February 5, 1987. This season in the South Zone of Connecticut is experimental. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season for Canada geese within the October 1, 1986, to January 20, 1987, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina may select a 43-day season for Canada geese within a

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December 20, 1986, to January 31, 1987, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In South Carolina the season on Canada geese is closed in the counties of Abbeville, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Cherokee, Chester, Colleton, Edgefield, Fairfield, Greenwood, Hampton, Kershaw, Lancaster, Laurens, Lee, McCormick, Newberry, Oconee, Pickens, Richland, Saluda, Spartanburg, Sumter, Union and York.

Closures on Canada geese: The season for Canada geese is closed in Florida and Georgia.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1986, and January 31, 1987, States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese); the daily bag and possession limits are 4 and 8, respectively.

Atlantic Brant

Outside Dates, Season Lengths, and Limits: Between October 1, 1986, and January 20, 1987, States in the Atlantic Flyway may select a 30-day season for Atlantic brant; the daily bag and possession limits are 2 and 4 brant, respectively.

Tundra Swans

In North Carolina an experimental season for tundra swans may be selected subject to the following conditions: (a) The season may be 90 days and must run concurrently with the snow goose season; (b) the State agency must issue and obtain harvest and hunting participation data; and (c) no more than 6,000 permits may be issued, authorizing each permittee to take 1 tundra swan.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Ducks Coots, and Mergansers

Outside Dates: Between October 4, 1986, and January 18, 1987, in all States.

Hunting Season: Not more than 40 days.

Canvasbacks: The season on canvasbacks is closed.

Limits: The daily bag limit of ducks is 4, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 2 wood ducks (except as noted below), 2 pintails, and 1 redhead. The possession limit is 8, including no more than 4 mallards (no more than 2 of which may be females), 2 black ducks, 4 wood ducks (except as noted below), 4 pintails, and 2 redheads.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Point-System Option: As an alternative to conventional bag limits for ducks, a 40-day season with point-system bag and possession limits may be selected within the framework dates prescribed. Point values for species and sexes taken are as follows: the female mallard and black duck count 100 points each; the redhead, wood duck (except as noted below) and hooded merganser count 70 points each; the blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 20 points each; the male mallard, pintail, and all other species of ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Coot Limits—Point System: Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Early Wood Duck Season Option: Arkansas, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 4 and October 15. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system the point value of wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point-system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Western Louisiana: In that portion of Louisiana west of boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Bossier City; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass—the season for ducks, coots and mergansers may extend 5 additional days. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning: *Alabama, Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, Tennessee,* and *Wisconsin* may select hunting seasons for ducks, coots and mergansers by zones described as follows:

Alabama: South Zone—Mobile and Baldwin Counties. North Zone—The remainder of Alabama. The season in the South Zone may be split.

Illinois: North Zone—That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I–280, east along I–280 to I–80, then east along I–80 to the Indiana border. Central Zone—That portion of the State between the North and South Zone boundaries. South Zone—That portion of the State south of a line running east from the Missouri border along the Monroe-Randolph County line to County Highway 856, south along County Highway 856 to Illinois Highway 155, east along Illinois Highway 155 to Illinois Highway 3, north along Illinois Highway 3 to Illinois Highway 158, north along Illinois Highway 158 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I–70, then east along I–70 to the Indiana border.

Indiana: North Zone: That portion of the State north of a line extending east from the Illinois border along State Highway 18 to U.S. Highway 31, then north along U.S. 31 to U.S. Highway 24, then east along U.S. 24 to Huntington,

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then southeast along U.S. Highway 224 to the Ohio border. Ohio River Zone: That portion of Indiana south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, then east along State Highway 62 to State Highway 56, then east along State Highway 56 to Vevay, then on State Highway 156 along the Ohio River to North Landing, then north along State Highway 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border. South Zone: That portion of the State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segments.

Iowa: North Zone—That portion of Iowa north of Interstate 80. South Zone—the remainder of the State.

Michigan: North Zone—The Upper Peninsula. South Zone—That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to M–20, east on M–20 to U.S.–10-B.R. in the city of Midland, east on U.S.–10-B.R. to U.S.–10, east on U.S.–10 and M–25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn powerplant, to a point one mile north of the Charity Islands, then continuing northeasterly to the Ontario border in Lake Huron. Middle Zone—The remainder of the State. Michigan may split its season in each zone into two segments.

Missouri: North Zone—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. 65 to State Highway 32, east along State Highway 32 to State to State Highway 72, east along State Highway 72 to State Highway 21, south along State Highway 21 to U.S. Highway 60, east along U.S. 60 to State Highway 51, south along State Highway 51 to State Highway 53, south along State Highway 53 to U.S. Highway 62, east along U.S. 62 to I–55, north along I–55 to State Highway 34, then east along State Highway 34 to the Illionis border. South Zone—The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone—The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. South Zone—That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

Tennessee: Reelfoot Zone—Lake and Obion Counties, or a designated portion of that area. State Zone—The remainder of Tennessee. Seasons may be split into two segments in each zone.

Wisconsin: North Zone—That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone—The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Within each State: (1) the same bag limit option must be selected for all zones; and (2) if a special scaup season is selected for a zone, it shall be outside the regular season in that zone.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Outside Dates, Season Lengths and Limits: Between October 4, 1986 (October 1 in Wisconsin) and January 20, 1987, States may select 70-day seasons for geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Arkansas and Louisiana: Between October 4, 1986, and January 31, 1987, Arkansas may hold a 70-day season on snow (including blue) geese. Between October 4, 1986, and February 14, 1987, Louisiana may hold 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons. Daily bag and possession limits are as described above.

Minnesota. In the: (a) Lac Qui Parle Zone (described in State Regulations)—the season for Canada geese closes after 50 days or when 4,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southeastern Zone (described in State regulations)—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season for Canada geese may extend for 50 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Iowa: The season may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season for geese in the Southwest Goose Zone (that portion of the State bounded by U.S. Highways 92 and 71) may be held at a different time that the season in the remainder of the State.

Missouri. In the: (a) Swan Lake Zone (described in State regulations)—the season for Canada geese closes after 70 days or when 16,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeast Zone (east of U.S. Highway 67 and south of Crystal City)—A 50-day season on Canada geese may be selected between December 1, 1986, and January 20, 1987, with a daily bag limit of 1 Canada goose and a possession limit of 2.

(c) Remainder of the State—the season for Canada geese may extend for 50 days in the respective duck hunting zones. The daily bag limit is 1 Canada goose, and the possession limit is 2.

Wisconsin: The total harvest of Canada geese in the State will be limited to 45,000 birds. In the:

(a) Horicon—Central Zone (Columbia, Dodge, Fond Du Lac, Green Lake, Marquette and Winnebago Counties, and the northwest portion of Washington County north of State Highway 33 and west of U.S. Highway 45)—the harvest of Canada geese is limited to 30,000 birds, with 2,000 birds allocated to the Theresa Subzone. The season may not exceed 50 days. In the Theresa Subzone (described in State regulations), the daily bag limit is 1 Canada goose per permittee through October 5 and 1 Canada goose per permittee per day thereafter, up to a season limit of 4. In the remainder of the Horicon-Central Zone, the season limit may not exceed 2 Canada geese per permittee, and the issuance of permits and tags may not exceed 37,000 permits with 1 tag each and 3,000 permits with 2 tags each.

(b) Mississippi River Zone (that portion of the State west of the

Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties)—the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through November 24, and 2 daily and 4 in possession thereafter.

(c) Northeast Goose Zone (that portion of the North Duck Zone which includes the Counties of Vilas, Oneida, Lincoln, Marathon, a portion of Wood County, and all counties or portions of counties eastward). The season for Canada geese may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In Brown County, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 2 and 4 birds, respectively.

(d) Southeast Goose Zone (that portion of the South Duck Zone which includes part of Wood County, Janeau, Sauk, Dane and Green Counties and all counties or portions of counties eastward)—in that portion of the Southeast Zone outside the Horicon-Central tag zone, the season may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In the Rock Prairie Zone (described in State regulations), a special late season to harvest giant Canada geese may be held between November 8 and December 7. During the late season, the daily bag limit is 1 Canada goose and the possession limit is 2.

(e) Northwest Goose Zone (that portion of the North Duck Zone west of the Northeast Goose Zone)—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(f) Southwest Goose Zone (that portion of the South Duck Zone west of the Southeast Goose Zone)—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In that portion of Wisconsin outside the Horicon-Central Zone, the progress of the Canada goose harvest must be monitored, and the season closed if necessary, to insure that the harvest does not exceed 15,000 birds.

Illinois: The total harvest of Canada geese in the State will be limited to 48,000 birds. In the: (a) Southern Illinois Quota Zone (described in State regulations)—The season for Canada geese will close after 50 days or when 24,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Rend Lake Quota Zone (Franklin and Jefferson Counties)—The season for Canada geese will close after 50 days or when 7,200 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 4.

(c) Tri-County Area (all of Knox County; the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam and that portion of Banner Township bounded on the north by Illinois Route 9 and on the east by U.S. 24 in Fulton County; the township of Alba, Annawan, Atkinson and Cornwall in Henry County)—The season for Canada geese may not exceed 25 days. The daily bag limit is 1 Canada goose and the possession limit is 4.

(d) Remainder of State—Seasons for Canada geese up to 40 days may be selected by zones established for duck hunting seasons, except that in the South Zone the season will close no later than December 15. The daily bag limit is 1 Canada goose and the possession limit is 4.

(e) McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will and Kankakee Counties—An early Canada goose season of 6-consecutive-days may be held between September 22 and September 30, 1986. The daily bag limit is 2 Canada geese and the possession limit is 4.

Michigan: The total harvest of Canada geese in the State will be limited to 53,000 birds. In the: (a) North Zone—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon, the framework opening date for geese is September 26. In the remainder of the North Zone, the framework opening date is October 4. Throughout the North Zone, the season for Canada geese may extend for 20 days, except at Seney Goose Management Area, where the season will close after 50 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 2, except at Seney Goose Management Area, where the daily bag and possession limits are 2 and 4, respectively.

(b) Middle Zone—the season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) South Zone: (1) Allegan County Zone (that portion of Allegan County west of U.S. Highway 131)—the season for Canada geese will close after 50 days or when 3,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(2) Muskegon Wastewater Zone (described in State regulations)—the season for Canada geese will close after 50 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(3) Saginaw County Goose Management Area—the season for Canada geese will close after 50 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(4) Remainder of South Zone: (i) East of U.S. Highways 27 and 127—the season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(ii) West of U.S. Highways 27 and 127—the season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(d) Southern Michigan Goose Management Area (described in State regulations)—A late Canada goose season of up to 46 days may be held between January 1, 1987, and February 15, 1987. The daily bag limit is 2 Canada geese and the possession limit is 4.

Ohio: The daily bag limit is 2 Canada geese and the possession limit is 4, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2.

Indiana: The total harvest of Canada geese in the State will be limited to 15,000 birds. In: (a) Posey County—The season for Canada geese will close after 50 days or when 4,400 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Kentucky: In the: (a) West Kentucky Zone (that portion of the State west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I–24, east on I–24 to U.S. 641; northerly on U.S. 641 to U.S. 60; northeasterly on U.S. 60 to U.S. 41; and then northerly on U.S. 41 to the Kentucky-Indiana border)—The season for Canada geese may extend for 50 days, and the harvest will be limited to 15,000 birds. Of the 15,000-bird quota, 9,500 birds will be allocated to the Ballard Subzone and 3,000 birds will be allocated to the Henderson-Union Subzone (both subzones described in State regulations). If the quota in either

subzone is reached prior to completion of the 50-day season, the season in that subzone will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1987.

(b) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Tennessee: In the: (a) Northwest Zone (Lake, Obion, and Weakley Counties, and those portions of Gibson and Dyer Counties not included in the Southwest Zone)—The season may extend for 50 days, and the harvest of Canada geese will be limited to 6,500 birds. Of the 6,500-bird quota, 4,500 birds will be allocated to the Reelfoot Subzone (described in State regulations). If the quota in the Reelfoot Subzone is reached prior to completion of the 50-day season, the season in the subzone will be closed. If this occurs, the season in the remainder of the Northwest Zone may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1987.

(b) Southwest Zone (that portion of the State bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45)—The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1987. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 1 Canada goose and the possession limit is 2, except in that portion west of State Highway 13, where the daily bag and possession limits are 2 and 4, respectively.

Arkansas and Louisiana: The season for Canada geese is closed.

Mississippi: In the: (a) Sardis Zone (described in State regulations)—The season for Canada geese may extend for 30 days, 10 days of which must occur before December 15, 1986. The daily bag limit is 1 Canada goose and possession limit is 2.

(b) Remainder of the State—The season for Canada geese may not exceed 15 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In both areas, the framework closing date is January 31, 1987.

Alabama: In Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4.

Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not in excess of 48 hours) as they deem necessary.

Shipping Restriction: In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall posses or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Ducks (Including Mergansers) and Coots

Outside Dates: October 4, 1986, through January 18, 1987.

Canvasbacks: There will be no open season on canvasbacks in the Central Flyway.

Hunting Season: Seasons in the Low Plains Unit may include no more than 51 days. Seasons in the High Plains Mallard Management Unit may include no more than 67 days, provided that the last 16 days may start no earlier than December 13, 1986. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridan, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits: Conventional limits are 4 ducks daily, including no more than 3 mallards of which no more than 1 may be a female, 3 pintails, 1 redhead, 1 hooded merganser and 2 wood ducks; and 8 in possession, including no more than 6 mallards of which no more than 1 may be a female, 6 pintails, 2 redheads, 2 hooded mergansers and 4 wood ducks.

As an alternative, States may select point system bag and possession limits. Under this system, the daily limit is reached when the point values of the last duck taken and other ducks already taken during that day total 100 or more points. The value of each female mallard, black duck, and mottled duck is 100 points; each wood duck, redhead and hooded merganser, and in Texas only, each black bellied whistling duck and fulvous whistling duck, is 70 points; each blue-winged teal, green-winged teal, cinnamon teal, scaup, gadwall, wigeon, shoveler, and merganser (except the hooded merganser) is 20 points; and of each duck of other species and sexes is 35 points. The possession limit is the equivalent of two daily limits.

Daily bag and possession limits for coots are 15 and 30, respectively.

Zoning: Duck and coot hunting seasons may be selected independently in existing zones as described in the following States:

Montana (Central Flyway portion):

Experimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska (Low Plains portion):

Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2. The area bounded by designated highways and political boundaries starting of U.S. 73 at the State Line near Falls City; north to N–67; north through Nemaha to U.S. 73–75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N–63; north and west to U.S. 77; north to N–92; west to U.S. 81; south to N–66; west to N–14; south to I–80; west to U.S. 34; west to N–10; south to the State Line; west to U.S. 283; north to N–23; west to N–47; north

to U.S. 30; east to N–14; north to N–52; northwesterly to N–91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N–70 from Wheeler County to N–14; south to N–39; southeast to N–22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N–51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

New Mexico

Experimental Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma

Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I–35, I–35 to U.S. 60; U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas state line.

Zone 2. The remainder of the Low Plains.

South Dakota (Low Plains portion):

South Zone. Bon Homme County south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 3207 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Yankton County west of U.S. Highway 81.

North Zone. The remainder of the Low Plains.

Wyoming (Central Flyway portion):

Zone 1. Sheridan, Johnson, Natrona, Campbell, Crook, Weston, Converse and Niobrara Counties.

Zone 2. Platte, Goshen and Laramie Counties.

Zone 3. Carbon and Albany Counties.

Zone 4. Park, Big Horn, Hot Springs, Washakie and Fremont Counties.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" includes all others.

Outside Dates: October 4, 1986, through January 18, 1987, for dark geese and October 4, 1986, through February 15, 1987 (February 28, 1987, in New Mexico), for light geese.

Possession Limits: Goose possession limits are twice the daily bag limits (see exception for light geese in the Rio Grande Valley Unit of New Mexico).

Hunting Seasons: Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 93 days with a daily limit of 5 geese that may include no more than 2 dark geese.

Kansas: For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 30 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I–70), no more than 86 days with a daily limit of 5.

For Light Goose Unit 2 (the remainder of Kansas), no more than 86 days with a daily limit of 5.

Montana: No more than 93 days with daily limits of 2 geese in Sheridan County and 3 geese in the remainder of the Central Flyway.

Nebraska: For Dark goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183, and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 14 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 23 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 23 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

New Mexico: For dark geese, no more than 93 days with a daily limit of 2.

For light geese in the Rio Grande Valley Unit (the Central Flyway portion of New Mexico west of highways starting at the Texas line north of El Paso: U.S. 54 to U.S. 60, U.S. 60 to U.S. 285, and U.S. 285 to the Colorado line), no more than 107 days with a daily limit of 5 and a possession limit of 20.

For light geese in the remainder of the Central Flyway portion of New Mexico, no more than 93 days with a daily limit of 5.

North Dakota: For dark geese, no more than 72 days with daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through November 2 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

Oklahoma: For Dark Goose Unit 1 (that portion of western and southern Oklahoma bounded by the following highways: starting at the Kansas-Oklahoma line, U.S. 77 to U.S. 177, U.S. 177 to OK 33 to U.S. 75, U.S. 75 to Indian Nation Turnpike, Indian Nation Turnpike to U.S. 271, and U.S. 271 to the Oklahoma-Texas line), no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For Dark Goose Unit 2 (the remainder of Oklahoma), no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

South Dakota: For dark geese in the Missouri River Unit (the Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson east of SD highway 65, Dewey, Gregory, Haakon north of Kirley Road and east of Plum Creek, Hughes, Hyde, Lyman north of Interstate 90 and east of U.S. Highway 83, Potter, Stanley, Sully, Tripp east of U.S. Highway 183, Walworth, and Yankton west of U.S. Highway 81), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 14 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

Texas: West of U.S. 81, no more than 93 days with a daily limit of 5 geese which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 86 days with a daily limit of 5.

Wyoming: For geese in each of 4 Units that coincide with management zones for ducks, no more than 93 days with daily limits of 2.

Tundra Swans

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in a current, approved management plan and general conditions that each State determine hunter participation and harvest, and specified conditions as follows:

Montana (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

North Dakota: no more than 1,000 permits with the season dates concurrent with the season for taking ducks.

South Dakota: no more than 500 permits with the season dates concurrent with the season for taking ducks.

Sandhill Cranes

Experimental Season in New Mexico

Two experimental seasons, not to exceed 8 days each, may be selected during the period October 10–31, 1986, in the Middle Rio Grande Valley Crane Hunt Area bounded by the south boundary of Isleta Pueblo; on the west by Interstate 25 and including all of Sevilleta and Bosque del Apache National Wildife Refuges; on the east by a dirt road from the northeast corner of Bosque del Apache NWR to the western boundary of the White Sands Missile Range Extension Co-Use (WSMREC) area, by the western WSMREC boundary and the eastern boundary of the Sevilleta NWR to U.S. Highway 60, U.S. 60 to NM Highway 47, and NM 47 to the south boundary of Isleta Pueblo; under the following conditions:

1. Not more than 365 special permits, provided by the State, may be issued for each season. Successful applicants for permits must possess valid Bosque del Apache NWR Hunt Cards or pass a hunter qualification course to be eligible to participate.

2. The bag limit shall be 3 cranes per season.

3. Shooting hours shall be sunrise to sunset and non-toxic shot is required.

4. All provisions of an Operational Hunt Plan, subject to review by the U.S. Fish and Wildlife Service Region 2 and the Central and Pacific Flyway Councils, must be in effect to assure protection of whooping cranes that might occur in the hunting area.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, Common Moorhens, and Common Snipe

Outside Dates: Between October 4, 1986, and January 11, 1987.

Hunting Seasons

Seasons may be split into two segments. Concurrent 79-day seasons on ducks (including mergansers), coots, common moorhens (gallinules) and common snipe may be selected except as subsequently noted. In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be an additional 7 days.

Duck Limits: The basic daily bag limit is 5 ducks, including no more than 4 mallards but only 1 female mallard, 4 pintails but only 1 female pintail, and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and Common Moorhen (Gallinule) Limits: The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggregate.

Common Snipe Limits: The daily bag and possession limit of common snipe is 8 and 16, respectively.

California—Waterfowl Zones: Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Idaho—Duck Zones: Duck season dates for Zone 1 and Zone 2 may differ. Zone 1 includes all lands and waters within the Fort Hall Indian Reservation, Bannock County, Bingham County except that portion within the Blackfoot Reservoir drainage, and Power County east of State Highway 37 and State Highway 39. Zone 2 includes the remainder of the State.

Nevada—Clark County Waterfowl Zone: Season dates for Clark County may differ from those in the remainder of Nevada.

Colorado, Montana, New Mexico and Wyoming—Common Snipe: For States partially within the Flyway a 93-day season for common snipe may be selected to occur between Setember 1, 1986, and Februrary 28, 1987, and need not be concurrent with the duck season.

Geese (Including Brant)

Outside dates, season lengths and limits on geese (including brant): Seasons may be split into two segments. Between October 4, 1986, and January 18, 1987, a 93-day season on geese (except brant in Washington, Oregon and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). The basic daily bag and possession limits are proportionately reduced in those areas where special restrictions apply to Canada geese. In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Between October 18 and November 30, 1986, Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

California, Oregon, and Washington—Cackling Canada goose closure: There will be no open season on the cackling Canada geese in California, Oregon and Washington.

California—Canada goose and dark goose closures: Three areas in California, described as follows, are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in

Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, there will be no open season for Canada geese. In this area, the season on dark geese must end on or before November 30, 1986.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23.

California (Northeastern Zone)—geese: In the Northeastern Zone of California the season may be from October 11 to January 11, except that white-fronted geese may be taken only during October 11 to November 2. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

California (Balance of the State Zone)—geese: In the Balance of the State Zone the season may be from November 1 through January 18, except that white-fronted geese may be taken only during November 1 to January 4. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

Western Oregon: In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon north and west of a line formed by State Highway 126 and Interstate Highway 5, except for designated areas, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the seasons in the designated area must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so.

Oregon (Lake and Klamath Counties)—geese: In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open until two weeks after the opening date of the general goose season.

Washington and Oregon (Columbia Basin Portions)—geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco, the goose season may be an additional 7 days.

Western Washington: In the Washington counties of Island, Skagit, Snohomish, and Whatcom, the season for snow geese may not extend beyond January 1, 1987. In Clark, Cowlitz, Wahkiakum, and Pacific Counties, except for areas to be designated by the State, there shall be no open season on Canada geese. For designated areas the seasons must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so.

Idaho, Oregon, and Montana—Pacific Population of Canada geese: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater, and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 Canada geese and the season for Canada geese may not extend beyond January 4, 1987.

Montana and Wyoming—Rocky Mountain Population of Canada geese: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 4, 1987. In Lincoln, Sweetwater, and Sublette Counties, Wyoming, the combined special sandhill crane-Canada goose seasons and the regular goose season shall not exceed 93 days.

Idaho, Colorado, and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 86 days and may not extend beyond January 4, 1987.

Nevada: Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. Except for Clark County the daily bag and possession limits are 2 and 4 Canada geese, respectively. In Clark County the daily bag and possession limits are 2 Canada geese.

Arizona, California, Utah and New Mexico: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) where the daliy bag and possession limits for Canada geese are 1 and 2, respectively.

Tundra Swans

In Utah, Nevada and Montana, an open season for tundra swans may be selected to the following conditions: (a) the season must run concurrently with the duck season; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data; (c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

Sandhill Cranes

Arizona may select an experimental sandhill crane season subject to the conditions specified in the frameworks for early seasons.

Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal

VOL 51 ISS 177 SEP 12 1986 UMI

falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular and any special season framework dates.

Daily Bag and Possession Limits: Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting season and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: September 5, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-20686 Filed 9-11-86; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 23

Revised Listing for Cactaceae (Cacti) in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. Appendices I, II, and III of CITES list those species for which trade is controlled. This rule incorporates into the U.S. regulations implementing CITES a recent decision of the Parties of CITES to amend the listing of Cactaceae (cacti) in Appendix II.

DATES: The amendments described below entered into effect on August 29, 1986, under the terms of CITES. Therefore, this rule is effective September 12, 1986.

ADDRESSES: Please send correspondence concerning this rule to the Chief, Office of Scientific Authority, Mail stop: Room 527, Matomic Building, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240. Background materials, as well as correspondence received, are available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the address given above, or telephone (202) 653-5948.

SUPPLEMENTARY INFORMATION:

Background

Postal procedures for amending the lists of animal and plant species included in Appendices I and II of CITES are provided in Article XV of CITES (51 FR 27431, July 31, 1986). Under this article, the Kingdom of the Netherlands proposed that the annotation "All species of the family in the Americas" be deleted from Cactaceae in Appendix II, and that the separate listing of *Rhipsalis* species be deleted from Appendix II.

These amendments remove confusion that had arisen with different interpretations of the notation "All species of the family in the Americas" in the original listing (50 CFR 23.23). With removal of the notation, all specimens of cacti in international trade, whether or not they originate in the Americas, are without doubt subject to regulation. The United States and some other countries have been regulating all cacti in this fashion, but some other countries had been interpreting the notation differently and not regulating specimens originating outside the Americas. Although the separate entry for *Rhipsalis* has been deleted, that species remains in Appendix II as indicated by the revised entry: "All species except those in App. I". Thus, all species of cacti not in Appendix I remain in Appendix II, and international trade in cacti is regulated wherever it occurs. The same applies to international trade in cactus parts and derivatives, except for some parts and derivatives that previously had been exempted from regulation and remain unregulated (50 FR 48212, November 22, 1985).

The Secretariat sent the Netherlands proposal to the Parties on February 26, 1986 [see the notice of the U.S. Fish and Wildlife Service (Service) in the **Federal Register** of April 2, 1986, 51 FR 11328]. In response to the Service's notice, no one raised any objections to the proposal and three organizations supported it. The proposal was accepted by the Parties under the postal procedures, and on June 10, 1986, the Secretariat notified the Parties that the amendments would enter into force August 29, 1986.

Article XV of CITES enables any Party to exempt itself from implementing CITES as specified for particular species if it enters a reservation with respect to the species (see the Service's proposed rule in the **Federal Register** of July 31, 1986, 51 FR 27431). In response to the Service's proposed rule requesting comments on whether the United States should enter a reservation on the above amendments, no comments were received. The United States has decided not to enter a reservation because the amendments coincide with current U.S. regulatory practice and assist in conserving cacti.

Acceptance of the amendments has little effect in the United States, which since September 15, 1980 (see the **Federal Register** of August 26, 1980, 45 FR 56923) has been regulating all cacti in Appendix II regardless of their origin (artificially propagated, naturalized, or native in or outside the Americas). The amendments do, however, require some other Parties to CITES to broaden the scope of their regulation of cacti. Uniform regulation will assist enforcement efforts and thus bring greater protection to native cacti.

Note.—The Department has determined that amendments to CITES appendices, which result from actions of the Parties to CITES, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321-4347); 516 DM 2, Appendix I, § 1.10. The Department also has determined that this listing action is not a rule for purposes of Executive Order 12291, and that the Regulatory Flexibility Act (5 U.S.C. 601) and Paperwork Reduction Act of 1980 (Pub. L. 96-511) do not apply to this listing process.

This rule simply implements changes in the listing of Cactaceae (cacti) in Appendix II of CITES that already have been approved by the Parties and that coincide with our current regulatory practice. The period of time during which the United States could have entered a reservation on the amendments ended on August 29, 1986. Earlier **Federal Register** publications informed the public about these amendments and allowed an opportunity for comment on them, and the comments received supported the listing revision. Therefore, the Department of the Interior has determined that good cause exists for making this rule effective upon publication (5 U.S.C. 553(d)).

This rule was prepared by Dr. Bruce MacBryde, Botanist, Office of Scientific Authority, under authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Regulation Promulgation

Accordingly, for the reasons set out in the preamble above, Title 50, Chapter I, Subchapter B, Part 23 of the Code of Federal Regulations is amended as set forth below.

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531–43.

2. The list in § 23.23(f) under PLANT KINGDOM, Family Cactaceae is amended by (a) removing the entry "*Rhipsalis* spp. . . . Mistletoe cacti. . . . II. . . . 7/1/75" and (b) revising the first entry under Cactaceae to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	Date listed (month/day/year)
Family Cactaceae:	Cacti:		
* * *			
All species except those in App. I.		II	7/1/75
* * *			

Dated: September 5, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–20572 Filed 9–11–86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50239–5115]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS) NOAA, Commerce.

ACTION: Notice of catch rate change in the General Category.

SUMMARY: The catch rate for giant Atlantic bluefin tuna in the General Category is changed from one fish per day to two fish per day per vessel. The regulations governing this fishery allow this change based on a review of specified criteria. The increase will provide handgear fishermen a better opportunity to harvest the quota.

EFFECTIVE DATE: September 10, 1986.

FOR FURTHER INFORMATION CONTACT: William C. Jerome Jr., 617–281–3600, ext. 262; or Richard G. Seamans, 617/281–3600, ext. 244.

ADDRESSES: The address for William C. Jerome, Jr. and Richard G. Seamans is National Marine Fisheries Service, Northeast Region, Management Division, 2 State Fish Pier, Gloucester, MA 01930–3097.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.24(a) provides that the Assistant Administrator for Fisheries, NOAA, on or about September 1, may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors to provide for maximum utilization of the quota. The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna of only 195 short tons (st) through September 1, and the relatively low average daily catch rate of 4 st per day for the period August 15 through September 1, that the quota for the General Category will not be harvested under the prevailing catch constraints. Therefore, the catch rate of one giant Atlantic bluefin tuna per day per vessel will be increased on the effective date of this notice to two fish per day per vessel to provide the maximum opportunity to utilize the 650 st General Category quota.

This daily catch rate will remain in effect for the remainder of 1986 or until the quota for the General Category is reached.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters:

This action is taken under the authority of 50 CFR 285.24 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: September 9, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–20630 Filed 9–9–86; 4:47 pm]

BILLING CODE 3510-22-M

50 CFR Part 674

[Docket No. 50694–5094]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of commercial fishery closure.

SUMMARY: NOAA issues this notice closing the fishery conservation zone (FCZ) off Southeastern Alaska to commercial fishing for chinook salmon. The management area will remain open to the harvest of other salmon species except for one small area which is closed to all commercial salmon fishing. This action is intended to prevent the commercial troll salmon harvest from exceeding the number of chinook salmon authorized by the Pacific Salmon Commission and to conserve the chinook salmon resource.

DATES: Effective at 0001 hours Alaska Daylight Time (ADT), September 10, 1986, through 2400 hours ADT on September 20, 1986. Public comments on this notice are invited until October 10, 1986.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the comment period, the data upon which this notice is based will be available for public inspection during business hours (0800 to 1630 ADT, Monday through Friday) at the NMFS Alaska Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Chief, Fisheries Management Division, NMFS), 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the FCZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude (FMP). This FMP was developed and amended by the North

Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

In March 1986, the Pacific Salmon Commission limited the 1986 chinook salmon harvest by all fisheries in Southeastern Alaska to 254,000 fish, exclusive of the harvest of chinook salmon resulting from Alaska's new enhancement activities. A final rule announcing this limit and setting the 1986 base fishing periods for salmon was published on July 21, 1986 (51 FR 26159). The commercial salmon fishery in the FCZ began on June 20, 1986.

On July 9, 1986, the Secretary of Commerce (Secretary) closed a small area of the FCZ called the Fairweather Grounds to commercial salmon fishing (51 FR 25528, July 15, 1986) to slow the rate at which chinook salmon were being harvested so that the number harvested did not exceed the limit imposed by the Pacific Salmon Commission and to prevent the harvest and release of large numbers of sublegal chinook salmon with a resulting high mortality.

On July 30, 1986, the Secretary closed an area between Cape Cross and Cape Fairweather to all commercial salmon fishing to protect coho salmon returning to the northern inside areas of Southeastern Alaska (51 FR 27860, August 4, 1986).

On August 11, 1986, NOAA closed the entire FCZ to all commercial salmon fishing for 10 days (51 FR 29107, August 14, 1986). This closure was intended to allow coho salmon to escape the ocean and coastal fishery so they could move to inside waters and the spawning grounds.

On August 21, 1986, the Secretary reopened the troll fishing season for chinook salmon for 6 days from August 21 until August 26 to harvest an estimated 43,000 chinook salmon remaining under the Pacific Salmon Treaty limit (August 26, 1986, 51 FR 30365).

Analyses of catches from the 6-day period between August 21 and 26 showed a marked decrease in the catch rate of chinook salmon. Alaska Department of Fish and Game salmon managers estimated that 15,000 to 20,000 chinook salmon remained to be caught under the Pacific salmon treaty provisions. Therefore, the Secretary again opened the FCZ off Southeastern Alaska on September 1, 1986, to commercial fishing for chinook salmon until the scheduled end of the commercial salmon fishing season on September 20, 1986, or until the 254,000 plus hatchery add-on chinook salmon quota is achieved, whichever occurs first.

During the period from September 1 through September 5, 1986, chinook salmon catch rates averaged just over 2,000 fish per day. It is now estimated that the 254,000 chinook salmon quota will be achieved by midnight September 9, 1986. Therefore, the Secretary is closing the FCZ off Southeastern Alaska to all fishing for chinook salmon effective at 0001 hours (ADT) September 10, 1986.

The management area off Southeastern Alaska will remain open to the troll harvest of other salmon species until the scheduled closing date of September 20, 1986, except for the area known as the Fairweather Grounds (described in 51 FR 25528, July 15, 1986). This area is being closed to continue to prevent hook and release mortality of sublegal chinook salmon.

Regulations implementing the FMP at § 674.23(a) provide that the Secretary may modify the time and area limitations governing the fishery whenever such modification is based upon a determination by the Regional Director that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP and this difference reasonably requires a modification of time or an area limitation if salmon of any species are to be adequately conserved and managed. Having reviewed the evidence of the 1986 harvest of chinook salmon, the Secretary has determined that the effect of overall fishing effort in the FCZ, the catch-per-unit-of-effort, the high rate of harvest, and the relative abundance of chinook stocks within the FCZ portion of the management area indicate that the condition of chinook stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of time or area limitations if chinook stocks are to be conserved and managed adequately. Therefore, the Secretary is implementing the closure of the chinook fishery as prescribed by this action. The notice of closure complies with § 674.23(b)(2).

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the chinook harvest in Southeastern Alaska will exceed the Pacific Salmon Treaty limit unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c).

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: September 9, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20631 Filed 9-9-86; 4:45 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 177
Friday, September 12, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-15-AD]

Airworthiness Directives; Dornier Models 228-100, 228-101, 228-200 and 228-201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawl of Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action withdraws NPRM, Docket No. 85-CE-15-AD, published in the **Federal Register** May 30, 1985 (50 FR 23026), which proposed to require modification of the connections of the 4CC and 9CC relays in the horizontal stabilizer electric trim system and mandatory replacement of those relays if they have more than 200 hours time-in-service (TIS) at the time of modification. Dornier reported that during trimming, peak currents could occur on these relays which are greater than the design values which reduces the life of the relays and the reliability of the system. The NPRM is being withdrawn because the Dornier Company demonstrated during the type certification flight testing of the DO228-100/200, with a FAA Test Pilot aboard, that the aircraft is easily controllable to a safe landing by the pilot when the elevator trim is allowed to rotate to full nose up and full nose down stops at maximum operating airspeed (V_{mo}); therefore, trim runaway would not be a problem in these aircraft with the design trim stops approved during type certification.

ADDRESSES: Alert Service Bulletin ASB-228-019 dated January 30, 1985, which was referenced in the NPRM, may be obtained from Dornier GmbH, Postfach 317, P-7990 Friedrichshafen-Bodensee, Germany. Copies of this service bulletin are contained in the Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106; and the Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone 513.38.30; or Mr. H. Chimerine, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the 4CC and 9CC relays in the horizontal stabilizer electric trim system and mandatory replacement of those relays with more than 200 hours TIS was published in the **Federal Register** on May 30, 1985 (50 FR 23026). Subsequent to issuance of the proposal, it was determined that the aircraft manufacturer demonstrated during the type certification flight testing of the DO228-100/200, with a FAA Test Pilot aboard, that the aircraft is easily controllable to a safe landing by the pilot when the elevator trim is allowed to rotate to the full nose up and full nose down stops at maximum operating airspeed (V_{mo}); therefore, trim runaway would not be a problem in these aircraft with the design stops approved during type certification. Accordingly, issuance of an AD is unnecessary and therefore the NPRM is being withdrawn.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Withdrawal of Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration deletes a proposal to amend § 39.13 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. NPRM No. 85-CE-15-AD, published in the **Federal Register** on May 30, 1985 (50 FR 23026), is withdrawn.

Issued in Kansas City, Missouri, on August 28, 1986.

Jerold M. Chavkin,
Acting Director, Central Region.

[FR Doc. 86-20526 Filed 9-11-86; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AWP-13]

Proposed Alteration of VOR Federal Airways—HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V-7 and V-25 located in the state of Hawaii. The current descriptions of these airways cite the Flight Information Region/Oceanic Control Airspace (FIR/Oceanic CTA) boundary as the end of these airways. This action would redescribe the end of these airways by including geographical coordinates which pilots can easily locate.

DATE: Comments must be received on or before October 27, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWP-13, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be chsnged in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of Federal Airways V-7 and V-25 located in the state of Hawaii. The current descriptions of these airways indicates that the end of V-7 is the Molokai, HI, 358° radial and the Honolulu FIR/Oceanic CTA boundary and V-25 is the Hilo, HI, 356° radial and the Honolulu FIR/Oceanic CTA boundary. To improve the descriptions of these airways, the FAA proposes to use geographical coordinates rather than the FIR boundary. This action would aid flight planning and increase safety by giving a precise geographical and navigational point where domestic air traffic control separation criteria must be applied. Section 71.127 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.127 [Amended]

2. Section 71.127 is amended as follows:

V-7 [Amended]

By removing the words "to INT Molokai 358° and the Honolulu FIR/Oceanic CTA boundary." and substituting the words ": to INT Molokai 358°T(347°M) radial and lat. 24°19'00"N."

V-25 [Revised]

From Hilo, HI, via INT Hilo 356°T(345°M) and Maui, HI, 038°T(027°M) radials; to INT Maui 038°T(027°M) radial and lat. 23°00'24"N.

Issued in Washington, DC, on September 5, 1986.

Daniel J. Peterson,

Manager Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-20522 Filed 9-11-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-23]

Proposed Transition Area Alteration, Goshen, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to alter the existing Goshen, Indiana, transition area to accommodate a new LOC BC Runway 9 Standard Instrument Approach Procedure (SIAP) to Goshen Municipal Airport, Goshen, Indiana.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before October 13, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 86-AGL-23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The present transition area is being expanded to accommodate arrival aircraft utilizing the LOC BC Runway 9 SIAP. The additional airspace designated will be approximately a 1-mile additional expansion to the west of the present transition area.

The development of the procedure requires that the FAA alter the designated airspace to insure that the

procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-23." The Postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Goshen, Indiana.

Section 71.181 of Part 71 of the Federal Aviation. Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.18 [Amended]

2. Section 71.181 is amended as follows:

Goshen, IN [Amended]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Goshen, Indiana, Airport (lat. 41°31'30"N., long. 85°48'00"W.); and within 2 miles each side of the Goshen, Indiana, VORTAC 090 radial extending from the 5 mile radius area to 13 miles west of the airport.

Issued in Des Plaines, Illinois, on July 14, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-20527 Filed 9-11-86; 8:45 am]

BILLING CODE 4901-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-22]

Proposed Transition Area Alteration, Kentland, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Kentland, Indiana, transition area to accommodate a new RNAV Runway 27 Standard Instrument Approach Procedure (SIAP) to Kentland Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before October 13, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 86-AGL-22, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of a new RNAV Runway 27 instrument approach procedure requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The additional airspace designated will be approximately a 1-mile expansion of the existing transition area radius.

The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Kentland, IN.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kentland, IN [Amended]

That airspace extending upward from 700 feet above the surface within a 6 mile radius of Kentland, Indiana, Airport (lat. 40°45'27" N., long. 87°25'48" W.).

Issued in Des Plaines, Illinois, on July 14, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-20524 Filed 9-11-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AGL-21]

Proposed Transition Area Alteration—Warroad, MN

AGENCY: Federal Aviation. Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Warroad, Minnesota, transition area to accommodate a new RNAV Runway 31 Standard Instrument Approach Procedure (SIAP) to Warroad International-Swede Carlson Field Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before October 13, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No.86-AGL-21, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The present transition area is being expanded to accommodate aircraft utilizing a RNAV Runway 31 SIAP. The additional airspace designated will be approximately a .5 mile expansion of the present transition area radius.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with

VOL
51
ISS
177
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applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Warroad, Minnesota.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Warroad, MN—[Amended]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Warroad International-Swede Carlson Field Airport (lat. 48°56'15" N., long. 95°20'30" W.) excluding that area north of lat. 49°00'00" N. (Canadian-U.S. Boundary) and within 3 miles each side of the 106° bearing from Warroad International-Swede Carlson Field, extending from the 6.5-mile radius to 8.5 miles east southeast of the airport.

Issued in Des Plaines, Illinois, on July 14, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-20525 Filed 9-11-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ANM-2]

Proposed Establishment of Transition Area, Evanston, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish a 700 foot transition area at Evanston, Wyoming, to accommodate new VOR/DME instrument approach procedures to the Evanston-Uinta County Airport. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

DATE: Comments must be received on or before November 1, 1986.

ADDRESS: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 86-ANM-2, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-534, Federal Aviation Administration, Docket No. 86-ANM-2, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulation, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ANM-2". The postcard will be date/time stamped and returned to the

commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700 foot transition area at Evanston, Wyoming. This action will establish a transition area to provide controlled airspace for aircraft executing new VOR/DME instrument approach procedures to the Evanston-Uinta County Airport.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854;
49 U.S.C. 106(9) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Evanston, Wyoming, Transition Area [New]

That airspace extending 700 feet above the surface within an area bounded by a line beginning at lat. 41°20'00" N, long. 111°28'00" W), thence to lat. 41°32'00" N, long. 41°17'00" W, thence to lat. 41°15'00" N, long. 41°07'00" W, thence to lat. 41°01'00" N, long. 41°18'00" W, to beginning.

Issued in Seattle, Washington, on September 2, 1986.

Joseph C. Foster,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 20523 Filed 9–11–86; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9189]

Detroit Auto Dealers Association, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Detroit, Mich. Area Chrysler-Plymouth and Cadillac associations, dealerships and dealers listed in Attachments A, B, and C to the order from conspiring to not advertise in the classified sections of newspapers or to advertise vehicle prices at all. An identical proposed consent agreement with Dertoit-area Chevrolet associations, dealerships and dealers was published in the **Federal Register** on Aug. 20, 1986 (51 FR 29660).

DATE: Comment must be received on or before November 12, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Smith, FTC/G–402, Washington, DC 20580. (202) 254–5020.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act. 38 Stat. 721, 15 U.S.C. 46 and §3.25(f) of the Commission's Rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Automobile dealers, trade practices.

Before Federal Trade Commission

[Docket No. 9189]

Agreement Containing consent order To Cease and Desist

In the Matter of Detroit Auto Dealers Association, Inc., a corporation, et al.

The Federal Trade Commission having initiated an enforcement proceeding after an investigation of certain acts and practices of respondents identified in Attachments, A, B and C, and those respondents having agreed to enter into an agreement containing an order to cease and desist from engaging in the acts and practices identified in Count II of the complaint,

It is Hereby Agreed by and between respondents identified in Attachments A, B and C, and counsel for the Commission that:

1. Respondent dealers identified in Attachment A are all corporations with their principal places of business located at the addresses shown in Attachment A.

2. Individual respondents identified in Attachment B are officers of various dealers, as shown in Attachment B, and as such they formulate, direct and control the acts and practices of the dealers for which they are officers.

3. The respondent association identified in Attachment C is an

VOL 51 ISS 177 SE 12 1986 UMI

incorporated trade association for motor vehicle dealers with its principal places of business located at the address shown in Attachment C.

4. The respondents listed in Attachments A, B and C have been served with a copy of the complaint issued by the Federal Trade Commission alleging that they and others have violated Section 5 of the Federal Trade Commission Act, and have filed answers to the complaint denying these allegations.

5. The respondents listed is Attachments A, B and C admit all the jurisdictional facts relating to Count II set forth in the Commission's complaint in this proceeding.

6. The respondents listed in Attachments, A, B and C waive the following with respect to Count II of the complaint:

(a) Any further procedural steps;
(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and
(d) Any claim under the Equal Access to Justice Act.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents listed in Attachments A, B and C, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of Count II of the complaint issued by the Commission in this proceeding.

8. This agreement is for settlement purposes only and relates solely to Count II of the Commission's complaint in this proceding; this agreement does not constitute an admission by the respondents listed in Attachments A, B and C that the law has been violated as alleged in Count II of the complaint issued by the Commission.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to the respondents listed in Attachments, A, B and C, (1) issue its decision containing the following Order to cease and desist in disposition of Count II of the complaint issued by the Commission in this proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondents' addresses as stated in this agreement shall constitute service. The respondents listed in Attachments A, B and C walve any right they might have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the agreement may be used to vary or to contradict the terms of the Order.

10. The respondents listed in Attachments A, B and C have read the complaint and the Order contemplated hereby. These respondents understand that once the Order has been issued, they may be required to file one or more compliance reports showing they have fully complied with the Order. These respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

11. Commission counsel may not introduce or make reference in any way to the allegations in Count II of the complaint during the remainder of this proceeding; provided, that this paragraph in no way limits Commission counsel from introducing or using factual evidence otherwise admissible on the Count I allegations.

12. By its final acceptance of this agreement, the Commission waives its right to commence a proceeding or action against the respondents listed in Attachments A, B and C seeking consumer redress or other relief under section 5 or section 19 of the Federal Trade Commission Act with respect to the acts or practices alleged in Count II of the complaint; provided, that this paragraph in no way limits the Commission in seeking relief for a violation of the Order entered pursuant to this agreement or for any other actions of the respondents listed in Attachments A, B and C taken after final acceptance of the agreement.

Order

For purposes of this Order, the following definitions shall apply:

1. "Person" means any natural person, corporation, partnership, association, joint venture, trust or any other organization or entity, but not governmental entities.

2. "Dealer" means any person who receives on consignment, or purchases, motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such person.

3. "Other Dealer" means any dealer not named in this Order.

4. "Dealer association" means any trade, civic, service, or social association whose membership is comprised primarily of dealers.

5. "Detroit area" means the Detroit, Michigan metropolitan area, comprising Macomb County, Wayne County and Oakland County in the State of Michigan.

6. "Respondent" means any corporation listed in Attachment A, any individual listed in Attachment B, or any association listed in Attachment C, and the officers, directors, representatives, agents, divisions, subsidiaries, and successors and assigns of any listed corporation or association.

I.

It Is Ordered, that each respondent shall cease and desist from, directly or indirectly, or through any corporate or other device, entering into or continuing or carrying out any agreement, contract, combination or conspiracy with any respondent or any other dealer or dealer association in the Detroit area which has the purpose or effect of:

A. Restraicting, regulating or limiting the advertising of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle, except to the extent that the restriction, regulation or limitation of such advertising is necessary for the purpose of engaging in lawful joint advertising; or

B. Maintaining, adopting or adhering to any policy, act or practice that restricts, regulates or limits the advertising by any person of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle, except to the extent that the restriction, regulation or limitation of such advertising is necessary for the purpose of engaging in lawful joint advertising.

II.

It Is Further Ordered, that each respondent shall cease and desist from, directly or indirectly, or through any corporate or other device, performing any of the following acts or practices, or encouraging any person to perform any of the following acts or practices, or entering into or continuing or carrying out any agreement, contract, combination or conspiracy with any other person in the Detroit area to do or perform any of the following acts or practices:

A. Requesting, recommending, coercing, influencing, encouraging or persuading, or attempting to request, recommend, coerce, influence, encourage or persuade, any other respondent or any other dealer in the Detroit area to maintain, adopt or adhere to any policy, act or practice that restricts, regulates or limits the advertising by any person of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle, except to the extent that the restriction, regulation or limitation of such advertising is necessary for the purpose of engaging in lawful joint advertising; or

B. Requesting, recommending, coercing, influencing, encouraging or persuading, or attempting to request, recommend, coerce, influence, encourage or persuade, any other respondent or any other dealer in the Detroit area to change his advertised or published prices.

III.

It Is Further Ordered, that nothing contained in Part I or II above shall be construed to prohibit: (a) Any respondent association from formulating, adopting, disseminating to its members, and enforcing lawful guidelines governing the conduct of its members with respect to advertisements that such respondent association reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act; (b) any other respondent from participating in such activities as identified in Subpart (a) of an association of which such respondent is a member; or (c) any respondent from informing or advising anyone regarding what the respondent reasonably believes to be the requirements of any other existing or proposed federal, state, or local law, regulation, or order, or publishing such interpretations thereof.

IV.

It Is Further Ordered, that the respondent association listed in Attachment C shall cease and desist from failing to maintain for five (5) years following the taking of any action against a person alleged to have violated any advertising guidelines as described in Part III of this Order, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

V.

It Is Further Ordered, that the respondent association listed in Attachment C shall:

A. Within sixty (60) days of the date this Order becomes final, amend its by-laws to incorporate by reference this Order, and provide each member with a copy of this Order and the amended by-laws;

B. For three (3) years from the date this Order becomes final, provide each new member with a copy of this Order and the amended by-laws within thirty (30) days of the new member's admission to the association.

VI.

It Is Further Ordered, that, for a period of three (3) years from the date this Order becomes final, the respondent association listed in Attachment C shall notify the Commission at least sixty (60) days prior to the adoption of any advertising guidelines as described in Part III of this Order.

VII.

It Is Further Ordered, that each respondent shall, within sixty (60) days after this Order becomes final, and then annually thereafter for a period of three (3) years, file with the Commission a report, in writing, signed by the respondent, setting forth in detail the manner and form in which it has complied with this Order.

VIII.

It Is Further Ordered, that each corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in that corporate respondent, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in that corporate respondent that may affect compliance obligations arising out of this Order. In the case of each natural person respondent named herein, for a period of three (3) years from the date this Order becomes final, said respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of any new affiliation or employment with any dealer or dealer association. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which said respondent is newly engaged, as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

Attachment A to Chrysler—Plymouth Proposed Consent Agreement

Birmingham Chrysler-Plymouth, Inc., 2100 West Maple Road, Troy, Michigan 48084
Lochmoor Chrysler-Plymouth, Inc., 18165 Mack Avenue, Detroit, Michigan 48224
Shelby Oil Company, Inc., d/b/a Monicatti Chrysler-Plymouth Sales, 40755 Van Dyke Avenue, Sterling Heights, Michigan 48078
Roseville Chrysler-Plymouth, Inc., 25800 Gratiot Avenue, Roseville, Michigan 48006
Bill Snethkamp, Inc., 16430 Woodward Avenue, Highland Park, Michigan 48023
Thompson Chrysler-Plymouth, Inc., 16225 Fort Street, Southgate, Michigan 48195
Westborn Chrysler-Plymouth, Inc., 23300 Michigan Avenue, Dearborn, Michigan 48124

Attachment B to Chrysler-Plymouth Proposed Consent Agreement

Robert M. Brent, Warren Chrysler-Plymouth, Inc., 32711 Van Dyke Avenue, Warren, Michigan 48093
James Riehl, Roseville Chrysler-Plymouth, Inc., 25800 Gratiot Avenue, Roseville, Michigan 48006
William Snethkamp, Bill Snethkamp, Inc., 16430 Woodward Avenue, Highland Park, Michigan 48023

Attachment C to Chrysler-Plymouth Proposed Consent Agreement

Chrysler-Plymouth Dealers Association of Greater Detroit, Inc., 32711 Van Dyke, Warren, Michigan 48093

Attachment A to Cadillac Proposed Consent Agreement

Audette Cadillac, Inc., 7100 Orchard Lake Road, West Bloomfield, Michigan 48033
Crissman Cadillac, Inc., 1350 North Woodward Avenue, Birmingham, Michigan 48012
Charles Dalgleish Cadillac-Peugeot, Inc., 6160 Cass Avenue, Detroit, Michigan 48202
Dreisbach & Sons Cadillac Co., 24600 Grand River Avenue, Detroit, Michigan 48219
Arnold Jerome Cadillac, Inc., 675 S. Saginaw, Pontiac, Michigan 48053
Roger Rinke Cadillac Co., 8333 East Eleven Mile Road, Warren, Michigan 48093

Attachment B to Cadillac Proposed Consent Agreement

Charles Audette, Audette Cadillac, Inc., 7100 Orchard Lake Road, West Bloomfield, Michigan 48033

Frank Audette, Audette Cadillac, Inc., 7100 Orchard Lake Road, West Bloomfield, Michigan 48033
Charles Dalgleish, Jr., Charles Dalgleish Cadillac-Peugeot, Inc., 6160 Cass Avenue, Detroit, Michigan 48202
Douglas Dalgleish, Charles Dalgleish Cadillac-Peugeot, Inc., 6160 Cass Avenue, Detroit, Michigan 48202
Thomas S. Dreisbach, Dreisbach & Sons Cadillac Co., 24600 Grand River Avenue, Detroit, Michigan 48219
Roger J. Rinke, Roger Rinke Cadillac Co., 8333 East Eleven Mile Road, Warren, Michigan 48093

Attachment C to Cadillac Proposed Consent Agreement

Metro Detroit Cadillac Dealers Association, Inc., 100 Renaissance Center, Suite 3100, Detroit, Michigan 48243

Analysis of Proposed Count II Consent Order to Aid Public Comment

The Federal Trade Commisson has accepted agreements and proposed consent orders from 50 respondents charged under Count II of the Commission's complaint.

The proposed consent orders have been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the argeements and the comments received and will decide whether it should withdraw from the agreements or make final the proposed orders.

Description of the Complaint

On December 20, 1984, the Commission issued a two count complaint against 19 Detroit area automobile dealer associations; 105 Detroit area automobile dealerships; and 115 individuals (all of whom are or have been dealership owners, employees, or association employees) charging them under Count I with conspiring to restrict dealership operating hours. Count II of the complaint, which the present consent orders propose to settle, also charged certain of the Chevrolet, Cadillac, and Chrysler-Plymouth automobile dealership association respondents, automobile dealership respondents, and individual respondents (most of whom were owners of the respondent automobile dealerships) with conspiring to restrict (1) the advertising of motor vehicles in the classified section of newspapers and (2) the advertising or publishing of motor vehicle prices, in violation of section 5 of the Federal Trade Commission Act.

The complaint further alleged that the purpose and effects of the respondents' conduct challenged under Count II has been to restrict competition among dealers in the sale or lease of motor vehicles in the Detroit area. According to the FTC staff, these advertising restrictions also injure consumers by reducing consumers' access to important information about automobile prices in the Detroit area, thereby increasing dealers' ability to maintain higher prices.

The Proposed Consent Orders

Three identical consent agreements have been executed by 50 Count II respondent associations, dealerships, and individuals, grouped by automobile makes, *i.e.*, Chevrolet,[1] Chrysler-Plymouth and Cadillac. The proposed consent orders against these 50 respondents are designed to remedy the Count II violations charged in the Commission's complaint, and to prevent the Count II respondents from engaging in similar allegedly illegal acts and practices in the future. The proposed orders are intended to ensure that the Count II respondents cease all conduct prohibiting or discouraging the truthful advertising of motor vehicles in the classified sections of newspapers or the advertising or publishing of the prices, terms, or conditions of sale of any motor vehicle.

Part I provides that each respondent must cease and desist from, directly or indirectly, entering into or continuing any agreement, contract, combination, or conspiracy with any respondent, or with any other dealer or dealer association in the Detroit area, which has the purpose or effect of (A) restricting the advertising of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle or (B) maintaining, adopting or adhering to any policy, act or practice that restricts the advertising of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle. The prohibitions in Part I (A) and (B) do not prevent respondents from imposing any restriction, regulation or limitation of such advertising that is necessary for lawful joint advertising. Part I will effectively remedy the complaint's Count II allegations that these respondents have conspired to restrict price advertising of motor vehicles and the advertising of motor vehicles in the classified sections of newspapers.

Part II goes beyond the prohibitions of Part I against actual agreements to restrain price advertising or advertising in the classified sections of newspapers. It reaches unilateral actions and attempts by prohibiting each respondent from (directly or indirectly) attempting to (A) request, recommend, coerce, influence, encourage or persuade any other respondent or other dealer in the Detroit area to maintain, adopt or adhere to any policy, act or practice that restricts or regulates the advertising by any person of any motor vehicle in the classified section of any newspaper, or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle or (B) request, recommend, coerce, influence, encourage or persuade any other respondent or any other dealer in the Detroit area to change its advertised or published prices. The prohibitions in Part II(A) parallel those in Part I by applying to any "term or condition of sale" and by not preventing any restriction, regulation or limitation of advertising that is necessary for lawful joint advertising.

Part III(a) provides that Parts I and II do not prevent any respondent association from formulating and enforcing lawful guidelines against its members with respect to advertisements that such association "reasonably believes" are false or deceptive under section 5 of the Federal Trade Commission Act. Part III(b) permits any dealership-member of an association to participate in the association activities described in Part III(a). Part III(c) permits any respondent to inform or advise anyone or publish interpretations of what it reasonably believes to be the requirements of any existing or proposed federal, state, or local law (excluding section 5 of the Federal Trade Commission Act, which is addressed in Part III(a)), regulation, or order. However, in order that the Commission not delegate law enforcement authority to private parties, this provision does not require that the respondent receiving the advice must abide by it.

Part IV requires that each association respondent maintain documentation concerning any action taken against any person alleged to have violated any association advertising guidelines described in Part III. This documentation must be maintained for 5 years following the taking of any such action.

Part V requires that, within 60 days of the Order becoming final, each

[1] The Proposed Consent Agreement with the Chevrolet associations, dealerships, and individuals was published in the **Federal Register** on Aug. 20, 1986 (51 FR 29660).

respondent association amend its by-laws to incorporate by reference the Order, and provide each association member with a copy of the Order and amended by-laws. In addition, for 3 years from the Order becoming final, each new member of the association must be provided with such documentation within 30 days of its admission to the association.

Part VI provides that, for 3 years, each respondent association must notify the Commission at least 60 days prior to the adoption of any advertising guidelines described in Part III.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-20690 Filed 9-11-86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD-85-092]

Puget Sound Vessel Traffic Service

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard proposes to amend the regulations for the Puget Sound Vessel Traffic Service (PSVTS). This proposal is intended to update the reporting requirements to reflect the Vessel Traffic Center's (VTC's) increased radar coverage capabilities; clarify the wording throughout the regulations; and reorganize and reword the regulations to make them compatible with the proposed Cooperative Vessel Traffic Management System (CVTMS) regulations which will apply to waters adjacent to those covered by the PSVTS regulations. These proposed changes would revise the operational reporting scheme by reducing the number of reports required and providing for the communication of more timely information to the VTC. For Traffic Service participants who navigate in both the PSVTS area and the CVTMS area, these proposed changes will facilitate the changeover in operating procedures when going from one area to another by minimizing the differences between the two sets of regulations.

DATES: Comments must be received by November 12, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC), U.S. Coast Guard, Washington, DC 20593. Comments may be delivered to and will be available for inspection and copying at the Office of the Executive Secretary, Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593 between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION, CONTACT: LTJG K.J. BRADLEY, Office of Marine Environment and Systems, (202) 267-1940. Normal office hours are 7:30 a.m. to 4:00 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 85-092) and the specific section of the proposal to which each comment applies, and give the reasons for the comments. A self-addressed stamped envelope should be included with the comments if an acknowledgment of receipt is desired. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is presently planned; however, a hearing may be held if it is determined that it would aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are LTJG K.J. BRADLEY, Project Manager, Office of Marine Environment and Systems, and CDR R.C. ZABEL, Project Counsel, Office of the Chief Counsel.

Background

The Ports and Waterways Safety Act, (33 U.S.C. 1221) provides authority for the Secretary of the Department of Transportation to "establish, operate, and maintain vessel traffic services and systems for ports, harbors, and other waters subject to congested vessel traffic." On July 10, 1974, the Coast Guard established regulations for the Puget Sound Vessel Traffic Service (PSVTS) (39 FR 25430; July 10, 1974). These regulations provide for the safe and expeditious movement of vessel traffic while minimizing the risk of pollution.

Discussion of Proposed Amendments

Changes in PSVTS equipment capabilities and operating procedures necessitate the revision of Title 33 CFR 161.101-187. This amendment will provide more definitive requirements in some areas, streamline others, and, in general, reword the PSVTS regulations to more accurately reflect intended procedures and current equipment capabilities.

This amendment also reorganizes and restructures the regulations to make them compatible with the proposed Cooperative Vessel Traffic Management System (CVTMS) regulations. The CVTMS regulations will provide for a joint U.S. and Canadian system for managing vessel traffic in waters bounding the state of Washington and Vancouver Island. The waters subject to this agreement include the Strait of Juan de Fuca and its Pacific Ocean approaches, Haro Strait, and the Strait of Georgia—waters which also bound the PSVTS Area. The PSVTS VTC in Seattle manages vessel traffic in both the PSVTS Area and in the Strait of Juan de Fuca in the CVTMS Area. The same radio call sign, "Seattle Traffic," is used to contact the PSVTS VTC whether a vessel is operating in the PSVTS Area, or the CVTMS Area. Canadian VTCs manage vessel traffic in the remainder of the CVTMS Area. The user who will be required to participate in both systems will find it easier to understand and comply with both sets of regulations if the PSVTS regulations are worded and structured to be as consistent as possible with the CVTMS regulations. Section cites have been changed throughout most of this amendment to reflect the reorganization of the PSVTS regulations. Certain section titles will have new section numbers, and/or be listed under different general headings. Changes in actual content of the sections are discussed below.

There are also several cites in this amendment which refer to various sections of the CVTMS regulations. These section cites will not be applicable until the CVTMS regulations are published as a final rule in 33 CFR 161.200-299. The CVTMS regulations were published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on 18 August 1983 (48 FR 37433), and the Final Rule was drafted without significant changes from the NPRM. Since CVTMS is a joint agreement, the U.S. and Canada intend to publish Final Rules at the same time. The delay in publication of the U.S. Final Rule is due to Canadian delays in getting their CVTMS regulations approved for publication. It is anticipated the U.S. and Canadian Final Rules will be published simultaneously in early 1987.

This amendment would delete specific reporting requirements concerning navigation in and around the TSS, delete the Initial report if the vessel is entering

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the PSVTS Area from the CVTMS Area and has previously reported the information to another VTC, and delete the requirement to routinely call-in at reporting points. The only new report proposed in this amendment is the Underway report. The extra benefit of gathering up-to-date information on when a vessel actually begins navigating in the VTS area far outweighs the negligible added burden of quickly reporting a vessel name and location to the VTC. The net effect of these changes is an actual decrease in the amount of reporting required.

Most sections in this amendment have been reworded to varying degrees, but the meaning remains basically unchanged from the current regulations unless noted otherwise below. The sections which have been changed are listed in this discussion under three headings: Procedure and Editorial Changes, Compatibility Changes, and New Requirements. Sections listed under "Procedure and Editorial Changes" reflect changes that were made to clarify a section in order to make it easier to read and understand, and to more accurately reflect the intent of the section to elicit timely and accurate traffic information. The main purpose of the changes to sections listed under "Compatibility Changes" was to make the wording of these regulations as consistent as possible with the wording of the proposed CVTMS regulations. Sections listed under "New Requirements" are, as the name implies, new requirements not specifically stated in the current regulations. All section cites given in this discussion refer to sections in this amendment unless noted otherwise.

Procedure and Editorial Changes

The cite referring to the entire set of PSVTS regulations has been changed from "§§ 161.100 through 161.199" to "§§ 161.101 through 161.187" to more accurately reflect the actual section numbering. Also, the term "master" used in the current regulations has been replaced throughout this amendment with "master, pilot, or person directing the movement of a vessel" in order to more accurately reflect actual responsibilities.

Three definitions ("Commercial Vessel", "Floating Plant", and "Vessel") have been added to § 161.103 to clarify the meaning of these terms in the regulations, and one definition ("Displacement Ton") was deleted because the term was not used.

Sections 161.104, 161.113, 161.137, 161.170, and 161.174 have been reworded to more clearly and accurately reflect the intent of the regulations.

The Port Angeles precautionary area is no longer mentioned in § 161.152(b) as it lies within the CVTMS Area. Vessel operating requirements relating to the Port Angeles precautionary area are more properly addressed in the proposed CVTMS regulations. However, the Port Angeles precautionary area is mentioned in § 161.187(a). This cite is merely descriptive, and is intended to aid in identifying the Port Angeles precautionary area and its relation to other precautionary areas.

The Port Angeles precautionary area has also been added to §§ 161.163(c) (1) and (2), replacing precautionary areas "S" and "R". No separate precautionary areas exist to correspond with "S" and "R", the areas are in fact part of the east end of the Port Angeles precautionary area. Again, the wording is merely descriptive and is intended to reflect the actual precautionary area configuration.

Section 161.152(b) now specifically exempts mariners from the requirement to keep the center of precautionary area "RB" to port. Permission for such deviation is frequently granted by the VTC due to the strong currents in that area.

The description of precautionary area "RB" in § 161.187(c) has been changed. A statement has been added to the description of precautionary area "RB" to reflect the fact that the buoy which had previously marked the center of the precautionary area has been removed.

Reporting requirements concerning vessel navigation in and around the Traffic Separation Scheme (TSS), such as when crossing the TSS or when joining the TSS at a location other than a precautionary area, have been deleted because the information is either already required under other reporting requirements, or is. available from the VTC's radar.

The requirement for a report when a vessel passes a reporting point has been deleted. Radar coverage at the VTC eliminates the routine need for this report. Provision for the use of reporting points has been retained however, in § 161.132, in the case of VTC equipment malfunction.

Section 161.188 has been deleted to avoid duplication with the provision in § 165.1301 of this Chapter authorizing PSVTS to establish Temporary Special Traffic Lanes.

Compatibility Changes

Two definitions ("CVTMS" and "CVTMS Area") have been added and four ("Precautionary Area", "Separation Zone", "Traffic Lane", and "Traffic Separation Scheme") changed in § 161.103 to maintain consistency with the same definitions in the CVTMS regulations. A statement has been added to § 161.105 to make the wording identical to wording in the CVTMS regulations. This statement is a clarification of action which can be taken pursuant to consultation with, and by authority of, the Captain Of The Port (COTP) if necessary to insure maritime safety.

Sections 161.107–161.112, 161.114, 161.120, 161.124–161.128, and 161.132–161.136 have been reworded to clarify the intent of the regulation, and to be compatible with similar requirements in the CVTMS regulations.

New Requirements

In addition to the present requirements, two minor additional requirements are proposed in these amendments. They are the Requirement to carry regulations (§ 161.106) and the Underway report requirement (§ 161.131).

Vessels listed in § 161.101(c) (vessels of 300 or more gross tons, vessels of 100 or more gross tons carrying passengers for hire, dredges, etc.) will be required to carry the PSVTS regulations onboard while in the VTS area. The major benefit of this requirement is a vessel in the VTS Area will have a copy of these regulations available on board if a question arises concerning the regulations. This consideration is especially important for vessels which may transit the VTS Area only occasionally. The regulations can be found in the Coast Pilot and in the PSVTS User's Manual. The impact of this additional requirement will be minimal since foreign vessels are required to carry the applicable Coast Pilot when in U.S. waters, and the PSVTS User's Manual is available without charge by writing to the address given in § 161.106.

For the Underway report, vessels will have to report their name and location when entering or getting underway in the VTS area. The VTC is currently using § 161.142(b) of the present PSVTS regulations to require this report. The proposal formalizes this requirement in a distinct, separate section. This report at the time a vessel actually enters or gets underway in the VTS Area will provide both PSVTS and participating vessels more timely information regarding vessel traffic.

Regulatory Evaluation

This proposed rule is considered to be non-major under Executive Order 12291 and "non-significant" under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this

proposal has been found to be so minimal that further evaluation is unnecessary. The changes to these regulations do not impose any economic burden on participants. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies it will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements

This proposed rulemaking contains an information collection requirement in § 161.108. It is being submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on this information collection requirement should submit their comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, ATTN: Desk Officer, Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 161

Navigation (water), Vessels, Traffic separation scheme.

In view of the foregoing, the Coast Guard proposes to amend Part 161 of Title 33 Code of Federal Regulations as follows:

1. The authority citation for Part 161 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Subpart B is amended by revising the sections under the undesignated center heading Puget Sound Vessel Traffic Service consisting of §§ 161.101 through 161.187 to read as follows.

Sections 161.188 and 161.189 are removed.

PART 161—VESSEL TRAFFIC MANAGEMENT

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Subpart B—Vessel Traffic Services

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PUGET SOUND VESSEL TRAFFIC SERVICE

General Rules

Sec.

161.101 Purpose and applicability.
161.103 Definitions.
161.104 Vessel operation in the VTS Area.
161.105 VTC directions.
161.106 Requirement to carry regulations.
161.107 Laws and regulations not affected.
161.108 Authorization to deviate from these rules.
161.110 Emergencies.

Communication Rules

161.112 Radio listening watch.
161.114 Use of designated frequency.
161.116 Time.
161.116 English language.
161.120 Radiotelephone equipment failure.
161.122 Report of radio failure.
161.124 Report of impairment to the operation of the vessel.

Vessel Movement Reporting Rules

161.127 Local harbor reports.
161.128 Initial report.
161.131 Underway report.
161.132 Calling-in-point report.
161.134 Follow-up report.
161.136 Final report.
161.137 Ferry vessels.
161.143 Navigation requirements.

Traffic Separation Scheme Rules

161.150 Vessel operation in the TSS.
161.152 Direction of traffic.
161.154 Anchoring in the TSS.
161.156 Joining, leaving, and crossing a traffic lane.
161.157 Vessel speed and wake control.

Rosario Strait Rules

161.170 Communication in Rosario Strait.
161.172 Report before entering Rosario Strait.
161.174 Entering Rosario Strait.

DESCRIPTIONS AND GEOGRAPHIC COORDINATES

161.180 VTS Area.
161.183 Separation zones.
161.185 Traffic lanes.
161.187 Precautionary areas.

* * * * *

Subpart B—Vessel Traffic Services

PUGET SOUND VESSEL TRAFFIC SERVICE

General Rules

§ 161.101 Purpose and applicability.

(a) Sections 161.101 through 161.187 prescribe rules for vessel operation in the Puget Sound Vessel Traffic Service Area (VTS Area) to prevent collisions and groundings and to protect the navigable waters of the VTS Area from environmental harm resulting from collisions and groundings.

(b) The General Rules in §§ 161.101 through 161.105 and 161.107 through 161.110, the Use of Designated Frequency Rule in § 161.114, and the TSS Rules in §§ 161.150 through 161.156 apply to the operation of all vessels.

(c) The Requirement to Carry Regulations Rule in § 161.106, the Communications Rules in §§ 161.112 through 161.126, the Vessel Movement Reporting Rules in §§ 161.127 through 161.137, the Vessel Speed and Wake Control Rule in § 161.157, and the Rosario Strait Rules in §§ 161.170 through 161.174 apply only to the operation of:

(1) Each vessel of 300 or more gross tons that is propelled by machinery;

(2) Each vessel of 100 or more gross tons that is carrying one or more passengers for hire;

(3) Each commercial vessel of 26 feet or over in length engaged in towing another vessel astern, alongside, or by pushing ahead;

(4) Each dredge and floating plant; and

(5) Each small passenger carrying vessel certificated in accordance with 46 CFR Part 175 through 187 (Subchapter T) when carrying more than six passengers for hire.

§ 161.103 Definitions.

As used in §§ 161.101 through 161.187:

"Commercial Vessel" means any vessel operating in return for payment or other type of compensation.

"ETA" means estimated time of arrival.

"Floating Plant" means any vessel, other than a vessel underway and making way, engaged in any construction, manufacturing, or exploration operation, and which may restrict the navigation of other vessels.

"Person" means an individual, firm, corporation, association, partnership, and governmental entity.

"Precautionary Area" means a routing measure comprising an area within defined limits where ships must navigate with particular caution, and within which the direction of traffic flow may be recommended.

"Separation Zone" means an area of the TSS separating the opposing traffic lanes.

"Traffic Lane" means an area of the TSS within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

"Traffic Separation Scheme (TSS)" means the routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

"Vessel" means every description of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

"Vessel Traffic Center (VTC)" means the shore-based facility that operates the Puget Sound Vessel Traffic Service.

"Vessel Traffic Service Area (VTS Area)" means the area described in § 161.180.

"Cooperative Vessel Traffic Management System (CVTMS)" means the system of vessel traffic management established and jointly operated by Canada and the United States within the waters of the CVTMS Area.

"Cooperative Vessel Traffic Management System Area (CVTMS Area)" means the waters described in § 161.254 of this chapter.

§ 161.104 Vessel operation in the VTS Area.

No person, except those authorized to do so under § 161.108 and § 161.110, may cause or authorize the operation of a vessel in the VTS Area contrary to the rules contained in §§ 161.101 through 161.187.

§ 161.105 VTC directions.

(a) During conditions of vessel congestion, adverse weather, reduced visibility, or other hazardous circumstances in the VTS Area, the VTC may issue directions to control and supervise traffic, and may specify times when vessels may enter, move within or through, or depart from ports, harbors, or other waters in the VTS Area.

(b) When a vessel is navigating in a unsafe manner or with improperly functioning equipment, the VTC may direct the vessel's movement, including directing it to anchor or moor.

(c) The master, pilot, or person directing the movement of a vessel in the VTS Area shall comply with each direction issued to him under this section.

§ 161.106 Requirement to carry regulations.

(a) The master of a vessel listed in § 161.101(c) shall ensure that a copy of the current Puget Sound Vessel Traffic Service regulations, Title 33, Code of Federal Regulations, §§ 161.101–161.187 (33 CFR 161.101–161.187), is available on board the vessel when it is in the VTS Area.

(b) The Puget Sound Vessel Traffic Service User's Manual includes the VTS regulations and guidelines for the efficient operation of the VTS system. The manual may be obtained free-of-charge from: Commanding Officer, Puget Sound Vessel Traffic Service, 1519 Alaskan Way S., Seattle, WA 98134.

§ 161.107 Laws and regulations not affected.

Nothing in §§ 161.101 through 161.187 is intended to relieve any person from complying with any other applicable laws or regulations.

§ 161.108 Authorization to deviate from these rules; equivalent procedures.

(a) Where these regulations require a particular procedure, the Commander, Thirteenth Coast Guard District, may, upon written request, authorize any other procedure for use in U.S. waters if it is determined that such other procedure provides a level of safety equivalent to that provided by the required procedure. An application for an authorization must state the need and fully describe the proposed procedure.

(b) The VTC, may, upon request, issue an authorization to deviate from any rule in §§ 161.101 through 161.187 for a voyage or part of a voyage on which a vessel is embarked or about to embark.

§ 161.110 Emergencies.

In an emergency, the master, pilot, or person directing the movement of a vessel, may deviate from any rule in §§ 161.101 through 161.187 to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the VTC as soon as possible.

Communications Rules

§ 161.112 Radio listening watch.

(a) When underway, or anchored or moored to a buoy, in the VTS Area, the master, pilot, or person directing the movement of a vessel shall ensure that a radiotelephone listening watch is maintained on the appropriate frequency designated in § 161.114, except when transmitting on that frequency.

(b) The radio listening watch required by paragraph (a) of this section may be maintained in a location other than the vessel's navigational bridge when the vessel is anchored or moored to a buoy.

§ 161.113 Radiotelephone equipment.

The master, pilot, or person directing the movement of a vessel shall ensure all reports and communications required by §§ 161.101 through 161.187 are made from the navigational bridge of the vessel, or, in the case of a dredge, at its main control station, except when anchored or moored to a buoy as provided in § 161.112(b). Such reports and communications must be made to the VTC on its designated frequency using a radiotelephone that is maintained in effective operating condition.

§ 161.114 Use of the designated frequency.

(a) In accordance with Federal Communication Commission regulations, no person may use the frequency or frequencies designated in this section to transmit any information other than information necessary for the safety of vessel traffic.

(b) All transmissions on the VTS frequencies shall be initiated on low power, if available; high power may only be used if low power communications are unsuccessful.

(c) The following frequencies must be used when communicating with the VTC, and with other vessels when passing navigation-related information, except as provided in § 161.170 for vessels operating in Rosario Strait:

(1) Primary frequency: 156.700 MHz (channel 14)

(2) Secondary frequency (to be used if communication not possible on primary frequency): 156.650 MHz (channel 13)

§ 161.116 Time.

Each report required by §§ 161.101 through 161.187 must specify time using:

(a) The zone time in effect in the VTS Area; and

(b) The 24-hour clock system.

§ 161.118 English language.

Each report required by §§ 161.101 through 161.187 must be made in the English language.

§ 161.120 Radiotelephone equipment failure.

(a) If the radiotelephone required by § 161.112 ceases to operate, the master shall ensure that it is restored to operating condition as soon as possible. The failure of a vessel's radiotelephone equipment, while the vessel is underway, shall not in itself constitute a violation of these rules, nor shall it obligate the vessel to moor or anchor; however, required reports shall be made by other means, if possible.

(b) A vessel that cannot meet the radiotelephone requirements of these rules may not enter or get underway in the VTS Area without permission from the VTC.

(c) Paragraph (a) of this section does not relieve compliance with the radio equipment requirement in § 161.174(a)(2) for vessels operating in Rosario Strait.

§ 161.122 Report of radio failure.

Whenever the master, pilot, or person directing the movement of a vessel deviates from any rule in §§ 161.101 through 161.187 because of a radio failure, the deviation and radio failure shall be reported to the VTC as soon as possible.

§ 161.124 Report of impairment to the operation of the vessel.

The master, pilot, or person directing the movement of a vessel in the VTS

Area shall report to the VTC as soon as possible:

(a) Any condition on the vessel that may impair its navigation such as fire or defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective echo depth sounding device, defective communications equipment, or defective navigational lighting.

(b) Any tow that the towing vessel is unable to control, or can control only with difficulty.

(c) When involved in a grounding, collision, or ramming of a fixed or floating object.

Vessel Movement Reporting Rules

§ 161.127 Local harbor report.

(a) When a vessel moves within a three mile radius of its point of departure in the VTS Area, the movement is a local harbor movement. A vessel making a local harbor movement is exempted from the reporting requirements for Initial report (§ 161.128), Underway report (§ 161.131), and Final report (§ 161.136).

(b) At least 5 minutes, but not more than 45 minutes, before a vessel makes a local harbor movement, as described under paragraph (a) of this section, the master, pilot, or person directing the movement of a vessel shall report, or cause to be reported, the following information to the VTC:

(1) Name and type of vessel.

(2) Position of departure.

(3) Time of departure.

(4) Destination and ETA.

(5) General description of operation to be performed.

(c) The master, pilot, or person directing the movement of a vessel shall report, or cause to be reported, any changes from the information reported under paragraph (b) of this section, except that departing or ETA times must be reported only if they vary by 15 minutes or more from the report.

§ 161.128 Initial report.

(a) Except as provided in paragraphs (b) and (c) of this section, at least 15 minutes, but not more than 45 minutes, before a vessel enters or begins to navigate in the VTS Area the master, pilot, or person directing the movement of the vessel shall report the following information to the VTC:

(1) Name and type of vessel.

(2) Point of entry in the VTS Area.

(3) Estimated time of entering or beginning to navigate in the VTS Area.

(4) Destination, ETA at destination, and route in the VTS Area.

(5) Anticipated vessel speed in knots.

(6) Whether or not the vessel intends to use the TSS.

(7) Whether or not any dangerous cargo listed in Part 160, Subpart C of this Chapter is on board the vessel or its tow.

(8) Any impairment to the operation of the vessel as described in § 161.124.

(9) Any planned maneuvers that may impede traffic.

(b) Vessels making movements that require Local harbor reports (§ 161.127) are exempt from making this report.

(c) Vessels that will be entering from the CVTMS Area and have previously reported the above information to another VTC are exempt from making this report.

§ 161.131 Underway report.

As soon as a vessel enters or begins to navigate in the VTS Area, the master, pilot, or person directing the movements of the vessel shall report the following to the VTC:

(a) Vessel name.

(b) Vessel location.

§ 161.132 Calling-in-point report.

When directed to do so by the VTC, the master, pilot, or person directing the movement of a vessel shall report, on either a one time basis, or as a series of reports, their:

(a) Vessel name.

(b) Vessel location.

§ 161.134 Follow-up report.

The master, pilot, or person directing the movement of a vessel shall report to the VTC, as soon as possible, any information which has changed since the previous report, including, but not limited to, ETA, speed, destination, and route.

§ 161.136 Final report.

No later than 30 minutes after a vessel anchors, moors in, or departs from the VTS Area, the master, pilot, or person directing the movement of a vessel shall report the place and time of anchoring, mooring, or departing to the VTC.

§ 161.137 Ferry vessels.

A ferry vessel operating in the VTS Area on a schedule and route, both of which have been previously furnished to the VTC, need not comply with Initial report (§ 161.128), Underway report (§ 161.131), Follow-up report (§ 161.134), and Final report (§ 161.136); however, the master, pilot, or person directing the movement of a ferry must report the following information to the VTC at least 5 minutes, but not more than 10 minutes prior to each departure from a ferry terminal:

(a) The name of the ferry vessel.

(b) Time and point of departure of the ferry vessel.

(c) Destination of the ferry vessel.

§ 161.143 Tank vessel navigation restrictions.

Tank vessels larger than 125,000 deadweight tons bound for a port or place in the United States may not operate in waters of the United States east of the line extending from Discovery Island Light to New Dungeness Light and all points in the Puget Sound area north and south of these lights.

Traffic Separation Scheme Rules

§ 161.150 Vessel operation in the TSS.

The master, pilot, or person directing the movement of a vessel in the TSS shall operate the vessel in accordance with the TSS rules prescribed in §§ 161.152 through 161.156.

§ 161.152 Direction of traffic.

(a) A vessel proceeding in the TSS must keep the separation zone to port.

(b) A vessel in a precautionary area, except the "RB" precautionary area or any temporary precautionary area, must keep the center of the precautionary area to port.

§ 161.154 Anchoring in the TSS.

No vessel may anchor in the TSS.

§ 161.156 Joining, leaving, and crossing a traffic lane.

(a) A vessel crossing a traffic lane must, to the extent possible, maintain a course that is perpendicular to the direction of the flow of traffic in the traffic lane.

(b) A vessel joining or leaving a traffic lane must steer a course to converge on or diverge from the direction of traffic flow in the traffic lane at as small an angle as possible.

§ 161.157 Vessel speed and wake control.

When the tide exceeds a stage of 11.0 feet at Seattle, all vessels listed in § 161.101(c), operating in the waters of the VTS Area, must proceed at a speed that will minimize the risk of wake damage while maintaining the ability to maneuver safely.

Rosario Strait Rules

§ 161.170 Communications in Rosario Strait.

Before a vessel meets, overtakes, or crosses ahead of any vessel listed in § 161.101(c), in Rosario Strait, the master, pilot, or person directing the movement of a vessel shall transmit the intentions of his vessel to the master of the other vessel on the frequency designated under the Bridge-to-Bridge Radiotelephone Act for the purpose of arranging safe passage.

§ 161.172 Report before entering Rosario Strait.

At least 15 minutes before a vessel enters the TSS at Rosario Strait, the master, pilot, or person directing the movement of the vessel shall report the vessel's ETA at, and point of entry in, Rosario Strait to the VTC by radiotelephone.

§ 161.174 Entering Rosario Strait.

(a) A vessel may not enter or get underway in Rosario Strait unless:

(1) The report required by § 161.172 has been made;

(2) The radio equipment on the vessel that is used to transmit the reports required by §§ 161.101 through 161.187 is operable;

(3) During periods of visibility of 2 miles or less, the radar on a vessel equipped with radar is in operation and manned; and

(4) The vessel is free of any conditions that may impair its navigation such as fire or defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective echo depth sounding device, defective communications equipment, or defective navigational lighting.

(b) A vessel of 75,000 deadweight tons or above may not enter or get underway in Rosario Strait unless permission to enter is obtained from the VTC.

DESCRIPTIONS AND GEOGRAPHIC COORDINATES

§ 161.180 VTS Area.

The VTS Area consists of the navigable waters of the United States which are inside of a line drawn from New Dungeness Light northerly to Puget Sound Traffic Lane Entrance Lighted Buoy "S"; thence to Rosario Strait Traffic Lane Entrance Lighted Buoy "R"; thence to Hein Bank Lighted Bell Buoy; thence to Cattle Point Light on San Juan Island; thence along the shoreline to Lime Kiln Light; thence to Kellett Bluff Light on Henry Island; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to Sucia Island Daybeacon 1; thence along the shoreline of Sucia Island to a point at 48°46.1' N., 122°53.3' W.; thence to Clements Reef Buoy "2"; thence to Alden Bank Lighted Gong Buoy "A"; thence northerly to the westernmost tip of Birch Point at 48°56.6' N., 122°49.2' W.

§ 161.183 Separation zones.

(a) Each separation zone is 500 yards wide and centered on a line that extends from one point to another, or through several points, described in paragraph (c) of this section.

(b) Two boundaries of each separation zone are parallel to its centerline and extend to and intersect with the boundary of a precautionary area. No part of any separation zone is contained in a precautionary area.

(c) The latitudes and longitudes describing the centerline of the separation zone are:

(1) Between the Port Angeles precautionary area and "SA",
(i) 48°12'22" N., 123°06'30" W.
(ii) 48°11'37" N., 122°52'40" W.

(2) Between the Port Angeles precautionary area and "RA",
(i) 48°16'26" N., 123°06'30" W.
(ii) 48°19'06" N., 123°00'09" W.

(3) Between precautionary area "RA" and "SA",
(i) 48°18'45" N., 122°57'30" W.
(ii) 48°13'04" N., 122°51'24" W.

(4) Between precautionary area "RA" and "RB",
(i) 48°20'26" N., 122°57'01" W.
(ii) 48°24'14" N., 122°48'00" W.
(iii) 48°25'28" N., 122°48'23" W.

(5) Between precautionary area "RB" and "SA",
(i) 48°25'12" N., 122°44'40" W.
(ii) 48°24'10" N., 122°44'12" W.
(iii) 48°13'22" N., 122°48'55" W.

(6) Between precautionary area "SA" and "SC",
(i) 48°10'48" N., 122°48'58" W.
(ii) 48°06'48" N., 122°39'36" W.
(iii) 48°02'28" N., 122°38'20" W.

(7) Between precautionary area "SC" and "SE",
(i) 48°01'20" N., 122°37'37" W.
(ii) 47°57'53" N., 122°34'42" W.
(iii) 47°55'48" N., 122°30'14" W.

(8) Between precautionary area "SE" and "SF",
(i) 47°54'49" N., 122°29'17" W.
(ii) 47°46'31" N., 122°26'23" W.

(9) Between precautionary area "SF" and "SG",
(i) 47°45'19" N., 122°26'21" W.
(ii) 47°40'19" N., 122°27'38" W.

(10) Between precautionary area "SG" and "T",
(i) 47°39'05" N., 122°27'42" W.
(ii) 47°35'12" N., 122°27'06" W.

(11) Between precautionary area "T" and "TC",
(i) 47°33'59" N., 122°26'47" W.
(ii) 47°26'53" N., 122°24'12" W.
(iii) 47°23'07" N., 122°21'08" W.
(iv) 47°19'54" N., 122°26'37" W.

(12) Between precautionary area "CA" and "C",
(i) 48°44'15" N., 122°45'39" W.
(ii) 48°41'39" N., 122°43'34" W.

§ 161.185 Traffic lanes.

(a) Except as provided in paragraph (c) of this section, each traffic lane consists of the area within two parallel boundaries that are 1000 yards apart and that extend to, and intersect with, the boundary of a precautionary area. One of these parallel boundaries is parallel to and 250 yards from the centerline of a separation zone.

(b) No part of any traffic lane is contained in a precautionary area.

(c) The traffic lane in Rosario Strait consists of the area enclosed by a line beginning at 48°26'50" N., 122°43'27" W.; thence. northerly to 48°36'06" N., 122°44'56" W.; thence northeasterly to 48°39'18" N., 122°42'42" W.; thence westerly and northwesterly along the boundary of precautionary area "C" to 48°39'37" N., 122°43'58" W.; thence southerly to 48°38'24" N., 122°44'08" W.; thence southwesterly to 48°36'06" N., 122°45'44" W.; thence southerly to 48°29'30" N., 122°44'41" W.; thence southwesterly to 48°27'37" N., 122°45'27" W.; thence northeasterly and southeasterly along the boundary of precautionary area "RB" to the point of beginning.

§ 161.187 Precautionary areas.

The precautionary areas consist of:

(a) *Port Angeles precautionary area.* An area enclosed by a line beginning on the shoreline at New Dungeness Spit at 48°11'00" N., 123°06'30" W.; thence due north to 48°17'10" N., 123°06'30" W.; thence southwesterly to 48°10'00" N., 123°27'38" W.; thence due south to the shorelines, thence along the shoreline to the point of beginning. (Note: the Port Angeles precautionary area lies within the CVTMS Area which is covered by §§ 161.200 through 161.299 of this Subpart.)

(b) *Precautionary area "RA".* A circular area of 2,500 yards radius centered at 48°19'48" N., 122°58'34" W.

(c) *Precautionary area "RB".* A circular area of 2,500 yards radius centered at 48°26'24" N., 122°45'12" W. (The center of precautionary area "RB" is not marked by a buoy.);

(d) *Precautionary area "C".* A circular area of 2,500 yards radius centered at 46°40'34" N., 122°42'44" W.;

(e) *Precautionary area "CA".* A circular area of 2,500 yards radius centered at 48°45'19" N., 122°46'26" W.;

(f) *Precautionary area "SA".* A circular area of 4,000 yards radius centered at 48°11'28" N., 122°49'43" W.;

(g) *Precautionary area "SC".* A circular area of 1,250 yards radius centered at 48°01'52" N., 122°38'05" W.;

(h) *Precautionary area "SE".* A circular area of 1,250 yards radius centered at 47°55'25" N., 122°29'29" W.;

(i) *Precautionary area "SF".* A circular area of 1,250 yards radius centered at 47°45'55" N., 122°26'11" W.;

(j) *Precautionary area "SG".* A circular area of 1,250 yards radius centered at 47°39'42" N., 122°27'48" W.;

(k) *Precautionary area "T".* A circular area of 1,250 yards radius centered at 47°34'34" N., 122°27'00" W.;

(l) *Precautionary area "TC".* A circular area of 1,250 yards radius centered at 47°19'30" N., 122°27'19" W.

June 16, 1986.

J.H. Parent,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50557; FRL-3078-3]

1-Propanol, 3-Mercapto-; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance 1-propanol, 3-mercapto- (Chemical Abstract Service Registry Number: 19721-22-3), which was the subject of premanufacture notice (PMN) P-85-433 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that this substance may be hazardous to human health and that the uses described in this proposed rule may result in significant human exposure. As a result of this rule, certain persons who intend to manufacture, import, or process this substance for a significant new use would be required to notify EPA at least 90 days before commencing that activity. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it occurs.

DATE: Written comments should be submitted by November 12, 1986.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Comments should include the docket control number OPTS-50557. Nonconfidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE-G-004 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit XII of this preamble.

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Enviromental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll Free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5 (b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed there in detail and interested persons should refer to that document for further information. EPA is proposing that these general provisions apply to this SNUR (except as discussed in this preamble and as set forth in § 721.585). On April 22, 1986 (51 FR 15104), EPA proposed revisions to the general provisions, some of which would apply to this proposed SNUR.

III. Summary of This Proposed Rule

The chemical substance which is the subject of this proposed SNUR is identified as 1-propanol, 3-mercapto-, and is listed as such in the TSCA inventory. It was the subject of PMN P-85-433 and was identified in the PMN as 3-mercapto-1-propanol. EPA is proposing to designate the following as significant new uses of the substance: use other than as a chemical intermediate; disposal other than by landfilling, incineration, deep/well injection, or release to an evaporation pond; production at an aggregate volume of 1-propanol, 3-mercapto greater than that permitted the PMN submitter under the terms of the Consent Order; or any manner or method of manufacture, import, or processing associated with use as a chemical intermediate without establishing a program whereby (1) persons who may be dermally exposed to the substance wear gloves, eye protection, and protective clothing, (2) persons who may be exposed to the substance as a vapor must wear respirators, unless time weighted average (TWA) airborne concentrations of the substance are controlled to <0.5 parts per million, (3) persons who are required to wear protective clothing and equipment are informed of the hazards of the substance, and (4) containers of the substance which may be distributed in commerce are labeled.

IV. Background

On January 23, 1985, EPA received a PMN which the Agency designated as P-85-433. EPA announced receipt of the PMN in the **Federal Register** of February 4, 1985 (50 FR 4896). The notice submitter intends to manufacture the substance for use as a chemical intermediate.

The notice submitter claimed the following as confidential business information (CBI): The estimated production volume and process

information. Under section 14(a)(4) of TSCA, the Agency may disclose CBI when relevant to any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its chemical name and PMN number.

Based upon results obtained from tests on structurally similar substances, 2,3-dimercaptopropanol and 2-mercaptoethanol, the Agency believes the substance may cause developmental toxicity. During review of the PMN, the Agency concluded that the uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that the use of appropriate protective equipment and other controls will significantly reduce exposure and potential risks to human health. A section 5(e) consent order requiring the use of appropriate controls was negotiated with the notice submitter. The order became effective June 25, 1986. The terms of this SNUR are similar to those of the section 5(e) consent order.

By issuing a section 5(e) consent order that allows controlled commercial production and distribution of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substance until additional data ar submitted. At the same time, the section 5(e) consent order protects human health by requiring precautionary controls pending the development of the data needed for a more fully reasoned evaluation of the risks associated with the substance.

Section 5(e) orders apply only to the notice submitter. When the notice submitter commences commercial manufacture of the substance and submits a Notice of Commencement of Manufacture to EPA, the Agency will add the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without controls. Therefore, EPA is proposing to designate the uses set forth in proposed § 721.585(a)(2) as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of 1-propanol, 3-mercapto- that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA proposes to designate the significant new uses of P-85-433 as set forth in proposed § 721.585(a)(2).

EPA has already determined in the section 5(e) order that unrestricted manufacture, import, processing, distribution in commerce, use and disposal of the substance may present an unreasonable risk of injury to human health. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the uses of the substance would be significant.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA, that in addition to meeting the requirements in § 721.17 the following records be maintained for 5 years after the date of their creation by persons who manufacture, import, or process P-85-433:

1. Documentation of quantities of the substance manufactured or imported, with the accompanying dates.

2. Any determination that gloves are impervious to the substance.

3. Names of persons who have attended safety meetings in accordance with proposed § 721.585(a)(2)(iii)(C), the dates of such meetings, and copies of any written information provided.

4. Any names used for the substance and the accompanying dates of use.

5. Dates of shipments of containers which have been labeled in accordance with proposed § 721.585(a)(2)(iii)(D) and names and addresses of recipients.

6. Copies of any MSDS used.

7. Information on disposal of the substance, including dates on which waste material is disposed of, location of disposal sites, volume of any disposed solid material, estimated volume of any liquid wastes containing the substance, and method of disposal.

8. Results, including charts or mechanical recordings of the monitoring of workplace concentrations pursuant to proposed § 721.585(a)(2)(iii)(B).

These recordkeeping requirements would apply to all manufacturers, importers, and processors including small manufacturers, importers, and processors because the small business exemption of section 8(a) of TSCA is not applicable when the chemical substance which is subject of the rule also is the subject of a section 5(e) order.

The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them. The basis for the Agency's recordkeeping requirements has been set forth in the preambles to previously proposed SNURs. Persons interested in a complete discussion of this issue should read the proposed SNUR for P-83-370 published in the Federal Register of January 13, 1984 (49 FR 1753).

VII. Exemptions To Reporting Requirements

EPA has codified, in § 721.19, general exemption provisions covering SNUR reporting. On a case-by-case basis the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

On April 22, 1986 (51 FR 15096), EPA issued amendments to 40 CFR Part 720, the premanufacture notification rule, including revisions of §§ 720.36 and 720.78(b) which contain detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. Because §§ 720.36 and 720.78(b) were not in effect when EPA codified § 721.19, the Agency has relied on the definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities by manufacturers, importers, and processors of substances identified in SNURs qualify under this exemption. On April 22, 1986, EPA proposed amendments to 40 CFR Part 721 which would redesignate § 721.19 as § 721.18 and which would contain a new § 721.19 establishing detailed rules for the section 5(h)(3) exemption for SNURs

and which would ultimately apply to this SNUR. The proposed new § 721.19 is similar to the revised §§ 720.36 and 720.78(b). Until the SNUR amendments are promulgated, manufacturers, importers, and processors of chemical substances identified in SNURs may look to §§ 720.36 and 720.78(b) and the proposed new § 721.19 for guidance in complying with the section 5(h)(3) exemption.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting.

The term "manufacture solely for export" is defined in § 720.3(s) of the PMN rule; an amendment clarifying this definition was issued on April 22, 1986 (51 FR 15096). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S. except in small quantities solely for research and development; (2) Processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) Distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., the manufacturing or processing activity would not be "solely for export" because the manufacture and processing would be for use in the U.S.

VIII. Applicability of Proposal To Uses Occurring Before Promulgation of Final Rule

To establish a significant new use, the Agency must determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter begins manufacture of the substance, the submitter will send EPA a Notice of Commencement of Manufacture and the substance will be added to the Inventory. The notice submitter is prohibited by the section 5(e) order from undertaking the activities which the Agency is proposing be designated as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that when the chemical substance identified in this SNUR is added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing, any person could defeat the SNUR by initiating a proposed significant new use before the rule became final. This would make it extremely difficult for the Agency to estabish SNUR notice requirements.

Thus, persons who begin commercial manufacture, import, or processing of 1-propanol, 3-mercapto- for a significant new use between proposal and promulgation of this rule would have to cease that activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expired.

EPA recognizes that this interpretation of TSCA may disrupt commercial activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who manufacture, import, or process for a proposed significant new use prior to promulgation of a final SNUR, has proposed a new § 721.18(h) in Subpart A of 40 CFR Part 721 (51 FR 15104) to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation).

IX. Determining When Use is Designated in This Rule

EPA is proposing a significant new use at a production volume which is confidential. The Agency is also proposing that this production volume would remain confidential in the final rule. EPA believes it is appropriate to keep this information confidential to protect the interests of the original notice submitter. EPA specifically requests comments on this issue.

Therefore, EPA is proposing to reveal the production volume described in paragraph (a)(2)(iv) of § 721.585 only to a manufacturer or importer who has shown a *bona fide* intent to manufacture or import the substance. To establish a *bona fide* intent the person must submit the information required under § 721.6(b)(1) through (3). EPA will make a determination as to whether the person has established a *bona fide* intent to manufacture or import the substance. If the person has established a *bona fide* intent, EPA will inform the person of the production volume which would constitute a significant new use.

X. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of this substance, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of the potential risks posed by this substance when utilized for an intended use. The Agency believes that the results of a developmental toxicity study would adequately characterize possible developmental toxicity of the substance. This study may not be the only means of addressing the potential risks. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA good laboratory practices standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the

VOL 51 ISS 177 SE 12 1986 UMI

significant new uses. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

Under the Consent Order, the PMN submitter is required to submit a developmental toxicity study at least 12 weeks before it reaches a specified production volume limit. The Order contains detailed procedures for dealing with situations where the resulting data are invalid or equivocal, or show that the substance will present an unreasonable risk of injury under the exposure limitations in the Order. This proposed SNUR uses the same production volume limit as a significant new use.

EPA believes it is likely that the PMN submitter will conduct the developmental toxicity study before reaching the production volume limit and before any other person who would be subject to this SNUR would reach the limit in the SNUR. Accordingly, before beginning to conduct a developmental toxicity study a person subject to this SNUR should contact EPA to determine whether the required study has already been produced.

EPA is also considering a more detail description of the significant new use that would incorporate some or all of the procedures reflected in the Consent Order for dealing with invalid or equivocal data. EPA solicits comments on such an approach.

XI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacture, import, and processing of this chemical substance. The Agency's complete economic analysis is available in the public file. This economic analysis is summarized below.

The only direct costs that will difinitely occur as a result of the promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. It is estimated that the Agency costs of issuing a SNUR are $10,500 to $17,600. While enforcement costs may also be incurred, the Agency cannot quantity them at this time.

Subsequent to promulgating the SNUR, the Agency believes that there would be three possible outcomes for companies that would manufacture, import, or process the substance. The companies could: (1) Manufacture, import, process, distribute in commerce, use, or dispose of the subtance within the limits of this SNUR; (2) Manufacture, import, process, distribute in commerce, use, or dispose of the substance under circumstances requiring the submission of a SNUR notice; or, (3) Not manufacture, import, process, distribute in commerce, use, or dispose of the substance. The costs of these outcomes are summarized below.

1. *Outcome 1.* If a company decides to manufacture, import, process, distribute in commerce, use, or dispose of P-85-433 within the limits of the SNUR, it will not incur the cost of submitting a SNUR notice. The only cost to the company would be the cost of specific protective equipment, recordkeeping, labeling, and imperviousness determinations. Protective equipment and recordkeeping costs, due to their recurring nature, are calculated as present value cost over an estimated 10-year life of the substance.

The PMN submitter claimed the actual exposure data as CBI. For analytical purposes, EPA has assumed that a worker will be exposed to P-85-433 for 8 hours a day, over 12 days of production per year. Each worker will be required to wear gloves (which are determined to be impervious to the chemical substance), other protective clothing, and chemical safety goggles. Assuming daily replacement of the gloves, the present value of supplying the gloves is $182 per worker (which annualized in $27 per worker). Assuming standard replacement of protective clothing, the present value of supplying a suit which covers the arms, legs, and torso is $241 per worker (which annualized is $35 per worker). Permeation tests to determine if the gloves are impervious to the substance have been estimated to cost $500 per substance per test per substrate (annualized cost of $75). These tests may cost up to $7,000 to $10,000 if different substrates (i.e., different compositions of gloves) are tested (annualized cost of $1,035 to $1,480). To the extent a company is able to extrapolate from previous tests, draw from knowledge of similar types of chemicals, or rely on the glove manufacturer's specification as the basis for determining imperviousness, these costs may be less.

A company wishing to manufacture or process the PMN substance will also be required to provide chemical safety goggles (or equivalent eye protection) and a category 23C organic vapor half-mask respirator. Assuming standard replacement of the chemical safety goggles, the present value of supplying eye protection is $59 per worker (which annualized is $9 per worker). Assuming standard replacements of the respirator and organic vapor cannisters, the present value of supplying a category 23C respirator is $204 per worker (which annualized is $30 per worker). If a fit test is performed for the required respirator in accordance with procedures established by the OSHA Industrial Hygiene Manual § 77:8093, which requires that the respirator be worn in a test atmosphere, the total cost of providing respirator fit tests will be the sum of the lost worker production and the cost of the equipment necessary to perform the fit test. The total costs, therefore, will vary with the specific fit test method employed. The present value of the costs of providing respirator fit testing per worker is $534 (which annualized is $79 per worker).

As an alternative to requiring the use of respirators, a company is permitted to control workplace TWA airborne concentrations of the PMN substance. The costs presented represent only the capital costs for purchasing and maintaining the equipment over the 10-year life of the PMN substance. Cost of calibrating the equipment and the analytics involved for a specific chemical cannot be estimated. Also, if high dust or moisture level are present in the workplace, cost could increase significantly; it is not possible to predict at this time how much these costs could increase. The capital cost for the monitoring has been estimated to have a present value of $15,000 (which, annualized is $2,210).

A company would also be required to inform persons of the hazards associated with the PMN substance with an MSDS, with appropriate warning labels, and as part of a training program in safety meetings. In addition, the company would be required to maintain certain records. The initial cost of the labeling requirements is estimated to be between $135 to $500, which is the cost of developing the label. Other labeling costs are expected to be minimal. The annualized cost of labeling is $20 to $75. The present value of the cost of complying with the recordkeeping requirements over a 10-year period is estimated to be $1,520 (the annualized cost is $225).

EPA will incur only enforcement costs once the SNUR has been promulgated.

2. *Outcome 2.* If the company decides to commence a significant new use, it will incur the cost of filing a SNUR notice ($1,400 to $8,000). The submitter may also experience up to a 3.2 percent reduction in profits due to delays in manufacturing, importing, or processing, and the cost of regulatory follow-up, if any.

The company may choose to test for toxicity through a standard developmental toxicity study in two mammalian species. The estimated cost would be $62,622, plus the cost of delay and the cost of any regulatory follow-up.

EPA costs following promulgation of the SNUR would include the cost of reviewing SNUR notices, estimated at $7,100 per notice, and the costs of modifying the terms of the SNUR if the information provided indicates that EPA's concerns would be adequately addressed by use of a different type of exposure control. This cost is estimated at $8,700. EPA will continue to incur the cost of enforcement.

3. *Outcome 3.* Some companies could find the cost of controlling exposure and potential testing costs too expensive to justify production, processing, and/or use. Therefore, there would be no direct costs as a result of the SNUR. The companies and society could lose benefits associated with the manufacture, processing, and use of the PMN substance. However, the fact that the original PMN submitter intends to manufacture the substance under the conditions of the section 5(e) consent order indicates that the intended uses of the substance will still return an acceptable profit under the terms of the SNUR.

The Agency has not quantified the benefits of the proposed SNUR. In general, however, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before significant health effects occur. The proposal and promulgation of the SNUR provide benefits to society by minimizing or eliminating potential health and environmental effects for this chemical substance.

XII. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50557). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The section 5(e) consent order.
4. The Economic analysis of the proposed rule.
5. The toxicology support document.
6. The engineering support document.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Information Office is located in Rm. NE–G–004, 401 M Street SW., Washington, DC.

XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, for the reasons discussed in Unit XI of this preamble, EPA believes that the cost will be low. EPA believes that, because of the nature of the rule and the substance involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, the Agency believes that the number of small businesses affected by this rule would not be substantial even if all the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0012 to this rule. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 3, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

It is proposed that 40 CFR Part 721 be amended as follows:

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.585 to read as follows:

§ 721.585 1-propanol, 3-mercapto-

(a) *Chemical substances and significant new uses subject to reporting.* (1) The following chemical substance referred to by its CAS number and chemical name, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: 1-propanol, 3-mercapto- [CAS Number: 19721–22–3].

(2) The significant new uses are:

(i) Use other than as a chemical intermediate.

(ii) Any method of disposal associated with use of the substance as a chemical intermediate other than by incineration, landfilling, deep-well injection, or release to an evaporation pond, each of which meets all applicable local, State, and Federal laws and regulations.

(iii) Any manner or method of manufacturing, importing, or processing associated with use as a chemical intermediate without establishing a program whereby:

(A) Any person who may be exposed dermally to the substance must wear:

(*1*) Gloves determined to be impervious to the substance under the conditions of exposure, including the duration of exposure. This determination is made either by testing the gloves under the conditions of exposure or evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications includes consideration of permeability, penetration, and potential chemical and mechanical degradation by the substance and associated chemical substances.

(*2*) Clothing which covers any other exposed areas of the arms, legs, and torso.

(*3*) Chemical safety goggles or equivalent eye protection.

(B) Unless time weighted average (TWA) airborne concentrations of the substance are controlled to <0.5 parts per million (ppm), monitored in a manner consistent with approaches described in the NIOSH Occupational Exposure Sampling Strategy Manual (NTIS No. PB 274 792), any person who may be exposed to the substance as a vapor must wear, in addition to the dermal protective equipment described in paragraph (a)(2)(iii)(A) of this section, at a minimum, a National Institute for Occupational Safety and Health approved, category 23C respirator, in accordance with subpart 30 CFR 11.150. The respirator is equipped with cartridages approved for organic vapor. Use of the respirator is in accordance with 29 CFR 1910.134 and 30 CFR Part 11.

(C) All persons who may be exposed to the substance are informed, in writing, and are presented the information as part of a training program in safety meetings at which attendance is recorded, by means of the following statement:

Warning: Avoid all contact. Chemicals similar in structure to [insert appropriate name] have been found to cause developmental effects in laboratory animals. To protect yourself, you must wear chemical safety goggles or equivalent eye protection, impervious gloves, protective clothing, and a respirator while handling this material. However, you are not required to wear a respirator in areas where workplace Time Weighted Average airborne concentrations of [insert appropriate name] are controlled to <0.5 parts per million. Your supervisor will inform you of any such areas.

(D)(*1*) Each container of the usbstance distributed in commerce has affixed to it a lable which includes a Warning Statement which consists at a minimum, of the following:

Warning: Aviod all contact. Chemicals similar in structure to [insert appropriate name] have been found to cause developmental effects in laboratory animals. To protect yourself, you must wear chemical safety goggles or equivalent eye protection, impervious gloves, eye protection, impervious gloves, and protective clothing while handling this material.

(*2*) The first word of the Warning Statement is capitalized, and the type size for the first word is no smaller than 6 point type for a label 5 square inches or less in area, 10 point type for a label above 5 but no greater than 10 square inches in area, 12 point type for a label above 10 but no greater than 15 square inches in area, 14 point type for a label above 15 but no greater than 30 square inches in area, or 18 point type for all labels over 30 square inches in area. The type size of the remainder of the Warning Statement is no smaller than 6 point type. All label text is of sufficient prominence and is placed with such conspicuousness relative to other label text and graphic material, to ensure that the Warning Statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(E) A material safety data sheet (MSDS) is provided when the substance is distributed in commerce. The MSDS includes, at a minimum, the language specified in paragraph (a)(2)(iii)(D) of this section and specifies the requirements for protective equipment in paragraph (a)(2)(iii)(A) of this section.

(iv) Manufacturing and importing the substance, for use as a chemical intermediate, at greater than the aggregate volume allowed under the Consent Order issued for Premanufacture Notice P–85–433, effective on June 25, 1986.

(b) *Specific requirements.* The provisions of Subpart A of this part apply to this section except as modified by this paragraph.

(1) *Determining whether a use is a significant new use.*

(i) A person who intends to manufacture or import the substance identified in paragraph (a)(1) of this section may submit to EPA the information required under § 721.6(b).

(ii) EPA will review this information to determine whether the person has a *bona fide* intent to manufacture or import the substance. If EPA determines that the person has a *bona fide* intent to manufacture or import the substance, EPA will tell the person the specific production volume which would constitute a significant new use under paragraph (a)(2)(iv) of this section.

(iii) A disclosure to a person with a *bona fide* intent to manufacture or import the substance of the specific production volume which would constitute a significant new use under paragraph (a)(2)(iv) of this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(2) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substance identified in paragrah (a)(1) of this section must maintain the following records for 5 years from their creation:

(i) Documentation of quantities of the substance manufactured or imported, with the accompanying dates.

(ii) Any determination that gloves are impervious to the substance in accordance with paragraph (a)(2)(iii)(A)(*1*) of this section.

(iii) Names of persons who have attended safety meetings in accordance with paragraph (a)(2)(iii)(C) of this section, the dates of such meetings, and copies of any written information provided.

(iv) Any names used for the substance and accompanying dates of use.

(v) Dates of shipments of containers which have been labeled in accordance with paragraph (a)(2)(iii)(E) of this section, and names and addresses of persons to whom they have been shipped.

(vi) Copies of any MSDS used.

(vii) Information on disposal of the substance including dates on which waste material is disposed of, location of disposal sites, volume of any disposed solid material, estimated volume of any liquid wastes containing the substance, and method of disposal.

(viii) Results, including charts or mechanical recordings, of the monitoring of workplace concentrations pursuant to paragraph (a)(2)(iii)(B) of this section.

(Approved by Office of Management and Budget (OMB) under control number 2070–0012)

[FR Doc. 86–20586 Filed 9–11–86; 8:45 am]
BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1042

[Ex Parte No. MC–65 (Sub-No. 6)]

Passenger Motor Carrier Superhighway and Deviation Rules

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Commission is discontinuing this proceeding (noticed at 44 FR 6580, February 1, 1979, and 51 FR 12530, April 11, 1986) which proposed changes to liberalize the circumstances under which regular-route motor carriers of passengers could conduct operations over superhighways and alternate routes. Further consideration is unnecessary because of the enactment of the Bus Regulatory Reform Act of 1982, Pub. L. No. 97–261, 96 Stat. 1102.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT:
Richard R. Hartley (202) 275–7786
or
Louis E. Gitomer (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. To purchase a copy of the decision contact T. S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free 800–424–5403.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will it have a significant impact on a substantial number of small entities.

Authority: 49 U.S.C. 10101, 10321, and 10922, and 5 U.S.C. 553.

Decided: September 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Kathleen M. King,

Acting Secretary.

[FR Doc. 86–20552 Filed 9–11–86; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 51, No. 177
Friday, September 12, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Advisory Committee on Foreign Animal and Poultry Diseases; Renewal

Notice is hereby given that the Secretary of Agriculture has renewed the Advisory Committee on Foreign Animal and Poultry Diseases for a 2-year period. The Secretary has determined that the Committee is in the public interest in connection with duties imposed on the Department by law.

The purposes of the Committee will be to advise the Secretary regarding program operations and measures to prevent, suppress, control, or eradicate an outbreak of foot-and-mounth disease or other destructive foreign animal or poultry diseases in the event such diseases should enter the United States. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to this Committee.

The Chairperson of the Committee will be the Assistant Secretary, Marketing and Inspection Services, United States Department of Agriculture, Washington, D.C. 20250. Plans are for the Committee to meet at least annually.

Done at Washington, DC, this 8th day of September 1986.

John J. Franke, Jr.,

Assistont Secretory for Administration.

[FR Doc. 86-20556 Filed 9-11-86; 8:45 am]

BILLING CODE 3410-34-M

Cooperative Agreement: Rutgers University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent to enter a cooperative agreement.

Activity: OICD intends to enter into a Cooperative Agreement with Rutgers University for collaboration in implementation of an Agriculture Support Program in Panama in the areas of mariculture and food technology.

Authority: Section 1458 of the National Agriculture Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces availability of funds for fiscal year 1987 to enter into a cooperative agreement with Rutgers University for provision of technical assistance to the Government of Panama. Rutgers will collaborate with USDA in carrying out a broad based program of agriculture support—particularly in the areas of shrimp mariculture production and food technology development; i.e., the industrialization of agricultural commodities through high value added transformations. These areas coincide with Panama's interests, USDA implementation of USAID/Panama's recently established priorities, and areas in which the University will be able to enhance its already major strengths in marine production and research. Rutgers is involved in research and extension supporting New Jersey's marine resources production which ranks fifth in the US, and is opening a new, large-scale marine sciences institute. Knowledge and experience gained through this agreement will enhance and support the University's efforts in these areas. Assistant for these activities will be provided only to Rutgers.

Based on the above, this is not a formal request for application. An estimated $50,000 will be available in FY 1987 to support this work. It is anticipated that the agreement will be funded over a 12-month budget period.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, OICD, USDA (58-319R-7-003).

Dated: September 8, 1986.

Allen Wilder,

Contracting Officer.

[FR Doc. 86-20532 Filed 9-11-86; 8:45 am]

BILLING CODE 3410-DP-M

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising its Privacy Act Systems of Records maintained by the Extension Service, "Cooperative Extension Personnel Records System USDA/ES-2" and "State Cooperative Extension Service Employees USDA/ES-3." These Records Systems are currently published as USDA/SEA-12 and USDA/SEA-13, respectively. The purpose of this notice is to correct the records to show the organizational changes which have occurred during the reorganization which reorganized the Science and Education Administation (SEA) into several agencies including the Extension Service (ES). Also, some addresses have been changed.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is revising two systems of records to be maintained by the Extension Service. The purpose of this notice is to correct the records. The systems contain data on Extension Service personnel.

EFFECTIVE DATE: October 14, 1986. Comments must be received by the contact person listed below on or before October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Ovid Bay, Director of Information, Extension Service, U.S. Department of Agriculture, Room 3428 South Building, 14th & Independence Avenue, SW., Washington, DC 20250, (202-447-3029).

A "Report on New System" for each system of records, required by 5 U.S.C. 552a(o), as implemented by OMB Circular A-130, was sent to the President of the Senate, the Speaker of the House of Representatives and the Office of Management and Budget on March 31, 1986.

Signed at Washington, DC, on September 8, 1986.

Richard E. Lyng,

Secretary of Agriculture.

USDA ES-2

SYSTEM NAME:

Cooperative Extension Personnel Records System, USDA.

SYSTEM LOCATION:

Personnel Staff, Extension Service, Room 3547 South Building, 14th &

Independence Ave., SW, Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of State Extension Services who hold an Excepted Federal Appointment without compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Microfiche copies of personnel actions taken by individual states under delegated personnel authority to support entitlement of employees to the benefit areas of retirement, life and health insurance, workman's and unemployment compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 7 U.S.C. 341, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Office of Personnel Management and Department of Labor are supplied supporting documentation for benefit claims of employees and Cooperative Extension Service Personnel Offices are supplied specific assistance upon request. Disclosure may be made to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on microfiche at the address listed.

RETRIEVABILITY:

Records are indexed by name of employee.

SAFEGUARDS:

In authorized locked cabinet.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Services Administration retirement and/or destruction schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Staff, ES, Room 3547 South Building, U.S. Department of Agriculture, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Any individual may request information concerning himself from this system. A request for information should be addressed to the System Manager and should contain: Name, address and particular information requested.

RECORD ACCESS PROCEDURE:

Any individual may obtain information as to the procedures for gaining access to a record in the System which pertains to him by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Use same procedures as for requesting access.

RECORD SOURCE CATEGORIES:

Information in this System comes primarily from the employee with additional data provided by the employee's personnel office.

USDA ES-3

SYSTEM NAME:

State Cooperative Extension Service Employees, USDA.

SYSTEM LOCATION:

Reports and Analysis Branch, Management Operations Staff, Extension Service, USDA, Room 3547 South Building, 14th & Independence Ave., SW., Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All professional employees of the State Cooperative Extension Services from 1968 to present.

CATEGORIES OF RECORDS IN THE SYSTEM:

Magnetic tapes are made from punch cards on information from the personnel records taken and submitted by State Cooperative Extension Services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 7 U.S.C. 341, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape at the address listed.

RETRIEVABILITY:

Records are entered by social security number or other unique State identifying number.

SAFEGUARDS:

Authorization must be obtained from the Administrator, ES, USDA or Director of Personnel, ES, USDA, before information is released. All printed matter is kept in locked rooms.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel and Management Services Division, Room 3547 South Building, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Any individual may request information concerning himself from this system. A request for information should be addressed to the System Manager, and should contain: Name, address, social security number, and the particular information requested.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the System which pertains to him by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Use same procedures as for requesting access.

RECORD SOURCE CATEGORIES:

Information in this System comes primarily from the employee with additional data provided by the employee's personnel office.

[FR Doc. 86-20557 Filed 9-11-86; 8:45 am]
BILLING CODE 3410-18-M

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. (770-776), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council
Date: October 5-7, 1986
Time: 9:00 a.m.—4:30 p.m., Oct. 6, 9:00 a.m.—4:30 p.m., Oct. 7
Place: U.S. National Arboretum, 3501 New York Avenue, NE., Washington, DC.
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review progress of National Arboretum relating to Congressional mandate of research and education concerning trees and plant life. The Council submits its

recommendations to the Secretary of Agriculture.

Contact Person: Howard J. Brooks, Executive Secretary, National Arboretum Advisory Council, Room 236 Bg–005, BARC–W, Beltsville, MD 20705. Telephone: AC 301/344–3912.

Done at Beltsville, Maryland, this 18th day of August 1986.

Howard J. Brooks,

Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 86–20623 Filed 9–11–86; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Southern Pine Beetle Suppression Program, Southern Region, Environmental Impact Statement; Extension of Comment Period

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: The period for receiving comments on the Draft Environmental Impact Statement for the Southern Region, Southern Pine Beetle Suppression Program on Federal and Non-Federal Lands, including Wilderness Areas is hereby extended from September 18, 1986, to October 20, 1986. The original notice of availability of the Draft Environmental Impact Statement was published in the **Federal Register** (51 FR 26748) July 25, 1986.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Environmental Impact Statement Team Leader, Southern Region, Forest Service, USDA, 1720 Peachtree Road, N.W., Atlanta, Georgia 30367; telephone (404) 347–4338.

Dated: September 9, 1986.

F. Dale Robertson,

Associate Chief.

[FR Doc. 86–20596 Filed 9–11–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 29–86]

Foreign-Trade Zone 114—Peoria, IL; Application for Subzone; Diamond Star Auto Manufacturing Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Development Council for the Peoria Area, grantee of FTZ 114, requesting special-purpose subzone status for the automobile manufacturing plant of Diamond Star Motor Corporation, a Chrysler/Mitsubishi joint venture, located in Normal, Illinois, adjacent to the Peoria Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 2, 1986.

The plant, which is currently under construction on a 636-acre site at U.S. Route 150/I–74 in Normal, McLean County, Illinois, will be used to produce compact automobiles, employing 2500 persons. Certain components such as engines, transmissions, suspension and brake system components, will be purchased from Mitsubishi in Japan. Most of the steel and remaining components will be sourced domestically. The finished autos will be sold through Chrysler and Mitsubishi dealers.

Zone procedures will exempt Diamond Star from duty payments on foreign material used in its exports. On its domestic sales the company will be able to take advantage of the same duty rate available to importers of finished autos (2.6 percent) compared to a 3.2 percent rate that would apply to most of the foreign parts it plans to use. Subzone status will be an important factor in full utilization of the plant.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consist of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Larry Shirk, Assistant District Director, U.S. Customs Service, North Central Region, 610 South Canal St., Chicago, IL 60607; and Colonel Neil A. Smart, District Engineer, U.S. Army Engineer District Rock Island, P.O. Box 2004, Rock Island, IL 61204.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 28, 1986.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 411 Hamilton Blvd., Suite 1118, Peoria, IL 61602

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, DC 20230

Dated: September 5, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86–20575 Filed 9–11–86; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

MCTL Implementation Technical Advisory Committee and the Special Licensing Working Group of the President's Export Council Subcommittee on Export Administration; Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee and the Special Licensing Working Group of the President's Export Council Subcommittee on Export Administration will be held Thursday, October 9, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises and assists the Office of Export Administration in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provides for continuing review to update the Regulations as needed.

The Committees will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes contact Ruth D. Fitts, 202–377–2583.

Dated: September 9, 1986.

Dan Hoydysh,

Acting Director Office of Technology and Policy Anolysis.

[FR Doc. 86-20576 Filed 9-11-86; 8:45 am]

BILLING CODE 3510-01-M

[A-423-601]

Mirrors In Stock Sheet and Lehr End Sizes From Belguim: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that mirrors in stock sheet and lehr end sizes (mirrors) from Belgium are being, or are likely to be, sold in the United States at less than fair value, and will notify the U.S. International Trade Administration (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from Belgium that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 24, 1986.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Gregory G. Borden, (202-377-3003) or Mary S. Clapp, (202-377-1769), Office of Investigations Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that mirrors in stock sheet and lehr end sizes from Belgium are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). We made fair value comparisons on all sales of the class or kind of merchandise to the United States by the respondent during the period of investigation, November 1, 1985 through April 30, 1986. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers on behalf of the United States industry producing mirrors in stock sheet and lehr end sizes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Belguim are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 21, 1986 (April 29, 1986, 51 FR 15933) and notified the ITC of our action.

On May 16, 1986, the ITC found that there is a reasonable indication that imports of mirrors in stock sheet and lehr end sizes from Belgium are materially injuring a U.S. industry (U.S. ITC Pub. No. 1850, May, 1986).

The petition included an allegation that home market sales were made at prices which were below the cost of production.

On May 20, 1986, we presented a questionnaire to Glaverbel S.A. A response was received from Glaverbel, S.A. on July 9, 1986. Since Glaverbel had insufficient home market sales on which to base foreign market values, a cost response to the questionnaire was not required. On August 20, 1986, petitioner alleged that sales to third countries were below the cost of production.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors, made of any of the glass described in TSUS items 541.11 through 544.41, 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA) under item 544.5400.

The period of investigation is November 1, 1985 through April 30, 1986.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Glaverbel in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

We based United States price of C.I.F. packed prices and made deductions for ocean freight, inland freight and marine insurance.

Foreign Market Value

In accordance with section 773 (a)(1)(B) of the Act, we determined that there were insufficient home market sales to be used as a basis for determining foreign market value. The third country markets with the largest volume of sales of the most similar merchandise are Italy (lehr end sizes) and the United Kingdom (stock sheet). We made comparisons of "such or similar" merchandise based on a consideration of grade, thickness, and color of the particular mirrors involved.

On August 20, 1986, petitioner alleged that these third country prices were below the cost of production. We did not have sufficient time to develop data for purposes of the preliminary determination. The issue will be addressed in the final determination.

We based foreign market value on delivered prices. We made deductions, where appropriate, for discounts, insurance and inland freight between Belgium and the United Kingdom or Italy, as appropriate.

We made an adjustment for differences in circumstances of sale for credit terms and warranty expenses, in accordance with § 353.15 of the Commerce Regulations (19 CFR 353.15). We deducted third country packing costs and added U.S. packing costs.

Currency Conversion

We made currency conversions from Belgian francs to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we will verify all information provided by Gaverbel, S.A. by using standard verification procedures, which will include on-site inspection of manufacturer's facilities and examination of relevant sales and financial records of the company.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from Belgium that are

entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Glaverbel, S.A.	0.82
All other Manufacturers/producers/exporter	0.82

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these import materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we made our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with §353.47 of our Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on October 14, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 7, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This notice is published in accordance with section 733(f) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 8, 1986.

[FR Doc. 86-20633 Filed 9-11-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-602]

Mirrors in Stock Sheet and Lehr End Sizes From Italy: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Notice.

SUMMARY: We have preliminarily determined that mirrors in stock sheet and lehr end sizes from Italy are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of this merchandise from Italy that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 24, 1986.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Willima Kane (202-377-1766) or Charles Wilson (202-377-5288), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that mirrors in stock sheet and lehr end sizes from Italy are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margin applicable to all such imports is 116.26 percent.

Case History

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers, in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subjects merchandise from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threat material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 21, 1986 (51 FR 15935, April 29, 1986), and notified the ITC of our action.

On May 13, 1986, the ITC found that there is a reasonable indication that imports of mirrors in stock sheet and lehr end sizes from Italy are materially injuring a U.S. industry (51 FR 19423, May 29, 1986).

On June 4, 1986, we delivered a questionnaire to Societa Italiano Vetro, SpA., Rome, Italy, believed to be the exporter of over eighty percent of the subject merchandise to the United States. No response to our questionnaire was received. On July 14, 1986, we again requested the company to respond. We received no response to this request.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors, made of any of the glass described in TSUS item numbers 541.11 through 544.41, 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as etching, edging, or framing, classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA) under item number 544.5400

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. Because there was no response to our questionnaire, we based United States price and foreign market value on the best information available pursuant to section 776(b) of the Act.

United States Price

We based United States price on a sampling on import statistics. These statistics were refined to approximate the unit value of the portion of the reporting category that best reflects the merchandise under investigation. We used import data during a period lagged two months from the period of investigation to approximate sales during that period based on knowledge of the industry, transit time and delays in statistical reporting.

Foreign Market Value

Petitioner based foreign market value on constructed value. We adopted the constructed value of the petition and updated it to reflect changes in the currency conversion rate. We made currency conversions using official exchange rates as certified by the Federal Reserve.

Verification

If we received a complete and timely response, we will verify all information used in the final determination, using standard verification procedures.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from Italy that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
All manufacturers, producers, exporters	116.26

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we made our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with section 353.47 of our Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on October 7, 1986, at the United States Department of Commerce, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 109 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 30, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This notice is published in accordance with section 733(f) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 8, 1986.

[FR Doc. 86-20634 Filed 9-11-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-603]

Mirrors in Stock Sheet and Lehr End Sizes From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminary determined that mirrors in stock sheet and lehr end sizes from Japan are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from Japan that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 24, 1986.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Marie Kissel (202-377-3798) or Mary S. Clapp, (202-377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that mirrors in stock sheet and lehr end sizes from Japan are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margin applicable to all exporters is 89.59 percent.

Case History

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 21, 1986 (April 29, 1986, 51 FR 15936), and notified the ITC of our action.

On May 13, 1986, the ITC found that there is a reasonable indication that imports of mirrors in stock sheet and lehr end sizes from Japan are materially

injuring a U.S. industry (U.S. ITC Pub. No. 1850, May 1986).

On June 6, 1986, we presented questionnaires to Central Glass Co., Ltd. and Nippon Sheet Glass Co., Ltd., which account for approximately 73 percent of the exports to the United States during the period of investigation. An extension of time in which to respond was granted to both companies. On July 21, 1986, we received the narrative and computer tape versions of the responses from both companies. Both of the questionnaire responses were insufficient. Respondents reported only a small portion of home market sales. The responses to many questions indicated that they are "still under consideration." Explanations for the calculation of many expenses categories were not given. Also, respondents did not submit proper non-proprietary summaries on a timely basis.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors, made of any of the glass described in TSUS item numbers 541.11 through 544.41, 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, classifiable in the *Tariff Schedules of the United States Annotated (TSUSA)* under item number 544.5400.

The period of investigation is October 1, 1985 through March 31, 1986.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. Because the questionnaire responses were insufficient, as discussed above, both United States price and foreign market value were determined as discussed below on the basis of the best information available pursuant to section 776(b) of the Act.

United States Price

We based United States price on a sampling of import statistics. These statistics were refined to approximate the unit value of the portion of the reporting category that best reflects the merchandise under investigation. We used import data during a period lagged three months from the period of investigation to approximate sales during that period based on knowledge of the industry, transit time, and delays in statistical reporting.

Foreign Market Value

We based foreign market value on prices reported in the petition which were updated to reflect changes in the currency conversion rate. Pursuant to § 353.36 of Commerce's Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all mirrors in stock sheet and lehr end sizes from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Central Glass Co., Ltd.	89.59
Nippon Sheet Glass Co. Ltd.	89.59
All other manufacturers/producers/exporters	89.59

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we made our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with section 353.47 of our Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on October 16, 1986, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 30, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This notice is published in accordance with section 733(f) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 8, 1986.

[FR Doc. 86-20635 Filed 9-11-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-471-601]

Mirrors In Stock Sheet and Lehr End Sizes From Portugal; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that mirrors in stock sheet and lehr end sizes from Portugal are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from Portugal that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 24, 1986.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Karen DiBenedetto, (202–377–1778) or Mary S. Clapp, (202–377–1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that mirrors in stock sheet and lehr end sizes from Portugal are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b), (the Act). We made fair value comparisons on all sales of the class or kind of merchandise to the United States by the respondent during the period of investigation, August 1, 1985 through January 31, 1986. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers, on behalf of the U.S. industry producing mirrors in stock sheet and lehr end sizes. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Portugal are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 21, 1986 (51 FR 15937, April 29, 1986), and notified the ITC of our action.

On May 16, 1986, the ITC found that there is a reasonable indication that imports of mirrors in stock sheet and lehr end sizes from Portugal are materially injuring a U.S. industry (U.S. ITC Pub. No. 1850; May, 1986).

On May 20, 1986, we presented a questionnaire to Abilio de Sousa, Filhos and Ca., Limitada (Sobil). An extension of time in which to respond was granted, and, on July 14, 1986, we received the narrative version of the questionnaire response. On July 17, 1986, we received the computer tape version of the response. The responses were insufficient. We sent a deficiency letter on August 12, 1986. On August 19, 1986, we received the supplemental response.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors, made of any of the glass described in TSUS items 541.11 through 544.41, 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as bevelling, etching, edging, or framing, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA) under item 544.5400.

We made comparisons on all of the sales of the product during the period of investigation, August 1, 1985 through January 31, 1986.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States.

We calculated the purchase price for Sobil based on the F.O.B. price to unrelated U.S. purchasers. We made deductions, where appropriate, for discounts, port charges, freight and insurance.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered home market prices of such or similar merchandise to unrelated purchasers. We made deductions, where appropriate, for freight and discounts. We made an adjustment under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses. Since respondent did not provide sufficient documentation of claimed credit expenses in the home market, we added U.S. credit expenses to the home market prices. We did not make an allowance for home market credit. No home market packing costs were reported. We added U.S. packing to home market prices.

We made comparisons of "such or similar" merchandise, pursuant to section 771(16)(B) of the Act, on the basis of mirror thickness. We made adjustments when comparing similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adustments were based on the costs of materials.

We made currency conversions from Portuguese escudos to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we will verify all information provided by Sobil by using standard verification procedures, which will include on-site inspection of manufacturer's facilities and examination of relevant sales and financial records of the company.

Suspension of Liquidation

In accordance with section 773(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from Portugal that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-Average Margin Percentage
Abilio de Sousa, Filhos and Ca., Limitada	0.82
All other manufacturers/producers/exporters	0.82

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written

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consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on October 9, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 7, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This notice is published in accordance with section 733(f) of the Act.

Gilbert B. Kaplan

Deputy Assistant Secretary for Import Administration.

September 8, 1986.

[FR Doc. 86-20636 Filed 9-11-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-601]

Mirrors in Stock Sheet and Lehr End Sizes From the United Kingdom; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that mirrors in stock sheet and lehr end sizes from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from the United Kingdom that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 24, 1986.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen (202-377-3464), or Mary S. Clapp (202-377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Derermination

We have preliminarily determined that mirrors in stock sheet and lehr end sizes from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We made fair value comparisons on all sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, November 1, 1985 through April 30, 1986. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers and on behalf of the U.S. industry producing mirrors in stock sheet and lehr end sizes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 21, 1986 (April 29, 1986, 51 FR 15937) and notified the ITC of our action.

On May 16, 1986, the ITC found that there is a reasonable indication that imports of mirrors in stock sheet and lehr end sizes from the United Kingdom are materially injuring U.S. industry (U.S. ITC Pub. No. 1850, May 1986).

On June 4, 1986, questionnaires were delivered to Solaglas Coventry, Ltd. (Solaglas) and Bowman Webber, Ltd. (Bowman Webber). An extension of time in which to respond was granted, and, on July 14 and July 17, 1986, respectively, we received incomplete responses from Solaglas and Bowman Webber. We requested supplemental information from the respondents, and Solaglas responded on July 29 and August 26, 1986. Bowman Webber submitted its supplemental information on August 5 and August 22, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors, made of any of the glass described in TSUS items 541.11 through 544.41, 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as bevelling, etching, edging, or framing, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA) under item 544.5400.

The period of investigation is November 1, 1985 through April 30, 1986.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise since it was sold prior to the date of importation to unrelated purchasers in the United States. We calculated purchase price based on the FOB, CIF, or free delivered, duty paid packed prices. We made deductions for brokerage charges and foreign inland freight. Where appropriate, we also made deductions for ocean freight, marine insurance, and U.S. duty. For Solaglas, we also made a deduction, where appropriate, for demurrage. For Bowman Webber, we also made a deduction, where appropriate, for U.S. inland freight.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on home market prices. We

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calculated the foreign market value on the basis of gross, delivered prices with appropriate deductions for freight, insurance, and discounts. In accordance with § 353.15 of Commerce's Regulations (19 CFR 353.15), we also made an adjustment for differences in circumstances of sale for warranties. In cases where we had commissions in only one market, we made adjustmemts for the differences in commissions in the applicable market and indirect selling expenses in the other market, used as an offset to the commissions, in accordance with § 353.15(c) of Commerce's Regulations. We substracted home market packing and added U.S. packing to home market prices. For Bowman Webber. we also made an adjustment for differences in circumstances of sale for credit and advertising expenses.

We made comparisons of "such or similar" merchandise based on a consideration of grade, thickness, and color of the particular mirrors involved.

We disallowed Solaglas' and Bowman Webber's adjustment claims for currency conversion and exchange rate fluctuations because the respondents did not show that they met the criteria set forth in § 353.56(b) of Commerce's Regulations.

With regard to Solaglas, we disallowed its claimed adjustment for direct selling expenses (a combination of commissions and advertising expenses) because Solaglas did not provide adequate information in support of its claim. We also disallowed Solaglas' claim for a bad debt expense adjustment because the claim was not shown to be directly related to the sales under consideration. We disallowed Solaglas' claim for a credit expense adjustment because Solaglas did not provide information with regard to credit expenses in both the U.S. and home markets. We also disallowed Solaglas' claim for a level of trade adjustment because Solaglas has not provided sufficient information to demonstrate and quantify the effects in the relevant markets. With regard to Bowman Webber, we disallowed its level of trade adjustment claim between the two markets because it was not shown that selling expenses incurred on U.S. sales would have been incurred in the home market had such sales existed there.

Additional information submitted on September 3, 1986 by both respondents was untimely and could not be considered for our preliminary determination. We will consider the additional information with regard to the disallowed claims and, after verification, will make any appropriate adjustments for our final determination.

Pursuant to § 353.56 of Commerce's Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we will verify all information by using standing verification procedures, including on-site inspection of records and selection of original source documentation containing relevant information.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from the United Kingdom that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-Average Margin Percentage
Solaglas Coventry, Ltd.	45.19
Bowman Webber, Ltd.	13.38
All other manufacturers/producers/exporters	13.46

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we made our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9 a.m. on October 13, 1986, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 6, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This notice is published in accordance with section 733(f) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 8, 1986.

[FR Doc. 86–20637 Filed 9–11–86; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–603]

Mirrors in Stock Sheet and Lehr End Sizes From the Federal Republic of Germany; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that mirrors in stock sheet and lehr end sizes (mirrors) from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from the FRG that are entered, or withdrawn from warehouse, for consumption on or

VOL 51 ISS 177 SE 12 1986 UMI

after the date of publication of this notice and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 24, 1986.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp (202-377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Information

We have preliminarily determined that mirrors in stock sheet and lehr end sizes from the FRG are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b (the Act). The dumping margins range from 5.17 percent to 18.19 percent, and the weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers on behalf of the U.S. industry producing mirrors in stock sheet and lehr end sizes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 21, 1986 (April 29, 1986, 51 FR 15934), and notified the ITC of our action.

On May 16, 1986, the ITC found that there is a reasonable indication that imports of mirrors in stock sheet and lehr end sizes from the FRG are materially injuring a U.S. industry (U.S. ITC Pub. No. 1850, May, 1986).

On May 22, 1986, we presented questionnaires to counsel for Flabeg GmbH and Vereinigte Glaswerke GmbH (Vegla) since we had information indicating that they accounted for virtually all of the exports to the United States during the period of the investigation. An extension of time in which to respond was granted, and, on July 11, 1986, we received a questionnaire response from Flabeg. Vegla did not respond.

Scope of Investigation

The products covered by this investigation are mirrors, made of any of the glass described in TSUS items 541.11 through 544.41, 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, classifiable in the *Tariff Schedules of the United States Annotated (TSUSA)* under item 544.5400.

The period of investigation is November 1, 1985 through April 30, 1986.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States by Flabeg were made at less than fair value, we compared the United States price with the foreign market value of such merchandise as specified below. Since Vegla did not respond, we based its United States price and foreign market value on the best information available in accordance with section 776(b) of the Act.

United States Price

As provided for in section 772(b) of the Act, we based Flabeg's United States price on purchase price because its mirrors were sold to unrelated purchasers in the United States prior to importation. We made deductions from F.O.B. or C.I.F. prices, as appropriate, for various discounts, ocean freight, marine insurance, customs duties, and foreign inland freight.

Since Vegla did not respond, we based United States price on a sampling of import statistics. These statistics were refind to approximate the unit value of the portion of the reporting category that best reflects the merchandise under investigation. We used import data during a period lagged two months from the period of investigation to approximate sales during that period based on knowledge of the industry and delays in statistical reporting.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we used home market prices since there were sufficient sales in the home market. Petitioner alleged that the home market sales were at prices which represent less than the cost of producing the mirrors over an extended period of time and at prices which would not permit the recovery of all cost within a reasonable period of time. We determined the cost of production on the basis of the cost of materials, fabrication and general expenses. We found that all sales by Flabeg were at prices above the cost of production. Therefore, we based foreign market value on sales in the home market.

We made deductions, where appropriate, from home market delivered prices for various discounts and inland freight. We made an adjustment for differences in circumstances of sale, in accordance with § 353.15 of our regulations, for differences in credit terms between the two markets. We also adjusted for differences in commission between the two markets or offset, where appropriate, a commission given in one market with selling expenses incurred in the other market in accordance with § 353.15 of our regulations. Lastly, we deducted home market packing costs and added U.S. packing costs.

Pursuant to § 353.36 of Commerce's Regulations, we made currency conversions at the rate certified by the Federal Reserve Bank.

For Vegla, we used information provided by the petitioner as the best information available to determine foreign market value. Petitioner based foreign market value on constructed value. The petitioner derived an average German cost of production from the estimated cost components of German mirror producers, to which was added the statutory minimum of eight percent for profit.

Verification

As provided in section 776(a) of the Act, we will verify all information provided by Flabeg by using standard verification procedures, which will include on-site inspection of manufacturer's facilities and examination of relevant sales and financial records of the company. If we receive a timely and complete response from Vegla, we will verify that information in the same manner.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from the FRG that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a

bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Flabeg GmbH	5.17
Vereinigte Glaswerke GmbH (Vegla)	18.19
All other Manufacturers/Producers/Exporters	6.98

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproperietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we made our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on October 17, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 10, 1986. Oral presentations will be limited to issues raised in the briefs. All written veiws should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This notice is published in accordance with section 733(f) of the Act.

Gilbert B. Kaplan.

Deputy Assistant Secretary for Import Administration.

September 8, 1986.

[FR Doc. 86-20630 Filed 9-11-86; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations with the Government of Japan to Review Trade in Categories 300/301, 342/642, 435, 442, 611, 644 and 659-I

September 8, 1986.

On July 28 and 30, 1986, the Government of the United States, under Article 3 of the Arrangement Regarding international Trade in Textiles, requested consultations with the Government of Japan with respect to cotton yarn in Category 300/301, cotton and man-made fiber skirts in Category 342/642, women's girls' and infants' wool coats, in Category 435, wool skirts in Category 442, woven spun cellulosic fabric in Category 611, women's girls' and infants suits of man-made fibers in Category 644 and infants' sets in Category 659-I (TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, and 384.9365, produced or manufactured in Japan.

The purpose of this notice is to advise the public that, if no solution is agreed upon consultation between the two governments, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption by cotton textila products in the foregoing categories, produced or manufactured in Japan and exported to the United States during the twelve-month periods which began in the case of Categories 300/301 and 611, on July 28, 1986 and extends through July 27, 1987, at levels of 1,537,584 pounds and 29,683,066 square yards, respectively; and, in the case of Categories 342/642, 435, 442, 644 and 659-I, which began on July 30, 1986 and extends through July 29, 1987 at levels of 323,636 dozen, 18,169 dozen, 12,325 dozen, 27,534 dozen, and 561,073 pounds respectively.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories, or to comment on domestic production or availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553 (a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Japan—July 1986 MARKET STATEMENT

Categories 300/301—Cotton Sales Yarn—

Summary and Conclusions

United States imports Category 300/301—cotton yarns—from Japan during year ending May 1986 were 2.2 million pounds, five times the 434,782 pounds imported a year earlier. During the first five months of 1986 alone, imports of cotton yarns from Japan were 2.1 million pounds, nine times the amount imported during the calendar year 1985.

During the year ending May 1986, 91 percent of the imports in Categories 300/301 from Japan were combed, cotton/polyester yarns. The U.S. markets for these type yarns has been disrupted by imports. The sharp and substantial increase in imports from Japan is contributing to this disruption.

The impact of imports of these combed, cotton/polyester yarns is demonstrated by the production, import, market share, and import ratio data for such yarns with counts 31's and finer.

U.S. Production and Market Share

U.S. production of combed cotton/polyester plied sales yarn, 31's and finer, fell sharply during 1985 compared to 1984. For 1985, production dropped 21 percent below the level of 1985.

The U.S. producer's share of the market for domestically produced and imported combed cotton/polyester sales yarn, 31's and finer, declined from 91 percent in 1983 to 58 percent in 1985.

Imports and Import Penetration

Imports of combed cotton/polyester yarns, 31's and finer, increased sharply in 1984 to 8.8 million pounds, up 172 percent from 1983. Imports in 1985 continued to increase, reaching a record level of 15.1 million pounds, and were almost twice the level of 1984.

The ratio of imports to domestic production in 1984 was 73.5 percent, more than seven times the 10.4 percent of 1983.

Duty-Paid Values and U.S. Producers' Price

U.S. imports of combed cotton/polyester yarns from Japan entered at landed duty-paid values below the U.S. producer price for comparable yarns.

Japan—MARKET STATEMENT

Category 342/642—Cotton and Man-made Fiber Skirts—July 1986

Summary and Conclusions

U.S. imports of Category 342/642 from Japan were 342,055 dozen during the year ending May 1986 compared to 266,436 dozen a year earlier, a 28 percent increase. Japan is the fifth largest supplier of Category 342/642 and the largest uncontrolled supplier, accounting for seven percent of total imports during the year ending May 1986. Imports from Japan reached 174,002 dozen in the first five months of 1986, an increase of 41 percent over the level in the first five months of 1985.

The U.S. market for Category 342/642 has been disrupted by imports. The sharp and substantial increase of imports from Japan has contributed to this disruption.

U.S. Production and Market Share

Between 1982 and 1984, U.S. Production of cotton and man-made fiber skirts declined by 983 thousand dozen, an eleven percent drop. During this same period the market for domestically produced and imported cotton and man-made fiber skirts grew by 651 thousand dozen. The share of this market held by domestic manufacturers fell from 83 percent in 1982 to 70 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Category 342/642 increased from 1.8 million dozen in 1982 to 3.5 million dozen in 1984, a 90 percent increase. Import growth continued as imports reached 3.8 million dozen in 1985, a 10 percent increase over the previous year. During the first five months of 1986 imports increased 77 percent over the same period in 1985. The ratio of imports domestic production more than doubled increasing from 20 percent in 1982 to 43 percent in 1984.

Duty-Paid Value and U.S. Producers' Price

Approximately 78 percent of Category 342/642 imports from Japan during the first five months of 1986 entered under the following two TSUSA Numbers: 384.5251—women's other cotton skirts except corduroy, denim, and velveteen not knit, not ornamented; 384.9445—women's man-made fiber skirts not knit, nor ornamented. These garments from Japan entered the U.S.at landed duty-paid values below U.S. producers' prices for comparable garments.

Japan—MARKET STATEMENT

Category 435—Women's, Girls' and Infants Wool Coats—July 1986

Summary and Conclusions

U.S. imports of Category 435 from Japan were 25,571 dozen during the year ending May 1986, a 31 percent increase over the level imported a year earlier. Imports of Category 435 from Japan increased 46 percent from 17,564 dozen in 1984 to 26,642 dozen in 1985.

The sharp and substantial increase of imports of Category 435 from Japan is disrupting the U.S. market for women's girls and infants' wool coats.

U.S. Production and Market

U.S. production of women's girls, and infants, coats remained relatively flat throughout the last several years. However, in 1984, U.S. production fell 13 percent to 1,103 thousand dozen. Between 1982 and 1984, the U.S. market for domestically produced and imported women's girls' and infants' wool coats grew 9 percent to 1,471 thousand dozen. The U.S. producers' share of this market decreased from 86 percent in 1982 to 75 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Category 435 grew from 186 thousand dozen in 1982 to 368 thosand dozen in 1984, a 98 percent increase. This upward trend continued in 1985 as Imports rose an additional 13 percent to 416 thousand dozen. Year ending May 1986 imports of Category 435 are 15 percent higher than the level imported during year ending May 1985. The ratio of imports to domestic production increased from 16 percent in 1982 to 33 percent in 1984.

Duty-Paid Values and U.S. Producers' Prices

Approximately 77 percent of imports of Category 435 from Japan during the first five months of 1986 entered under TSUSA No. 384.7215—women's girls' and infants' wool suit-type coats and jackets over four U.S. dollars per pound not knit, not ornamented and TSUSA NO. 384.722—women's, girls' and infnts other wool coats not knit, not ornamented over four U.S. dollar per pound. These coats entered the U.S. at landed duty-paid values below U.S. Producers' prices for comparable garments.

Japan—MARKET STATEMENT

Category 442—Wool Skirts—July 1986

Summary and Conclusions

U.S. imports of Category 442 from Japan were 19,731 dozen during the year ending May 1986 compared to 16,427 dozen a year earlier, a 20 percent increase. Imports from Japan reached 2,041 dozen in the first five months of 1986, an increase of 136 percent over the 866 dozen imported during the first five months of 1985.

The U.S. market for Category 442 has been disrupted by imports. The sharp and substantial increase of imports from Japan has contributed to this disruption.

U.S. Production and Market Share

U.S. production of wool skirts continues to decline. U.S. production declined 9 percent in 1983 and another 19 percent in 1984. During this same period wool skirt imports increased nearly three-fold. The U.S. producers' share of the wool skirt market fell from 92 percent in 1982 to 75 percent in 1984.

U.S. Imports and Imports Penetration

U.S imports of Category 442 increased from 131 thousand dozen in 1982 to 353 thousand dozen in 1984, a 169 percent increase. Imports continued to grow reaching 444 thousand dozen in 1985, a 26 percent increase over the previous year. Imports are up 15 percent in the first months of 1986. The ratio of imports to domestic production increased from 9 percent in 1982 to 19 percent in 1983 to 34 percent in 1984.

Duty-Paid Value and U.S. Producers' Price

Approximaely 79 percent of Category 442 imports from Japan during the first five months of 1986 entered the U.S. under TSUSA No. 384.7522—Womens' girls' and infants' wool skirts not knit not ornamented over 4 U.S. dollars per pound. These skirts are entered at duty-paid landed values below U.S. producers' prices for comparable skirts.

Japan—MARKET STATEMENT

Category 611—Cellulosic Spun Yorn Fobric—July 1986

Summary and Conclusions

U.S. imports of Category 611—cellulosic spun yarn fabric—from Japan during the year ending May 1986 were 29.8 million square yards compared with 16.3 million square yards a year earlier. Imports in 1984 were 17.3 million square yards increasing to 20.9 million in 1985. Japan is the largest supplier of Category 611 fabric, accounting for 56.3 percent of 1986 imports.

The U.S. market for cellulosic spun fabric has been disrupted by imports. Japan's position as the major supplier of these fabrics makes it a major contributor to the U.S. market disruption.

Production and Market Share

U.S. production of Category 611 dropped sharply in 1982 due to a substantial decline in the market for these type fabrics. Production declined from 592 million square yards in 1981 to 94 million in 1982 and continued to drop in 1983 to a level of 87 million square yards. Although production regained some of the loss in 1984, increasing to 113 million square yards, 1985 production fell to 102 million square yards, a decline of 10 percent.

The market for Category 611 has improved since 1982. However, there has been a distinct downward trend in the U.S. producers' share of the market. In 1981, the domestic producers provided 98 percent of the market; in 1985, they provided 73 percent.

Import and Import Penetration

U.S. imports of Category 611 from all sources increased 51 percent in 1985 to a

record level 36.8 million square yards. Imports for year ending May 1986 doubled over the comparable period of 1985, reaching 54.7 million square yards.

The ratio of imports to domestic production doubled from 11.4 percent in 1982 to 21.6 percent in 1984. The ratio continued to rise in 1985, reaching 36.1 percent.

Duty-Paid Values and U.S. Producers's Prices

The duty-paid landed values of Category 611 imports from Japan are below the U.S. producers prices for comparable fabrics. Approximately 57 percent of Japan's Category 611 trade during January—May 1986 were lightweight printcloth fabrics imported under TSUSA Number 338.5948.

Japan—MARKET STATEMENT

Category 644—Women's, Girls', and Infants' Mon-Made Fiber Suit—July 1986

Summary and Conclusions

U.S. imports of Category 644 from Japan were 26,238 dozen during the year ending May 1986, compared to 24,220 dozen imported during the previous twelve months. During the first five months of 1986 imports from Japan were 14,682 dozen, 44 percent above the 10,168 dozen imported during the same period a year earlier.

The sharp and substantial increase of imports of Category 644 from Japan is disrupting the U.S. market for women's, girls', and infants' man-made fiber suits.

U.S. Production and Market Share

U.S. production of women's, girls', and infants' man-made fiber suits fell 22 percent from 890 thousand dozen in 1982 to 695 thousand dozen in 1984. The U.S. producers' share of this market fell from 79 percent in 1982 to 60 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Category 644 increased 90 percent from 241 thousand dozen in 1982 to 459 thousand dozen in 1984. Year ending May 1986 imports reached 501 thousand dozen, 37 percent above the 365 thousand dozen imported during the previous twelve months. The ratio of imports to production has increased from 27 percent in 1982 to 66 percent in 1984.

Duty-Paid Landed Value and U.S. Producer Price

Approximately 75 percent of the imports of Caegory 644 from Japan during the first five months of 1986 entered under TSUSA No. 384.9158—Women's, girls' and infants' suits with single back panel jacket, not knit, not ornamented and TSUSA No. 384.9162—women's, girls' and infants' other man-made fiber suits, not knit, not ornamented. These suits entered the U.S. at duty-paid landed values below the U.S. producers' prices for comparable suits.

Japan—MARKET STATEMENT

Category 659–I—Man-Made Fiber Infant Sets—July 1986

Summary and Conclusions

U.S. imports of Category 659–I from Japan were 576,466 pounds (183,035 dozen) during the year ending May 1986. These compare with 553,156 pounds (130,062 dozen) imported a year earlier. Imports from Japan were 517,532 pounds (117,318 dozen) in 1984 and 577,467 pounds (183,778 dozen) in 1985.

The U.S. market for man-made fiber infant sets has been disrupted by imports and imports from Japan are contributing to this disruption.

U.S. Production and Market Share

U.S. production data for infant sets are available only in dozens. Domestic production of man-made fiber infant sets was 3,825 thousand dozen in 1982; 3,631 thousand dozen in 1983; and 3,854 thousand dozen in 1984. U.S. production was virtually unchanged from 1982 to 1984. The U.S. producers's share of the market for domestically produced and imported man-made fiber infant sets declined from 69 percent in 1982 to 63 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of Category 659–I increased from 1.7 million dozen (4.2 million pounds) in 1982 to 2.3 million dozen (9.0 million pounds) in 1984, a 34 percent increase. Imports for the year ending May 1986 were 3.5 million dozen (10.7 pounds), up 31 percent from the 2.7 million dozen (10.3 million pounds) imported a year earlier.

The ratio of imports to domestic production increased from 45 percent in 1982 to 59 percent in 1984.

Duty Paid Value and U.S. Producers' Price

Approximately 77 percent of Category 659–I imports from Japan during the first five months of 1986 entered under TSUSA No. 384.8651—man-made fiber infant sets, knit, not ornamented. These garments entered the U.S. at landed duty-paid values well below U.S. producers' prices for comparable garments.

[FR Doc. 86–20574 Filed 9–11–86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1986 a service to be provided by and military resale commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 12, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 6 and July 18, 1986 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (51 FR 20687 and 51 FR 26033) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service and the military resale commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service and the military resale commodities listed.

c. The action will result in authorizing small entities to produce the service and the military resale commodities procured by the Government.

Accordingly, the following service and the military resale commodities are hereby added to Procurement List 1986:

Service

Mailing Service, U.S. Department of Interior, Bureau of Land Management, Oregon State Office, Portland, Oregon.

Military Resale Commodities

No. 581 Flatware, Assorted, Pg. of 24
No. 583 Flatware, Forks, Pg. of 24
No. 584 Flatware, Spoons, Pg. of 24

C.W. Fletcher,
Executive Director.

[FR Doc. 86–20577 Filed 9–11–86; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1986; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1986 a commodity to be produced by and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before: October 15, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

if the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodity

Bag, Urine Collection
6530–01–074–6600

Services

Janitorial/Custodial, Federal Building and U.S. Courthouse, 110 S. 4th Street, Minneapolis, Minnesota.

Repair of Tool Box and Rollaway, Robins Air Force Base, Georgia.

C.W. Fletcher,
Executive Director.
[FR Doc. 86–20578 Filed 9–11–86; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1986, Proposed Addition; Correction

In FR Doc. 86–19608 appearing on page 30899 in the issue of Friday, August 29, 1986, make the following correction: In the first column under *Commodities*, the entry for Pillow Bed Feather should read:

Pillow, Bed Feather
7210–01–015–5190
(Requirements for Richmond, Virginia DLA Depot)

Because of this change, the time for receipt of comments on the proposed addition of this service is extended until October 9, 1986.

C.W. Fletcher,
Executive Director.

[FR Doc. 86–20579 Filed 9–11–86; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Defense Initiative Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC, on October 7–8–9, 1986.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on October 7–8–9, 1986 the committee will discuss status of SDI research and management issues.

In accordance with section 10(d) of the the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App II, (1982)), it has been determined that this SDI Advisory Committee meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
September 9, 1986.
[FR Doc. 86–20628 Filed 9–11–86; 8:45 am]
BILLING CODE 3810–01–M

Department of the Army

1. In accordance with section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Department of the Army Historical Advisory Committee
Date: 9–10 October 1986
Place: Conference Room, National Guard Association Building 1 Massachusetts Avenue, NW., Washington, DC.
Time: 9 October 1300–1600, 10 October 0900–1200, 1330–1500
Proposed Agenda: 9 October—Review of historical activities
10 October—Discussion of activities and executive session of the committee.

Purpose of meeting: The committee will review the past year's historical activities based on reports and manuscripts received throughout the year and formulate recommendations through the Chief of Military History to the Chief of Staff, U.S. Army and the Secretary of the Army for advancing the purpose of the Army Historical Program.

2. Meetings of the Advisory Committee are open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the 9–10 October meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to Dr. Brooks E. Kleber, Assistant Chief of Military History, U.S. Army Center of Military History, Washington, DC 20314–0200.

Dated: September 3, 1986.

Brooks E. Kleber,
Assistant Chief of Military History.
[FR Doc. 86–20582 Filed 9–11–86; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before October 14, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426–7034.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal

agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submission of these requests of OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 9, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: New
Title: Libraries and Literacy Education Survey
Agency Form Number: G50–19P
Frequency: Once only
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 5,441
Burden Hours: 4,081
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: These instruments survey the extent of library involvement in literacy education and will help to determine what library literacy service models exist in different types of libraries in urban and rural settings. Public, secondary school, and state institutional libraries are being surveyed.

Type of Review: New
Title: Elementary and Secondary School Surveys of Foreign Language Education in the United States
Agency Form Number: G50–20P
Affected Public: State or local governments
Reporting Burden:
Responses: 3,000
Burden Hours: 750
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The survey will provide information about the nature of foreign language education in elementary and secondary schools. It will also provide information on program types, languages taught, and teaching practices. This information will be useful for developing a national network of exemplary programs and for guiding future plans for research and development.

Type of Review: New
Title: National Educational Longitudinal Study of 1988
Agency Form Number: G50–21P
Affected Public: Individuals or households
Reporting Burden:
Responses: 6,026
Burden Hours: 10,841
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study collects data on the educational, vocational, and personal development of students beginning in their 8th grade year. The study will also collect data from the students' parents, teachers, and administrators. The base year of the study is 1988 with a follow-up scheduled every two years until 1996.

Type of Review: New
Title: Survey of Secondary Providers of Vocational Education
Agency Form Number: G50–22P
Affected Public: State or local governments
Reporting Burden:
Responses: 56
Burden Hours: 28
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This survey will be used to collect data from the States to identify the number of secondary and correctional facilities offering vocational education to adults.

Type of Review: Revision
Title: Application for Grants under Library Career Training Program, Title II–B of the Higher Education Act of 1965, as amended.
Agency Form Number: ED 547
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 120
Burden Hours: 1,680
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by institutions of higher education and library organizations to apply for funds under the Higher Education Act, as amended, to assist in training persons in librarianship through the award of fellowships and institutes.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for the Comprehensive Program New Awards and Continuations
Agency Form Number: ED 0001, 0002
Affected Public: State or local governments; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 2,774
Burden Hours: 29,863
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The application is used to apply for new and continuing grants under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education.

Type of Review: Revision
Title: Application Information Request to Participate in the Carl D. Perkins Scholarship Program
Agency Form Number: E40–16P
Affected Public: Individuals or households, state or local governments
Reporting Burden:
Responses: 57
Burden Hours: 285
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This application form is used to obtain funds under the Carl D. Perkins Scholarship Program which provides college scholarships to outstanding students enabling them to pursue teaching careers at the elementary or secondary school level.

Type of Review: Revision
Title: Student Aid Report
Agency Form Number: ED 255–1
Affected Public: Individuals or households; Businesses or other for-profit; Non-profit institutions
Reporting Burden:
Responses: 11,086,684
Burden Hours: 1,189,723
Recordkeeping Burden:
Recordkeepers: 6,000
Burden Hours: 243,000

Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by the applicant to the participating institution of their choice. The institution submits Part 3 of the SAR to

the Department to receive funds for the applicant.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Grant Application Under the Education of the Handicapped Act
Agency Form Number: ED 9037
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 3,390
Burden Hours: 108,480
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The application form provides instructions and information necessary for applicants to submit a request for Federal assistance. The information submitted is used by the Office of Special Education to determine grantee eligibility, acceptability or application, and amount of grant award.

Office of Planning, Budget and Evaluation

Type of Review: Extension
Title: GEPA 406A: State Uses of Federal Funds Under State-Administered Federal Education Programs
Agency Form Number: P75–7P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 2,550
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: Section 406A of the General Education Provisions Act mandates an annual report on the State uses of federal funds to assure that these funds are received by the subgrantees, the intended beneficiaries.

[FR Doc. 86–20625 Filed 9–11–86; 8:45 am]
BILLING CODE 4000–01–M

National Advisory and Coordinating Council on Bilingual Education; Telephone Conference

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 22, 1986—Telephone Conference—11:30 a.m. until 3:30 p.m.

The telephone conference will be conducted at: The U.S. Department of Education, Federal Office Building Number (6), Room 6004, 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202, (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3282). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The Telephone Conference Call of the Council is open to the public.

The proposed agenda includes the following:

I. Call to Order
II. Roll Call
III. Approval of Minutes from previous meeting
IV. Old Business
V. New Business
VI. Site Visits—Dr. Porter
VII. Meetings of Council Committees

The public is being given less than 15 days notice of this teleconference meeting due to the difficulty in communicating with some of the executive members.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.—5:30 p.m.

Dated: September 8, 1986.

Carol Pendas Whitten,

Director, Office of Biliingual Education and Minority Languages Affairs.

[FR Doc. 86–20520 Filed 9–11–86; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections, listed at the end of this notice, to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Affected public; (7) An estimate of the number of respondents annually; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection and, briefly, the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. Last notice published Wednesday, August 27, 1986, (51 FR 30538).

ADDRESS: Address comments to Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise Mr. Broussalian of your intent as early as possible.

Issued in Washington, DC, September 5, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE Collections Under Review by OMB

Collection No.	Collection title	Type of request	Response frequency	Response obligation	Affected public	Estimated No. of respondents	Annual respondent burden—hrs	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
FERC								
FERC-523	Application for Authorization of the Issuance of Securities or the Assumption of Liabilities.	Extension	On occasion	Mandatory	State or Local government, businesses.	60	9,000	Applies to any issuance of a security or assumption of obligation or liability by a public utility or licensee for which approval must be obtained from this Commission.
FERC-568	Well Category Determination.	Extension	On occasion	Mandatory	Businesses or other for profit.	5,917	214,515	FERC-568 "Well Category Determinations" is an information collection which is mandatory pursuant to the Natural Gas Policy Act of 1978 for jurisdictional agency determinations of four categories of natural gas: (1) new natural gas and new reservoirs on old OCS leases; (2) new onshore production wells; (3) high-cost natural gas; and (4) stripper well natural gas.

[FR Doc. 86–20549 Filed 9–11–86; 8:45 am]

BILLING CODE 6450–01–M

VOL 51 ISS 177 SE 12 1986 UMI

Coal Survey Forms; Availability

AGENCY: Energy Information Administration, DOE.

ACTION: Solicitation of comments concerning changes to coal survey forms and notice of public hearing.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy solicits comments concerning proposed changes to the coal data collection forms. In an effort to maximize public participation in the discussion of revisions to these forms, the EIA will conduct a public hearing on Wednesday, October 15, 1986, in Room 1E–245 of the Forrestal Building, 1000 Independence Avenue SW., Washington DC 20585, beginning at 9:00 a.m. (EDT).

DATES: Those wishing to provide oral testimony at the public hearing should request to speak at hearing by 4:30 p.m., Wednesday, September 24, 1986, and should submit a copy of their presentation to the EIA by 4:30 p.m., Friday, October 3, 1986.

Those wishing to provide written comments only should submit a copy of their comments to the EIA within 45 days of the publication of this notice.

ADDRESS: Send comments, requests to speak at the hearing, and written presentations to: Ann M. Ducca, Coal Division, Energy Information Administration, EI–521, Department of Energy, Mail Stop 2G–090, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6868.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the proposed forms and instructions: Harriet M. Tarver, Coal Division, Energy Information Administration, EI–521, Department of Energy, Mail Stop 2G–090, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6868.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Comment and Public Hearing Procedures

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275), and the Department of Energy (DOE) Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to collect, publish, and otherwise make available to the public, high-quality statistical data that reflect national and regional coal activity as accurately as possible. To meet this responsibility and to respond to internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass each significant coal activity in the United States.

II. Current Actions

A. Proposed Surveys

In keeping with DOE's mandated responsibilities the EIA proposes the following changes to its current coal forms:

EIA–1: Weekly Coal Monitoring Report—General Industries and Blast Furnances (Standby form)—to be implemented only in case of a supply disruption. No changes. New form number: EIA–901.

EIA–3: Quarterly Coal Consumption Report—Manufacturing Plants. Report on new Form EPA–920, Coal Disposition Quarterly.

EIA–4: Weekly Coal Monitoring Report—Coke Plants (Standby form)—to be implemented only in case of a supply disruption. No changes. New form number: EIA–902.

EIA–5: Coke Plant Report-Quarterly. Report on new form, EIA–920, Coal Disposition Quarterly.

EIA–5A: Coke Plant Report-Annual Supplement Discontinued as of December 1985.

EIA–6: Coal Distribution Report (a quarterly report). Report on new Form EIA–910, Coal Supply Quarterly.

EIA–7A: Coal Production Report (an annual report). Report on new Form EIA–930, Coal Supply Annual.

EIA–7A (Supplement): Coal Production Report (Supplement), (a

biennial report). Discontinued as of December 1985.

EIA–20: Weekly Telephone Survey of Coal Burning Utilities (Standby form)—to be implemented only in case of a supply disruption. No changes. New form number: EIA–903.

EIA–97: Boiler Order Report (an annual report). This form was revised from a quarterly to an annual report and only coal boiler orders need be reported. New form number: EIA–940.

The proposed new forms are:

Coal Disposition Quarterly (Form EIA–920):

In addition to data collected on the current Forms EIA–3 and EIA–5, includes data on (1) coal quality, (2) state origin of coal, (3) method of transportation, (4) port of exportation, (5) country of destination, and (6) price and type of coal export (i.e., metallurgical vs. steam). Respondents to this new form include respondents to the current Forms EIA–3 and EIA–5 plus coal exporters.

Coal Supply Quarterly (Form EIA–910):

Data to be collected include: (1) Coal production by state and district of origin for each responding company during the quarter, (2) coal purchased by the responding company by state and district of origin during the quarter (including identification of selling company names, addresses and the quantity purchased from each company), (3) coal stocks held by the responding company by state at the end of the quarter, (4) total coal shipments during the quarter by consumer categories (categories are: electric utilities, coke plants, manufacturing plants, transportation, agriculture/mining/construction, residential and commercial, other coal supply companies, and exports), (5) coal sales to other coal supply companies (including company names and addresses and the quantity sold to each company), (6) for the total shipments reported to the agriculture/mining and construction sector and the residential and commercial sector, the quantity of coal shipped by state destination, and (7) total coal shipped during the quarter by methods of transportation (rail, water, river, truck, tramway/conveyor, and slurry pipeline). Respondents to this new form include respondents to current Form EIA–6, but responders will only submit a single report versus the current requirement to submit a separate form for each coal-producing district from which they produce and/or supply coal.

Coal Supply Annual (Form EIA–930):

In addition to data collected on the current Form EIA–7A: (1) Union affiliation and latitude/longitude of mining operation, (2) coal shipments by end-use, (3) coal shipments by methods of transporting coal from the mining operation, (4) underground mining depths and methods of loading coal at the face, (5) overburden thicknesses and ratios, (6) coal quality, and (7) coal preparation by cleaning method.

Respondents to this new form include all coal mining operators (i.e. companies operating coal mines, preparation plants, loading tipples). Operations producing or preparing less than 10,000 short tons of coal per year will report only production quantity and identification data to reduce the burden for small companies.

B. Effect on EIA Publications and Data Dissemination

Coal Production—1984 (DOE/EIA–0118(84)). EIA's annual mine-level data report would be unchanged except that most coal preparation data reported in Appendix C would be eliminated.

Coal Distribution (DOE/EIA–02125(85/4Q)). EIA's quarterly distribution data report would be renamed Coal Disposition Quarterly, and its contents would reflect changes in the data elements proposed to be collected by the EIA. Because of the availability of complete coal origin and quality data for electric utilities, coke plants, manufacturing plants, and coal exporters, the EIA plans to publish coal receipts (quantity and price) and coal quality tables covering all major consuming sectors in the Coal Disposition Quarterly. This data would allow the Coal Distribution publication user to continue to track coal from origin (state and district) to destination (state) by consumer category and method of transportation.

Quarterly Coal Report (ROE/EIA–02121 (85/4Q)), Weekly Coal Production (DOE/EIA–02180) and Coal Data: A Reference (DOE/EIA–0064). No changes.

The EIA will enhance its data dissemination capabilities by making data contained in its quarterly and annual reports available in a machine (including PC) readable media to the public beginning in 1987. Currently, weekly coal production is available electronically in machine readable format by dialing (202) 252–8858.

C. Automation to Reduce Respondent Burden

The EIA intends to further reduce respondent burden through the use of

VOL 51 ISS 177 SE 12 1986 UMI

various automated approaches to data collection. The use of preprinted forms containing identification information and data which remain fairly static will reduce the amount of new data to be entered by responders to the coal data surveys. For those responders having word-processing equipment/or personal (micro) computers, the EIA will seek to collect coal survey data using formatted diskettes so that responders can take advantage of their automated data processing equipment and thereby reduce response time and errors by avoiding manual data handling.

The EIA will provide all software necessary to enter the data in a user friendly format. This software will perform basic data editing functions and will include the capability of generating a completed form for retention and for submission. Responders having the capabilities and desire to use word-processing equipment and/or personal (micro) computers to submit their coal data should answer question 6 in Section III. Comment procedure.

D. Restatement of EIA's Current Disclosure Policy

1. The responding company's name and address; the mine or plant type (i.e. underground, surface, preparation plant, SIC code) and location (state, county, and/or coal-producing district); and the mine level total production quantity and coal bed(s) mined from Form EIA–930, Coal Supply Annual, will be released upon request in the form of full or partial list of respondents for each of the EIA coal data collection surveys. This policy is based on the fact that these data are publicly available from other sources and therefore not considered to be confidential.

2. The information contained on the proposed forms other than that described above, will be kept confidential to the extent that it satisfies the criteria set forth in the Freedom of Information Act (FOIA) exemption for trade secrets and confidential commercial information and DOE regulations implementing the FOIA, and is prohibited from release by the Trade Secrets Act, 18 U.S.C. 1905. Upon receipt of a request for disclosure of this information under the FOIA, the DOE shall, in accordance with procedures and criteria provided in 10 CFR 1004.11, make a final determination whether the information is exempt from disclosure. To assist in this determination, respondents should demonstrate to DOE that their information constitutes trade secrets or commercial or financial information whose release would be likely to cause substantial harm to their company's competitive position. A letter accompanying the submission that explains (on an element-by-element basis, if possible) the reasons why the information would be likely to cause the respondent substantial competitive harm if released to the public would aid in this determination. Requests from other Federal agencies for information from these forms shall be evaluated in accordance with the DOE Policy on the Disclosure of Individually Identifiable Energy Information in the Possession of the EIA [45 FR 59812 (1980)]. Information concerning coal supplies (stocks) from Forms EIA–901, 902, and 910 (Coal Supply Quarterly) and 920 (Coal Disposition Quarterly) are subject to disclosure to state agencies under certain limited conditions and provided that the state agrees to maintain the confidential nature of the data.

Except as otherwise provided by law, the information will also be made available in response to an order of a Court of competent jurisdiction, or upon written request, to the Congress, any committee of Congress, the General Accounting Office, or other congressional agencies authorized by law to receive such information.

3. All data on Form EIA–903 will continue to be treated as nonconfidential because this form collects data from coal-fired electric power plants and all electric utility survey data are considered to be in the public domain.

III. Comment and Public Hearing Procedures

A. Written Comments

The EIA invites the public to comment on these proposed changes and provides the following guidelines to assist in preparation of responses.

If you are a data provider:

1. How many hours, including time for research, computation, preparation, and administrative review, will it take your firm to complete and submit each form relevant to your firm?

2. How many hours will your firm require in subsequent years of reporting?

3. Estimate the cost to respond to the forms, including direct and indirect costs associated with the data collection. Direct costs should include all one-time and recurring costs, such as development, assembly equipment, ADP, and other administrative costs.

4. Are there any changes to any of the forms that you would recommend?

5. Would you be interested in completing your form(s) using a word-processor or personal computer with EIA providing a diskette containing software to process the form and possibly copies of your previously submitted data? What type of equipment do you have?

If you are a data user:

1. Do you use data at the levels of aggregation that are available using the forms? (i.e., do the products, frequency, market categories, and geography reflect your needs?)

2. Are there alternative sources of data? Do you now use them? What are their deficiencies?

3. How could the forms be improved to better meet your specific data needs?

4. What on-line data or data tapes would better meet your data needs?

Comments or summaries of comments will be included in EIA's submission to the Office of Management and Budget and will become a matter of public record.

EIA is also interested in receiving comments concerning the need to continue the collection of the data required on these forms.

B. Public Hearings

1. Procedures for Requests to Make Oral Presentation.

The time and place for the hearing are indicated in the "**DATES**" and "**ADDRESSES**" sections above.

The EIA invites any interested person wishing to provide oral testimony on these forms to request to speak at the hearing no later than 4:30 p.m., Wednesday, September 24, 1986, and provide a copy of the presentation to the EIA by Friday, October 3, 1986. Such a presentation should include the interest concerned, if appropriate, a statement indicating why the individual is a proper representative of a class of persons that has such an interest, and a telephone number where this individual may be contacted during the day. The EIA will notify each person selected to speak at the hearing by Wednesday, October 8, 1986. We request that persons selected bring 25 copies of their written presentations to the hearing.

2. Conduct of the Hearing.

The EIA will schedule the presentations and establish the procedures governing the conduct of the hearing. Due to the fact that, at the end of previously scheduled testimony a determination will be made whether to continue or adjourn the hearing, we request that all persons seeking to

submit testimony arrive by 9:00 a.m. Any person desiring to present oral testimony will be allowed to do so, time permitting. Although time contraints may limit the number of persons who will be allowed to speak, the EIA will consider all comments submitted. The length of each presentation will be limited to a maximum of 10 minutes. An EIA official will preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions immediately following a presentation may be asked only at the discretion of those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any other procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained in the EIA and made available for inspection at the DOE Freedom of Information Office, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, DC, on September 8, 1986.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 86-20568 Filed 9-11-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9688-000, 7186-010]

Chocorua Forestlands Limited Partnership Mississquoi Associates; Availability of Environmental Assessment and Finding of No Significant Impact

September 5, 1986.

In accordance with the National Environmental Policy Act of 1969, of the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town or county	applicant
			Exemptions		
9688-000	Weed Brook/Halfway Brook	NH	Weed Brook and Halfway Brook	Moultonboro and Sandwich	Chocorua Forestlands Limited Partnership.
			Licenses		
7186-010	Sheldon Springs	VT	Missisquoi River	Sheldon Springs	Missisquoi Associates.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20602 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-700-000 et al.]

Natural gas certificate filings; Columbia Gas Transmission Co.

September 5, 1986.

Take notice that the followings filings have been made with the Commission:

1. Columbia Gas Transmission Company

[Docket No. CP86-700-000]

Take notice that on August 26, 1986, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP86-700-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas storage operations and facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to abandon storage operations from its Knox Storage Field located in Knox County, Ohio, and its Knox Compressor Station because of existing operational problems and deteriorating facilities. Applicant states that the Knox Storage Field had a maximum peak day deliverability of 26,500 Mcf of natural gas and consists of (1) approximately 30.5 miles of various sized pipelines ranging in size from 2-inch to 10-inch, (2) 59 storage wells, (3) measuring and regulating facilities, and (4) approximately 9,306 acres of leaseholds, and appurtenances. The Knox Compressor Station consists of four 200-horse-power compressor units and appurtenant facilities related thereto. It is indicated that downhole remedial work and replacement of the compressor station and related facilities at an estimated cost of approximately $7,100,000 would be required to upgrade operations of the Knox Storage Field, with no assurance that such expenditure of funds would correct the operational problems of the field resulting from oil contamination of the wells.

Applicant states that once authorization to abandon the storage operations from the Knox Storage Field and the Knox Compressor Station is obtained, Applicant would reclassify approximately 9.4 miles of 10-inch pipeline and certain measuring and regulating facilities from storage plant to transmission plant and other facilities, wells, lines, leasehold, etc., would be reclassified from storage plant to production plant, all as appropriate under the uniform system of accounts. Applicant further states that the existing facilities, other than the compressor station which would be retired, would be utilized to produce the native natural gas in the field.

Applicant states that the proposed abandonment of the field from storage operations and retirement of the Knox Compressor Station would have a *de minimis* effect on the overall operations of and the benefits derived from the operation of its underground gas storage facilities. Further, Applicant states that, in the event additional storage deliverability is required in the future, it believes it has the potential to obtain equivalent volumes of the Knox Storage Field by drilling additional wells in its other existing storage fields at considerably less cost and without the oil contamination problems. It is indicated that abandonment of storage operations from this field would not

result in any reduction of service to Applicant's existing customers.

Comment date: September 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Company

[Docket No. CP86-697-000]

Take notice that on August 25, 1986, Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, hereinafter referred to as "Applicant", filed an application pursuant to section 7(b) of the Natural Gas Act for a certificate of public convenience and necessity for permission to abandon a transportation service for Tennessee Gas Pipeline Company, a division of Tenneco, Inc. (Tennessee), pursuant to the authorization granted in Docket No. CP83-2-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that by Commission Order issued March 31, 1983, in Docket No. CP83-2-000, 22 FERC ¶ 62,422, Applicant is authorized to transport up to 25,000 Mcf of gas per day for Tennessee, on an interruptible basis, Tennessee's South Timbalier Block 53 amounts of gas which Tennessee transports to Applicant at a point of interconnection with Applicant's pipeline in Lafourche Parish, Louisiana. It is stated that Columbia Gulf redelivers thermally equivalent amounts of gas to Tennessee at a point of interconnection in Acadia Parish, Louisiana.

Applicant requests authorization to abandon this transportation service. It is stated that the gas normally transported for Tennessee from this point of receipt will be included with gas Applicant is currently receiving from Tennessee as part of an exchange authorized by Commission order issued April 26, 1977, in Docket No. CP77-21 58 FERC 650, as amended. Columbia Gulf and Tennessee will file a joint application to amend this Commission Order so as to authorize the inclusion of this gas in the exchange.

Comment date: September 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Great Lakes Gas Transmission Company

[Docket No. CP86-696-000]

Take notice that on August 25, 1986, Great Lakes Gas Transmission Company, 2100 Buhl Building, Detroit, Michigan 48226 (Applicant), filed in Docket No. CP86-696-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Michigan Consolidated Gas Company (MichCon), amendments to existing certificates and abandonment of sales service, so as to be able to terminate the existing service agreement under which Applicant currently sells gas to MichCon, abandon such service, and provide transportation service for MichCon for amounts of gas to be purchased by MichCon directly from TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that under the current servcie agreement dated September 12, 1985, between Applicant and MichCon, Applicant sells up to 59,578 Mcf of natural gas per day to MichCon which Applicant purchases from TransCanada. During the last two years, MichCon has successfully negotiated new market-oriented pricing arrangements with TransCanada, it is stated. Applicant states that its role has become that of a conduit between its resale customers and TransCanada.

Applicant requests that the Commission authorize Applicant to (1) abandon its sales service to MichCon pursuant to its rate schedule CQ, (2) cancel the existing service agreement under which Applicant currently sells gas to MichCon, (3) provide transportation service for MichCon for amounts of gas which MichCon will purchase directly from TransCanada, and (4) approve the transportation service agreement between Applicant and MichCon to be filed as Rate Schedule T-15 to Applicant's FERC Tariff.

Applicant states that, along with MichCon, it is filing a joint petition with te Economic Regulatory Administration to obtain authorization allowing MichCon to succeed to Applicant's import authorization so that MichCon may purchase amounts of gas directly from TransCanada. The sole purpose of the new arrangement, it is stated, is to "unbundle" the sale of Canadian gas by Applicant to MichCon, so that MichCon may purchase such gas directly from TransCanada.

The rates Applicant proposes to charge for its transportation service would be the transportation component of resale rates for Applicant's central and eastern zones under its existing Rate Sechdule CQ. Also, Applicant states, that without relieving MichCon of its obligations under the transportation agreement, MichCon may, with respect to the amounts of gas it puchases from TransCanada, allocate to third parties all or a portion of its transportation capacity on Applicant's system.

Comment date: September 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP86-703-000]

Take notice that on August 27, 1986, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP86-703-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act, 18 CFR 157.205 to add additional delivery points to its affiliate, National Fuel Gas Distribution Corporation (Distribution), under the certificate issued in Docket No. CP83-4-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National requests authorization to construct sales tap facilities in the towns of Sandy Lake, Mercer County; Bear Lake, Warren County; Edinboro, Erie County; Segel, Jefferson County; North East, Erie County; Cooksburg, Jefferson County; Butler, Jefferson County; Sandy Creek, Venango County and Kittanning, Armstrong County, Pennsylvania, as feeds to Distribution in order to service additional residential customers. National states that the proposed deliveries will have minimal impact on its peak and annual deliveries.

Comment date: October 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

Consolidated Gas Transmission Corporation and Tennessed Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-694-000]

Take notice that on August 25, 1986, Consolidated Gas Transmission Croporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, hereinafter referred to collectively as Applicants, filed in Docket No. CP86-694-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing a gas for gas exchange by Applicants, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to an exchange agreement dated August 12, 1986, Consolidatd would receive gas

from Tennessee's share of production in three wells which are jointly owned by Applicants in Allegany County, New York. It is asserted that Tennessed would receive thermally equivalent amounts of gas from Consolidated's share of gas in the Harrison and Ellisburg storage fields in Potter County, Pennsylvania. It is further asserted that the Harrison filed is owned by Applicants and that the Fllisburg filed is owned by Applicants and by Applicants and by National Fuel Gas Supply Corporation.

Applicants state that the exchange would be performed on a gas for gas basis with no rates charged. It is further stated that existing facilities would be used and that no construction would be required.

Comment date: September 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP84-441-018]

Take notice that on August 28, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-441-018 a petition to further amend the order issued June 14, 1985, in Docket No. CP84-441-002 (31 FERC ¶ 61,308) pursuant to section 7(c) and 7(b) of the Natural Gas Act to provide up to 4,804 dt equivalent of natural gas per day of firm storage service transportation for EnergyNorth Inc. (EnergyNorth) and up to 2,798 dt equivalent of gas per day of firm storage service transportation for Fitchburg Gas and Electric Light Company (Fitchburg) for a limited period expiring May 1, 1987, with pregranted abandonment, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP84-441-002 it was authorized to provide firm storage service transportation subject to approval of Penn-York Energy Corporation's (Penn-York) application in Docket No. CP76-492-036 to provide increased storage service to EnergyNorth and Fitchburg. Pending depostion of Penn-York's application, Petitioner states that the Commission authorized Petitioner to transport reduced firm volumes of 1,865 dt equivalent of natural gas per day for EnergyNorth and 1,271 dt equivalent of natural gas per day for Fitchburg.

Petitioner seeks authorization to provide full firm storage transportation of 4,804 dt equivalent of natural gas per day for EnergyNorth and 2,798 dt equivalent of natural gas per day for Fitchburg by October 15, 1986.

Petitioner states that both EnergyNorth and Fitchburg have executed one-year storage contracts with Consolidated Gas Transmission Corporation (Consolidated) for interim storage service to supplement their currently authorized level of storage service from Penn-York.

Petitioner states that it would deliver injection quantities and receive withdrawal quantities from Consolidated and Penn-York at existing interconnections in Potter County, Pennsylvania. Petitioner further states that it would receive injection quantities and deliver withdrawal quantities in Hillsborow and Worcester Counties, Massachusetts.

Petitioner further seeks authorization to transport quantities in any increment of the total transportation quantity from either Consolidated or Penn-York as mututally agreed upon by EnergyNorth, Fitchburg, and Petitioner subject to the contract quantity limitations in the related Consolidated and Penn-York storage agreements.

It is further stated that the service proposed herein is identical to the service authorized by the Commission's November 7, 1985, order in Docket No. CP84-441-008 for a limited period expiring May 1, 1986.

Comment date: September 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-705-000]

Take notice that on August 28, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-705-000 an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible storage transportation service of up to 1,124 dt equivalent of natural gas per day for Valley Gas Company (Valley) for a limited term expiring May 1, 1987, and pregranted abandonment upon the expiration of the term, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Appicant states that Valley has executed a storage service agreement with Consolidated Gas Transmission Corporation (Consolidated) for an additional 100,000 dt equivalent interruptible storage capacity (1,124 dt equivalent maximum withdrawal quantity of gas) for a one-year period commencing April 1, 1986, and has requested Applicant to provide the related storage transportation services pursuant to the terms of an August 26, 1986, precedent agreement (Agreement) between Applicant and Valley.

For injections into storage, applicant states that it has agreed to receive, on an interruptible basis, up to 1,124 dt equivalent of natural gas per day for Valley from the existing point of interconnection between the facilities of Applicant and Valley at Applicant's Meter No. 2-0135-1 located at Applicant's Valve No. 266A-124 at Pawtucket, Providence County, Rhode Island, and to deliver a thermally equivalent quantity of gas to Consolidated for Valley at the existing interconnection between the facilities of Applicant and Consolidated at Applicant's Meter No. 2-0480-1 located at Applicant's Main Line Valve No. 313G-102 at Ellisburg, Potter County, Pennsylvania.

For withdrawals from storage, Applicant states that it would accept and receive daily on an interruptible basis as determined in its sole opinion, up to 1,124 dt equivalent of natural gas per day for Valley at the existing interconnection between the facilities of Applicant and Consolidatged located at Applicant's Meter No. 20480-1 located at Applicant's Main Line Valve 313G-102 at Ellisburg, Potter County, Pennsylvania, and deliver thermally equivalent quantities (less quantities retained for Applicant's fuel and uses and gas lost and unaccounted for) to Valley at an existing point of interconnection between the facilities of Applicant and Valley at Applicant's Meter No. 2-0135-1 located at Applicant's Valve No. 266A-124 at Pawtucket, Providence County, Rhode Island.

Applicant further states that it proposes to render the service proposed herein in accordance with the terms and conditions of Applicant's Rate Schedule ISST-NE.

Applicant further requests authority by October 15, 1986, so that injections of gas into storage can be made in time for the 1986-1987 winter season storage withdrawals.

Comment date: September 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP86-699-000]

Take notice that on August 26, 1986, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP86-699-000

an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain compression facilities located at its Premont Compressor Station (Premont), Jim Wells County, Texas, and a request for temporary authorization to relocate the facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

More specifically, Trunkline seeks to abandon by relocation one (1) 6,350 Horsepower, G.E. Regenerative Cycle, gas-fired turbine compressor located at Premont. The compressor is now idle and is not expected to be needed, due to the depletion of gas reserves in the area. Trunkline states that the remaining compression related facilities would be abandoned in place. Trunkline further states that the compressor would be relocated to its Kountze Compressor Station (Kountze), Hardin County, Texas, to replace an equivalent but damaged unit. It is stated that there would be no change in the design capacity at Kountze. Finally, Trunkline contends that its proposal would permit a more efficient utilization of its facilities and would expedite resumption of service at Kountze.

Comment date: September 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-20003 Filed 9-11-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-3056-000 et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co. et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

September 8, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a poceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-3056-000, D, Sept. 2, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas, 75221.	Trunkline Gas Company, Columbus Field, Colorado County, Texas.	(1)	
G-4319-000, D, Sept. 2, 1986	....do	....do	(1)	
G-3219-000, D, Sept. 2, 1986	....do	Natural Gas Pipeline Company of America, Clayton Field, Live Oak County, Texas.	(1)	
G-3894-023, D, Sept. 2, 1986	....do	....do	(1)	
G-4544-002, D, Sept. 2, 1986	....do	Transcontinental Gas Pipe Line Corp., Clayton Field, *et al.*, Live Oak County, Texas.	(1)	
G-11832-000, D, Aug. 22, 1986	Amoco Production Company, P.O. Box 800, Denver, Colorado 80201.	Northern Natural Gas Company, Division of Entron Corp., Certain acreage in Hereford County, Texas.	(2)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G–17412–000, D, Sept. 2, 1986	Mobil Exploration & Producing North America, Inc., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	United Gas Pipe Line Company, Sunrise Field, Terrebonne Parish, Louisiana.	([3])	
CI184–498–002, D, Aug. 26, 1986	Eastern Kentucky Production Co., P.O. Box 824, Hazard, Kentucky 41701.	Kentucky West Virginia Gas Company, Well No. 493, Floyd County and Well No. 950, Pike County, Kentucky.	([4])	
CI86–703–000, A, Aug. 26, 1986	Phillips Petroleum Company, 336 HS&L Building, Bartlesville, Okla. 74004.	Transcontinental Gas Pipe Line Corp., West Cameron Block 480, Offshore, Louisiana.	([5])	
CI86–704–000, (CI66–749), B, Aug. 27, 1986.	Texaco Inc., P.O. Box 52332, Houston, Texas 77052.	Mountain Fuel Resources, Inc., South Baggs Area, Carbon County, Wyoming.	([6])	
CI86–706–000, (G–2570), B, Aug. 27, 1986.	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Phillips Petroleum Company, Milroy Field, Carter and Stephens Counties, Oklahoma.	([7])	
CI86–707–000, (CI72–714), B, Aug. 27, 1986.	Texaco Inc.	Sea Robin Pipeline Company, OSC–G–0966, East Cameron Block 229, Offshore Louisiana.	([8])	
CI86–678–000, F, Aug. 18, 1986	Koch Hydrocarbon Company (Succ. in Interest to Phillips Petroleum Company), P.O. Box 2256, Wichita, Kansas 67201.	Williston Basin Interstate Pipeline Co., Koch's Williston Plant, Williams County, North Dakota or Koch's McKenzie Plant, McKenzie County, North Dakota.	([9])	
CI83–1371–000, Aug. 1986	Phillips 66 Natural Gas Company, 336 HS&L Building, Bartlesville, Okla. 74004.	Panhandle Eastern Pipe Line Company, Sneed Gasoline Plant located in Hansford County, Texas.	([10])	
CI77–365–001, Aug. 15, 1986	....do	Panhandle Eastern Pipe Line Company, Hansford and Sneed Gasoline Plants located in Hansford County, Texas.	([10])	
CI75–760–001, D, Aug. 18, 1986	Mobil Producing Texas & New Mexico, Inc., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	Transwestern Pipeline Company, Worsham-Bayer Field, Reeves County, Texas.	([11])	

[1] Deletion of acreage. ARCO no longer holds an interest in acreage to be deleted.
[2] Amoco Production Company assigned certain acreage to Scarth Oil and Gas Company on 6–9–86.
[3] By Partial Releases dated 6–19–67 and 6–23–67, a portion of the acreage covered under the contract dated 12–9–58 with United Gas Pipe Line Company was released.
[4] Well No. 493, Floyd County, Kentucky, and Well No. 950, Pike County, Kentucky, have minimal reserves. Production from Well No. 493 has become difficult due to frequent water encroachment, and production from Well No. 950 has become difficult due to mining operations in the area.
[5] Applicant is filing under Contract dated 8–20–86.
[6] Assignment of a part of Texaco's interest under said certificate to Shakespeare Oil Company on 5–7–85. The acreage retained by Texaco was non-productive.
[7] TPI's contract with Phillips expired on 7–1–81, with year-to-year sales thereafter. As per the terms of the 7–1–74 contract, TPI gave notice of termination by letter dated 6–2–86. Phillips acknowledged termination of the contract as 6–30–86 by letter dated 6–25–86. TPI intends to enter into percentage-of-proceeds type Casinghead Gas Contracts covering gas from the leases previously contracted and delivered to Phillips. The gas will be processed in TPI's Velma Plant, located in Stephens County, Oklahoma.
[8] By assignment dated 6–4–86, effective 7–1–86, Texaco Inc. assigned all of its interest in certain properties under the 4–25–72 contract to Conn Energy, Inc .
[9] By assignment dated 1–1–86, Phillips Petroleum Company assigned to Koch Hydrocarbon Company all its right, title and interest in certain properties.
[10] Applicant is filing to add alternate delivery point at Phillips' Sherman Plant located in Hansford County, Texas.
[11] Applicant is filing for a change in delivery point and partial abandonment authorization to the extent that the proposed processing of the gas will reduce the amount of gas delivered to the purchaser.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86–20604 Filed 9–11–86; 8:45 am]
BILLING CODE 6717–01–M

Streamline Hydro, Inc.; Surrender of Preliminary Permit

[Project No. 8603–001]

September 8, 1986.

Take notice that Streamline Hydro, Inc., permittee for the proposed Herman Gulch Project No. 8603, has requested that its preliminary permit be terminated. The preliminary permit was issued on February 19, 1985, and would have expired on July 31, 1987. The project would have been located on Herman Gulch Creek in, Clear Creek County, Colorado.

The permittee filed the request on August 25, 1986, and the preliminary permit for Project No. 8603 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–20605 Filed 9–11–86; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TA87–1–31–000, 001]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

September 8, 1986.

Take notice that on September 2, 1986 Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

Original Volume No. 3, Rate Schedule No. X–26
First Revised Volume No. 1, Rate Schedule No. G–2

Tariff Sheets Setting Forth Regular Semi-Annual PGA Adjustments

41st Revised Sheet No. 185, 14th Revised Sheet No. 185A
42nd Revised Sheet No. 4, 14th Revised Sheet No. 4A

Tariff Sheets Revising AER's Purchase Gas Adjustment Clauses

4th Revised Sheet No. 188C, Original Sheet No. 188H
3rd Revised Sheet No. 12I, Original Sheet No. 12N

The purpose of the above described tariff sheets reflecting AER's regular semi-annual PGA changes is to (1) reflect the average projected cost of purchased gas for the six month period commencing October 1, 1986; (2) recover or refund accumulated deferred purchased gas costs as of June 30, 1986; (3) set forth the incremental pricing calculation applicable to this PGA period and, (4) refund the remaining balance of deferred transportation revenue as of June 30, 1986.

The purpose of the above described tariff sheets revising AER's purchase gas adjustment clauses is to provide a new section for interim adjustments to AER's rates between its regular semi-annual PGA adjustment dates with a twenty-four hour's filing notice. When approved this section will allow AER to file known and measurable changes in its purchased gas costs and pass through to its customers these changes in costs on a timely basis. AER shall waive its recovery rights to deferred amounts under an interim filing in excess of 103% of the actual average costs of gas over the current average cost of purchased gas as filed in the interim filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20606 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-692-000]

Cambridge Electric Light Co.; Filing of Rate Change

September 5, 1986.

Take notice that on September 2, 1986, Cambridge Electric Light Company ("Cambridge") tendered for filing, pursuant to § 35.13 of the Commission's Regulations, two proposed rate schedules affecting the sale and transmission of electric power to the Municipal Light Department of the Town of Belmont, Massachusetts ("Belmont"), its only wholesale customer. The tendered filing consists of two proposed FERC electric tariffs, as below-listed, plus two implementing and unexecuted service agreements by and between Cambridge and Belmont:

(1) FERC Electric Tariff for Partial Requirements Service

(2) FERC Electric Tariff for Firm Transmission Service

Cambridge has requested that both such tariffs become retroactively effective on July 1, 1985 as proposed and, in support of such request, has stated that both such tariffs give effect to a Settlement Agreement between itself and Belmont in prior FERC Docket No. ER86-287-001. By the terms of such Settlement Agreement, Cambridge has already consented to make refunds to Belmont in this proceeding as and if necessary pursuant to the Commission's final order herein. Suspension of the proposed rate schedules, therefore, is not required to protect Belmont's interests.

Copies of the tendered filing have been served upon Belmont and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 18, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20607 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-135-001]

Caprock Pipeline Co.; Compliance Filing

September 8, 1986.

Take notice that on August 15, 1986, Caprock Pipeline Company (Caprock) tendered for filing the following materials in accordance with the Commission's order of July 30, 1986:

(1) Original Volume No. 3—a Restatement of Appendix A in a format consistent with sections 154.32 and 154.33 of the Commission's regulations. In addition, as directed, Appendix A has been changed to eliminate the processing fee previously found in Paragraph 7.3; and

(2) Caprock's calculation of minimum and maximum rates in accordance with Subpart A of 284.

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 28, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20608 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-157-000]

El Paso Natural Gas Co.; Petition for Authority to Institute Direct Billing of Changes in Net Liquid Revenues

September 8, 1986.

Take notice that El Paso Natural Gas Company ("El Paso") on August 29, 1986 tendered for filing with the Federal Energy Regulatory Commission ("Commission") a petition for authority to institute direct billing for the difference between actual and settlement "net liquid revenues," which, under current procedures, are credited or debited, as appropriate, to Account 191, pursuant to the Stipulation and Agreement in Settlement of Rate Proceedings at Docket No. RP85-58-000, *et al.* El Paso proposes to continue use of the direct billing procedures through the term of such Settlement, commencing with amounts attributable to the period January 1, 1986 through June 30, 1986.

In order to allocate the difference between actual and settlement net liquid revenues among customers, El Paso will first identify the jurisdictional amount for each month during the six-month period commencing January 1, 1986. Each jurisdictional customer's share of a month's jurisdictional net liquid revenues will be determined by multiplying the amount by a fraction, the numerator of which is the difference between the jurisdictional customer's actual purchases for the month and the customer's quantities for that month utilized in the Settlement, and the denominator of which is the difference between the aggregate of all jurisdictional customer's purchases for the month and the total jurisdictional quantities utilized in the Settlement for the related month. The amount to be billed or refunded directly to the customer will be the total of each month's share so calculated to be payable in six-monthly installments commencing October 1, 1986. This method will continue for each six-month period until expiration of the final billing period following termination of El Paso's Stipulation and Agreement at Docket No. RP85-58-000. El Paso will calculate

and allocate interest on each month's ending balance for changes in net liquid revenues through the time the billing commences in accordance with § 154.38(d)(4)(iv)(c) of the Commission's Regulations. El Paso will also charge or credit interest to each customer on the allocated remaining balance.

Copies of this filing were served on El Paso's pipeline system customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before 9–16–1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20609 Filed 9–11–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–33–000,001]

El Paso Natural Gas Co.; Proposed Change in Rates Pursuant to Purchased Gas Cost Adjustment

September 8, 1968.

Take notice that on August 29, 1986, El Paso Natural Gas Company ("El Paso") filed a notice of change in rates for jurisdictional gas service rendered under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1. The filing reflects a decrease of $0.1704 per dth in the base purchased gas cost rate and an increase of $0.0587 per dth in the surcharge rate for a net decrease in El Paso's currently effective sales rates of $0.1117 per dth attributable to the PGA.

To implement the notice of change in rates, El Paso tendered for filing and acceptance the following revised sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Tenth Revised Sheet No. 100, Seventh Revised Sheet No. 540
Third Revised Volume No. 2	Thirty-fifth Revised Sheet No. 1–D
Original Volume No. 2A	Thirty-seventh Revised Sheet No. 1–C

El Paso also tendered Fifth Revised Sheet No. 24 to its Original Volume No. 1–A Tariff to reflect a rate of $1.7236 per dth as the fuel reimbursement charge payable under Rate Schedule T–1 or T–2 in said Tariff by shippers electing to reimburse El Paso for fuel usage in monthly payments rather than in-kind.

El Paso requests that the Federal Energy Regulatory Commission ("Commission") grant waiver of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on October 1, 1986.

On August 8, 1986 at Docket No. RP86–150–000, El Paso petitioned the Commission for authority to direct bill its customers for certain production-related costs incurred pursuant to Order No. 94, *et seq.*, for gas purchases prior to January 1, 1986, which became the subject of payment by El Paso between January 1, 1986 and June 30, 1986 ("retroactive Order No. 94 costs"). Additionally, concurrently with the notice of rate change El Paso filed a petition with the Commission for authority to direct bill its customers for the difference between actual and settlement net liquid revenues credited or debited, as appropriate, to Account 191 ("net liquid revenues") pursuant to the provisions of Article V of the Stipulation and Agreement in Settlement of Rate Proceedings at Docket No. RP85–58–000, *et al.*, continuing through the term of such settlement, commencing with amounts attributable to the period January 1, 1986 through June 30, 1986. Therefore, El Paso states that the above-designated tariff sheets set forth rates based on an Account 191 block balance for the six-month period ended June 30, 1986, exclusive of such retroactive Order No. 94 costs and net liquid revenues. In the event the Commission does not act on one or both of the petitions for direct billing prior to the proposed effective date of the notice of PGA rate change or denies either or both of El Paso's requests, El Paso also tendered three sets of alternate tariff sheets to be made effective in lieu of their above-designated counterparts, as appropriate. The alternate tariff sheets reflect rates based on an Account 191 block balance for the six-month period ended June 30, 1986, which:

Alternate, Tab 1—excludes the retroactive Order No. 94 costs and includes net liquid revenues, resulting in a net increase in rates of $0.2389 per dth;

Alternate, Tab 2—includes the retroactive Order No. 94 costs and excludes net liquid revenues, resulting in a net decrease in rates of $0.0691 per dth; and

Alternate, Tab 3—includes the retroactive Order No. 94 costs and net liquid revenues, resulting in a net increase in rates of $0.2815 per dth.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before September 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20610 Filed 9–11–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–156–000]

El Paso Natural Gas Co.; Tariff Filing

September 8, 1986.

Take notice that on August 29, 1986, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulatons Under the Natural Gas Act, Original Sheet Nos. 362–A and 362–B to its FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that the above designated tariff sheets, when accepted by the Commission and permitted to become effective, will serve to revise section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions contained in El Paso's First Revised Volume No. 1 Tariff by adding a new section § 19.11, Interim Adjustments to Rates for Changes in Seller's Average Cost of Purchased Gas.

BEST COPY AVAILABLE

El Paso requests that the Commission grant waiver of its applicable rules, regulations and orders as may be necessary to permit the tendered tariff sheets to become effective on October 1, 1986, the proposed effective date of El Paso's semi-annual PGA filed concurrently therewith.

El Paso further states that in addition to filing its semi-annual PGA's effective April 1 and October 1 of each calendar year, El Paso requests authorization to adjust, from time to time and at any time upon one (1) day's notice to its affected customers, state commissions, the Commission and all other persons that are parties to Seller's immediately preceding PGA filing, its jurisdictional rates to reflect known and measurable changes in the average cost of gas per dth. Such adjustments would be limited only to purchased gas costs and would reflect either an increase or decrease in El Paso's jurisdictional rates; provided, however, that any increase would not exceed the level of the jurisdictional rates established in the immediately preceding PGA filing.

El Paso states that the filing has been served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before September 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20611 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-696-000]

Kansas Gas and Electric Co.; Filing

September 5, 1986.

Take notice that on September 2, 1986, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed Transmission Service Agreement superseding FERC Rate Schedule No. 157 between KG&E and the City of Girard, Kansas (City).

This filing is necessary as a result of a negotiated settlement of the terms upon which service will be rendered to the City of Girard. KG&E has requested an effective date of January 31, 1987.

Copies of the filing were served upon the City of Girard, Kansas and the Utilities Division of the Kansas Corporation Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 18, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20612 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4734-004]

Marin Municipal Water District; Surrender of Exemption

September 5, 1986.

Take notice that Marin Municipal Water District, exemptee for the proposed Alpine Lake Project No. 4734, has requested that its exemption be terminated. The exemption was issued April 2, 1984. The project would have been located on Lagunitas Creek, near Fairfax, in Marin County, California.

The exemptee filed the request on August 19, 1986, and the exemption for Project No. 4734 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20613 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-15-003]

Mid Louisiana Gas Co.; Compliance Tariff Filing

September 8, 1986.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on September 2, 1986, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff, Substitute Fifty-Sixth Revised Sheet No. 3a.

Mid Louisiana states that the filing of the tariff sheet is in compliance with the Commission's Order issued July 31, 1986, in the above captioned docket. Mid Louisiana further states that the purpose of Substitute Fifty-Sixth Revised Sheet No. 3a is to restate the normal surcharge account to eliminate the collection of $1,750,000 of costs related to the repricing of company-owned production and to institute a special surcharge to reflect the collection, during an 18 month amortization period, of costs related to the pricing of company-owned production at NGPA pricing levels for the period February 1, 1982 through December 31, 1982.

Mid Louisiana states that a copy of this compliance filing has been mailed to each of its jurisdictional customers, interested state commissions and all other parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before September 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20614 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

Natural Gas Pipeline Company of America; Modification to Settlement

[Docket Nos. RP85-150-000, RP85-200-000 and RP85-200-001]

September 5, 1986.

Take notice that on August 22, 1986, Natural Gas Pipeline Company of

BEST COPY AVAILABLE

America (Natural) filed a letter in Docket No. RP85–150–000 which sets forth certain terms and conditions which modify the terms and conditions of a contested settlement filed by Natural on November 8, 1985, and certified by the administrative law judge in the above-captioned dockets to the Commission on December 19, 1985.

Natural states that the terms and conditions set forth in the August 22 letter would remove certain objections to the settlement, and that such terms and conditions are acceptable to Natural and the active participants which previously supported the settlement. Attached to the letter are three appendices which detail the proposed modifications to the settlement, described in the body of the August 22 letter. Natural requested that the Commission take the proposed modifications into consideration in its review of the pending settlement.

Any person desiring to file comments on the proposed modifications to the settlement, as set forth in Natural's letter of August 22, 1986, should file comments with the Commission pursuant to the regulations at 18 CFR 385.602(f), at 825 North Capitol Street, NE., Washington, DC 20426. Initial comments must be filed not later than 20 days after the issuance of this notice in the **Federal Register** and reply comments must be filed not later than 30 days after the issuance of this notice in the **Federal Register**. Consistent with the regulations at 18 CFR 385.602(f)(3), any failure to file comments constitutes a waiver of all objections to the modifications to the settlement embodied in the August 22, 1986, letter which is the subject of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20615 Filed 9–11–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER86–101–003]

Northern States Power Co.; Filing

September 9, 1986.

Take notice that on August 13, 1986, Northern States Power Company tendered for filing its compliance and refund report in this docket. The filing company states that it has mailed copies of this report to the Minnesota Public Utilities Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20616 Filed 9–11–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–3–28–003]

Panhandle Eastern Pipe Line Co.; Change in Tariff

September 8, 1986.

Taken notice that on August 29, 1986, Pahandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Fifty-Sixth Revised Sheet No. 3–A

First Substitute Thirty-Third Revised Sheet No. 3–B

The proposed effective date of these revised tariff sheets is September 1, 1986.

Panhandle sates that these revised tariff sheets reflect a commodity rate decrease of 4.36¢ per Dt. Panhandle further states that this filing reflects reduced purchased gas costs from Panhandle's pipeline supplier, Trunkline Gas Company (Trunkline). Trunkline is filing concurrently herewith a 56.94¢ per Dt reduction to its commodity rates to be effective September 1, 1986.

In anticipation of the Commission's approval of the aforementioned Trunkline reduction effective September 1, 1986, Panhandle is submitting these revised tariff sheets. The instant Panhandle rate reduction is a revision to the PGA rate adjustment which becomes effective September 1, 1986. Therefore, to the extent required, if any, Panhandle requests that the Commission grant such waivers as may be necessary for the acceptance of these tariff sheets submitted herewith, to become effective September 1, 1986, as previously described.

Panhandle states that copies of this filing were served on all its jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20617 Filed 9–11–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–40–000, 001]

Raton Gas Transmission Co.; Change in Rates

September 8, 1986.

Take notice that Raton Gas Transmission Company (Raton), on August 29, 1986, tendered for filing, proposed changes in its FERC Gas Tariff, Original Volume No. 1, consisting of Thirty-seventh Revised Sheet No. 3a. The change in rates is for jurisdictional gas service. The proposed effective date is October 1, 1986.

Raton states that the instant notice of change in rates is occasioned solely for changes in cost of gas purchased from Colorado Interstate Gas Company (CIG). The tracking of CIG Gas Cost Change results in Decrease of $0.05 per MCF Demand Charge and decrease of 2.12¢ per MCF in Commodity Charge. On an annual basis the changes result in a revenue decrease of $28,831.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20618 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-38-000, 001]

Ringwood Gathering Co.; Change in Tariff

September 8, 1986.

Take notice that on August 28, 1986, Ringwood Gathering Company (Ringwood) tendered for filing Thirty-Eighth Revised Sheet PGA-1 to its FERC Gas Tariff. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until September 3, 1986. Ringwood proposes an effective date of October 1, 1986.

Ringwood states that said tariff sheet revises its Base Tariff Rate to reflect the increase in the system cost of purchased gas and recover the balance accumulated in the unrecovered purchased gas cost account.

Copies of this filing have been mailed to Northwest Central Pipeline Corporation, Westar Transmission Company, and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20619 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-94-005 and RP85-167-005]

Sea Robin Pipeline Co.; Compliance Tariff Filing

September 8, 1986

Take notice that on August 29, 1986, Sea Robin Pipeline Company ("Sea Robin"), 600 Travis, P.O. Box 1478, Houston, Texas 77251-1478, tendered for filing tariff all of the tariff sheets necessary to comply with §§ 284.7, 284.8, 284.9, 284.10 of the Commission's Regulations, as required by the August 14, 1986 letter order of the Director of the Office of Pipeline and Producer Regulation in the above-captioned docket, as modified by the Commission's August 22, 1986 order granting an extension of time. The tariff sheets submitted for filing in Sea Robin's FERC Gas Tariff Original Volume No. 1 include:

Eighth Revised Sheet No. 1, Fourth Revised Sheet No. 1-A, and Original Sheet Nos. 1-B through 1-D, Table of Contents;

Revised Substitute Sheet No. 4-A1, Statement of Effective Interruptible Transportation Rates; [1]

Original Sheet No. 4-A2, Statement of Effective Firm Transportation Rates;

Original Sheet Nos. 25-49, Transportation General Terms and Conditions;

Original Sheet Nos. 50-70, Rate Schedule ITS, Interruptible Transportation Services;

Original Sheet Nos. 71-91, Rate Schedule FTS, Firm Transportation Service;

Original Sheet Nos. 92-102, Gas Transportation Service Agreement, Service Under Rate Schedule ITS;

Original Sheet Nos. 103-113, Gas Transportation Service Agreement, Service Under Rate Schedule FTS;

Original Sheet Nos. 114-122, Lateral Line Interconnect Agreement.

Sea Robin states that in compliance with § 284.7 of the Commission's Regulations, the tariff sheets contain maximum and minimum rates for interruptible and firm transportation service under section 311 of the Natural Gas Policy Act. Sea Robin states that these rates are based on costs that underlie Sea Robin's currently effective rates. Sea Robin states further that these tariff sheets contain Transportation General Terms and Conditions, Interruptible and Firm Transportation Service Rate Schedules and Service Agreements, and Sea Robin's Lateral Line Interconnect Agreement, all in compliance with Part 284 of the Commission's Regulations governing self-implementing transportation under section 311.

Sea Robin asserts that good cause exists pursuant to 18 CFR 154.51 for waiver of the thrity-day notice period provided in 18 CFR 154.22, so that the tariff sheets may become effective on July 1, 1986. Sea Robin states that these tariff sheets are submitted in compliance with the requirements of Order 436 for section 311 self-implementing transportation, and will govern the terms and conditions under which Sea Robin will offer such transportation.

Sea Robin states that copies of this filing have been mailed to Sea Robin's producers and jurisdictional customers, and to interested state regulatory agencies, as well as to parties listed on the service list in Docket No. RP86-94.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20620 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-7-000, 001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 8, 1986.

Take notice that Southern Natural Gas Company (Southern) on August 29, 1986, tendered for filing proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective October 1, 1986. Such filing is pursuant to section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff, Sixth Revised Volume No. 1. The proposed changes reflect a net increase in Southern's rates of approximately 11.550¢ per Mcf as a result of the following items:

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[1] This tariff sheet contains a technical correction that reflects the Commission's most current GRI Surcharge.

(1) A Current Adjustment pursuant to section 17.3 of the General Terms and Conditions of Southern's tariff, reflecting an annual increase in the cost of purchased gas to jurisdictional customers of $26,444,305 or approximately 10.775¢ per Mcf.

(2) A Surcharge Adjustment for unrecovered purchased gas costs of .570¢ per Mcf, which is an increase of .796¢ per Mcf from the present Surcharge Adjustment.

(3) A Surcharge Adjustment for estimated Demand Charge Credits pursuant to section 9.6(3) of the General Terms and Conditions of Southern's tariff of (.031¢) per Mcf, which reflects a decrease of .021¢ per Mcf from the present DCC Surcharge Adjustment.

Pursuant to § 282.601(a)(1)(ii) of the Commission's Regulations, Southern is also filing Fourteenth Revised Sheet No. 45R with a proposed effective date of October 1, 1986. Such tariff sheet reflects Southern's projected incremental pricing surcharge for the six-month period beginning October 1, 1986, to be zero.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20621 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-18-002]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

September 8, 1986.

Take notice that on September 2, 1986 Texas Gas Transmission Corporation (Texas Gas) tendered for filing Substitute Fourth Revised Sheet No. 10 and Substitute Fourth Revised Sheet No. 10A to its FERC Gas Tariff, Original Volume No. 1.

The revised tariff sheets are being filed to reflect rate revisions from Texas Eastern Transmission Corporation and Tennessee Gas Pipeline Company pursuant to Ordering Paragraph (B) of the Commission's Order issued July 30, 1986 in Docket No. TA86-4-18.

Copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers, interested state commissions, and parties of record in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 2 11 and 2 14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20622 Filed 9-11-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3078-6]

Environmental Impact Statements; Availability

Responsible Agency

EPA Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed September 2, 1986 through September 5, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860362, Final, NPS, DC, MD, VA, George Washington Memorial Parkway, Spout Run to the Theodore Roosevelt Bridge, and Spout Run Parkway Improvements, Traffic and Recreational Management, Due: October 14, 1986, Contact: John Byrne (703) 285-2600.

EIS No. 860363, Final, IBR, CA Westland Water District, Drainage Disposal Project, West San Joaquin Division, Central Valley Project, Fresno and Kings Cos., Due: October 14, 1986, Contact: Alan Solbert (916) 978-5130.

EIS No. 860364, Final, FHW, NC, NC-280 Improvement, NC-280 and NC-191 Intersection to I-26 near Asheville Airport, Henderson and Buncombe Cos., Due: October 14, 1986, Contact: Kenneth Bellamy (919) 755-4346.

EIS No. 860365, Final, AFS, UT, Dixie National Forest Land and Resource Management Plan, Garfield, Iron, Kane, Piute, Washington and Wayne Counties, Due: October 14, 1986,

EIS No. 860366, FSuppl, USN, GA, Kings Bay Ballistic Missile Submarine Support Base, North River Access Restriction, Construction, Camden County, Due: October 14, 1986, Contact Cdr. Bruce Dutton (202) 697-8055.

EIS No. 860367, Draft, AFS, OR, Ochoco National Forest and Crooked River National Grassland, Land and Resource Management Plan, Due: December 20, 1986, Contact: David Rittersbacher (503) 447-6247.

Amended Notices

EIS No. 860258, Draft, BIA, AZ, San Xavier/Tucson Planned Community Development, Lease Approval, Pima County, Due: October 7, 1986, Published FR 07-11-86 - Review period extended.

Dated: September 9, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-20600 Filed 9-11-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3078-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 25, 1986 through August 29, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in Federal Register dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-K65107-CA, Rating EC2, San Bernardino Nat'l Forest, Land and Resource Mgmt. Plan, CA. Summary: EPA expressed concerns that proposed forest management activities could impact riparian areas, water quality and beneficial uses. EPA requested the final EIS discuss mitigation measures to reduce any adverse impacts.

ERP No. D–FHW–B40064–ME, Rating EO2, Sears Island Marine Dry Cargo Terminal and Access Road Construction, ME. Summary: EPA believes the project will cause substantial impacts to marine and terrestrial habitats and recommends more thorough consideration of the alternative site, Mack Point, and less damaging design alternatives.

ERP No. D–FHW–L40152–WA, Rating EC2, I–405 Construction, S. Renton Interchange to Sunset Blvd., Transit and Carpool Improvements, 404 and 10 Permits, WA. Summary: EPA is concerned that the proposed detention basins for mitigation of accidental spills be operated consistent with the objectives of the project, which will reduce risks of contamination of the Renton water supply wells and reduce nonpoint source water pollution to the Cedar River over current conditions. As current and expected traffic noise levels from the project are significant, additional explanation of the projected change in traffic noise from current levels is needed.

Final EISs

ERP No. F–AFS–F65012–MI, Huron and Manistee Nat'l Forests, Land and Resource Mgmt. Plan, MI. Summary: EPA's review resulted in no objections to the preferred alternative. Documentation was requested regarding the designation of Bear Swamp as a Research Natural Area.

ERP No. F–AFS–G65041–AR, Ozark-St. Francis Nat'l Forests, Land and Resource Mgmt. Plan, AR. Summary: The final EIS adequately responded to EPA comments issued on the draft EIS. EPA has not identified any new issues of concern with regard to the proposed action.

ERP No. F–AFS–H65002–MO, Mark Twain Nat'l Forest, Land and Resource Mgmt. Plan, MO. Summary: EPA did not object to the plan. EPA commented that the Eleven Point and Current Rivers are designated as outstanding national resource waters, and as such, no degradation of their existing water quality will be permitted even if the present quality exceeds the standards. EPA also stated that if hazardous waste disposal sites were identified on Forest grounds the Forest Service is required to file a 103(c) CERCLA notification with EPA.

ERP No. F–BLM–L70004–ID, Lemhi Resource Area, Resource Mgmt. Plan, ID. Summary: The final EIS did not provide sufficient information to assure that water quality and beneficial uses of water would be adequately protected by the BLM Standard Operating Procedures. EPA will meet with BLM and seek to resolve remaining concerns prior to issuance of the Record of Decision.

ERP No. F–FHW–CA0061–NJ, NJ–522 Realignment, US 1 to US 130, Right-of-Way Acquisition, NJ. Summary: EPA remains concerned about the lack of mitigation for the loss of 5.6 acres of wetlands and has indicated that this issue must be resolved through the 404 permit process.

ERP No. F–FHW–LA0113–OR, McLoughlin Blvd. and US 99E Widening, Pacific Highway East, Union-Grand Viaduct to South East River Road, Right-of-Way Acquisition, 404 Permit, OR. Summary: EPA made no formal comments. EPA reviewed the final EIS and the project was found to be satisfactory.

ERP No. F–FHW–L40146–OR, Tualatin Valley Highway Widening, 21st Ave. to E. Main Street, Improvements and Developments, Right-of-Way Acquisition, OR. Summary: EPA made no formal comments. EPA reviewed the final EIS and the project was found to be satisfactory.

ERP No. F–SFW–C90011–NY, Honeoye Creek Wetland Expansion and Enhancement Project, NY. Summary: EPA believes that the project as proposed will not result in significant environmental impacts. However, EPA requested final details for the proposed impoundment construction, when they become available.

Regulations

ERP No. R–FHA–A99172–00, 7 CFR Parts 12, 1940, 1941, 1943, 1945, and 1980, Highly Erodible Land and Wetland Conservation (51 FR 23496). Summary: EPA supports full implementation of subtitles B and C of the Food Security Act, but has significant concerns that the implementing rule, in its interim form, will not fully realize its potential agricultural and environmental benefits. EPA feels that water quality criteria and off-site effects should be used in determining highly erodible lands and is also concerned that the conversion exemptions and wetland determinations of the interim rule may allow for the continued conversion of wetlands without the loss of USDA program eligibility. EPA has offered to meet with USDA to discuss its concerns and suggestions.

Dated: September 9, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–20601 Filed 9–11–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59226A; FRL–3079–1]

Certain Chemical, Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–86–54. The test marketing conditions are described below.

EFFECTIVE DATE: August 29, 1986.

FOR FURTHER INFORMATION CONTACT: John G. Davidson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–613, 401 M St., SW., Washington, DC 20460, (202–382–3373).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–54. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–86–54. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years

after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–86–54

Date of Receipt: July 22, 1986.

Notice of Receipt: August 12, 1986 (51 FR 28874).

Applicant: Tennant Corporation.

Chemical: (G) Ammonio derivative of a copolymer of polyalkyl glycols toluene diisocynate, an alkyl polyamine.

Use: Curing agent for aqueous epoxy resin dispersions.

Production Volume: Confidential.

Number of Customers: 15.

Worker Exposure: Manufacturer: dermal and inhalation, a total of 15 workers, up to 15 hrs/day.

Test Marketing Period: Twelve Months.

Commencing on: August 29, 1986.

Risk assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 29, 1986.

Edward A. Klein,

Acting Director, Office of Toxic Substances.

[FR Doc. 86–20592 Filed 9–11–86; 8:45 am]

BILLING CODE 6560–50–M

[9OPTS–59225A FRL–3079–3]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substance Control Act (TSCA), TME–86–53. The test marketing conditions are described below.

EFFECTIVE DATE: August 29, 1986.

FOR FURTHER INFORMATION CONTACT: Sally Sasnett, Premanufacture Notice Management Branch, Environmental Protection Agency, RM. E–613, 401 M St., SW., Washington, DC 20460, (202–382–3861).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–53. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–86–53. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addtion, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–86–53

Date of Receip: July 21, 1986.

Applicant: Confidential.

Chemical: (G) Thermoplastic elastomer.

Use: (S) Tubes, sealings for industrial instruments.

Production Volume: (V) Confidential.

Numbers of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Twelve Months.

Commencing on: (August 29, 1986).

Risk assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restriction of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 29, 1986.

Edward A. Klein,

Acting Director, Office of Toxic Substances.

[FR Doc. 86–20593 Filed 9–11–86; 8:45 am]

BILLING CODE 6560–50–M

[Opts–51637; FRL–3070–8]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86–19246 beginning on page 30426 in the issue of Tuesday, August 26, 1986, make the following corrections on page 30426:

In the first column, under "P86–1527", in the fifth line, insert a period after "coatings". In the ninth line, under "P86–1528", "Sdin" should read "Skin".

In the second column, under "P86–1532", in the fourth line, the first phrase should read, "1,1 "methylene bis,".

BILLING CODE 1505–01–M

[OPTS–59224A; FRL–3072–4]

Certain Chemicals; Approval of Test Marketing Exemptions

Correction

In FR Doc. 86–19715 beginning on page 31168 in the issue of Tuesday, September 2, 1986, make the following correction: On page 31169, in the second column, in the first line after the signature, "*Textile*" should read "*Toxic*".

BILLING CODE 1505–01–M

[OPTS-59782; FRL-3073-1]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 86-19716 beginning on page 31169 in the issue of Tuesday, September 2, 1986, make the following correction: On page 31169, in the third column, in the fifth line under the entry for Y 86-225, *Use/Production* should read *Use/Import*.

BILLING CODE 1505-01-M

FARM CREDIT ADMINISTRATION

Denial of Request to Liquidate; Amarillo Production Credit Association, Amarillo, TX

AGENCY: Farm Credit Administration.

ACTION: Notice of Decision.

SUMMARY: On January 23, 1986, the Amarillo Production Credit Association ("Association") filed with the Farm Credit Administration ("FCA") a request to liquidate the Association voluntarily pursuant to section 4.12(a) of the Farm Credit Act of 1971, as amended ("Act"). Notice of the request and opportunity for hearing was published in the Federal Register on March 25, 1986, and interested persons were invited to testify and submit written views at any session of the hearing held at Dallas, Texas on April 30, 1986; Englewood, Colorado on May 14, 1986; and Washington, DC on June 10, 1986. At the hearing, FCA officials heard testimony and received written submissions from over 40 witnesses and their counsel, representing the Association, 12 other production credit associations, one Federal land bank association, two farm credit district boards, one national bank, one Farm Credit system service organization, and two Congressmen. Notice is hereby given that the FCA Board denied the request of the Association to liquidate at a special meeting held on Wednesday, August 22, 1986.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration.

[FR Doc. 86-20545 Filed 9-11-86; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM

BTB Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 1, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BTB Corp.*, Boston, Massachusetts; to engage *de novo* in directly making, acquiring or servicing loans or other extensions of credit for its own account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 8, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-20546 Filed 9-11-86; 8:45 am]

BILLING CODE 6210-01-M

Mellon Bank Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 29, 1986.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to acquire Muller Data Corporation, New York, New York, and thereby engage in providing to its customers quotation data regarding stocks, bonds, options, mutal funds, commodities, BNMAs, 13F Reports, corporate actions, overseas security markets' information, and with access to a library of financial and economic data bases, prepared by third party data base services, that provide,

among other things, financial information extracted from reports filed with the SEC and advisory services pursuant to § 225.25(b) (4) and (7) of the Board's Regulation Y. These activities will be conducted throughout the United States and abroad.

Board of Governors of the Federal Reserve System, September 8, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-20547 Filed 9-11-86; 8:45 am]

BILLING CODE 6210-01-M

Mountaineer Bankshares of West Virginia, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requires a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 2, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Mountaineer Bankshares of West Virginia, Inc.*, Martinsburg, West Virginia; to acquire 100 percent of the voting shares of The Old National Bank of Jefferson County, Ranson, West Virginia, a *de novo* bank.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Commerce Corporation*, St. Francisville, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Feliciana Commerce Corporation, St. Francisville, Louisiana, and thereby indirectly acquire Bank of Commerce and Trust Company, St. Francisville, Louisiana.

2. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 100 percent of the voting shares of SouthTrust Bank of Cleburne County, N.A., Heflin, Alabama, a *de novo* bank.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Iowa National Bankshares Corp.*, Waterloo, Iowa; to acquire 100 percent of the voting shares of FT&S Bancorp, Indianola, Iowa, and thereby indirectly acquire Peoples Trust & Savings Bank, Indianola, Iowa.

2. *Merchants National Corporation*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of Citizens National Bank of Tipton, Tipton, Indiana.

3. *Merchants National Corporation*, Indianapolis, Indiana; to merge with Mid-Southern Indiana Bancorp, Seymour, Indiana, and thereby indirectly acquire Seymour National Bank, Seymour, Indiana.

4. *Merchants National Corporation*, Indianapolis, Indiana; to merge with NBG Financial Corporation, Greenwood, Indiana, and thereby indirectly acquire The National Bank of Greenwood, Greenwood, Indiana.

5. *New Palestine Bancorp*, New Palestine, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of New Palestine Bank, New Palestine, Indiana.

6. *Northern Trust Corporation*, Chicago Illinois; to acquire 100 percent of the voting shares of First Lake Forest Corporation, Lake Forest, Illinois, and thereby indirectly acquire The First National Bank of Lake Bluff, Lake Bluff, Illinois, The First National Bank of Lake Forest, Lake Forest, Illinois, and Lake Forest National Bank, Lake Forest, Illinois.

7. *Peoples Tri-County Bancorporation*, Des Moines, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank, Albia, Iowa, a *de novo* bank.

8. *RNB Corp.*, Brazil, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Riddell National Bank, Brazil, Indiana.

9. *River Forest Bancorp*, River Forest, Illinois; to acquire 100 percent of the voting shares of Commercial Chicago Corporation, Chicago, Illinois, and thereby indirectly acquire Commercial National Bank of Chicago, Chicago, Illinois.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Chambers Bancshares, Inc.*, Danville, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Danville State Bank, Danville, Arkansas.

2. *Grenada Sunburst System Corporation*, Grenada, Mississippi; to merge with South Mississippi Capital Company, Prentiss, Mississippi, and thereby indirectly acquire South Mississippi Bank, Prentiss, Mississippi, and to merge with Citizens Capital Corporation, Mount Olive, Mississippi, and thereby indirectly acquire Mount Olive Bank, Mount Olive, Mississippi.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Desoto Bancshares, Inc.*, Desoto, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Desoto State Bank, Desota, Kansas.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Equitable Bankshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares of Landmark National Bank, Arlington, Texas.

Board of Governors of the Federal Reserve System, September 8, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-20548 Filed 9-11-86; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of July 8-9, 1986

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 8-9, 1986.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting indicates a mixed pattern of developments but suggests on balance that economic activity expanded slowly in the second quarter. In June total nonfarm payroll employment grew little after accounting for striking workers, with continued weakness in the industrial sector reflected in further

[1] Copies of the Record of policy actions of the Committee for the meeting of July 8-9, 1986, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

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declines in employment in manufacturing and mining. The civilian unemployment rate moved down to 7.1 percent from 7.3 percent in May. Industrial production declined in May. Total retail sales were about unchanged during the month, although consumer spending rose considerably for the second quarter as a whole. Housing starts fell somewhat in May from a relatively high level. Weakness in the energy sector has contributed to a slowing of business capital spending. Preliminary data for the U.S. merchandise trade balance in April show a somewhat larger deficit than the rate recorded in the first quarter. Both consumer and producer prices turned up in May but have fallen on balance since late 1985, largely reflecting declines in energy prices.

M1 growth in June, though less than in May, was still rapid; through June, M1 grew at a rate well above the Committee's range for 1986. Growth of M2 slowed somewhat and expansion of M3 remained relatively moderate in June, keeping these two aggregates close to the middle of their respective ranges for the year. Expansion in total domestic nonfinancial debt remains appreciably above the monitoring range for 1986. Most short-term interest rates have declined on balance since the May 20 meeting of the Committee. Rates on Treasury bonds also have moved lower while rates on private long-term obligations are about unchanged to somewhat higher. The trade-weighted value of the dollar against major foreign currencies has declined somewhat on balance since the May meeting.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at this meeting to reaffirm the ranges established in February for growth of 6 to 9 percent for both M2 and M3, measured from the fourth quarter of 1985 to the fourth quarter of 1986. With respect to M1, the Committee recognized that, based on the experience of recent years, the behavior of that aggregate is subject to substantial uncertainties in relation to economic activity and prices, depending among other things on the responsiveness of M1 growth to changes in interest rates. In light of these uncertainties and of the substantial decline in velocity in the first half of the year, the Committee decided that growth of M1 in excess of the previously established 3 to 8 percent range for 1986 would be acceptable. Acceptable growth of M1 over the remainder of the year will depend on the behavior of velocity, growth in the other monetary aggregates, developments in the economy and financial markets, and price pressures. Given its rapid growth in the early part of the year, the Committee recognized that the increase in total domestic nonfinancial debt in 1986 may exceed its monitoring range of 8 to 11 percent, but felt an increase in that range would provide an inappropriate benchmark for evaluating longer-term trends in that aggregate.

For 1987 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1986 to the fourth quarter of 1987, of 5½ to 8½ percent for M2 and M3. While a range of 3 to 8 percent for M1 in 1987 would appear appropriate in the light of most historical experience, the Committee recognized that the exceptional uncertainties surrounding the behavior of M1 velocity over the more recent period would require careful appraisal of the target range at the beginning of 1987. The associated range for growth in total domestic nonfinancial debt was provisionally set at 8 to 11 percent for 1987.

In the implementation of policy for the immediate future, the Committee seeks to decrease somewhat the existing degree of pressure on reserve positions, taking account of the possibility of a change in the discount rate. This action is expected to be consistent with growth in M2 and M3 over the period from June to September at annual rates of about 7 to 9 percent. While growth in M1 is expected to moderate from the exceptionally large increase during the second quarter, that growth will continue to be judged in the light of the behavior of M2 and M3 and other factors. Somewhat greater or lesser reserve restraint might be acceptable depending on the behavior of the aggregates, the strength of the business expansion, developments in foreign exchange markets, progress against inflation, and conditions in domestic and international credit markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, September 8, 1986.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 86-20642 Filed 9-11-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Date: October 6-7, 1986.

Place: Conference Room 207, Centers for Disease Control 1600 Clifton Road NE., Atlanta, Georgia 30333.

Time: 8:30 a.m.

Type of Meeting: Open.

Contact Person: Jeffrey P. Koplan, M.D., Executive Secretary of Committee, Centers for Disease Control (1-2047), 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: FTS: 236-3751, Commercial: 404/329-3751.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Agenda: The Committee will review and discuss recommendations on *Haemophilus influenzae* type b, influenza, measles, hepatitis B vaccine; review data on pertussis and DTP; and will consider other matters of relevance among the Committee's objectives.

Agenda items are subject to change as priorities dictate.

Dated: September 5, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 86-20529 Filed 9-11-86; 8:45 am]

BILLING CODE 4160-18-M

Reducing Back Stress to Nursing Personnel; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: September 22, 1986.

Time: 9 a.m.-12 noon.

Place: Room 203, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Purpose: To discuss a study to be conducted by the University of Wisconsin pursuant to a contract with NIOSH. The study will assess the efficacy of a program for minimizing back stress in nurses employed at long-term geriatric facilities. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Roger Jensen, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Telephones: FTS: 923-4809, Commercial: 304/291-4809.

Dated: September 5, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 86-20530 Filed 9-11-86; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Cardiovascular and Renal Drugs Advisory Committee by the Secretary of Health and Human

Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on August 27, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: September 5, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–20537 Filed 9–11–86; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Orlando District Office, chaired by Douglas Tolan, District Director. The topics to be discussed are fad diets and diet products and health claims on food labels.

DATE: Wednesday, September 24, 1986, 1 p.m. to 3:15 p.m.

ADDRESS: Hillsborough County Extension Service, 5339 State Rd. 579, Seffner, FL 33584.

FOR FURTHER INFORMATION CONTACT: Lynne Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809, 305–855–0900.

Detroit District Office, chaired by Alan L. Hoeting, District Director. The topics to be discussed are prescription education month and items of current concern.

DATE: Wednesday, September 24, 1986, 1:30 p.m.

ADDRESS: George Potter Larrick Bldg., Conference Rm., 1560 East Jefferson, Detroit, MI 48207.

FOR FURTHER INFORMATION CONTACT: Evelyn DeNike, Consumer Affairs Office, food and Drug Administration, 1560 East Jefferson, Detroit, MI 48207, 313–226–6260.

Los Angeles District Office, chaired by George J. Gerstenberg, District Director. The topic to be discussed is health claims on food labels.

DATE: Tuesday, September 30, 1986, 10 a.m. to 12 m.

ADDRESS: Los Angeles District Office, 1521 West Pico Blvd., Los Angeles, CA 90015.

FOR FURTHER INFORMATION CONTACT: Gordon L. Scott, Consumer Affairs Officer, Food and Drug Administration, 1521 West Pico Blvd., Los Angeles, CA 90015, 213–252–7597.

SUPPLEMENTARY INFORMATION: The purpose of these meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 5, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Do. 86–20540 Filed 9–11–86; 8:45 am]

BILLING CODE 4160–01–M

Endocrinologic and Metabolic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Endocrinologic and Metabolic Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on August 27, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: September 5, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–20538 Filed 9–11–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86N–0371]

Human Drugs; Becton Dickinson and Co., et al.; New Drug Applications; Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice proposes to withdraw approval of 12 new drug applications because the applicants have failed to submit required annual reports.

DATE: Requests for hearing are due by October 14, 1986.

ADDRESS: Requests for hearing in response to this notice should be identified with Docket No. 86N–0371 and directed to:

Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drugs and Biologics (HFN–46), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320.

SUPPLEMENTARY INFORMATION: An applicant is required to report periodically to FDA concerning each of its approved new drug applications (NDA's) in accordance with 21 CFR 314.81. Although in the past some exemptions from these reporting requirements have been granted, all such exemptions were rescinded (43 FR 20556; May 12, 1978). The holders of the following NDA's have not submitted annual reports and have not responded to the agency's requests by certified mail for submission of the reports:

NDA	Drug name	Applicant's name and address
5–939	Bal in Oil Injection	Becton Dickinson & Co., 1 Becton Dr., Franklin Lakes, NJ 07417.
9–436	Acylanid Tablets	Sandoz Pharmaceuticals, Div. of Sandoz Inc., East Hanover, NJ 07936.
9–464	Rauwolfia Serpentina Tablets.	American Pharmaceutical Co., Inc., 120 Bruckner Blvd., Bronx, NY 10454.
9–477	Rauwolfia Serpentina.	The C.M. Bundy Co., 2055 Reading Rd., Cincinnati, OH 45202.
9–481	Hyserp Tablets	Moore Kirk Laboratories, Inc., 326 Chandler St., Worcester, MA 01602.
9–577	Rauja Tablets	Bell Pharmacal Corp., Box 1988, Greenville, SC 29602.
9–663	Reserpine Tablets	The C.M. Bundy Co.
9–667	Reserpine Tablets 0.1 mg and 0.25 mg.	ICN Pharmaceuticals Inc. 3300 Hyland Ave., Costa Mesa, CA 92626.
9–668	Rauwolfia Serpentina 0.1 mg and 0.25 mg.	Do.
10–441	Reserpine Tablets	Stanlabs Pharmaceutical Co., P.O. Box 3108, Portland, OR 97208.
12–686	Contac CR-Cap	Menly & James Laboratories, P.O. Box 8082, Philadelphic, PA 19101.
17–130	Sodium Heparin Injection (all strengths).	Chamberlin Parenteral Corp., 6–10 Nassau Ave., Inwood, NY 11609.

Therefore, notice is given to the holders of the new drug applications and to all other interested persons that the Director of the Center for Drugs and Biologics proposes to issue an order under section 505(e) of the Federal Food, Drug, and Comestic Act (21 U.S.C.

335(e)) withdrawing approval of the new drug applications and all amendments and supplements thereto on the grounds that the applicants have failed to submit the reports required under 21 CFR 314.81.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicants are hereby given an opportunity for a hearing to show why approval of their new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products named above.

An applicant who decides to seek a hearing shall file (1) on or before October 14, 1986, a written notice of a appearance and request for hearing, and (2) on or before November 12, 1986, the data, information, and analyses relied on to justify a hearing as specified in 21 CFR 314.200.

The failure of the applicant to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the action proposed for the drug product and constitutes a waiver of any contentions about the legal status of the drug product. The drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will begin appropriate regulatory action to remove it from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that justifies a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accord with 21 CFR 314.81. If the submission is not complete or if a request for hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests a hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice must be filed in two copies. Except for information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.82).

Dated: August 28, 1986.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 86–20539 Filed 9–11–86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Notice of Hearing to Reconsider Disapproval of an Iowa State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 29, 1986 in Kansas City, Missouri to reconsider our decision to disapprove Iowa State Plan Amendment 85–33.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk September 29, 1986.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove an Iowa State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disppproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Iowa SPA 85–33 violates section 1902(a)(13)(A) of the Social Security Act and Federal regulations at 42 CFR 447.253(b)(1)(i) and 42 CFR 447.252(b).

Iowa SPA 85–33 would amend the Iowa Medicaid State plan for reimbursement of intermediate care facility services.

The Medicaid regulation at 42 CFR 447.253(a) requires the State Medicaid agency to provide an assurance satisfactory to the Health Care Financing Administration that it meets the requirements of 42 CFR 447.253(b)(1)(i) and pays for long-term care facility services through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable State and Federal laws, regulations, and quality and safety standards.

In this case, for the period November 1, 1985 through December 31, 1985, the State's proposed payment rate includes a facility's base period per diem costs plus an inflation factor of .8 percent, providing the trended costs do not exceed the maximum allowable per diem cost limits. HCFA has determined the State's assurance for this period is not acceptable because Iowa has not satisfactorily demonstrated that its prospective rate, based in many cases on costs over a year old plus a nominal inflation adjustment, are reasonable and adequate to meet costs that must be incurred by the most efficient and economically operated facility to meet applicable requirements during the 2-month rate period. HCFA has determined the rates also do not reasonably take into account projected economic trends during the period for which the rates are set.

HCFA has determined the State's assurance for the payment rates to be effective January 1,1986, is also not acceptable. HCFA believes the State's methods may result in less than 50 percent of the facilities receiving full payment of their reasonable costs incurred during the rate period. HCFA believes this situation would be further exacerbated during future rate periods as the amendment does not require Iowa to update the maximum ICF rate to reflect the level of costs the 50th percentile facility would be expected to incur during any subsequent rate period. Thus, HCFA has determined Iowa has not provided sufficient information or justification to support its finding and

assurance that such results comply with section 1902(a)(13)(A) of the Social Security Act and Federal regulations at 42 CFR 447.253(b)(1)(i).

Finally, HCFA has determined the amendment violates 42 CFR 447.252(b) because it does not comprehensively specify the methods and standards used by the agency to determine payment rates, in a manner consistent with 45 CFR 201.2.

The notice to Iowa announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Michael V. Reagen, Ph.D.,
Commissioner, Department of Human Services, Hoover State Office Building, 5th Floor, Des Moines, Iowa 50319.

Dear Dr. Reagen: This is to advise you that your request for reconsideration of the decision to disapprove Iowa State Plan Amendment 85–33 was received on August 11, 1986. Iowa SPA 85–33 would amend the Iowa Medicaid State plan for reimbursement of intermediate care facility services.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations. The issues to be considered at the hearing are whether: 1) Iowa has provided sufficient information or justification to support its finding and assurance that its proposed rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with applicable State and Federal laws, regulations and quality and safety standards as required by section 1902(a)(13)(A) and 42 CFR 447.253(b)(1)(i), and 2) whether the amendment adequately specifies the methods and standards used by the agency to determine payment rates in a manner consistent with 45 CFR 201.2 as required by 42 CFR 447.252(b).

I am scheduling a hearing on your request to be held on October 29, 1986 at 9:00 a.m. in the HCFA Conference Room, Second Floor, Federal Office Building, 601 East 12th Street, Kansas City, Missouri. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,

William L. Rober, M.D.,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 8, 1986.

William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 86–20597 Filed 9–11–86; 8:45 am]
BILLING CODE 4120–03–M

Health Resources and Services Administration

Application Announcement for Grants for Residency Training in General Internal Medicine and General Pediatrics

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1987 Grants for Residency Training in General Internal Medicine and/or General Pediatrics are being accepted under the authority of section 784, Title VII, of the Public Health Service Act, as amended by Pub. L. 99–129.

Section 784 authorizes the award of grants for planning, developing and operating approved residency training programs which emphasize the training of residents for the practice of general internal medicine or general pediatrics. In addition, section 784 authorizes assistance in meeting the cost of supporting residents who are participants in any such program, and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

The Administration's budget request for Fiscal Year 1987 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Eligible applicants are accredited schools of medicine and osteopathy, public and private nonprofit hospitals, or other public or private nonprofit entities.

To receive support, programs must meet the requirements final regulations as specified in 42 CFR Part 74, Subpart FF.

Section 784, as amended by Pub. L. 99–129, requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to general internal medicine and general pediatrics in their medical education training programs.

In addition, § 57.3106(b) of the program regulations require that preference will be given to projects in which:

1. Substantial training experiences are provided in settings where physician assistants or nurse practitioners, or both, are used as part of a health care team.

2. Administrative and educational resources are coordinated for the use of a program of general internal medicine and a program of general pediatrics which are to be conducted within a single project.

3. Substantial portions of a project are conducted in a primary medical care manpower shortage area(s) designated under section 332 of the Public Health Service Act and in particular, one which is located in a Metropolitan Areas, as defined by the Office of Federal Statistical Policy and Standards, Department of Commerce; or are conducted in an Area Health Education Center funded, at least in part, under section 781 of the Act.

Additionally, all applicants must either demonstrate an increase in minority and disadvantaged residents or show evidence of efforts to recruit minority and disadvantaged residents into their medical education program.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–28), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone (301) 443–6960.

Should additional programmatic information be required, please contact: Primary Care Graduate Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–04, Rockville, Maryland 20857, Telephone (301) 443–6820.

The standard application form and specific instructions for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline data for receipt of applications is December 12, 1986. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before deadline data, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal

Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

The program is listed at 13.884 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: August 14, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86-20581 Filed 9-11-86; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the months of September/October 1986:

Name: Health and Services Developmental Grants Review Subcommittee.

Date and Time: October 16-17, 1986, 8:30 A.M.

Place: Linden Hill Hotel, Queensbury Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open October 16, 8:30 A.M. to 9:30 A.M.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting of October 16 from 8:30 A.M. to 9:30 A.M. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

* * * * *

Name: Health Care Technology Study Section.

Date and Time: September 22-23, 1986, 8:30 A.M.

Place: Lister Hill National Center, NIH, Training Classroom B, Level B1, Building 38A, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open September 22, 8:30 A.M. to 9:30 A.M.

Closed for remainder of meeting.

Purpose: The Study Section is charged with the initial review of health research grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session from 8:30 A.M. to 9:30 A.M. on September 22 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed portion of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

* * * * *

Name: Health Services Research Review Subcommittee.

Date and Time: October 9-10, 1986, 8:30 A.M.

Place: Linden Hill Hotel, Pinehurst Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open October 9, 3:30 P.M. to 5:00 P.M.; October 10, 8:30 A.M. to 9:30 A.M.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open sessions of the meeting on October 9 from 3:30 P.M. to 5:00 P.M. and October 10 from 8:30 A.M. to 9:30 A.M. will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Dated: September 4, 1986.

Norman W. Weissman,

Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-20569 Filed 9-11-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 40269; OR-090-06-4212-11: GP6-365]

Realty Action; Classification of Public Lands for Recreation and Public Purposes; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, classification of public lands in Lane County, Oregon.

SUMMARY: The following described public land has been examined and determined to be unsuitable for lease as a minimal development, natural area type county park under the Recreation and Public Purposes Act of June 14, 1926 as amended (43 U.S.C. 869 et seq.), and is hereby so classified:

Willamette Meridian, Oregon

T. 15 S., R. 1 W.
Sec. 33: Metes and Bounds within SE¼NE¼
Sec. 34: Metes and Bounds within S½NW¼, N½SW¼
Containing 110 acres, more or less.

Lane County has filed an application to lease the above described land under the said Act of June 14, 1926, for use as a minimal development, natural area type county park. The proposed lease is not consistent with the provisions of current

BLM land use planning. The land is partially encumbered with a timber sale contract on 43 acres, while the timber on an additional 31 acres has been sold but the contract has not yet been awarded. Upon examination of the proposal it has been determined that the adverse impacts of the proposed lease outweigh the potential benefits and that approval of the lease would not be in the national interest. The land is, therefore, classified as unsuitable for the proposed use and the application is rejected.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Eugene District Manager at the address shown below. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, and will become effective 60 days from the date of publication of this notice in the **Federal Register.**

ADDRESSES: Detailed information concerning this classification, including the environmental assessment, land report, and record of public comments, is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Lee Lauritzen, Mohawk Area Manager, Eugene District Office, at (503) 687–6671.

Date of Issue: September 5, 1986.

Roland D. Smith,

District Manager (Acting).

[FR Doc. 86–20528 Filed 9–11–86; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Indian Affairs

Intent To Prepare an Environmental Impact Statement for the Proposal To Lease Approximately 100 Acres of the Cabazon Indian Reservation (Near Mecca, California) for a 50-MW Biomass-Fueled Electrical Power Plant in Riverside County, California

September 9, 1986.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent and public scoping meeting.

SUMMARY: This notice advises the public that the Bureau intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the proposal to lease 100 acres of the Cabazon Indian Reservation (near Mecca, California) for a 50–MW biomass-fueled electrical power plant in Riverside County, California. Public scoping meetings will be held to receive input and questions from members of the public regarding this proposal and preparation of this EIS. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received 30 days from the date of this notice. A public meeting will be held on Thursday, September 18, 1986, at 7:00 p.m. at the Swap Meet Area on the Cabazon Indian Reservation at 84–245 Indio Springs Drive, Indio, California.

ADDRESS: Comments should be addressed to Mr. Maurice W. Babby, Area Director, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Donald B. Knapp, Area Environmental Coordinator, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–4703 or FTS 460–4703.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs (BIA), Department of the Interior, proposes to issue a lease for approximately 100 acres of the Cabazon Indian Reservation to Colmac Energy Inc. so they can build a 50–MW biomass-fueled electrical power plant. The plant will be located adjacent to State Highway 111 and the Southern Pacific Railroad mainline about one mile north of the town of Mecca in Southcentral Riverside County, California. Fuel for the plant will consist of agricultural residues, commercial wood waste, municipal tree trimmings, a small percentage of cattle manure, and possibly up to 15 percent coal. The fuel will be combusted in a circulation fluidized bed boiler to produce steam which will drive a conventional turbine-generator. Electricity will be sold to the Southern California Edison Utility under a power sales agreement.

The purpose and need for this action is that the Tribe would like to increase economic development within the reservation and further develop their Tribal Government. The project would add to long-term renewable energy supplies in California. The project is intended to provide full off-sets for all emissions generated through the elimination of open-field burning new being used for agricultural residues.

The two principal alternatives identified are either to build the project as planned or not to build the project. Major impacts to be expected if the proposed action is implemented will be new air emissions from the plant and an increase in truck traffic bringing in fuel and taking away ash.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), Department of the Interior procedures (516 DM 1–6), and the Bureau of Indian Affairs Handbook (30 BIAM Supplement 1) for compliane with the procedures.

We estimate the DEIS will be made available to the public by March 1987.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 9, 1986.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 86–20783 Filed 9–11–86; 8:45 am]

BILLING CODE 4310-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C 10524(b)(1).

That the named Corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 01524(b).

A. 1. Parent Corporation and address of principal office:

(i) Parent Corporation—A–1 Racing Specialties, Inc., 770 Route 28, Middlesex, New Jersey 08846.

2. Wholly-owned subsidiary(s) which will participate in the operations, and State(s) of incorporation:

(i) Subsidiary—A–1 Racefuel Transport Corporation, 770 Route 28, Middlesex, New Jersey 08846, State of Incorporation—New Jersey

B. 1. Parent corporation and address of principal office: American Information Technologies Corporation, 30 South Wacker Drive, Chicago, Illinois 60606.

2. Subsidiaries participating in the operations that are wholly-owned, directly or indirectly, by the parent corporation, and their state(s) of incorporation:

(i) Ameritech Services, Inc. (Delaware)
(ii) Wisconsin Bell, Inc. (Wisconsin)
(iii) Illinois Bell Telephone Company (Illinois)
(iv) Indiana Bell Telephone Company, Inc. (Indiana)
(v) Michigan Bell Telephone Company (Michigan)
(vi) The Ohio Bell Telephone Company (Ohio)
(vii) Ameritech Communications, Inc. (Delaware)
(viii) Illinois Bell Communications, Inc. (Delaware)
(ix) Wisconsin Bell Communications, Inc. (Delaware)
(x) Indiana Bell Communications, Inc. (Delaware)
(xi) Michigan Bell Communications, Inc. (Delaware)
(xii) Ohio Bell Communications, Inc. (Delaware)

C. 1. Parent corporation and address of principal office: General Battery Corporation, P.O. Box 1262, Reading, PA 19603.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

a. Dixie Metals Corporation, Incorporated in Delaware
b. GBW of Arizona, Inc., Incorporated in Arizona
c. Banning Battery Company, Incorporated in California
d. GBW of Oregon, Inc., Incorporated in Washington
e. GBW Corporation, Incorporated in Washington
f. Battery Marketers, Inc., Incorporated in Delaware
g. GBC—Manchester, Inc., Incorporated in Delaware

D. 1. Parent corporation and address of principal office: Krispy Kreme Distributing Company, Inc., 1814 Ivy Avenue, Winston-Salem, North Carolina 27102

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

(a) Krispy Kreme Doughnut Corporation, 1814 Ivy Avenue, Winston-Salem, North Carolina 27102.
(b) North Carolina
(c) Tennessee

E. 1. Parent corporation and address of principal office: RJR Nabisco, Inc., 1100 Reynolds Boulevard, Winston-Salem, North Carolina 27102.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

	State of incorporation
(i) Del Monte Banana Company, P.O. Box 011940, Miami, Florida 33131.	Florida.
(ii) Del Monte Corporation, P.O. Box 3575, San Francisco, California 94119.	New York.
(iii) Paddison Truck Lines, Inc., P.O. Box 1033, Hughson, California 95326.	Washington.
(iv) R.J. Reynolds Tobacco Company, P.O. Box 2959, Winston-Salem, North Carolina 27102.	New Jersey.
(v) RJR Archer, Inc., 1100 Reynolds Boulevard, Winston-Salem, North Carolina 27102.	Delaware.
(vi) Nabisco Brands, Inc.,100 DeForest Avenue, East Hanover, New Jersey 07936.	Delaware.
(vii) Shippers Imperial, Inc., 2277 7th Street, Oakland, California 94607.	California.
(viii) Heublein, Inc., Munson Road, Farmington, Connecticut 06032.	Connecticut.

F. 1. Parent corporation and address of principal office: Roberts & Dybdahl Inc., 1350 Financial Center, Des Moines, Iowa 50309

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Shelter Superstore Corp., State of Incorporation—Iowa
(ii) Astro Buildings, Inc., State of Incorporation—Iowa
(iii) R&D Transportation Corporation, State of Incorporation—Iowa
(iv) Solar Homes Co., State of Incorporation—Iowa

Kathleen M. King,

Acting Secretary.

[FR Doc. 86-20550 Filed 9-11-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30847]

The Atchison, Topeka and Santa Fe Railway Company and the Oklahoma, Kansas and Texas Railroad Co.—Construction Exemption—In Lost Springs, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts The Atchison, Topeka and Santa Fe Railway Company and Oklahoma, Kansas and Texas Railroad Company from the provisions of 49 U.S.C. 10901 to construct a new connection between their respective lines at Lost Springs, KS.

DATES: This exemption will be effective by October 13, 1986. Petitions for stay must be filed by September 22, 1986, and petitions for reconsideration must be filed by October 2, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30847 to:

(1) Office of the Secretary:
Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative:
Michael W. Blaszak, 80 East Jackson Boulevard, Chicago, IL 60604
Michael E. Roper, 701 Commerce Street, Dallas, TX 75202

FOR FURTHER INFORMATION CONTACT: Donald Shaw, Jr., (202) 275-7693.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or call toll free (800) 424-5403.

Decided: September 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Kathleen King,

Acting Secretary.

[FR Doc. 86-20553 Filed 9-11-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30666]

Montana Western Railway Co., Inc.—Acquisition and Operation Exemption—Burlington Northern Railway Co.

Montana Western Railway Company (MWR) has filed a notice of exemption (1) to acquire the interests of Burlington Northern Railroad Company (BN) in a railroad line extending from Butte to Garrison, MT, including the Newcombe branch, and to operate such property. The property between Butte and Garrison is the subject of a lease between BN and the Oregon Short Line Railroad dated August 1, 1886. Comments must be filed with the Commission and served on: R. Lawrence McCaffrey, Jr., Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350

New York Avenue NW., Washington, DC 20005-4797, (202) 628-2000. This transaction will also involve the issuance of securities by MWR, which will be a class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 86-20554 Filed 9-11-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30892]

The Newburgh & South Shore Railroad Co.—Acquisition and Operation—Chicago, West Pullman & Southern Railroad Co.

The Newburgh & South Shore Railroad Company [1] has filed a notice of exemption to acquire and operate Chicago, West Pullman & Southern Railroad Company's 5.13-mile line in Cuyahoga County, OH.[2] Any comments must be filed with the Commission and Served on Edward K. Wheeler, 1729 H Street, NW., Suite 200, Washington, DC 20423.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 5, 1986

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Do. 86-20555 Filed 9-11-86; 8:45 am]

BILLING CODE 7035-01-M

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[1] Amsteel and Wire Corporation will acquire the involved rail line and immediately change its corporate name to The Newburgh & South Shore Railroad Company. A different corporate entity with the same name owned the same line prior to its acquisition by Chicago, West Pullman & Southern Railroad Company.

[2] The line extends from valuation station 6+00 to station 316+85.9 (but excludes the segment between station 25+49.7 and station 140+05).

Section 5a Application No. 83; Alaska Carriers Association, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of dissolution and revocation of antitrust immunity.

SUMMARY: Alaska Carriers Association, Inc. (ACA), on July 14, 1986, filed a notice of dissolution. Cancellation supplements to all outstanding bureau issuances were filed with the Commission July 7, 1986, to become effective September 1, 1986. After that date, no carrier will be party to its rate bureau agreement. ACA must file a certificate of dissolution from the appropriate official in the State where it is incorporated. All outstanding antitrust immunity is revoked.

EFFECTIVE DATE: September 1, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rothstein, (202) 275-7912

or

Louis E. Gitomer, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. A copy may be purchased from T. S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC metropolitan area.

Energy And Environmental Statement

This action does not appear to significantly affect the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10706 and 10321.

Decided: September 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Kathleen M. King,

Acting Secretary.

[FR Doc. 86-20551 Filed 9-11-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Morris Salkind, D.O. Revocation of Registration

On June 26, 1986, the Administrator of the Drug Enforcement Administration (DEA) issued to Morris Salkind, D.O. of 88 West Steuben Street, P.O. Box 4556, Crafton-Ingram Shopping Center, Pittsburgh, Pennsylvania 15205, an Order to Show Cause proposing to revoke his DEA Certificate of Registration, AS8872891. The Order to Show Cause alleged that the continued registration of Dr. Salkind would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f). Additionally, citing his preliminary finding that Dr. Salkind's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AS8872891 during the pendency of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served on Dr. Salkind on June 27, 1986. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Salkind is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Salkind was the subject of an investigation conducted by agents of the Commonwealth of Pennsylvania's Office of the Attorney General, Bureau of Narcotics Investigations and Drug Control (BNIDC). On March 12, 1984, a City of Pittsburgh Narcotics Investigator went to Dr. Salkind's office in an undercover capacity to attempt to obtain prescriptions for controlled substances from the doctor. Before Dr. Salkind would prescribe anything for the undercover investigator he said, "you know how it works. You have to say something is wrong with you in order to get a script." After she gave him a fabricated medical need, Dr. Salkind sold the undercover investigator prescriptions for Percocet, Valium and Seconal. These are all controlled substances.

On October 10, 1985, an agent of the BNIDC interviewed the receptionist at Dr. Salkind's office. She had been the receptionist since January 1985. She told the agent that Dr. Salkind saw approximately 30 to 35 patients daily. All of the patients would be rescheduled for appointments every two weeks. On each visit, a patient generally received between three and five prescriptions for controlled substances. On some occasions, a patient would receive as many as seven to ten prescriptions for controlled substances. The receptionist further told the agent that Dr. Salkind kept, on a daily basis, 100 to 150 photocopies of prescriptions with the name and amount of controlled substance already filled in prior to the

patients' arrival. The receptionist stated that on many occasions patients would line up outside of Dr. Salkind's office waiting to see the doctor.

As a result of this information, an undercover BNIDC agent went to Dr. Salkind's office on October 16, 1985, to attempt to purchase prescriptions for controlled substances. Following a brief cursory examination, Dr. Salkind wrote the agent a prescription for 30 dosage units of Restoril, a Schedule IV controlled substance and a prescription for 60 dosage units of Anexsia-D, a Schedule III controlled substance. After the agent left the examining room, the receptionist told him that Dr. Salkind suspected that he was a law enforcement officer and had written "N. Agent" on his chart. The receptionist informed the agent that while Dr. Salkind had prescribed only Schedule III and IV drugs for him, the doctor saw 31 other patients that day and gave them all prescriptions for Schedule II drugs.

The undercover agent returned to Dr. Salkind's office on seven more occasions between November 20, 1985 and May 13, 1986. On each occasion Dr. Salkind wrote the agent four or five presciptions for Schedule II through IV controlled substances. He never performed any sort of physical examination nor did he ask any questions regarding the agent's health.

On February 21, 1986, the BNIDC agent interviewed a woman who was a nurse in Dr. Salkind's office from May 1985 to September 1985. This woman stated that Dr. Salkind's office was like an assembly line. All of the patients entering the doctor's office had similar complaints, and all patients exiting the office had received prescriptions for Tylox, a Schedule II controlled substance and Hycodan, a Schedule III controlled substance. When this nurse questioned the doctor about his prescribing practices, he told her it was none of her business. The woman further stated that she had reported to the doctor that she had observed several patients with needle marks on their arms or with what she recognized as obvious signs of drug abuse. Dr. Salkind responded, "If I don't give them what they want, they will just get it someplace else."

On January 14, 1986, the BNIDC agent interviewed a woman who was at that time drug dependent on Percodan and Hycodan and who had been a patient of Dr. Salkind since January 1985. She stated that it was generally known on the street that addicts merely had to make an appointment with Dr. Salkind, appear and pay for the visit and tell the doctor that they were nervous, couldn't sleep or had back pain. The doctor would then write multiple prescriptions for controlled substances for such "patients". The woman further stated that she saw the doctor regularly for several months. At no time did Dr. Salkind give her any medical advice nor did he give her any sort of physical examination. She told the agent that her visits with the doctor generally did not last more than five minutes, but that she always received prescriptions for controlled substances.

Agents of the BNIDC interviewed a doctor who had performed surgery on Dr. Salkind and then volunteered to maintain Dr. Salkind's medical practice during his recuperation from the surgery. The doctor noted that after the first couple of days at the medical office, he determined that Dr. Salkind's practice consisted mainly of patients who were drug dependent and/or had no medical indication for any controlled substances. As a result of this discovery, the doctor refused to dispense or write any prescriptions for controlled substances. He posted a sign in Dr. Salkind's office that stated, "no class II, III or IV drugs prescribed." The doctor noted that upon seeing the sign, approximately ninety percent of the patients left the office.

The Administrator concludes that given the magnitude of Dr. Salkind's diversion of controlled substances and his obvious disregard for the health and safety of those individuals who frequented his office, there is no question that the continued registration of Dr. Salkind is inconsistent with the public interest. 21 U.S.C. 824(a)(4). Dr. Salkind did not respond to the Order to Show Cause. He did not offer any evidence of explanation or mitigating circumstances. Accordingly, the Administrator concludes that the registration must be revoked.

On June 19, 1986, the State Board of Osteopathic Medicine for the Commonwealth of Pennsylvania ordered the emergency temporary suspension of Dr. Salkind's license to practice osteopathic medicine and surgery. Even if the public interest grounds to revoke the registration were not as compelling as they are, the loss of state licensure requires DEA to revoke the DEA Certificate of Registration. 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(3). See, *Jerry L. Word, M.D.*, 51 FR 26613 (1986); *Meyer Liebowitz, M.D.* 51 FR 11654 (1986); *George P. Gotsis, M.D.*, 49 FR 33750 (1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AS8872891, previously issued to Morris Salkind, D.O., be, and it hereby is revoked. This order is effective immediately.

When the Order to Show Cause/Immediate Suspension was served on Dr. Salkind, all controlled substances possessed by the doctor under the authority of his then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until October 14, 1986 or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated: September 8, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-20531 Filed 9-11-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Amendment of Privacy Act systems of records, Office of Veterans' Reemployment Rights.

SUMMARY: The Department of Labor hereby publishes for comment the amendment of the system of records DOL/LMSA-7, "Veterans' Reemployment Rights Complaint File." Specifically, the system of records is renumbered "DOL/VETS-1"; the System Managers addresses are changed, and an exemption is proposed. In addition, certain non-substantive editorial changes are being made.

DATES: Comments: Persons wishing to comment on this system of records may do so by October 14, 1986.

EFFECTIVE DATE: Unless otherwise noted in the Federal Register, this notice shall become effective October 14, 1986.

ADDRESS: Seth D. Zinman, Associate Solicitor, Office of the Solicitor, Division of Legislative and Legal Counsel, U.S. Department of Labor, Room N-2428, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, Counsel for Administrative Legal Services, Office of the Solicitor, Department of Labor, 200

Constitution Avenue NW., Room N–2428, Washington, DC 20210; Telephone (202) 523–8188.

Revision of DOL/LMSA–7

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Labor hereby revises the system of records maintained by the Office of Veterans' Reemployment Rights, previously published at 47 FR 30401 (July 13, 1982).

DOL/VETS–1

SYSTEM NAME:

Veterans' Reemployment Rights Complaint File—VETS–1.

SYSTEM LOCATION:

Veterans' Reemployment Rights (VRR) Area Offices, Veterans' Employment and Training Services (VETS) Regional Offices, VETS National Office, Regional Solicitor's Offices, National Solicitor's Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans, enlistees, examinees, reservists or members of the National Guard of the U.S. Armed Forces on active or reserve service or training duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory files compiled for compliance/enforcement of individual cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C., 2021 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are filed/stored by name of complainant and cross-referenced by name of employer. Requests must specify either name of complainant or name of employer with sufficient similarity to name(s) maintained on file to enable searcher to locate correct file.

Data processing storage and manual records.

RETRIEVABILITY:

By name of complainant or name of employer.

SAFEGUARDS:

Secured room, or locked cabinets, and security access requirement for ADP system.

RETENTION AND DISPOSAL:

Records will be maintained by the VETS for 5 years in accordance with NARA retention retirement and disposal schedule.

SYSTEM MANAGER(S) AND ADDRESS:

United States Department of Labor, Veterans' Employment and Training Service, Room S1315, 200 Constitution Avenue NW., Washington, DC 20210, and Regional Offices located at:

Veterans' Employment and Training Service, U.S. Department of Labor, 506 John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203 (617) 223–0918

Veterans' Employment and Training Service, U.S. Department of Labor, U.S. Customs House, Room 240, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106 (215) 597–5032

Veterans' Employment and Training Service, U.S. Department of Labor, 1371 Peachtree Street NE., Room 716, Atlanta, Georgia 30367 (404) 881–3673

Veterans' Employment and Training Service, U.S. Department of Labor, 230 South Dearborn, Room 1064, Chicago, Illinois 60604 (312) 353–0970

Veterans' Employment and Training Service, U.S. Department of Labor, 525 Griffin Street Federal Building, Room 204, Griffin and Young Streets, Dallas, Texas 75202 (214) 767–4987

Veterans' Employment and Training Service, U.S. Department of Labor, Federal Building, Room 800, 911 Walnut Street, Kansas City, Missouri 64106 (816) 374–7151

Veterans' Employment and Training Service, U.S. Department of Labor, Federal Office Building, 909 First Avenue, Room 3104, Seattle, Washington 98174 (206) 442–4831

NOTIFICATION PROCEDURES:

See above.

RECORD ACCESS PROCEDURES:

See above.

CONTESTING RECORD PROCEDURES:

See above.

RECORD SOURCE CATEGORIES:

Veterans, employees, employers, Department of Defense, Veterans Administration, physicians, fellow employees, union officers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under the specific exemption authority provided by paragraph 3(k)(1) of 5 U.S.C. 552a certain investigatory material compiled for law enforcement purposes which is maintained in the Veterans' Reemployment Rights Complaint File may be exempted from disclosure under the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(F); (e)(4)(G); (e)(4)(H); and (e)(4)(I) and (f); and the portion of 29 CFR Part 70a which implements these provisions, if the disclosure of this information could result in the threatening of investigators and/or witnesses, or occasion them and/or their families with adverse consequences or could inhibit the effective investigation of complaints under the Veterans' Reemployment Rights Act and predecessor statutes. In order to conduct effective investigations it is at times necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a break of the guarantee of confidentiality, could lead to the intimidation of witnesses, harassment or dismissal from employment of those involved, and could discourage those contacted from cooperating with investigators in future investigations.

Signed at Washington, DC, this 8th day of September 1986.

William E. Brock,

Secretary of Labor.

[FR DOC. 86–20543 Filed 9–11–86; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal

VOL 51 ISS 177 SE 12 1986 UMI

statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC86-1(Jan. 3, 1986) p.80
Florida:
FL86-9(Jan. 3, 1986)..... pp.124-125
New York:
NY86-9(Jan. 3, 1986) p.723
NY86-10(Jan. 3, 1986) ..... pp.727-728, pp. 731-734
NY86-13(Jan. 3, 1986) p.753
NY86-14(Jan. 3, 1986) pp.760-761
NY86-15(Jan. 3, 1986) pp.763-764
NY86-17(Jan. 3, 1986) pp.777-872
Rhode Island:
RI86-1(Jan. 3, 1986)..... pp.965-969
Listing by Location (index)..... p.xxxiv

Volume II

Kansas:
KS86-6(Jan. 3, 1986)..... p.326
Missouri:
MO86-1(Jan. 3, 1986) p.539

Volume III

None.....

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 5th day of September 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-20364 Filed 9-11-86; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[V-82-5]

Lenox China, Inc.; Withdrawal of Application for Variance and Termination of Interim Order

AGENCY: Occupational Safety and Health Adminstration, Labor.

ACTION: This notice announces the Withdrawal of the application of Lenox China, Inc., for permanent variance from the lead standard, prescribed in 29 CFR 1910.1025, concerning the requirement at Paragraph (e)(2) that appropriate respirators be worn where engineering and work practice controls do not reduce employee exposure to or below the permissible exposure limit.

Based on the withdrawal of the variance application notice is hereby given that the interim order, granted on June 11, 1982, has been revoked.

Notice of this application for permanent variance appeared in the **Federal Register** of July 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3656, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 9th day of September 1986.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 86-20599 Filed 9-11-86; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-6308 et. al.]

Proposed Exemptions; Additional Securities Benefit Fund et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the

Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retiirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Additional Securities Benefit Fund (the Fund) and Plumbers Local Union No. 1 of Brooklyn and Queens (the Union) Located in Howard Beach, New York

[Application No. D–6308]

Proposed exemption

The Department is considering granting an exemption under the authority of seciton 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of seciton 4975(c)(1)(A) through (E) of the Code shall not apply to the loan of $575,872 by the Fund to the Union provided that the terms of such loan are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

EFFECTIVE DATE: August 26, 1985.

Summary of Facts and Representations

1. The Union is the collective bargaining representative of approximately 2,800 journeymen and apprentice plumbers in New York City. The Fund is a jointly administered fund whose trustees are designated equally by the Union and the Contracting Plumbing Association of Brooklyn and Queens (CPA). CPA is the employer represesntative for the Fund. The Fund had total assets of $10,208,612 as of September 30, 1985.

2. In 1971, the Union acquired land in Howard Beach, New York from an unrelated party with the intention of constrtucting its headquarters on the land. In 1972, the Union made inquiry of the Board of Trustees of the Fund to determine if a building loan and a first mortgage loan would be made available by the Fund to the Union. On April 2, 1972, the Fund made a loan of $800,00 to the Union (the Loan). The Loan bore interest at the rate of 6 percent, repayable in 25 years, with quarterly payments of principal and interest, with a first mortgage on the building to be constructed by the Union. [1] The construction of the Union's headquarters located at 158–29 Cross Bay Boulevard, Howard Beach, New York (the Building) was completed in April of 1974.

3. As of July 1, 1984, the outstanding balance of the Loan was $575,672. Effective July 1, 1984, the terms of the Loan were revised (the Revised Loan). The Revised Loan is for a 30-year period, maturing on June 1, 2014 and requires quarterly payments of principal and interest in the amount of $18,499, with a fixed rate of interest of 12½ percent.[2] All payments on the Loan and the Revised Loan been made on a timely basis.

4. A first mortgage on the Building is the security for the Revised Loan. An independent appraisal of the Building was performed by George J. Schneider of Brand-Schneider Real Estate located in Ozone Park, New York (the Appraiser). The Appraiser established the fair market value of the Building at $1,5000,000 as of October 1, 1984. The Appraiser updated his valuation of the Building and by letter of November 15, 1985 represented that the fair market value of the Building remains at $1,500,000.

5. The Pension Fund Monitoring and Evaluation Services, Inc. (PFM&E) is the independent fiduciary for the Revised Loan effective October 17, 1984. PFM&E is a member of the National Association of Securities Dealers and the Securities Investment Protection Corporation and is registered with the Securities and Exchange Commission as an investment advisor pursuant to the Investment Advisors Act of 1940. PFM&E monitors the performance of investment managers of numerous employee benefit plans, including those funds administered by the Plumbing Industry Board, Plumbers Local Union No. 1. PFM&E represents that it understands and acknowledges its duties, responsibilities and liabilities under the Act in acting as independent fiduciary for the Revised Loan.

6. PFM&E represents that it will monitor payment of the Revised Loan through its duration and take whatever action it deems necessary to protect the

[1] The applicant represents that the Loan was not a prohibited transaction until July 1, 1984 because it was covered by section 414 of the Act. The Department expresses no opinion as to the applicability of section 414 in this instance. The applicant further represents that any excise tax imposed by the Internal Revenue Service, as finally determined, for the period commencing July 1, 1984, will be paid within sixty (60) days after the final grant of this proposed exemption.

[2] The Department has determined that the effective date of the proposed exemption, if granted, should commence on August 26, 1985. Two payments were made by the Union to the Plan to pay the additional interest owed to the Plan beginning July 1, 1984. These payments were: $18,449 on July 1, 1985 and $7,348 on August 26, 1985.

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interests of the Plan participants and beneficiaries and will pay particular attention to assure that throughout the term of the Revised Loan (i) the Revised Loan will represent no more than 25 percent of the total assets of the Fund; (ii) the Building will represent at least 150 percent of the outstanding balance of the Revised Loan; and (iii) payments are made on a current basis.

7. PFM&E has reviewed the terms of the Revised Loan and has concluded that the 12½ interest rate, effective July 1, 1984 reflects fair market value. In making such determination, PFM&E represents that it communicated with a number of financial institutions in the New York City metropolitan area to determine the mortgage financing of different financing packages were offered to the Union, including 12½ percent fixed rate mortgage financing. Thus, PFM&E has determined that the 12½ percent interest rate for the Revised Loan would be substantially the same as the interest rate the Union would obtain from a third party financial institution.

8. In summary, the applicant represents the subject transaction meets the statutory criteria of section 408(a) because:

(a) the Revised Loan will be secured by collateral which represents approximately 260 percent of the outstanding balance of the Loan; and

(b) the Fund's independent fiduciary has determined that the Revised Loan is in the interests of and protective of the Fund and its participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 30 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Employees Stock Purchase Plan of Enserch Corporation (the Plan) Located in Dallas, Texas

[Application No. D–6518]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 407(a) of the Act shall not apply to (1) effective January 3, 1986, the acquisition and holding by the Plan of certain depositary units (the Units) representing limited partnership shares in Enserch Exploration Partners, Ltd. (the Partnership) distributed as dividends to the Plan as a shareholder of Enserch Corporation (Enserch) common stock (the Stock); and (2) the proposed acquisition and holding by the Plan of Units acquired on the open markets as a result of either the Plan's reinvestment of cash distributions received with respect to the Units or the Plan's purchase of additional Units in accordance with directions given by Plan participation.

Effective Date: If the proposed exemption is granted, the exemption will be effective January 3, 1986.

Summary of Facts and Representations

1. The Plan is a stock bonus plan with approximately 5,900 participants. As of May 31, 1985, the Plan's total assets were approximately $58.06 million. The trustee of the Plan is InterFirst Bank of Dallas (the Trustee). The Plan is sponsored by Enserch and certain subsidiaries. Enserch is a diversified energy company engaged in the transportation and distribution of natural gas, oil and gas exploration and development, oil field services and products, and various other related activities. The Plan is administered by a committee whose members are appointed by the Enserch Board of Directors (the Committee). The Committee serves as the Plan's administrator and named fiduciary. The Applicants referred to herein are Enserch, the Committee, and the Trustee.

2. The Partnership is a Texas limited partnership which was formed on March 7, 1985 to succeed to substantially all of the domestic oil and gas exploration and production business of Enserch. Enserch and its subsidiaries contributed to the Partnership substantially all of their domestic developed and undeveloped oil and gas properties (the Partnership Properties). In exchange for the Partnership Properties, Enserch received Units representing approximately 85 percent of the total outstanding Units issued by the Partnership. The remaining 15 percent of the Units were sold to the public in a public offering completed in April, 1985. The Units are represented by depositary receipts issued by Harris Trust Company of New York. The Units are traded on the New York Stock Exchange and are freely transferable to United States citizens and qualified United States entities, except as restricted by federal and state securities laws. Each Unit represents the same percentage interest in the Partnership.

3. On September 10, 1985, Enserch announced that quarterly cash dividends on the Stock would be supplemented with distributions of Units to all shareholders of record. Each shareholder would receive one Unit for each 100 shares of the Stock held on the record date. The initial distribution of Units was made on January 3, 1986 to shareholders or record as of November 15, 1985. Thus, since January 3, 1986, the Plan, as a shareholder of the Stock, has received noncash dividends in the form of Units in addition to cash dividends.

4. Prior to the receipt of the Units as dividends, the assets of the Plan consisted only of shares of the Stock and cash. The Plan owned 2,313,910 shares of the Stock as of May 31, 1985. Participants make contributions to their individual accounts in the form of Regular Allotments, Salary Deferral Allotments, and Supplemental Salary Deferral Allotments. Regular Allotments are made in "after-tax" dollars based on a percentage of the participant's base pay. Salary Deferral Allotments are made in "pre-tax" dollars pursuant to salary reduction elections under section 401(k) of the Code. Employer contributions to the Plan are based on the total of the participant's Regular and Salary Deferral Allotments. All allotments and contributions are held in trust by the Trustee and are currently used to purchase the Stock.

5. The Applicants state that prior to any distribution of Units to the Plan, each participant was provided with a brochure describing the options available with respect to the Units. Units attributable to a participant's Salary Deferral Allotments and non-vested employer contributions were sold by the Trustee on the open market and the proceeds were reinvested in the Stock and credited to the participant's account in the Plan. Each participant was allowed to elect one of two options with respect to the distribution of Units attributable to the participant's Regular Allotments and vested employer contributions. Under the first option, a participant could elect to have the Units sold by the Trustee with the proceeds to such sale reinvested in the Stock. Under the second option, a participant could elect to have the Units distributed in kind from the Plan to the Enserch Exploration Partners, Ltd. Distribution Reinvestment Plan (the Reinvestment

Plan) for deposit in a separate account under the participant's name. The Applicants state that the Reinvestment Plan is not a qualified plan and any distributions made to the Reinvestment Plan are taxable as income to the participant.[3] MBank, N.A. is the custodian of the Reinvestment Plan (the Custodian). If a participant elects to have the Units distributed to the Custodian, the participant executes a form certifying that he or she is a United States citizen. If a participant fails to elect either option, hir or her Units are sold by the Trustee on the open market and the proceeds are invested in the Stock and credited to the participant's account.

Therefore, the Applicants represent that as a result of these options, all Units received by the Plan to date have been either sold on the open market or distributed to the Reinvestment Plan in accordance with directions given to the Trustee by each participant for his or her account in the Plan.

6. The Applicants request that participants in the Plan be allowed to acquire and hold the Units for their accounts on an ongoing basis. Thus, the assets of the Plan will consist of the Stock, the Units, and cash. No other investments will be permitted by the Plan.

The Applicants represent that eligible participants will be able to elect one of three options with respect to the Units. Under the first option, a participant may elect to have the Units received as dividends for his or her account sold and the proceeds reinvested in the Stock. Under the second option, a participant may elect to receive as a distribution from the Plan the Units attributable to his or her vested employer contributions and Regular Allotments. These Units will be distributed to the Custodian of the Reinvestment Plan whereupon the participant will have the same rights as an individual shareholder with respect to the Units. Units received by the Plan with respect to a participant's non-vested employer contributions and Salary Deferral Allotments will be held by the Trustee for the participant in his or her account in the Plan. Under the third option, a participant may elect to hold all Units in his or her account in the Plan.

7. The Committee will provide each participant with a written description of the three options and a form on which the participant may elect one of these options. When a participant fails to elect an option, his or her Units, will be sold on the open market and the proceeds invested in the Stock.

Participants will be permitted to change their previous instructions with respect to the Units within a 30 day period after the end of each calendar quarter. Once a participant elects the manner in which the Units are to be handled, that election will remain in effect until the participant executes a new election form. A change of instruction will be effective for any Units received by the Plan after the date that the executed form is received by the Committee.

8. The Applicants represent that, in addition to the receipt of Units by the Plan as dividends, the Plan will be amended to allow a participant to elect each quarter whether to have all or part of his or her future Allotments and employer contributions invested in Units rather than in the Stock. Such Units will be purchased on the open market.

The Plan will recieve cash distributions on the Units held by the participants' accounts as part of the Partnership's cash distributions to all unitholders. The Plan provides that such Partnership cash distributions may be reinvested only in additional Units. The Plan also provides that cash dividends on the Stock may not be used to purchase additional Units. The acquisition of all additional Units through reinvestment of Partnership cash distributions will be accomplished through open market transactions.

The Applicants state that participants are not allowed to sell the Stock held in their accounts and reinvest the proceeds in other securities. The Applicants state further that participants who hold Units will be subject to essentially the same restrictions on the Units as on the Stock. Therefore, participants who elect to hold the Units in their accounts may not later sell the Units and reinvest the proceeds in the Stock. However, a participant who is holding Units will be able to withdraw such Units from the Plan in the same manner and to the same extent that he or she may withdraw the Stock. If the participant elects to sell the Units, the Plan will provide that the Trustee must sell the Units on the open market.

9. The Partnership Agreement provides that the Partnership may redeem Units held by a person if, in the opinion of the Partnership's counsel, there exists a substantial risk of cancellation or forfeiture concerning any property in which the Partnership has an interest because of the nationality or other status of such person. However, the Partnership Agreement requires the Partnership to withdraw its notice of redemption if it receives notice that the ineligible person has transferred the Units to a person who certifies that he or she is an eligible United States person. Therefore, the Applicants state that the Plan will provide that, within 15 days of receipt of a notice of redemption, the Committee will direct the Trustee to sell the Units allocated to such non-United States person on the open market.

10. The Applicants represent that the Units issued by the Partnership are "employer securities" as defined under section 407(d)(1) of the Act. However, the Applicants state that relief from section 406(a) and 407(a) of the Act for the acquisition and holding of the Units is necessary since the Units are not "qualifying employer securities" as defined under section 407(d)(5) of the Act.

11. In summary, the Applicants represent that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The acquisition and holding of the Units by the Plan is the result of Enserch's quarterly dividend distributions to all shareholders of the Stock; (b) the decision to acquire additional Units and the decision to hold or dispose of all Units is made by the participants in the Plan in accordance with directions given to the Trustee by each participant for his or her account; (c) the participants may change their previous instructions to the Trustee regarding the receipt or disposition of the Units; and (d) all transactions concerning the Units, other than the distribution of the Units by Enserch as dividends on the Stock, are conducted on the open market.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Blanton & Co., Architects and Engineers Profit Sharing Plan and Trust Agreement (the Plan) Located in Tucson, Arizona

[Applicant No. D–6665]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of a certain parcel

[3] The Applicants represent that the Reinvestment Plan is not an employee benefit plan subject to the Act

of unimproved real property (the Property) to Blanton & Co. Architects and Engineers (the Employer), the sponsor of the Plan, provided that the sales price is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which, as of December 31, 1984, had twenty participants and total assets of approximately $2,363,656. The trustees of the Plan are Rex E. Willoughby, Robert E. Smith, and Andrea P. Platt (the Trustees), who are the decision-makers with respect to Plan investments. The Trustees are officers and employees of the Employer. The Employer is an Arizona corporation engaged in the practice of architecture, engineering, surveying and land planning, with its principal offices located at 300 West Paseo Redondo, Tucson, Arizona.

2. The Property is a rectangularly shaped, fifty foot strip of land adjacent to the Employer's property at the above address. The Property is part of Block #2 of Paseo Redondo, east of Granada Avenue. The Plan acquired the Property from the Employer as a contribution for the year ending December 31, 1980.[4] The applicant represents that the original intent was to have the Plan sell the Property to the City of Tucson (the City). The Employer donated the Property to the Plan after the City threatened condemnation of Block #2, including the Property. The Employer anticipated that the Property would have much greater value and would yield a profit to the Plan if acquired by the City with the rest of Block #2. However, the City subsequently acquired only part of Block #2 and did not acquire the Property. The applicant states that the City's acquisition of the adjacent parcel and the construction of a street immeidately to the west of the Property has diminished the utility of the Property.

3. The Property is contigious to a parking lot on the Employer's property which is used by employees and visitors of the Employer. The applicant states that, generally, unimproved lots in the area, including the Property have traditionally been used by members of the public for free parking. The applicant admits that there may have been times when employees and visitors to the Employer have parked on the Property. The applicant acknowledges that use of the Property by employees and visitors of the Employer was a prohibited transaction. The applicant states further that the necessary excise tax forms will be filed to report the transaction to the Internal Revenue Service and that all appropriate excise taxes will be paid within 60 days of the date of a grant of an exemption for the proposed sale of the Property. In addition, the applicant has agreed to pay any back rent which is due the Plan for the past use of the Property, plus an appropriate rate of interest of such amount, based on the fair market rental value of the Property at the time of such use.

4. The Property was appraised on October 17, 1985 and June 27, 1986 by Sanders K. Solot, M.A.I. (Mr. Solot), an independent real estate appraiser in Tucson, Arizona, as having a fair market value of no more than $57,000. Mr. Solot states that the Property has no economic integrity as a free standing, independent parcel because of its use is limited by its size and shape. Mr. Solot states further that the Property does have a special value to the Employer, as the adjacent property owner, which has been taken into account in determining the Property's fair market value. Mr. Solot concludes that the highest and best use for the Property, due to the existing zoning of the site, is its present use as a parking lot.

5. The applicant represents that the Property is now an undesirable investment for the Plan because it is not appreciating in value and yields no current income. The applicant states that since condemnation of the adjacent parcels by the City, no attempts have been made to sell the Property to unrelated parties for fear that such an attempt would result in a below market sale. The Trustees believe that it would be in the Plan's best interest to sell the Property to the Employer for $57,000, in accordance with Mr. Solot's appraisal, because other potential buyers are not likely to pay as much for the Property. In addition, the transaction would increase the Plan's liquidity position and would allow the Plan to reinvest the proceeds of the sale in other investments that would increase the Plan's overall earnings. No commissions or other expenses would be charged to the Plan in connection with the sale of the Property.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the fair market value for the Property as determined by an independent qualified appraiser; (c) the Plan will not pay any commissions or other expenses in connection with the transaction; and (d) the Trustees have determined that the sale of the Property is in the best interests of the Plan.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Reinhart, Boerner, Van Deuren, Norris & Rieselback, S.C. Employees' Profit Sharing Plan (the Plan) Located in Milwaukee, Wisconsin

[Application No. D-6661]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of 500 shares of Lubar & Company Inc. common stock (the Stock) to Mr. Richard A. Van Deuren (Mr. Van Deuren) from his individually direct account in the Plan (the Account), provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 65 participants as of June 30, 1985. The Plan provides for segregated accounts and for participant direction of the investment of the accounts. Mr. Van Deuren is an employee, shareholder, director and officer of the Plan sponsor.

2. The Account holds 500 shares of the Stock, which was originally acquired pursuant to Mr. Van Deuren's direction on February 7, 1977, at a cost of $50,200. The Stock is not listed or traded on any exchange and currently represents 16.4% of the Account's assets.

3. Mr. Van Deuren desires to sell the Stock held in the Account to himself for a cash price equal to its current market value on the date of sale. Mr. Van Deuren will pay all costs involved in the proposed sale. Mr. Van Deuren had the Stock appraised by Mr. Michael H. White, an unrelated appraiser with the firm of Michael H. White & Co. (a company specializing in valuation of closely held equity securities, business

[4] The Department is expressing no opinion as to whether the acquisition of the Property by the Plan violated any provision of Part 4 of Title I of the Act.

enterprises and intangible assets) of Des Plaines, Illinois. Mr. White appraised the Stock as having a fair market value of $212,500 as of December 31, 1985. An updated appraisal will be performed, at Mr. Van Deuren's expense, to fix the value of the Stock on the date of sale.

4. In summary, Mr. Van Deuren represents that the proposed transaction satisfies the statutory criteria for exemption under section 408(a) of the Act because:

(a) The sale of the Stock will be a one-time transaction for cash;

(b) Mr. Van Deuren will pay all costs associated with the proposed sale;

(c) The Account will sell the Stock for its fair market value as determined by an independent appraiser; and

(d) Mr. Van Deuren is the only participant to be affected by the transaction and he desires that it be consummated.

Notice to Interested Persons

Because Mr. Van Deuren is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of the proposed exemption in the Federal Register.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

National Sales, Inc. Employee Profit Sharing Plan (the Plan) Located in Jackson, Mississippi

[Application No. D-6715]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b) (1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of a certain parcel of improved real property located in Bossier City, Louisiana (the Bossier City Property) and a leasehold interest in another parcel of improved real property in Memphis, Tennessee (the Memphis Property; collectively, the Properties) to Business Advisors and Investors, Inc., a party in interest with respect to the Plan, provided that the sales price for each of the Properties is not less than the higher of either the total cost of such Property to the Plan or the fair market value of such Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which, as of December 31, 1985, had 190 participants and total assets of approximately $2,053,238. The Plan is sponsored by the National Prepared Foods, Inc. (the Employer), formerly known as National Sales, Inc., which was sold on April 11, 1986 to an unrelated party. The trustee of the Plan, and the decision-maker with respect to Plan investments, is the Sunburst Bank (the Trustee), located in Jackson, Mississippi. The Trustee represents that it is a qualified, independent fiduciary with respect to the Plan which is otherwise unrelated to the Employer or its affiliates.

The Plan was restated and reexecuted by the Employer on January 1, 1976 and was terminated effective January 1, 1984. The applicant states that Form 5310, Application for Determination of Qualification Upon Termination of the Plan, was filed with the Internal Revenue Service (the Service) on December 31, 1984 and that a favorable determination letter was issued on June 19, 1985.

2. The Bossier City Property, which consists of 9.0186 acres located on Industrial Drive, was purchased on October 21, 1977 from Kennon, Treat, Inc., an unrelated party, for $74,809.50. The Plan subsequently constructed a freezer storage facility on the property, which was completed on April 19, 1979 at a cost of $1,620,257.58.[5] The Plan leased the Bossier City Property and the improvements to Bill's Institutional Commissary Corporation of Mississippi (BIC) from April 19, 1979 until July 1, 1984. At the time of the transaction, BIC was an employer of employees covered by the Plan and a subsidiary of the Trend Line Corporation (Trend Line), which was the majority shareholder of both BIC and the Employer. Thus, BIC was a party in interest with respect to the Plan at the time of the lease. The applicant states that BIC was sold to Consolidated Companies, Inc., an unrelated party, on September 13, 1985. The applicant acknowledges that the lease of the Bossier City Property to BIC was a prohibited transaction. The applicant states further that the necessary excise tax forms were filed to report the transaction to the Service and that the appropriate taxes for the transaction were paid on June 26, 1986.

The Bossier City Property was leased to BIC in 1979 for an annual rental of $202,500. The rent was increased by $4,095 to $206,595 in 1980 when an additional building was placed on the property and leased to BIC. The applicant states that the amounts paid by BIC to the Plan under the lease represented the fair market rental value for the Bossier City Property. However, the applicant states further that BIC will pay any back rent and interest on such additional rent, which is determined to be due by the Trustee based on the difference between rental amounts paid under the lease and the fair market rental value for the property at the time of the transaction.

3. The Memphis Property consists of certain leasehold improvements in an industrial warehouse located at 237 Belz Boulevard. The Plan leased the building from Belz Enterprises on July 1, 1972. The Plan subsequently constructed the improvements, a freezer cooler facility, on the property at a cost of $229,779.05. The Plan leased the Memphis Property to BIC on July 8, 1974, subsequent to certain oral agreements between the parties which occurred prior to July 1, 1974, at an annual rental of $17,440. The applicant represents that the lease of the property to BIC expired on July 1, 1984. The applicant represents further that the lease satisfied the requirements of section 414(c)(2) of the Act.[6]

4. The Properties were appraised on January 10, 1986 by Jack K. Mann, M.A.I. (Mr. Mann), an independent real estate appraiser in Jackson, Mississippi. Mr. Mann determined that the fair market value of the Bossier City Property was $1,700,000 and the fair market value of the Plan's leasehold interest in the Memphis Property was $185,000, as of January 10, 1986. Mr. Mann represents that he has no present or future interest in the Properties and is unrelated to any of the parties involved in the proposed transaction. Mr. Mann states that the Properties are "special purpose" properties which cannot be easily adapted to an alternate use without excessive cost. Mr. Mann believes that the highest and best use for the Properties would be their use as freezer and warehouse storage facilities.

[5] The Department is expressing no opinion as to whether the use of Plan assets for the construction of a freezer storage facility on the Bossier City Property was in violation of any provisions of Part 4 of Title I of the Act.

[6] The Department expresses no opinion as to the applicability of section 414(c)(2) of the Act to this lease arrangement.

5. In order to provide the Plan with the immediate liquidity necessary for distribution of the assets to the participants, the Trustee proposes that the Plan sell the Properties for cash to Business Advisors and Investors, Inc. (Business Advisors). Business Advisors will pay the Plan for each of the Properties the greater of either the Plan's total costs with respect to such Property or the fair market value of such Property on the date of sale. The applicant states that Mr. Mann will update the appraisal of the Properties at the time of the proposed sale.

The applicant represents that the Business Advisors may be a party in interest with respect to the Plan since a trust for the grandchildren of W.T. Hogg, Jr. (Mr. Hogg), the majority shareholder of Trend Line and a fiduciary of the Plan, and a separate trust for each of Mr. Hogg's two daughters, collectively own approximately 69 percent of Business Advisors. The Trustee states that the sale to Business Advisors is necessary because all attempts to sell the Properties to an unrelated party have been unsuccessful. The Trustee states further that the Properties are both vacant and subject to deterioration. Therefore, the Trustee represents that the proposed transaction is in the best interests of the Plan. The proceeds from the sale of the Properties will be distributed to the participants.

The Plan will pay no commissions or other expenses with respect to the sale of the Properties to Business Advisors.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the higher of either the Plan's total costs with respect to each of the Properties or the fair market value of each of the Properties on the date of sale; (c) no commissions or other expenses will be incurred by the Plan in connection with the sale; (d) the proposed sale will enable the Plan to dispose of the Properties and will facilitate the distribution of assets to the Plan participants; and (e) the Trustee, as an independent fiduciary of the Plan, had determined that the proposed transaction would be in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Profit Sharing Plan for Employees of Regal Capital Company (the Plan) Located in Dallas, Texas

[Application No. D–6769]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1), 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of a parcel of unimproved real property (the Property) by the Plan to Howard E. Rachofsky (Mr. Rachofsky), a party in interest with respect to the Plan; provided that the sales price is equal to the greater of the fair market value of the Property on the date of sale or the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property by the Plan, as calculated on the day of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing established on October 6, 1977. As of September 30, 1985, the Plan had seven participants and estimated assets of approximately $15,834,677. The sponsor of the Plan is Regal Capital Company (the Employer). The Employer is located at 333 Lee Parkway, Suite 610, Dallas, Texas, and has for the last fifteen years been actively engaged in the business of trading in securities. Mr. Rachofsky, the president and sole shareholder of the Employer, is a participant in the Plan and the trustee of the Plan.

2. The Property which consists of approximately 1.28 acres of unimproved residential real estate located at 10040 Meadowbrook Drive, Dallas, Texas. The Property currently constitutes approximately 4.7% of the assets of the Plan. The Plan purchased the Property on October 24, 1983, from John E. and Marjorie O. Stitt, unrelated third parties, for $550,000 in cash. At the time of the Plan's purchase there was a one-story brick and wood residence (the Residence) on the Property.

3. The Residence was rented to an unrelated party from August 1984 through May 1985, at the rate of $450 per month for a total rental income of $4,500. Due to termite infestation and serious structural difficulties the Residence was razed in mid-1985. Consequently, although the Plan has, as of August 6, 1986, incurred a total of approximately $3,685 in expenses for maintenance, insurance, and taxes, the Property is no longer producing rental income. The applicant represents that significant expenditures would be required to construct another residence on the Property. Without such expenditures, it is uncertain whether the Property will appreciate in value as it has in the past. Further, in the currently soft real estate market in Dallas, it is represented that the Property has peaked in value. Accordingly, Mr. Rachofsky proposes to purchase the Property for cash from the Plan for the greater of the fair market value or the total expenditures as of the date of sale incurred by the Plan in connection with the acquisition and holding of the Property by the Plan, including the cost of acquiring the Property and any and all expenses associated with maintenance, insurance, or taxes on the Property. It is represented that no fees, commissions, or other expenses will be paid by the Plan with respect to the sale. All costs related to the sale of the Property will be paid by Mr. Rachofsky.

4. The Property has been appraised at a value of $890,000, as of February 17, 1986, by George E. Trojack (Mr. Trojack) and reviewed by Jack Simpson, SRPA, (Mr. Simpson) of Crossan Dannis, Inc., 5445 La Sierra, Suite 400, Dallas, Texas. Mr. Simpson is qualified in that since 1972 he has engaged in appraising commerical and residential real property. Also, Mr. Simpson is a senior real property appraiser, a member of the Society of Real Estate Appraisers, and a licensed real estate broker in Texas. Both Mr. Trojack and Mr. Simpson verify their independence in that they have no present or prospective interest in the Property, nor any personal interest or bias with respect to the parties involved. Mr. Trojack and Simpson indicate that their compensation in not contingent upon the conclusion in the appraisal report.

5. The applicant represents that the Plan can earn more income from investing the proceeds of the sale in alternative investments, than from holding the Property, because of the possibility of a reduced rate of appreciation for the Property in the volatile real estate market in Dallas and the lack of rental income from this asset.

6. In summary, the applicant represents that the proposed sale meets the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The sale will be a one-time transaction for cash; (b) the sale price of the Property will be the higher of the fair market value as based on an appraisal

or the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property by the Plan; (c) the Plan will incur no real estate commissions, fees, or expenses in connection with the sale; and (e) the sale will enable the Plan to sell a non-income producing asset and invest the proceeds in alternative higher yielding investments.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8196. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory of administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of September, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-20643 Filed 9-11-86; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 86-111; Exemption Application No. D-6149 et al.]

Grant of Individual Exemptions; PECA-IBEW Annuity Fund et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

PECA-IBEW Annuity Fund (the Annuity Fund) and the PECA-IBEW Pension Fund (the Pension Fund; Collectively, the Funds) Located in Honolulu, Hawaii

[Prohibited Transaction Exemption 86-111; Application Nos. D-6149 and D-6150]

Exemption

I. Effective June 15, 1979, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the past and proposed sale, exchange or transfer between First Interstate Bank (FIB), State Savings and Loan (SSL), other banking institutions (the Banks), and the Funds of multi-family residential and commercial mortgage loans (the Mortgages) or participation interests therein (the Participation Interests) which are originated by FIB, SSL and the Banks, provided that:

A. Such sale, exchange or transfer is (or has been) expressly approved by fiduciaries independent of FIB, SSL and the Banks who have authority to manage or control those assets of the Funds invested in the Mortgages or Participation Interests;

B. The terms of all transactions between the Funds, FIB, SSL and the Banks are (or have been) not less favorable to the Funds than the terms generally available in arm's-length transactions between unrelated parties;

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is (or has been) paid to FIB, SSL and the Banks with regard to such sale, exchange or transfer;

D. The decision to invest in a Mortgage or Participation Interest is not (or has not been) part of an arrangement under which a fiduciary of a Fund, acting with the knowledge of either FIB, SSL or the Banks, causes a transaction to be made with or for the benefit of a party in interest [as defined in section 3(14) of the Act] with respect to the Funds; and

E. FIB, SSL and the Banks shall maintain (or have maintained) for the duration of any Mortgage or Participation Interest which is sold to a Fund pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records above must be (or have been) unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Funds, during normal business hours by: any trustee, investment manager, employer of Fund participants, employee organization whose members are covered by a Fund, or any participant or beneficiary of a Fund.

II. Effective June 15, 1979, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to the Funds by virtue of providing services to the Funds (or who has a relationship to such service provider as described in section 3(14) (F), (G), (H), or (I) of the Act) solely because of the ownership of a Mortgage or Participation Interest by such Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 18, 1986 at 51 FR 26069.

Effective Date: This exemption is effective June 15, 1979.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bluff Medical Center, P.C. Profit Sharing Plan (the Plan) Located in Clinton, Iowa

[Prohibited Transaction Exemption 86–112; Exemption Application No. D–6360]

Exemption

The restrictions of section 406(a), 406 (b)(1), and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the purchase (the Purchase) of certain real property (the Property) by the Plan from the Bluff Boulevard Leasing Co. (the Seller), a party in interest with respect to the Plan for the lower of either $975,000 or the fair market value of the Property on the date of the sale, (2) the extension of credit by the Seller to the Plan in connection with the Purchase, and (3) the lease of the Property by the Plan to the Bluff Medical Center, P.C., a party in interest with respect to the Plan, provided that the terms and conditions of all three transactions are at least as favorable to the Plan as those obtainable from an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 25, 1986 at 51 FR 26777.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a tolle-free number.)

Freeman Companies Savings and Investment Plan and Trust Agreement (the Plan) Located in Nashville, Tennessee

[Prohibited Transaction Exemption 86–113; Exemption Application No. D–6411]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchases by Plan participants of units of certain real estate limited partnerships which are organized, underwritten, offered and operated by certain of the Freeman Companies, the sponsors of the Plan; provided that such purchases are on terms which are at least as favorable to the Plan participants as could be obtained in transactions with unrelated parties, and provided further that the investment in any such units by each Plan participant shall not exceed twenty-five percent of the individual account balance of such participant in the Plan and total investments by all Plan participants in such units shall not exceed ten percent of the units of any one of such partnerships.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 18, 1986 at 51 FR 26071.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

David L. Hicks Corporation Profit Sharing Plan and Retirement Trust (the Plan) Located in Fresno, California

[Prohibited Transaction Exemption 86–114; Exemption Application No. D–6575]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale from the segregated account of David L. Hicks in the Plan to County Home Loans, a party in interest with respect to the Plan, of a parcel of real property located in Porterville, California, provided the Plan receives no less than fair market value for the property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 24, 1986, at 51 FR 22999.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Bangs, McCullen, Butler and Foye Employees' Profit Sharing Retirement Plan (the Plan) Located in Rapid City, South Dakota

[Prohibited Transaction Exemption 86–115; Exemption Application No. D–6582]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the purchase by the Plan of a certain commercial office facility (the Addition) from Bangs, McCullen, Butler, Foye and Simmons (the Employer), the sponsor of the Plan; and (2) the lease by the Plan of the Addition and other property to the Employer; provided that such transactions are on terms at least as favorable to the Plan as those the Plan could obtain in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 18, 1986 at 51 FR 26073.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Niccoli & Holman, D.D.S., Inc. Money Purchase Pension Plan (the Plan) Located in Whittier, California

[Prohibited Transaction Exemption 86–116; Exemption Application No. D–6615]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed ground lease (the Ground Lease) by the Plan of a certain parcel of unimproved real property to Niccoli and Holman Investments (the Partnership), a party in interest with respect to the Plan, provided that the terms of the Ground Lease are no less favorable to the Plan than an arm's-length transaction with an unrelated party; and (2) the personal guarantees of the obligations of the Partnership under the Ground Lease by Dominic J. Niccoli, D.D.S. and Charles M. Holman, D.D.S., parties in interest with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 18, 1986 at 51 FR 26074.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (TREET) Located in New York, New York

[Prohibited Transcation Exemption 86–117; Exemption Application No. D–6671]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1 (A) through (D) of the Code, shall not apply, effective May 20, 1986, to the loan of $58.5 million by Equitable Life Assurance Society of the United States to TREET, provided that the terms of the transaction were no less favorable to TREET than those obtainable were no less favorable to TREET than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction was consummated.

For a more complete atatement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 11, 1986 at 51 FR 25272.

Effective Date: This exemption is effective May 20, 1986.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 406(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemtion is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of September 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–20644 Filed 9–11–86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

RECORDFACTS, New Publication Availability

AGENCY: National Archives and Records Administration.

ACTION: Notice of availability of a new publication by the National Archives.

SUMMARY: The National Archives and Records Administration (NARA) is printing a publication titled "RECORDFACTS" which is meant to be used by all agencies to acquaint employees with recordkeeping responsibilities. The pamphlet is primarily intended for use during orientation of new employees, but is also suitable for employees already on board. Sample copies are available by calling the number shown below.

Agencies can ride the NARA requisition at GPO to receive copies at cost price. Agencies must submit their Standard Form 1, by October 15, 1986, to: Superintendent of Departmental Account Representative Division (CSD), Government Printing Office, Washington, DC 20401. NARA Requisition Number 600353, and GPO Jacket Number 161–436 must be included on the Standard Form 1.

FOR FURTHER INFORMATION CONTACT: Katherine Coram, National Archives (NIA), Washington, DC 20408 (202) 724–1474.

Dated: September 8, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–20594 Filed 9–11–86; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or

utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning this application follows.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material Type	Material in Kilograms		End Use	Country of Destination
		Total Element	Total Isotope		
Aldrich Chemical Co. Inc., 08-29-86, 08-29-86, XMAT0316, Amend.01.	Deuterium Oxide	add'l 10,000	add'l 2,000	Upgrading purposes only and R/T to US.	Canada.

Dated this 5th day of September 1986, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc. 86-20639 Filed 9-11-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas & Electric Co; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of amendments to Facility Operating Licenses DPR-53 and DPR-69 issued to the Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland. The proposed amendments, submitted via the application dated April 14, 1986, would change Technical Specification 3/4.8.1, "A.C. Sources," to permit continued power operation of up to 72 hours with one inoperable diesel fuel oil storage tank.

Need for Environmental Impact Statement

The Commission has found that the proposed amendments constitute no additional significant environmental impact and as such, the Commission has determined that an environmental impact statement is not necessitated by the proposed amendments and shall not be prepared.

Environmental Assessment

Identification of the Proposed Amendments

Currently, both diesel fuel oil storage tanks must be operable or restored to operability within 2 hours to permit continued power operations. The licensee has proposed changes to Technical Specification 3/4.8.1, "A.C. Sources," to permit continued power operations of up to 72 hours with one diesel fuel oil storage tank inoperable. This extension of the permissible inoperability period to 72 hours would not be applicable to the inoperability of #21 diesel fuel oil storage tank, the bunkered storage tank, from April 1 to September 30 due to the high probability of tornado occurrences during this period. Only 2 hours of continued power operation would be permitted in this case.

In addition, the licensee must provide on site an alternate 8,000 gallon diesel fuel oil supply for continued power operations whenever a diesel fuel oil storage tank is inoperable.

Need for the Proposed Action

During normal power operations, the need may exist to conduct normal maintenance or minor repair activities on a diesel fuel oil storage tank and its associated piping systems. This maintenance or repairs may render it temporarily inoperable. Under present constraints, these activities must be completed within 2 hours or both units must be shut down to Hot Standby conditions within the next 6 hours. The issuance of these proposed amendments would allow for the performance of minor repairs and normal maintenance activities on a diesel fuel oil storage tank without requiring a dual-unit reactor shutdown.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. This would not significantly reduce the environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered by the Commission in the "Final Environmental Statement Relating to Operation of Calvert Cliffs Nuclear Power Plant, Units 1 and 2" dated April 1973.

Environmental Impact of the Proposed Amendments

The primary radiological environmental impact that could occur from allowing a 72-hour period of power operation with one diesel fuel oil storage tank inoperable would result from a loss of all A.C. power accident (station blackout). The mechanism of this station blackout would be a seismic event or a severe meteorological event (tornado) that caused a localized failure of all three offsite A.C. power supplies concurrently with the loss of the remaining operable diesel fuel oil storage tank.

The staff has reviewed the radiological consequences of this station blackout accident. The probability of these localized seismically or meteorologically induced station blackout events was found to be negligible when further mitigated by the following requisites: (1) The maintenance of an 8,000 gallon alternate diesel fuel supply on-site when a diesel fuel oil storage tank is inoperable and, (2) restriction of the period that the bunkered diesel fuel oil storage tank may be inoperable to those months in which tornadoes and hurricanes are unlikely to occur.

The primary non-radiological environmental impact of this proposal would result as the consequence of an oil spill or oil fire emanating from the alternate diesel fuel oil storage tank which is provided on-site when a diesel fuel oil storage tank is inoperable. The potential for an oil spill contaminating the Cheasapeake Bay waters would be minimized through use of the licensee's oil spill prevention countermeasures plan and through placing the alternate fuel tank in a depressed and/or bunkered area that does not drain towards the plant, the bay or into any water runoff areas or storm drains. Rather the site of the alternate fuel tank shall be located in an area which drains to the yard oil interceptor. The yard oil interceptor has more than sufficient volume to contain a spill of 8,000 gallons of diesel fuel oil.

Oil fires are mitigated by the low flammability of the diesel fuel oil combined with the presence of a trained site fire fighting brigade that could rapidly respond to any developing diesel fuel oil fire problem.

Therefore, with regard to diesel fuel oil spills and fires, there is no significant

increase in the probability of non-radiological environmental events.

The Commission has determined that these proposed amendments pose no significant environmental impact.

Agencies and Persons Consulted

U.S. Environmental Protection Agency
Dr. Sandy Williams and Mr. Jay Radstein
State of Maryland, Department of Natural Resources, Oil Control Division
Mr. Edwin Weber

Finding of No Significant Impact

Based on the aforementioned environmental assessment, the Commission has determined that the proposed amendments will not have a significant effect on the quality of the human environment.

for further details with respect to this action, see (1) the application for license amendments dated April 14, 1986 and (2) the licensee's supplemental letter dated July 24, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 2nd day of September 1986.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate #8, Division of PWR Licensing-B.

[FR Doc. 86-20640 Filed 9-11-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Maine Yankee Atomic Power Company (the licensee) to withdraw its May 5, 1986 application for proposed amendment to Facility Operating License No. DPR-36 for Maine Yankee Atomic Power Station, located in Lincoln County, Maine. The proposed amendment would have changed the Turbine Valve test frequencies from monthly when the turbine is operating to every 6 weeks when the turbine is operating. The Commission issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 2, 1986 (51 FR 24257). By letter dated August 28, 1986, the licensee withdrew its application for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated May 5, 1986; (2) the licensee's letter dated August 28, 1986; and (3) the Commission's letter granting the withdrawal dated September 8, 1986. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Wiscassett Public Library Association, High Street, Wiscassett, Maine 04578.

Dated at Bethesda, Maryland this 8th day of September 1986.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate #8, Division of PWR Licensing-B.

[FR Doc. 86-20641 Filed 9-11-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Revision

Rule 17a-3

No. 270-26

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for OMB approval a revision of a currently approved collection under Rule 17a-3 (17 CFR 240.17a-3) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) which requires the maintenance of certain books and records by registered brokers or dealers. The potential by affected persons are approximately 6000 registered broker-dealers per year.

Submit comments to OMB Desk Officer: Ms. Sheri Fox, (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Shirley E. Hollis

Assistant Secretary.

September 4, 1986.

[FR Doc. 86-20561 Filed 9-11-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23600; File No. SR-BSE-85-11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to BSE Chapter II, Section 15 Concerning Execution of Good-Till-Cancelled Orders

The Boston Stock Exchange, Inc. ("BSE") submitted on December 19, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Chapter II, Section 15 of the BSE Rules to provide enhanced standardized procedures for the confirmation of Good-Till-Cancelled ("GTC") orders. The proposal provides that the entering broker must confirm or renew existing GTC orders with the specialist on the last business day of each month. Previously, the rule required that the confirmation or renewal procedure occur on the last business day of the "confirmation period," the time of which was determined by the Exchange. The proposal has no effect on the present provision in the BSE Rules that provides that GTC orders not renewed or confirmed nevertheless are to be executed according to their terms.[1] It is anticipated that these modifications will improve record-keeping by providing uniformity in GTC confirmation procedures, and therefore reduce the risk that member organizations will have to accept an executed transaction on a GTC order that they did not know existed.

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by the issuance of a Commission release (Securities Exchange Act Release No. 22986, March 7, 1986) and by publication in the **Federal Register** (51 FR 9560, March 19, 1986). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

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[1] The proposal, however, changes the language, if not the content, of that provision. Originally, the provision read: "GTC orders not so confirmed or renewed shall be retained on the specialist's book. However, if executed according to their terms, these orders must be accepted by the entering firm." Pursuant to the rule change proposal and a subsequent amendment, the proposed provision now reads: "GTC orders not so confirmed or renewed nevertheless shall be retained on the specialist's book and executed according to their terms." *See* File No. SR-BSE-85-11; Letter from Joseph P. Carmichael, Vice President, BSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated July 18, 1986.

rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rule and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 5, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20564 Filed 9-11-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23599; File No. SR-NYSE-86-18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Amendments to Rule 134 of the NYSE Rules To Provide Procedures for Resolving "Questioned Trades" in Listed Bonds, Except United States Government Bonds

The New York Stock Exchange, Inc. ("NYSE") submitted on June 20, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Rule 134 of the NYSE Rules to provide a procedure forresolving "Questioned Trades" ("QT") (uncompared trades) by members who execute orders on the floor of the Exchange in all listed bonds except United States Government bonds.[1]

In its present form, Rule 134 does not distinguish between procedures for stocks and bonds, but has come to apply to listed stock only. Further, the Rule 134 procedure is not suitable for bonds due to certain operational procedures unique to bond trading.[2] The Exchange, therefore, has developed a bond comparison procedure different from the Rule 134 stock procedures, and is now proposing to adopt it as a formal rule.[3] The proposed rule provides for the timely resolution of uncompared trades by requiring them to be closed out if they cannot be resolved by the fifth business day of the trade date.

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by the issuance of a Commission release (Securities Exchange Act Release No. 23433, July 14, 1986), and by publication in the Federal Register (51 FR 26325, July 22, 1986). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 5, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20565 Filed 9-11-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15290(812-6391)]

PVNGS Funding Corp., Inc.; Application Exempting Finance Subsidiary From All Provisions of the Act

Notice is hereby given that PVNGS Funding Corp., Inc. ("Applicant"), 1209 Orange Street, Wilmington, Delaware 19081, filed an application on May 22, 1986, and an amendment thereto on August 26, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "act"), exempting Applicant from all provision of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of its relevant provisions.

Applicant has been created to participate as lender in one or more leveraged lease transactions ("Leases"), in which Arizona Public Service Company, an Arizona corporation is the lessee (the "Company" or "Lessee"). The Company is engaged principally in providing electricity in the State of Arizona and is subject to the reporting requirements of the Securities Exchange Act of 1934.

Applicant expects to have all of its shares of common stock owned by The Corporation Trust Company or a company controlled by it. Applicant represents that there has been, and undertakes that in the future there will be, no public offering of Applicant's common stock or of any other equity security. Applicant also represents that there is, and in the future will be, no class of equity securities of Applicant other than its common stock.

Applicant states that its sole purpose is to assist the Company in the financing and refinancing, in whole or in part, of the Company's 29.1% undivided ownership interest in the Palo Verde Nuclear Generating Station ("PVNGS"). PVNGS located near Phoenix, Arizona, consists primarily of three 1,270 megawatt electric generating units, each containing a pressurized water nuclear steam supply system and, certain related common facilities. Ownership of PVNGS is governed by the Arizona Nuclear Power Project Participating Agreement, dated August 23, 1973, as amended, and pursuant thereto, the Company is authorized to act as agent for the owners of PVNGS, and has responsibility and control over construction, operation and maintenance of PVNGS. Applicant states that it is subject to regulation by The Arizona Corporation Commission and the Federal Energy Regulatory Commission.

Applicant states that its participation as lender in the Leases will be limited to making loans pursuant to a Loan and Security Agreement or a Trust Indenture and Security Agreement (in either case, a "Lease Indenture") to certain lessors ("Lessors") under such Leases which will be payable primarily from rentals and other payments by the Lessee. Applicant states that the Lessors under each lease will be The First National Bank of Boston acting as trustee for one

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[1] Exchange trades in United States Government bonds have not been included within the scope of the propsoed amendment to Rule 134 because all trades in these bonds are compared and settled through a separate central clearing agency.

[2] Approximately 85% of all listed bonds on the Exchange are traded through the Automated Bonds Systems ("ABS"). A computerized order processing system, the ABS captures trade details automatically, and therefore generates no Questioned Trades. The remaining 15% of listed bonds are too active to be traded on the ABS, and therefore are traded through the auction market process. This process includes the manual reporting of trade details, which occasionally results in uncompared trades, which must be resolved through a Questioned Trade procedure.

[3] The basic structure for the resolution of questioned trades for bonds is not dissimilar to the existing structure for the resolution of stock trades, with the exception of the inclusion of a provision for two-dollar brokers on the stock side. Both processes commence with attempts to resolve the questioned trade through telephone inquiries and appropriate back office procedures. If the trade is still unresolved by the second business day, a QT form is prepared by the firm with the open trade. In both processes, the QT form is circulated to the executing broker, the contra broker, and finally the fim for whom the contra broker acted, in an attempt to resolve the trade. Both processes provide that if the trade is still unresolved, it shall be closed out under the provisions of NYSE Rule. 282.

or more beneficiaries pursuant to a trust agreement formed exclusively for the purpose of the lease financing. Applicant states that a portion of the purchase price of the property owned by the Lessors and leased to the Lessee ("Leased Property") will be paid by the beneficiaries of the grantor trust that acts as Lessor and that amount will constitute their equity investment in the Leased Property. The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries, and will be evidenced by non-recourse obligations of the respective Lessors ("Lessor Notes"). Applicant states that under each Lease the Lessee will be obligated to make rental payments sufficient to pay principal of and premiums, if any, and interest on the Lessor Notes issued in connection therewith. Applicant farther states that such obligations of the Lessee will be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. Applicant expects to enter into an agreement (the "Commitment Agreement") with the Company pursuant to which Applicant will agree to make loans to one or more Lessors designated by the Company from time to time.

Applicant intends to acquire the funds necessary for the purchase of the Lessor Notes through the issuance of its debt securities in one or more series with differing maturities ("Lease Obligation Bonds"), which will be secured on a parity basis by a first lien on, and security interest in, all of the assets of the Applicant, consisting primarily of the Lessor Notes so acquired and previously acquired and which may include a lien or security interest in the Leased Property. Lessor Notes held by Applicant may only consist of Lessor Notes issued in connection with any Leases to which the Company is a party, as lessee, in conjunction with its ownership interest in PVNGS.

Applicant states that the Lease Obligation Bonds will be issued under a common indenture and a separate supplemental indenture for each series other than the initial series (collectively, the Collateral Trust Indenture), which will establish the terms of the Lease Obligation Bonds of that series. It is expected that the trustee under the Collateral Trust Indenture ("Trustee") will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of the Company or its subsidiaries. At each Lease closing, the Lessor Notes will be pledged and assigned directly to the Trustee. Applicant expects that the Lessor Notes will be issued under circumstances making such transactions exempt from the registration requirements under the Securities Act of 1933 (the "Securities Act").

Applicant states that the Lease Indentures will set forth the terms and conditions under which the Lessor Notes will be issued. Applicant represents that each Lease Indenture will require the Lessor to grant to the Applicant (if the Lease Indenture is a Loan and Security Agreement) or a trustee under the Lease Indenture ("Lease Indenture Trustee") (if the Lease Indenture is a Trustee Indenture and Security Agreement), an assignment of rents, including basic rentals and certain other payments, to be made by the Lessee under the applicable Lease. The Lease Indenture Trustee or the Applicant may have a lien on or security interest in, the Leased Property. In the event no such lien or security interest is created, the Lessor will covenant that, so long as any Lessor Note is outstanding, it will not incur any other debt constituting Lessor Notes or otherwise in connection with the Leased Property, and except for certain limited permitted liens, it will not create any lien or security interest in such property. Applicant states that these two covenants combined insure that, if a Lessor defaults on a Lessor Note, the Leased Property will be available to satisfy the claims of the Trustee, acting for the benefit of holders of Lease Obligation Bonds. Applicant states that it will be precluded from purchasing any Lessor Note unless (i) such Lessor Note is issued in respect of Leased Property having a fair market sales value at the time of purchase at least equal to 110% of the original principal amount of such Lessor Note or, (ii) such Lessor Note and all other Lessor Notes (if any) issued by the relevant Lessor are issued in respect of Leased Property having an aggregate fair market value (measured, in each case, as of the date such Leased Property was first financed under the Lease) at least equal to 110% of the original principal amount of such Lessor Note and such other Lessor Notes. Further, Applicant states that each Lease Indenture will include as events of default, without limitation: (a) Payment defaults on the Lessor Notes issued thereunder and (b) events of default under the related Lease.

According to the application, the various series of Lease Obligation Bonds will have terms which may differ as to interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Bonds and other matters. The interest rates, maturities and principal amounts of of each series of Lease Obligation Bonds will be established based on prevailing market conditions, thereby giving Applicant the flexibility to take advantage of changing market conditions. If the maturity dates and cash flow of the Lessor Notes exceed the cash requirements of Applicant's obligations under the Lease Obligation Bonds, the resulting funds ("Temporary Funds") will be invested by Applicant in certain investments described in the application ("Permitted Investments"), in each case maturing at such time as necessary to pay Applicant's obligations under the Lease Obligation Bonds. Applicant states that Lease Obligation Bonds, which may include commercial paper and intermediate-term and long-term obligations, will be issued in the private or public markets in the United States, and in offerings outside the United States under circumstances reasonably designed to assure that such Lease Obligation Bonds are not offered or sold to citizens and/or residents of the United States.

Applicant proposes that the initial issuance of Lease Obligation Bonds will be through an underwritten public offering or private placement of one or more series having an aggregate principal amount of approximately $1.1 billion (assuming a total sales price for the Company's 29.1% interest in PVNGS Unit 2 and the common facilities of $1.3 billion). Applicant represents that, although the Company will not be the actual issuer of the Lease Obligation Bonds, it will be considered the "issuer" thereof for purposes of the Securities Act. Any registration statement filed under the Securities Act relating to the Lease Obligation Bonds will name the Company as the sole registrant.

Applicant represents that it will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the payment of the principal of and premium, if any, and interest on all Lease Obligation Bonds, the Lessor Notes and other assets held by the Applicant, including any lien or security interest it may have in the Leased Property. Each such Lessor Note will in turn be secured by the assigned rentals and other assigned payments under such Lease and may be secured by a lien or security interest in the Leased Property. Applicant states that the Trustee will give immediate notice to the Lease Obligation Bondholders of any rights granted by the Collateral Trust Indenture to it, which will include the right to exercise voting powers in respect of the Lessor Notes, to give any consents or waivers or the exercise of any rights and remedies thereunder. The

Collateral Trust Indenture will authorize the Lease Obligation Bondholders to direct by notice to the Trustee within a specific period of time, that it take any action or cast any vote in its capacity as a holder of the Lessor Notes. As a result of this pass-through voting mechanism, the rights and remedies of Lessor Noteholders will be exercisable directly by the Lease Obligation Bondholders through their fiduciary, the Trustee. The principal amount of Lessor Notes directing any action or being voted for or against any proposal will be the principal amount of the Lease Obligation Bondholders taking the corresponding position. To the extent the Trustee does receive instruction, it will take such action with respect to the Lessor Notes as a prudent man would in the care of his own property.

Applicant states that in the event the Company defaults in the payment of rent or otherwise under any Lease Indenture, the Applicant or the Lease Indenture Trustee, as the case may be, would have the right to exercise, subject to the provisions of the Lease Indenture, all of the rights and remedies against the Company provided in the related Lease. The exercise of such rights and remedies would be at the direction of the Lease Obligation Bondholders through the Trustee's instructions to the Lease Indenture Trustee or as pledgee of Applicant's interest in such Lease Indenture. Applicant states that among the Trustee's rights and remedies, as holder of Lessor Notes included under the Lease Indenture, is the right to demand, after a specified grace period, that the Company pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of, preimum, if any, and interest on the related Lessor Notes and that such amounts will be paid directly to the Trustee for distribution to the Lease Obligation Bondholders. Applicant thus asserts that the Lease Obligation Bondholders will have access under the Collateral Trust Indenture and the Lease Indentures to the credit of the Company. Moreover, Applicant asserts that the Lease Obligation Bondholders will be entitled to realize on the security afforded by the assignment of rentals in an amount up to the aggregate unpaid amount of the relevant Lessor Notes secured by such assignments of rentals. The combination of Lessor Notes and the obligation of the Company under the Leases, Applicant asserts, grants the Lease Obligation Bondholders access to the general credit of the Company and is thus the equivalent of a general unsecured obligation of the Company without limitation as to source of payment. The Lessor Notes and the Lease Idenfure will provide that, upon the occurrence of certain casualty events, and certain other events which require the collapsing of the lease transaction, either (i) the Company shall assume the obligations represented by the Lessor Notes or (ii) the Company shall purchase from the beneficiaries of the trusts issuing the Lessor Notes the beneficial interest in such trusts and the Lessors will grant a lien and security interest in the Leased Property to secure the Lessor Notes. The assumption or purchase described in the preceding sentence will be in partial satisfaction of the Company's obligation to make payments required of it upon early termination of the Leases in consequence of any such event. Applicant asserts that in circumstances where the Lessor Notes are not secured by the Leased Property, there will be no need to prepay the Lessor Notes in the event of a casualty. The Company's right to assume the Lessor Notes in certain circumstances assures that it will not be faced with an accelerated obligation to prepay the Lessor Notes under the provisions of the Leases.

Applicant states that the Issue, sale and delivery of a particular series of Lease Obligation Bonds may be effected, at maximum, two months prior to the date for the consummation of the Leases ("Lease Closing Date") applicable to the Leased Property financed with the Lease Obligation Bonds proceeds. Pending the Lease Closing Date, the net proceeds of the Lease Obligation Bonds will be held by the Trustee, pursuant to the terms of the Collateral Trust Indenture. The Trustee may invest proceeds in Permitted Investments, which include direct obligations of the United States or obligations fully guaranteed by the United States, certificates of deposit issued by or bankers' acceptances of, or time deposits with, banks organized under United States law and limited to amounts of less than $15 million in principal amount at any one time from any one bank, or commercial paper of companies doing business in the United States in amounts less than $15 million at any one time from any one company. The commercial paper will also have the highest rating by a nationally recognized rating organization. Permitted Investments, Applicant states, also include repurchase agreements, fully collateralized by the Permitted Investments, pursuant to which a United States bank, trust company or national banking association having a net worth of at least $200 million is obligated to repurchased the obligation not later than 90 days after its purchase.

Except to the extent payable from the proceeds of refunding the Lease Obligation Bonds, proceeds of Temporary Investments or the proceeds of the initial issuance of the Lease Obligation Bonds, where the relevant Lease Closing Date does not occur simultaneously, due to the nonrecourse nature of Lessor Notes and the limited scope of Applicant's activities, payment of the principal of, premium, if any, and interest on the Lease Obligation Bonds will be made exclusively from amounts paid by the Lessee under the Leases.

Applicant asserts that its proposed activities are approrpiate in the public interest because the proposed issuance of Lease Obligation Bonds would provide a convenient mechanism for the Company to obtain access to segments of the debt capital market other than the institutional private placement market. Applicant further asserts that an exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because, among other things, investors will be protected under the proposed arrangements to the same extent as under equivalent arrangements where the Act is inapplicable.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 30, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange of Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: September 5, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20567 Filed 9-11-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15289; (812-6435)]

The Scandinavia Fund, Inc.; Application to Permit Purchases From Affiliated Underwriting Syndicates

September 5, 1986.

Notice is hereby given that The Scandinavia Fund, Inc. ("Applicant"), c/o Stephen R. Rusmisel, Esq., Winthrop, Stimson, Putnam & Roberts, 40 Wall Street, New York, NY 10005, registered under the Investment Company Act of 1940 ("Act") as a diversified, closed-end management investment company, filed an application on July 16, 1986, requesting an order pursuant to section 10(f) of the Act, granting an exemption, to the extent necessary, to permit Applicant to purchase securities in public offerings in Sweden in which affiliates of its investment adviser participate as principal underwriters. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and rules thereunder for the text of the relevant provisions.

Applicant states its investment objective is long-term capital appreciation through investment primarily in "Scandinavian equity securities", including (i) securities principally traded on Scandinavian stock exchanges, (ii) securities of companies that derive 50 percent or more of their total revenue from either goods or services produced in Scandinavia or sales made in Scandinavia or (iii) securities of companies organized under the laws of a Scandinavian country which are publicly traded in recognized securities markets outside of Scandinavia. Applicant further states that at least 65 percent of its total assets will normally be invested in publicly traded Scandinavian equity securities. According to the application, the remainder of Applicant's assets will be invested in (i) debt securities of Scandinavian companies rated A or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, or which, in the judgment of Applicant's investment adviser, are of equivalent quality, (ii) securities issued or guaranteed by a Scandinavian government, its agencies or instrumentalities, and (iii) for cash management purposes, certain short-term instruments.

Applicant states that it has entered into an investment advisory agreement with Skandifond Fiduciary AB ("Skandifond") under which, subject to the supervision of Applicant's Board of Directors, Skandifond will manage Applicant's investments and investment decisions, including the selection of, and placement of orders with, brokers, dealers and banks to execute portfolio transactions on behalf of Applicant. According to the application, Skandifond is organized under the laws of Sweden, and is an indirect, wholly-owned subsidiary of Skandinaviska Enskilda Banken ("S-E-Banken"). Applicant states that S-E-Banken is the largest commercial bank in Scandinavia based on total assets, and that its affiliates participate as principal underwriters in a substantial number of underwriting syndicates for public offerings made in Sweden. Applicant represents that it has been advised that during the year ended December 31, 1985, S-E-Banken and its affiliates were principal underwriters for approximately one-third of the total amount of new issues of equity offerings in Sweden, representing SEK 1.3 billion of SEK 1.7 billion raised in such offerings. Applicant represents that because of the affiliations described above, Skandifond is an "affiliated person" of S-E-Banken within the meaning of section 2(a)(3) of the Act.

Applicant states that under section 10(f) of the Act, it may not purchase securities from any underwriting syndicate in which S-E-Banken and its affiliates participate as principal underwriter because S-E-Banken is an affiliated person of Applicant's investment adviser, Skandifond. Applicant further states that it cannot satisfy all of the conditions of Rule 10f-3 under the Act which would permit the purchase of securities in circumstances otherwise prohibited by section 10(f) of the Act. One such condition is that the securities to be purchased are part of an issue registered under the Securities Act of 1933 ("Securities Act"). Applicant states that the securities offerings in which it will participate are not required to be, and will not be, registered under the Securities Act. Another condition of Rule 10f-3 is that the securities to be purchased be offered pursuant to a "firm commitment" underwriting agreement. According to the application, although in practice, underwriting in Sweden are not undertaken unless all of the offered securities are placed, there is no practice by which the underwriters bind themselves to purchase all of the securities as in firm commitment underwritings in the United States. Applicant intends to invest in equity securities of Swedish companies, which securities typically trade immediately after the initial public offering at substantial premiums over the initial offering price. Applicant states that because it is unable to satisfy all of the conditions of Rule 10f-3 it will be precluded from purchasing Swedish equity securities at the lower initial offering price in offerings where S-E Banken or its affiliates participate as principal underwriters.

Applicant represents that it has reviewed all of the conditions set forth in Rule 10f-3 and that, with the exception of the registration requirement and the firm commitment underwriting requirement contained in subsections (a)(1) and (a)(3) of Rule 10f-3, respectively, it will be able to satisfy each of the other conditions of said Rule. Consequently, in order to be able to participate in Swedish public offerings on a broad basis, Applicant requests an exemption from Section 10(f) of the Act, subject to the condition that (i) all securities purchased in reliance on the requested order be subject to the disclosure provisions of the Swedish Companies Act of 1975 ("Companies Act") and (ii) with the exception of subsections (a)(1) and (a)(3) of Rule 10f-3, Applicant will satisfy all other conditions of Rule 10f-3 with respect to each purchase made pursuant to the requested order.

In support of the requested relief, Applicant asserts that the disclosure required by the Companies Act is adequate disclosure and is the "substantial equivalent" of the disclosure requirements of the Securities Act for purposes of Rule 10f-3(a)(1). Applicant also asserts that the condition in Rule 10f-3(a)(3) requiring that the securities be offered pursuant to a firm commitment underwriting is substantially satisfied by the practical realities of the Swedish securities markets. Applicant states that a firm commitment underwriting ensures that all securities are sold. Applicant also states, however, that because Swedish securities offerings are typically oversubscribed, there is no practical necessity for firm commitment underwritings in Sweden. Applicant represents that it is aware of only one instance where a public offering of securities in Sweden was not oversubscribed. Further, Applicant and Skandifond believe that public offerings of securities in Sweden will continue to be oversubscribed in the future.

Applicant submits that, given the significant role of S-E-Banken in underwritten public offerings in Sweden, Applicant's shareholders might be prejudiced in the absence of the requested relief because Applicant will be precluded from purchasing, at the lower initial offering price, any

securities for which S-E-Banken or any of its affiliates participate as a principal underwriter. In this respect, Applicant represents that Swedish common stocks typically trade at a substantial premium (average 35.5% for the two year period ended December 31, 1985) over the initial offering price. Applicant asserts that the granting of this requested exemptive order is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any person wishing to request a hearing on the application may, not later than September 30, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest and the specific issues, if any, of fact or law that are disputed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20566 Filed 9-11-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15288 (812-6378)]

The Alger Fund; Application for an Order Permitting a Contingent Deferred Sales Charge

September 5, 1986.

Notice is hereby given that The Alger Fund ("Applicant"), 75 Maiden Lane, New York, NY 10038, filed an application on May 8, 1986, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicant from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Applicant to assess (waiver and vary) a contingent deferred sales charge on redemptions of its initial and future series of shares, and of any other registered investment company organized in the future that employs a subsidiary of Alger Associates, Inc. ("Associates") as investment adviser or principal underwriter ("Funds"). Applicant represents that all the Funds will be operated in a manner substantially similar to the manner described herein with respect to the Applicant. All interested persons are referred to the application of file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable statutory provisions.

According to the Application, Applicant is an open-end, diversified, management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on March 20, 1986. Applicant states that it is a series company that is currently composed of eight series—the Alger Money Market Portfolio, the Alger Tax-Exempt Money Portfolio, (collectively, the "Non-Charge Portfolios"), the Alger Fixed Income Portfolio, the Alger Government Securities Portfolio, the Alger High Yield Portfolio, the Alger Income and Growth Portfolio, the Alger Small Capitalization Portfolio and the Alger Growth Portfolio (collectively, the "Charge Portfolios"; the Charge Portfolios and the Non-Charge Portfolios collectively referred to as the "Portfolios"). Applicant further states that shares of each of the Portfolios will be distributed by Fred Alger & Company, Incorporated ("Alger Inc."), and that Fred Alger Management, Inc. ("Alger Management") will serve as the investment manager to each of the Portfolios. Applicant further represents that Alger Management is a wholly owned subsidiary of Alger Inc., which in turn is a wholly owned subsidiary of Associates.

According to the application, Applicant proposes to (1) offer shares of the Charge Portfolios subject to a contingent deferred sales charge ("Charge") and (2) institute a plan of distribution in accordance with Rule 12b-1 under the Act ("Plan"). Under Applicant's proposal, shares of each of the Portfolios would be offered and sold without the deduction of a sales load at the time of the purchase. Applicant represents that certain redemptions of shares of the Portfolios, however, would be subject to the Charge. Applicant states that the proceeds of the Charge would be paid to Alger Inc. and would be used by Alger Inc. to defray costs incurred in connection with the sale of applicant's shares.

Applicant represents that the Charge would only be imposed on a redemption of shares of the Charge Portfolios that cause the current value of the shares of such Charge Portfolio held by a shareholder to fall below the total dollar amount of payments for the purchase of shares of the Portfolio made by the shareholder during the preceding six years. Applicant states that no charge would be imposed on the redemption of shares purchased and retained in the Non-Charge Portfolios, however, the Charge would be imposed on redemptions of shares of the Non-Charge Portfolios that are acquired in exchange for shares of the Charge Portfolios. Applicant further states that no Charge would be imposed to the extent that the net asset value of the shares redeemed by a shareholder does not exceed (1) the current net asset value of shares of the Portfolio purchased more than six years prior to the redemption ("Old Shares Value"), plus (2) the current net asset value of shares of the Portfolio purchased through reinvestment of dividends or capital gains distributions ("Reinvestment Shares Value"), plus (3) increases in the net asset value of the shares of the Portfolio above purchase payments made with respect to the Portfolio during the Preceding six years ("Appreciation Value").

Applicant states that in effecting a particular redemption request, Applicant would first redeem an amount that represents Appreciation Value. If the amount of the requested redemption exceeded Appreciation Value, Applicant would next redeem an amount that represents Reinvestment Shares Value. If the amount of the redemption exceeded the sum of Appreciation Value and Reinvestment Shares Value, Applicant would then redeem an amount that represents Old Shares Value. The amount by which a redemption exceeds the total of Appreciation Value, Reinvestment Shares Value and Old Shares Value would be subject to the Charge. Applicant represents that the amount of the Charge imposed would depend on the number of years that the shareholder has held the shares from which an amount is being redeemed. Such charge would be 5% in the first year, 4% in the second year, 3% in the third year, 2% in the fourth and fifth years, 1% in the sixth year and no charge thereafter. Applicant states that the amount of the Charge (if any) would be calculated by first determining the date on which the purchase that is the source of the redemption was made, and then applying the appropriate percentage to the amount of the redemption subject to the Charge.

Applicant states that it will assess no Charge on exchanges of shares between Portfolios. In addition, as mentioned above, no Charge would be imposed on the redemption of shares purchased and retained in the Non-Charge Portfolios.

However, the Charge would be imposed on redemptions of shares of the Non-Charge Portfolios that are acquired in exchange for shares of the Charge Portfolios. An exchange of shares between Portfolios would not affect the running of the six year holding period.

Applicant further proposes to waive the Charge under circumstances enumerated in the application. Applicant also proposes to institute a one-time only reinvestment privilege under which a shareholder who redeems shares subject to the Charge and reinvests the proceeds of the redemption within 30 days after the redemption would receive a credit against the amount of the Charge paid. Under the proposed reinvestment privilege, the percentage of the Charge credited to the shareholder would be the same as the percentage of the redemption proceeds that are reinvested. Applicant intends, when providing for waivers from or credits against the Charge, to meet all of the conditions set forth in Rule 22d–1 promulgated by the Commission under Section 22(d) of the Act.

In addition, Applicant proposes to finance its distribution expenses pursuant to a Plan adopted to Rule 12b–1 under the Act. Under the Plan, Applicant will pay a distribution fee to Alger Inc. for expenses incurred by Alger Inc. in connection with the offering of shares of the Charge Portfolios. Applicant states that Alger Inc.'s distribution fee will be accrued daily and paid monthly by Applicant with respect to the Charge Portfolios at the annual rate of one percent of the average daily net assets of each of those Charge Portfolios for which the Plan is in effect. Applicant further states that amounts of its shares redeemed, including amounts upon which the Charge is waived, will be removed from the base upon which the distribution fee under the Plan is calculated.

Applicant submits that its imposition of the Charge is consistent with the policies underlying the Act, and believes that the Charge is fair and in the best interests of Applicant's shareholders. Applicant further submits that neither its waiving the Charge nor its crediting amounts against the Charge will result in the occurrence of any of the abuses which section 22(d) of the Act is designed to prevent. Applicant also believes that the waiver from and credits against the Charge will not harm Applicant or its shareholders or unfairly discriminate among shareholders or purchasers.

Notice is further given that any interested person wishing to request a hearing on the Applicant may, not later than September 30, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-in-law, by certificate) shall be filed with the request. After said date, an order disposing of the Application will be issued, unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20562 Filed 9–11–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15296; 813–59]

PB–SB 1983 Investment Partnership I et al.; Application

Notice is hereby given that PB–SB 1983 Investment Partnership I, PB–SB 1983 Investment Partnership IA and PB–SB 1984 Investment Partnership I ("Realty Partnerships"), PB–SB Investments Inc. ("Investments"), the general partner of each Realty Partnership; PB–SB 1983 Investment Partnership III ("Venture Capital Partnership"), and its general partner, PB–SB Ventures Inc ("Ventures," and together with Investments, "General Partners"); and PB–SB 1983 Investment Partnership IV ("Equity Partnership"), and its general partner, Ventures; and PB–SB 1984 Investment Partnership V, PB–SB 1984 Investment Partnership V–A ("Municipal Bond Partnerships," and together with Realty Partnerships, Venture Capital Partnership and Equity Partnership, the "Partnerships," which, together with the General Partners, are referred to as "Applicants") and Ventures, the general partner of each Municipal Bond Partnership; One New York Plaza, New York, N.Y. 10004, filed an application on May 4, 1984, and amendments thereto on July 18, 1984, January 7, 1985 and July 15, 1986, pursuant to sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act"), requesting orders amending certain previous orders issued by the Commission, in the manner hereinafter described. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions.

Applicants state that the Partnerships are limited partnerships formed under the laws of the State of New York, and registered under the Act as non-diversified, closed-end, management investment companies. The Partnerships have been sponsored by Salomon Inc. ("SI") and its affiliates ("Employers") in order to enable participating employees to pool their investment resources and make real estate, real estate-related, venture capital, equity, or municipal bond investments. Interests in the Partnerships are to be offered to a class of investors ("Eligible Persons"), who will form the body of limited partners ("Limited Partners") upon admission to any of the Partnerships. To be an Eligible Person, an employee of an Employer must qualify as an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, and have received an income of at least $150,000 in the calendar year preceding his acquisition of a Partnership interest. The Eligible Person category includes senior traders at Salomon Brothers, Inc. ("Salomon") and Phillipp Brothers, Inc. ("Phillipp Brothers"), both wholly-owned subsidiaries of SI; senior analysts and salesmen and senior members of the corporate finance, municipal finance and real estate finance departments of Salomon; executive officers of SI, Salomon and Phillipp Brothers; department heads of Phillipp Brothers and heads of the operations departments of Salomon; and non-management directors of SI. It is asserted that these persons have substantial knowledge of and experience in financial matters, including investments of the type represented by interests in the Partnerships.

On October 12, 1982, an order was issued (Investment Company Act Release No. 12726) exempting the Realty Partnerships, and any subsequent entities of this class which the Employers may sponsor in the future ("Subsequent Realty Partnerships") from sections 10(a), 10(b), 10(f), 14(a), 15(a), 16(a), 17(a), 17(d), 17(g), 18(i), 23(c), 30(a), 30(b), 30(d), and 32(a) of the Act, further providing that confidential treatment under section 45(a) would be accorded to filings with the Commission pursuant to section 30 of the Act made by the Realty Partnerships, or Subsequent Realty Partnerships. Similarly, on September 27, 1983, an order was issued (Investment Company Act Release No. 13539), exempting the

Venture Capital Partnerships and any subsequent entities of this class which the Employers may sponsor in the future. ("Subsequent Venture Capital Partnerships") from sections 16(a), 16(b), 16(9), 15(c), 16(a), 17(a), 17(d), 17(e)(1), 17(g), 19(b), 19(b), 23(c), 30(a), 30(b), 30(d), and 32(a) of the Act, further providing for confidential treatment under section 45(a) of the Act to the extent filings under Section 30 of the Act should be made by the Venture Capital Partnerships, or Subsequent Venture Capital Partnerships.

Another order was issued (Investment Company Act Release No. 13992) on December 20, 1983, which, as amended on April 2, 1984 (Investment Company Act Release No. 13998), exempted the Equity Partnership, and any subsequent entities of this class which the Employers may sponsor in the future ("Subsequent Equity Partnerships"), from all provisions of the Act, other than sections 9, 17(a), 17(d) (subject to certain exceptions), 30(a), 30(b) and 36 through 53 of the Act, providing as well for confidential treatment under section 45(a), and for certain other relief. On August 28, 1984, an order was issued (Investment Company Act Release No. 14110) exempting the Municipal Bond Partnerships, and any subsequent entities of this class which the Employers may sponsor in the future ("Subsequent Municipal Bond Partnerships") from all provisions of the Act, other than sections 9, 17(a), 17(d), 36(a), 36(b), and 37 through 53 of the Act, providing as well for confidentiality for certain Partnership reports under section 45(a), and certain other relief.

Applicants seek to amend the orders pertaining to the Realty Partnerships and the Venture Capital Partnership, to conform them to the structure of the orders granted the Equity Partnership and the Municipal Bond Partnerships. As amended, the orders would exempt the Realty Partnerships (and Subsequent Realty Partnerships), and the Venture Capital Partnership (and Subsequent Venture Capital Partnerships) from all provisions of the Act other than sections 9, 17(a), 17(d), 30(a), 30(b), and 36 through 53 of the Act, to which they would remain subject except to the extent provided for by the previous orders, and in the case of sections 17(a) and 17(d), and Rule 17d-1 thereunder, as further provided by the amended orders herein requested. Additionally, with respect to section 17(a) of the Act, all Partnerships would attain expanded relief under the amended orders requested, for the specific purpose of enabling them to establish customer brokerage accounts with Salomon. Finally, the Realty and Venture Capital Partnerships would be authorized to engage in joint transactions with certain "upstream affiliates," subject to conditions, without the necessity of obtaining Commission approval in advance of each such transaction.

I. Amended Relief To Apply Only to the Realty and Venture Capital Partnerships

As a result of the requested amendments, the Realty Venture Capital Partnerships (and any Subsequent Realty or Venture Capital Partnerships) would be exempted from the registration provisions of Section 8 of the Act. It is asserted that registration statements would not provide investors with material information which they would not otherwise receive from the detailed periodic reports and other communications provided directly by the Realty and Venture Capital Partnerships in formats specifically designed for the real estate, or venture capital businesses. Applicants represent that the issuers in which the Realty and Venture Capital Partnerships are expected to invest typically will have been organized as limited partnerships and these entities will furnish the Partnerships with financial statements prepared on the basis of federal income tax reporting requirements, rather than ones prepared in accordance with Regulation S-X. Therefore, Applicants assert, the Realty and Venture Capital Partnerships' auditors cannot, as a practical matter, prepare the financial statements required by Regulation S-X. As a condition to the granting of the requested exemption from section 8 of the Act, the Realty and Venture Capital Partnerships agree to file with the Commission, within 120 days after the end of each annual reporting period, a copy of the annual report of each of the Realty and Venture Capital Partnerships, which are sent to Limited Partners. Further, each Realty and Venture Capital Partnership will file with the Commission reports on Form N-SAR and will make copies available to Limited Partners. Applicants request that, with the exception of reports on Form N-SAR, partnership reports be afforded confidential treatment under section 45(a) of the Act. Confidentiality is requested on the grounds that since the Limited Partners will have all such information provided to them directly, maintaining the confidentiality of such information would be consistent with the protection of investors.

The requested amendments would modify the relief from section 17(d) and Rule 17d-1 accorded the Realty and Venture Capital Partnerships by the previous orders. The previous orders permit the Realty and Venture Capital Partnerships to make joint investments with their affiliates, provided that no director, officer, or employee of a General Partner, or an entity owned beneficially by any such person, or members of their immediate families (i.e., a "Special Affiliate"), is a participating investor (other than in the capacity of a Limited Partner of the applicable Realty or Venture Capital Partnership). Applicants represent that the Special Affiliates are substantial private investors (or entities they own), that have economic interests which accord with those of the Realty and Venture Capital Partnerships. Applicants note that the Special Affiliates are presently the only class of affiliated persons not permitted to participate in investments jointly with the Realty and Venture Capital Partnerships. Applicants submit that the criteria which determine the class of Eligible Persons will assure the Limited Partners will be capable of evaluating the efficacy of the procedures and restrictions upon which the additional relief from section 17(d) and Rule 17d-1 is being sought. It is further submitted that if the requested relief were denied, the Realty and Venture Capital Partnerships might be unable to participate in certain attractive investment opportunities because of their inability to commit funds to investments in the requisite amounts in a timely manner.

Applicants also request a modification of the previous order to make it clear that any Realty or Venture Capital Partnership may participate in joint investments with an affiliated person if the basis upon which it is participating is found to be *more* advantageous than that of the affiliated person. It is also requested that any exemptive relief from Section 17 granted the Realty and Venture Capital Partnerships under the previous orders be extended to affiliated persons of affiliated persons.

Applicants request that the exemptions granted by the previous orders from section 17(d), and Rule 17d-1 thereunder, respecting concurrent investments by the Realty and Venture Capital Partnerships, be amended in accordance with the following:

Each Realty and Venture Capital Partnership undertakes not to make any joint investment in which a Special Affiliate of such Partnership, is a participant, or plans concurrently or otherwise, directly or indirectly, to become a participant (other than through an investment in or a relationship with such Partnership);

except that this undertaking shall not be applicable to (a) 25% of the total assets of each such Partnership, and (b) as to the remaining 75% of the total assets of such Partnership, other investments by such Partnership in any other companies, partnerships, or other investment vehicles which are not sponsored, managed, or underwritten on a principal basis by SI, or any of its affiliates, if the amount invested by such Realty or Venture Capital Partnership in any given investment does not exceed 20% of such Partnership's total assets. For purposes of the foregoing, total assets shall be determined as of the time of investment. Any investments made concurrently with a Special Affiliate will be made by such Realty or Venture Capital Partnership on the basis not less advantageous than that of the Special Affiliate. The amended exemptions requested, however, will permit joint investments by a Realty or Venture Capital Partnership and by individual Special Affiliates of the Partnership, who are making their own individual investment decisions apart from any Employer, subject to the following limitations: (i) The conditions as to joint investments stated above in this paragraph would apply if one or more Special Affiliates, who hold in the aggregate 15% or more of the equity interest in SI, make a joint investment with a Realty or Venture Capital Partnership; and (ii) in the case of a joint investment with a Realty or Venture Capital Partnership by any Special Affiliate the General Partner will obtain a commitment from each Special Affiliate that such person will not dispose of his or her investment in the joint investment without giving at least one day's notice to the General Partner so that the Realty or Venture Capital Partnership has the opportunity to dispose of its investment in the joint investment prior to, or concurrently with, such person and on the same terms as such person. In addition, each General Partner expressly represents that it will maintain the records required by section 57(f)(3) of the Act and will comply with the provisions of section 57(h) of the Act; all resolutions of the boards of directors of the General Partners will be available for inspection by Limited Partners.

II. Amended Exemptions Requested for All Partnerships

Applicants are seeking an exemption, to the extent necessary, from section 17(a)(3) of the Act, to permit any Partnership to earn interest on its uninvested cash balances in a customer brokerage account which the Partnership would maintain with Salomon. Salomon asserts that the most efficient and cost-effective means of managing the Partnerships' cash balances would be to allow them to remain in Salomon customer brokerage accounts pending investment, or reinvestment, as the case may be. It is stated that cash balances in customer brokerage accounts at the end of each day are utilized by Salomon on an overnight basis in the course of its trading activities, and that Salomon pays interest on those cash balances at a rate, determined weekly according to the rate of return on certain money market instruments. That interest rate, Applicants state, is determined for all of Salomon's clients as a general category. Because Salomon is a registered broker-dealer, each customer receives the protection of the minimum net capital rules that are applicable to Salomon under the Securities Exchange Act of 1934, as well as the protections afforded by the Securities Investors Protection Act.

Applicants request a blanket exemption from section 17(a)(3) of the Act, which prohibits affiliated persons from borrowing from an investment company, to implement the arrangement. Only the Equity and Municipal Bond Partnerships are expected to have significant cash balances on hand on a regular basis, and those Partnerships have been granted exemptions to enter into repurchase agreements with Salomon. Applicants submit that it would be consistent with these precedents, as well as with the purposes and policies of the Act generally, to exempt all of the Partnerships from the prohibition of section 17(a)(3) to allow them to achieve a fair rate of return on idle funds in the most convenient way available to them.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 30, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: September 5, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20563 Filed 9-11-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 23-C]

Inspector General; Delegation of Authority and Line of Succession

Delegation of authority No. 23-C is hereby made to effect a delegation of authority, and provide for a line of succession, from the Inspector General to the Assistant Inspector General for Audit, the Assistant Inspector General for Investigations, and the Counsel to the Inspector General, as follows:

I. Pursuant to authority vested in me by the Inspector General Act of 1978, 92 Stat. 1101, authority is hereby delegated to the following officials in the following order:

1. Assistant Inspector General for Audit
2. Assistant Inspector General for Investigations
3. Counsel to the Inspector General

to perform, in the event of the absence or incapacity of the Inspector General, or a vacancy in the position of Inspector General, any and all acts which the Inspector General is authorized to perform.

II. Anyone designated by the Inspector General as acting due to a vacancy in one of the positions listed above remains in the line of succession; otherwise, in the absence of one of the above, the authority moves to the next position.

III. This delegation is not in derogation of any authority residing in the above officials relating to the operations of their respective programs nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

IV. The authorities delegated herein may not be redelegated.

Effective Date: September 5, 1986.

Dated: September 5, 1986.

Mary F. Wieseman,

Inspector General.

[FR Doc. 86-20541 Filed 9-11-86; 8:45 am]

BILLING CODE 8025-01-M

Loan Guarantees; Pilot Project in the State of Illinois

Summary: The Small Business Administration authorized a pilot program that is designed to increase the access of Illinois small businesses to fixed rate loans. This program is fully described at 48 FR 36533 (August 11, 1983) and amended at 49 FR 16916 (April 20, 1984).

At the request of local and Regional SBA officials and representatives of the Illinois Department of Commerce and Community Affairs, SBA will extend the pilot program in the State of Illinois through September 30, 1987.

For Further Information Contact: James W. Hammersley, Financial Economist, Small Business Administration, Room 800, 1441 L St. NW., Washington DC 20416 (202-653-5954)

(Catalog of Federal Domestic Assistance Programs, 59.012, Small Business Loans)

Dated: August 25, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-20542 Filed 9-11-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 5, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44326

Date Filed: September 5, 1986.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 3, 1986.

Description: Application of Inter City Airways, Inc. pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to conduct scheduled Oshawa—Buffalo service.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-20570 Filed 9-11-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-86-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before October 29, 1986, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Houston Belt and Terminal Railway Company

(Waiver Petition Docket Number PB-86-3)

The Houston Belt and Terminal Railway Company (HBT) seeks a permanent waiver of compliance with certain provisions of the Power Brakes Regulation (49 CFR Part 232). The HBT seeks a permanent waiver of compliance with § 232.13(e)(1) of the Power Brakes Regulation which requires that transfer train and yard train movements not exceeding 20 miles, must have the air brake hose coupled between all cars, and after the brake system is charged to not less than 60 pounds, a 15-pound service brake pipe reduction must be made to determine that the brakes are applied on each car before releasing and proceeding. The HBT seeks a waiver to move trains between Settegast Yard and Pierce Yard without the benefit of a train air brake test. These movements could be in the general area of ½-mile to 4 miles and trains would traverse and crossover the HBT east and west main tracks. The train movements in this area are controlled by signal indication. There are three highway grade crossings that could be involved during these train movements. Each highway grade crossing is protected by flashers, crossing gates and alarm bells which signal when the circuit area is occupied by a train. At this time, an overpass is being constructed over the main tracks and Pierce Yard lead at Homestead Road. There is a possibility that an overpass will be constructed at Lockwood Drive and at Kilpatrick Boulevard, but no authority has been granted at this time.

Hartwell Railway Company

(Waiver Petition Docket Number RSGM-86-15)

The Hartwell Railway Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives operate over approximately 10 miles of track between Hartwell and Bowersville, Georgia. The Hartwell Railway Company states that the area of operation is rural and they have not experienced any problems with vandalism that would warrant the use of certified glazing. The petitioner, therefore, feels that replacing the existing glazing with FRA certified glazing would impose an unneeded burden on them to protect against situations which they do not encounter.

Indiana and Ohio Railroad

(Waiver Petition Docket Number RSGM-86-16)

The Indiana and Ohio Railroad (INOH) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. The INOH states that the locomotives are

operated over approximately 39 miles of trackage largely rural in nature between Valley Junction, Ohio, and Brookville, Indiana, and Monroe, Ohio, and Mason, Ohio. The petitioner indicates that they have been operating for 8 years with no incidents of stoning of trains or other vandalism. They currently operate one locomotive under an existing FRA glazing waiver and feel that the installation of certified glazing in the three additional units would be an unnecessary cost.

Issued in Washington, DC on September 5, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-20521 Filed 9-11-86; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1986 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Allianz Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Allianz Insurance Company, of Los Angeles, California, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective August 31, 1986.

The Company was last listed as an acceptable surety on Federal bonds at 51 FR 23925, July 1, 1986.

With respect to any bonds currently in force with Allianz Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2298.

Dated: September 5, 1986.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 86-20533 Filed 9-11-86; 8:45 am]

BILLING CODE 4810-35-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 177
Friday, September 12, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Communictions Commission...	1
Federal Deposit Insurance Corporation	2–4
Securities and Exchange Commission.	5, 6

1

FEDERAL COMMUNICATIONS COMMISSION

September 9, 1986.

The following item has been deleted from the list of agenda items scheduled for consideration at the September 10, 1986, Open Meeting, and previously listed in the Commission's Notice of September 3, 1986.

Agenda, Item No., and Subject

Private Radio—1—Title: Amendment of Part 90 Subparts M and S of the Commission's Rules. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making which addresses the elimination of Subpart M and the modification of Subpart S as it applies to trunked Specialized Mobile Radio systems.

Additional information concerning this item may be obtained from Maureen Peratino, FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

Issued: September 9, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 20755 Filed 9–10–86; 2:44 pm]

BILLING CODE 6712-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Thursday, September 4, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Fairview State Bank of Fairview, Okla., Fairview, Oklahoma, which was closed by the Bank Commissioner for the State of Oklahoma on Thursday, September 4, 1986; (2) accept the bid for the transaction submitted by Community National Bank of Okarche, Okarche, Oklahoma; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(B) consider matters relating to Western Bank, Midland, Texas, which was closed by the Banking Commissioner for the State of Texas on Thursday, September 4, 1986.

In calling the meeting, the Board determined, on motion of Director C.C. Hope Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters or less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 4:55 p.m., and at 6:20 p.m. on Friday, September 5, 1986, the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Western Bank, Midland, Texas, which was closed by the Banking Commissioner for the State of Texas on Thursday, September 4, 1986; (2) accepted the bid for the transaction submitted by United Bank, National Association, Midland, Texas; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9((A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 9, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–20756 Filed 9–10–86; 2:45 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, September 9, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of the Islamorada Bank, Monroe County (P.O. Islamorada), Florida, an insured State nonmember bank, for consent to merge, under its charter and with the title "T.I.B. State Bank of the Florida Keys," with Florida Keys First State Bank, Key West, Florida, and for consent to establish the four offices of Florida Keys First State Bank as branches of the resultant bank.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: September 9, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–20757 Filed 9–10–86; 2:46 pm]

BILLING CODE 6714-01-M

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4

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, September 9, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the Corporation's corporate activities.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: September 9, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-20758 Filed 9-10-86; 2:46 pm]

BILLING CODE 6714-01-M

5

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held a closed meeting on Thursday, August 28, 1986, at 450 5th Street, NW., Washington, DC, to consider the following items.

Regulatory matter bearing enforcement implications.

Regulatory matter regarding disclosure of nonpublic information.

Commissioner Peters, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald Schy at (202) 272-2014.

Shirley E. Hollis,

Assistant Secretary.

September 9, 1986.

[FR Doc. 86-20795 Filed 9-10-86; 3:57 pm]

BILLING CODE 8010-01-M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 15, 1986:

A closed meeting will be held on Tuesday, September 16, 1986, at 1:00 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 16, 1986, at 1:00 p.m., will be:

Formal order of investigation.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Litigation matter.

Institution of injunctive action.

Regulatory matter regarding financial institution.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272-2467.

Shirley E. Hollis,

Assistant Secretary.

September 9, 1986.

[FR Doc. 86-20796 Filed 9-10-86; 3:58 pm]

BILLING CODE 8010-01-M

VOL
51

ISS
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federal register

Friday
September 12, 1986

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 51, 71, 78, 80, and 92

Brucellosis Regulations; Interstate Movement of Cattle, Bison, and Swine; Final Rule

VOL 51 ISS 177 SE 12 1986 UMI

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 85-132]

9 CFR Parts 51, 71, 78, 80, and 92

Brucellosis Regulations; Interstate Movement of Cattle, Bison, and Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle, bison, and swine as related to brucellosis. The amendments clarify definitions and interstate movement requirements, impose additional restrictions on the interstate movement of cattle to reduce the risk of interstate spread of brucellosis, and provide alternative methods of moving cattle and bison interstate that will not increase the risk of spreading brucellosis.

EFFECTIVE DATE: October 14, 1986.

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SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register** on September 12, 1985 [50 FR 37201-37229], the Department proposed to amend the regulations governing the interstate movement of cattle, bison, and swine as related to brucellosis. The amendments were to clarify definitions and interstate movement requirements, impose additional restrictions on the interstate movement of cattle to reduce the risk of spreading brucellosis interstate, and provide alternative methods of moving cattle and bison interstate that would not increase the risk of spreading brucellosis.

Comments were solicited concerning the proposal for a 90-day period ending December 12, 1985. The Department received comments from 62 sources. These included veterinarians, health technicians, cattle producers, stockyard owners, and representatives of 8 trade associations, 6 State government agencies, and 1 Veterinary Services regional office. Thirty-five of those responding were from Alabama, with the rest from 16 other States. These comments were carefully considered, and any which raised objections to the proposed rule are discussed in this supplementary information. Except as explained below, the provisions of the proposed rule have been adopted in the final rule based on the reasons set forth in the proposal.

Changes to the Proposed Rule

The Department received 7 comments requesting deletion from the proposal of the modified card test as an official test for brucellosis because the specificity and sensitivity of this test have proven unsatisfactory to accurately classify the brucellosis disease status of cattle and bison. The Department agrees and has deleted all references to the modified card test.

The Department received 8 comments objecting to the definition of "standard card test" under "official test" in proposed § 78.1. The commentors stated that the proposed definition implies the standard card test cannot be used in the field. This test can be used under field conditions to determine the brucellosis disease status of animals. Therefore, this document revises the definition of "standard card test" to provide for the use of the standard card test in the field in certain specified situations.

The Department received 1 comment citing an omission in the definition of "official vaccinate" in proposed § 78.1. The commentor stated that the definition should include a requirement that vaccinations be reported to an official recordkeeping agency. The Department agrees and has revised the definition to conform with current practice. This final rule requires vaccinations to be reported to the State animal health official of the State in which the animal was vaccinated.

The Department received 1 comment that the definition of "official calfhood vaccinate" in proposed § 78.1 should allow individual animal registered breed association registration tattoos, as well as individual animal registered breed association registration brands, to be substituted for official eartags. The Department agrees and has added individual animal registered breed association registration tattoos as an acceptable means of identification for any "official adult vaccinate" or "official calfhood vaccinate" as defined in § 78.1.

The Department received 1 comment pointing out a typographical error in proposed § 78.1 under the definition of "official calfhood vaccinate." The phrase "at least 3 billion and not more than 10 billion live cells per mL dose" should read "at least 3 billion and not more than 10 billion live cells per 2 mL dose." The correction has been made.

The Department received 1 comment stating that the words "cooperative agreement" in the definition of "State representative" in proposed § 78.1 should be changed to "memorandum of understanding." The proposed definition was in error, and this change has been made.

The Department received 1 comment suggesting that the definition of "test-eligible cattle and bison" in proposed § 78.1 be revised to make it clear that such cattle and bison are test-eligible for purposes of interstate movement. The Department agrees, since cattle and bison also may be eligible for herd blood tests and for testing at slaughter, and these tests have different eligibility requirements. This document revises the proposed definition of "test-eligible cattle and bison" by adding an introduction as follows: "For purposes of interstate movement, test-eligible cattle and bison are:"

The Department received 20 comments opposing the definition of "directly" in proposed § 78.1. "Directly" was defined as "without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner." The definition was intended to clear up ambiguity about the meaning of "directly," which previously was undefined. All 20 commentors indicated that under the proposed definition they could not consolidate shipments of slaughter cattle. They stated that if they could not offload and combine such cattle, it would be too expensive to take the animals to slaughter.

The Department does not wish to place undue burdens on owners who may need to combine small shipments of cattle or bison for slaughter. Therefore, two changes have been made in the requirements for direct movement.

First, the final rule will allow cattle and bison to stop for up to 7 days at an "approved intermediate handling facility" before proceeding directly to a recognized slaughtering establishment, provided the cattle or bison do not change ownership during this time. This will allow owners to condense shipments of cattle and bison without increasing the risk of spreading brucellosis.

Approved intermediate handling facilities, as defined in the final rule, shall be premises approved by the Deputy Administrator and the State animal health official for receiving and handling cattle and bison for release to recognized slaughtering establishments. Cattle and bison, except those from a farm of origin, must be accompanied to an approved intermediate handling

facility by either a permit or "S" brand permit, but may not enter if moving in a sealed vehicle. No cattle or bison shall be permitted to leave an approved intermediate handling facility unless they are accompanied by a permit or "S" brand permit which lists a recognized slaughtering establishment as the point of destination. To qualify for and retain approval, an intermediate handling facility must meet the following conditions: (1) The facility must be separate and apart from other livestock handling facilities; (2) Serviceable equipment for cleaning and disinfection must be furnished and maintained with adequate disinfection on hand; (3) The facility must be cleaned and disinfected in accordance with 9 CFR Part 71.4(a); (4) Any document relating to cattle or bison which are or have been in the facility shall be maintained by the facility for a period of 1 year; (5) State representatives and Veterinary Services representatives shall be granted, at reasonable hours, access to all documents required to be maintained by the facility and authority to reproduce the documents; and (6) Each entrance and exit to the facility must prominently display a sign bearing the following words: "All cattle and bison entering this facility must go directly to slaughter". These requirements are necessary to prevent the interstate spread of brucellosis.

The provision to allow cattle and bison to stop at an approved intermediate handling facility before moving directly to a recognized slaughtering establishment has been added to appropriate sections of the regulations. The definition of "directly" remains as proposed.

The second change in the proposed requirements for direct movement relieves certain other direct movement provisions which Department officials now believe to constitute an unnecessary burden.

Specifically, proposed §§ 78.9(c)(1)(i)(B) and 78.9(d)(1)(i)(B) provide that test eligible cattle from herds not known to be affected which originate in Class B and Class C States or areas may be moved for slaughter directly from a farm of origin or a nonquarantined feedlot to a specifically approved stockyard and then directly to a recognized slaughtering establishment if, among other things, (1) such cattle are subjected to an official test at the specifically approved stockyard and found negative and are accompanied by a certificate which shows the test dates and the results of the official tests; or (2) such cattle originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (3) such cattle are moved from the specifically approved stockyard in vehicles closed with official seals and are accompanied by an "S" brand permit. Department officials believe that under these circumstances the risk of such cattle having brucellosis or spreading brucellosis is not great enough to warrant requiring that the movement from the specifically approved stockyard to the recognized slaughtering establishment be "direct". Therefore, this document removes the word "directly" from these provisions (see §§ 78.9(c)(1)(iv) and 78.9 (d)(1)(iv) in this document).

Further, proposed §§ 78.9(c)(1)(ii) and 78.9(d)(1)(ii) provide that test eligible cattle from herds not known to be affected which originate in Class B and Class C States or areas may be moved from other than a farm of origin or a nonquarantined feedlot interstate directly to a recognized slaughtering establishment if, among other things, (1) such cattle are subjected to an official test and found negative within 30 days prior to the interstate movement and are accompanied by a certificate which shows the test dates and the results of the official tests; or (2) such cattle originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (3) such cattle are moved in vehicles closed with official seals and are accompanied by an "S" brand permit. Department officials believe that under these circumstances the risk of such cattle having brucellosis or spreading brucellosis is not great enough to warrant requiring that the movement from other than a farm of origin or a nonquarantined feedlot to a recognized slaughtering establishment be "direct". Therefore, this document removes the word "directly" from these provisions (see §§ 78.9(c)(1)(vi) and 78.9(d)(1)(vi) in this document).

Further, proposed §§ 78.9(c)(2)(i) and 78.9(d)(2)(ii) provide that test eligible cattle from herds not known to be affected which originate in Class B and Class C States or areas may be moved interstate from other than a farm of origin directly to a quarantined feedlot if, among other things, such cattle are subjected to an official test and found negative within 30 days prior to such movement and are accompanied by a certificate which shows the test dates and results of the official tests. Department officials believe that under these circumstances the risk of such cattle having brucellosis or spreading brucellosis is not great enough to warrant requiring that the movement from other than a farm of origin to a quarantined feedlot be "direct". Therefore, this document removes the word "directly" from these provisions (see §§ 78.9(c)(2)(ii) and 78.9(d)(2)(ii) in this document).

The Department received one comment suggesting clarification of the phrase "if feral swine are not in contact with domestic swine" in the definition of "validated brucellosis-free State" in proposed § 78.1. The Department has revised that phrase to say "if feral swine are not in physical contact with domestic swine."

The Department received 8 comments objecting to a requirement in proposed § 78.2(b) that copies of certificates be forwarded to the State animal health official of the State of destination. The commentors pointed out that current practice in some States is to send copies of certificates to the State animal health official of the State of origin for forwarding to the State animal health official of the State of destination. Although proposed § 78.2(b) was not a change in the regulations, the Department does not wish to disrupt the standing procedure in some States for State of origin review of certificates. The Department also realizes that those responsible for forwarding copies of certificates may not have the addresses for State animal health officials of States of destination. For these reasons, final § 78.2(b) requires copies of certificates to be forwarded either to the State animal health official of the State of destination or to the State animal health official of the State of origin for forwarding to the State animal health official of the State of destination. Copies of permits shall continue to be forwarded to the State animal health official of the State of destination.

The Department received 8 comments opposing a provision in the proposal concerning the interstate movement of brucellosis exposed cattle from herds known to be affected and for which no claim for indemnity is being made. Proposed § 78.8(c)(1)(iii) would permit the interstate movement of such cattle which are official vaccinates under 1 year of age and from a herd known to be affected which is following an approved individual herd plan, provided the official vaccinates are individually identified with a hole at least ¾ inch in diameter in the left ear. The commentors argued that the hole was ineffective identification. The Department agrees that the hole is not easily recognized. For this reason and for humane reasons, the requirement for the ¾ inch hole has been deleted from the final rule. The

Department is considering other identification and restrictions.

The Department received 3 comments objecting to a proposed amendment requiring a certificate for certain cattle consigned to slaughter. This amendment was in three places in the proposed regulations: §§ 78.9(c)(1)(i)(B)(1) and 78.9(d)(1)(i)(B)(1), governing the interstate movement from a specifically approved stockyard to a recognized slaughtering establishment of test-eligible cattle which originate in Class B and Class C States or areas, respectively, are not brucellosis exposed, and are from a herd not known to be affected; and § 78.12(d)(1), governing the interstate movement to a recognized slaughtering establishment of cattle from qualified herds in quarantined areas. The proposal would have provided for the movement of such cattle directly to a recognized slaughtering establishment if, among other things, they were accompanied by a certificate which showed, in addition to the items specified in § 78.1, the test dates and results of the official tests. The Department's intention in requiring a certificate in these instances was to maintain the identity of the cattle to slaughter. Since an "S" brand permit also would accomplish this, the final rule allows such cattle to be accompanied by either a certificate or "S" brand permit.

The Department received 4 comments objecting to proposed § 78.9(d)(3)(vi). This was a new proposed provision concerning the interstate movement of test-eligible cattle which originate in Class C States or areas, are not brucellosis exposed, and are from a herd not known to be affected. The proposed amendment was intended to permit such cattle from a farm of origin and from a herd to which no cattle have been added for 120 days or more to move interstate within 30 days after a single negative herd blood test, or within one year of a negative herd blood test if the cattle are negative to an official test within 30 days prior to interstate movement, provided no cattle are added to the herd between the time of the herd blood test and movement. The requirement that such cattle be from a herd to which no cattle have been added for 120 days or more was discussed in the supplementary information to the proposed rule but, as one commentor pointed out, was not included in the text of proposed § 78.9(d)(3)(vi), creating confusion. One commentor said proposed § 78.9(d)(3)(vi) would place more restrictions on cattle from a farm of origin than proposed § 78.9(d)(3)(ii) would place on dealer cattle. Two commentors indicated that proposed § 78.9(d)(3)(vi) repeated proposed § 78.9(d)(3)(ii). Neither assertion is correct. Proposed § 78.9(d)(3)(ii) would require cattle to be negative to 2 official tests conducted at least 60 days apart. In light of these comments, the Department has revised proposed § 78.9(d)(3)(vi) to clarify the requirements for interstate movement and to correct the omission of the 120 day requirement.

The Department received 3 comments opposing proposed § 78.11. This section concerns cattle, except brucellosis reactors and brucellosis exposed cattle, which are moved interstate to a specifically approved stockyard but fail to comply with the requirements of Part 78 for release from the stockyard. Proposed § 78.11 provides that such cattle could be moved from the specifically approved stockyard directly to a recognized slaughtering establishment or quarantined feedlot or, with the concurrence of the State animal health officials of the States of origin and destination, returned to the farm of origin. The proposal would require such cattle to be accompanied by an "S" brand permit and either "S" branded or moved in vehicles closed with official seals. The three commentors indicated that there is no need to return such properly permitted cattle to a farm of origin in a sealed vehicle. The Department agrees. Cattle moving pursuant to § 78.11 are not brucellosis reactors or brucellosis exposed animals and, therefore, do not pose the type of disease risk which would warrant requiring that such animals be "S" branded or that they be moved in sealed vehicles. In this regard, it should be noted that cattle from a farm of origin which are moved to a specifically approved stockyard and then determined to be brucellosis exposed may be returned to the farm of origin under permit but without being "S" branded or transported in vehicles closed with official seals. Therefore, § 78.11 in this document provides that such cattle may, with the concurrence of the State animal health officials of the States of origin and destination, be moved directly back to the farm of origin if accompanied by a permit. The final rule also stipulates that such cattle may be moved directly to a quarantined feedlot only if they are "S" branded and accompanied by an "S" brand permit. The provision for cattle to be moved in a sealed vehicle is retained in the final rule only for such cattle moving directly to a recognized slaughtering establishment.

The Department received 19 comments objecting to the requirement in proposed § 78.44 for separate penning of cattle from each class of State or area. Each stockyard agreement in proposed § 78.44 would require cattle from each class of State or area to be penned apart from any other cattle until they have met the requirements of Title 9, Code of Federal Regulations, for release from the stockyard. One commentor said that his stockyard tests cattle before they leave the yard, and that it would be impossible to let stocker and feeder cattle under the same system if the cattle have to be penned separately by class of State or area. Two commentors stated that most markets have neither the facilities nor the pen arrangements to comply with the requirement for separate pens. Others who gave reasons for objecting said the requirement would place a severe financial burden on livestock markets. One commentor suggested separating only test-eligible cattle from Class C States or areas. Another objected to separating slaughter cattle.

The Department agrees that separate pens should be required only for test-eligible cattle. Furthermore, after reviewing the cost to market owners versus the disease risk, the Department has agreed to exempt cattle from Class Free and Class A States or areas from this requirement. The Department believes, however, that mixing of cattle from the lower classes of States or areas would seriously undermine efforts to prevent the spread of brucellosis. Thus, the final rule requires separate penning only of test-eligible cattle from Class B and C States or areas and quarantined areas. As in the proposal, such cattle must be penned separately only until they meet the requirements for release from the stockyard. This modification of the proposed rule is expected to make compliance easier and less costly for all stockyards. Stockyards which test cattle as they enter the premises should feel very little impact.

The Department received 1 comment suggesting different names for the two types of specifically approved stockyards in proposed § 78.44. The Department wishes to retain the term specifically approved stockyard but agrees that a way of referring to one or the other is necessary. In the final rule, whenever cattle or bison may only be moved to a specifically approved stockyard authorized to receive brucellosis reactors or brucellosis exposed animals, the text of the rule specifies "specifically approved stockyard approved to receive brucellosis reactors," "specifically approved stockyard approved to receive brucellosis exposed cattle," or

"specifically approved stockyard approved to receive brucellosis exposed bison," whichever is appropriate. In the final rule, whenever cattle or bison may be moved to either type of specifically approved stockyard, the text of the rule specifies "specifically approved stockyard".

The Department received 1 comment suggesting that footnote 2 in proposed § 78.33 be revised to require rather than request certain actions by operators of establishments where swine are identified on arrival. As proposed, this footnote requested the operator of each place of business where such swine are identified on arrival in accordance with this section to enter such identification on the yarding receipt, sale ticket, invoice, waybill, or similar document relating to the swine; maintain such documents on file at the place of business for at least 1 year; and make such documents available for inspection during ordinary business hours upon request by a Veterinary Services representative or State representative. The Department agrees and this final rule requires that the operator of each place of business where such swine are identified on arrival in accordance with this section shall perform these functions. This change is necessary to ensure that these records are made and are available for inspection. Such records are the only means by which brucellosis in swine can be traced. As such, they are a critical tool in eradicating and preventing the spread of brucellosis in swine.

The Department also made the following changes for the reasons discussed below:

The terms " 'B' branded," "designated epidemiologist," "market swine test program," and "official vaccination eartag" are defined in final § 78.1 to clarify their meanings. A new term, "approved intermediate handling facility," also is defined in final § 78.1.

"Individual animal registered breed association registration brand" has been added as an acceptable means of individual identification under the definitions of "certificate," "permit," and " 'S' brand permit" in final § 78.1. Such identification is permitted by the present regulations and was inadvertently omitted from the proposed rule.

The definitions of "permit" and " 'S' brand permit" in proposed § 78.1 also have been amended to clarify the requirement that a new permit or "S" brand permit is required for each change in destination.

A new paragraph 13 has been added to both stockyard agreements under proposed § 78.44 (c) and (d) as follows: "Test-eligible cattle penned with test-eligible cattle from a lower class State or area, in violation of this agreement, shall have the status of the State or area of lower class for any subsequent movement." This amendment is necessary to regulate movement of test-eligible cattle from Class B or C States or areas which may be mixed with cattle from a lower class State or area before meeting the requirements for release from the specifically approved stockyard.

As a result of the above amendment to proposed § 78.44, the definition of "originate" in proposed § 78.1 also has been changed. A new paragraph (c) has been added as follows: "Cattle penned in a specifically approved stockyard with cattle from a lower class State or area, in violation of the requirements set forth in § 78.44, shall have the status of the State or area of lower class for any subsequent movement."

Proposed § 78.41, "State/area classifications," has been revised to reflect changes in classification for the States of Mississippi and Nevada and for 12 Counties in the State of Florida. Mississippi previously was listed as a Class C State. Its status was changed to Class B State by an interim rule published on November 4, 1985 [50 FR 45806–45809]. Nevada previously was listed as a Class B State. Its status was changed to Class A State by an interim rule published on February 13, 1986 [51 FR 5309–5311]. Florida is divided into a Class B area and a Class C area. An interim rule published on October 7, 1985, amended the regulations to change the status of 12 Counties in Florida from Class C to Class B. These Counties are Alachua, Baker, Bradford, Clay, Columbia, Duval, Gilchrist, Nassau, Putnam, Saint Johns, Suwannee, and Union.

This document also makes numerous nonsubstantive changes only for clarification, and such changes are not addressed in this supplemental information.

Other comments

Except as noted below, other comments supported the proposed rule.

The Department received 1 comment suggesting a change to the definition of "brucellosis exposed" in proposed § 78.1. The proposed definition provides that animals are brucellosis exposed if they have been in contact with a brucellosis reactor for less than 24 hours if the brucellosis reactor has aborted, calved, or farrowed within the past 30 days. Noting that it is not always possible to determine whether and when an animal has aborted, calved, or farrowed, the commentor suggested removing this provision. The Department disagrees since without this provision an animal penned with a reactor known to have aborted, calved, or farrowed within the past 30 days could not be classified as brucellosis exposed.

The Department received 5 comments objecting to the definition of "moved" in proposed § 78.1. Present § 78.1 defines "moved" as "Shipped, transported, or otherwise moved, or delivered, or received for movement." Proposed § 78.1 added the phrase "or otherwise aided, induced or caused to be moved." One commentor wanted the phrase "received for movement" deleted from the definition. This phrase is not a change in the regulations. Three commentors said the proposed definition is too broad. The Department disagrees, pointing out that the amendment is necessary to extend legal responsibility for violations to persons indirectly responsible for unauthorized movement, i.e., a veterinarian who prepares false documents or a seller who promises to have animals tested but does not. The final rule retains the definition as proposed.

The Department received 1 comment objecting to a proposed amendment to the definition of "certificate" in § 78.1. This amendment would permit ownership brands to be used as identification on certificates for cattle being moved interstate when no official test for brucellosis is required, provided the ownership brands are registered with the official brand recording agency and the cattle being moved are accompanied by official brand inspection certificates. The commentor said ownership brands should not be permitted because brand laws are not uniform and don't exist in some States. Since the Department is permitting, but not requiring, use of ownership brands, no change has been made in the definition.

The Department received 1 comment suggesting a change to the definition of "certified brucellosis-free herd" in proposed § 78.1. The proposed definition would allow a dairy herd to qualify as a certified brucellosis-free herd by testing negative to a minimum of four consecutive brucellosis ring tests at not less than 90-day intervals, followed by a negative herd blood test conducted within 90 days after the last brucellosis ring test. The commentor suggested intervals of 75–105 days between the brucellosis ring tests. The intent of the provision is to have a herd under surveillance for 12 months prior to certification. An interval of less than 90 days would not accomplish this and

would increase the risk of spreading brucellosis interstate. The definition has been retained as proposed.

The Department received 1 comment opposing the proposed change in dosage for official calfhood vaccination. The present regulations require "at least 300 million and not more than 3 billion live cells per 2 ml. dose." The definition of "official calfhood vaccinate" in proposed § 78.1 would change that to at least "3 billion and not more than 10 billion live cells per 2 ml. dose." The commentor feels that the new dosage will increase the number of brucellosis reactors. As discussed in the proposal, little difference has been observed in persistence of blood serum titers between calves vaccinated with 1 billion live cells and calves vaccinated with 10 billion live cells. In most cases, the higher dosage resulted in blood serum titers for only 1–2 additional weeks. Some research also suggests that calves in the 4–6 month age group develop better resistance to brucellosis following use of the higher dosage. Therefore, no change has been made based on this comment.

The Department received 1 comment objecting to the definition of "official eartag" in proposed § 78.1. The proposal amended the present definition of "official metal eartag" by removing the word "metal" so that plastic tags can be used as well as metal tags. The commentor argued that plastic could be tampered with and said the word "metal" should be returned to the definition.The Department has made no change to the proposed definition; the definition requires use of "Veterinary Services approved" eartags, which are tamper resistant.

The Department received 3 comments objecting to a provision in the definition of "official adult vaccinate" in proposed § 78.1. The provision would permit official adult vaccinates to be permanently identified by a "V" hot brand on the right jaw or high on the hip near the tailhead. The commentors opposed using a "V" hot brand on the hip. They stated that such a brand may be illegal in some States, that States with brand laws already have brands on the hip, and that a brand located on the hip might not be observed. The Department has retained this provision in the final rule for the following reasons. The "V" hot brand on the hip is not required. And, although it may be harder to recognize adult vaccinates with the brand located on the hip, the Department feels the benefit to owners of not having to restrain the head to get a good brand outweighs this disadvantage. In addition, personnel will be informed of this procedure and advised to check for the brand on the hip.

The Department received 1 comment objecting to the definition of "approved individual herd plan" in proposed § 78.1. The present definition requires an approved individual herd plan to be designed by the herd owner, the owner's veterinarian if requested, and a veterinarian of the Cooperative Brucellosis Eradication Program. The plan must be approved by the State animal health official and the Veterinarian in Charge. Proposed § 78.1 replaced "veterinarian of the Cooperative Brucellosis Eradication Program" with "a State representative or Veterinary Services representative." The commentor objected to requiring plans to be approved by both the Veterinarian in Charge and the State animal health official. This is not a change in the regulations. The commentor also said that the State or Federal representative should be a veterinarian. The Department disagrees and has retained the definition as proposed for the following reasons. State and Veterinary Services representatives are qualified to design individual herd plans and in most cases work under the supervision of a State or Federal veterinarian. Using such representatives to perform this function will enhance brucellosis eradication efforts in States where State or Federal veterinarians are not readily available. Furthermore, any individual herd plan must be approved by both the Veterinarian in Charge and the State animal health official.

The Department received 2 comments opposing proposed § 78.2(a), which would amend the requirements for handling certificates and permits required for interstate movement. Present § 78.3(a) requires that whenever animals are moved interstate by a transportation company issuing waybills or other forms of billing covering the movement, certificates or permits must be attached to and accompany the billing to the animals' destination. Present § 78.3(b) requires that whenever a transportation agency does not issue waybills or other forms of billing, certificates or permits must accompany animals moving interstate. Proposed § 78.2(a) would require certificates or permits to accompany animals to destination in all instances of interstate movement and be delivered to the consignee or the person receiving the animals. This amendment has been retained as proposed for the following reasons, which were set forth in the proposal. Present § 78.3 (a) and (b) and proposed § 78.2(a) require certificates or permits to provide animal health officials with a means of tracing animal movement and the spread of brucellosis. There appears to be no reason to limit the requirements set forth in present § 78.3 (a) and (b) to instances in which transportation companies are involved.

The Department received 3 comments objecting to proposed § 78.44, which would establish two types of specifically approved stockyards. Proposed § 78.44(c) sets forth the requirements for a "Specifically Approved Stockyard for Handling Cattle and Bison Pursuant to Title 9 of the Code of Federal Regulations," and proposed § 78.44(d) sets forth the requirements for a "Specifically Approved Stockyard for Handling Cattle and Bison Except to Receive Brucellosis Reactor, Brucellosis Suspect and Brucellosis Exposed Cattle and Bison Pursuant to Title 9 of the Code of Federal Regulations." The commentors stated that they saw little need for market approval other than for markets handling restricted cattle. However, both types of specifically approved stockyards may handle restricted cattle and bison. The latter type of stockyard is prohibited from receiving known brucellosis reactor, suspect or exposed cattle and bison, but cattle and bison may be found to be infected after arrival at such stockyard. Therefore, the final rule retains this provision as proposed.

The Department received 2 comments opposing an amendment to the requirements for moving cattle interstate in the course of normal ranching operations without change of ownership to another premises belonging to the same owner. Present §§ 78.9(a), 78.9(b)(3)(iv), and 78.9(c)(3)(v) require that premises from which and to which cattle are moved interstate during the course of normal ranching operations be owned by the same person. The proposal would allow the two premises to be owned, leased or rented by the same person. The commentors expressed concern that some ranchers may lease property in order to get around the restrictions on interstate movement of cattle. One suggested limiting the provision for lease or rental to owners whose land straddles 2 States; the other suggested limiting this provision to owners who have had the land as part of their operations in previous years. The Department feels the commentors have raised a valid concern but has insufficient information to change the regulations. Changes will be considered, however, after further review and discussion.

The Department received comments from 8 individuals objecting to proposed § 78.10, which would require certain cattle to be official vaccinates to move into or out of Class B or C States or areas, unless they are moved directly to a recognized slaughtering establishment or quarantined feedlot. Six commentors argued that the requirement would infringe on States' rights. Two commentors objected to requiring vaccinations for cattle moving to slaughter; one objected to requiring vaccinations for cattle moving to slaughter or a quarantined feedlot; and one objected to requiring vaccinations for cattle without regard to purpose of movement. As stated in the proposal, vaccinations are not required for cattle moving directly to a recognized slaughtering establishment or quarantined feedlot. The final rule also exempts cattle moving directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment. The six comments concerning States' rights are from individuals in 2 States. Several large groups, including the United States Animal Health Association (USAHA), however, support the proposed amendment, which parallels USAHA recommendations. The Department believes this amendment is necessary to prevent the interstate spread of brucellosis. Officially vaccinated cattle are more resistant to infection and are less likely to transmit the disease to other animals. Vaccination would protect cattle entering areas of high infection and cattle potentially in contact with infected cattle prior to interstate movement.

The Department received 6 comments objecting to the requirement in proposed § 78.44 that stockyards requesting approval enter into an agreement with Veterinary Services. Present § 78.25 requires a Memorandum of Understanding between Veterinary Services and the States in which such stockyards are located. The requirement has been retained as proposed for the reason set forth in the proposal: Since those legally responsible for operating the stockyard are in a position to ensure that the standards for approval are met, it appears appropriate to have stockyard operators enter into any agreement with Veterinary Services. Furthermore, both agreements in proposed § 78.44 contain provisions requiring specifically approved stockyards to grant State representatives, as well as Veterinary Services representives, access to stockyard premises and facilities to ensure compliance with the regulations.

The Department received 1 comment stating that proposed § 78.44 does not require the presence of a veterinarian in the marketplace. Proposed § 78.44 (c)(1) and (d)(1) require "an accredited veterinarian, State representative, or Veterinary Services representative" to be on the stockyard premises on the sale days to perform duties in accordance with State and Federal regulations. The commentor suggested substituting the terms "accredited veterinarian, State veterinarian or Veterinary Services veterinarian." It was not the Department's intention to require the presence of a veterinarian in the stockyard on all sale days since there are Veterinary Services representatives and State representatives qualified to perform the work under the Brucellosis Eradication Program. Therefore, no change has been made to this proposed requirement.

The Department received 22 comments objecting to the provision in proposed § 78.44(c) requiring impervious floors in quarantined pens used to confine brucellosis reactors and suspects in specifically approved stockyards authorized to receive such cattle and bison. The commentors cited the cost of installing concrete floors and questioned whether such floors would reduce the disease risk. Porous floors, such as soil floors or floors of untreated wood, cannot be properly disinfected because the organic material in such floors interferes with the action of the disinfectant. Impervious floors are necessary for proper cleaning and disinfecting to minimize the risk of spreading brucellosis to animals using the pens after use by brucellosis reactors or suspects. The cost of these impervious floors will be minimized because they are required only for quarantined pens used to confine brucellosis reactors or suspects, and only in specifically approved stockyards authorized to receive such cattle and bison. Brucellosis exposed cattle or bison, which might come into such a stockyard in large numbers, are not required to be confined in pens with impervious floors. Requiring impervious floors in certain quarantined pens is necessary to ensure that brucellosis reactors and suspects, which pose a known threat of spreading brucellosis, are handled in a manner which will reduce the likelihood of that happening. The requirement is retained as proposed.

The Department received 1 comment that the definition of the word "interstate" be amended to delete the movements between two locations in the same State but through another State when there is no offloading of livestock during such movements. The Department disagrees. Movement between two points in the same State but through another State is an interstate movement which must be regulated to prevent the interstate spread of brucellosis.

In addition, the Department received 4 comments which raised issues not addressed in the proposal. These included a proposal for an inspection and approval form that would apply to a centrally organized stockyard; a recommendation that test-eligible animals entering quarantined feedlots in Class A States be tested prior to or upon arrival; a recommendation to require first point-of-concentration testing of test-eligible animals in Class B States; and a proposal to amend interstate movement requirements so that brucellosis suspects would be required to follow Part II, M. of the Brucellosis Uniform Methods and Regulations. Because these issues were not addressed in the proposed rule, these comments were not considered as part of this rulemaking.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and have been assigned OMB control numbers 0579–0047, 0579–0051, and 0579–0064.

Executive Order 12291

This action is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this action would have an annual effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; would not have a significant adverse effect on competition, employment or investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities because both direct and indirect cost to producers should be minimal. Approximately 22 million female calves are born in the United States each year. Nine million calves were officially

vaccinated against brucellosis in Fiscal Year 1984. Only those female cattle moving into or out of Class C States or areas and those dairy cattle moving into or out of Class B States or areas will require vaccination under this rule. It is estimated that a maximum of 2 million more calves may be vaccinated in order to move interstate under the provisions of this rule at a cost of approximately $5.0 million. The $2.50 cost per animal is relatively small in comparison to the other costs of production and to the value of the cattle vaccinated.

List of Subjects

9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

9 CFR Part 80

Animal diseases, Livestock and livestock products, Transportation.

9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, Parts 51, 71, 78, 80, and 92 are amended as follows:

1. Part 78 is revised to read:

PART 78—BRUCELLOSIS

Sec.

Subpart A—General Provisions

78.1 Definitions.
78.2 Handling of certificates, permits, and "S" brand permits for interstate movement of animals.
78.3 Handling in transit of cattle and bison moved interstate.
78.4 [Reserved]

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

78.5 General restrictions.
78.6 Steers and spayed heifers.
78.7 Brucellosis reactor cattle.
78.8 Brucellosis exposed cattle.
78.9 Cattle from herds not known to be affected.
78.10 Official vaccination of cattle moving into and out of Class B and Class C States or areas.
78.11 Cattle moved to a specifically approved stockyard not in accordance with this part.
78.12 Cattle from quarantined areas.
78.13 Other movements.
78.14–78.19 [Reserved]

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis

78.20 General restrictions.
78.21 Bison steers and spayed heifers.
78.22 Brucellosis reactor bison.
78.23 Brucellosis exposed bison.
78.24 Bison from herds not known to be affected.
78.25 Other movements.
78.26–78.29 [Reserved]

Subpart D—Restrictions on Movement of Swine Because of Brucellosis

78.30 General restrictions.
78.31 Brucellosis reactor swine.
78.32 Brucellosis exposed swine.
78.33 Sows and Boars.
78.34 Other movements.
78.35–78.39 [Reserved]

Subpart E—Designation of Brucellosis Areas, and Specifically Approved Stockyards.

78.40 Designation of States/areas.
78.41 State/area classification.
78.42 Quarantined areas
78.43 Validated brucellosis-free States.
78.44 Specifically approved stockyards.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—General Provisions

§ 78.1 Definitions.

The following terms are defined in this section:

Accredited veterinarian
Animals
Approved brucella vaccine
Approved individual herd plan
Approved intermediate handling facility
Area
"B" branded
Boar
Brucellosis
Brucellosis exposed
Brucellosis negative
Brucellosis reactor
Brucellosis ring test
Brucellosis suspect
Certificate
Certified brucellosis-free herd
Class A State or area
Class B State or area
Class C State or area
Class Free State or area
Dairy cattle
Deputy Administrator
Designated epidemiologist
Directly
Epidemiologist
Epidemiology
Farm of origin
Finished fed cattle
Herd
Herd blood test
Herd known to be affected
Herd not known to be affected
Herd of origin of swine
Interstate
Market cattle identification test cattle
Market swine test swine
Moved
Moved (movement) in interstate commerce
Official adult vaccinate
Official brand inspection certificate
Official brand recording agency
Official calfhood vaccinate
Official eartag
Official seal
Official test
Official vaccinate
Official vaccination eartag
Originate
Parturient
Permit
Permit for entry
Person
Postparturient
Qualified herd
Quarantined area
Quarantined feedlot
Quarantined pasture
Recognized slaughtering establishment
"S" branded
"S" brand permit
Sow
Specifically approved stockyard
State
State animal health official
State representative
Test-eligible cattle and bison
Validated brucellosis-free herd
Validated brucellosis-free State
Veterinarian in Charge
Veterinary Services
Veterinary Services representative
Whole herd vaccination

As used in this part, the following terms shall have the meanings set forth in this section.

Accredited veterinarian. An accredited veterinarian as defined in Part 160 of this chapter.

Animals. Cattle, bison, and swine.

Approved brucella vaccine. A *Brucella abortus* Strain 19 product approved by and produced under license of the United States Department of Agriculture for injection into cattle and bison to enhance their resistance to brucellosis.

Approved individual herd plan. A herd management and testing plan designed by the herd owner, the owner's veterinarian if so requested, and a State representative or Veterinary Services representative to determine the disease status of animals in the herd and to control and eradicate brucellosis within the herd. The plan must be jointly approved by the State animal health official and the Veterinarian in Charge.

Approved intermediate handling facility. Premises approved by the Deputy Administrator and the State animal health official for receiving and handling cattle and bison for release only to recognized slaughtering establishments. Cattle and bison may be held at an approved intermediate handling facility for a maximum of 7 days and may not change ownership during this time. No cattle or bison, except cattle or bison moved directly

from a farm of origin, shall be permitted to enter an approved intermediate handling facility unless they are accompanied by a permit or "S" brand permit. Cattle or bison transported in vehicles closed with official seals are prohibited from entering the approved intermediate handling facility. No cattle or bison shall be permitted to leave an approved intermediate handling facility unless they are accompanied by a permit or "S" brand permit which lists a recognized slaughtering establishment as the point of destination. To qualify for and retain approval, the following conditions must be met: (a) The facility must be separate and apart from other livestock handling facilities; (b) Serviceable equipment for cleaning and disinfection shall be furnished and maintained with adequate disinfectant on hand; (c) The facility must be cleaned and disinfected in accordance with § 71.4(a) of this chapter; (d) Any document relating to cattle or bison which are or have been in the facility shall be maintained by the facility for a period of 1 year; (e) State representatives and Veterinary Services representatives shall be granted, at reasonable hours, access to all documents required to be maintained by the facility and authority to reproduce the documents; and (f) Each entrance and exit to the facility must prominently display a sign bearing the following words: "All cattle and bison entering this facility must go directly to slaughter". The Deputy Administrator may withdraw or deny approval of any intermediate handling facility in accordance with § 78.44(b).

Area. That portion of any State which has a separate brucellosis classification under this part.

"B" branded. Branding with a hot iron the letter "B" at least 5 sq. cm. (2 x 2 inches) in size on the left jaw.

Boar. An uncastrated male swine 6 months of age or over which is or has been capable of being used for breeding purposes.

Brucellosis. The contagious, infectious, and communicable disease caused by bacteria of the genus *Brucella.* It is also known as Bangs disease, undulant fever, and contagious abortion.

Brucellosis exposed. Except for brucellosis reactors, animals that are part of a herd known to be affected, or are in a quarantined feedlot or a quarantined pasture, or are brucellosis suspects, or that have been in contact with a brucellosis reactor for a period of 24 hours or more, or for a period of less than 24 hours if the brucellosis reactor has aborted, calved, or farrowed within the past 30 days or has a vaginal or uterine discharge.

Brucellosis negative. An animal subjected to one or more official tests resulting in a brucellosis negative classification or reclassified as brucellosis negative by a designated epidemiologist as provided for in the definition of official test.

Brucellosis reactor. An animal subjected to an official test resulting in a brucellosis reactor classification or subjected to a bacteriological examination for field strain *Brucella abortus* and found positive or reclassified as a brucellosis reactor by a designated epidemiologist as provided for in the definition of official test.

Brucellosis ring test. The brucellosis ring test is conducted on composite milk or cream samples from dairy herds and is interpreted as either negative or suspicious (positive). Herds which are negative to the brucellosis ring test and which are not quarantined as brucellosis affected are classified as brucellosis negative for public health ordinances and surveillance purposes. Herds classified as suspicious require a herd blood test to determine animal and herd status.

Brucellosis suspect. An animal subjected to an official test resulting in a brucellosis suspect classification or reclassified as a brucellosis suspect by a designated epidemiologist as provided for in the definition of official test.

Certificate. An official document issued by a Veterinary Services representative, State representative, or accredited veterinarian at the point of origin of a movement of animals. It must show the official eartag number, individual animal registered breed association registration tattoo, individual animal registered breed association registration brand, individual animal registered breed association registration number, or similar individual identification of each animal to be moved; the number of animals covered by the document; the purpose for which the animals are to be moved; the points of origin and destination; the consignor; and the consignee. Ownership brands may be used as identification on certificates for cattle moved interstate when no official test is required under this part, provided the ownership brands are registered with the official brand recording agency and the cattle are accompanied by official brand inspection certificates.

Certified brucellosis-free herd. A herd of cattle or bison which has qualified for and whose owner has been issued a certified brucellosis-free herd certificate signed by the appropriate State animal health official and the Veterinarian in Charge.

(a) Certification. Either of the following two methods may be used to qualify a herd:

(1) In the case of dairy cattle, by conducting a minimum of four consecutive negative brucellosis ring tests at not less than 90-day intervals, followed by a negative herd blood test within 90 days after the last negative brucellosis ring test; or

(2) By conducting at least two consecutive negative herd blood tests not less than 10 months nor more than 14 months apart.

(b) Maintaining certification. Certified brucellosis-free herd status will remain in effect for 1 year beginning with the date of issuance of the certified brucellosis-free herd certificate. A negative herd blood test must be conducted within 10 to 12 months of the last certification date for continuous status. Lapsed certification may be reinstated if a herd blood test is conducted within 14 months of the last certification date. A new recertification test date may be established if requested by the owner and if the herd is negative to a herd blood test on that date, provided that date is within 1 year of the previous certification date. A herd decertified because a brucellosis reactor is found may be recertified only by repeating the entire certification process.

Class A State or area. A State or area which meets standards for classification as a Class A State or area and is certified as such on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reclassification to a lower class may be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. The following are the standards to attain and maintain Class A status.

(a) Surveillance.

(1) Brucellosis ring test. The brucellosis ring test shall be conducted in the State or area at least four times per year at approximately 90-day intervals. All herds producing milk for sale shall be included in at least three of the four brucellosis ring tests per year.

(2) Market Cattle Identification (MCI) program. (i) Coverage. All recognized slaughtering establishments in the State or area must participate in the MCI program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subjected to an

official test; (ii) Brucellosis reactors. At least 90 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test.

(3) Epidemiologic surveillance. (i) Adjacent herds. All adjacent herds or other herds having contact with cattle in a herd known to be affected shall have an approved individual herd plan in effect within 15 days of notification of brucellosis in the herd known to be affected; (ii) Epidemiologically traced herds. All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

(b) Herd infection rate.

(1) Percentage of herds affected. States or areas must not exceed a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months due to field strain *Brucella abortus*, of 0.25 percent or 2.5 herds per 1,000, except in States with 10,000 or fewer herds. A special review by the Deputy Administrator will be made to determine if such small herd population States would qualify for Class A status. Locations of herds, sources of brucellosis, and brucellosis control measures taken by the State will be considered.

(2) Epidemiologic investigation. Within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors have been found in any herd, State representatives or Veterinary Services representatives shall investigate that herd to identify possible sources of brucellosis. All possible sources of brucellosis identified shall be contacted within an additional 15 days to determine appropriate action.

(c) MCI reactor prevalence rate. The State or area must maintain a 12 consecutive month MCI reactor prevalence rate not to exceed 1 brucellosis reactor per 1,000 cattle tested (0.10 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum titer or greater will be counted as MCI reactors. The MCI reactor prevalence rate is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in the MCI test cattle. The MCI reactor prevalence rate is adjusted for out-of-State and out-of-area cattle, recordkeeping errors, and cattle traced to herds known to be affected or to herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate will be permitted when it is affected by unusual marketing conditions.

Class B State or area. A State or area which meets standards for classification as a Class B State or area and is certified as such on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reclassification to a lower class can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. The following are the standards to attain and maintain Class B status.

(a) Surveillance.

(1) Brucellosis ring test. The brucellosis ring test shall be conducted in the State or area at least four times per year at approximately 90-day intervals. All herds producing milk for sale shall be included in at least three of the four brucellosis ring tests per year.

(2) Market Cattle Identification (MCI) program. (i) Coverage. All recognized slaughtering establishments in the State or area must participate in the MCI program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subjected to an official test; (ii) Brucellosis reactors. At least 80 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 30 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test.

(3) Epidemiologic surveillance. (i) Adjacent herds. All adjacent herds or other herds having contact with cattle in a herd known to be affected shall have an approved individual herd plan in effect within 45 days of notification of brucellosis in the herd known to be affected; (ii) Epidemiologically traced herds. All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall have an approved individual herd plan in effect within 45 days of locating the source herd or recipient herd.

(b) Herd infection rate.

(1) Percentage of herds affected. States or areas must not exceed a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months due to field strain *Brucella abortus*, of 1.5 percent or 15 herds per 1,000, except in States with 1,000 or fewer herds. A special review by the Deputy Administrator will be made to determine if such small herd population States would qualify for Class B status. Locations of herds, sources of brucellosis, and brucellosis control measures taken by the State will be considered.

(2) Epidemiologic investigation. Within 45 days after notification by the cooperative State-Federal laboratory that brucellosis reactors have been found in any herd, State representatives or Veterinary Services representatives shall investigate that herd to identify possible sources of brucellosis. All possible sources of brucellosis identified shall be contacted within an additional 30 days to determine appropriate action.

(c) MCI reactor prevalence rate. The State or area must maintain a 12 consecutive month MCI reactor prevalence rate not to exceed 3 brucellosis reactors per 1,000 cattle tested (0.30 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum titer or greater will be counted as MCI reactors. The MCI reactor prevalence rate is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in the MCI test cattle. The MCI reactor prevalence rate is adjusted for out-of-State and out-of-area cattle, recordkeeping errors, and cattle traced to herds known to be affected or to herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate will be permitted when it is affected by unusual marketing conditions.

Class C State or area. A State or area which meets standards for classification as a Class C State or area and is

certified as such on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reduction in status to "quarantined area" can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. The following are the standards to attain and maintain Class C status.

(a) Surveillance.

(1) Brucellosis ring test. The brucellosis ring test shall be conducted in the State or area at least four times per year at approximately 90-day intervals. All herds producing milk for sale shall be included in at least three of the four brucellosis ring tests per year.

(2) Market Cattle Identification (MCI) program. (i) Coverage. All recognized slaughtering establishments in the State or area must participate in the MCI program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subjected to an official test; (ii) Brucellosis reactors. At least 80 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 30 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days of the official notification that brucellosis reactors were found on the MCI test.

(3) Epidemiologic surveillance. (i) Adjacent herds. All adjacent herds or other herds having contact with cattle in a herd known to be affected shall have an approved individual herd plan in effect within 45 days of notification of brucellosis in the herd known to be affected; (ii) Epidemiologically traced herds. All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall have an approved individual herd plan in effect within 45 days of locating the source herd or recipient herd.

(b) Herd infection rate.

(1) Percentage of herds affected. States or areas exceed a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months due to field strain *Brucella abortus*, of 1.5 percent or 15 herds per 1,000, except in States with 1,000 or fewer herds. A special review by the Deputy Administrator will be made to determine if such small herd population States should be classified as a Class C State. Locations of herds, sources of brucellosis, and brucellosis control measures taken by the State will be considered.

(2) Epidemiologic investigation. Within 45 days after notification by the cooperative State-Federal laboratory that brucellosis reactors have been found in any herd, State representatives or Veterinary Services representatives shall investigate that herd to identify possible sources of brucellosis. All possible sources of brucellosis identified shall be contacted within an additional 30 days to determine appropriate action.

(c) MCI reactor prevalence rate. The State or area maintains a 12 consecutive month MCI reactor prevalence rate exceeding 3 brucellosis reactors per 1,000 cattle tested (0.30 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum titer or greater will be counted as MCI reactors. The MCI reactor prevalence rate is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in the MCI test cattle. The MCI reactor prevalence rate is adjusted for out-of-State and out-of-area cattle, recordkeeping errors, and cattle traced to herds known to be affected or to herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate will be permitted when it is affected by unusual marketing conditions.

(d) Compliance with minimum procedural standards.

(1) A State must implement and maintain minimum procedural standards.

(2) A State or area must make continued progress over a 2-year period in reducing the prevalence of brucellosis as determined by epidemiologic evaluation or it will be placed under Federal quarantine.

Class Free State or area. A State or area which meets standards for classification as a Class Free State or area and is certified as such on initial classification or on reclassification by the State animal health official, the Veterinarian in Charge, and the Deputy Administrator. Reclassification to a lower status can be made by the Deputy Administrator after notice and opportunity to be heard is given to the State animal health official. All cattle herds in the State or area in which brucellosis has been known to exist must be released from any State or Federal brucellosis quarantine prior to classification. In addition, if any herds of other species of domestic livestock have been found to be affected with brucellosis, they must be subjected to an official test and found negative, slaughtered, or quarantined so that no known foci of brucellosis in any species of domestic livestock are left uncontrolled. The following are the standards to attain and maintain Class Free status.

(a) Surveillance.

(1) Brucellosis ring test. The brucellosis ring test shall be conducted in the State or area at least four times per year at approximately 90-day intervals. All herds producing milk for sale shall be included in at least three of the four brucellosis ring tests per year.

(2) Market Cattle Identification (MCI) program. (i) Coverage. All recognized slaughtering establishments in the State or area must participate in the MCI program. Blood samples shall be collected from at least 95 percent of all cows and bulls 2 years of age or over at each recognized slaughtering establishment and subjected to an official test; (ii) Brucellosis reactors. At least 90 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin and an epidemiologic investigation conducted by State representatives or Veterinary Services representatives within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine within 30 days of notification that brucellosis reactors were found on the MCI test.

(3) Epidemiologic surveillance. (i) Adjacent herds. All adjacent herds or other herds having contact with cattle in a herd known to be affected shall be placed under quarantine and have an approved individual herd plan in effect within 15 days after notification of brucellosis in the herd known to be affected; (ii) Epidemiologically traced herds. All herds from which cattle are moved into a herd known to be affected and all herds which have received cattle from a herd known to be affected shall be placed under quarantine and have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

(b) Herd infection rate.

(1) Percentage of herds affected. All cattle herds in the State or area must

remain free of field strain *Brucella abortus* for 12 consecutive months. States or areas must have a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months due to field strain *Brucella abortus* of 0.0 percent or 0 herds per 1,000.

(2) Epidemiologic investigation. Within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors have been found in any herd, State representatives or Veterinary Services representatives shall investigate that herd to identify possible sources of brucellosis. All possible sources of brucellosis identified shall be contacted within an additional 15 days to determine appropriate action.

(c) MCI reactor prevalence rate. The State or area must maintain a 12 consecutive month MCI reactor prevalence rate not to exceed 1 brucellosis reactor per 2,000 cattle tested (0.050 percent). For purposes of State or area classification, cattle which are not official vaccinates and are positive to the standard card test and officially vaccinated cattle positive to the rivanol test at 1:25 serum titer or greater will be counted as MCI reactors. The MCI reactor prevalence rate is a rate of infection in the cattle population based on the percentage of brucellosis reactors found in the MCI test cattle. The MCI reactor prevalence rate is adjusted for out-of-State and out-of-area cattle, recordkeeping errors, and cattle traced to herds known to be affected or to herds with negative herd blood tests. Special consideration of a State or area MCI reactor prevalence rate will be permitted when it is affected by unusual marketing conditions.

Dairy cattle. A bovine animal of a recognized dairy breed.

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other Veterinary Services official delegated to act in the Deputy Administrator's stead.

Designated epidemiologist. An epidemiologist selected by the State animal health official and the Veterinarian in Charge to perform the functions required. The regional epidemiologist and the Veterinary Services brucellosis staff must concur in the selection and appointment of the designated epidemiologist.

Directly. Without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner.

Epidemiologist. A veterinarian who has received a master's degree in epidemiology or completed a course of study in epidemiology sponsored by the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

Epidemiology. A branch of medical science that deals with the incidence, distribution, and control of disease in the animal population.

Farm of origin. (a) Premises where cattle or bison are born and remain prior to movement from the premises but which are not used to assemble cattle or bison from any other premises for 4 months before such movement; or (b) premises where cattle or bison remain for not less than 4 months immediately before movement from the premises but which are not used to assemble cattle or bison from any other premises for 4 months before such movement.

Finished fed cattle. Cattle fattened on a ration of feed concentrates to reach a slaughter condition equivalent to that which would be attained on full feed with a high concentrate grain ration for 90 days.

Herd. (a) All animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm or ranch); or (b) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals from the different premises have been interchanged or had contact with each other.

Herd blood test.

(a) Cattle and bison. A blood test for brucellosis conducted in a herd on all cattle or bison which are (1) 6 months of age or over and not official vaccinates, except steers and spayed heifers; (2) Official calfhood vaccinates of any age which are parturient or postparturient; (3) Official calfhood vaccinates of beef breeds or bison with the first pair of permanent incisors fully erupted (2 years of age or over); and (4) Official calfhood vaccinates of dairy breeds with partial eruption of the first pair of permanent incisors (20 months of age or over).

(b) Swine. A blood test for brucellosis conducted in a herd on all swine 6 months of age or over maintained in the herd for breeding purposes.

Herd known to be affected. Any herd in which any animal has been classified as a brucellosis reactor and which has not been released from quarantine.

Herd not known to be affected. Any herd in which no animal has been classified as a brucellosis reactor or any herd in which one or more animals have been classified as brucellosis reactors but which has been released from quarantine.

Herd of origin of swine. Any herd in which swine are farrowed and remain until movement or any herd in which swine remain for 30 days immediately prior to movement.

Interstate. From any State into or through any other State.

Market cattle identification test cattle. Cows and bulls 2 years of age or over which have been moved to recognized slaughtering establishments, and test-eligible cattle which are subjected to an official test for the purposes of movement at farms, ranches, auction markets, stockyards, or other assembly points. Such cattle shall be identified by an official eartag and/or United States Department of Agriculture backtag prior to or at the first market, stockyard, or slaughtering establishment they reach.

Market swine test swine. Sows and boars which have been moved to slaughtering establishments and sows and boars which are subjected to an official test for the purposes of movement at farms, ranches, auction markets, stockyards, or other assembly points.

Moved. Shipped, transported, delivered, or received for movement, or otherwise aided, induced, or caused to be moved.

Moved (movement) in interstate commerce. Moved from the point of origin of the interstate movement to the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops for any purpose along the way, such as at a stockyard or dealer premises for feed, water, rest, or sale.

Official adult vaccinate.

(a) (1) Female cattle or female bison older than the specified ages defined for official calfhood vaccinate and vaccinated by a Veterinary Services representative, State representative, or accredited veterinarian with a reduced dose approved brucella vaccine, diluted so as to contain at least 300 million and not more than 1 billion live cells per 2 ml. dose, as part of a whole herd vaccination plan authorized jointly by the State animal health official and the Veterinarian in Charge; or (2) Female cattle or female bison vaccinated prior to December 31, 1984, in accordance with the definition of an official adult vaccinate in this part at the date of vaccination; and

(b) (1) Permanently identified by a "V" hot brand on the right jaw or high on the hip near the tailhead, or by an official AV (adult vaccination) tattoo in the right ear preceded by the quarter of the year and followed by the last digit of

the year; and (2) Identified with an official eartag or individual animal registered breed association registration brand or individual animal registered breed association tattoo.

Official brand inspection certificate. A document issued by an official brand inspection agency in any State which requires such documents for movement of cattle.

Official brand recording agency. The duly constituted body authorized by a State or governmental subdivision thereof to administer laws, regulations, ordinances or rules pertaining to the brand identification of cattle.

Official calfhood vaccinate.

(a) (1) Female cattle or female bison vaccinated while from 4 through 12 months of age by a Veterinary Services representative, State representative, or accredited veterinarian with a reduced dose approved brucella vaccine containing at least 3 billion and not more than 10 billion live cells per 2 ml. dose; or (2) Female cattle or female bison vaccinated prior to December 31, 1984, in accordance with the definition of an official vaccinate in this part at the date of vaccination; and

(b) Permanently identified by a tattoo and by an official vaccination eartag in the right ear. However, if already identified with an official eartag prior to vaccination, an additional tag is not required. The tattoo must include the U.S. Registered Shield and "V," preceded by the quarter of the year and followed by the last digit of the year of vaccination. Individual animal registered breed association registration brands or individual animal registered breed association registration tattoos may be substituted for official eartags.

Official eartag. A Veterinary Services approved identification eartag conforming to the nine-character alpha-numeric National Uniform Eartagging System which provides unique identification for each animal.

Official seal. A serially numbered, metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened, or a serially numbered, self-locking button which can be used for this purpose.

Official test.

(a) Classification of cattle and bison.

(1) Standard card test (standard sensitivity pH 3.8).

(i) A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted and when conducted under the following circumstances:

(A) When conditions and time are such that no other test is available; or

(B) When the owner or the owner's agent requests it because of time or situation constraints; or

(C) In specifically approved stockyards when the State animal health official designates the standard card test as the official test in all specifically approved stockyards in the State. In such States, no other test except the BAPA shall be used as an official test in specifically approved stockyards; or

(D) To test market cattle identification (MCI) program test samples. Cattle and bison which test positive to the BAPA test or RST under the MCI program must be retested using the standard card test or the standard plate or tube agglutination test.

(ii) Results of the standard card test also may be used to supplement the results of other official tests conducted in the cooperative State-Federal laboratory to give the designated epidemiologist additional information when classifying cattle and bison.

(iii) Standard card test results are interpreted as either negative or positive. A moderate to marked clumping agglutination reaction is a positive result. Test-eligible cattle and bison positive to the standard card test are classified as brucellosis reactors. Test-eligible cattle and bison negative to the standard card test are classified as brucellosis negative.

(2) Standard tube test (STT) or standard plate test (SPT). A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following agglutination reactions:

SPT OR STT CLASSIFICATION—OFFICIAL VACCINATES

Titer		Classification	
1:50	1:100	1:200	
—	—	—	Negative.
I	—	—	Do.
+	—	—	Do.
+	I	—	Suspect.
+	+	—	Do.
+	+	I	Do.
+	+	+	Reactor.

— No agglutination.
I—Incomplete agglutination.
+—Complete agglutination.

ALL CATTLE AND BISON WHICH ARE NOT OFFICIAL VACCINATES

Titer		Classification	
1:50	1:100	1:200	
—	—	—	Negative.
I	—	—	Suspect.
+	—	—	Do.
+	I	—	Do.
+	+	—	Reactor.
+	+	I	Do.
+	+	+	Do.

— No agglutination.
I—Incomplete agglutination.
+—Complete agglutination.

(3) Manual complement-fixation (CF) test. A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following reactions:

(i) Cattle and bison which are not official vaccinates:

(A) Fifty percent fixation (2 plus) in a dilution of 1:20 or higher—brucellosis reactor;

(B) Fifty percent fixation (2 plus) in a dilution of 1:10 but less than 50 percent fixation (2 plus) in a dilution of 1:20—brucellosis suspect;

(C) Less than 50 percent fixation (2 plus) in a dilution of 1:10—brucellosis negative;

(ii) Official vaccinates:

(A) Twenty-five percent fixation (1 plus) in a dilution of 1:40 or higher—brucellosis reactor;

(B) Fifty percent fixation (2 plus) in a dilution of 1:10 but less than 25 percent fixation (1 plus) in a dilution of 1:40—brucellosis suspect;

(C) Less than 50 percent fixation (2 plus) in a dilution of 1:10—brucellosis negative.

(4) Technicon automated complement-fixation test. A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following reactions:

(i) Cattle and bison which are not official vaccinates:

(A) Fixation in a dilution of 1:10 or higher—brucellosis reactor;

(B) Fixation in a dilution of 1:5 but no fixation in a dilution of 1:10—brucellosis suspect;

(C) No fixation in a dilution of 1:5 or lower—brucellosis negative;

(ii) Official vaccinates:

(A) Fixation in a dilution of 1:20 or higher—brucellosis reactor;

(B) Fixation in a dilution of 1:10 but no fixation in a dilution of 1:20—brucellosis suspect;

(C) Fixation in a dilution of 1:5 or less but no fixation in a dilution of 1:10—brucellosis negative.

(5) Rivanol test. A test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. Cattle and bison are classified according to the following agglutination reactions:

(i) Cattle and bison which are not official vaccinates:

(A) Complete agglutination at a titer of 1:25 or higher—brucellosis reactor;

(B) Less than complete agglutination at a titer of 1:25—brucellosis negative;

(ii) Official adult vaccinates more than 5 months after vaccination and official calfhood vaccinates:

(A) Incomplete agglutination at a titer of 1:100 or higher—brucellosis reactor;

(B) Complete agglutination at a titer of 1:25 or higher when the manual or technicon automated complement-fixation test is not conducted—brucellosis reactor;

(C) Complete agglutination at a titer of 1:50 or less when the manual complement-fixation test or the technicon automated complement-fixation test is conducted and results in a classification of brucellosis suspect or brucellosis negative—brucellosis suspect;

(D) Less than complete agglutination at a titer of 1:25—brucellosis negative;

(iii) Official adult vaccinates less than 5 months after vaccination: Less than complete agglutination at the 1:50 titer—brucellosis negative.

(6) Semen plasma test. A test to determine the brucellosis disease status of bulls used for artificial insemination when conducted in conjunction with an official serological test and according to instructions approved by Veterinary Services and the State in which the test is to be conducted. The classification of such bulls shall be based on the maximum agglutination titer of either the official serological test or the semen plasma test.

(7) Buffered acidified plate antigen (BAPA) test. A test to determine the brucellosis disease status of test-eligible cattle and bison at recognized slaughtering establishments and specifically approved stockyards when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. BAPA test results are interpreted as either negative or positive. Cattle and bison negative to the BAPA test are classified as brucellosis negative. Cattle and bison positive to the BAPA test shall be subjected to other official tests to determine their brucellosis classification.

(8) Rapid screening test (RST). A test to determine the brucellosis disease status of test-eligible cattle and bison in cooperative State-Federal laboratories when conducted according to instructions approved by Veterinary Services and the State in which the test is to be conducted. RST results are interpreted as either negative or positive. Cattle and bison negative to the RST are classified as brucellosis negative. Cattle and bison positive to the RST shall be subjected to other official tests to determine their brucellosis classification.

(9) The evaluation of test results for all cattle and bison shall be the responsibility of a designated epidemiologist in each State. The designated epidemiologist shall consider the animal and herd history and other epidemiologic factors when determining the brucellosis classification of cattle and bison. Deviations from the brucellosis classification criteria as provided in this definition of official test are acceptable when made by the designated epidemiologist.

(b) Classification of swine.

(1) Standard card test. A test to determine the brucellosis disease status of swine. Standard card test results are interpreted as either negative or positive. A moderate to marked clumping agglutination reaction is a positive result. Swine negative to the standard card test are classified as brucellosis negative. Swine positive to the standard card test in a herd not known to be affected but negative to any other official test or bacteriological culture for *brucella* are classified as brucellosis suspects. Other swine positive to the standard card test are classified as brucellosis reactors.

(2) Standard tube test. A test to determine the brucellosis disease status of swine.

(i) If all of the following apply: (A) The swine are part of a herd not known to be affected; (B) No swine tested, individually or as part of a group, has a complete agglutination reaction at a dilution of 1:100 or higher; and (C) the swine are tested as part of a herd blood test or are part of a validated brucellosis-free herd, then the swine are classified according to the following agglutination reactions:

Titer		Classification
1:25	1:50	1:100	
I	-	—	Negative.
+	—	—	Do.
+	I	—	Do.
+	+	—	Do.
+	+	I	Do.

— No agglutination.
I—Incomplete agglutination.
+—Complete agglutination.

(ii) If any of the following apply: (A) The swine are part of a herd known to be affected; (B) Any swine tested, individually or as part of a group, has a complete agglutination reaction at a dilution of 1:100 or higher or; (C) The swine are not part of a validated brucellosis-free herd and are not being tested as part of a herd blood test, then the swine are classified according to the following agglutination reactions:

Titer		Classification
1:25	1:50	1:100	
I	—	—	Negative.
+	—	—	Reactor.
+	I	—	Do.
+	+	—	Do.
+	+	I	Do.
+	+	+	Do.

— No agglutination.
I—Incomplete agglutination.
+—Complete agglutination.

Official vaccinate. An official calfhood vaccinate or an official adult vaccinate. The accredited veterinarian, State representative or Veterinary Services representative who performs the vaccination must forward a completed official vaccination certificate for each animal vaccinated to the State animal health official of the State in which the animal was vaccinated.

Official vaccination eartag. A Veterinary Services approved identification eartag conforming to the alpha-numeric National Uniform Eartagging System which provides unique identification for each animal. The eartag shall have a "V" followed by 2 letters and 4 numbers. States which require more official vaccination eartags than the number of combinations available in the "V" series of tags shall use a "T" or "S" followed by 2 letters and 4 numbers. Duplicate reissue of official vaccination eartags shall not be made more often than once each 15 years.

Originate.

(a) Animals will have the status of the herd from which they are moved if:

(1) They were born and maintained in the herd since birth; or

(2) They have been in the herd for at least 120 days.

(b) Animals will have the status of the State or area from which they are moved if:

(1) They were born and maintained in the State or area since birth; or

(2) They were previously moved from a State or area of equal or higher class to the State or area; or

(3) They were previously moved from a State or area of lower class to the State or area where they are now located and have been in the new State or area for at least 120 days.

(c) Cattle penned in a specifically approved stockyard with cattle from a lower class State or area, in violation of the requirements set forth in §78.44, shall have the status of the State or area of lower class for any subsequent movement.

Parturient. Visibly prepared to give birth or within 2 weeks of giving birth (springers).

Permit. An official document (VS Form 1–27 or a State form which contains the same information but not a "permit for entry" or "'S' brand permit") issued by a Veterinary Services representative, State representative, or accredited veterinarian which lists the owner's name and address, points of origin and destination, number of animals covered, purpose of the movement, any reactor tag number, and one of the following: the official eartag number, individual animal registered breed association registration tattoo, individual animal registered breed association registration brand, United States Department of Agriculture backtag (when applied serially, only the beginning and the ending numbers need be recorded), individual animal registered breed association registration number, or similar individual identification. (A new permit is required for each change in destination. However, permits accompanying cattle or bison to an approved intermediate handling facility may list either the approved intermediate handling facility or a recognized slaughtering establishment as the point of destination. If such a permit lists a recognized slaughtering establishment as the point of destination, then the permit must list the approved intermediate handling facility as a temporary stopping point, and no additional permit is required for the subsequent movement of the cattle or bison to the recognized slaughtering establishment.)

Permit for entry. A premovement authorization for entry of cattle into a State from the State animal health official of the State of destination. It may be oral or written.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company or other legal entity.

Postparturient. Having given birth.

Qualified herd.

(a) Qualification. (1) Any herd of cattle or bison which is in a quarantined area, not known to be affected, and negative to two consecutive herd blood tests. The first of these two herd blood tests shall be conducted not more than 240 days nor less than 120 days prior to the date of classification as a qualified herd. The second herd blood test may not be conducted less than 90 days nor more than 150 days after the first test. Additionally, the second herd blood test must be within 120 days of the date of classification as a qualified herd; or (2) Any certified brucellosis-free herd in a quarantined area which is negative to a herd blood test 120 days before or after designation of the area as a quarantined area.

(b) Requalification. In order to remain a qualified herd, a herd must be negative to successive requalifying herd blood tests. Each requalifying test shall be conducted not more than 120 days from the date of the preceding herd blood test. All cattle or bison added to a qualified herd must be included in two successive herd blood tests of the qualified herd to qualify as cattle or bison from the qualified herd.

Quarantined area. An area in which brucellosis exists but in which control and eradication procedures are not adequate to prevent the interstate dissemination of brucellosis.

Quarantined feedlot.[1] A confined area under State quarantine approved jointly by the State animal health official and the Veterinarian in Charge. Approval will be granted only after a State representative or Veterinary Services representative inspects the confined area and determines that all cattle and bison are secure and isolated from contact with all other cattle and bison, that there are facilities for identifying cattle and bison, and that there is no possibility of brucellosis being mechanically transmitted from the confined area. The quarantined feedlot shall be maintained for feeding cattle and bison for slaughter, with no provisions for pasturing or grazing. All cattle and bison in a quarantined feedlot, except steers and spayed heifers, shall be treated as brucellosis exposed.

(a) All cattle and bison, except steers and spayed heifers, leaving the quarantined feedlot must (1) Be accompanied by a permit and move directly to a recognized slaughtering establishment; or (2) Be "S" branded and accompanied by an "S" brand permit and move directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment; or (3) Be accompanied by a permit issued by the State animal health official and move directly to another quarantined feedlot; or (4) After being "S" branded at the quarantined feedlot, be accompanied by an "S" brand permit and move directly to a specifically approved stockyard approved to receive brucellosis exposed cattle and bison and then directly to a recognized slaughtering establishment or another quarantined feedlot; or (5) After being "S" branded at the quarantined feedlot, be accompanied by an "S" brand permit and move directly to a specifically approved stockyard approved to receive brucellosis exposed cattle and bison and then directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment. However, finished fed cattle moving directly to a recognized slaughtering establishment are exempt from the permit/"S" brand permit requirement.

(b) The State animal health official and the Veterinarian in Charge shall establish procedures for accounting for all cattle and bison entering or leaving quarantined feedlots.

Quarantined pasture. A confined grazing area under State quarantine approved by the State animal health official, Veterinarian in Charge and the Deputy Administrator. A justification of the need for the quarantined pasture must be prepared by the State animal health official and/or Veterinarian in Charge and submitted to the Deputy Administrator. An intensified brucellosis eradication effort which produces large numbers of brucellosis exposed cattle or bison or official adult vaccinates needing the grazing period to reach slaughter condition would be an acceptable justification. Approval will be granted only after a State representative or Veterinary Services representative inspects the confined grazing area and determines that all cattle and bison are secure and isolated from contact with all other cattle and bison, that there are facilities for identifying the cattle and bison, and that there is no possibility of brucellosis being mechanically transmitted from the

[1] A list of quarantined feedlots in any State may be obtained from the State animal health official, a State representative, or a Veterinary Services representative.

confined grazing area. The quarantined pasture shall be for utilizing available forage for growth or to improve flesh condition of cattle or bison. No cattle or bison may be moved interstate into these quarantined pastures, which shall be restricted for use by cattle or bison originating within the State. All cattle or bison shall be of the same sex, except that neutered cattle and bison may share the quarantined pasture. All cattle and bison, except steers and spayed heifers, must be "S" branded upon entering the quarantined pasture. All cattle and bison, except steers and spayed heifers, leaving the quarantined pasture must move directly to a recognized slaughtering establishment or quarantined feedlot, or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment. The movement shall be in accordance with established procedures for handling brucellosis exposed cattle and bison, including issuance of "S" brand permits prior to movement. The State animal health official and Veterinarian in Charge shall establish procedures for accounting for all cattle and bison entering and leaving the quarantined pasture. All brucellosis exposed cattle and bison must vacate the premises on or before the expiration of approval, which may not last longer than 10 months.

Recognized slaughtering establishment.[2] Any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or a State meat inspection act.

"S" branded. Branding with a hot iron the letter "S" at least 5 sq. cm. (2×2 inches) in size on the left jaw or high on the tailhead (over the fourth to the seventh coccygeal vertebrae).

"S" brand permit. A document prepared at the point of origin which lists the points of origin and destination, the number of animals covered, the purpose of movement, and one of the following: The official eartag number, individual animal registered breed association registration tattoo, individual animal registered breed association registration brand, individual animal registered breed association registration number, United States Department of Agriculture backtag (when applied serially, only the beginning and the ending numbers need be recorded), or similar individual identification. If the document is prepared at a quarantined feedlot, it shall be prepared by an accredited veterinarian, a State representative, or an individual designated for that purpose by the State animal health official. If the document is prepared at any other point of origin, it shall be prepared by an accredited veterinarian, State representative, or Veterinary Services representative. (A new "S" brand permit is required for each change in destination. However, "S" brand permits accompanying cattle or bison to approved intermediate handling facilities may list either the approved intermediate handling facility or a recognized slaughtering establishment as the point of destination. If such an "S" brand permit lists a recognized slaughtering establishment as the point of destination, the "S" brand permit must list the approved intermediate handling facility as a temporary stopping point, and no additional "S" brand permit is required for the subsequent movement of the cattle or bison to the recognized slaughtering establishment.)

Sow. A female swine which is parturient or postparturient.

Specifically approved stockyard.[3] Premises where cattle or bison are assembled for sale or sale purposes and which meet the standards set forth in § 78.44 and are approved by the Deputy Administrator.

State. Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands or any other territory or possession of the United States.

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a State or a political subdivision thereof and authorized by such State or political subdivision to perform the function involved under a memorandum of understanding with the United States Department of Agriculture.

Test-eligible cattle and bison. For purposes of interstate movement, test-eligible cattle and bison are:

(a) Cattle and bison which are not official vaccinates and which have lost their first pair of temporary incisors (18 months of age or over), except steers and spayed heifers;

(b) Official calfhood vaccinates 18 months of age or over which are parturient or postparturient;

(c) Official calfhood vaccinates of beef breeds or bison with the first pair of permanent incisors fully erupted (2 years of age or over); and

(d) Official calfhood vaccinates of dairy breeds with partial eruption of the first pair of permanent incisors (20 months of age or over).

Validated brucellosis-free herd. (a) Validation. A herd of swine in which all sows and boars maintained for breeding purposes are negative to an official test. (b) Revalidation. To remain a validated brucellosis-free herd, (1) All sows and boars maintained for breeding purposes in the herd must be negative to an official test within 10 to 14 months of the last validation test date; or (2) At least 20 percent of the sows and boars maintained for breeding purposes in the herd must be tested under a market swine test (MST) program during the year, with at least one-half of the MST sampling occurring during the last 6 months of the validation period; or (3) All sows and boars maintained for breeding purposes in the herd must be tested in groups according to an approved individual herd plan with each such sow and boar tested at least once during the 1-year validation period.

Validated brucellosis-free State. (a) Validation.

(1) The State has necessary authorities for classification as a validated brucellosis-free State for swine; and

(2) The State has:

(i) No known focus of swine brucellosis at the time of validation and has completed one of the following methods of surveillance: (A) All sows and boars maintained for breeding purposes in the State are subjected to an official test during the 18 months preceding validation and no more than 3 percent of the herds in the State are found to have brucellosis; (B) All swine maintained in herds for breeding purposes and sold are subjected to an official test; 90 percent of all sows and boars marketed for slaughter are subjected to an official test; and, during the 12 months preceding validation, at least 90 percent of the brucellosis reactors identified are traced to their herds of origin and no more than 3 percent of the herds in the State are found to have brucellosis; (C) During a 2-year period, all herds from which sows and boars maintained for breeding purposes are sold are subjected to a herd blood test; and at least 50 percent of the brucellosis reactors identified at slaughter are traced to their herd of

[2] A list of recognized slaughtering establishments in any State may be obtained from a Veterinary Services representative, the State animal health official or a State representative

[3] Notices containing lists of specifically approved stockyards are published in the **Federal Register**. Lists of specifically approved stockyards also may be obtained from the State animal health official, State representatives, or Veterinary Services representatives.

origin and no more than 3 percent of the herds in the State are found to have brucellosis; or

(ii) No diagnosed case of swine brucellosis in the preceding 12 months, and a statistical analysis of combined results of the Market Swine Testing (MST) program, change of ownership testing, farm validation tests, and diagnostic tests conducted during the period shows the testing to be equivalent to either complete herd testing or slaughter surveillance during a 1 or 2-year period, as chosen by the State as most appropriate to its marketing needs; and

(3) The State is certified as such by the appropriate State animal health official, the Veterinarian in Charge, and the Deputy Administrator. A State may qualify as a validated brucellosis-free State regardless of the brucellosis status of feral swine in that State if the feral swine are not in physical contact with domestic swine.

(b) Revalidation. Revalidation may be obtained by either herd testing, slaughter surveillance, or combined surveillance, as chosen by the State as most appropriate to its marketing needs.

Veterinarian in Charge. The veterinary official of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Deputy Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

Veterinary Services. Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Veterinary Services representative. An individual employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, and authorized to perform the function involved.

Whole herd vaccination. The vaccination of all female cattle and female bison 4 months of age or over in a herd when authorized by the State animal health official and the Veterinarian in Charge, and conducted in accordance with the definitions of official adult vaccinate and official calfhood vaccinate.

(Approved by the Office of Management and Budget under control numbers 0579–0047, 0579–0051, and 0579–0064)

§ 78.2 Handling of certificates, permits, and "S" brand permits for interstate movement of animals.

(a) Any certificate, permit, or "S" brand permit required by this part for the interstate movement of animals shall be delivered to the person moving the animals by the shipper or shipper's agent at the time the animals are delivered for movement and shall accompany the animals to their destination and be delivered to the consignee or the person receiving the animals.

(b) The Veterinary Services representative, State representative, or accredited veterinarian issuing a certificate or permit required for the interstate movement of animals under this part, except for permits for entry and "S" brand permits, shall forward a copy thereof as follows: (1) A copy of each certificate shall be forwarded to the State animal health official of the State of destination, or to the State animal health official of the State of origin for forwarding to the State of destination; or (2) a copy of each permit shall be forwarded to the State animal health official of the State of destination.

(Approved by the Office of Management and Budget under control numbers 0579–0051 and 0579–0064)

§ 78.3 Handling in transit of cattle and bison moved interstate.

Cattle and bison moving interstate, except cattle and bison moved directly to a recognized slaughtering establishment, approved intermediate handling facility, or quarantined feedlot, shall be moved only in a means of conveyance which has been cleaned in accordance with §§ 71.5, 71.7, 71.10, and 71.11 of this chapter and, if unloaded in the course of such movement, shall be handled only in pens cleaned in accordance with the provisions of §§ 71.4, 71.7, 71.10, and 71.11 of this chapter.

§ 78.4 [Reserved]

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

§ 78.5 General restrictions.

Cattle may not be moved interstate except in compliance with this subpart.

§ 78.6 Steers and spayed heifers.

Steers and spayed heifers may be moved interstate without restriction under this subpart.

§ 78.7 Brucellosis reactor cattle.

(a) *Destination.* Brucellosis reactor cattle may be moved interstate only for immediate slaughter as follows:

(1) Directly to a recognized slaughtering establishment; (2) Directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment; or (3) From a farm of origin directly to a specifically approved stockyard approved to receive brucellosis reactors and then (i) Directly to a recognized slaughtering establishment; or (ii) Directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment.

(b) *Identification.* Prior to moving interstate, brucellosis reactor cattle shall be (1) Individually identified by attaching to the left ear a metal tag bearing a serial number and the inscription, "U.S. Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors; and (2) "B" branded.

(c) *Permit.* Brucellosis reactor cattle moving interstate shall be accompanied to destination by a permit.

(d) *Marking of records.* Each person moving brucellosis reactor cattle interstate shall, in the course of interstate movement, plainly write or stamp the words "Brucellosis Reactor" upon the face of any document that person prepares in connection with such movement.

(e) *Segregation en route.* Brucellosis reactor cattle shall not be moved interstate in any means of conveyance containing animals which are not brucellosis reactors unless all the animals are for immediate slaughter or unless the brucellosis reactor cattle are kept separate from the other animals by a partition securely affixed to the sides of the means of conveyance.

(Approved by the Office of Management and Budget under control number 0579–0051)

§ 78.8 Brucellosis exposed cattle.

Brucellosis exposed cattle may be moved interstate only as follows:

(a) *Movement to recognized slaughtering establishments.* (1) Finished fed cattle from a quarantined feedlot may be moved interstate (i) Directly to a recognized slaughtering establishment without further restriction under this part; or (ii) Directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if accompanied by a permit or "S" brand permit.

(2) Brucellosis exposed cattle may be moved interstate directly to a recognized slaughtering establishment if such cattle are: (i) Individually identified by an official eartag or a United States Department of Agriculture backtag; (ii) Accompanied by a permit or "S" brand permit; and (iii) (A) "S" branded before leaving the premises from which they are to be moved interstate; or (B) "B"

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branded when a claim for indemnity is made under Part 51 of this chapter; or (C) Official adult vaccinates; or (D) Moved in vehicles closed with official seals applied and removed by a Veterinary Services representative, State representative, accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

(3) Brucellosis exposed cattle may be moved interstate directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if such cattle are: (i) Individually identified by an official eartag or a United States Department of Agriculture backtag; (ii) Accompanied by a permit or "S" brand permit; and (iii) (A) "S" branded before leaving the premises from which they are to be moved interstate; or (B) "B" branded when a claim for indemnity is made under Part 51 of this chapter; or (C) Official adult vaccinates.

(4) Brucellosis exposed cattle moving to slaughter from a farm of origin may be moved directly to a specifically approved stockyard approved to receive brucellosis exposed cattle and then directly to a recognized slaughtering establishment if such cattle are: (i) Individually identified by an official eartag or United States Department of Agriculture backtag; (ii) Accompanied by a permit or "S" brand permit; and (iii) (A) "S" branded before leaving the premises from which they are to be moved interstate; or (B) "B" branded when a claim for indemnity is made under Part 51 of this chapter; or (C) Official adult vaccinates; or (D) Moved in vehicles closed with official seals applied and removed by a Veterinary Services representative, State representative, accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

(5) Brucellosis exposed cattle moving to slaughter from a farm of origin may be moved directly to a specifically approved stockyard approved to receive brucellosis exposed cattle and then directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if such cattle are: (i) Individually identified by an official eartag or United States Department of Agriculture backtag; (ii) Accompanied by a permit or "S" brand permit; and (iii) (A) "S" branded before leaving the premises from which they are to be moved interstate; or (B) "B" branded when a claim for indemnity is made under Part 51 of this chapter; or (C) Official adult vaccinates.

(b) *Movement to quarantined feedlots.* Brucellosis exposed cattle for which no claim for indemnity is being made by the owner under Part 51 of this chapter may be moved interstate directly to a quarantined feedlot or, from a farm of origin, directly to a specifically approved stockyard approved to receive brucellosis exposed cattle and then directly to a quarantined feedlot if such cattle are:

(1) Individually identified by an official eartag or a United States Department of Agriculture backtag;

(2) Accompanied by a permit or "S" brand permit; and

(3)(i) "S" branded before leaving the premises from which they are to be moved interstate; or (ii) Official adult vaccinates.

(c) *Movement other than in accordance with paragraphs (a) and (b) of this section:* Brucellosis exposed cattle for which no claim for indemnity is being made by the owner under Part 51 of this chapter also may be moved interstate in accordance with § 78.10 and as follows:

(1) Such brucellosis exposed cattle from herds known to be affected may be moved interstate if the cattle are:

(i) Under 6 months of age and weaned from brucellosis reactors or brucellosis exposed cows not less than 30 days immediately preceding interstate movement; or

(ii) Under 6 months of age and nursing brucellosis exposed cows in a herd subjected to a herd blood test within 10 days prior to interstate movement; or

(iii) Official vaccinates under 1 year of age from a herd following an approved individual herd plan.

(2) Cattle moved interstate from a farm of origin directly to a specifically approved stockyard in accordance with §§ 78.9(b)(3)(iii), 78.9(c)(3)(iii), 78.9(d)(3)(iv), or 78.9(d)(3)(v) and subsequently determined to be brucellosis exposed may be moved interstate directly back to the farm of origin under the following conditions:

(i) Prior to interstate movement, State representatives of the State in which the cattle are located and the State of destination advise Veterinary Services that such movement would not be contrary to the laws and regulations of their respective States;

(ii) Prior to interstate movement, the State representative of the State of destination agrees to quarantine the cattle on arrival and to require that all test-eligible cattle on the farm of origin be subjected to an official test; and

(iii) The cattle are accompanied to the farm of origin by a permit.

(Approved by the Office of Management and Budget under control numbers 0579-0051 and 0579-0064)

§ 78.9 Cattle from herds not known to be affected.

Cattle which are not test-eligible and are from herds not known to be affected may be moved interstate without further restriction if officially vaccinated as required in section § 78.10. Test-eligible cattle which are not brucellosis exposed and are from herds not known to be affected may be moved interstate only in accordance with § 78.10 and as follows:

(a) *Class Free States/areas.* Test-eligible cattle which originate in Class Free States or areas, are not brucellosis exposed, and are from a herd not known to be affected may be moved interstate from Class Free States or areas only as specified below:

(1) *Movement to recognized slaughtering establishments.*

(i) Such cattle may be moved interstate directly to a recognized slaughtering establishment or directly to a specifically approved stockyard and then directly to a recognized slaughtering establishment without restriction under this subpart.

(ii) Such cattle may be moved interstate from a farm of origin directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if accompanied by a permit.

(iii) Such cattle may be moved interstate from other than a farm of origin directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if such cattle are accompanied by a permit.

(2) *Movement to quarantined feedlots.* Such cattle may be moved interstate directly to a quarantined feedlot or directly to a specifically approved stockyard and then directly to a quarantined feedlot without restriction under this subpart.

(3) *Movement other than in accordance with paragraphs (a) (1) and (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (a) (1) and (2) of this section only if:

(i) Such cattle are moved interstate from a farm of origin directly to a specifically approved stockyard; or

(ii) Such cattle are moved interstate from a farm of origin or returned interstate to a farm of origin in the

course of normal ranching operations, without change of ownership, directly to or from another premises owned, leased, or rented by the same individual; or

(iii) Such cattle are moved interstate accompanied by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a Class Free State or area.

(b) *Class A States/areas.* Test-eligible cattle which originate in Class A States or areas, are not brucellosis exposed, and are from a herd not known to be affected may be moved interstate from Class A States or areas only as specified below:

(1) *Movement to recognized slaughtering establishments.* (i) Such cattle may be moved interstate from a farm of origin or nonquarantined feedlot directly to a recognized slaughtering establishment or directly to a specifically approved stockyard and then directly to a recognized slaughtering establishment without restriction under this subpart.

(ii) Such cattle may be moved interstate from a farm of origin directly to an approved intermediate handling facility without restriction under this subpart.

(iii) Such cattle from other than a farm of origin or nonquarantined feedlot may be moved interstate directly to a recognized slaughtering establishment or directly to a specifically approved stockyard and then directly to a recognized slaughtering establishment if identity to the Class A State or area is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from the farm or State or area apart from other animals.

(iv) Such cattle from other than a farm of origin may be moved interstate accompanied by a permit (A) Directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment; or (B) Directly to a specifically approved stockyard and then directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment.

(2) *Movement to quarantined feedlots.* (i) Such cattle may be moved interstate from a farm of origin directly to a quarantined feedlot or directly to a specifically approved stockyard and then directly to a quarantined feedlot if identity to the farm of origin is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from the farm of origin apart from other animals.

(ii) Such cattle from other than a farm of origin may be moved interstate directly to a quarantined feedlot or directly to a specifically approved stockyard and then directly to a quarantined feedlot if identity to the Class A State or area is maintained by means of identification tag numbers appearing on sale records showing the consignor or by penning cattle from one farm or State or area apart from other animals.

(3) *Movement other than in accordance with paragraphs (b) (1) and (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (b) (1) and (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are negative to an official test within 30 days prior to such interstate movement and are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(iii) Such cattle are moved interstate from a farm of origin directly to a specifically approved stockyard and are subjected to an official test upon arrival at the specifically approved stockyard prior to losing their identity with the farm of origin; or

(iv) Such cattle are moved interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premises owned, leased, or rented by the same individual.

(c) *Class B States/areas.* Test-eligible cattle which originate in Class B States or areas, are not brucellosis exposed, and are from a herd not known to be affected may be moved interstate from Class B States or areas only under the conditions specified below:

(1) *Movement to recognized slaughtering establishments.* (i) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a recognized slaughtering establishment without restriction under this subpart.

(ii) Such cattle may be moved interstate from a farm of origin directly to an approved intermediate handling facility without restriction under this subpart.

(iii) Such cattle may be moved interstate from a nonquarantined feedlot directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if they are accompanied by a permit or "S" brand permit.

(iv) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a specifically approved stockyard and then to a recognized slaughtering establishment if: (A) They are negative to an official test conducted at the specifically approved stockyard and are accompanied to slaughter by a certificate or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (C) They are "S" branded at the specifically approved stockyard, accompanied by an "S" brand permit, and moved directly to a recognized slaughtering establishment; or (D) They are moved from the specifically approved stockyard accompanied by an "S" brand permit and in vehicles closed with official seals applied and removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(v) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a specifically approved stockyard and then to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if: (A) They are negative to an official test conducted at the specifically approved stockyard and are accompanied by an "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They originate from a certified brucellosis-free herd, identity to the certified brucellosis-free herd is maintained, and they are accompanied by an "S" brand permit; or (C) They are "S" branded at the specifically approved stockyard, accompanied by an "S" brand permit, and moved directly to an approved intermediate handling facility.

(vi) Such cattle from other than a farm of origin or a nonquarantined feedlot may be moved interstate to a recognized slaughtering establishment only if: (A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by a certificate or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They originate from a certified brucellosis-free herd and

identity to the certified brucellosis-free herd is maintained; or (C) They are "S" branded, accompanied by an "S" brand permit, and moved directly to a recognized slaughtering establishment; or (D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or by an individual authorized for this purpose by a Veterinary Services representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(vii) Such cattle from other than a farm of origin or a nonquarantined feedlot may be moved interstate to an approved intermediate handling facility and then directly to a recognized slaughtering establishment only if: (A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by a permit or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They originate from a certified brucellosis-free herd, identity to the certified brucellosis-free herd is maintained, and they are accompanied by an "S" brand permit; or (C) They are "S" branded, accompanied by an "S" brand permit, and moved directly to an approved intermediate handling facility.

(2) *Movement to quarantined feedlots.* (i) Such cattle may be moved interstate from a farm of origin directly to: (A) A quarantined feedlot if such cattle are "S" branded upon arrival at the quarantined feedlot; or (B) A specifically approved stockyard and then directly to a quarantined feedlot if such cattle are "S" branded upon arrival at the specifically approved stockyard and are accompanied to the quarantined feedlot by an "S" brand permit.

(ii) Such cattle from other than a farm of origin may be moved interstate to a quarantined feedlot if: (A) They are negative to an official test within 30 days prior to such movement and are accompanied by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They are "S" branded, accompanied by an "S" brand permit, and moved directly to a quarantined feedlot.

(3) *Movement other than in accordance with paragraphs (c) (1) and (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (c) (1) and (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are negative to an official test within 30 days prior to interstate movement, have been issued a permit for entry, and are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(iii) Such cattle are moved interstate from a farm of origin directly to a specifically approved stockyard and are subjected to an official test upon arrival at the specifically approved stockyard prior to losing their identity with the farm of origin; or

(iv) Such cattle are moved interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premises owned, leased or rented by the same individual, and (A) The cattle being moved originate from a herd in which (*1*) All the cattle were negative to a herd blood test within 1 year prior to the interstate movement; (*2*) Any cattle added to the herd after such herd blood test were negative to an official test within 30 days prior to the date the cattle were added to the herd; (*3*) None of the cattle in the herd have come in contact with any other cattle; and (B) The cattle are accompanied interstate by a document which states the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted.

(v) The State animal health officials of the State of origin and State of destination may waive the requirements of paragraph (c)(3)(iv) of this section in writing.

(d) *Class C States/areas.* Test-eligible cattle which originate in Class C States or areas, are not brucellosis exposed, and are from a herd not known to be affected may be moved interstate from Class C States or areas only under the conditions specified below:

(1) *Movement to recognized slaughtering establishments.* (i) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a recognized slaughtering establishment without restriction under this subpart.

(ii) Such cattle may be moved interstate from a farm of origin directly to an approved intermediate handling facility without restriction under this subpart.

(iii) Such cattle may be moved interstate from a nonquarantined feedlot directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if they are accompanied by a permit or "S" brand permit.

(iv) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a specifically approved stockyard and then to a recognized slaughtering establishment if: (A) They are negative to an official test conducted at the specifically approved stockyard and are accompanied by a certificate or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (C) They are "S" branded at the specifically approved stockyard, accompanied by an "S" brand permit, and moved directly to a recognized slaughtering establishment; or (D) They are moved from the specifically approved stockyard accompanied by an "S" brand permit and in vehicles closed with official seals applied and removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(v) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a specifically approved stockyard and then to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if: (A) They are negative to an official test conducted at the specifically approved stockyard and are accompanied by an "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They originate from a certified brucellosis-free herd, identity to the certified brucellosis-free herd is maintained, and they are accompanied by an "S" brand permit; or (C) They are "S" branded at the specifically approved stockyard, accompanied by an "S" brand permit, and moved directly to an approved intermediate handling facility.

(vi) Such cattle from other than a farm of origin or a nonquarantined feedlot may be moved interstate to a recognized slaughtering establishment only if: (A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by a certificate or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They originate from

a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or (C) They are "S" branded, accompanied by an "S" brand permit, and moved directly to a recognized slaughtering establishment; or (D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or by an individual authorized for this purpose by the Veterinary Services representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(vii) Such cattle from other than a farm of origin or a nonquarantined feedlot may be moved interstate to an approved intermediate handling facility and then directly to a recognized slaughtering establishment only if: (A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by a permit or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They originate from a certified brucellosis-free herd, identity to the certified brucellosis-free herd is maintained, and they are accompanied by an "S" brand permit; or (C) They are "S" branded, accompanied by an "S" brand permit, and moved directly to an approved intermediate handling facility.

(2) *Movement to quarantined feedlots.*

(i) Such cattle may be moved interstate from a farm of origin directly to: (A) A quarantined feedlot if such cattle are "S" branded upon arrival at the quarantined feedlot; or (B) A specifically approved stockyard and then directly to a quarantined feedlot if such cattle are "S" branded upon arrival at the specifically approved stockyard and are accompanied to the quarantined feedlot by an "S" brand permit.

(ii) Such cattle from other than a farm of origin may be moved interstate to a quarantined feedlot if: (A) They are negative to an official test within 30 days prior to such movement and are accompanied by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or (B) They are "S" branded, accompanied by an "S" brand permit, and moved directly to a quarantined feedlot.

(3) *Movement other than in accordance with paragraphs (d) (1) or (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (d) (1) or (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle (A) Are negative to two consecutive official tests at least 60 days apart, with the first test not less than 60 days nor more than 1 year before interstate movement and the second test not more than 30 days before interstate movement; (B) Are accompanied by a certificate which states, in addition to the items specified in § 78.1; the test dates and results of the official tests; and (C) Have been issued a permit for entry; or

(iii) Such cattle (A) Are official vaccinates of the beef breeds 24 months of age or over, or of the dairy breeds 20 months of age or over; (B) Are negative to an official test within 30 days prior to the date of interstate movement; (C) Are accompanied by a certificate which states, in addition to the items specified in § 78.1; the test dates and results of the official tests; and (D) Have been issued a permit for entry; or

(iv) Such cattle (A) Are negative to an official test not less than 60 days nor more than 1 year before the interstate movement; (B) Are moved from a farm of origin directly to a specifically approved stockyard and are subjected to an official test upon arrival at the specifically approved stockyard prior to losing their identity with the farm of origin; and (C) Are accompanied by a document which states the test dates and results of the official tests conducted prior to the interstate movement; or

(v) Such cattle are official vaccinates of the beef breeds 24 months of age or over, or of the dairy breeds 20 months of age or over, are moved from a farm of origin directly to a specifically approved stockyard, and are subjected to an official test upon arrival at the specifically approved stockyard prior to losing their identity with the farm of origin; or

(vi) Such cattle are from a farm of origin and are negative to a herd blood test within 1 year prior to interstate movement, provided no cattle are added to the herd for at least 120 days before the herd blood test or between the time of the herd blood test and movement. If the herd blood test is not conducted within 30 days prior to interstate movement, such cattle must be negative to an official test within 30 days prior to movement. The cattle must have been issued a permit for entry and be accompanied by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests and that the cattle originated from a farm of origin. The cattle also must be accompanied by a written statement signed by the owner and an accredited veterinarian, or other documentation, which establishes that the cattle originated from a herd to which no cattle had been added for at least 120 days before the herd blood test or between the time of the herd blood test and movement; or

(vii) Such cattle are moved interstate from a farm of origin or are returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premises owned, leased or rented by the same individual, and (A) The cattle being moved originate from a herd in which (*1*) All the cattle were negative to a herd blood test within 1 year prior to the interstate movement; (*2*) Any cattle added to the herd after such a herd blood test were negative to an official test within 30 days prior to the date the cattle were added to the herd; (*3*) None of the cattle in the herd have come in contact with any other cattle; and (B) The cattle are accompanied interstate by a document which shows the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted.

(Approved by the Office of Management and Budget under control numbers 0579–0051 and 0579–0064)

§ 78.10 Official vaccination of cattle moving into and out of Class B and Class C States or areas.

(a) Female dairy cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move interstate into or out of a Class B State or area [4] unless they are moved interstate directly to a recognized slaughtering establishment or quarantined feedlot or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment. Female cattle eligible for official calfhood vaccination and required by this paragraph to be officially vaccinated may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

(b) Female cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move into

[4] Female cattle imported into the United States may be exempted from the vaccination requirements of this paragraph with the concurrence of the State animal health official of the State of destination. This concurrence is required prior to importation of the cattle into the United States.

VOL 51 ISS 177 SEP 12 1986 UMI

or out of a Class C State or area [4] unless they are moved interstate directly to a recognized slaughtering establishment or quarantined feedlot or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment. Female cattle eligible for official calfhood vaccination and required by this paragraph to be officially vaccinated may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

§ 78.11 Cattle moved to a specifically approved stockyard not in accordance with this part.

Cattle, except brucellosis reactors and brucellosis exposed cattle, which are moved interstate to a specifically approved stockyard but fail to comply with the requirements of this part for release from the specifically approved stockyard may be moved from the specifically approved stockyard only as follows:

(a) With the concurrence of the State animal health officials of the State of origin and State of destination, directly back to the farm of origin accompanied by a permit; or

(b) Directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if such cattle are "S" branded and accompanied by an "S" brand permit; or

(c) Directly to a recognized slaughtering establishment if such cattle are (1) "S" branded and accompanied by an "S" brand permit; or (2) Accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by a Veterinary Services representative, State representative, an accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative. The official seal numbers must be recorded on the "S" brand permit; or

(d) Directly to a quarantined feedlot if such cattle are "S" branded and accompanied by an "S" brand permit.

(Approved by the Office of Management and Budget under control numbers 0579–0051 and 0579–0064)

§ 78.12 Cattle from quarantined areas.

Not withstanding any provisions in the regulations to the contrary, cattle may be moved interstate from a quarantined area only in accordance with § 78.10 and this section.

(a) *Steers and spayed heifers.* Steers and spayed heifers may be moved interstate without restriction under this section.

(b) *Brucellosis reactor cattle.* Brucellosis reactor cattle may be moved interstate in accordance with § 78.7.

(c) *Brucellosis exposed cattle.* Brucellosis exposed cattle may be moved interstate in accordance with § 78.8 (a) or (b).

(d) *Movement from qualified herds.* Cattle from qualified herds in any quarantined area may be moved interstate only as follows:

(1) *Movement to recognized slaughtering establishments.*

(i) Cattle from qualified herds in a quarantined area may be moved interstate from a farm of origin directly to a recognized slaughtering establishment or directly to a specifically approved stockyard and then directly to a recognized slaughtering establishment if they are negative to an official test within 30 days prior to such interstate movement and are accompanied by a certificate or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(ii) Cattle from qualified herds in a quarantined area may be moved interstate from a farm of origin directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if they are negative to an official test within 30 days prior to such interstate movement and are accompanied by an "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(iii) Cattle from qualified herds in a quarantined area may be moved interstate from a farm of origin directly to a specifically approved stockyard and then directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment if they are negative to an official test within 30 days prior to such interstate movement and are accompanied by a permit or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(iv) Cattle from qualified herds in a quarantined area may be moved interstate in accordance with § 78.8(a).

(2) *Movement to quarantined feedlots.*

(i) Cattle from qualified herds in a quarantined area may be moved interstate from a farm of origin directly to a quarantined feedlot or directly to a specifically approved stockyard and then directly to a quarantined feedlot if they are negative to an official test within 30 days prior to such interstate movement and are accompanied by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(ii) Cattle from qualified herds in a quarantined area may be moved in accordance with § 78.8(b).

(3) *Movement other than in accordance with paragraph (d) (1) or (2) of this section.* Cattle from qualified herds in a quarantined area may be moved interstate other than in accordance with paragraph (d) (1) or (2) of this section, either directly from a farm of origin or from a farm of origin through no more than one specifically approved stockyard if (i) The cattle, except official vaccinates less than 1 year of age and cattle less than 8 months of age, are negative to an official test within 30 days prior to such interstate movement; and (ii) The cattle are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests when such tests are required.

(e) *Movement from herds which are not qualified.* Cattle from herds known to be affected or from herds which are not qualified in any quarantined area may be moved interstate only in accordance with § 78.8 (a) or (b).[5]

(Approved by the Office of Management and Budget under control numbers 0579–0051 and 0579–0064)

§ 78.13 Other movements.

The Deputy Administrator may, upon request in specific cases, permit the interstate movement of cattle not otherwise provided for in this subpart, under such conditions as the Deputy Administrator may prescribe in each case to prevent the spread of brucellosis. The Deputy Administrator shall promptly notify the State animal health officials of the States involved of any such action.

§§ 78.14–78.19 [Reserved]

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis.

§ 78.20 General restrictions.

Bison may not be moved interstate except in compliance with this subpart.

§ 78.21 Bison steers and spayed heifers.

Bison steers and spayed heifers may be moved interstate without restriction under this subpart.

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[4] A herd which is not qualified in a quarantined area may become a qualified herd upon compliance with the provisions set forth in § 78.1 in the definition of "qualified herd."

§ 78.22 Brucellosis reactor bison.

(a) *Destination.* Brucellosis reactor bison may be moved interstate only for immediate slaughter as follows:

(1) Directly to a recognized slaughtering establishment; (2) Directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment; or (3) From a farm of origin directly to a specifically approved stockyard approved to receive brucellosis reactors and then (i) Directly to a recognized slaughtering establishment; or (ii) Directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment.

(b) *Identification.* Prior to moving interstate, brucellosis reactor bison shall be (1) Individually identified by attaching to the left ear a metal tag bearing a serial number and the inscription, "U.S. Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors; and (2) "B" branded.

(c) *Permit.* Brucellosis reactor bison moving interstate shall be accompanied to destination by a permit.

(d) *Marking of records.* Each person moving brucellosis reactor bison interstate shall, in the course of interstate movement, plainly write or stamp the words "Brucellosis Reactor" upon the face of any document that person prepares in connection with such movement.

(e) *Segregation en route.* Brucellosis reactor bison shall not be moved interstate in any means of conveyance containing animals which are not brucellosis reactors unless all of the animals are for immediate slaughter or unless the brucellosis reactor bison are kept separate from the other animals by a partition securely affixed to the sides of the means of conveyance.

(Approved by the Office of Management and Budget under control number 0579–0051)

§ 78.23 Brucellosis exposed bison.

Brucellosis exposed bison may be moved interstate only as follows:

(a) *Movement to recognized slaughtering establishments.* Brucellosis exposed bison may be moved interstate for slaughter accompanied by a permit or "S" brand permit and as follows:

(1) Directly to a recognized slaughtering establishment or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment; or

(2) From a farm of origin directly to a specifically approved stockyard approved to receive brucellosis exposed bison and then (i) Directly to a recognized slaughtering establishment; or (ii) Directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment.

(b) *Movement to quarantined feedlots.* Brucellosis exposed bison may be moved directly to a quarantined feedlot or, from a farm of origin, directly to a specifically approved stockyard approved to receive brucellosis exposed bison and then directly to a quarantined feedlot. Such bison shall be accompanied by a permit or "S" brand permit.

(c) *Movement other than in accordance with paragraphs (a) or (b) of this section.* Brucellosis exposed bison which are from herds known to be affected, but which are not part of a herd being depopulated under Part 51 of this chapter, may move without restriction if the bison: (1) Are under 6 months of age and were weaned from brucellosis reactor or brucellosis exposed bison not less than 30 days immediately preceding interstate movement; or (2) Are under 6 months of age and nursing brucellosis exposed bison in a herd subjected to a herd blood test within 10 days prior to interstate movement; or (3) Are official vaccinates under 1 year of age from a herd following an approved individual herd plan.

(Approved by the Office of Management and Budget under control numbers 0579–0051 and 0579–0064)

§ 78.24 Bison from herds not known to be affected.

Bison from herds not known to be affected may be moved interstate only as follows:

(a) *Movement to recognized slaughtering establishments.* Bison from herds not known to be affected may be moved directly to a recognized slaughtering establishment without restriction under this subpart.

(b) *Movement to quarantined feedlots.* Bison from herds not known to be affected may be moved directly to a quarantined feedlot without restriction under this subpart.

(c) *Movement from public zoo to public zoo.* Bison from herds not known to be affected may be moved from a zoo owned by a governmental agency to another such zoo if handled in accordance with § 78.3.

(d) *Movement other than in accordance with paragraphs (a), (b), or (c) of this section.* Bison from herds not known to be affected may be moved interstate other than in accordance with paragraphs (a), (b), or (c) of this section only as follows:

(1) Such bison under 6 months of age may be moved interstate when accompanied by a certificate.

(2) Such bison which are official vaccinates under 2 years of age and are not parturient or postparturient may be moved interstate when accompanied by a certificate.

(3) Such bison may be moved interstate if they are negative to an official test within 30 days prior to such movement and are accompanied by a certificate which states, in addition to the items specified in § 78.1, the dates and results of the official tests.

(4) Such bison may be moved interstate if they originate in a certified brucellosis-free herd and are accompanied by a certificate which states, in addition to the items specified in § 78.1, that the bison originated in a certified brucellosis-free herd.

(Approved by the Office of Management and Budget under control number 0579–0064)

§ 78.25 Other movements.

The Deputy Administrator may, upon request in specific cases, permit the interstate movement of bison not otherwise provided for in this subpart, under such conditions as the Deputy Administrator may prescribe in each case to prevent the spread of brucellosis. The Deputy Administrator shall promptly notify the State animal health officials of the States involved of any such action.

§§ 78.26–78.29 [Reserved]

Subpart D—Restrictions on Interstate Movement of Swine Because of Brucellosis

§ 78.30 General restrictions.

(a) Brucellosis reactor swine, brucellosis exposed swine, and sows and boars may not be moved interstate or in interstate commerce except in compliance with this subpart.

(b) Each person who causes the movement of swine in interstate commerce is responsible for the identification of the swine as required by this subpart. No such person shall remove or tamper with or cause the removal of or tampering with an identification tattoo or approved swine identification tag required in this subpart except at the time of slaughter, or as may be authorized by the Deputy Administrator upon request in specific cases and under such conditions as the Deputy Administrator may impose to ensure continuing identification.

§ 78.31 Brucellosis reactor swine.

(a) *Destination.* Brucellosis reactor swine may be moved interstate only for

immediate slaughter as follows: (1) Directly to a recognized slaughtering establishment; or (2) Directly to a stockyard posted under the Packers and Stockyards Act, as amended (7 U.S.C. 181 *et seq.*), or directly to a market agency or dealer registered under the Packers and Stockyards Act, for sale to a recognized slaughtering eatablishment in accordance with the following requirements:

(b) *Identification.* Brucellosis reactor swine shall be individually identified by attaching to the left ear a metal tag bearing a serial number and the inscription, "U.S. Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors.

(c) *Permit.* Brucellosis reactor swine shall be accompanied to destination by a permit.

(d) *Marking of records.* Each person moving brucellosis reactor swine interstate shall, in the course of interstate movement, plainly write or stamp the words "Brucellosis Reactor" upon the face of any document that person prepares in connection with such movement.

(e) *Segregation en route.* Brucellosis reactor swine shall not be moved interstate in any means of conveyance containing animals which are not brucellosis reactors unless all of the animals in the shipment are for immediate slaughter, or unless the brucellosis reactor swine are kept separate from other animals by a partition securely affixed to the sides of the means of conveyance.

(Approved by the Office of Management and Budget under control number 0579–0051)

§ 78.32 Brucellosis exposed swine.

Brucellosis exposed swine may be moved interstate only if accompanied by a permit and only for immediate slaughter as follows: (a) Directly to a recognized slaughtering establishment; or (b) Directly to a stockyard posted under the Packers and Stockyards Act, as amended (7 U.S.C. 181 *et seq.*), or directly to a market agency or dealer registered under the Packers and Stockyards Act, for sale to a recognized slaughtering establishment.

(Approved by the Office of Management and Budget under control number 0579–0051)

§ 78.33 Sows and boars.

(a) Sows and boars may be moved in interstate commerce for slaughter or for sale for slaughter only if the sows and boars are:

(1) (i) Individually identified by a Veterinary Services approved tattoo [6] applied to the back of each swine prior to the movement in interstate commerce and before they are mixed with swine from any other source; or (ii) When approved by the State animal health official and the Veterinarian in Charge, individually identified by an approved swine identification tag; [7] or

(2) Moved from a herd of origin of swine (i) Directly to a recognized slaughtering establishment; or (ii) Directly to a stockyard posted under the Packers and Stockyard Act, as amended (7 U.S.C. 181 *et seq.*), or directly to a market agency or dealer registered under the Packers and Stockyard Act for sale to a recognized slaughtering establishment. Upon arrival and before they are mixed with swine from any other source, such swine must be identified [8] to the herd of origin by a Veterinary Services approved tattoo [6] applied to the back of each swine or individually identified by an approved swine identification tag.[7]

(b) Sows and boars may be moved in interstate commerce for breeding only if the sows and boars are:

(1) (i) Individually identified by an approved swine identification tag [7] prior to the interstate movement and before they are mixed with swine from any other source; or (ii) Registered with a registry association and individually identified in the same manner as recorded with the registry association; and

(2) (i) From a validated brucellosis-free herd or a validated brucellosis-free State and accompanied by a certificate which states, in addition to the items specified in § 78.1, that the swine originated in either a validated brucellosis-free herd or validated brucellosis-free State; or (ii) Negative to an official test within 30 days prior to interstate movement and accompanied by a certificate which states, in addition to the items specified in § 78.1, the dates and results of the official tests.

(c) Sows and boars may be moved in interstate commerce for purposes other than slaughter or breeding without restriction under this subpart.

(Approved by the Office of Management and Budget under control number 0579–0064)

§ 78.34 Other movements.

The Deputy Administrator may, upon request in specific cases, permit the movement in interstate commerce of swine not otherwise provided for in this subpart under such conditions as the Deputy Administrator may prescribe in each case to prevent the spread of brucellosis. The Deputy Administrator shall promptly notify the State animal health officials of the States involved of any such action.

§§ 78.35–78.39 [Reserved]

Subpart E—Designation of Brucellosis Areas, and Specifically Approved Stockyards

§ 78.40 Designations of State/areas.

The Deputy Administrator may amend §§ 78.41 and 78.42 to reclassify States and areas as Class Free, Class A, Class B, Class C, or quarantined when the Deputy Administrator determines that the States or areas meet the appropriate definitions in § 78.1. The Deputy Administrator may amend § 78.43 to reclassify States as validated brucellosis-free States or remove such status when the Deputy Administrator determines that such States meet or do not meet the standards of a validated brucellosis-free State as defined in § 78.1. In the case of any reclassification to a lower status or removal of validated brucellosis-free status, the State animal health official of the State involved will be notified and given an opportunity to be heard prior to the reduction of status.

§ 78.41 State/area classification.

(a) *Class Free*—Alaska, Arizona (those portions of Mohave and Coconino Counties north of the Grand Canyon), Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virgin Islands, West Virginia, Wisconsin, and Wyoming.

(b) *Class* A—Arizona (except those portions of Mohave and Coconino Counties north of the Grand Canyon), California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Nebraska, Nevada, New Mexico, Ohio, Oregon,

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[6] Veterinary Services approved tattoo codes will be assigned to persons upon application to the State animal health official or the Veterinarian in Charge for the State in which such persons maintain their principal place of business.

[7] Serial numbers of approved swine identification tags will be assigned to persons upon application to the State animal health official or the Veterinarian in Charge for the State in which such persons maintain their principal place of business.

[8] The operator of each place of business where such swine are identified on arrival in accordance with this section shall enter such identification on the yarding receipt, sale ticket, invoice, waybill, or similar document relating to the swine and maintain the document on file at the place of business for at least 1 year. Such document shall be made available for inspection during ordinary business hours upon request by a Veterinary Services representative or State representative.

Puerto Rico, South Dakota, Tennessee, Virginia, and Washington.

(c) *Class B*—Alabama, Florida (Counties of Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Nassau, Okaloosa, Putnam, Saint Johns, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, and Washington), Kentucky, Mississippi, Missouri, Oklahoma, and Texas (Counties of Andrews, Archer, Armstrong, Bailey, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Erath, Fisher, Floyd, Foard, Gaines, Garza, Gillespie, Glasscock, Gray, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lampasas, Lipscomb, Llano, Loving, Lubbock, Lynn, McCullock, Martin, Mason, Maverick, Medina, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Winkler, Wise, Yoakum, Young and Zavala).

(d) *Class C*—Arkansas, Florida (Counties of Brevard, Broward, Charlotte, Citrus, Collier, Dade, De Soto, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Marion, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Saint Lucie, Sarasota, Seminole, Sumter, and Volusia), Louisiana, and Texas (Counties of Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Bowie, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Dallas, Delta, Denton, DeWitt, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kaufman, Kenedy, Kleberg, Lamar, LaSalle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, McLennan, McMullen, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Starr, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Wood and Zapata).

§ 78.42 Quarantined areas.

None.

§ 78.43 Validated brucellosis-free States.

Alaska, Arizona, California, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Utah, Vermont, Virgin Islands, Virginia, Washington, Wisconsin, Wyoming.

§ 78.44 Specifically approved stockyards.

(a) To qualify for approval by the Deputy Administrator as a specifically approved stockyard and to retain such designation, the operator [9] of the stockyard shall execute one of the agreements set forth in paragraphs (c) or (d) of this section and the stockyard shall be maintained and operated in accordance with the standards specified in the agreement.

(b)(1) The Deputy Administrator shall withdraw the approval of any specifically approved stockyard when the operator of the stockyard notifies the Deputy Administrator in writing that the agreement to operate as a specifically approved stockyard is terminated. (2) The Deputy Administrator may withdraw the approval of any specifically approved stockyard when the Deputy Administrator determines that the stockyard is not maintained and operated in accordance with the standards specified in the agreement. Before the Deputy Administrator withdraws approval from a specifically approved stockyard based upon a failure to maintain or operate the stockyard in accordance with the standards specified in the agreement, the operator of the stockyard will be informed in writing of the reasons for the proposed withdrawal of approval and, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of the action to withdraw approval if there is a dispute regarding any material fact, in accordance with rules of practice which shall be adopted for the proceeding. (3) The Deputy Administrator shall remove a stockyard from the list of specifically approved stockyards if the approval of such stockyard is withdrawn.

(c) To obtain approval as a specifically approved stockyard to handle cattle and bison pursuant to this part, the operator of the stockyard shall execute the following agreement:

Agreement— Specifically Approved Stockyard for Handling Cattle and Bison Pursuant to Title 9 of the Code of Federal Regulations

_____

(Name of Stockyard)

_____

(Address of Stockyard)

I, _____, (name of operator) operator of _____, (name of stockyard) hereby agree to maintain and operate this stockyard at _____ (premises location) in accordance with each of the provisions set forth herein.

Cooperation

(1) An accredited veterinarian, State representative, or Veterinary Services representative shall be on the stockyard premises on sale days to perform duties in accordance with State and Federal regulations.

(2) The State animal health official and the Veterinarian in Charge shall be furnished with a current schedule of sale days which apply to the stockyard and any revision to the schedule of sale days prior to implementation of such revision.

(3) State representatives and Veterinary Services representatives shall be granted access to stockyard premises and facilities at reasonable hours to determine compliance with the requirements of Title 9, Code of Federal Relations, and the standards of this agreement.

Handling of Cattle and Bison

(4) Cattle and bison shall be received, handled, and released by the stockyard only in accordance with Title 9 of the Code of Federal Regulations.

(5) All brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle or bison arriving at the stockyard shall be placed in quarantined pens and consigned from the stockyard only in accordance with Title 9, Code of Federal Regulations, Part 78.

(6) Cattle and bison which have not been classified as brucellosis reactors, brucellosis suspects, or brucellosis exposed shall not be placed in quarantined pens without prior cleaning and disinfection of such pens in accordance with paragraph 14 of this agreement.

[9] The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

(7) Any cattle or bison classified as brucellosis reactors at the stockyard shall be (a) Identified by branding the letter "B" at least 2x2 inches in size on the left jaw and attaching to the left ear a metal tag bearing a serial number and the inscription, "U.S. Reactor," or metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors; (b) Placed in quarantined pens; and (c) Consigned from the stockyard only to a recognized slaughtering establishment or an approved intermediate handling facility in accordance with Title 9, Code of Federal Regulations, Part 78.

(8) Any cattle or bison classified as brucellosis exposed at the stockyard shall be (a) Identified in accordance with Title 9, Code of Federal Regulations, Part 78; (b) Placed in quarantined pens; and (c) Consigned from the stockyard only to a recognized slaughtering establishment, an approved intermediate handling facility, a quarantined feedlot, or a farm of origin in accordance with Title 9, Code of Federal Regulations, Part 78.

(9) Identity of cattle from Class Free States or areas and Class A States or areas shall be maintained.

(10) Identity of cattle from Class B States or areas shall be maintained, and test-eligible cattle from Class B States or areas shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(11) Identity of cattle from Class C States or areas shall be maintained, and test-eligible cattle from Class C States or areas shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(12) Identity of cattle from quarantined areas shall be maintained, and test-eligible cattle from quarantined areas shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(13) Test-eligible cattle penned with test-eligible cattle from a lower class State or area, in violation of this agreement, shall have the status of the State or area of lower class for any subsequent movement.

Facilities

(14) Quarantined pens for the confinement of brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle and bison shall be (a) Clearly labeled with paint or placarded as follows: "Quarantined," "Brucellosis," or "Bangs"; and (b) Cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, § 71.4, before being used to pen cattle and bison which are not brucellosis reactors, brucellosis suspects or brucellosis exposed.

(15) Quarantined pens confining brucellosis reactors or brucellosis suspects shall have impervious floor surfaces and adequate draining for the purposes of cleaning and disinfection.

(16) Well-lighted cattle chutes shall be furnished and maintained to provide for proper restraint of cattle and bison for inspection, identification, vaccination, testing, and branding. Adequate electrical outlets shall be provided at the chute area for branding purposes.

(17) Laboratory space shall be furnished and maintained for conducting brucellosis tests. All test reagents, testing equipment, and documents relating to the State-Federal cooperative brucellosis eradication program on the stockyard premises shall be secured to prevent misuse and theft. Adequate heat, cooling, electricity, water piped to a properly drained sink, and sanitation shall be provided for properly conducting brucellosis tests.

(18) Serviceable equipment for cleaning and disinfecting shall be furnished and maintained with adequate disinfectant on hand.

Cleaning and Disinfection

(19) The stockyard shall be cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, § 71.4.

Records

(20) Any document relating to animals which are or have been in the stockyard shall be maintained by the stockyard for a period of 1 year.

(21) State representatives and Veterinary Services representatives shall be granted, at reasonable hours, access to all documents required to be maintained pursuant to paragraph 20 of this agreement and authority to reproduce the documents upon request.

I, _____, hereby acknowledge receipt of a copy of Title 9, Code of Federal Regulations, Parts 71 and 78, and hereby acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement and Parts 71 and 78 constitutes a basis for the withdrawal of approval from this stockyard.

Request Approval

_____

* Operator of the Stockyard

_____

Date

_____

Recommend Approval

_____

State Animal Health Official

_____

Date

_____

Recommend Approval

_____

Veterinarian in Charge

_____

Date

_____

Approval Granted

_____

Deputy Administrator

_____

Veterinary Services

_____

Date

* The operator shall be the individual legally responsible for the day to day operations of the specifically approved stockyard.

(d) To obtain approval as a specifically approved stockyard to handle cattle and bison, except to receive known brucellosis reactor, brucellosis suspect, or brucellosis exposed cattle or bison, pursuant to this part, the operator of the stockyard shall execute the following agreement:

Agreement—Specifically Approved Stockyard for Receiving Cattle and Bison Other Than Brucellosis Reactor, Brucellosis Suspect, and Brucellosis Exposed Cattle or Bison Pursuant to Title 9 of the Code of Federal Regulations

_____

(Name of Stockyard)

_____

(Address of Stockyard)

I, _____, (name of operator) operator of _____ (name of stockyard) hereby agree to maintain and operate this stockyard at _____ (premises location) in accordance with each of the provisions set forth herein.

Cooperation

(1) An accredited veterinarian, State representative, or Veterinary Services representative shall be on the stockyard premises on sale days to perform duties in accordance with State and Federal regulations.

(2) The State animal health official and the Veterinarian in Charge shall be furnished with a current schedule of sale days which apply to the stockyard and any revision to the schedule of sale days prior to implementation of such revision.

(3) State representatives and Veterinary Services representatives shall be granted access to stockyard premises and facilities at reasonable hours to determine compliance with the requirements of Title 9, Code of Federal Regulations, and the standards of this agreement.

Handling of Cattle and Bison

(4) Cattle and bison shall be received, handled, and released by the stockyard only in accordance with Title 9 of the Code of Federal Regulations.

(5) No cattle or bison known to be brucellosis reactors, brucellosis suspects, or brucellosis exposed shall be permitted to enter the stockyard.

(6) Any cattle or bison classified as brucellosis reactors at the stockyard shall be (a) Identified by branding the letter "B" at least 2x2 inches in size on the left jaw and attaching to the left ear a metal tag bearing a serial number and the inscription, "U.S. Reactor," or metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors; (b) Placed in quarantined pens; and (c) Consigned from the stockyard only to a recognized slaughtering establishment or an approved intermediate handling facility in accordance with Title 9, Code of Federal Regulations, Part 78.

(7) Any cattle or bison classified as brucellosis exposed at the stockyard shall be (a) Identified in accordance with Title 9, Code of Federal Regulations; (b) Placed in quarantined pens; and (c) Consigned from the

stockyard only to a recognized slaughtering establishment, an approved intermediate handling facility, a quarantined feedlot, or a farm of origin in accordance with Title 9, Code of Federal Regulations, Part 78.

(8) Cattle and bison which have not been classified as brucellosis reactors, brucellosis suspects, or brucellosis exposed shall not be placed in quarantined pens without prior cleaning and disinfection of such pens in accordance with paragraph 14 of this agreement.

(9) Identity of cattle from Class Free States or areas and Class A States or areas shall be maintained.

(10) Identity of cattle from Class B States or areas shall be maintained, and test-eligible cattle from Class B States or areas shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(11) Identity of cattle from Class C States or areas shall be maintained, and test-eligible cattle from Class C States or areas shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(12) Identity of cattle from qualified herds in quarantined areas shall be maintained, and test-eligible cattle from qualified herds in quarantined areas shall not be placed in pens with any other cattle until they have fulfilled the requirements of Title 9, Code of Federal Regulations, for release from the stockyard.

(13) Test-eligible cattle penned with test-eligible cattle from a lower class State or area, in violation of this agreement, shall have the status of the State or area of lower class for any subsequent movement.

Facilities

(14) Quarantined pens for the confinement of brucellosis reactors, brucellosis suspects, and brucellosis exposed cattle and bison tested and classified at the stockyard shall be (a) Clearly labeled with paint or placarded as follows: "Quarantined," "Brucellosis," or "Bangs"; and (b) Cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, § 71.4, before being used to pen cattle and bison which are not brucellosis reactors, brucellosis suspects, or brucellosis exposed.

(15) Well-lighted cattle chutes shall be furnished and maintained to provide for proper restraint of cattle and bison for inspection, identification, vaccination, testing, and branding. Adequate electrical outlets shall be provided at chute area for branding purposes.

(16) Laboratory space shall be furnished and maintained for conducting brucellosis tests. All test reagents, testing equipment, and documents relating to the State-Federal cooperative brucellosis eradication program on the stockyard premises shall be secured to prevent misuse and theft. Adequate heat, cooling, electricity, water piped to a properly drained sink, and sanitation shall be provided for properly conducting brucellosis tests.

(17) Serviceable equipment for cleaning and disinfecting shall be furnished and maintained with adequate disinfectant on hand.

Cleaning and Disinfection

(18) The stockyard shall be cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, § 71.4.

Records

(19) Any document relating to animals which are or have been in the stockyard shall be maintained by the stockyard for a period of 1 year.

(20) State representatives and Veterinary Services representatives shall be granted, at reasonable hours, access to all documents required to be maintained pursuant to paragraph 19 of this agreement and authority to reproduce the documents upon request.

I, _____, hereby acknowledge receipt of a copy of Title 9, Code of Federal Regulations, Parts 71 and 78, and hereby acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement and Parts 71 and 78 constitutes a basis for the withdrawal of approval from this stockyard.

Request Approval

_____

*Operator of the Stockyard

_____

Date

Recommend Approval

_____

State Animal Health Official

_____

Date

Recommend Approval

_____

Veterinarian in Charge

_____

Date

Approval Granted

_____

Deputy Administrator
Veterinary Services

_____

Date

*The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

PART 51—[AMENDED]

2. The authority citation for Part 51 continues to read as follows:

Authority: 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

3. In § 51.6, paragraph (a) is revised to read as follows:

§ 51.6 Destruction of animals; time limit for destruction of animals.

(a) *Cattle.* The claimant shall be responsible for ensuring that cattle subject to this part shall be sold under permit to a recognized slaughtering establishment [1] or to a specifically approved stockyard [1] for sale to a recognized slaughtering establishment.[1]

* * * * *

4. Footnote number 1 in § 51.6 is revised to read as follows:

[1] The terms "recognized slaughtering establishment" and "specifically approved stockyard" are defined in § 78.1 of this chapter.

PART 71—[AMENDED]

5. The authority citation for Part 71 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

6. In § 71.1, the introductory text and the definition of "Moved (movement) in interstate commerce" is revised to read as follows:

§ 71.1 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section. * * *

Moved (movement) in interstate commerce. Moved from the point of origin of the interstate movement to the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops along the way, such as at a stockyard or dealer premises for feed, water, rest, or sale.

§ 71.3 [Amended]

7. In § 71.3(c), the reference to "the provisions of Subpart B of Part 78 of this subchapter" is revised to read "Part 78 of this chapter".

8. In § 71.18, the first sentence of paragraph (a) is revised to read as follows:

§ 71.18 Individual identification of certain cattle 2 years of age or over for movement in interstate commerce.

(a) No cattle 2 years of age or over, except steers and spayed heifers and cattle of any age which are being moved interstate during the course of normal ranching operations without change of ownership to another premises owned, leased, or rented by the same individual as provided in §§ 78.9(a)(3)(iv), 78.9(b)(3)(iv), 78.9(c)(3)(iv), and 78.9(d)(3)(vii) of this chapter, shall be moved in interstate commerce other than in accordance with the requirements of this section. * * *

* * * * *

9. Footnote number 1 in § 71.18 is revised to read as follows:

[1] Department-approved backtags are available at recognized slaughtering establishments and specifically approved stockyards and from State representatives and Veterinary Services representatives. A list of recognized slaughtering establishments and specifically approved stockyards may be obtained as indicated in § 78.1 of this chapter. The terms "State representative" and "Veterinary Services representative" are defined in § 78.1 of this chapter.

VOL
51
ISS
177
SE
12
1986
UMI

10. In §§ 71.18(a)(1)(i) and 71.18(a)(1)(ii), "slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or slaughtering establishment specifically approved under § 78.16(b) of this subchapter" is revised to read "recognized slaughtering establishment as defined in § 78.1 of this chapter".

PART 80—[AMENDED]

11. The authority citation for Part 80 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

12. In § 80.1, paragraph (j) is revised to read as follows:

§ 80.1 Definitions.

* * * * *

(j) *Specifically approved stockyard.*[1] Premises where cattle or bison are assembled for sale or sale purposes and which meet the standards set forth in § 78.44 and are approved by the Deputy Administrator.

13. In § 80.1, a new footnote 1 is added to read:

[1] Notices containing lists of specifically approved stockyards are published in the Federal Register. Lists of specifically approved stockyards also may be obtained from the State animal health official, State representatives, or Veterinary Services representatives.

§ 80.4 [Amended]

14. In § 80.4 the introductory text, "a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), or a slaughtering establishment approved with respect to brucellosis reactors pursuant to § 78.16(b) of this subchapter" is revised to read "a recognized slaughtering establishment as defined in § 78.1 of this chapter."

PART 92—[AMENDED]

15. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

16. In § 92.35(d)(2), "a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act or a slaughtering establishment specifically approved as specified in § 78.24 of this chapter" is amended to read "a recognized slaughtering establishment as defined in § 78.1 of this chapter".

§ 92.35 Cattle from Mexico.

17. In § 92.35(d), the reference to "§ 78.1(oo)" is revised to read "§ 78.1" and the reference to "§ 78.12(a)" is revised to read "§ 78.12."

Done at Washington, DC, this 8th day of July, 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-20491 Filed 9-11-86; 8:45 am]

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federal register

Friday
September 12, 1986

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 544

Inmate Recreation Programs; Showing of Movies; Final Rule

VOL 51 ISS 177 SEP 12 1986 UMI

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment, and Instruction of Inmates; Inmate Recreation Programs; Showing of Movies

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rule on inmate recreation programs. The final amendments to the rule on recreation programs include a revised section on the showing of movies at the institution.

DATE: Effective October 27, 1986. Comments will be accepted indefinitely.

ADDRESS: Send comments to Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on inmate recreation programs. A proposed rule on this subject was published in the **Federal Register** on November 22, 1985 (at 50 FR 48341). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

1. Section 544.30. In this section "an inmate" is changed to "inmates." The phrase "and other group and individual activities" is added to recognize that activities other than those listed may be provided. The overall intent of this section is unchanged.

2. Section 544.31. In § 544.31(a) the words "participation in" are added. In the same sentence, "physical fitness" has been included as an example of a leisure activity. Physical fitness may include weight lifting or the use of exercise equipment.

3. Section 544.32. Section 544.32(a) is reworded. The phrase "handicap considerations" has been added for consistency with the Bureau's rule on non-discrimination towards inmates (see 28 CFR 551.90). The intent of the section is unchanged. The word "capacity" has been deleted from paragraph (b). The Bureau's intent has always been to provide all inmates, even those with limited capacity, access to leisure activities. Although the wording of this paragraph has changed, the intent remains the same.

4. Section 544.33. In the proposed rule, "HBO" was used as an *example* of a cable movie channel. It was not intended to restrict cable movie channel selection to that one specific channel, therefore, the less restrictive term "premium movie channels" is substituted in the final rule.

A commenter voiced a continued objection to proposed restrictions on X-rated movies by stating that a "blanket ban" on X-rated movies is "unconstitutionally over broad, vague and meaningless". We do not agree. Part of the criteria used in rating a movie "X" is whether the movie contains segments depicting explicit sexual activity or extreme violence. The Bureau believes that both of these elements can pose some threat to the security and good order of its institutions. Nor do we agree with a comment suggesting that the Bureau is taking "another backward step" by deleting inmate participation on a committee to select or review movies. In 1980, the Bureau finalized its rule [relevant to movies] based on the fact that most institutions were renting movies for inmate viewing. Today, most institutions have access, or subscribe to [cable] premium movie channels. In effect, this eliminates the need for renting movies, and the need for a selection committee.

5. Section 544.34. In § 544.34(c)(2) the word "items" has been changed to "item". Section 544.34(c)(3) has been reworded. In § 544.34(d) the word "institution" is changed to "an inmate's". Although the wording changed, the intent of these paragraphs remains the same. A comment to § 544.34(d)(1) suggested that the use of a "local standard of decency" for public display of prisoner art-work is unconstitutional and therefore unacceptable. The commenter stated this same objection at the time the original rule was published for public comment in December 1979. The Bureau's position then, as now, is that § 544.34(d)(1) restricts only the display of inmate art-work in the more public areas of the institution, where people of all ages and backgrounds, including children, may attend and observe the work. The rule does not obstruct the inmate's opportunity to create, or place limitations on the inmate's ability to distribute art-work as noted in § 544.34(c).

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended by revising Subchapter C, Part 544, Subpart D, to read as set forth below.

Dated: August 21, 1986.

J. Michael Quinlan,

Acting Director, Bureau of Prisons.

Subchapter C—Institutional Management

PART 544—EDUCATION

1. The authority citation for Part 544 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. Part 544, Subpart D, consisting of §§ 544.30-544.34, is revised to read as follows:

Subpart D—Inmate Recreation Programs

Sec.

544.30 Purpose and scope.
544.31 Definitions.
544.32 Goals.
544.33 Movies.
544.34 Art and Hobbycraft.

Subpart D—Inmate Recreation Programs

§ 544.30 Purpose and scope.

The Bureau of Prisons encourages inmates to make constructive use of leisure time and offers movies, sports, social activities, arts and hobbycrafts, and other group and individual activities.

§ 544.31 Definitions.

(a) *Leisure activities* are a wide range of activities in which inmates may participate when not performing assigned duties. Leisure activities include participation in organized and informal sports, physical fitness, table games, hobbycrafts, music programs, intramural activities, social and cultural organizations, movies and stage shows. Religious activities, psychological

services, and education classes are not included within this definition.

(b) *Organized activities* are those activities accounted for by registration or roster of individual participants.

(c) *Art work* includes all paintings and sketches rendered in any of the usual media (oils, pastels, crayons, pencils, inks, and charcoal).

(d) *Hobbycraft activities* include leatherwork, models, clay, mosaics, crochet, knitting, sculptures, woodworking, lapidary, and other forms consistent with institution guidelines.

§ 544.32 Goals.

The Warden is to insure, to the extent possible, that leisure activities are provided to meet social, physical, and psychological needs of inmates.

(a) Leisure activities are designed to attract inmate participation regardless of ethnic, racial, age, or sex difference, or handicap considerations, and to enhance the potential for post-release involvement.

(b) Leisure activities are designed to ensure that an inmate with the need and desire has the opportunity to complete one or more activities (see 28 CFR 544.81).

§ 544.33 Movies.

The Warden or designees may approve the showing of movies at the institution. X-rated movies are not permitted. Where the institution receives premium movie channels through cable television subscription, regular movie rentals ordinarily will be limited to special events or holidays.

§ 544.34 Art and hobbycraft.

(a) An inmate engaged in art or hobbycraft activities may obtain materials through:

(1) The institution art program (if one exists);

(2) The commissary sales unit;

(3) Special purchase commissary orders, if the sales unit is unable to stock a sufficient amount of the needed materials; or

(4) Other sources approved by the Warden.

(b) Each inmate shall identify art or hobbycraft materials by showing the inmate's name and register number on the reverse side of the item.

(c) Completed or abandoned art or hobbycraft articles may be disposed of in the following manner:

(1) Upon approval of the Warden, by giving the item to an authorized visitor.

(2) By mailing the item to a verified relative or approved visitor at the inmate's expense.

(3) By selling through an institution art and hobbycraft sales program, if one exists, after the institution price committee has detemined the sale price.

(4) Other methods established by the Warden.

(d) *Restrictions.* Art and hobbycraft programs are intended for the personal enjoyment of an inmate and as an opportunity to learn a new leisure skill. They are not for the mass production of art and hobbycraft items by artists or to provide a means of supplementing an inmate's income.

(1) The Warden may restrict, for reasons of security and housekeeping, the size of inmate paintings. Paintings mailed out of the institution must conform to both institution guidelines and postal regulations. If an inmate's art work or hobbycraft is on public display, the Warden may restrict the content of the work in accordance with community standards of decency.

(2) The Warden may set limits, in compliance with commissary guidelines, on the amount of money an inmate may spend on art or hobbycraft materials.

(3) The Warden may restrict for reasons of security, fire safety, and housekeeping, the use or possession of art and hobbycraft items or materials.

(4) The Warden may limit hobbycraft projects in the cell/living areas to those which can be contained/stored in designated personal property containers. Exceptions may be made for such items as a painting where the size would prohibit placement in a locker. Hobbycraft items must be removed from the living area when completed.

(5) The Warden shall require the inmate to mail completed hobbycraft articles out of the institution at the inmate's expense, or to give them to an authorized visitor within 30 days of completion, or to dispose of them through approved sales. However, articles offered for sale must be sold within 90 days of completion, or must be given to an authorized visitor or mailed out of the institution at the inmate's expense.

(6) Where space and equipment are limited and demand is high, the Warden may set limits on the amount of time an inmate may use a hobbycraft facility, e.g. the Warden may limit an inmate's use of a ceramics classroom to six months to make room for new students.

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VOL
51

ISS
1
7
7

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12

1986

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Friday
September 12, 1986

Part IV

Environmental Protection Agency

40 CFR Part 6

Procedures and Requirements Implementing the National Environmental Policy Act for the Municipal Wastewater Treatment Construction Grants Program; Final Rule

VOL 51 ISS 177 SE 12 1986 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 6

[FRL 2989-4]

Procedures and Requirements Implementing the National Environmental Policy Act for the Municipal Wastewater Treatment Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document makes final the interim rule published in the Federal Register June 25, 1985 (50 FR 26310) which sets out EPA's procedures for implementing the National Environmental Policy Act (NEPA) for the wastewater treatment construction grants program (Subpart E and related sections of 40 CFR Part 6). This rule directly relates to the implementation of the Municipal Wastewater Treatment (MWWT) Construction Grants program regulations (Part 35 of this title) and the Agency's public participation regulations (Part 25 of this title). It makes minor amendments as a result of public and internal Agency comments received on the interim rule.

The amendments and revisions made in the final rule include aspects of: partitioning and re-evaluating environmental reviews; categorical exclusions; public participation; producing and distributing environmental review documents; and various technical changes. Changes made in the final rule, and others which were considered but not adopted, are described below under sub-headings following a general description of the issues.

As explained in the Preamble to the Interim rule, changes to this rule are not expected to have a significant individual or cumulative impact on the environment, therefore no EIS was performed.

DATE: This regulation is effective September 12, 1986.

FOR FURTHER INFORMATION CONTACT: John Gerba, Office of External Affairs [A-104-S] Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-7063.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1985, EPA amended its procedures for implementing the National Environmental Policy Act (NEPA) to: (1) Be consistent with the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97-117); (2) be consistent with changes in the wastewater treatment construction grants program's regulation (Part 35 Subparts E and I of this title); (3) reorder the sections of Subpart E of this part to more closely reflect the sequence of the steps undertaken in the environmental review process; (4) make minor changes to the criteria for undertaking, preparing or issuing various environmental decision documents; (5) require re-evaluation of previously issued NEPA decisions on projects awaiting grant funding; (6) reflect the new organizational structure within EPA for lead responsibilities for these regulations; and (7) make adjustments to other subparts as needed for consistency throughout the entire rule. Readers may review the detailed descriptions of changes made in the Preamble to the Proposed rule of January 7, 1983 (48 FR 1014) issue of the Federal Register and the Interim rule of June 25, 1985 (50 FR 26310).

General Description of Issues

In response to the Interim rule published June 25, 1985, the EPA received comment letters from four States and from two municipal sanitary district agencies. Although this preamble does not respond to each comment individually, all were carefully considered. Most commentors concentrated on the following three issues: The EPA's independent environmental review of preliminary environmental assessments drafted by States; public participation requirements for categorical exclusions (CEs); and, the re-evaluation of environmental assessment (EA) decision documents following the elapse of five years from their original issuance. Other significant issues raised which prompted changes or clarifications include: the cost-savings criterion for partitioning the environmental review for qualified projects; the relationship of Part 6 requirements to non-EPA funded portions of MWWT facilities plans; the requirements for evaluating induced growth and excess capacity; and, the relationship among interdependent but otherwise largely separate systems within a facilities planning study area.

The technical changes made to the final rule include the location in the regulation of general requirements for evaluating requests for categorical exclusions and the nomenclature of responsible EPA offices referenced.

Applicability and Limitations

Several commentors suggested eliminating federal public participation requirements on project planning and design activities on the grounds that EPA no longer funds Step 1 or 2 (planning and design) grants. Some of the same commentors stated that Part 6 environmental review requirements should apply only to EPA-related portions of a MWWT system and not to those portions supported entirely with non-federal funds.

The Agency did not accept these suggestions. The interim regulation did not impose public participation requirements solely related to a grantee's planning and design activities. Instead, consistent with the Council on Environmental Quality's (CEQ) regulations implementing NEPA, it prescribed public participation as part of the NEPA review required on the entire project prior to submission of a grantee's Step 3 grant application. In the preamble to its construction grants regulations (Part 35, Subpart I of this title) the Agency noted that applicants who request an early determination of NEPA compliance can take advantage of involving the public in their own Step 1 and 2 (planning and design) activities through application of the public participation requirements of Part 6. However, applicants also have the option of meeting Part 6 public participation requirements at any time prior to Step 3 grant application.

In regards to the applicability of Part 6 to non-EPA funded portions of wastewater treatment systems, the Agency's position is in conformance with CEQ's regulations implementing NEPA requiring the evaluation of the cumulative impacts of a federal action, including nonfunded portions and related actions enabled by it. Consequently no changes were made regarding the applicability of these Part 6 requirements.

One additional commentor raised an issue involving compliance with the Coastal Barrier Resources Act. In response the Agency has added language emphasizing the restriction on award of grants involving projects which are proposed for barrier islands as a new paragraph (4) in § 6.502(b). The addition of this paragraph did not substantively change any previous requirement.

Independent Review

Several commentors suggested that the independent EPA review of preliminary environmental assessments (EAs) prepared by States, and Agency review of the grantee's environmental information document (EID) (including the review of the grantee's facilities plans upon which the EID is based) be eliminated because they view these

activities as unnecessarily duplicating State responsibilities.

The Agency agrees that duplicative reviews should be avoided to the extent practicable. However, CEQ's implementing regulations require that the final environmental determination be made by the federal responsible official based on an independent environmental review. The EPA review is to ensure that the information provided by the State to the federal responsible official is sufficient to support the State's recommendation on the environmental determination.

The Agency does not consider an EID to be final until the Agency's informational needs are satisfied. Therefore, should a situation arise where the information contained in a preliminary EA prepared by a State is found to be inadequate, the EPA Regional Administrator has the responsibility to review, if necessary, the grantee's EID and/or facilities plan to determine the completeness of the grantee's analysis. In these cases, EPA officials will work with delegated States to avoid duplication of effort. In cases where the State's recommendations are adopted without need for supplementing the accompanying preliminary EA produced by the State, the signing of a NEPA determination by the federal responsible official also makes final the grantee's EID.

Partitioning the Environmental Review

Cost savings. One commentor noted that the introductory paragraph describing the purposes of the procedure allowing for partitioning of an environmental review included two criteria, only one of which need be met to qualify for partitioning—"cost savings" or "impaired program effectiveness"—but that the remainder of the section only provided a procedure for partitioning under the latter criterion. The Agency agreed with the commentor that specific procedures for implementing the cost savings criterion should be provided. Consequently, the final rule incorporates specific requirements for the cost savings criterion established in the introductory purpose paragraph of § 6.507.

Non-EPA funded portions of facilities plans. Several commentors suggested that the EPA should add a third criterion to permit partitioning of environmental reviews for the sole purpose of early procurement of portions of treatment systems that are to be constructed entirely by State or local funds.. Furthermore some commentors suggested eliminating the environmental review on these portions entirely.

EPA does not agree with these suggestions since NEPA requires the Agency, in evaluating the consequences of a construction grant project, to consider the impact of treatment works enabled by the process but not otherwise funded by EPA. However, non-EPA funded portions of MWWT systems can be partitioned and built in advance in accordance with § 6.507 requirements without jeopardizing EPA grant funding for the remainder of the system(s), if the portion meets either one of the two criteria for partitioning already permitted.

Phases and interdependent systems. Several commentors requested clarifications to the partitioning requirements involving facilities planning study areas containing multiple phased projects (as defined in Part 35 regulations of this title) or interdependent, though largely separate, systems. The Agency's view on partitioning environmental reviews for projects of this kind is that an environmental review on the first phase or system in a study area must take into account the cumulative effects of all other interrelated projects or systems contemplated for that study area in order not to foreclose on viable alternatives and to eliminate those with cumulative effects which are undesirable. Thereafter each succeeding complete phase or system that undergoes environmental review may incorporate common analyses by reference. Therefore, to clarify the Agency's position the word "systems" was substituted for "facilities plan" in paragraphs (a) and (d)(3) of § 6.507.

Categorical Exclusions

Commentors submitted many suggestions for improving or changing the requirements for categorical exclusions (CEs). As a result the Agency concluded that there was a need to clarify the following in both the preamble and rule: whether or not a formal application for a CE was necessary, what it should contain, and who should initiate it; procedures for rescinding CEs; availability of CEs for projects involving relocation of existing discharges; applicability of requirements for not granting a CE when new categories are proposed; and, the need for both grantee and EPA notices and a thirty-day public comment period. Each is briefly discussed below.

Applications and their initiation. In order to make the requirements more understandable, the Agency has modified the final rule to require that all CEs shall be by application and that only grantees can make application. Establishment of specific application procedures, however, will be the responsibility of each federal responsible official, in consultation with States. At a minimum, an application should consist of a letter request from the grantee with supporting documentation drawn from existing information justifying the exclusion. The phrase "from existing information" as used in § 6.505(a) indicates that grantees do not have to comply with requirements for initiating an EID unless their application for a CE is denied or additional information is required before a final determination can be made.

Rescinding previously granted CE determinations. In response to a comment, the Agency has amended the rule at § 6.400(f) to indicate that the procedures to rescind a previously granted CE determination should follow the same notice procedures used in granting the original determination.

Relocation of existing discharges. One commentor suggested that disallowing CE determinations in all cases involving the relocation of existing discharges was too restrictive, recommending that a threshold distance should be established.

The Agency disagrees. A change of a few feet could place the relocated discharge of effluent into a different water body or the discharge may be to the same receiving water body but involve a different water quality segment. We disagree further because the complexity of possible water quality impacts makes it difficult to create a threshold distance which would encompass all combinations of wastewater treatment facilities and technologies employed.

Applicability of CE criteria to new categories. In response to another comment § 6.505(d) was amended (redesignated § 6.107(f)] to indicate that new adopted categories of projects excluded from the substantive requirements of Part 6 will become an addition to § 6.107(d) of this section for new permissible general actions, or as an addition to a similar paragraph in other subparts when the new permissible action pertains to only one program, subject to all criteria for evaluating CE applications including conformance with criteria for not granting CEs. A further suggestion that a time-frame be included for acting on requests for new categories was not adopted since the Agency believes that each suggested category may take different lengths of time to adequately evaluate and complete the regulatory review process.

Public notices, comment periods and effective dates. Several comments were

directed toward eliminating the public notice requirement on CE requests on the basis that it added too much time to the process for evaluating requests for CEs to the point where there would be little time saved over EA/FNSI preparation. One of the commentors further suggested that if the public notice requirement were to stay, it should also appear in Part 35 requirements.

EPA does not agree with these recommendations. The required notice is a minimal one which does not require public meetings. Furthermore, no EID need be prepared for CEs. Since virtually no environmental recordkeeping is involved on such projects, the Agency feels strongly that a widely disseminated notice is necessary to inform the public about the proposed federal project in their community. In addition, the requirement is incorporated by reference in Part 35 of this title, which requires compliance with Part 6 prior to the submissions of an application.

One commentor recommended that the required publication of the notice by the grantee should be the same day that the federal responsible official signs the NEPA determination. Other commentors further recommended that CEs should become effective immediately following the issuance of the determination on the part of the federal responsible official rather than following an additional thirty-day public comment period. Their reasoning was that a CE determination can be revoked at any time new information is brought to the attention of the responsible official, including information submitted by the general public. It was also pointed out that a mandatory 30-day delay for public comment was inconsistent with the rationale for having CE provisions, i.e., that there should be a mechanism for expeditiously handling projects which clearly have no significant environmental impact. After careful examination of these comments, the Agency accepted the recommendations that a formal 30-day public comment period was not necessary before making a CE determination effective. The distribution of the notice of determination by the EPA regional office and the publication of the newspaper notice by the grantee should be made as soon as possible after the signing of the determination by the EPA Regional Administrator. Section 6.400(f) of this part was changed accordingly.

Excess capacity. One commentor suggested that disallowing CEs for projects which will result in more than a 30% increase in population growth is unduly restrictive. EPA's original position on this issue, when the requirements were first published in March of 1982, was to impose a 20% cap on excess capacity. However in response to public comment on this threshold, and after consultation with the construction grants program, this cap was later increased to 30%. It remains our opinion that there is a strong presumption that there could be significant environmental impacts associated with excess capacities of 30% or greater.

Other Environmental Review Criteria

Compliance with other environmental laws. Several commentors suggested incorporating portions of laws or guidance pertaining to related environmental laws affecting the environmental review of construction grants projects as appendices to Part 6 (e.g., portions of the Council on Environmental Quality's regulations implementing NEPA, EPA guidance on the prohibition of federal project funding on barrier islands, and EPA guidance on implementing section 106 of the National Historic Preservation Act).

Though the reasons expressed in these comments for emphasizing these laws all had merit, the Agency's preference is to issue such material as separate documents as the need arises rather than including them in this regulation.

Induced growth and excess capacity. One commentor suggested that the term "induced growth" (or induced impacts), as used in § 6.506(b)(5), be qualified as meaning development in excess of that anticipated in the grantee's own planning studies. The Agency rejected this suggestion on the grounds that growth does not cease to be an environmental concern simply because it falls within the limits predicted by the locality itself. The NEPA issue to be investigated by evaluating growth is the likelihood and extent of primary and secondary impacts that any growth might cause on the existing and future environmental conditions enumerated in § 6.506, including secondary land use impacts, and not simply whether or not the federal project induced growth beyond what the grantee's planning studies have projected.

Threatened and endangered species and their habitats. After consulting with the Council on Environmental Quality, the EPA accepted a suggestion to amend the criteria addressing threatened and endangered species habitats in §§ 6.107 (criteria for not granting a categorical exclusion) and 6.108 (criteria for initiating an EIS) to include reference to the threatened and endangered species themselves as well as their habitats.

Submitting decision documents to OEA. During internal review of the interim comments, a decision was taken by EPA to drop the requirement in the rule requiring copies of EAs, FNSIs and RODs to be sent to OEA. A decision was also made to exempt CE determinations as well. It was determined that these documents should be obtained through other Agency administrative procedures.

Improving documentation and exhibits. Several comments suggested adding clarifying language specifying minimal requirements to improve the quality of bibliographic citations and mapped information within EAs and EISs. The Agency generally agreed with the intent of these suggestions but believes it would be more appropriate to address improvements to documentation and exhibits in guidance issued either by the EPA construction grants or NEPA compliance program offices. However, § 6.506(b)(4) was revised to clarify that local and tribal as well as public and private institutions should be considered within the range of sources consulted.

Re-evaluation of NEPA Determinations

Six comments were received on the requirements for re-evaluating the environmental consequences of projects which have not proceeded to award after five or more years following the effective date of the original environmental determination made by the Agency. The "5-year" re-evaluation requirement is based on the expectation that after five years the environmental conditions within the project area will have changed, and that therefore the anticipated future environmental impacts might also have changed as well. Commentors requested clarifications on: the application of this requirement to Step 1 grant assistance; initiating re-evaluations earlier than 5 years; and, application of this requirement to Step 2+3 grant projects.

Step 1 assistance & early initiation. In response to the question on the applicability to Step 1 grant assistance, the Agency stresses that the 5-year re-evaluation rule is not affected by when or how a project was initiated. It applies equally to all projects awaiting grant funding regardless of Step 1 federal planning grant assistance. Therefore no change in the rule was necessary on this. The Agency believes it is unnecessary to insert additional language to permit the initiation of re-evaluations by EPA earlier than 5 years since requirements in § 6.502(a)(2) and other sections as well make re-evaluating a project mandatory at any

time that significant project changes occur or that new information having bearing on the original determination is found or developed, or that its existing information becomes outdated.

Application to Step 2+3 projects. Two commentors noted that since the 5-year re-evaluation interim regulation requirement applied to all projects awaiting award of a Step 3 grant, the status of Step 2+3 grants under the requirement was not clear. The commentors recommended that specific reference to Step 2+3 grants be included in these sections to clarify the status of Step 2+3 grant projects.

The EPA agreed with the observation and recommendations expressed by these commentors. First, it was the Agency's intent that the re-evaluation requirements be applicable to Step 2+3 projects in cases where five years has elapsed between the environmental determination and grant award, although Step 2+3 projects were not specifically referenced in these parts of the regulation. To clarify this we have amended the final regulation to specifically include Step 2+3 projects in §§ 6.505(d)(2)(i), 6.508(b)(2)(i), and 6.511(c)(2)(i)). Secondly, for situations where there is a delay between Step 2+3 grant award and actual project procurement (e.g., the initiation of building the project) the final rule has been amended to require that an environmental re-evaluation take place as part of the review and approval of plans and specifications prescribed by § 35.220(2)(b) of this title. A separate paragraph addressing this latter requirement for Step 2+3 grants has been inserted into §§ 6.505(d)(2)(ii), 508(b)(2)(ii) and 511(c)(2)(ii) of the final rule.

Re-evaluated EIS notice requirements. During internal Agency review the requirement in § 6.511(c)(2)(i) requiring issuance of a FNSI when reaffirming an original EIS determination five or more years old was questioned. The Agency determined that this could be considered inconsistent with related FNSI requirements elsewhere in this rule, especially with its requirement for a 30-day public comment period. Therefore this requirement has been replaced with the same notice requirement for reaffirming NEPA determinations on CE and FNSI projects.

Technical Changes

General responsibilities. Since the last recodification of Part 6 requirements in 1979 there have been several changes to EPA Assistant Administratorships which are cited in § 6.103 as having responsibility for implementing its provisions. After internal review, it was decided to update § 6.103 and corresponding Subparts to reflect the current organizational structure in the Agency.

Relocation of general categorical exclusion criteria. During internal review of the comments made on the interim regulation, a decision was made to remove all general criteria pertaining to establishing categories of excludable projects and the detailed criteria for granting and not granting exclusions for potentially qualified projects from Subpart E, § 6.505. and insert them into Subpart A, § 6.107, which already contains all other pertinent general requirements for issuing CEs. Only criteria specific to construction grants projects were left remaining in § 6.505. Citations elsewhere within the regulation cross-referencing general criteria have been amended to conform with this new location.

Other minor non-substantive changes. There are other minor clarifying word or phrase changes which were made that were suggested through the comment procedure, and the Agency's internal review procedure, none of which change the rule in any major substantive way.

Regulation Development Process

An interim rule was developed by a work group, with representation from EPA headquarters and regional offices, and published in the Federal Register on June 25, 1985. A 60-day comment period resulted in the receipt of suggestions and recommendations from both the affected public and components of EPA's regional offices. These comments resulted in recommendations by the workgroup for minor amendments. Because the rule affected the implementation of the National Environmental Policy Act, a copy of this rulemaking was submitted to the Council on Environmental Quality for comment.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) on April 10, 1985, under provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.* and have been assigned OMB control number 2090-0016.

The Office of External Affairs (OEA), the responsible office for this rule, has determined that this revision is not a "major" rule within the meaning of Executive Order (E.O.) 12291. This decision was made because this revision will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase of costs or prices for consumers, individual industries, geographic regions, or federal, State, tribal or local government Agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The net purpose and effect of these amendments and technical revisions to the environmental review process for the construction grants program is to simplify some processes, reducing the burden on recipients of wastewater treatment construction grant awards, and making minor clarifications to the rule. No increased paperwork burdens overall are imposed on potential grantees by the amendments.

These amendments and technical revisions were submitted to the OMB for review as required by E.O. 12291.

E.O. 12291 requires that "major" rules must undergo a Regulatory Impact Analysis. Since EPA has adopted the determination of OEA that this rulemaking is not "major" under the requirements of E.O. 12291, it is not subject to such analysis.

List of Subjects in 40 CFR Part 6

Environmental impact statements, Administrative practice and procedure, Grant programs, Permit programs, Waste treatment and disposal.

Dated: August 22, 1986.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, the interim regulations published in the Federal Register June 25, 1985 (50 FR 26310) are adopted as final with the following changes.

PART 6—[AMENDED]

1. The authority citation for Part 6 continues to read as follows:

Authority: Secs. 101, 102, and 103 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations dated November 29, 1978 (Parts 1500 to 1508 of this title); also Executive Order 12114 on Environmental Effects Abroad of Major Federal Actions.

2. Section 6.103 is amended by revising paragraphs (a)(4), (b)(2), (c)(2), (e) and (f) as follows:

§ 6.103 Responsibilities.

(a) * * *

(4) The Office of Policy, Planning, and Evaluation duties include: responsibilities for coordinating the preparation of EISs required on EPA legislative proposals in accordance with § 6.102(b).

(b) * * *

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(2) *Assistant Administrator.* The responsibilities of the Assistant Administrator, as described in § 6.103(a)(3), shall be assumed by the Assistant Administrator for Water for EPA actions covered by this subpart.

(c) * * *

(2) *Assistant Administrator.* The responsibilities of the Assistant Administrator, as described in § 6.103(a)(3), shall be assumed by the Assistant Administrator for Enforcement and Compliance Monitoring for EPA actions covered by this subpart.

* * * * *

(e) *Responsibilities for Subpart H.* The Assistant Administrator for Solid Waste and Emergency Response will be the responsible official for activities covered by this subpart.

(f) *Responsibilities for Subpart I.* The responsible official for new construction and modification of special purpose facilities is as follows:

(1) The Chief, Facilities Engineering and Real Estate Branch, Facilities and Support Services Division, Office of the Assistant Administrator for Administration and Resource Management (OARM) shall be the responsible official on all new construction of special purpose facilities and on all new modification projects for which the Facilities Engineering and Real Estate Branch has received a funding allowance and for all other field components not covered elsewhere in paragraph (f) of this section.

(2) The Regional Administrator shall be the responsible official on all improvement and modification projects for which the regional office has received the funding allowance.

3. Section 6.105 is amended by revising paragraph (d) and the section title to read as follows:

§ 6.105 Synopsis of environmental review procedures.

* * * * *

(d) *Environmental assessments.* Environmental assessments (i.e., concise public documents for which EPA is responsible) are prepared to provide sufficient data and analysis to determine whether an EIS or finding of no significant impact is required. Where EPA determines that a categorical exclusion is appropriate or an EIS will be prepared, there is no need to prepare a formal environmental assessment.

* * * * *

4a. Section 6.107 is amended by revising paragraph (b) and adding paragraphs (d), (e) and (f) as follows:

§ 6.107 Categorical exclusions.

* * * * *

(b) *Determination.* The responsible official shall determine whether an action is eligible for a categorical exclusion as established by general criteria in § 6.107 (d) and (e) and any applicable criteria in program specific subparts of Part 6 of this title. A determination shall be made as early as possible following the receipt of an application. The responsible official shall document the decision to issue or deny an exclusion as soon as practicable following review in accordance with § 6.400(f). For qualified actions, the documentation shall include the application, a brief description of the proposed action, and a brief statement of how the action meets the criteria for a categorical exclusion without violating criteria for not granting an exclusion.

* * * * *

(d) *General categories of actions eligible for exclusion.* Actions consistent with any of the following categories are eligible for a categorical exclusion:

(1) Actions which are solely directed toward minor rehabilitation of existing facilities, functional replacement of equipment, or towards the construction of new ancillary facilities adjacent or appurtenant to existing facilities;

(2) Other actions specifically allowed in program specific subparts of this regulation; or

(3) Other actions developed in accordance with paragraph (f) of this section.

(e) *General criteria for not granting a categorical exclusion.* (1) The full environmental review procedures of this part must be followed if undertaking an action consistent with allowable categories in paragraph (d) of this section may involve serious local or environmental issues, or meets any of the criteria listed below:

(i) The action is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, State, local, tribal or private actions;

(ii) The action is known or expected to directly or indirectly affect (A) cultural resource areas such as archaeological and historic sites in accordance with § 6.301, (B) endangered or threatened species and their critical habitats in accordance with § 6.302 or State lists, (C) environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones in accordance with § 6.302, or (D) other resource areas identified in supplemental guidance issued by the OEA;

(iii) The action is known or expected not to be cost-effective or to cause significant public controversy; or

(iv) Appropriate specialized program specific criteria for not granting an exclusion found in other subparts of this regulation are applicable to the action.

(2) Notwithstanding the provisions of paragraph (d) of this section, if any of the conditions cited in paragraph (e)(1) of this section exist, the responsible official shall ensure:

(i) That a categorical exclusion is not granted or, if previously granted, that it is revoked according to paragraph (c) of this section;

(ii) That an adequate EID is prepared; and

(iii) That either an environmental assessment and FNSI or a notice of intent for an EIS and ROD is prepared and issued.

(f) *Developing new categories of excluded actions.* The responsible official, or other interested parties, may request that a new general or specialized program specific category of excluded actions be created, or that an existing category be amended or deleted. The request shall be in writing to the Assistant Administrator, OEA, and shall contain adequate information to support the request. Proposed new categories shall be developed by OEA and published in the **Federal Register** as a proposed rule, amending paragraph (d) of this section when the proposed new category applies to all eligible programs or, amending appropriate paragraphs in other subparts of this part when the proposed new category applies to one specific program. The publication shall include a thirty (30) day public comment period. In addition to criteria for specific programs listed in other subparts of this part, the following general criteria shall be considered in evaluating proposals for new categories:

(1) Any action taken seldom results in the effects identified in general or specialized program specific criteria identified through the application of criteria for not granting a categorical exclusion;

(2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EIS; and

(3) Whether information adequate to determine if a potential action is consistent with the proposed category will normally be available when needed.

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4b. Section 6.108 is amended by revising paragraph (d) and the section title to read as follows:

§ 6.108 Criteria for initiating an EIS.

* * * * *

(d) The proposed action may significantly affect threatened and endangered species or their habitats identified in the Department of the Interior's list, in accordance with § 6.302, or a State's list, or a structure or a facility constructed or operated under the proposed action may be located in the habitat;

* * * * *

5. Section 6.400 is amended by revising paragraphs (d), (e) and (f) as follows:

§ 6.400 Public involvement.

* * * * *

(d) *Findings of no significant impact (FNSI).* The responsible official shall allow for sufficient public review of a FNSI before it becomes effective. The FNSI and attendant publication must state that interested persons disagreeing with the decision may submit comments to EPA. The responsible official shall not take administrative action on the project for at least thirty (30) calendar days after release of the FNSI and may allow more time for response. The responsible official shall consider, fully, comments submitted on the FNSI before taking administrative action. The FNSI shall be made available to the public in accordance with the requirements and all appropriate recommendations contained in § 1506.6 of this title.

(e) *Record of Decision (ROD).* The responsible official shall disseminate the ROD to those parties which commented on the draft or final EIS.

(f) *Categorical exclusions.* An applicant who files for and receives a determination of categorical exclusion under § 6.107(a), or has one rescinded under § 6.107(c), shall publish a notice indicating the determination of eligibility or rescission in a local newspaper of community-wide circulation and indicate the availability of the supporting documentation for public inspection. The responsible official shall, concurrent with the publication of the notice: make the documentation as outlined in § 6.107(b) available to the public; and distribute the notice of the determination to all known interested parties.

6. Section 6.402 is amended by revising paragraph (b) as follows:

§ 6.402 Availability of documents.

* * * * *

(b) *Public information.* Lists of all notices, determinations and other reports/documentation, related to these notices and determinations, involving CEs, EAs, FNSIs, notices of intent, EISs, and RODs prepared by EPA shall be available for public inspection and maintained by the responsible official as a monthly status report. OEA shall maintain a comprehensive list of notices of intent and draft and final EISs provided by all responsible officials for public inspection including publication in the Federal Register. In addition, OEA will make copies of all EPA-prepared EISs available for public inspection; the responsible official shall do the same for any EIS he/she undertakes.

7. Section 6.502 is amended by adding paragraphs (b)(4) as follows:

§ 6.502 Applicability and limitations.

* * * * *

(b) * * *

(4) In accord with § 6.302(f), on or after October 18, 1982, no new expenditures or financial assistance involving the construction grants program can be made within the Coastal Barrier Resource System, or for projects outside the system which would have the effect of encouraging development in the system, other than specified exceptions made by the EPA after consultation with the Secretary of the Interior.

8. Section 6.503 is amended by revising paragraph (b) as follows:

§ 6.503 Overview of the environmental review process.

* * * * *

(b) *Determining categorical exclusion eligibility.* At the request of a potential Step 3 or Step 2+3 grant applicant, or a Step 1 facilities planning grantee, the responsible official will determine if a project is eligible for a categorical exclusion in accordance with § 6.505. A Step 1 facilities planning grantee awarded a Step 1 grant on or before December 29, 1981 may request a categorical exclusion at any time during Step 1 facilities planning. A potential Step 3 or Step 2+3 grant applicant may request a categorical exclusion at any time before the submission of a Step 3 or Step 2+3 grant application.

* * * * *

9. Section 6.505 is amended by revising paragraphs (a), (b) and (c); removing existing paragraph (d); and revising and redesignating existing paragraph (e) as new paragraph (d) as follows:

§ 6.505 Categorical exclusions.

(a) *General.* At the request of an existing Step 1 facilities planning grantee or of a potential Step 3 or Step 2+3 grant applicant, the responsible official, as provided for in §§ 6.107(b), 6.400(f) and 6.504(a), shall determine from existing information and document whether an action is consistent with the categories eligible for exclusion from NEPA review identified in § 6.107(d) or § 6.505(b) and not inconsistent with the criteria in § 6.107(e) or § 6.505(c).

(b) *Specialized categories of actions eligible for exclusion.* For this subpart, eligible actions consist of any of the categories in § 6.107(d), or:

(1) Actions for which the facilities planning is consistent with the category listed in § 6.107(d)(1) which do not affect the degree of treatment or capacity of the existing facility including, but not limited to, infiltration and inflow corrections, grant-eligible replacement of existing mechanical equipment or structures, and the construction of small structures on existing sites;

(2) Actions in sewered communities of less than 10,000 persons which are for minor upgrading and minor expansion of existing treatment works. This category does not include actions that directly or indirectly involve the extension of new collection systems funded with federal or other sources of funds;

(3) Actions in unsewered communities of less than 10,000 persons where on-site technologies are proposed; or

(4) Other actions are developed in accordance with § 6.107(f).

(c) *Specialized Criteria for not granting a categorical exclusion.* (1) The full environmental review procedures of this part must be followed if undertaking an action consistent with the categories described in paragraph (b) of this section meets any of the criteria listed in § 6.107(e) or when:

(i) The facilities to be provided will (A) create a new, or (B) relocate an existing, discharge to surface or ground waters;

(ii) The facilities will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters; or

(iii) The facilities would provide capacity to serve a population 30% greater than the existing population.

(d) *Proceeding with grant awards.* (1) After a categorical exclusion on a proposed treatment works has been granted, and notices published in accordance with § 6.400(f), grant awards may proceed without being subject to any further environmental review requirements under this part, unless the responsible official later determines that the project, or the conditions at the time the categorical determination was made, have changed significantly since the independent EPA review of information

submitted by the grantee in support of

FNSI. For those States delegated

the overall wastewater treatment works

VOL 51 ISS 177 SEP 12 1986 UMI

environmental information deemed necessary by the responsible official

without the preparation of supplemental EISs unless the responsible official later

an independent review of a preliminary environmental assessment.

[redacted]

[redacted]

[redacted]

171.....31760, 32208
178.....31760, 32208

21 CFR

5.....32451
74.....32453
81.....31323
175.....31098
178.....31099, 31760, 32211
193.....31324
331.....32212
332.....32212
357.....31763
369.....31763
510.....31100
558.....31763

22 CFR

41.....32295

23 CFR

11.....32453

24 CFR

201.....32059
511.....31764

26 CFR

1.....31610, 31613, 32061
20.....31938, 32071
25.....31938
602.....31610, 31613, 31938

28 CFR

0.....31939, 31940
2.....32071
16.....32305
544.....32602

Proposed Rules:

16.....31781

29 CFR

220.....32306
1601.....32073
1956.....32453
2200.....32002

30 CFR

901.....31940
938.....31942

Proposed Rules:

733.....31139
917.....32336
946.....32106
948.....32338

32 CFR

90.....32308
199.....31100
205.....31325
286g.....31103
359.....32309
706.....31103–31112, 32312–32316

Proposed Rules:

40.....31651

33 CFR

110.....32317
117.....31112, 31113, 31946, 32318, 32319
165.....31113, 31114, 31946

Proposed Rules:

117.....32339
161.....32489
165.....31958

34 CFR

Proposed Rules:

614.....31754

36 CFR

13.....31619
800.....31115
1254.....31617

38 CFR

Proposed Rules:

21.....31782

39 CFR

10.....31325
233.....31328

Proposed Rules:

111.....31673

40 CFR

6.....32606
51.....32176
52.....31125, 31127, 31129, 31328, 32973, 32075, 32176
60.....32454
180.....32212
261.....31330, 32458
271.....31618
721.....32077
799.....32079

Proposed Rules:

51.....32180
52.....32180
86.....31783, 31959, 32032
260.....31783
261.....31140, 31783, 32217
262.....31783
264.....31783
265.....31783
268.....31783
270.....31783
271.....31783
721.....32495
799.....32107

41 CFR

Proposed Rules:

201–33.....31674

42 CFR

23.....31947
405.....31454
412.....31454

Proposed Rules:

57.....31920, 32616

43 CFR

36.....31619
2880.....31764

Proposed Rules:

2800.....31886
2880.....31886

44 CFR

64.....31330
65.....31635, 31950
67.....31951

Proposed Rules:

10.....31788
67.....31675, 31678

47 CFR

0.....31303, 32087
1.....31303, 32087
2.....31303
13.....31303
21.....31303
22.....31335
63.....31303
73.....32087, 32089, 32213, 32320
74.....32087
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303

Proposed Rules:

2.....32222
15.....31147, 32222
25.....32223
64.....32113
67.....31149
68.....31149
73.....32113, 32114, 32224–32226, 32340
76.....31147
80.....31306

48 CFR

5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
47.....31424
50.....31424
52.....31424
223.....31765
228.....31765
242.....31765
252.....31765
914.....31335
933.....31335
952.....31335
970.....31335

Proposed Rules:

32.....31194
45.....31196
48.....31197
52.....31194, 31197
515.....31344
538.....31344
542.....32340
552.....31344
970.....32340
1317.....31687
1352.....31687
5316.....32114

49 CFR

1.....32320
571.....31765

Proposed Rules

391.....31150
393.....32115
1042.....32500

50 CFR

17.....31412
20.....31430, 32460
23.....31130, 32477
32.....32321
36.....31619, 32329
285.....32478
611.....32089, 32334
655.....31774, 31775
661.....32091
662.....32334
663.....31776
674.....32214, 3247
675.....32334
683.....32215

Proposed Rules

611.....32226
630.....31151

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 5, 1986.

VOL 51 ISS 177 SE 12 1986 UMI

..31424
..31424
..31424
..31424
..31765
..31765
..31765
..31765
..31335
..31335
..31335
..31335

..31194
..31196
..31197
, 31197
..31344
..31344
..32340
..31344
..32340
..31687
..31687
..32114

. 32320
..31765

..31150
..32115
..32500

..31412
, 32460
, 32477
. 32321
, 32329
..32478
, 32334
, 31775
..32091
..32334
..31776
4, 3247
..32334
..32215

..32226
..31151

AWS

hich

of the
lusion
c

1966.

VOL
51
ISS
1
7
7
SE
12
1986
UMI